

REQUEST FOR QUALIFICATION

RFQ o. 2022-05

ENGINEERING AND DESIGN SERVICES FOR EXPANSION & UPGRADE OF ED BRABSON BALLOONPARK FOR THE CITY OF ALAMOGORDO, NEW MEXICO

I. Introduction

A. Purpose of this Request for Qualifications

The City of Alamogordo is soliciting sealed proposals that specialize in professional services based on the scope of work described below and in accordance with any federal, state and local requirements. It is the intent of the City of Alamogordo to execute and agreement with the most qualified Contactor that present an economically viable proposal. All potential Offerors are to read, understand and accept the requirements of this Request for Qualification.

B. Project Description/Scope of Work

Scope of work is to provide services in accordance with "Attachment 4"

C. CHIEF PROCUREMENT OFFICER

1. Chief Procurement Officer is responsible for the conduct of this procurement whose name, address, telephone number and e-mail address are listed below:

Name: Barbara Pyeatt, Chief Procurement Officer
Address: Purchasing Department
2600 N. Florida Ave.
Alamogordo, NM 88310
Telephone: (575) 439-4116
Fax: (575) 439-4117
Email: bpyeatt@ci.alamogordo.nm.us

2. All deliveries of responses via express carrier must be addressed as follows:

Name: Purchasing Department
Attn: Barbara Pyeatt, CPO
Reference: RFQ 2022-05 Engineering & Design Services for Expansion & Upgrade
of Ed Brabson Balloon Park
Address: 2600 N Florida Ave.
Alamogordo, New Mexico 88310

3. Any inquiries or requests regarding this procurement should be submitted, in writing, to the Purchasing Department. Chief Procurement Officer, Barbara Pyeatt bpyeatt@ci.alamogordo.nm.us, Purchasing Specialist, Candice Gebhardt cgebhardt@ci.alamogordo.nm.us . Offerors may contact ONLY the Chief Procurement Officer or Purchasing Specialist regarding this procurement.

NOTE: DIRECT CONTACT WITH CITY ELECTED OFFICIALS OR CITY STAFF OTHER THAN PURCHASING STAFF REGARDING THIS RFQ WILL RENDER THE PROPOSAL NON-COMPLIANT.

II. Conditions Governing the Procurement

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

A. SEQUENCE OF EVENTS

The Chief Procurement Officer will make every effort to adhere to the following schedule. However, if the Selection Committee makes a selection at the proposal Short Listing, oral presentation will not apply.

Action	Responsible Party	Due Dates
Issue RFQ	City of Alamogordo	May 29 th , 2022
Deadline to submit Written Questions	Potential Offerors	June 13 th , 2022
Addenda if necessary	City of Alamogordo	June 14 th , 2022
Submission Proposals	Potential Offerors	July 1 st , 2022
Proposal Evaluation	Evaluation Committee	July 8 th 2022
Oral Presentation if requested	City of Alamogordo	TBD
Authorization of Award	City Commission	July 26 th , 2022

B. EXPLANATION OF EVENTS

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

1. Issuance of RFQ

This RFQ is being issued on behalf of the Engineering Department, City of Alamogordo.

2. Distribution List Response Due

Potential Offerors can hand deliver, return by facsimile, email or registered or certified mail the "Acknowledgement of Receipt of Request for Proposals Form" that accompanies this document, ATTACHMENT 3, to have their organization placed on the procurement distribution list. The form should be signed by an authorized representative of the organization, dated and returned to the Chief Procurement Officer.

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

3. Pre-Proposal Conference

A pre-proposal conference will not be held for this project.

4. Deadline to Submit Written Questions

Potential Offerors may submit written questions to the Chief Procurement Officer as to the intent or clarity of this RFQ until 3:00 PM Mountain Standard Time/Daylight Time as indicated in the sequence of events. All written questions must be addressed to the Chief Procurement Officer as declared in Section II, Paragraph C.

