



RFP # 2022-802

SENIOR CENTER KITCHEN ARCHITECTURAL DESIGN

Proposals Due:

31 January 2022, 3:00 PM

Via Vendor Registry

Mandatory Site Visit:

20 January 2022, 2:00 PM

Deadline for Questions

25 January 2022, 2:00 PM

For further information, please contact:

Eduard Vodovoz
Procurement Manager
City of Aztec

Phone: 505-334-7656

Fax: 505-334-7649

Email: evodovoz@aztecnm.gov

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NOTICE OF REQUEST FOR PROPOSALS
City of Aztec, NM – SENIOR CENTER KITCHEN ARCHITECTURAL DESIGN
RFP # 2022-802

The City of Aztec is requesting competitive proposals for architectural services for the remodel of a kitchen located at 101 S. Park Ave, Aztec, NM S. This facility is used as a municipal community center and senior center. The building was constructed in 1988 and is approximately 13, 523 square feet. The Project consists of completely remodeling and expanding the kitchen and serving area.

A mandatory site visit will be required at the Aztec Senior Center, Aztec NM 87410. Last day for questions is, 25 January 2022, 2:00 PM.

Proposal documents, including instructions to Bidders and Bid Forms are available online by accessing the City's purchasing webpage through <http://www.aztecnm.gov/purchasing.html> or Vendor Registry www.vendorregistry.com, or by contacting Eduard Vodovoz at (505) 334-7656 or evodovoz@aztecnm.gov

Proposals will be received by the Purchasing Office via Vendor Registry, until the hour of 3:00 p.m. on 31 January 2022. Proposals received after that date and time will be considered non-responsive and not included in the bidding process.

Offerors are responsible for monitoring the website referenced above for notifications of changes and addenda related to this solicitation.

CITY OF AZTEC
Aztec, New Mexico 87410

I. INTRODUCTION

A. PURPOSE OF THIS REQUEST FOR PROPOSALS

The City of Aztec (City) is requesting architectural design for Senior Center Kitchen Remodel.

B. SUMMARY SCOPE OF WORK

- 1) City of Aztec hereby desires to contract for Professional Architectural Services with an emphasis on Renovations/Remodel of the kitchen. The City desires to contract with offerors who offer experience and a solid background in kitchen remodeling, renovations, building codes, fire codes and additions, as well as experience and expertise in evaluating user needs, providing master planning, construction documentation (to include plans and specifications), bidding and negotiations, and construction administration and post-construction consultation for projects.
- 2) Provide a needs assessments, evaluations, analysis, recommendations, cost and time estimates, reports, financial and non-financial feasibility studies, preparation of schematic or preliminary designs, field inspections and investigations and code compliance investigations for architectural compliant structures and provide the City with preliminary design for the building.
- 3) After the City approves preliminary architectural designs that meets the City's needs and falls within budgeted amounts, the architect shall prepare schematic and preliminary designs for the City to view. Thereafter, architect will prepare final architectural plans for the remodel, which will include all necessary stamped drawings for construction permits and bid specifications.
- 4) Architect assists the City will pre-bid documents, the bidding phase, preparing specifications of the project and construction contracts and other documents. Architectural plans must meet all current building codes, fire codes, and is ADA compliant.
- 5) Architect will provide plans to the City, which will contain everything necessary for Aztec to bid each and every phase of the project in conformance and compliance with New Mexico Procurement Code, New Mexico Building Code and any other and all other codes applicable to the project.
- 6) Architect will be required to assist the City with all pre-bid and post-bid reviews and will be available as necessary to inspect the project or assist the City during construction phase.
- 7) The successful architect will work with the City to help establish the budget through the design process for the project.
- 8) The successful architect shall furnish all expertise, labor and resources, in accordance with the requirements of the scope of work.

C. INFORMATION PROVIDED BY CITY

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

Should an Offeror find discrepancies in or omissions from, this RFP and related documents, or should Offeror be in doubt as to meaning, Offeror shall immediately notify the City's designated representative and, if necessary, a written addenda will be emailed to each Offeror who has returned the "Acknowledgement of Receipt" form, included in this document as Exhibit A. Each Offeror requesting an interpretation will be responsible for the delivery of such requests to the City's designated representative in

writing as outlined in this RFP. The City will not be bound by, nor responsible for, any explanation or interpretation of the proposed documents other than those given in writing.

D. INTENT

It is the intent of the City to award the contract to the most qualified, responsible Offeror(s) as detailed in the Scope of Work and with consideration of the potential cost for services. The City will negotiate with the Offeror(s) deemed most qualified by the City to address the specific services to be provided, the time and order of services, staffing, areas of responsibility and proposed fee structure, including the amount and method of payment.

E. DEFINITION OF TERMINOLOGY

This paragraph contains definitions that are used throughout this Request for Proposals (RFP), including appropriate abbreviations.

This section contains definitions that are used throughout this procurement document, including appropriate abbreviations.

“**City**” means the City of Aztec.

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

“**Contractor**” means the offeror selected by the City pursuant to this Request for Proposals.

“**Desirable**”—The terms “may,” “can,” “should,” “preferably,” or “prefers” identify a desirable or discretionary item or factor (as opposed to “mandatory”).

“**Determination**” means the written documentation of a decision of a purchasing agent and the Selection Committee including findings of fact supporting a decision. A determination becomes part of the procurement file to which it pertains.

“**Finalist**” is defined as an offeror who meets all the mandatory specifications of the Request for Proposal and whose score on evaluation factors is sufficiently high to qualify that offeror for further consideration by the Selection Committee.

