



CITY OF AZTEC

Request for Qualifications-Based Proposals RFP REBID # 2024-838

RIVERBANK STABILIZATION PLANNING & ENGINEERING SERVICES

PROPOSAL OPENING DATE/ TIME/ PLACE:

Thursday, November 9, 2023 at 3:00 P.M.

City of Aztec Finance Conference Room
201 W Chaco
Aztec NM 87410

FINAL DATE FOR QUESTIONS:

Thursday, November 2, 2023, 3:00 PM

TENTATIVE COMMISSION APPROVAL DATE:

December 12, 2023

FOR FURTHER INFORMATION CONTACT:

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City of Aztec Finance Department

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REQUEST FOR PROPOSALS

Section 1. Invitation.

City of Aztec, NM
RFP REBID 2024-838, Riverbank Stabilization Engineering Services
Proposals Due: November 9, 2023 at 3:00 PM, MST

The City of Aztec is accepting proposals from interested and qualified professional engineers to provide services for riverbank stabilization. Services to be provided may include, but are not limited to, permitting, planning, design, specifications, contract documents, construction management, and cost estimates for this project.

Sealed proposals will be received by the City of Aztec, 201 W Chaco, Aztec, NM 87410, until 3:00 PM, local time, Thursday, November 9, 2023. Proposals received after that time will be considered non-responsive and returned unopened. A qualification based selection process will be utilized to select the most qualified firm.

RFP documents may be obtained online at www.aztecnm.gov/purchasing.html or VendorRegistry.com, or by contacting Vanessa Tanner at (505) 334-7652 or vtanner@aztecnm.gov.

Publication Dates: October 6 & 8, 2023, Farmington Daily Times.
October 6, 2023, Albuquerque Journal

Section 2. Introduction.

The City of Aztec (City) is seeking qualified firms to provide planning and engineering services for riverbank stabilization and habit enhancement projects.

General information is provided regarding this project. However, this RFP document is not intended to completely define the selection or contractual relationship to be entered into by the City and successful offerer. The proposal submitted and possible consultant team interviews shall serve as the basis for selection.

The "Scope of Work" requirements for respective projects will be proposed by the selected team for review and consideration during the negotiation process for individual project task orders as funding becomes available. Cost or fee information is not to be submitted with proposal.

Section 3. Background.

Aztec is the first town South of Durango Colorado and has many outdoor recreation features attracting visitors. However, several river hazards exist, impeding river activities such as tubers, kayakers, waders and swimmers. For over a century various debris have been placed into the river, such as concrete and asphalt, to shore the banks. Currently the portion of river beside Riverside Park holds a manmade weir to funnel the river into an irrigation ditch. This weir is made of excavator tires, steel cable, and concrete, creating risks for recreationists. At the west end of Hartman Park, the Animas River is compromised by the failing gabions on the river left. The gabions were constructed in 2002 and in 2009, and the level of deterioration

is significant. Constructed with prefabricated gabion basket frames filled with cobble, and sewn shut with hog rings, the gabions are compromised in several locations. The section constructed in 2002 was compromised when a later public works project tunneled under the structure and weakened the foundation. The section constructed in 2009 has eroded due to poor construction and the force of the river, which in turn is exposing the rusted ends of the basket wire used in the structure.

The City intends to prevent further erosion of the bank and improve structures to reduce widening of the river. This widening creates a shallow channel adding to the diminished aquatic population and has contributed to the loss of natural riparian species along the bank. Recent improvements downstream have improved the channel width and stabilized the bank. A j-hook was installed, and a revegetation program completed. Replacing these gabions would be the second phase of a developing three-part plan to complete the restoration of the area and create a healthier ecosystem, as well as reduce damage to previous restoration efforts.

