



*City of Alamogordo*

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Purchasing Office 2600 N. Florida Alamogordo NM 88310 Phone (575)439-4116

July 7, 2022

To: All Bidders

Re: **Addendum No. 1**

**RFQ 2022-06 Re-Bid Engineer and Design Services – Repair 10<sup>th</sup> Street Bridge and Replace Hubbard Dr. Bridge**

**Each bidder shall acknowledge receipt of this Addendum Number One (1) by including in Proposal packet. This addendum will not be counted as part of the maximum page limit.**

**Addendum Number 1 is issued to provide changes and/or clarifications to the above referenced RFQ as per the following:**

**Question:** In regards to the Draft Copy of the Services Agreement in the RFQ, there is a section that states, “WHEREAS, the City desires to hire Consultant to provide engineering services for the update to several City Codes of Ordinance (Ordinance Updates) (See Attachment A);”. Our questions about this section are as follows:

1. Is providing updates to City Codes of Ordinances (Ordinance Updates) a part of this RFQ’s scope of work?
2. Could we please receive a copy of Attachment A?

**Answer:** Disregard the draft services agreement regarding City Code of Ordinance. The correct draft agreement is attached to this addendum.

**Question:** Are there as-built drawings available for both 10<sup>th</sup> St and Hubbard Dr. structures?

**Answer:** No as-builts are available.

**Question:** Are there any Bridge Inspection Reports available for the Hubbard Drive bridge?

**Answer:** No bridge inspection reports are available.

**Question:** Attachment # 4 (Scope of Work) page 20 of the RFQ mentions that this is a re-bid. *Why is this a re-bid?*

**Answer:** No bids were received on previous RFQ.

**Question:** IV-Evaluation, A-criteria, 6 Amount of work the will be produced in NM....., Firm will indicate approximate value of work that will be produced in NM.....

*This is a RFQ based on qualifications and proposers are not required to submit a fee for the design. Is this gong to be deleted? How are you going to arrange these five points within the rest of the criteria?*

**Answer:** This is a standard criterion for the City of Alamogordo. It will be evaluated on the proposer response of what work they will be producing in New Mexico. No fee schedule is requested.

**All other provisions of the Contract Documents shall remain unchanged. This addendum is hereby made part of the Contract Documents. Each bidder shall acknowledge receipt of this Addendum Number One (1) using the attached acknowledgement page and submit with each copy of the proposal (not included in page count).**

Thank You,

Barbara Pyeatt  
Chief Procurement Officer  
bpyeatt@ci.alamogordo.nm.us

**ADDENDUM ACKNOWLEDGEMENT**

**ADDENDUM NO. 1**

**RFQ 2022-06 Re-Bid Engineer and Design Services - Repair 10<sup>th</sup> Street Bridge and  
Replace Hubbard Dr. Bridge**

Received By: \_\_\_\_\_

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

Business Name: \_\_\_\_\_

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

# DRAFT

## **AN AGREEMENT FOR ENGINEERING SERVICES (Standard Hourly Rate with Maximum/Lump Sum)**

**THIS AGREEMENT** made this \_\_\_\_ day of \_\_\_\_\_, 2022 by and between THE CITY OF ALAMOGORDO, New Mexico, a New Mexico municipal corporation organized and existing under the laws of the State of New Mexico, (City) and, **CONSULTANT** in association with PROJECT, a New Mexico corporation, (Engineer), witnesseth:

**WHEREAS**, City intends to engage Engineer to perform professional services for a project known as Engineering Design Services for **RFQ No. 2022-06, Re-Bid Engineer & Design Services for Repair Tenth Street Bridge and Replace Hubbard Drive Bridge**, hereinafter called the "Project", and further described in the Scope of Work (Attachment "A") attached hereto and made a part hereof.

**NOW, THEREFORE**, City and Engineer for the consideration hereinafter set forth agree as follows:

### **I. BASIC SERVICES OF THE ENGINEER**

#### **A. General**

1. Engineer agrees to perform professional services in connection with the Project as hereinafter stated.

2. Engineer shall serve as City's professional representative in those phases of the Project to which this Agreement applies, and shall give consultation and advice to City during the performance of these services.