“**Mandatory**” The terms “must,” “shall,” “will,” “is required,” identify a mandatory item or factor (as opposed to “desirable”). Failure to meet a mandatory item or factor will result in the rejection of the offeror’s proposal.

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

“**Purchasing Specialist**” means the person or designee authorized by the City to manage or administer a procurement requiring the evaluation of competitive sealed proposals.

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

“**Responsible Offeror**” means an offeror 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 “**Responsive Proposal**” means an offer or proposal, which conforms in all material aspects to the requirements set forth in the request for proposals. Material aspects of responses to the request for proposals include, but are not limited to, price, quality, quantity or delivery requirements.

“**Selection Committee**” means a body appointed by the Purchasing Agent to perform the evaluation of offeror proposals.

“**Selection Committee Report**” means a report prepared by the Purchasing Agent and the Selection Committee for submission to the for contract award that contains all written determinations resulting from the conduct of a procurement requiring the evaluation of competitive sealed proposals.

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

II. CONDITIONS GOVERNING THE PROCUREMENT

This section of the RFP outlines and tentatively describes the major events of the Selection Process and specifies general requirements.

A. SEQUENCE OF EVENTS

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

PRELIMINARY SCHEDULE

Activity	Date
Issue Date	1/13/2022
Acknowledgement Form Due	1/20/2022
Deadline For Questions	1/25/2022
Pre-Proposal Meeting	1/20/2022
Proposal Due Date	1/31/2022
Recommendation to City Commission	February

B. EXPLANATION OF EVENTS

1. Issue Date - This RFP is issued by the City of Aztec in accordance with the provisions of Sections § 13-1-120 through 13-1-122 NMSA 1978.
2. Acknowledgement Form Due - Potential offerors should email the Procurement Manager the “Acknowledgement of Receipt Form” that accompanies this document (Exhibit A) to have their organization placed on the procurement distribution list. This form should be signed by an authorized representative of the organization, dated, and returned by to the purchasing agent. The procurement distribution list will be used for the distribution of written responses to questions and any RFP amendments.
3. Deadline for Questions – Questions and/or clarifications concerning this RFP will be accepted via Vendor Registry through, 2:00 PM on 25 January 2022. Responses and addenda to this RFP, if necessary, will be posted on Vendor Registry. No Offeror may rely upon oral responses made by any City employee or any representative of the City.

4. RFP Amendments - RFP amendments will be distributed to all potential offerors whose organization name appears on the procurement distribution list. Amendments will also be posted to the website and Vendor Registry.
5. Proposal Due Date - Proposals must be submitted via Vendor Registry by, **31 January 2022, 3:00 PM.**

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

Proposals will be reviewed for completeness and compliance with requirements by the Purchasing Agent. If any proposal submitted is deemed non-responsive by the Purchasing Agent, the Offeror will be notified in writing of such determination and the method of protesting that determination (see Section II.C.1.).

6. Proposal Evaluation - The Selection Committee will review each Offerors proposal. Points will be allocated, by each member, as outlined in Section IV of this RFP. 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 three highest-ranked proposals if deemed necessary. The Selection Committee may award the selection based on the results of the interviews.
7. Recommendation to City Commission - After review of the Selection Committee Report, the recommendation of City management, and the signed contract, the City Commission will award the contract.

This contract shall be awarded to the offeror whose proposal is most advantageous, taking into consideration the evaluation factors set forth in the RFP. The most advantageous proposal may or may not have received the most points.

C. GENERAL REQUIREMENTS

The General Requirements section contains specific information about the process and conditions under which this RFP is issued and conditions concerning how the project will be completed.

1. Protests - In accordance with § 13-1-172 NMSA 1978, any Offeror who is aggrieved in connection with the award of a contract may protest to the City of Aztec Finance Department. The protest must be submitted in writing within fifteen (15) calendar days after knowledge of the facts or occurrences giving rise to the protest to:

Eduard Vodovoz
City of Aztec
201 W Chaco
Aztec, NM 87410

The 15-day protest period shall begin on the day following the date of written notice of action from the Finance Department. Protests must include the name and address of the protestant, the solicitation number, and a statement of grounds for protest, including appropriate supporting exhibits. Protests received after the deadline will not be accepted.

2. Incurring Cost - Any cost incurred by the Offeror in preparation, transmittal, or presentation of any proposal or material submitted in response to this RFP shall be borne solely by the Offeror.
3. Subcontractors - All work that may result from this procurement must be performed by the contractor

and payments will only be made to the contractor. Use of consultants identified in the proposal is permitted, but since the award is made on a quality-based evaluation process, subcontracting of the work is not acceptable.

4. Amended Proposals - An Offeror 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. Purchasing Office personnel will not collate or assemble proposal materials.
5. Offeror's Rights to Withdraw Proposal - Offerors will be allowed to withdraw their proposals at any time prior to the deadline for receipt of proposals. The Offeror must submit a written withdrawal request signed by the Offerors duly authorized representative addressed to the Purchasing Agent. The approval or denial of withdrawal requests received after the deadline for receipt of the proposals is at the discretion of the Purchasing Agent.
6. Disclosure of Proposal Contents - The content of proposals will be kept confidential until written notice of a contract award has been made by Purchasing Specialist of the Finance Department. At that time, all proposals will be open to the public, except for the material, which is, or has previously been noted and deemed as proprietary or confidential.