5. Response to Written Questions

An Addendum will be issued in response to all written questions and will be distributed as indicated in the sequence of events to all potential Offerors whose organization name appears on the procurement distribution list and on the City's website. An e-mail copy will be sent to all Offerors that provide Acknowledgement of Receipt Forms described in II.B.2.

All offerors will be required to acknowledge receipt of RFQ amendment(s) in writing as part of their proposal transmittal. A failure to acknowledge receipt of RFQ amendment(s) may be cause for rejection of the proposal.

6. Submission of Proposal

ALL OFFEROR PROPOSALS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE CHIEF PROCUREMENT OFFICER OR DESIGNEE NO

LATER THAN 3:00 PM MOUNTAIN STANDARD TIME/DAYLIGHT TIME ON see Section II A. Sequence of Events. Proposals received after this deadline will not be accepted. The date and time of receipt will be recorded on each proposal.

Proposals must be addressed and delivered to the Chief Procurement Officer at the address listed in Section I, Paragraph C2. Proposals must be sealed and labeled on the outside of the package to clearly indicate that they are in response to the RFQ 2022-05 ENGINEERING & DESIGN SERVICES FOR EXPANSION & UPGRADE OF ED BRABSON BALLOON PARK. Proposals submitted by facsimile, or other electronic means, will not be accepted.

At all times, it shall be the responsibility of the offeror to ensure its proposal is delivered to the City of Alamogordo by the proposal due date and time. If the mail or delivery of said proposal is delayed beyond the deadline set for the proposal opening, proposals thus delayed will not be considered.

A public log will be kept of the names of all Offer organizations that submitted proposals. The contents of proposals shall not be disclosed to competing potential Offerors during the negotiation process. The negotiation process is deemed to be in effect until the contract is awarded pursuant to this Request for Qualification has been awarded.

Proposals accepted by the City shall be valid for a period of ninety (90) days following the deadline for the proposal submittal.

8. Proposal Evaluation

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

9. Oral Presentations

Finalist Offerors may be required to conduct an oral presentation at a location to be determined as per schedule Section II, A Sequence of Events or as soon as possible. Whether or not oral presentations will be held is at the discretion of the Issuing Department and Chief Procurement Officer.

11. Contract Awards

The Contract will be finalized with the most advantageous Offeror. In the event that mutually agreeable terms cannot be reached within the time specified, the City of Alamogordo reserves the right to finalize a contract with the next most advantageous Offeror without undertaking a new procurement process or reserves the right to cancel the award.

12. **Protest Deadline**

Any protest by an Offeror must be in conformance with Section 2-13-300 and applicable procurement regulations. The fifteen (15) day protest period for responsive Offerors shall begin on the day following the commission's approval to negotiate and will end at 5:00 pm MDT on the fifteenth (15) calendar day following that approval. Protests must be written and must include the name and address of the Protester and the solicitation number(s). It must also contain a statement of grounds for protest including appropriate supporting exhibits, and it must specify the ruling requested from the Purchasing Manager. The protest must be delivered to the following address:

Name: Barbara Pyeatt
Title: Chief Procurement Officer
Address 2600 N. Florida Ave.
Alamogordo, NM 88310
Fax Number: 575-439-4117
E-mail: bpyeatt@ci.alamogordo.nm.us

Protests received after the deadline will not be accepted.

C. ***GENERAL REQUIREMENTS***

1. Acceptance of Conditions Governing the Procurement

This procurement will be conducted in accordance with the City of Alamogordo's procurement regulations.

2. Incurring Cost

Any cost incurred by the potential Offeror in preparation, transmittal, and/or presentation of any proposal or material submitted in response to this RFQ shall be borne solely by the Offeror.

Any cost incurred by the Offeror for set up and demonstration of the proposed equipment and/or system shall be borne solely by the Offeror.

3. Subcontractors

The selected firm shall not assign, sublet, or transfer their interest in this agreement without prior written consent from the City. If such an assignment is allowed, the firm

entering into this contract shall be ultimately responsible to ensure that the work is performed satisfactorily.

4. Consultants

Since the award is made on a quality-based evaluation process, replacement of consultants after award of and prior to the contract execution may cause the Offeror to be disqualified.

