



TOWN OF TAOS, NM
REQUEST FOR PROPOSALS
FOR
ENGINEERING SERVICES FOR WASTE WATER AND
STORM WATER SYSTEM IMPROVEMENTS

Control Number: 18-19-02

Issue Date: November 8, 2018

Pre-Proposal Question Deadline: Thursday November 15, 2018 at 5:00 p.m. local time

Pre-Proposal Meeting: None

Proposal Due Date: November 30, 2018 at 4:00 p.m. local time

Deliver to: Town of Taos
Procurement Office
400 Camino de la Placita Room 202
Taos, NM 87571

Purchasing Contact: Sharon Voigt, Chief Procurement Officer
Finance Department-Procurement
Phone: (575) 751-2025
Email: svoigt@taosgov.com

Introduction

The Town of Taos is requesting competitive sealed proposals for the selection of a professional firm to provide engineering services for the design and construction of waste water and storm water systems improvements which may include preliminary design, final design, bidding and negotiating and construction phases. The selected firm may coordinate projects with the Town of Taos, New Mexico Finance Authority, and other State or Federal entities or granting agencies.

Description: A copy of this RFP can be obtained from the Town of Taos website at www.taosgov.com/finance/solicitation/php until the expiration date of this solicitation. It is incumbent upon the Respondent to check the website for additional information and/or addenda. RFPs can also be obtained from Sharon Voigt, Chief Procurement Officer, Town of Taos Procurement Office, 400 Camino de la Placita- Room 202, Taos, NM 87571. If you have any questions, please call (575) 751-2025 or email svoigt@taosgov.com.

Written questions regarding the substance of the RFP or scope of services must be submitted via e-mail to the purchasing contact listed above no later than the Pre-Proposal Question Deadline indicated above.

Sealed Responses are due prior to the Response Deadline indicated above and must be delivered to the Procurement Office, located at Taos Town Hall, Room 202, 400 Camino de la Placita, Taos, NM 87571. Late responses will not be accepted.

TABLE OF CONTENTS

SECTION 1 – INSTRUCTIONS 4

SECTION 2 – SPECIFICATIONS AND SCOPE OF WORK 10

SECTION 3 – EVALUATION CRITERIA AND SUBMITTAL REQUIREMENTS 12

SECTION 4 – TERMS AND CONDITIONS OF CONTRACT 12

SECTION 5 – REQUIRED FORMS 30

SECTION 1 – INSTRUCTIONS

1) COMMUNICATIONS

In an effort to create a more competitive and unbiased procurement process, the Town of Taos (Town) desires to establish a single point of contact throughout the procurement process. From the issue date of this RFP, until a Successful Respondent(s) is selected, all requests for clarification or additional information regarding this RFP or contacts with the Town personnel concerning this RFP or the evaluation process must be solely to the contact person (or her designee) listed on the cover page of this RFP.

A violation of this provision is cause for the Town to reject the Respondent's Response. If it is later discovered that a violation has occurred, the Town may reject any Response or terminate any contract awarded pursuant to this RFP. No direct contact regarding this document with other Town employees, the Towns' contractors' or other entities working with the Town are permitted.

2) PRE-PROPOSAL INFORMATION AND QUESTIONS

Each response that is timely received will be evaluated on its merit and completeness of all requested information. In preparing responses, Respondents are advised to rely only upon the contents of this RFP, its accompanying documents and any written clarifications or addenda issued by the Town. If a Respondent finds a discrepancy, error, or omission in the RFP package, or requires any written addendum thereto, the Respondent is requested to notify the Purchasing contact noted on the cover of this RFP, so that written clarification may be sent to all prospective Respondents. THE TOWN IS NOT RESPONSIBLE FOR ANY ORAL INSTRUCTIONS. All questions must be submitted in writing to the Purchasing contact before the Pre-Response Question Deadline indicated on the front of this document. No contact regarding this document with other Town employees is permitted. All answers will be issued in the form of a written addendum.

3) RFP MODIFICATIONS

Clarifications, modifications, or amendments may be made to the RFP at any time prior to the Response Deadline at the discretion of the Town. It is the Respondent's responsibility to periodically check the Town's website until the posted Response Deadline to obtain any issued addenda.

4) PRE-PROPOSAL MEETING

The date, time and location of the meeting, if any, are indicated on the cover page of this RFP. All Respondents are strongly encouraged to attend any scheduled meetings.

5) RESPONSE SUBMISSION

To be considered, the Response must be prepared in the manner and detail specified in this RFP.

- a. Responses must be submitted to Sharon Voigt, Town Procurement Office, 400 Camino de la Placita, Room 2002, Taos, NM 87571, before the date and time indicated as the deadline. It is each Respondent's responsibility to ensure that the Procurement Office receives its Response prior to the deadline. This responsibility rests entirely with the Respondent, regardless of delays resulting from postal handling or for any other reasons. Responses will be accepted at any time during the normal course of business only, said hours being 8:00 a.m. to 12:00 p.m. and 1:00 p.m. to 5:00 p.m. local time, Monday through Friday, except for legal holidays.
- b. Responses received after the above deadline will not be accepted and will be returned to the Respondent unopened. The Procurement Office's timestamp shall be the official time.
- c. The opening of a Response does not constitute the Town's acceptance of the Respondent as a responsive and responsible Respondent.
- d. Responses must be enclosed in a **sealed envelope, box, or package**, and clearly marked on the outside with the following: project name, control Number, deadline date and time, and Respondent's name, address, phone, fax, and contact name.
- e. Submission of a Response establishes a conclusive presumption that the Respondent is thoroughly familiar with the RFP and specifications and terms of the Sample Contract, and the Town's Procurement Policy and that the Respondent understands and agrees to abide by each and all of the stipulations and requirements contained therein.

- f. All prices and notations if applicable must be typed or printed in ink. No erasures are permitted. Mistakes may be crossed out and the person(s) signing the Response must initial corrections in ink.
- g. Responses sent by telegraph, facsimile, email or other electronic means will not be considered.
- h. All costs incurred in the preparation and presentations of the Response, as well as any resulting contract, are the Respondent's sole responsibility; no such costs will be reimbursed to any Respondent. All documentation submitted with the Response will become the property of the Town.
- i. Responses are subject to public disclosure after the award in accordance with state law under the Freedom of Information Act (FOIA).

6) RESPONSE SIGNATURES

An authorized official must sign the Responses. Each signature represents binding commitment upon the Respondent to provide the goods and/or services offered to the Town if the Respondent is determined to be the most responsive and responsible Respondent.

7) CONTRACT AWARD

The Town reserves the right to withdraw the RFP, to award to one Respondent, to any combination of Respondents, by item, group of items, or total RFP. The Town may waive informalities if it is in the Town's interest. The award shall be made to the responsible respondent whose proposal is the most advantageous to the Town taking into consideration the evaluation factors set forth in the Request for Proposals. Qualifications-based proposals are based on respondents' qualifications to perform the required scope of work and are not based on price. Responses will be evaluated and assigned scores. The Respondent(s) to whom the recommendation to award is made will be notified at the earliest possible date. If, for any reason, a contract is not executed with the selected Respondent within 14 days, then the Town may recommend the next most responsive and responsible Respondent. Award of this RFP is contingent upon the availability of funds for this project, within the sole discretion of the Town. Acceptance of the Respondent's RFP does not constitute a binding contract. There is no contract until the Town's policies have been fulfilled. The Town is not liable for performance costs until the successful Respondent has been given a fully executed contract. Failure to accept the terms and conditions of the Town's Standard Contract may deem the Respondent non-responsive.

8) RESPONSE MODIFICATIONS

Clarifications, modifications, or amendments to any Response that has been submitted, but prior to the Response Deadline Date, may be made only within the discretion and written approval of the Chief Procurement Officer.

9) DUPLICATE RESPONSES

No more than one (1) Response from any Respondent, including its subsidiaries, affiliated companies and franchisees will be considered by the Town. In the event multiple Responses are submitted in violation of this provision, the Town will have the right to determine which Response will be considered, or at its sole option, reject all such multiple Responses.