Confidential data is normally restricted to confidential financial information concerning the Offeror's organization and data that qualifies as a trade secrets in accordance with the Uniform Trade Secrets Act, 57-3A-1 to 57-3A-7 NMSA 1978. Any pages of a proposal on which the Offeror has stamped or imprinted "proprietary" or "confidential" must be readily separable from the proposal in order to facilitate public inspection of the non-confidential portion of the proposal.

7. Termination - This RFP may be canceled at any time and any and all proposals may be rejected in whole or in part when the Purchasing Agent determines such action to be in the best interest of the City of Aztec.
8. Sufficient Appropriation - Any contract awarded as a result of this RFP process may be terminated if sufficient appropriations or authorizations do not exist. Such termination 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.
9. Offeror Qualifications - The Selection Committee may make such investigations as necessary to determine the ability of the Offeror to adhere to the requirements specified within this RFP. The Purchasing Agent will reject the proposal of any Offeror who the Committee deems is not a responsible Offeror or fails to submit a responsive offer as defined in Sections 13-1-83 and 13-1-85 NMSA 1978.
10. Right to Waive Minor Irregularities - The Purchasing Agent reserves the right to waive minor irregularities. The Purchasing Agent 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 Purchasing Agent.
11. Bribery and Kickbacks - By law (Section 13-1-191, NMSA 1978) the City is required to inform Offerors of the following: (1) it is a third-degree felony under New Mexico law to commit the offense of bribery of a public officer or public employee (Section 30-24-1 NMSA 1978); (2) it is a third degree felony to commit the offense of demanding or receiving a bribe by a public officer or public employee (Section 30-24-2 NMSA 1978); (3) it is a fourth-degree felony to commit the offense of soliciting or receiving illegal kickbacks ((Section 30-41-1 NMSA 1978); (4) it is a fourth-degree felony to commit the offense of offering or paying illegal kickbacks (Section 30-41-2 NMSA 1978).

12. Debarment, Suspension and Ineligibility - By submitting a response to this solicitation (RFQ ,

Bid, RFP) the business (Bidder/Offeree/Contractor) represents and warrants that it is not debarred, suspended, or placed in ineligibility status under the provisions of Federal Executive Order 12549.

13. Release of Information - Only the City is authorized to release information about services covered by this RFP. The Offerors must refer to the City any requests to release any information that pertains to the work or activities covered by any action or award related to this RFP.

III. RESPONSE FORMAT AND ORGANIZATION

A. NUMBER OF RESPONSES

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

B. PROPOSAL FORMAT

To facilitate comparison and evaluation, offerors must follow the format outlined in this section. Failure of an Offeror to follow the required format, may, at the sole discretion of the City, result in the rejection of the submittal. Proposals shall contain concise written material and illustrations that enable a clear understanding and evaluation of the capabilities of the Offeror. Legibility, clarity, and completeness are essential. The City, at its sole discretion, may reject any proposal which is unclear in any way.

- Submittal Form (Exhibit B), Cost Proposal (Exhibit C) including most recent peer review, Campaign Disclosure Form (Exhibit D)
 - Cover Letter
 - Tables of Contents
 - Qualifications
 - a. Professional Resumes
 - b. Experience and Background
 - References (format identified in Exhibit E)
- 1) Proposal Organization - All pages should be numbered except for those specifically excluded as noted above. Proposals should be organized in the same order as the evaluation criteria.
 - 2) Submittal Form – The submittal form, exhibit B of this RFP, must be completed, signed and incorporated into the submitted proposal. Failure to do so may result in disqualification.
 - 3) Cost Proposal – The cost proposal is included as Exhibit C and must be completed, signed and incorporated into the submitted proposal. Failure to do so may result in disqualification.
 - 4) Campaign Disclosure Form – The campaign disclosure form is included as Exhibit D and must be completed, signed and incorporated into the submitted proposal. Failure to do so may result in disqualification.
 - 5) Cover Letter – The cover letter shall constitute a firm offer to the City and be utilized to introduce the Offeror. Cover letters should contain the following information:
 - a. Designation of the business entity that will contract with the City;
 - b. Identification of the principal contact person for the Offeror and an alternate contact person together with addresses, telephone and facsimile numbers, and e-mail address;
 - c. A clear statement indicating that the attached proposal constitutes a firm and binding offer by the Offeror to the City; and
 - d. A clear statement indicating that all information in support of the proposal is accurate, truthful, and factual.

- 6) Table of Contents - Proposals should contain a detailed table of contents listing major sections and subsections which correspond to the requirements of the RFP. The table of contents should also list all tables, exhibits, figures, etc. contained in the proposal.

C. PROPOSAL PACKAGE

Proposals must include the following:

1. The architect’s specialized technical competence in architectural services on similar projects. It should include any previous experience with remodeling/redesign of a building similar to the building at 101 S. Park Ave, Aztec, NM, including the renovation of a kitchen and service area into a fully functional kitchen area.
2. The experience of the architects in design of renovation and remodel must include environmental, technical, operational and maintenance aspects.
3. The architects track record on performance time and cost control aspects of projects similar to this project.
4. The number of contracts with governmental agencies or private industries within the last five (5) years that were not completed within the original schedules and overall percentage of projects within the last five (5) years the architect has worked on that exceeded initial schedules.
5. A detailed plan for how the architect will propose their approach to successfully complete the project described in the scope of work.
6. A detailed list of at least three (3) references to include contact information and a description of the project associated with each reference.
7. The ability of the architect to provide all the proper licensure as well as any insurance requirements as deemed necessary by the City of Aztec.