5. 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. The Agency personnel will not merge, collate, or assemble proposal materials.

6. Offerors 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 addressed to the Chief Procurement Officer and signed by the Offerors duly authorized representative.

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

7. Disclosure of Proposal Contents

The proposals will be kept confidential until negotiations are completed by City of Alamogordo. At that time, all proposals and documents pertaining to the proposals will be open to the public, except for material that is clearly marked proprietary or confidential. The Chief Procurement Officer will not disclose or make public any pages of a proposal on which the potential Offeror has stamped or imprinted "proprietary" or "confidential" subject to the following requirements.

Proprietary or confidential data shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal. Confidential data is normally restricted to confidential financial information concerning the Offerors organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, Sections 57-3A-1 to 57-3A-7 NMSA 1978. The price of products offered, or the cost of services proposed shall not be designated as proprietary or confidential information.

If a request is received for disclosure of data for which an Offeror has made a written request for confidentiality, City of Alamogordo shall examine the Offerors request and make a written determination that specifies which portions of the proposal should be disclosed. Unless the Offeror takes legal action to prevent the disclosure, the proposal will be so disclosed. The

proposal shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential data.

8. No Obligation

This procurement in no manner obligates the City of Alamogordo or any of its departments to the use of Offeror services until a valid written contract is awarded and approved by appropriate authorities.

9. Termination

This RFQ may be canceled at any time and any and all proposals may be rejected in whole or in part when Procurement Department determines such action to be in the best interest of the City of Alamogordo.

10. Sufficient Appropriation

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

11. Legal Review

The City requires that all Offerors agree to be bound by the General Requirements contained in this RFQ. Any Offeror concerns must be promptly brought in writing to the attention of the Chief Procurement Officer.

12. Governing Law

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

13. Basis for Proposal

Only information supplied, in writing, by the City of Alamogordo through the Chief Procurement Officer or in this RFQ should be used as the basis for the preparation of Offeror proposals.

14. Contract Terms and Conditions

The City of Alamogordo reserves the right to negotiate with a successful Offeror provision in addition to those contained in this solicitation. The contents of this solicitation, as revised and/or supplemented, and the successful Offerors proposal will be incorporated into and become part of the contract.

Should an Offeror object to any of the City of Alamogordo's terms and conditions, as contained in this Section, that Offeror must propose specific alternative language. The City of

Alamogordo may or may not accept the alternative language. General references to the Offerors terms and conditions or attempts at complete substitutions are not acceptable to the City of Alamogordo and will result in disqualification of the Offerors proposal.

15. Offerors Terms and Conditions

Offerors must submit with the proposal a complete set of any additional terms and conditions they expect to have included in a contract negotiated with the City of Alamogordo. Not to be included in page count.

16. Contract Deviations

Any additional terms and conditions, which may be the subject of negotiation, will be discussed only between the City of Alamogordo and the Offeror and shall not be deemed an opportunity to amend the Offerors proposal.

17. Offeror Qualifications

The Selection Committee may make such investigations as necessary to determine the ability of the potential Offeror to adhere to the requirements specified within this RFQ. The Selection Committee will reject the proposal of any potential Offeror who is not a responsible Offeror or fails to submit a responsive offer as defined in Section 2-13-110 of the City of Alamogordo Procurement Ordinance.

18. Right to Waive Minor Irregularities

The Chief Procurement Officer reserves the right to waive minor irregularities. The Chief Procurement Officer 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 Chief Procurement Officer.

19. Change in Representatives

The City of Alamogordo reserve the right to require a change in offeror representatives if the assigned representatives is not, in the opinion of the City of Alamogordo, meeting its needs adequately.

20. Notice - Bribery and Kickbacks

New Mexico criminal statues imposes civil and misdemeanor criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kickbacks.

21. City of Alamogordo Rights

The City of Alamogordo in agreement with the Chief Procurement Officer reserves the right to accept all or a portion of a potential Offerors proposal.