10) WITHDRAWAL

Responses may only be withdrawn by written notice prior to the Deadline date set for the opening of Response. No Response may be withdrawn after the deadline for submission.

11) REJECTION

The Town reserves the right to reject any or all Responses, or to accept or reject any Response in part, and to waive any minor informality or irregularity in Responses received, if it is determined by the Chief Procurement Officer or designee that the best interest of the Town will be served by doing so. The Town may reject any Response from any person, firm or corporation in arrears or in default to the Town on any contract, debt, or other obligation, or if the Respondent is debarred by the Town from consideration for a contract award, or if Respondent has committed a violation of the ethics or anti-kickback provisions of the Town's Purchasing Policy which resulted in a termination of a contract or other material sanction within the two (2) years immediately preceding the date of issuance of this document.

12) PROCUREMENT POLICY

Procurement for the Town will be handled in a manner providing fair opportunity to all businesses. This will be accomplished without abrogation or sacrifice of quality and as determined to be in the best interest of the Town.

The Town Mayor has the vested authority to execute all Town contracts, subject to Council approval where required.

13) COMPLIANCE WITH LAWS

The Respondent must comply with all federal, state, and local laws and policies. The laws of the State of New Mexico shall govern this procurement and any agreement with Respondents that may result. In submitting a proposal, the Respondent represents that the Respondent has familiarized himself with the nature and extent of the RFP dealing with federal, state, and local requirements that are part of this RFP. The successful Respondent(s) shall perform work under the resultant Contract in strict accordance with the latest version of all State and local codes, ordinances, and regulations governing the work involved. All materials and labor necessary to comply with the rules, regulations and ordinances shall be provided by the successful Respondent(s). In the event of a conflict between various codes and standards, the more stringent shall apply.

14) NON-DISCRIMINATION

The Town will not contract with any person or firm that discriminates against employees or applicants for employment because of any factor not related to job performance. The Respondent must comply with all federal, state and local laws and policies that prohibit discrimination in employment contracts. The Respondent must include in its subcontracts provisions that prohibit subcontractors from discriminating in their employment practices.

16) CONTRACT NEGOTIATION

All Responses must be firm for at least 120 days from the due date of the Response. If, for any reason, a contract is not executed with the selected Respondent within 14 days after notice of recommended award, then the Town may recommend the next most responsive and responsible Respondent. There is no contract until the Town's policies have been fulfilled.

17) DISQUALIFICATION OF RESPONDENTS

Any one or more of the following causes may be considered sufficient for the disqualification of a Respondent and the rejection of the Response:

- a. Evidence of collusion among Respondents.
- b. Lack of competency as revealed by either financial, experience, or equipment statements.
- c. Lack of responsibility as shown by past work.
- d. Uncompleted work under other contracts which, in the judgment of the Town, might hinder or prevent the prompt completion of additional work if awarded.

18) DISCUSSIONS

Discussions may be conducted with responsible Respondents, in order to clarify and assure full understanding of, and conformance to, the solicitation requirements. Discussions may be conducted with Respondents who submit Responses determined to be likely selected for award, but Responses may be accepted without such discussions.

Respondents shall be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of Responses. Such revisions may be permitted after submission and prior to award for the purpose of obtaining best and final offers. If during discussions there is a need for any substantial clarification of or change in the RFP, the RFP shall be amended to incorporate such clarification or change. The Respondent shall reduce any substantial oral clarification of a Response to writing.

19) SUBCONTRACTORS

In an effort to promote supplier diversity, the Town encourages Respondents to identify and include qualified disadvantaged businesses as subcontractors when proposing to provide products and services to the Town.

The Contract will not be assignable to any other business entity without the Town's approval.

20) RESPONDENT RESPONSIBILITIES

The Respondent must be capable, either as a firm or a team, of providing all services as described under SECTION 2 – SCOPE OF WORK and to maintain those capabilities until notification of the fact that their Response was unsuccessful. Exclusion of any service for this Response may serve as cause for rejection. The Successful Respondent must remain capable of providing all services as described under SECTION 2 – SCOPE OF WORK and must maintain those capabilities until the agreement is successfully finished. The successful Respondent will be responsible for all services in this Response whether they are provided or performed by the Successful Respondent or Subcontractor(s). Further, the Town will consider the Successful Respondent to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the cost of any

contract. The Successful Respondent must identify all Subcontractors and the Services they provide. The Successful Respondent is responsible for all payments and liabilities of all Subcontractor(s).

It is strongly recommended that the Respondent visit the Town of Taos and familiarize themselves with the site, including attendance at the Pre-Proposal Meeting, if any.

The Town reserves the right to approve or reject, in writing, any proposed Subcontractor. If the Town rejects any proposed Subcontractor in writing, the Successful Respondent shall be responsible to assume the proposed Subcontractor's responsibilities. The Successful Respondent may propose another Subcontractor if it does not jeopardize the effectiveness or efficiency of the contract. Nothing contained in the Response or in the contract shall create or be construed as creating any contractual relationship between any Subcontractor and the Town.

21) TOWN PARTICIPATION

The Town will provide appropriate personnel support for implementation of these agreements. The Respondent's Response should identify Town FTEs required and tasks to be performed by Town personnel. For the purpose of contract administration, the Town will designate a person to serve as Town Contract Manager. The Town Contract Manager will serve as the primary liaison between the Town and the Successful Respondent and will coordinate overall management and administration of the contract for the Town.

22) DISCLOSURE OF CONTENTS

All information provided in the Response shall be held in confidence and shall not be revealed or discussed with competitors, until after award of the contract except as provided by law or court decision. All material submitted with the Response becomes the property of the Town and may be returned only at the Town's option.

Respondents must make no other distribution of their Responses other than authorized by this RFP.

Respondents shall not be provided any information about other Responses or prices or where the Respondent stands in relation to others at any time during the evaluation process. Any request for such information by a Respondent, its subcontractor or an affiliated party may be viewed as a compromise to the evaluation process and the requesting Respondent may be eliminated from further consideration.

23) PROPOSAL EVALUATION

An evaluation committee will perform the evaluation of proposals. Points will be allocated by each member. 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.

It is at the discretion of the Evaluation Committee to hold interviews with the three highest-ranked proposals. The Evaluation Committee may award the selection based on the results of the ranking without interviews. If interviews are held, rankings from the initial evaluation are weighted 40% and the interview rankings are weighted 60% to determine final award. If fewer than three proposals are received the Evaluation Committee may recommend an award to the Governing Body for approval or direct that the RFP be reissued.

During this time, the Town of Taos may initiate discussions with Respondents who submit responsive or potentially responsive proposals for the purpose of clarifying aspects of the proposals, but proposals may be accepted and evaluated without such discussion. Discussions SHALL NOT be initiated by the Respondents.

24) PROTESTS

Any protest by a Respondent must be timely and in conformance with Section 13-1-172 NMSA 1978 and applicable procurement regulations. Protests must be written and must include the name and address of the protestor and the request for proposals number. It must also contain a statement of grounds for protest including appropriate supporting exhibits, and it must specify the ruling requested from the Town of Taos. The protest must be delivered to the Town of Taos, Chief Procurement Officer 400 Camino de la Placita, Room 202, Taos, NM 87571 within 24 hours after the facts or occurrences giving rise thereto, but in no case later than 15 calendar days after the facts or occurrences giving rise thereto. Protests received after the 15-day period deadline will not be accepted.

In the event of a timely protest under this section, the Town of Taos shall not proceed further with procurement unless the Chief Procurement Officer makes a determination that the award of Agreement is necessary to protect substantial interests of the Contracting Agency (13-1-173 NMSA 1978).

The Chief Procurement Officer or designee shall have the authority to take any action reasonably necessary to resolve a protest of an aggrieved Respondent concerning procurement.

The Chief Procurement Officer or designee shall promptly issue a determination relating to the protest.

The aggrieved Respondent has the right to judicial review of the determination pursuant to 13-1-183 NMSA 1978.