IV. EVALUATION

A. EVALUATION CRITERIA

Proposals for consideration must contain evidence of the firm’s experience and abilities in the specified area and other disciplines directly related to the proposed services. Other information required by the City to be submitted in response to this RFP is included elsewhere in this solicitation.

The Selection Committee will evaluate the proposals and may conduct interviews with Offerors applying for selection. The selection committee will have only the response to this solicitation to review for selection of finalists and, therefore, it is important that Offerors emphasize specific information considered pertinent to the services to be provided.

The evaluation of the responses will be based on the following criteria:

Factors – correspond to section IV.A, IV B and IV C	Points Available
Technical Specifications	
Tech1. Approach to Scope of Work	15
Tech2. Experience, Performance, and Years of Service	20
Tech3. Qualifications	20
Tech4. Timeliness of Service	10
Tech5. Proposal Responsiveness, Completeness, and Clarity	5
Cost Proposal	30
Business Specifications	
Bus1. Submittal Form	Pass/Fail
Bus2. Signed Campaign Contribution Disclosure Form	Pass/Fail
Bus3. Debarment/Suspension Form	Pass/Fail

Bus4. Certificate of Insurance	Pass/Fail
Bus5. W9 Complete	Pass/Fail
Bus6.A New Mexico Preference - Resident Vendor Points per Section IV C. 7 <i>Certification must be included to be considered</i>	
Bus6.B New Mexico Preference - Resident Veterans Points per Section IV C.7 <i>Certification must be included to be considered</i>	
Bus7. Contract Terms & Conditions	Yes/No
TOTAL	100 points

B. EVALUATION PROCESS

1. Notice of Non-Responsiveness - For any proposal submitted which is deemed non-responsive by the City, the Offeror will be notified in writing of such determination and the method for protesting the determination. (See Section II, paragraph C.)

2. Notice of Award - The City will notify all finalists in writing of the final results of the interview and the overall selection process. For a period of thirty (30) days after the written date of award, proposals will be available for public inspection by appointment only at the City of Aztec Finance Department. Unsuccessful Offerors may retrieve all but one copy of their proposal as soon as award is made. Any unsuccessful Offeror wishing to retrieve all copies of their proposal must do so within two weeks after the expiration of the 30-day public inspection period.

APPENDIX A: ACKNOWLEDGEMENT OF RECEIPT FORM

SENIOR CENTER KITCHEN ARCHITECTURAL DESIGN
RFP #2022-802

ACKNOWLEDGEMENT OF RECEIPT FORM

In acknowledgement of receipt of the SENIOR CENTER ARCHITECTURAL DESIGN distribution packet #2022-802, the undersigned agrees that he/she has received a complete copy, beginning with the title page and ending with the Draft Agreement for a total of 32 Pages.

In order to receive copies of all future communications, relating to, and including amendments to this distribution packet 2022-802, return this acknowledgement form no later than at 20 January 2022.

FIRM:

REPRESENTED BY: _____

TITLE: _____ PHONE: _____

EMAIL: _____ FAX: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP: _____

SIGNATURE: _____ DATE: _____

This name and address will be used for all correspondence related to document #2022-802.

Firm **does / does not (circle one)** intend to respond to RFP 2022-802 SENIOR CENTER ARCHITECTURAL DESIGN

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

Return to:

Eduard Vodovoz
Procurement Manager
City of Aztec
Phone: 505-334-7656
Fax: 505-334-7649
Email: evodovoz@aztecnm.gov

Faxed Copies of this form will be accepted. Faxed RFP responses **will not be accepted.**

APPENDIX B: REQUEST FOR PROPOSALS SUBMITTAL FORM

**REQUEST FOR PROPOSALS SUBMITTAL FORM
RFP 2022-802 SENIOR CENTER KITCHEN ARCHITECTURAL DESIGN**

REQUIRED INFORMATION

COMPANY NAME/ADDRESS/CITY/STATE/ZIP

CONTACT PERSON

TELEPHONE NUMBER

TITLE

EMAIL ADDRESS

If a corporation, state of incorporation: _____

In-State/Resident Veterans Preference will be applied only to those Offerors who have been issued a certification number by the State of New Mexico Taxation and Revenue department and **return a copy of their certificate with their proposal**. In-State/Resident Veterans Preference certification approval is required at the time of the proposal opening to be eligible.

Do you qualify for either preference and have included the appropriate current certificate with your response?
_____ (Yes or No)

Proposals will be received until, **31 January 2022, 3:00 P.M. local time**. 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.

Questions will be accepted until, 25 January 2022, 2:00 PM local time and should be submitted via Vendor Registry.

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

The City will open all proposals, assign an evaluation committee and evaluate all proposals; determine the need for and 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 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

APPENDIX C: NEW MEXICO PREFERENCE 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 D: COST PROPOSAL

COST OF PROPOSAL

1. Name of Company: _____
2. Address: _____
3. Telephone Number: _____ Fax Number: _____
4. Contact Person: _____ Email Address: _____
5. Total Cost: _____

APPENDIX E: 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 Michael A. Padilla Sr., Mayor-Pro Tem Kenneth George, Commissioner James Crowley, Commissioner Austin R. Randall, and/or Commissioner Colby King

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 F: DEBARMENT/SUSPENSION CERTIFICATION FORM
CITY OF AZTEC**

THE FOLLOWING MUST BE CERTIFIED IF THIS PROCUREMENT IS \$60,000 OR GREATER

CONFLICT OF INTEREST

No elected official or employee of the City of Aztec (COA) has a direct or indirect financial interest in the Vendor or in the proposed transaction. Vendor neither employs, nor is negotiating to employ, any COA elected official or employee, with the exception of the person(s) identified below. Vendor did not participate, directly or indirectly, in the preparation of specifications upon which the quote or offer is made.