3. City is relying upon the skill and expert knowledge of Engineer to furnish City with an accurate work product within the allocated budget. City's review of any documents prepared by Engineer is only general in nature, and its obligation to approve and accept the work in no way relieves Engineer of responsibility and liability for any specific deficiencies in the work product including, but not limited to: accuracy and competency of designs, working drawings, specifications or other documents and work. Further, approval by City is not an assumption by City of responsibility for any defect in the work of Engineer, its agents or employees. Throughout the performance of the project, Engineer agrees to perform those services required to correct errors or omissions on the original plan and to change the design as necessary for those corrections without additional cost to City. Engineer shall respond in twenty-four (24) clock hours to any questions and/or inquiries concerning the project, unless otherwise agreed to by City.

#### **B. Preliminary Design Phase**

Provide the services identified in the Scope of Work (Attachment "A"), which may include: Upon receipt of City's written authorization to proceed with the Preliminary Design Phase, Engineer shall do the following separately for each construction contract:

1. Consult with City to determine City's requirements for the Project.
2. Provide right-of-way surveys, boundary surveys, topographic surveys, and drainage surveys, as needed to design the Project and as required by the Scope of Work of this Agreement; obtain all available information from all utility companies and other affected agencies including, but not limited to, the State Highway Department as needed to complete the proper design to standard city specifications. This does not, however, include property surveys and legal descriptions as needed to acquire additional right-of-way or additional property; however, Engineer will identify any easements or right-of-way that will be required for construction of the project.
3. Obtain all available horizontal and vertical locations of public utilities, and fully coordinate design of the Project with public utilities in an effort to minimize relocation of utilities as much as possible.
4. Make drawings from field measurements of existing conditions when required for planning additions or alterations thereto.
5. (1) Provide consultation and advice as to the necessity of providing or obtaining other services such as: (a) property surveys, boundary surveys, right-of-way surveys, and utility surveys, (b) core borings, probings or subsurface explorations, and hydrographic surveys, (c) laboratory testing, and (d) inspection of samples or materials and other special consultation; (2) act as City's representative in connection with such services; and (3) if concurred with and authorized by City, provide, procure, or assist City in procuring such additional services.
6. Review with City's alternative approaches to the construction of the Project. City, at its option, may designate in writing various construction contracts into which the Project shall be divided. If City designates various construction contracts into which the Project is to be divided, Engineer shall thereafter treat each construction contract as a separate Project under this Agreement. Each construction contract shall be separately bid and Engineer shall prepare separate preliminary design, pre-final design, and final design specifications to conform to City's standard specifications, proposal forms, notices to bidders, construction contract documents, and other required documents for each construction contract.
7. Prepare for approval, by City, preliminary design documents consisting of design criteria, drawings, and outline specifications to develop and establish the scope of each construction contract.
8. Prepare detailed cost estimates including quantities, for each construction contract containing the main construction components, based on the information given in the preliminary design documents.
9. Furnish three (3) copies of the above preliminary design documents and cost estimates for each construction contract. Additional sets required for public utilities and other agencies must be provided by Engineer at no additional cost to City.

### C. Final Design Phase

Provide the services identified in the Scope of Work (Attachment "A"), which may include: Upon receipt of City's written authorization to proceed with the Final Design Phase, Engineer shall do the following separately for each construction contract:

1. Incorporate changes requested by City and other governmental authorities after review of pre-final documents and perform redesign necessitated by public utility conflicts.
2. Prepare final plans.
3. Engineer is expected to have coordinated closely with utility companies during the Preliminary Design and Final Design Phases. The amount of redesign necessary to accommodate utility company comments on the pre-final design drawings is expected to be in proportion to the effectiveness of that coordination and is to be performed by Engineer as part of the Final Design Phase of this Agreement.
4. Furnish to City three (3) copies of the Drawings and Specifications in final approved form for bidding purposes for each construction contract. Additional sets required for public utilities and other agencies must be provided by Engineer at no additional cost to City. In order to obtain approval, final plans must be complete in every respect so that they will be ready to be advertised for bids for letting the contract for the project.