25) RESPONDENT QUALIFICATIONS

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

26) RIGHT TO WAIVE MINOR IRREGULARITIES

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

27) CHANGE IN CONTRACTOR REPRESENTATIVES

The Town of Taos reserves the rights to require a change in contractor representatives if the assigned representatives are not, in the opinion of the Town of Taos, meeting its needs adequately. If the contractor wishes to change its designated representative, that change must be approved by the Town of Taos.

28) NOTICE

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

29) TOWN OF TAOS RIGHTS

The Town of Taos reserves the right to accept all or a portion of a Respondent's proposal.

30) MULTIPLE AWARDS

The Town reserves the right to make multiple awards of the items, projects and/or sections of this RFP.

31) RIGHT TO PUBLISH

Throughout the duration of this procurement process and contract term, potential Respondents, Respondents and contractors must secure from the Town of Taos written approval prior to the release of any information that pertains to the potential work or activities covered by this procurement or the subsequent contract. Failure to adhere to this requirement may result in disqualification of the Respondent's proposal or termination of the contract.

32) OWNERSHIP OF PROPOSALS

All documents submitted in response to this Request for Proposals shall become the property of the Town of Taos. However, any technical or user documentation submitted with the proposals of non-selected Respondents shall be returned after the expiration of the protest period. Unsuccessful Respondents may retrieve all but one copy of their proposal as soon as award is made. Any unsuccessful Respondent wishing to retrieve copies of their proposal must do so within two weeks after the award.

33) ELECTRONIC E-MAIL ADDRESS REQUIRED

A large part of the communication regarding this procurement will be conducted by electronic mail (e-mail). Respondent must have a valid e-mail address to receive this correspondence.

34) STATUS OF SUCCESSFUL RESPONDENTS.

The successful Respondent(s) is an independent contractor performing services for the Town and neither he/she nor his/her agents or employees shall, as a result of the resultant Contract, accrue leave, retirement, insurance, bonding authority, use of Town vehicles, or any other benefits, prerequisites or allowances normally afforded only to employees of the Town. The successful Respondent(s) acknowledges that all sums received under the resultant Contract are personally reportable by him/her for income, self-employment and other applicable taxes.

35) ASSIGNMENT/TRANSFER

Assignment or transfer of this contract without written consent of Town may be construed by the Town as a breach of contract sufficient to cancel this agreement at the discretion of the Town.

37) DEBARMENT, SUSPENSION, AND INELIGIBILITY

By submitting a response to this Request for Proposals, the business (Bidder/Offeror/Contractor) represents and warrants that it is not debarred, suspended, or placed in ineligibility status under the provisions of Federal Executive Order 12549 and FAR 521.209-5.

SECTION 2 – SPECIFICATIONS AND SCOPE OF WORK

1) INTRODUCTION

The Town of Taos is requesting competitive sealed proposals for the selection of a professional firm to provide engineering services for the design and construction of waste water and storm water systems improvements which may include preliminary design, final design, bidding and negotiating and construction phases. The selected firm may coordinate projects with the Town of Taos, New Mexico Finance Authority, and other State or Federal entities or granting agencies.

The successful Firm / Individual will be required to execute a Professional Services Contract, (Town of Taos terms and Conditions), a sample but not the actual document is part of the RFP document. The Professional Services Contract will incorporate the selected Firm / Individual proposal, scope of services and other pertinent requirements and details.

Through this Request for Proposal (RFP), the Town of Taos (Town) hereby invites entities who meet the qualifications and specifications set forth herein to submit responses for the Town of Taos RFP 18-19-02 Engineering Services for Waste Water and Storm Water Systems Improvements.

2) SCOPE OF SERVICES:

Projects included in the Request for Proposals will follow the Water and Wastewater Master Plan and may include, but are not limited to:

1. Valverde Sewer Line Rehabilitation/Replacement.
2. La Lomita Sewer Line Rehabilitation/Replacement.
3. Other projects identified in the Capital Improvements Plan or Operating Budget for a given fiscal year

The purpose of this RFP is to enter into a contract with a qualified engineering firm (Consultant) that will be ready and able to perform any or all of the above listed services, if and when funding becomes available and the Town is ready to proceed. There is no guarantee that the Town will require any or all of such services.

The successful Respondent shall:

- Assist the Town in the grant application process.
- Complete preliminary and final design.
- Advertise for bids, assist the Town in receipt of bids and prepare recommendations of award to the Town of Taos governing body.
- Provide project management, general engineering oversight and contract administration through project completion.
- Provide periodic or full time on site observation during construction

The following tasks are identified as the Scope of Work that the Respondent team will be requested to perform. This scope of work may be adjusted and modified to meet the needs of the Town.

Funding Phase:

- Assist and/or apply for federal and state grants for the Town of Taos to help defray the cost of the engineering services and construction.

Preliminary Design:

- In consultation with the Director of Public Works, any other consultants as requested by the Town of Taos, and on a basis of any accepted preliminary study reports available, determine the general scope, extent and character of the project.
- Prepare Preliminary Design Documents consisting of final design criteria, preliminary drawings, and outline specification
- Submit an Opinion of Probable Costs
- Submit two copies of above preliminary design documents and present and review them in person with the Director of Public Works
- Obtain property permitting for work to be done in water way

Final Design:

- Prepare bid documents specifications and plans in accordance with any State of New Mexico or funding entity standards, setting forth in detail the requirements for the construction of the entire project.

- Submit a revised opinion of probable project cost.
- Submit five (5) copies of the final design documents and present and review them in person with the Director of Public Works.

Bidding and Negotiating Phase:

- Assist the Chief Procurement Officer or designee in advertising for and obtaining bids.
- Distribute bid documents to prospective bidders and construction reporting services.
- Coordinate and conduct a pre-bid conference.
- Clarify and answer questions concerning the bid documents and issue addenda as required in coordination with the Chief Procurement Officer or designee.
- Assist with bid opening
- Prepare bid tabulation, assist the Town of Taos in evaluating bids, and prepare recommendation of award to the Town of Taos governing body
- Assist the Town of Taos in assembling and awarding contracts.

Construction Phase:

- Provide project management, general engineering supervision and contract administration during construction.
- Submit to the Director of Public Works a list of critical observation milestones including weekly program and quality of work reports.
- Provide periodic or full time on-site inspection at such times as appropriate during the progress of the work, to determine that work is completed in conformance with the contract documents.
- Review contracts pay applications and provide recommendation for payment.
- Render interpretations of construction documents.
- Review contract submittals for conformance.
- Prepare field and change orders as necessary.
- Coordinate and conduct final inspection and obtain all warranties and related documents as required by the contract documents.
- Develop and review with owner and contractor a punch list.
- Modify the original reproducible drawings delineating recorded as-built conditions.
- Coordinate and conduct an 11 month warranty review.
- Achieve multi-agency compliance with grantor rules and regulations.

Additional Services – Per Copy Cost

- Cost per bound hard copy for bid documents, specifications and plans
- Cost per CD for bid documents, specifications and plans

Deliverables will include conceptual and final design drawings, cost estimates, and final construction documents for the Invitation to Bid documents.

No services or construction or furnishing of goods is permitted either before a written contract is signed by the Town and the Contractor or after the contract terminates. Working without a contract may result in non-payment for such work.

3) CONTRACT TERM

The contract is for a term of four years. Task orders will be assigned for specific projects. It is anticipated that this contract will commence on or about January 1, 2019. The successful firm shall commence work only after the full execution of a contract between the Town of Taos and the chosen firm(s), the transmittal of a Purchase Order with an issuance of a Notice to Proceed.

SECTION 3 – EVALUATION CRITERIA AND SUBMITTAL REQUIREMENTS

EVALUATION CRITERIA: All Responses received will be evaluated by an Evaluation Committee. The following factors will be considered in making the selection of the qualified Respondents with maximum possible points:

- a) **Specialized Design** - Provide information about the firm's specific technical experience with similar projects that demonstrate competence to successfully complete the project. Indicate the relevance of previous projects to the anticipated scope of work. Demonstrate the successful aspects of past design projects and the corresponding applications to the proposed scope of work.