DEBARMENT/SUSPENSION STATUS

The Vendor certifies that it is not suspended, debarred or ineligible from entering into contracts with any federal entity, state agency or local public body. The Vendor agrees to provide immediate notice to the COA Purchasing Office in the event of being suspended, debarred or declared ineligible by any entity (federal , state or local), or upon receipt of a notice of proposed debarment that is received after the submission of the quote or offer but prior to the award of the purchase order or contract.

CERTIFICATION

The undersigned hereby certifies that he/she has read the above CONFLICT OF INTEREST AND DEBARMENT/SUSPENSION STATUS requirements RFP SEC II Conditions Governing The Procurement: C General Requirements: Disclosure Regarding Responsibility and that he/she understands and will comply with these requirements. The undersigned further certifies that they have the authority to certify compliance for the vendor named and that the information contained in this document is true and accurate to the best of their knowledge.

Signature: _____ Title: _____ Date: _____

Names Typed: _____ Company Name: _____

Address: _____ City/State/Zip: _____

APPENDIX G: DRAFT AGREEMENT

CITY OF AZTEC

Services Agreement

SENIOR CENTER KITCHEN ARCHITECTURAL DESIGN

Agreement # 2022-802

This agreement is made and entered into on this _____ day of _____ 20____ (“Effective Date”) by and between **(CONTRACTOR)**, hereinafter referred to as the “Contractor”, and the City of Aztec, New Mexico, hereinafter referred to as the “City”.

WHEREAS, the City has deemed it necessary to retain the services of the Contractor to perform services on behalf of the City; and

WHEREAS, the City desires to engage the Contractor to provide said services; and conditions of this agreement.

THEREFORE, it is mutually agreed by and between the parties that:

- 1) City of Aztec hereby desires to contract for Professional Architectural Services with an emphasis on Renovations/Remodel of the kitchen. The City desires to contract with offerors who offer experience and a solid background in kitchen remodeling, renovations, building codes, fire codes and additions, as well as experience and expertise in evaluating user needs, providing programming, master planning, construction documentation (to include plans and specifications), bidding and negotiations, and construction administration and post-construction consultation for projects.
- 2) Provide needs assessments, evaluations, analysis, recommendations, cost and time estimates, reports, financial and non-financial feasibility studies, preparation of schematic or preliminary designs, field inspections and investigations, and code compliance investigations for architectural compliant structures and provide the City with preliminary design for the building.
- 3) After the City approves preliminary architectural design that meets the City needs and falls within budgeted amount, architect shall prepare schematic and preliminary designs for the City to view. Thereafter, architect will prepare final architectural plans for the remodel, which will include all necessary stamped drawings for construction permits and bid specifications.
- 4) Architect assists the City will pre-bid documents, the bidding phase, preparing specifications of the project and construction contracts and other documents. Architectural plans must meet all current building codes, fire codes, and is ADA compliant.
- 5) Architect will provide plans to the City, which will contain everything necessary for Aztec to bid each and every phase of the project in conformance and compliance with New Mexico Procurement Code, New Mexico Building Code and any other and all other codes applicable to the project.
- 6) Architect will be required to assist the City with all pre-bid and post-bid reviews and will be available as necessary to inspect the project or assist the City during construction phase.
- 7) The successful architect will work with the City to help establish the budget through the design process for the project.

- 8) The successful architect shall furnish all expertise, labor and resources, in accordance with the requirements of the scope of work.

1. Changes to Services:

City may, at any time, revise the Services by providing written notice to Contractor of the required changes. Contractor 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.

2. Term:

This agreement shall be effective from the Effective Date until completion of services unless terminated earlier as provided herein.

Termination:

2.1 Termination for Cause: If, through any cause, the CONTRACTOR fails to fulfill in a timely and proper manner the Contractor's obligations under this Agreement, or if the CONTRACTOR violates any of the covenants, agreements, or stipulations of this Agreement, the CITY may order CONTRACTOR by written notice to stop the services or any portion of them until the cause for such order has been eliminated. If the CONTRACTOR fails to correct the cause within five (5) working days of date of written notice, CITY shall have the right to immediately terminate this Agreement. The CONTRACTOR shall be entitled to receive just and equitable compensation for any work satisfactorily completed.

2.2 Termination for Convenience: The City Manager may, upon advance written notice to Contractor, 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 Contractor 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 Contractor 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 Contractor'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 Contractor would otherwise have earned for the percentage of Services performed prior to such termination. Contractor shall not be entitled to any other costs or damages whatsoever arising out of Contractor's performance of the Services and the termination by City for convenience.

2.3 Stopping Services. When City terminates the Services in accordance with "**Termination by City for Cause**" or "**Termination by City for Convenience,**" Contractor shall take the actions set forth herein. Unless City directs otherwise, after receipt of a written notice of termination for either cause or convenience, Contractor 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 Contractor 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 Contractor in which City has an interest; and (f) continue performance only to the extent not terminated.

2.4 Suspension of the Services. City may, for any reason, at any time and from time-to-time, by written notice to Contractor, suspend the carrying out of the Services or any part thereof, whereupon Contractor 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, Contractor shall properly protect and secure the results of the Services in such manner as City may reasonably require. Unless otherwise instructed by City, Contractor 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 Contractor shall negotiate a change order to address the impact of such suspension on Contractor's compensation and the term of this Agreement.