This procurement in no manner obligates the City of Alamogordo or any of its agencies to the use of any proposed professional services until a valid written contract is awarded and approved by the appropriate authorities.

22. Right to Publish

Throughout the duration of this procurement process and contract term, Offerors must secure from the Chief Procurement Officer and the Owner written approval prior to the release of any information that pertains to the potential work or activities covered by this procurement and/or agency contracts deriving from this procurement. Failure to adhere to this requirement may result in disqualification of the Offerors proposal.

23. Ownership of Proposals

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

24. Confidentiality

Any confidential information provided to, or developed by, the firm in the performance of services under this contract shall be kept confidential and shall not be made available to any individual or organization by the firm without the prior written approval of the City Commission.

The Offeror agrees to protect the confidentiality of all confidential information and not to publish or disclose such information to any third party without the City Commission's written permission. By confidential information, we mean the software and related materials, including enhancements, which are designated as proprietary and confidential trade secrets of the licensor and licensee of the software. Firm(s) will not remove any copyright, trademark, and other proprietary rights notice from the licensed software or related materials.

25. Electronic mail address required

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

26. Use of Electronic Versions of this RFQ

This solicitation is being made available by electronic means. If accepted by such means, the Offeror acknowledges and accepts full responsibility to ensure that no changes are made to the solicitation. In the event of conflict between a version of the solicitation in the Offerors

possession and the version maintained by the City of Alamogordo, the version maintained by the City of Alamogordo shall govern.

27. Campaign Contribution Disclosure Form

Offeror must complete, sign, and return the Campaign Contribution Disclosure Form (See Attachment 2) as a part of their proposal. This requirement applies regardless of whether a covered contribution was made or not made. **Failure to complete and return the signed unaltered form will result in disqualification.**

28. Conflict of Interest; Governmental Conduct Act.

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

29. Utilization of Proposal

The City of Alamogordo may enter into cooperative purchasing agreements with other political subdivisions or other governmental entities of the State of New Mexico in order to conserve resources, reduce procurement costs, and improve the timely acquisition of supplies, equipment and services. The Respondent to whom a contract is awarded under this solicitation may be requested by other parties to such a cooperative purchasing agreement to extend to those parties the right to purchase supplies, equipment and services provided by the Respondent(s) under its contract with the City of Alamogordo, pursuant to terms and conditions stated therein.

30. Award of Contract

The award shall be made to the responsible Offeror whose proposal is most advantageous to the City of Alamogordo taking into consideration the evaluation factors set forth in this solicitation. After initial ranking of the proposals, at the City's sole option, the City may decide to interview the top three ranked firms to develop final rankings or may consider the rankings based on the proposals as final.

The contents of any proposal shall not be disclosed so as to be available to competing offerors during the negotiation process.

31. Registration

All work shall be under the direction of a Professional Engineer registered by the State of New Mexico. (If Applicable)

32. Insurance

The firm must hold errors and omissions/professional liability insurance of at least \$1,000,000.

III RESPONSE FORMAT AND ORGANIZATION

A. NUMBER OF RESPONSES

Offerors shall submit only one proposal in response to this RFQ.

B. PROPOSAL FORMAT

1. Proposal Organization

Offerors shall submit **SIX (6) hard copies and ONE (1) electronic copy** of their proposal to the location specified in this RFQ, on or before the closing date and time for receipt of proposals. Proposals shall follow the format as described below:

- A maximum of **FIFTEEN (15)** pages of 8.5“ by 11” paper, including title, index, and other required information, not including front and back covers, transmittal letter, Veteran’s Preference Certification Form, Resident Business Certificate, or Campaign Contribution Disclosure Form.
- Bound on left-hand margin.
- Minimum font size 10.
- Front cover with RFQ number, project title, date, and firm’s name (not included in page limit).
- Back cover without any text (not included in page limit).
- The proposal must be organized and indexed in the following format and order and must contain, as a minimum, all listed items in the sequence indicated:
 1. Letter of transmittal, not to exceed one page (not included in page limit). If applicable, will include **written acknowledgment of receipt of RFQ amendment(s)**;
 2. Responses to the seven (7) Selection Criteria items, addressing all requested information, in the order presented in this RFQ above. Provide the Selection Criteria title at the beginning of each response so that it is clear what proposal text is addressing each Selection Criteria item.
- If applicable, Offerors shall complete Attachment 1 – Resident Veterans Preference Certification Form and submit with each copy of the proposal (not included in page count).
- If applicable, Offerors shall provide Resident Business Certificate and submit with each copy of the proposal (not included in page count).
- Offerors shall complete Attachment 2 – Campaign Contribution Disclosure Form and submit with each copy of the proposal (not included in page count).