The personnel named in the statement of qualification submitted by your firm, shall remain responsible throughout the period of this project. No diversion or replacement may be made without submission of the proposed replacement with final approval being granted by the Town's Project Manager. **25 points**

- b) **Capacity and Capability** - Provide information about the business that demonstrates the ability to provide sufficient professional competence, meet time schedules, accommodate cost considerations and project administration requirements. Indicate the relationship of the work in this solicitation to the firm's other current projects. Indicate proposed work schedules and milestones, with completion methods and strategies. Indicate key project team members and their specific roles, experience and background. Demonstrate or indicate project team organization and working relationships. Other items could include references from clients, financial institutions and insurance carriers. **25 points**

- c) **Past Record of Performance** - Demonstrate through historical documentation that the firm has the ability to meet schedules and budgets, as well as user program goals, and final construction project costs. Include information regarding owner budgets, construction estimates, bidding and completed project cost including change order information. Project schedules should provide information about the progress of work as related to owner schedules and goals as well as the overall success of projects and client satisfaction. References from past clients can be included. **25 points**

- d) **Proximity to or Familiarity with Site Location** - Proximity to or familiarity with the area in which the project is located. Provide a summary addressing projects completed by your firm which address proximity to or familiarity with the area in which the project is located. **5 points**

- e) **Design Work Produced by a New Mexico Business** – Summarize the amount of design work that will be produced by a New Mexico business. (The Town will apply a formula, based on the percent of work performed compared to total scope, to reduce points earned if using firms outside of New Mexico). **5 points**

- f) **Volume of Work Previously Done** - Firms shall be scored on any project that has been previously awarded and is, on the date of the submittal, less than 75% complete (see definitions for clarification of "75% complete"). Information on the status of past project awards shall be included in the "Project Listing Form" as a requirement of this solicitation. The following formula on fees for projects awarded that are less than 75% complete shall be utilized in assessing scores:

i. \$ 00,00	to	\$ 25,000	5 points
ii. \$ 25,000	to	\$ 35,000	4 points
iii. \$ 35,001	to	\$ 50,000	3 points
iv. \$ 50,001	to	\$100,000	2 points
v. \$100,001	to	\$150,000	1 points
vi. \$150,001	and	over	0 points

- g) **Evidence of Understanding of the Scope** - Describe in detail the anticipated scope of work for the project. Include information about the project site, project administration, scheduling, budget and programmatic user requirements. The proposal should demonstrate competent knowledge of project constraints as well as any applicable discussion of possible options for design approaches or techniques. Respondents are not encouraged to provide specific design solutions for the project. Without completion of programming activities, any specific design proposals could be inappropriate and may result in a reduction in scoring. This would not preclude discussion of project parameters that may affect design decisions, concept approaches or design philosophies. **10 points**

h) **In-State Preference OR Veterans Preference. 5 or 10 points**

- i) **Fee/Cost** - Cost is not a factor in the evaluation of proposals submitted in response to this RFQ (NMSA 13-1-120). The most highly qualified respondent submitting a responsive proposal will be selected and the selected respondent will then be required to submit a man-hour and fee schedule will be used in summarizing the cost proposal, with adequate back-up to verify the proposed fixed fee, and shall include the following information. This pricing shall be used in negotiating the contract price (Ref. NMSA 1978 13-1-120 through 13-1-124).

- The itemized cost for individual elements, such as studies, reports, etc.
- The cost of each task or segment of the task shall be itemized.
- Breakdown of direct labor and labor overhead costs including number of man-hours and applicable actual or average hourly rates, overhead rate and supporting schedule.
- Travel and per diem or subsistence costs, if any, supported by breakdown including destination, duration and purpose. Automobile mileage and per diem shall not exceed the amounts authorized by the New Mexico mileage and per diem act. Air transportation shall be coach fair.
- Breakdown of other expenses such as clerical support, other overhead costs, supplies, etc.
- Breakdown of fee or profit.

The schedule shall also indicate company name, date and signature of an officer authorized to contract for the work. Price shall be determined by negotiations related to scope of work following ranking of the proposals received (NMSA 1978 13-1-112 C).

110 points The Proposal will be evaluated based on the above 110 points. If oral presentations are held, the oral presentations will be based upon re-evaluation of the above criteria.

Each Response submitted in response to this solicitation shall focus on the above criteria. The Evaluation Committee also may consider past performance of the Respondent on other contracts with the Town or other entities. Responses will be evaluated equally and fairly; no preference will be given to any Respondent based solely on previous experience with the Town or to an incumbent thereof. The Town reserves the right to make additional inquiries and may request the submission of additional information.

Respondent to whom award of an Agreement is under consideration shall submit upon request, information and data to prove that their financial resources, production of service facilities, personnel, and service reputation and experience are adequate to make satisfactory delivery of the services described in the Request for Proposals (13-1-82 NMSA 1978).

A serious deficiency in any one category may be grounds for rejection of the proposal regardless of the overall score.

Interview: It is at the discretion of the Evaluation Committee to hold interviews with the three highest-ranked proposals. The Evaluation Committee may award the selection based on the results of the ranking without interviews. If interviews are held, rankings from the initial evaluation are weighted 40% and the interview rankings are weighted 60% to determine final award. If fewer than three proposals are received the Evaluation Committee may recommend an award to the Governing Body for approval or direct that the RFP be reissued.

During this time, the Town of Taos may initiate discussions with Respondents who submit responsive or potentially responsive proposals for the purpose of clarifying aspects of the proposals, but proposals may be accepted and evaluated without such discussion. Discussions SHALL NOT be initiated by the Respondents.

1. APPLICATION OF IN-STATE/VETERANS PREFERENCE

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

Preference credit will be given to Respondents and/or sub-contractors that have provided their In-State/Veterans preference certificate(s).

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

- i. If the contract is awarded based on a point-based system, a resident business shall be awarded the equivalent of five percent of the total possible points to be awarded based on the resident business possessing a valid resident business certificate.
 - ii. The Town's RFP award process is based on a point system, with 100 points possible. With the in-state preference applied, 105 points will be possible.
- b) Pursuant to Section 13-1-21 (D), NMSA 1978, When a joint bid or joint proposal is submitted by both resident and nonresident businesses, the resident business preference provided pursuant to Subsection B or C of this section shall be reduced in proportion to the percentage of the contract, based on the dollar amount of the goods or services provided under the contract, that will be performed by a nonresident business as specified in the joint bid or proposal.
- i. Respondent will complete the following table if submitting a joint proposal

Firm Name, Location	Work to be Performed	Preference Certificate Included ✓	% of Work Performed Compared to Total Scope

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

Example: 35% of work will be performed by the Respondent and/or subcontractor which is a certified resident business: 35% of 5 points = 1.75 points

- c) In accordance with Sections 13-1-21 and 13-1-22 NMSA 1978 and effective July 1, 2012, a resident veteran's business preference has been implemented. The Taxation and Revenue Department (TRD) will be issuing a three (3) year certificate to each qualified business. Businesses are required to reapply to TRD every three (3) years with proper documentation to renew their certificate.
- i. This preference is separate from the in-state preference and is not cumulative with that preference

1) GENERAL SUBMITTAL REQUIREMENTS:

- a) **NUMBER OF COPIES:** One unbound original, plus four copies (five total) of the entire Response must be submitted. The original must be marked "ORIGINAL". Each copy must be identical to the original.
- b) **RESPONSE FORMAT:** Each Response should be prepared simply and economically. Responses shall be in the same order as the requirements listed below and in the following section.
- c) **RESPONSE CONTENT:** The Respondent must include the following items, or the Response may be deemed non-responsive and rejected without any further evaluation.
 - i) All forms contained or listed in Section 5 in this solicitation, fully completed:
 - ii) Evidence showing that the Respondent meets each of the Minimum Qualifications listed in the Scope of Work of this solicitation.

- iii) A complete response to each of the items in the next section, which are specific to the evaluation criteria.

Proposal Organization

The proposal must be organized and indexed in the following format and must contain, as a minimum, all listed items in the sequence indicated.