### D. Bidding Phase

Provide the services identified in the Scope of Work (Attachment "A"), which may include:

Upon receipt of City's written authorization to proceed with the Bidding Phase on each construction contract, Engineer shall do the task identified in the Scope of Work. Some of the tasks that may be included in the Scope of Work include:

1. Assist City in the determination of the bidding period and bid date, and provide necessary data for preparation of the bid documents and the Notice to Bidders by City as required for advertising purposes.
2. Assist City in responding to all questions from prospective bidders concerning the Drawings and Specifications.
3. Attend a prebid conference, if any, to explain the Project and to answer questions regarding the Project.
4. Prepare addenda to the Drawings and Specifications as may be required during the advertising period. Any addenda issued shall be approved by all agencies having approval authority over the Drawings and Specifications. Deliver necessary copies of all addenda to City for distribution.

5. Assist City in evaluating bids, including obtaining and providing to City reasonably available information as to the quality, ability, and record of performance of the three (3) lowest responsible bidders.

6. Advise City concerning the acceptability of subcontractors and other persons and organizations proposed by the general construction contractor for those portions of the work for which such acceptability is required by the construction contract documents.

#### E. Construction Phase

Provide the services identified in the Scope of Work (Attachment "A"), which may include:

The Construction Phase, for each construction contract, shall commence with the award of the construction contract and shall terminate upon written approval of final payment to Engineer by City, except that this phase may be extended, if required, by agreement between Engineer and City. During the Construction Phase, Engineer shall:

1. Attend the preconstruction conference to assist City in responding to all questions from the construction contractor.

2. Advise and consult with City and act as City's representative as provided in the general conditions of the agreement included in the construction contract. Such general conditions shall be City's standard general conditions for construction projects, with such changes and modifications as may be made in such general conditions being agreed to by both Engineer and City. The extent and limitations of the duties, responsibilities, and authority of Engineer, as assigned in the document agreed upon, shall not be modified without prior written agreement between City and Engineer. However, it is understood and agreed that in the event of any conflict between the terms of this Agreement and those of the general conditions referred to above in this paragraph, the terms and conditions of this Agreement shall control.

3. Visit each construction site as required by City, to observe the progress and quality of the executed work and to determine if such work meets the essential performance and design features and the technical and functional requirements of the construction contract documents. On the basis of these on-site observations, Engineer shall endeavor to guard City against apparent defects and deficiencies in the permanent work constructed by the construction contractor. Engineer shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work and shall not be responsible for the construction means, methods, techniques, sequences of procedures, or the safety precautions incident thereto. Engineer's efforts shall be directed toward providing assurance for City that each completed construction contract shall conform to the engineering requirements of the construction contract documents. However, Engineer shall not be responsible for the construction contractor's failure to perform the construction work in accordance with the construction contract documents. Nothing in this Agreement shall be construed as requiring Engineer to assume responsibility for or to guarantee the complete adherence of the construction contractor to the Drawings and Specifications and the construction contract documents.

4. Review shop drawings, diagrams, illustrations, brochures, catalog data, schedules, samples, the results of tests and inspections, and other data which the construction contractor is required to submit for conformance with the design concept of each construction contract and compliance with the information given in the construction contract documents. Engineer shall also assemble maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspections, and other documents that the construction contractor is required to submit in accordance with the construction contract documents.

5. Issue City's instructions to the construction contractor when required to do so; prepare routine change orders for City's approval as required after securing approval of all agencies having approval authority over each construction contract. Engineer shall require, as City's representative and subject to the written concurrence by City, special inspection or testing of the work whether or not fabricated, installed, or completed and shall act as interpreter of the terms and conditions of the construction contract documents, subject to City's interpretation of such terms and conditions.