- To preclude possible errors and/or misinterpretations, the proposal must be affixed legibly in ink or typewritten. Corrections or changes must be signed or initialed by Offeror prior to scheduled proposal submittal deadline. Failure to do so may be just cause for rejection of proposal.
- Proposals shall be delivered in sealed envelopes which shall be clearly marked “**RFQ 2022-05 Engineering & Design Services for Expansion & Upgrade of Ed Brabson Balloon Park**” on the outside of the envelope. Proposals shall be signed by a representative authorized to bind the company.

IV. EVALUATION

A. CRITERIA

Proposals must address each of the following criteria. Each proposal may be awarded points up to the amount listed.

1. Specialized Design and Technical Competence Available Points = 30

Offerors will provide the firm’s and personnel’s experience and technical competence related to the scope of this project. Include familiarity with applicable regulations and permits. Include qualifications for the key personnel who will be assigned to this specific project and summaries of their relative experience. Include information that is relevant to delivery of this project.

2. Capacity and Capability Available Points = 20

Offerors will provide the firm’s current capacity and capability (resources) available to perform services specifically for this project, including specialized services that may be required. Include proposed schedule to perform the work with sufficient detail to understand the timing for delivery of the project deliverables. Include information about other projects that key personnel will be working on during this project and the associated completion schedules as compared to the progress of this project. Address the firm’s potential to effectively replace key personnel, if necessary. Note that Firm Capacity identified that would not be utilized specifically on this project will not be credited. The “capacity and capability” must directly apply to delivery of this particular project.

3. Past Record of Performance Available Points = 20

Offerors will provide the past record of performance on contracts for delivery of work relevant to this project scope. An emphasis will be placed on the firm’s demonstrated ability to meet project schedules and provide a quality product. Include experience and successful project delivery history of the Project Manager responsible for delivery of this project scope on similar projects. As part of the response, firms will provide a list of four (4) projects of similar scope for reference. The reference projects will include a listing of personnel that worked on the reference projects that will also work on this project. A minimum of two (2) references will be provided for the Project Manager who will be responsible for delivery of this project, which may be included in the four (4) reference projects or may be separate reference projects in addition to the four (4) required reference projects. For all reference projects, including those for the Project Manager, list the name of the entity for which the reference project was

performed, a brief description of the project, amount and time of initial construction contract award as compared to final contract price and time for completion, name of contact person with the entity who can discuss your firm's or personnel's role and performance. Provide current telephone numbers for which to contact these references.

4. Approach to Providing Services Available Points = 15

Offerors will describe their approach to managing and providing the scope of this project successfully. Include the internal Quality Assurance/Quality Control (QA/QC) processes to be utilized on this project. Describe the firm's approach to communicating effectively with the City of Alamogordo to facilitate successful delivery of this project.

5. Proximity to or Familiarity with the Alamogordo area Available Points = 5

Firm's and proposed key personnel's familiarity with the Alamogordo area. Firm's experience on previous projects in Alamogordo, including the firm's and key personnel's experience dealing with local jurisdictional agencies and City departments.