- Transmittal Letter
- Table of Contents
- Response to Evaluation Criteria a. through g.
- References (minimum of 3)
- Required Forms
- Other Supporting Material, if applicable

Within each section of their proposal, Respondents should address the items in the order in which they appear in this RFP. All forms provided in the RFP must be thoroughly completed and included in the appropriate section of the proposal. Cost is not a factor in the evaluation process. Any proposal that does not adhere to these requirements may be deemed non-responsive and rejected on that basis.

Respondents may attach other materials that they feel may improve the quality of their responses. However, these materials should be included as items in Other Supporting Material.

Transmittal Letter

The Respondent shall submit a formal transmittal letter on *official company letterhead* that contains the following:

Statement of Interest - This statement shall indicate your firm's general interest and capability to perform the project. It shall also include a brief summary of any information that you feel might be especially important to the Town of Taos.

Statement of Response Life - The proposal must have a *response life* of at least one hundred twenty (120) calendar days from the solicitation due date. This shall represent the minimum time during which the response is a firm offer and a contract may be entered into based upon it.

Statement of Acceptance - This statement shall state acceptance of all terms and conditions of the Town of Taos RFP and Town of Taos terms or conditions not accepted and the reasons for non-acceptance and/or proposed changes or additional Terms and Conditions. Responses taking exception to any language in the Form of Contract may be rejected as nonresponsive,

Contact Person - Please include the name, title, address, telephone number, fax number and e-mail of the key contact person for any questions regarding your proposal. Include also the location of the office from which service will be provided, with the hours of operation at that location.

Signature of Authorized Representative - An authorized representative of the firm must sign the transmittal letter.

References

Please provide a detailed list of references that can provide information concerning your expertise and experience in providing the types of services requested. This should include project description, contact names, addresses, phone and e-mail.

Fee/Cost

Price shall be determined by formal negotiations related to scope of work following selection of the most qualified Respondent (NMSA 13-1-112.C).

SECTION 4 –TERMS AND CONDITIONS OF CONTRACT

SAMPLE -FOR REVIEW ONLY

**AGREEMENT BETWEEN THE TOWN OF TAOS AND ENGINEER
FOR PROFESSIONAL ENGINEERING SERVICES**

PROJECT (short title) _____ Contract No. _____

PROJECT LOCATION _____



**THE TOWN OF TAOS
PURCHASING DIVISION
2013 EDITION, Part A of Two Parts**

Changes, additions, deletions and/or any modifications other than those agreed upon execution of this contract without the written consent of Taos shall render this document null and void.

THIS AGREEMENT is made and entered into on this _____ day of _____, 20__, by and between THE TOWN OF TAOS (hereinafter referred to as "the Town"), a municipal corporation organized and existing under the Laws of the State of New Mexico, and _____, licensed to do business in the State of New Mexico), hereinafter referred to as the "Engineer".

Hereinafter "Taos":

Daniel R. Barrone, Mayor
400 Camino De La Placita
Taos, New Mexico 87571
(575) 751-2002
(575) 751-2026

Hereinafter "Engineer":

Name: _____

RECITALS

WHEREAS, the Town needs the services of a professional licensed engineer to for the design and engineering of waste water and storm water projects _____; and

WHEREAS, in accordance with Section 13-1-112 NMSA 1978 and Taos Purchasing Regulations, the Town issued Request of Proposal (RFP) No. 18-19-02; and

WHEREAS, the Town requires the services of the Engineer, and the Engineer is willing to provide these services and both parties wish to enter into this Agreement.

NOW THEREFORE, in consideration of the premises and mutual obligations herein in Parts A and Part B of this Agreement, the parties hereto do mutually agree as follows:

1. PROJECT DESCRIPTION:

The engineer shall provide the full range of engineering services required for projects that follow the Water and Waste Water Master Plan, The Capital Improvements Plan and/or the Operating Budget of the Town of Taos for any given fiscal year. This shall include, but not be limited to, Projects outlined in the "Scope of Services, below.

2. SCOPE OF WORK

Projects that may be contracted under this Agreement include any projects whose funding originates from local funds, local matching funds, state appropriations, or that are undertaken during the term of the engineering contract, and may include but not be limited to any or all of the following:

1. *Valverde Sewer Line Rehabilitation/Replacement.*
2. *La Lomita Sewer Line Rehabilitation/Replacement.*
3. *Other projects identified in the Capital Improvements Plan or Operating Budget for a given fiscal year.*

3. COMPENSATION, INVOICING, AND SET-OFF

A. In consideration of its obligations under this Agreement the Engineer shall be compensated as follows:

- 1) Taos shall pay to the Engineer in full payment for services satisfactorily performed and all costs and expenses shall be in accordance with Exhibit A (Compensation and Schedule).
- 2) Any New Mexico gross receipts tax levied on the amounts payable under this Agreement shall be paid by Taos to the Engineer.
- 3) This amount is a maximum and not a guarantee that the work assigned to be performed by Engineer under this Agreement shall equal the amount stated herein. The parties do not intend for the Engineer to continue to provide services without compensation when the total compensation amount is reached. Taos will notify the Engineer when the services provided under this Agreement reach the total compensation amount. In no event will the Engineer be paid for services provided in excess of the total compensation amount without this Agreement being amended.

- B. The Engineer shall submit a written request for payment, on the form attached hereto as Exhibit B (Pay Request Form), when payment is due under this Agreement. Upon the Town of Taos's receipt of the written request, the Town of Taos shall issue a written certification of complete or partial acceptance or rejection of the contractual items or services for which payment is sought. The Engineer acknowledges and agrees that the Town of Taos may not make any payment hereunder unless and until Town of Taos has issued a written certification accepting the contractual items or services. Within 30 days of the issuance of a written certification accepting the contractual items or services, the Town of Taos shall tender payment for the accepted items or services. In the event the Town of Taos fails to tender payment within 30 days of the written certification accepting the items or services, the Town of Taos shall pay late payment charges of one and one-half percent (1.5%) per month, until the amount due is paid in full.
- C. In the event the Engineer breaches this Agreement, the Town of Taos may, without penalty, withhold any payments due the Engineer for the purpose of set-off until such time as Taos determines the exact amount of damages it suffered as a result of the breach.
- D. Payment under the Agreement shall not foreclose the right of the Town of Taos to recover excessive or illegal payment.

4. ENGINEER'S BASIC SERVICES

The Engineer shall provide the following Basic Services:

A. Study and Report Phase.

- 1) The Engineer shall consult with the Town of Taos to define and clarify the requirements for the Project.
- 2) Advise the Town of Taos of any need for the Town of Taos to provide additional data or services which are not a part of the Engineer's Basic Services.
- 3) Identify and analyze requirements of governmental agencies having jurisdiction to approve the portions of the Project designed or specified by the Engineer.
- 4) Prepare draft Study and Report and brief and obtain the written approval of the Town of Taos for the draft Study and Report, before commencing work on the Preliminary Design, Study and Report Phase.

B. Preliminary Design, Study and Report Phase

- 1) Convene a meeting with the Town of Taos and other interested parties to review the Project site. Advise the Town of Taos if additional data, reports, or services are necessary and assist the Town of Taos in obtaining such data, reports, or services.
- 2) Develop and complete a Development Plan for the area in schematic form for review with the Town of Taos. The plans shall allow for phased construction if necessary.
- 3) Upon approval of the schematic Development Plan documents by the Town of Taos, the Engineer will develop and complete preliminary Design Plans and a construction cost estimate within 30 days of authorization to proceed and review with the Town of Taos. If necessary, revise Preliminary Design Phase documents in response to the Town of Taos's comments.
- 4) From the approved Scope of Work the Engineer as applicable shall produce a study consisting of drawings and other documents necessary to illustrate the general planning

concepts, probable Engineering system, types of materials needed and preliminary alternatives, a breakdown of the budget on current area, volume, or other unit costs, and the approximate dimensions of the project area. The Engineer shall brief and obtain the written approval of the Town of Taos for the Preliminary Design, Study and Report Phase drawings and documents.

- 5) The Engineer shall obtain written approval from the Town of Taos for the proposed Preliminary Design as modified by any comment during review before commencing work on the Final Design Phase.