6. Based on on-site observations as an experienced and qualified design professional and on review of the construction contractor's applications for payment and supporting data, determine the amount owing to the construction contractor and recommend in writing payment to the construction contractor in such amounts; such recommendation of payment to constitute a representation to City, based on such observations and review, that the work has progressed to the point indicated and that, to the best of Engineer's knowledge, information, and belief, the quality of the work is in accordance with the construction contract documents, subject to an evaluation of the work as a functioning project upon substantial completion, to the results of any subsequent tests called for in the construction contract documents and to any qualifications stated in the approval. Engineer shall have five (5) calendar days from the date of receipt of the construction contractor's application for payment to furnish the approved application for payment to City (the five calendar days shall include transit time to City). Engineer shall have seven (7) calendar days from the date of receipt of the construction contractor's application for payment to reject the application and return to the construction contractor for revision (the seven calendar days shall include transit time of the application for payment to the construction contractor). By recommending an application for payment, Engineer shall not be deemed to have represented that any examination to determine how or for what purposes the construction contractor has used the moneys paid on account of each construction contract price has been made.

7. Furnish City a written report each month which describes the work on the project, work remaining to be done and the status of the project indicating the percent complete.

8. Make written recommendations to City on all claims relating to the execution and progress of the construction work.

9. Schedule and conduct with City, including representatives of Public Works Director and the using department, and the construction contractor, a final inspection of the Project, and prepare and publish a "punch list" of minor deficiencies to be corrected prior to final payment to the construction contractor. Contents of "punch list" shall be coordinated with City. The "punch list" shall be furnished to the construction contractor and City within two (2) city working days after the final inspection.



10. Issue a Certificate of Substantial Completion when the final inspection reveals that the Project is substantially complete and fully usable for its intended purpose with only minor deficiencies to be corrected. The certificate shall be issued within two (2) city working days after the final inspection.

11. Monitor and verify proper correction of all punch lists deficiencies. Notify City in writing when all deficiencies have been corrected and when warranty, maintenance, and operating instructions, and other documents have been submitted by the construction contractor. Act on and forward the construction contractor's final invoice for payment.

12. Notify City of all permanent work which does not conform to the result required in each construction contract; prepare a written report describing any apparent nonconforming permanent work, and make recommendations to City for its correction and, at City's request, have recommendations implemented by the construction contractor.

13. Furnish City, within thirty (30) calendar days, after the receipt of Contractor's markup drawings, a complete set of original drawings (24" x 36") on 4-mil mylar and a copy of the record drawings on a CD-ROM using City's latest version of Autocad. The record drawings shall show those changes made during the construction process, based on the marked-up prints, drawings, and other data furnished by the construction contractor to Engineer. All lettering shall be clearly legible when the sheets are reduced to half scale.

## **II. ADDITIONAL SERVICES OF THE ENGINEER**

### **A. General**

If authorized in writing by City, Engineer shall furnish or obtain additional services of the following types which are not covered by Section I herein, which shall be paid for by City as indicated in Sec. V, Part B.:

1. Furnish core borings, probings, or subsurface explorations; laboratory testing; inspection of samples or materials; and other special consultations.

2. Furnish property surveys and legal descriptions as needed to acquire additional right-of-way or additional property.

3. Provide additional services due to significant changes in the general scope of the Project or its design including, but not limited to, changes in size, complexity, or character of construction if the changes are made after approval of preliminary design documents except when Engineer's preliminary design, pre-final design, or final design estimates exceed the budgeted amount, or in the case where the lowest bid exceeds Engineer's final design estimate by ten percent (10%) or more.

4. Revise previously approved studies, reports, design documents, drawings, or specifications, except when said revisions are required as a result of errors, negligence, or other fault on the part of Engineer.

5. Prepare documents for alternate bids requested by City for construction work for which bids have not been awarded.

6. Prepare detailed renderings, exhibits, or scale models for the Project, except as otherwise required herein.

7. Furnish additional copies of studies, reports, and additional prints of Drawings and Specifications in excess of those required in Section 1 hereof.

8. Provide investigations involving detailed consideration of operation, maintenance, and overhead expenses; the preparation of rate schedules, earnings and expense statements, feasibility studies, appraisals and valuations; detailed quantity surveys or material or labor; and material audits or inventories required for certification of force account construction performed by City.

9. Prepare change orders requiring additional significant design requested by City.

10. Inspect each construction contract site prior to expiration of the guarantee period and report observed discrepancies under guarantees provided by the construction contractor.