By building the riverbank up and stabilizing the widening, we plan to promote deeper flow, enhanced habitats, and removal of invasive species. This will also benefit recreation by allowing for safe enjoyment of the beautiful Animas River and promote Aztec as an extension of river recreation from the Durango area. This project aims to build onto the existing project that created two J-hooks in the river to control the power of the water and create a welcoming recreation environment as well as contribute to overall river/riparian health. (See EXHIBIT 1, pg. 49, Aerial Photo of Project)

Section 4. Information Provided by City.

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

Should an Offerer find discrepancies in, or omissions from, this RFP and related documents, or should Offerer be in doubt as to meaning, Offerer shall immediately notify the Procurement Manager and, if necessary, a written addenda will be emailed to each Offerer who has returned the "Acknowledgement of Receipt" form.

Each Offerer requesting an interpretation will be responsible for the delivery of such requests to the City's designated representative in writing as outlined in this RFP. The City will not be bound by, nor responsible for, any explanation or interpretation of the proposed documents other than those given in writing.

Section 5. Agreement.

A sample agreement is included (Appendix A). A written contract will be entered into between the City and the successful Offerer.

1. Services for the Project will be provided pursuant to task orders issued during the Contract Term. The City reserves the right, at its sole discretion, to issue an RFP for similar work, for other types of work, and for other projects as the need may occur.

2. Prior to beginning work on any improvement, the Awarded Offerer shall meet with the City Engineer or project representative to obtain the proposed work scope, schedule, and other parameters for the improvement. The Awarded Offerer shall evaluate existing conditions, including making site visits and any other activities necessary to properly assess the improvement.
3. The Awarded Offerer shall prepare a written scope of services, estimate of fees to perform that work and of total cost related to the improvement. If requested, the Awarded Offerer will submit an estimate, projecting the man-hours by employee classification and estimated reimbursable expenses to the City Engineer, City project representative. Fixed or not-to-exceed fees for each project shall be established based upon hourly fees for work actually performed and /or fees for reimbursable contract. Any agreed upon fee for the improvement shall include all professional fees, subcontracted work, estimates of reimbursable expenses, and profit and overhead. The City may utilize a 3rd party to perform an independent fee estimate based on task order scope of work and funding requirements prior to acceptance and approval of task order.
4. Approval to begin work on each project shall be evidenced by issuance of a task order by the City Engineer or City project representative. No work shall be performed prior to the issuance of a task order and no changes in the work shall be made without a written change order.
5. The resultant contract shall not be exclusive to the successful Offerer. The City reserves the right to contract with firms not party to this contract for specific projects if it determines this to be in the City's best interest.

Section 6. Contract Completion.

This Agreement shall remain in full force and effect for one (1) year, unless terminated earlier as provided herein. This agreement shall be renewed automatically, subject to the appropriation of funds by the City Commission and New Mexico Office of the Attorney General, if applicable, from year to year for three (3) additional consecutive one year periods, unless terminated as herein provided.

The project completion date shall be included in each project task order. Any alterations of the completion date shall be agreed to in writing by the City and the Offerer.

PROPOSAL PROCESS

Section 1. Introduction.

Until the final award by the City of Aztec Commission, the City reserves the right to reject any and/or all submittals, to waive technicalities, to re-advertise, or to otherwise proceed when the best interest of the City will be realized. This procurement is governed by the New Mexico State Statutes 1978, Chapter 13, Public Purchases and Property.

Section 2. Preliminary Schedule.

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

Issue RFP	Friday, 10/06/23
Pre-Proposal Conference/ Site Visit	Thursday, 10/12/23, 10:00 AM
Deadline to Submit Questions and Acknowledgement Form	Thursday, 11/02/23, 3:00 PM
Response to Written Questions/ Amendment	Monday, 11/06/23
Submission of Proposal	Thursday, 11/09/23, 3:00 PM
Proposal Evaluation	11/13/23 to 11/15/23
Selection of Finalists	Thursday, 11/16/23
Best and Final Offers from Finalists	Tuesday, 11/28/23
Presentations from Finalists (if required)	Wednesday, 12/06/23
Recommendations to City Commission	Tentatively: Tuesday, 12/12/23
Finalize Contract	12/18/23 to 12/19/23
Contract Award	Thursday, 12/20/23

Section 3. Pre-Proposal Conference.