C. Final Design Phase

Upon approval of Preliminary Design Phase documents by the Town of Taos, the Engineer shall:

- 1) Prepare Final Design Plans, documents, project specifications, and develop a construction cost estimate.
- 2) Prepare a statement that identifies the need for additional data, surveys, or tests.
- 3) Submit to the Town of Taos for review of written approval a statement of Probable Construction Cost at the completion of the Final Design Phase. Should the Engineer conclude at any time that the budget and Scope of Work to accomplished are incompatible; the Town of Taos shall be notified immediately in writing with proposed recommendations to reconcile the incompatibility.
- 4) Convene a meeting with the Town of Taos and other interested parties to review the Final Design Plans, Project Specifications and Cost Estimate. If necessary revise such final Design Phase documents, Project Specifications, and Cost Estimate.
- 5) Upon approval of final Design Phase documents by the Town of Taos, prepare and deliver Design Phase document, Project Specifications and Cost Estimate.
- 6) Deliver signed/sealed construction drawings and bid documents for submittal for permits.
- 7) Assist the Town of Taos at all regulatory review meetings, present design, respond to review questions, revise plans if necessary to obtain approvals.
- 8) Provide the Town of Taos with three full size and three half size sets of the 100% construction plan, electronic copy of the Project specifications and cost estimate. AutoCAD and PDF copies of the construction drawings shall be provided to Taos upon request.

D. Bidding and Negotiating Phase

The Engineer shall:

- 1) If requested, assist the Town of Taos in obtaining bids or proposals and awarding and preparing contracts for construction.
- 2) Attend pre-bid conference and assist in preparing addenda.
- 3) Assist the Town of Taos to clarify and answer any questions about the bidding or proposal documents during the bidding or proposal process.
- 4) Identify any changes during the bidding or proposal process that may require addenda.
- 5) Submit all proposed addenda, including all revised drawings and sections, for approval by the Town of Taos prior to distribution. The Engineer shall allow sufficient time for the Town of Taos review and acceptance of each addendum.
- 6) Assist the Town of Taos to issue addenda as required to all bidders or offerors.

- 7) Assist the Town of Taos to identify the apparent successful bidder or proposal and provide written recommendation to accept or reject the bids and/or related proposals.

E. Construction Phase

The Engineer shall:

- 1) Participate in a pre-construction conference.
- 2) Provide a minimum of one weekly or one monthly on-site observation(s) during the Construction Phase to protect the Town of Taos against defects and deficiencies in construction, in addition to critical inspections, reviews and evaluations required by the Scope of Work. The results of all on site observations shall be documented in field reports submitted to the Town of Taos within seven days of each site visit.
- 3) Determine, certify, and make recommendations to the Town of Taos for payment of amounts owing to the construction contractor subject to the Town of Taos's approval, based on observations at the site and on evaluations of the construction contractor's application for payment.
- 4) Assist the Town of Taos in reviewing change orders.
- 5) Conduct final site visit with the Town of Taos to determine if completed work is acceptable and issue a Notice of Substantial Completion.
- 6) Finalize "As-Built" plans to include construction contractor's mark-ups.

F. Project Closeout and 11 Month Warranty Inspection Phase

- 1) General. The Engineer shall submit to the Town of Taos recommendations to regarding the completion of the construction. The Engineer shall obtain from the construction contractor as applicable all releases, waivers of lien, guarantees, warranties, maintenance data, bonds, and acknowledgement receipts of any contraction contractors record drawing. The Engineer shall obtain and deliver to the Town of Taos a signed receipt for all materials turned over by the Contractor.
- 2) Eleven Month Inspection and Report. The Engineer shall have 11 months after Substantial Completion of the project, schedule a meeting with the Town of Taos to evaluate the construction site, inspect the Engineer's Design to identify any defects in material products and workmanship. The Engineer shall provide a written report of this activity to the Town of Taos with in seven calendar days. The Town of Taos through the Engineer shall notify the construction contractor of any corrective action noted in the report. The Engineer shall obtain and deliver to the Town of Taos a signed receipt of all corrective action completed to the satisfaction of the Engineer and the Town of Taos.

- G. Attached as Exhibit C and incorporated into this Agreement is the Amendment for Engineering Basic Services form.

5. REIMBURSABLES

- A. Reimbursable expenses are those beyond Basic Services compensation and are the actual expenditures made by the Engineer or its employees, in the interest of the Project. Reimbursable expenses are in accordance with the agreed upon compensation as identified in Exhibit A (Compensation and Schedule).

- B. Reimbursable expenses, if allowed by this Agreement, shall be compensated at direct cost not to exceed the reimbursable amounts as indicated in Exhibit A of this Agreement, unless otherwise modified by written amendment.

6. ADDITIONAL SERVICES

- A. Additional Services are services that are in addition to but not included as part of Basic Services, provided that the Engineer is not obligated to perform or furnish such services as part of the Engineer's Basic Services. These Additional Services shall be provided when authorized in advanced in writing by the Town of Taos, and shall be paid for by the Town of Taos as provided in paragraph 3 and Exhibit A. Attached as Exhibit D and incorporated into this Agreement is the Amendment for Engineering Additional Services form.
- B. Additional Services may include but are not limited to the following.
- 1) Subservice geotechnical investigation with associated laboratory testing to include soil borings to determine subsurface profiles, relative strengths, compressibility and other characteristics of the surface layer(s).
 - 2) Survey services for mapping, construction layout and/or to determine Project and surrounding area boundaries.
 - 3) Traffic study that may include volume, movement counts, accident crash data, pedestrian traffic, and parking, sidewalk and walk/bike trail considerations.
 - 4) Drainage Plan to determine the amount of runoff/drainage impacting the Project area and make recommendations accordingly.
 - 5) Storm water management to provide viable flood control, runoff and drainage conveyance options and recommendations for surface treatment plan(s).
 - 6) Environmental Review and as applicable Cultural Resource Study, to include preparation of documentation regarding the mandatory evaluation of physical, social, and economic impacts of the proposed Project area to ensure compliance with environmental laws and authorities and as required obtain environmental clearance(s) from governmental agencies.
 - 7) Feasibility Study to evaluate and analyze the potential of the proposed Project to support recommendations for project implementation.
 - 8) Market analysis to determine, develop and recommend conceptual options for future use of the Project site.

7. EXHIBITS LIST

Exhibit A	Compensation and Schedule – To be determined
Exhibit B	Engineer Pay Request – To be determined
Exhibit C	Amendment for Basic Services – To be determined
Exhibit D	Amendment for Additional Services – To be determined
Exhibit E	Amendment for Consultant Services– To be determined
Exhibit F	Consultant List – To be determined
Exhibit G	Task Order Form – To be determined

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date first written above.

THE TOWN OF TAOS

Daniel R. Barrone, Mayor

ATTEST:

Francella Garcia, Town Clerk

Approved as to form:

Stephen C. Ross, Town of Taos Attorney

Date

Finance Department:

Marietta S. Fambro, Finance Director

Date

ENGINEER

Date

(print name and title)



THE TOWN OF TAOS PURCHASING DIVISION

GENERAL TERMS AND CONDITIONS OF THE AGREEMENT BETWEEN THE TOWN OF TAOS and ENGINEER FOR PROFESSIONAL SERVICES

2013 Edition, Version 1.0, Part B of the Agreement

Changes, additions, deletions and/or any modifications other than those agreed upon execution of this contract, without the written consent of the Town of Taos shall render this document null and void.

1. SCOPE OF WORK

Engineer shall provide the services set forth in Part A Section 2 (Scope of Work) of this Agreement and as provided by Task Order.

2. EFFECTIVE DATE AND TERM

The Agreement shall, upon due execution by all parties, become effective as of the date first written in Part A and shall terminate _____ () , unless earlier terminated pursuant to Section 4 (Termination) or Section 5 (Appropriations and Authorizations) of these General Terms and Conditions.