11. Provide additional or extended services during construction made necessary by: (1) work damaged by fire or other cause during construction, (2) prolongation of the construction contract time by more than twenty-five percent (25%), provided that such prolongation is not caused by errors, negligence, or other fault on the part of Engineer, (3) acceleration of the work schedule involving services beyond normal city working hours, or (4) the construction contractor's default under the construction contract due to delinquency or insolvency.

12. Provide extensive assistance in the initial start-up and test operation of equipment or devices and the preparation of manuals of operation-and maintenance.

13. Provide additional services and costs necessitated by out-of-town travel required of Engineer other than visits to the Project as required in Section I.

14. Serve as an expert witness for City in any litigation or other proceeding involving the Project.

15. Provide additional services in connection with the Project not otherwise provided for in this Agreement, except where those services are required as a result of negligence or other fault on the part of Engineer.

#### **B. Resident Project Services**

1. If directed in writing by City, one or more full-time Resident Project Representatives shall be furnished and directed by Engineer in order to provide more extensive representation at each construction site during the Construction Phase. Such resident project representation shall be paid for by City as indicated in Sec. V, Part B.

2. The duties and responsibilities and the limitations on the authority of the Resident Project Representative shall be as set forth in Attachment "B" which is to be identified, attached to, and made a part of this Agreement before such services begin.

3. Through the continuous on-site observations of the working progress and field checks of materials and equipment by the Resident Project Representative, Engineer shall endeavor to provide further protection for City against defects and deficiencies in the work of the construction contractor, but the furnishings of such resident project representation shall not make Engineer responsible for the construction contractor's failure to perform the construction-work in accordance with the construction contract documents.

### **III. THE CITY'S RESPONSIBILITIES**

Unless agreed to otherwise, City shall:

- A. Provide full information as to its requirements for each construction contract.
- B. Make all known information pertinent to the site of the construction contract, including previous reports and other data relative to design, such as as-built drawings or physical conditions now existing at the Project site available to Engineer.
- C. Obtain access to and make provisions for Engineer to enter upon public and private lands as required for Engineer to perform the work required under this Agreement.
- D. Review all studies, reports, sketches, estimates, drawings, specifications, proposals, and other documents presented by Engineer and render in writing decisions pertaining thereto within a reasonable time so as not to unreasonably delay the work of Engineer. Any review of studies, reports, sketches, estimates, drawings, specifications, proposals, and other documents by City shall not relieve Engineer of the responsibility for providing City with complete and accurate documents.
- E. Advertise for proposals from bidders, open the proposals at the appointed time and place, and pay for all costs incident thereto.
- F. Designate Public Works Director or other designee, as City's representative with respect to the engineering work to be performed under this Agreement. The Public Works Director or City's designee shall have complete authority to transmit instructions, receive information, interpret and define City's policies and decisions with respect to materials, equipment, elements, and systems pertinent to the work covered by this Agreement.
- G. Give prompt written notice to Engineer whenever City observes or otherwise becomes aware of any defect in any work done under any of the construction contracts.
- H. Obtain approval of all governmental agencies having jurisdiction over the Project and such approvals and consents from such other individuals or bodies as may be necessary for completion of the Project.

I. Furnish or direct Engineer to provide at City's expense necessary additional services as stipulated in Section II of this Agreement or other services as required by City.

**IV. PERIOD OF SERVICE**

A. The services called for in the Preliminary Design Phase of this Agreement shall be completed and the preliminary design documents and general cost estimate submitted within the time period identified in the Scope of Work.

B. After City's review of the preliminary design documents and cost estimates for each construction contract, including specific modifications or changes in scope desired by City, and upon written authorization from City, Engineer shall proceed with the performance of the services called for in the Final Design Phase of this Agreement, so as to deliver completed detailed construction drawings, specifications, revised design analysis, and cost estimates for review on all authorized work on each construction contract within the time period identified in the Scope of Work.

C. Unless sooner terminated as provided in Sec. VI, Part A., this Agreement shall remain in force: (1) for a period which may reasonably be required for the design, award of construction contracts, and construction of the improvements included in all construction contracts, including extra work and required extensions thereto, or (2) in case construction is not commenced for a period of twelve (12) months after the completion of the services called for in that phase of work last authorized.