6. Amount of design work that will be produced by a New Mexico business within this state Available Points = 5

Firm will indicate the approximate value of work that will be produced by New Mexico business (es) within this state. Points will be determined as follows:

<u>Estimated Value of Work</u>	<u>Points</u>
\$100,001 or more	5
\$80,001 to \$100,000	4
\$60,001 to \$80,000	3
\$40,001 to \$60,000	2
\$10,001 to \$40,000	1
\$10,000 or less	0

7. Current Volume of Work for the City of Alamogordo Available Points = 5

Offerors will indicate the volume of work currently under contract with the City of Alamogordo that is less than seventy-five percent (75%) complete. The purpose of this criterion is to help distribute projects among qualified firms, and points will be determined as follows:

<u>Value of Work on Projects (less than 75% complete)</u>	<u>Points</u>
None	5
\$1 to \$25,000	4
\$25,001 to \$50,000	3
\$50,001 to \$75,000	2
\$75,001 to \$100,000	1
\$100,001 or more	0

TOTAL AVAILABLE POINTS = 100

Additional Preference Award Points Available per #8, #9 or #10 below

An Offeror must specify which preference below they would claim if qualifying for more than one. The preference values are not cumulative.

8. Resident Veterans Preference Certification, Attachment 1 (Certificate Required)

Available Points = 7, 8 or 10 Percent of total Points

Complete the Resident Veterans Preference Certification Form in Attachment 1, if applicable.

9. New Mexico Business Preference, Attachment 1 (Certificate Required)

Available Points = 5 Percent of total Points

Points will be awarded based upon offerors ability to provide a copy of a current Resident Business Certificate.

10. Local Business Preference

Points will be awarded based upon offerors ability to provide proof of Local Business Residence.

Available Points = 10 Percent of total Points

B. EVALUATION PROCESS:

1. All offeror proposals will be reviewed for compliance with the mandatory requirements as stated within the RFQ. Proposals deemed non-responsive will be eliminated from further consideration.
2. The Chief Procurement Officer may contact the offeror for clarification of the response.
3. The Evaluation Committee may use other sources of information to perform the evaluation.
4. Responsive proposals will be evaluated on the factors in Section IV that have been assigned a point value. The responsible Offerors with the highest scores will be selected as finalist Offerors based upon the proposals submitted. Finalist Offerors may be asked to present oral presentation. Points awarded from oral presentations will be added to the previously assigned points to attain final scores.
5. The responsible Offeror (s) whose proposals is most advantageous to the City, taking into consideration the evaluation factors in Section IV, will be recommended for Contract award. Please note, however, that a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.

BID EVALUATION CRITERION FOR AREA BUSINESSES – LOCAL BUSINESS PREFERENCE

Effective March 20, 2015, the Alamogordo City Commission adopted Ordinance No. 1490 establishing Bid evaluation criterion for area businesses. Any business licensed in New Mexico, with a current business registration from the City of Alamogordo, with fixed offices or distribution points

within fifteen (15) miles of the city limits of Alamogordo and able to furnish evidence of payment of New Mexico Gross Receipts tax shall qualify. If a non-Area Business is the highest-ranking Prequalified Candidate, the evaluation score of the proposal submitted by an Area Business shall be multiplied by a Local Preference Factor of 1.10. If the resulting score of the Area Business receiving the Local Preference is higher than or equal to the highest score of all proposals received, the contract shall be recommended to be awarded the Area Business receiving the preference. If no proposals are received from an Area Business, or if the proposal received from an Area Business does not qualify for an award after multiplication by the Local Preference Factor, the contract shall be recommended to be awarded the highest-ranking proposer.

View the following link for the complete Ordinance No. 1490 Local Preference:

<http://ci.alamogordo.nm.us/AssetsOrdinance+1490.pdf>

This procurement will be conducted in accordance with the City of Alamogordo Purchasing Ordinance No. 1304.

RESIDENT VETERANS PREFERENCE CERTIFICATION

To receive a Veterans Preference pursuant to Section 13-1-21 and 13-1-22 NMSA 1978, a resident veteran's business shall submit with its proposal a copy of a valid "Resident Veterans Preference Certification" issued by the Taxation and Revenue Department. For the purpose of scoring points, the State of New Mexico General Services Department Purchasing Division Policy Memo FY13-001 shall apply to a proposal submitted by a resident veteran's business. For information on obtaining a Resident Veterans Preference Certificate, the offeror should contact the State of New Mexico Taxation and Revenue Department, P.O. Box 5373, Santa Fe, NM 87502-5374, telephone (505) 827-0951.