3. ADDITIONAL SERVICES

- A. The parties agree that all tasks set forth in Section 1 (Scope of Work) above and Section 4 (Engineer's Basic Services) of Part A of the Agreement, shall be completed in full, to the satisfaction of the Town of Town, for the amount set forth in Section 3 (Compensation, Invoicing, and Set-Off) of Part A of this Agreement, and for no other cost, amount, fee, or expense.
- B. The Town of Taos may from time-to-time request changes in the Scope of Work to be performed hereunder. Such changes, including any increase or decrease in the amount of the Contractor's compensation, which are mutually agreed upon by and between the Town of Taos and the Engineer, shall be incorporated in written amendments to this Agreement.

4. TERMINATION

- A. Termination of Agreement for Cause. Either party may terminate the Agreement based upon any material breach of this Agreement by the other party. The non-breaching party shall give the breaching party written notice of termination specifying the grounds for the termination. The termination shall be effective thirty (30) days from the breaching party's receipt of the notice of termination, during which time the breaching party shall have the right to cure the breach. If, however, the breach cannot with due diligence be cured within 30 days, the breaching party shall have a reasonable time to cure the breach, provided that, within 30 days of its receipt of the written notice of termination, the breaching party began to cure the breach and advised then non-breaching party in writing that it intended to cure.
- B. Termination for Convenience of the Town of Taos. The Town of Taos may, in its discretion, terminate this Agreement at any time for any reason by giving the Engineer written notice of termination. The notice shall specify the effective date of termination, which shall not be less than 15 days from the Engineer's receipt of the notice. The Town of Taos shall pay the Engineer for acceptable work, determined in accordance with the specifications and standards set forth in this Agreement, performed before the effective date of termination but shall not be liable for any work or service performed after the effective date of termination.

5. APPROPRIATIONS AND AUTHORIZATIONS

This Agreement is contingent upon sufficient appropriations and authorizations being made for performance of this Agreement by the Governing Body of the Town of Taos and/or, if state funds are involved, the Legislature of the State of New Mexico. If sufficient appropriations and authorizations are not made in this or future fiscal years, this Agreement shall terminate upon written notice by the Town of Taos to the Engineer. Such termination shall be without penalty to the Town of Taos, and the Town of Taos shall have no duty to reimburse the Engineer for expenditures made in the performance of this Agreement. The Town of Taos is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered, and approved for expenditure by the Town of Taos. The Town's decision as to whether sufficient appropriations and authorizations have been made for the fulfillment of this Agreement shall be final and not subject to challenge by the Engineer in any way or forum, including a lawsuit.

6. INDEPENDENT CONTRACTOR, SUBCONTRACTING AND PERSONNEL

- A. Independent Contractor. The Engineer and its agents and employees are independent contractors and are not employees or agents of the Town. Accordingly, the Engineer and its agents and employees shall not accrue leave, participate in retirement plans, insurance plans, or liability bonding, use the Town of Taos' vehicles, or participate in any other benefits afforded to employees of the Town of Taos. Except as may be expressly authorized elsewhere in this Agreement, the Engineer has no authority to bind, represent, or otherwise act on behalf of the Town of Taos and agrees not to purport to do so.
- B. Subcontracting. The Engineer shall not subcontract or delegate any portion of the services to be performed under this Agreement without the advance written approval of the Town of Taos. Any attempted subcontracting or delegating without the Town of Taos' advance written approval shall be null and void and without any legal effect.
- C. Personnel.

- 5) All work performed under this Agreement shall be performed by the Engineer or under its supervision.
- 6) The Engineer represents that it has, or will secure at its own expense, all personnel required to discharge its obligations under this Agreement. Such personnel (i) shall not be employees of or have any contractual relationships with the Town of Taos and (ii) shall be fully qualified and licensed or otherwise authorized or permitted under federal, state, and local law to perform such work.

7. ASSIGNMENT

The Engineer shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the advance written approval of the Town of Taos. Any attempted assignment or transfer without the Town of Taos' advance written approval shall be null and void and without any legal effect.

8. RELEASE

Upon its receipt of all payments due under this Agreement, Engineer releases Town of Taos, its Elected Officials, officers, agents and employees from all liabilities, claims, and obligations whatsoever arising from or under or relating to this Agreement.

9. CONFIDENTIALITY

Any confidential information provided to or developed by the Engineer in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Engineer without prior approval from the Town.

10. PUBLICATION, REPRODUCTION, AND USE OF MATERIAL; COPYRIGHT

The Town of Taos has the unrestricted right to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data, or other material prepared under or pursuant to this Agreement. To the extent any material is copyrightable, the Town of Taos shall own such copy right.

11. CONFLICT OF INTEREST

Engineer represents that it has no and shall not require any interest, direct or indirect, that would conflict in any manner or degree with the performance of its obligations under the Agreement.

12. NO ORAL MODIFICATIONS; WRITTEN AMENDMENTS REQUIRED

The Agreement may not be modified, altered, changed, or amended orally but, rather, only by an instrument in writing executed by the parties hereto. Engineer specifically acknowledges and agrees that Town of Taos shall not be responsible for any changes to Section 1 (Scope of Work), Part A of the Agreement unless such changes are set forth in a duly executed written amendment to the Agreement.

13. ENTIRE AGREEMENT; INTEGRATION

The Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such agreements, covenants and understandings

have been merged into the written Agreement. No prior or contemporaneous agreement, covenant or understandings verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in the Agreement.

14. EXHIBITS AND ATTACHMENTS: INCORPORATION BY REFERENCE

All exhibits, attachments, riders, and addenda referred to in the Agreement, including but not limited to the Exhibits referred to in this Agreement, as listed in Paragraph 7 (Exhibits List) in Part A of this Agreement, are hereby incorporated into this Agreement by reference and made a part hereof as though set forth in full in this Agreement to the extent they are consistent with its conditions and terms.

15. NOTICE OF PENALTIES

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

16. EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

- A. Engineer agrees to abide by all Federal, State, and local laws, ordinances, and rules and regulations pertaining to equal opportunity and unlawful discrimination. Without in any way limiting the foregoing general obligation, Engineer specifically agrees not to discriminate against any person with regard to employment with Engineer or participation in any program or activity offered pursuant to this Agreement on the grounds of race, age, religion, color, national origin, ancestry, sex, physical or mental handicap, serious medical condition, spousal affiliation, sexual orientation, or gender identity.
- B. Engineer acknowledges and agrees that failure to comply with this Section shall constitute a material breach of the Agreement.

17. COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW

- A. In performing its obligations hereunder, Engineer shall comply with all applicable laws, ordinances, and regulations.
- B. This Agreement shall be construed in accordance with the substantive laws of the State of New Mexico, without regard to its choice of law rules.

18. RECORDS AND INSPECTIONS

- A. To the extent their books and records relate to (i) their performance of the Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in the Agreement or that was required to be submitted to the Town of Taos as part of the procurement process, Engineer agrees to (i) maintain such books and records during the term of the Agreement for a period of six (6) years from the date of final payment under the Agreement; (ii) allow the Town of Taos or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with generally accepted accounting principles ("GAAP").

- B. To the extent their books and records relate to (i) their performance of the Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in the Agreement or that was required to be submitted to the Town of Taos as part of the procurement process, Engineer also agrees to require any subcontractor it may hire to perform its obligations under this Agreement to (i) maintain such books and records during the term of the Agreement and for a period of six (6) years from the date of final payment under the subcontract:(ii) to allow the Town of Taos or its designee to audit such books and records at reasonable times and upon reasonable not notice; and (iii) to keep such books and records in with GAAP.