**V. PAYMENTS TO THE ENGINEER**

A. Payments for Basic Services of Engineer Under Section I

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

STANDARD HOURLY RATE WITH MAXIMUM method of payment. The total amount of hourly charges, excluding gross receipt tax and reimbursables, for ENGINEERING SERVICES as described in the appropriate EXHIBIT shall not exceed \$ \_\_\_\_\_ without prior written approval of the City of Alamogordo.

2. Payment on account of said fees for the basic services provided in Sec. V, Part A.1., shall be made as follows:

The compensation for each phase of basic services shall be made as follows:

	<u>Payment</u>
a. Preliminary Design Phase	\$ _____
b. Final Design Phase	\$ _____
c. Bidding Phase	\$ _____
d. Construction Phase	\$ _____

Partial payment for each phase shall be paid on a monthly basis prorated on the amount of work completed in each phase.

Upon request of successful offeror, progress payments may be made monthly based on percentage of work completed. Requests for payment will be submitted to City no later than the 10<sup>th</sup> of each month. City will tender payment within thirty (30) days of receipt and approval of requested progress payment.

#### B. Payments for Additional Services of Engineer Under Section II

1. City shall pay Engineer for additional services performed by personnel assigned to the regularly established office of Engineer at the rates established in Attachment "C" hereof, plus the actual cost of the reimbursable expenses as hereinafter provided.

2. Continental United States (CONUS) rates will apply for Engineer's expenses for transportation and subsistence of principals, employees and Resident Project Representative while traveling in connection with the Project. Reimbursable expenses such as field office expenses, toll telephone calls and telegrams, reproduction of reports, drawing and specification, and similar Project related items will be paid by City. Such expenses must be authorized in writing by City to be eligible for reimbursement.

3. City shall pay Engineer for serving as an expert witness at the rate of \$ XXX per day or any portion thereof, plus out-of-pocket expenses.

4. Payments for additional services shall be made monthly upon presentation of Engineer's detailed statement and its written approval by City.

#### C. General

1. The payroll cost of salaries and wages used as a basis for payment under Sec. V, Part B.1., shall mean the cost of salaries and wages paid to principals and employees engaged directly on the Project, including but not limited to, social security contributions, unemployment, excise and payroll taxes, worker's compensation, health and retirement benefits, sick leave, vacation, and holiday pay applicable thereto.

2. If the Engineer's most recent cost estimate for any construction contract is in excess of the estimated Project cost stated herein, City shall give written approval of an increase in the limit, or shall cooperate in revising the Project's scope or quality, or both, to reduce the cost as required. Such revisions shall be made, and Drawings and Specifications modified by Engineer without further compensation.

3. If this Agreement is terminated upon completion of any phase of Engineer's services, the payments to be made in accordance with Sec. V, Part A.2., on account of that and all prior phases shall constitute total payment for services rendered; if terminated during any phase of the work, Engineer shall be paid for services performed during such phase on the basis of a mutually reasonable estimate of the portion of such phase completed prior to termination. In the event of any termination, Engineer shall be paid to the extent of services performed and completed when due, including payment for additional services performed under Sec. V, Part B. Any previous

payments made to Engineer shall be credited to the payments due under this Agreement.

4. If, prior to termination of this Agreement, any work designed or specified by Engineer during any phase of the work is suspended in whole or in part for more than three (3) months, or abandoned, after written notice from City, Engineer shall be paid for services performed on account of the work done prior to receipt of such notice from City as provided in Sec. V, Part C.3., for termination during any phase of the work.

## **VI. GENERAL CONSIDERATIONS**

### **A. Termination**

This Agreement may be terminated without cause by either party by giving thirty (30) days written notice, as provided in Sec. VII, Part J. It is understood that Engineer will cease all work on the project immediately upon receipt of notice of termination and will not be entitled to payment for work performed after that date unless the work is specifically authorized by City. Should Engineer terminate this agreement without cause, it will still be liable to City for costs incurred, including delays in having the project completed.