2.5 Termination by Contractor for City Default. Subject to City's right of set-off, if City fails to pay Contractor any undisputed amount due hereunder, and such failure continues for thirty (30) days following receipt of written notice thereof from Contractor, then Contractor 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 **Section 5.4** 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) Contractor's Services under this Agreement are delayed by an event of Uncontrollable Forces, and/or suspended by City, for one hundred eighty (180) days or more, then Contractor shall be entitled to terminate this Agreement by written notice to City and be paid its costs in the same manner as provided in **Section 5.4**.

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

Delivery of Documents. Upon the suspension, abandonment, or termination of this Agreement, in whole or in part, Contractor shall execute and deliver all such instruments and take all such steps, including assignment of its contractual rights with third parties, as may be required to fully vest in City all right, title, and interest in all Services, including but not limited to all plans, specifications, materials, and equipment procured and all contractual rights, and/or cancel or terminate, at City's option, such of those contractual rights including, but not limited to, subcontracts and purchase orders as may be requested in writing by City.

3. Contractor Representations and Corrective Action.

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

- (a) Contractor has performed similar Services and possesses the specific training, skills, knowledge, necessary personnel, and legal right to perform the Services. Contractor shall provide in connection with the Services the standard of care, skill, and diligence normally provided by a Contractor in the performance of similar services and warrants that all such Services shall be performed in accordance with sound and accepted industry standards and 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).
- (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 Contractor's independent evaluation of the Services to be performed and investigation of site conditions.
- (c) Contractor is financially solvent, able to pay its debts as they mature, and possesses sufficient working capital to complete the Services and perform Contractor's obligations required by this Agreement.

- (d) Contractor 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) Contractor 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.
- (f) No services performed or goods provided by Contractor shall cause any process, procedure, hardware, software, firmware, micro-code, equipment, component or device or any part thereof that is used in City's operations and is currently Date Data Compliant, to thereafter cease to be Date Data Compliant. Contractor represents and warrants that all services rendered by Contractor to City pursuant to this Agreement shall be Date Data Compliant and that all processes, procedures, hardware, software, firmware, micro-code, equipment, components, devices or any part thereof provided by Contractor to City in rendering such services are designed to be Date Data Compliant. For purposes of this Agreement, "Date Data Compliant" means that all date-data is electronically recognized, handled and manipulated without interruptions or inaccuracies.

3.2 Contractor shall remedy, at its own expense, any problems or damages arising out of Contractor's failure to perform the Services in accordance with this Agreement. If Contractor does not take the necessary corrective action within a reasonable time after receipt of City's written notice of the problem, City may take such corrective action through itself or through contract with others, and shall charge Contractor for all such costs incurred by City. The rights and remedies of City provided for in this **Section 6** are in addition to and do not limit any other rights and remedies available to City at law or in equity.

4. Regulatory Proceedings:

Contractor 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. Contractor's testimony shall be limited to the scope of services performed by Contractor per the Services, subject to compensation at negotiated rates.

5. Status of Contractor:

The Contractor and his agents and employees are independent contractors performing professional services for the City and are not employees of the City of Aztec. The Contractor, and his agent and employees shall not accrue leave, retirement, insurance, bonding, use of City vehicles, or any other benefits afforded to employees of the City of Aztec as a result of this Agreement. Neither shall the City be liable to the Contractor nor its Agents, nor their estates for any injury to person or property incurred in the course of the performance of this Agreement unless such injury shall have directly and proximately resulted from grossly negligent or reckless conduct on the part of the City or its Agents acting within the scope of their employment and official duties.

6. Liability:

6.1 Contractor General Indemnity. To the fullest extent permitted by law, the Contractor agrees to indemnify and hold harmless the 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 or this Agreement, but only to the extent that the liability, damages, losses, or costs are caused by, or arise out of, the acts or omissions of Contractor, any subcontractor of Contractor, 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 Contractor's employees.

6.2 Compliance with Laws. Contractor 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 Contractor of any applicable law, rule regulation, or ordinance relating to Contractor's operations and performance of the Services.

6.3 Intellectual Property Rights Infringement Indemnity. Contractor warrants that none of the Services, or the results thereof, performed by Contractor, or the documents, goods or equipment produced, designed, fabricated, or assembled by Contractor 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, Contractor 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 Contractor 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. Contractor 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, Contractor 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.

6.3.1 Best Efforts. Contractor 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.

6.4 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.

6.5 Bribes and Gratuities. By law (Section 13-1-191, NMSA, 1978) the City is required to inform Offerors/Bidders/Contractors/Consultants/Sellers/Suppliers 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).

7. Assignment:

Contractor shall not assign or transfer any interest in this agreement or assign any claims for money due under this agreement without the prior approval of the City.

8. Subcontracting:

It is understood and agreed that City has chosen Contractor based on Contractor's qualifications to perform services of the nature contemplated by this Agreement. Accordingly, Contractor 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 Contractor 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.