19. INDEMNIFICATION

- A. Engineer shall defend, indemnify, and hold harmless the Town of Taos and its Elected Officials, agents, and employees from any losses, liabilities, damages, demands, suits causes of action, judgments, costs or expenses (including but not limited to court costs and attorneys' fees) resulting from or directly or indirectly arising out of Engineer's performance or non-performance of its obligations under this Agreement, including but not limited to Engineer's breach of any representation or warranty made herein.
- B. The Town of Taos shall have the right to approve any counsel retained by Engineer to defend any demand, suit, or cause of action in which the Town of Taos is named, such approval not to be unreasonably withheld. Engineer agrees (i) that the Town of Taos shall have the right to control and participate in the defense of any such demand, suit, or cause of action concerning matters that relate to the Town of Taos and (ii) that such suit will not be settled without the Town of Taos consent, such consent not to be unreasonably withheld. If in the Town of Taos judgment, a conflict exists between the interests of the Town of Taos and Engineer such demand, suit, or cause of action, the Town of Taos may retain its own counsel, whose fees shall be paid by Engineer.
- C. Engineer's obligations under this section shall not be limited by the provisions of any insurance policy Engineer is required to maintain under this Agreement.

20. SEVERABILITY

If any term or condition of the Agreement shall be held invalid or non-enforceable by any court of competent jurisdiction, the remainder of the Agreement shall not be affected and shall be valid and enforceable to the fullest extent of the law.

21. NOTICES

Any notice required to be given to either party by the Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the Town: Town of Taos
 400 Camino de la Placita
 Taos, New Mexico 87571

To the Engineer: _____

22. ENGINEER'S REPRESENTATIONS AND WARRANTIES

- A. It is a corporation duly organized and in good standing under the laws of the state of New Mexico.
- B. This Agreement has been duly authorized by the Engineer, the person executing this Agreement has authority to do so, and once executed by the Engineer, this Agreement shall constitute a binding obligation of the Engineer.
- C. This Agreement and Engineer's obligations hereunder do not conflict with Engineer's articles of incorporation or by-laws or any corporate resolution adopted by Engineer for filed with the NM Secretary of State.

23. LIMITATION OF LIABILITY

The Town of Taos liability to Engineer for any breach of this Agreement by the Town of Taos shall be limited to direct damages and shall not exceed the maximum amount of compensation specified in Section 3 (Compensation and Invoicing) Part A, of the Agreement. In no event shall the Town of Taos be liable to Engineer for special or consequential damages, even if the Town of Taos was advised of the possibility of such damages prior to entering into the Agreement.

24. NO THIRD-PARTY BENEFICIARIES

This Agreement was not intended to and does not create any rights in any persons not a party to the Agreement.

25. INSURANCE

- A. General Conditions. Engineer shall submit evidence of insurance as is required herein. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico.
- B. General Liability Insurance, Including Automobile. Engineer shall procure and maintain during the life of this Agreement a comprehensive general liability and automobile insurance policy and liability limits in amounts not less than \$1,050,000 combined single limits of bodily injury, including death, and property damage for any one occurrence. Said policies of insurance shall include coverage for all operations performed for the Town of Taos by Engineer; coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment both on and off work; and contractual liability coverage under which this Agreement is an insured contract. The Town of Taos shall be named additional insured on the policy.
- C. Workers' Compensation Insurance. Engineer shall comply with the provisions of the Workers' Compensation Act.
- D. Malpractice/Errors and Omissions Insurance. Engineer shall procure and maintain during the life of this Agreement professional liability (errors and omissions) insurance with policy limits of not less than \$5,000,000.00 per occurrence, \$5,000,000.00 in the aggregate.
- E. Increased Limits. If, during the life of this Agreement, the Legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act (NMSA 1978,

Sections 41-4-1 through 41-4-29, as amended), Engineer shall increase the maximum limits of any insurance required herein.

26. PERMITS, FEES, AND LICENSES

Engineer shall procure all permits and licenses, pay all charges, fees and royalties, and give all notices necessary and incidental to the due and lawful performance of its obligations hereunder.

27. FACSIMILE SIGNATURES

The parties hereto agree that a facsimile signature has the same force and effect as an original for all purposes.

28. NEW MEXICO TORT CLAIMS ACT

No provision of the Agreement modifies or waives any sovereign immunity or limitation of liability enjoyed by the Town of Taos or its “public employees: at common law or under the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, et seq.

29. CAMPAIGN CONTRIBUTION DISCLOSURE FORM

The Engineer agrees to compute and submit simultaneous and execution of this Agreement a Campaign Contribution Disclosure Form approved by the Town.

30. SURVIVAL

The provisions of following paragraphs shall survive termination of the Agreement:
INDEMNIFICATION; RECORDS AND INSPECTION; RELEASE, CONFIDENTIALITY,
PUBLICATION, REPRODUCTION, AND USE OF MATERIAL; COPYRIGHT; COMPLIANCE
WITH APPLICABLE LAW; CHOICE OF LAW; NO THIRD-PARTY BENEFICIARIES; SURVIVAL.

SECTION 5 – REQUIRED FORMS

FORMS INCLUDED IN THIS SOLICITATION DOCUMENT:

- (1) Response Form (blank form attached to this Request for Proposals)
- (2) Campaign Disclosure (blank form attached to this Request for Proposals)
- (3) In-State/Veterans Preference Certificate, if applicable

Failure to complete and submit these forms with your Response may result in it being deemed non-responsive and rejected without further evaluation

*Download solicitations, addenda and forms at www.taosgov.com

RESPONSE FORM

Failure to complete this form shall result in your Response being deemed non-responsive and rejected without further evaluation.

TO: Town of Taos:

The Undersigned hereby offers and agrees to furnish the goods and/or services in compliance with all terms, scope of work, conditions, specifications, and addenda in the Request for Proposals.

ADDENDA:

The undersigned has read, understands and is fully cognizant of the Information to Respondents, Offer and Form of Contract, all Exhibits thereto, together with any written addendum issued in connection with any of the above. The undersigned hereby acknowledges receipt of the following addendum(s): _____, _____, _____, _____ (write "none" if none). In addition, the undersigned has completely and appropriately filled out all required forms.

OBLIGATION:

The undersigned, by submission of this Offer, hereby agrees to be obligated, if selected as the Contractor, to provide the stated goods and/or services to the Town, for the term as stated herein, and to enter into a Contract with the Town, in accordance with the Conditions, Scope and Terms, as well as the Form of Contract, together with any written addendum as specified above.

COMPLIANCE:

The undersigned hereby accepts all administrative requirements of the RFP and will be in compliance with such requirements. By submitting this Response Form, the Respondent represents that: 1) the Respondent is in compliance with any applicable ethics or anti-kickback provisions of the Town's Procurement Ordinance, and 2) if awarded a contract to operate the Concession or provide the Services required in the RFP, the Respondent will comply with the ethics and anti-kickback provisions of the Procurement Ordinance.

NONCOLLUSION:

The undersigned, by submission of this Response Form, hereby declares that this Response is made without collusion with any other business making any other Response, or which otherwise would make a Response.

PERFORMANCE GUARANTEE:

The undersigned further agrees that if awarded the Agreement, it will submit to the Town any required performance guarantee (i.e. performance and payment bond).

SUBMITTAL REQUIREMENTS:

The undersigned certifies it has attached a complete response to each of the submittal requirements listed in the Evaluation Criteria and Submittal Requirements section of this RFP.

No Response shall be accepted which has not been manually signed in ink in the appropriate space below:

I certify, under penalty of perjury, that I have the legal authorization to bind the firm hereunder:

For clarification of this offer, contact:

Company Name

Name: _____

Address

Title: _____

City State Zip

Phone: _____

Signature of Person Authorized to Sign

Fax: _____

Printed Name

Email: _____

Title

Federal Tax ID

Acknowledged before me by _____ (name) as _____ (title)
of _____ (company) this ____ (day) of _____, 200__.

Notary Signature: _____

My Commission Expires: _____

Affix Seal

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 Page 2 of 3 DFA Disclosure form/April, 2006 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

MAYOR:

DANIEL R. BARRONE

COUNCIL MEMBERS:

NATHANIEL EVANS

DARIEN D. FERNANDEZ

GEORGE "FRITZ" HAHN

PASCUALITO M. MAESTAS

Contribution made by: _____

Relation to Prospective Contractor: _____

Name of Applicable Public Official: _____

Date Contribution(s) made: _____

Amount(s) of Contributions(s) _____

Nature of Contributions (s) _____

Purpose of Contributions(s) _____

Signature

Date

Title (position)

OR

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

Signature

Date

Title (position)