IN-STATE PREFERENCE (RESIDENT BUSINESS)

To receive a resident business preference pursuant to Section 13-4-2 NMSA 1978, an offeror shall submit with its proposal a copy of a valid resident business certificate issued by the taxation and revenue department. For a proposal submitted by a resident business with the required Resident Business Certificate, in addition to the total points on an RFQ, 5% must be added for preference points.

For information on obtaining a resident business certificate, the offeror should contact the State of New Mexico Taxation and Revenue Department, P.O. Box 5373, Santa Fe, New Mexico 87502-5374, telephone (505) 827-0951 or on the web at <http://www.tax.newmexico.gov/forms-and-publications/pages/recently-updated.aspx>

An offeror must specify which preference they would claim if qualifying for more than one. The preference values are not cumulative.

ATTACHMENT 1

RESIDENT VETERANS PREFERENCE CERTIFICATION

_____ (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 discount 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 discount on this bid or proposal. 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 discount on this bid or proposal. 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 Sections 13-1-21 or 13-1-22 NMSA 1978, 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 un-award of the procurement involved if the statements are proven to be incorrect.

ATTACHMENT 2

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to Chapter 81, Laws of 2006, any prospective contractor seeking to enter into a Contract with any state agency or local public body must file this form with that state agency or local public body. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or local public body during the two (2) 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 (2) 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 (2) year period.

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

The following definitions apply:

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

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

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

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

“Pendency of the Procurement Process” means the time period commencing with the public notice of the Request for Proposals and ending with the award of the Contract or the cancellation of the Request for Proposals.

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

“Prospective Contractor” means a person who is subject to the competitive sealed proposal process set forth in the Procurement Codes 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:

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 Contributions(s): _____

Signature

Date

Title

--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

ATTACHMENT 3

ACKNOWLEDGMENT OF RECEIPT FORM

**REQUEST FOR PROPOSALS
Qualification Based**

In acknowledgement of receipt of this Request for Proposal the undersigned agrees that he/she has received a complete copy of acknowledged **RFQ 2022-05**.

The acknowledgement of receipt should be signed and returned to the Chief Procurement Officer. Only potential Offerors who elect to return this form completed with the intention of submitting a proposal will receive copies of all Offeror written questions and the City's written responses to those questions in the form of an addenda.

COMPANY: _____

REPRESENTED BY: _____

TITLE: _____ **PHONE NO.:** _____

E-MAIL: _____ **FAX NO.:** _____

ADDRESS: _____

CITY: _____ **STATE:** _____ **ZIP CODE:** _____

SIGNATURE: _____ **DATE:** _____

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

Company does/does not (circle one) intend to respond to this Request for Proposals.

Acknowledgements must be delivered to the Chief Procurement Officer at the following address:

Barbara Pyeatt
Chief Procurement Officer
Purchasing Department
2600 N Florida Ave
Alamogordo, New Mexico 88310
bpyeatt@ci.alamogordo.nm.us
Fax Number: (575) 439-4117

ATTACHMENT 4

SCOPE OF WORK

RFQ NO. 2022-05

ENGINEERING AND DESIGN SERVICES FOR EXPANSION & UPGRADE OF ED BRABSON BALLOON PARK FOR THE CITY OF ALAMOGORDO, NEW MEXICO

The project involves planning, engineering, and design services to expand the footprint of the existing Ed Brabson Balloon Park westward, on City of Alamogordo property. Improvements will include, but are not limited to, clearing & grubbing; asphalt paving; ADA accommodations; electrical, potable water, and sewer line upgrades and extensions; a permanent stage structure for various events; additional permanent restroom facilities; and fencing.

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. 2022-05, Engineering & Design Services for Expansion & Upgrade of Ed Brabson Balloon Park**, 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 Community Services Director or other designee, as City's representative with respect to the engineering work to be performed under this Agreement. The Community Services 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 10th 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 Street
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