9. Invoicing and Payment:

Contractor 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
201 W Chaco
Aztec NM 87410

Attention: Accounts Payable

Email: acctspayable@aztecnm.gov

If City has no objections to an invoice, it shall pay the invoice in full within ten (10) days after receipt of such invoice. If City objects to an invoice or any portion thereof, it shall notify the Contractor of its objections within ten (10) days after receipt and may withhold payment of the disputed amount. Any objections or disputes concerning invoices shall be resolved in accordance with **Section 29 "Dispute Resolution."**

10. Records and Audit:

The Contractor shall maintain detailed time records which indicate the date, time, and nature of services rendered for a minimum of three (3) years from the date of final payment. These records shall be subject to inspection by the City of Aztec Finance Department, Personnel Department and the New Mexico Auditor. The City shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the City to recover excessive or illegal payments.

11. Taxes:

Contractor shall pay all taxes and contributions for unemployment insurance, retirement benefits, pensions, annuities, and similar benefits, which may now or hereafter be imposed on Contractor by law or collective bargaining agreements with respect to persons employed by Contractor for performance of the Services. Contractor 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, Contractor shall separately show all New Mexico gross receipts, compensating, sales, and other similar taxes which are reimbursable by City to Contractor, provided that in no event will interest or penalties on such taxes be reimbursable by City. Contractor 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.

Appropriation:

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

12. Release:

The Contractor, upon final payment of the amount due under this Agreement, releases the City, its officers and employees, and the City of Aztec from all liabilities, claims and obligations whatsoever arising from or under this Agreement. The Contractor agrees not to purport to bind the City of Aztec to any obligations not assumed herein by the City of Aztec, unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

13. Confidentiality:

Any information learned, given to, or developed by the contractor in the performance of this agreement shall be kept confidential and shall not be made available or otherwise released to any individual or organization without the prior written approval of the City. This Agreement is subject to the provisions of the Public Records Act (Chapter 14 Article 3 NMSA 1978).

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. Contractor shall make no claim for additional compensation or damages by reason of any delay due to an Uncontrollable Force; however, Contractor shall be entitled to a reasonable extension to the time schedule for delays resulting from an Uncontrollable Force.

15. Conflict of Interest:

The Contractor warrants that it currently 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 this Agreement. The Contractor further covenants that, in the performance of this Agreement, no person having any such interest shall be employed by the Contractor. The Contractor warrants that it does not employ, has not employed, and will not employ during the term of this Agreement any City employee while such employee was or is employed by the City and participating directly or indirectly in the City's contracting process. Contractor shall notify the City's Chief Procurement Officer if any employee(s) of

the requesting department or the Purchasing Division have a financial interest in the Contractor's business operations.

16. Intellectual Property:

16.1 Intellectual Property Rights. Contractor agrees that all inventions made, works created and trade secrets learned by Contractor in connection with providing products or services to City pursuant to this Agreement and which relate to the business of City, including all patent, trademark, copyright, and trade secret rights thereto, belong to City. Contractor hereby assigns all such rights to City and agrees to execute all documents necessary to effect such assignment. Contractor further agrees to cooperate with City, at City's expense, in all steps necessary to protect such rights, including assisting in preparing applications, signing all necessary documents, testifying in court proceedings, and retaining secret information concerning an invention that is not public knowledge.

16.2 License. Contractor hereby grants to City a fully paid, royalty fee, 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 Contractor pursuant to this Agreement, including the right to create sub-licenses without any duty to account to Contractor. If so requested by City, Contractor 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.

16.3 Best Efforts. Contractor shall use its 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.

17. Amendment:

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

18. Scope of Agreement:

This agreement incorporates all the agreements, covenants and the understanding between the parties hereto concerning the subject matter hereof and all such covenants, agreements and understanding have been merged into this written agreement. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this agreement. And no subsequent agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless incorporated by way of amendment as described in *AMENDMENT* paragraph above.

19. Equal Opportunity Clause:

The Contractor agrees to abide by all Federal and State laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, the Contractor agrees to assure that no person in the United States shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under, any program or activity performed under this Agreement. If the Contractor is found to be not in compliance with these requirements during the life of this Agreement, the Contractor agrees to take appropriate steps to correct these deficiencies.

20. Fair Labor Standards

Contractor 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 Contractor as a contractor of City.

21. 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 Contractor as a contractor of City.

22. Drug and Alcohol Policy

22.1 Contractor, in the performance of any Services requiring the physical presence of its employees on City's property or on the property of others for which City has acquired access rights, shall maintain a drug and alcohol policy, as respects its employees and subcontractors involved in the performance of such Services, which policy at a minimum includes reasonable testing procedures and which advances the policy of providing 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 City's premises and work sites, including vehicles used on company business.

22.2 Contractor shall also comply with all applicable laws concerning drug and alcohol use, including, if applicable, requirements of the United States Department of Transportation. Contractor shall require that each subcontractor complies with the drug and alcohol policy requirements and applicable laws as set forth herein and, upon request by City, will provide to City verification of Contractor's and subcontractor's compliance with such policy requirements and applicable laws.

22.3 Contractor shall provide City and any public authority having jurisdiction with access to Contractor's facilities and records to audit Contractor's drug and alcohol policy, records and testing program including, if applicable, United States Department of Transportation requirements.

22.4 City may remove a Contractor's employee from any work or work site if City reasonably suspects the employee is under the influence of controlled substances or alcohol until such time as Contractor confirms by testing that the employee is fit for duty.

22.5 Contractor shall notify City in writing within ten (10) days any time there is a change in the person or personnel administering Contractor's drug and alcohol program.

23. Unlawful Discriminatory Practice

In responding to this solicitation, the Contractor represents that it will not practice unlawful discrimination per Section 28-1-7 NMSA 1978 and Title VI of the Civil Rights Act of 1964 - 49 CFR part 21, with regard to, but not limited to, the following: race, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, spousal affiliation, physical or mental handicap, age or serious medical condition.