In the event of failure to perform in accordance with terms herein, this Agreement may be terminated by City by giving seven (7) days written notice, as provided in Sec. VII, Part J. If this Agreement is so terminated, Engineer shall be paid as provided in Sec. V, Part C.3. Notwithstanding the above, Engineer shall not be relieved of liability to City for damages sustained by City by virtue of any breach of the Agreement by Engineer, and City may withhold any payment to Engineer for the purpose of setoff until such time as the exact amount of damages due City from Engineer is determined.

### **B. Ownership of Documents**

Tracings, drawings, plans, specifications, original survey field notes, maps, diskettes, and other recordations prepared or obtained under the terms of this Agreement shall be delivered to and become the property of City prior to payment to Engineer for work under the Construction Phase. If this Agreement is terminated at any time for any reason prior to payment to Engineer for work under the Construction Phase, all tracings, drawings, plans, specifications, original survey field notes, maps, electronic media, and other original recordations prepared or obtained under the terms of this Agreement shall upon termination be delivered in Microsoft product and/or Autodesk product (DWG file) format on CD-ROM and become the property of City prior to payment to Engineer as provided in Sec. V, Part C.3. Sketches, charts, computations, and other data prepared for and under this Agreement shall be made available to City upon request and without restriction on their use, or further compensation to Engineer. City in requiring ownership of the above listed documents hereby releases Engineer from all responsibility in connection with their use on any project other than their use on this Project.

### **C. Estimates**

Engineer is expected to be knowledgeable of the cost of construction, labor, and materials in the Alamogordo area and of bidding and market trends. The estimates of

construction cost provided for herein are to be made in light of such knowledge and are expected to be within ten percent (10%) of the bid for the base bid from the lowest responsible bidder.

#### D. Project Budget

Engineer shall apprise himself/herself of the amount budgeted for this Project, and does hereby agree to design the Project such that the final estimate for the complete construction of the final Project is within the budgeted amount. Engineer further understands that payment for the Final Design Phase is conditional upon the bid of the lowest responsible bidder being within ten percent (10%) of Engineer's final estimate for the base bid. If all responsible bids exceed the final estimate by more than ten percent (10%), Engineer expressly agrees, at the direction of City, to redesign the Project without additional charge to City in order to bring the Project within the budgetary limitations.

#### E. Insurance

Engineer shall secure and maintain such insurance as shall protect Engineer and firm from claims under the Worker's Compensation Act. Engineer shall maintain insurance for bodily injury, death, or property damage which may arise from the performance of the services under this Agreement in an amount at least equal to that required by the New Mexico Tort Claims Act. Engineer shall carry errors and omissions insurance in an amount not less than \$1,000,000.

#### F. Successors and Assigns

This Agreement shall be binding on City, its successors and assigns, and on Engineer, its partners, successors, executors, administrators, legal representatives, and assigns. Neither City nor Engineer shall assign, sublet, or transfer an interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of City of Alamogordo.

#### G. Compliance with Laws

Engineer shall comply with all applicable federal, state, and local laws and ordinances applicable to the work covered hereunder.

### **VII. SPECIAL PROVISIONS**

#### A. Topographic Surveys

Topographic surveys, to be provided in Basic Services under Sec. I, Part B.2., shall be limited to the area of the various Project construction sites.

#### B. Time of Essence; Liquidated Damages

TIME IS OF THE ESSENCE in this Agreement. Engineer agrees to accept and adhere to the schedule established in the Scope of Work of this Agreement. Failure of Engineer to adhere to this schedule without due cause, approved in writing by the Public Work Director, shall cause damage to City which Engineer agrees to compensate at the rate of THREE HUNDRED and NO/100 DOLLARS (\$300.00) per day, without the right of setoff or counterclaims.

It is hereby understood and mutually agreed, by and between Engineer and City, that the date of beginning and the time for completion as specified in the Agreement of the work to be done hereunder are ESSENTIAL CONDITIONS in the Agreement. It is further mutually understood and agreed that the work embraced in this Agreement shall be commenced on a date to be specified in the "Notice to Proceed."

Engineer agrees that said work shall be prosecuted regularly, diligently, and uninterrupted at such rate of progress as shall ensure completion thereof within the time specified. It is expressly understood and agreed, by and between Engineer and City, that the time for the completion of the work described herein is a reasonable time for the completion of the same.