24. Insurance:

24.1 Prior to commencement of the Services, Contractor shall obtain the insurance required by this Agreement and all insurance that may be required under Applicable Laws. Unless otherwise indicated below, each insurance policy of Contractor 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 Contractor's insurance policies regardless of any like insurance coverage that the City may have. Contractor will provide the City with certificate(s) of insurance (COI) evidencing that all coverages, limits, and endorsements required herein are in full force and effect. Such COI(s) shall also reference this Agreement/Contract number. With respect to any insurance policy referenced on a COI, Contractor will (or he will cause the respective insurance carrier to) provide the City with a minimum thirty (30) days written notice in the event of cancellation, termination, non-renewal, or any other material change. Any such written notice shall also include copies of the non-renewal or cancellation notice originated by the insurance carrier. Written notice may be submitted via fax, courier, or postal service in accordance with the notice provision herein.

If Contractor fails to obtain and keep in force the insurance required hereunder, the City may obtain and maintain the required insurance in the name of Contractor and the cost thereof shall be payable by Contractor to the City on demand. Review of Contractor's insurance by the City shall not relieve or increase the liability of Contractor. Nothing in this Agreement/Contract shall be deemed to limit Contractor's liability under this Agreement/Contract to the limits of the insurance coverages required

hereunder. Contractor shall be solely responsible for payment of all deductible or retention amounts pertaining to any insurance required hereby.

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, shall name the City and its directors, officers, officials, managers, representatives, agents and employees as additional insured, to the extent allowable under such policies.

24.2 Minimum Coverage. Without limiting any of the liabilities or other obligations of Contractor under this Agreement, including but not limited to **Section 6 "Liability,"** Contractor 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 Contractor or any subcontractor for at least the following minimum coverage:

Worker's Compensation Insurance. To cover obligations imposed by federal and state statutes pertaining to Contractor'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).

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, contractor'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 City is vicariously liable for the negligence, acts or omissions of Contractor.

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

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

24.3 Subcontractors. Contractor shall require that each subcontractor comply with the insurance requirements set forth in **Section 24.2 "Minimum Coverage."**

25. Dispute Resolution

If the Parties are unable to resolve any dispute within 30 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 Two Hundred Fifty Thousand Dollars (\$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 29 "Notice"** 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 Farmington, 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 Two Hundred Fifty Thousand Dollars (\$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 29** shall affect restrict, condition, or otherwise limit a Party's right to terminate this Agreement pursuant to **Section 2 "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 Agreement 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: Contractor's proposal

26. Non-Exclusive Relationship:

Contractor 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 Contractor may enter into contractual arrangements with other parties during the term of this Agreement provided that the obligations of Contractor pursuant to such contractual arrangements do not in any manner interfere with Contractor's performance of its obligations to City pursuant to this Agreement.

27. Waiver of Contractual Right:

The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver of that party's right to subsequently enforce and compel strict compliance with every provision of the Agreement.

28. Severability:

If any provision of this agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this agreement is invalid or unenforceable, but that by limiting such provision it would become valid or enforceable, then such provision shall be deemed to be written, construed and enforced as so limited.

29. Notice:

All notices, requests, demands or other communications required or desired to be made or given hereunder or in connection herewith shall be in writing and shall be deemed to be duly given if delivered in person or mailed by certified or registered mail, postage prepaid, to the parties at the following addresses, or to such other addresses as may from time to time be designated by the parties by written notice in the manner herein provided:

City of Aztec:

Paul Eckert

City Manager

City of Aztec

201 W Chaco

Aztec, New Mexico 87410

Contractor:

30. Designated Representative:

City Designated Representative:

Karla Saylor

201 W Chaco

Aztec, New Mexico 87410

The Designated Representative's authority shall encompass but not be limited to (1) issuance of instructions, (2) interpretation of plans, (3) review and inspection of Contractor's Services, (4) rejection of nonconforming Work, (5) determination of when Services is complete, (6) approval of progress payments and final payment, and (7) first point of contact for certain Change Orders as set forth in Article 3 "Changes to Services". All field communications from Contractor to City shall be directed to the Designated Representative. City may appoint another Contract Administrator at any time by written notice to Contractor.

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

31. 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.

32. 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.

33. 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 Contractor may retain a duplicate copy (e.g. electronic image, photocopy, facsimile) of this Agreement, which shall be considered an equivalent to this original.

34. Survival of Obligations:

In addition to the continuation of confidentiality obligations as specified in **Section 17 "Confidentiality,"** Contractor's representations and warranties under **Section 6 "Contractor Representations and Corrective Action,"** indemnity obligations, including those under **Section 9 "Liability,"** and **Section 26**

“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.

35. 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.

36. Entire Agreement:

This Agreement represents the entire agreement and understanding between City and Contractor 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 Contractor 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.

This agreement shall be governed by the laws of the State of New Mexico and the Ordinances of the City of Aztec.

In witness hereof, the parties have executed this agreement as of the _____ day of _____ 2022.

CONTRACTOR:

Company Name: _____

Signed By: _____ Date: _____

Printed Name: _____ Title: _____

Federal Taxpayer Identification or NM Taxpayer Identification City Business License
Social Security Number Number Number

CITY OF AZTEC, NEW MEXICO

By: _____ Date: _____

City Manager

Attest: _____ Date: _____

City Clerk

Approved as To Form: _____ Date: _____

City Attorney