If the said Engineer shall neglect, fail, or refuse to complete the work within the time herein specified, or any proper extension thereof granted by City, then Engineer does hereby agree, as a part of the consideration for the awarding of this Agreement, to pay City the amount specified in this Agreement, not as a penalty but as liquidated damages for such breach of Agreement as hereinafter set forth, for each and every calendar day that Engineer shall be in default after the time stipulated in the Agreement for completing the work.

The said amount is fixed and agreed upon by and between Engineer and City because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages City would in such event sustain, and said amount is agreed to be the amount of damages which City would sustain.

It is further agreed that TIME IS OF THE ESSENCE in each of the specifications wherein a definite and certain length of time is fixed for the performance of any act and in every portion of this Agreement. Additionally, time shall be of the essence where under this Agreement an additional time is allowed for the completion of any work. However, when City determines in writing that Engineer is without fault and the reasons for time extension are acceptable, Engineer shall not be charged with liquidated damages or any excess cost.

#### C. Equal Employment Opportunity

In providing services under this Agreement, Engineer shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, or national origin. Engineer shall take affirmative action to ensure that applicants for employment are treated during employment, without regard to their race, color, religion, sex, age, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Engineer shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the government



setting forth the provisions of this nondiscrimination clause. Engineer shall state that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex, age, or national origin. Engineer shall incorporate the foregoing requirements of this section in all of its subcontracts for work to be performed on this Project.

#### D. Obligations of Engineer with Respect to Certain Third Party Relationships

Engineer shall remain fully obligated under the provisions of this Agreement notwithstanding its designation of any third party or parties for the undertaking of all or any part of the Project with respect to which assistance is being provided under this Agreement. Subconsultants shall not be employed without prior approval by City.

#### E. Interest-of Members of Local Governing Body, or Other Public Officials

No member of the governing body of City of Alamogordo, and no other public official of City of Alamogordo who exercises any function or responsibility with respect to the Project during his/her tenure or for one (1) year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the Project assisted under this Agreement.

#### F. Law Governing Agreement

For the purpose of determining place of Agreement and the law governing same, this Agreement is entered into in City of Alamogordo, County of Otero, State of New Mexico, and shall be governed by the laws of the State of New Mexico. Venue shall be in the County of Otero, New Mexico.

#### G. Indemnification

City shall not be subject to any obligations or liabilities of Engineer incurred in the performance of this Agreement. Engineer expressly agrees to and shall defend, indemnify and hold harmless and defend City, its officers, agents, and employees, from and against any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all expenses of litigation, court costs, and attorney's fees, for injury to or death of any person, or for damage to any property, arising from or relating to any acts or omission of Engineer, its principals or officers, agents, or employees in performance of this Agreement.

#### H. Authorization To Enter Agreement

If Engineer signs this Agreement as a corporation, each of the persons executing this Agreement on behalf of Engineer warrants to City that Engineer is a duly authorized and existing corporation, that Engineer is qualified to do business in the State of New Mexico, that Engineer has full right and authority to enter into this Agreement, and that each and every person signing on behalf of Engineer is authorized to do so. Upon City's request, Engineer shall provide evidence satisfactory to City confirming these representations.

#### I. Entire Agreement

This Agreement, including attachments, constitutes and expresses the entire agreement between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement shall not be amended or modified except by written instrument signed by both parties.

J. Notices

Any notice, demand, request, consent, or approval that either party hereto may or is required to give the other shall be in writing and shall be either personally delivered or sent by certified mail, return receipt, to the following addresses:

To the City: City of Alamogordo  
1376 East Ninth St.  
Alamogordo, New Mexico 88310

To the Engineer:

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement.

CONSULTANT

By: \_\_\_\_\_  
Consultant

NM Taxpayer Identification Number: \_\_\_\_\_  
Federal Taxpayer Identification Number: \_\_\_\_\_

CITY OF ALAMOGORDO, NEW MEXICO  
a New Mexico municipal corporation

By: \_\_\_\_\_  
Brian Cesar, City Manager

ATTEST:

\_\_\_\_\_  
Rachel Hughs, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Petria Bengoechea, City Attorney