A pre-proposal conference with site visit will be conducted 10/12/23, 10:00 AM, at Hartman Park, 500 Llano Street, Aztec NM 87410.

Section 4. Deadline to Submit Questions and Acknowledgement Form.

Questions concerning this RFP will be accepted in writing until **3:00 PM on Thursday, November 2, 2023**. Requests may be transmitted via facsimile or email. Written responses will be provided and distributed to all parties having submitted questions and/or submitted the Acknowledgement of Receipt Form. Responses and addendums to this RFP, if necessary, is scheduled to be issued by 5:00 PM on November 6, 2023. No Offerer may rely upon oral responses made by any City employee or any representative of the City.

Questions shall be directed to: Vanessa Tanner, Procurement Specialist
Attn: RFP rebid 2024-838
Email: vtanner@aztecmn.gov or fax 505-334-7649

Section 5. Due Date.

Proposals shall be due **no later than 3:00 PM on Thursday, November 9, 2023**. Required forms are included in the Proposal Forms section. Envelopes or boxes should be clearly marked "RFP REBID 2024-838 Riverbank Stabilization Engineering Services".

Offerers are fully responsible for timely delivery of proposals. Any proposal received after the stated closing time will be returned unopened. If proposals are sent by mail to the City of Aztec, the Offerer shall be responsible for the actual delivery of the proposal to the City of Aztec before the advertised date and hour for the opening. Proposals which are delayed will not be considered and will be returned unopened.

Note: The City operates on a 4-10 schedule, Mon-Thurs, 7AM - 6 PM. Offices are not open to accept deliveries on Fridays. Aztec is not a guaranteed delivery zone for the various delivery services.

Section 6. Number of Copies.

The Offerer shall provide three (3) identical copies of their proposal and one electronic version formatted as a single PDF document provided on a CD or flash drive, in sealed envelopes, plainly marked:

RFP REBID #: **2024-838** Riverbank Stabilization Engineering Services

The proposal shall contain any information or supplements which will assist the City in selecting an Offerer. All expenses associated with this submittal will be borne solely by the Offerer.

Section 7. Prohibited Contacts.

The Offerer, including any person affiliated with or in any way related to the Offerer, is strictly prohibited from any contact with members of the City Commission, evaluation committee member, or City staff on any matter having to do in any respect with this RFP other than as outlined herein. Questions and requests for information regarding this RFP, site visits or other requirements shall be presented to the City as prescribed in this RFP.

Failure by any Offerer to adhere to this prohibition may, at the sole discretion of the City, result in disqualification and rejection of any proposal. Offerers shall have no claim against the City for failure to obtain information made available by the City which the Offerer could have remedied through the exercise of due diligence.

Section 8. Conflicts of Interest.

Prospective Consultants warrant and covenant that no official or employee of the City, or any business entity in which an official of the City has an interest, has been employed or retained to solicit or aid in procuring the resulting agreement, nor that any such person will be employed in the performance of such agreement without immediate divulgence of such fact to the City.

Offerer must notify the City's Chief Procurement Officer if any employee(s) of the City have a financial interest in the Offerer. If yes, the Offerer must specify the employee(s) name in their proposal.

Proposal shall contain a statement to the effect that the Offerer is not currently committed to another project that would constitute a conflicting interest with any project defined in this RFP.

Section 9. Format and Content.

Offerers shall include in their proposal the information and documentation requested in this RFP in the format described. The failure of an Offerer to adhere to requirements may, at the sole discretion of the City, result in the rejection of the proposal.

Section 10. Signing of Proposals and Authorization to Negotiate.

The original proposal shall be executed by a duly authorized officer of the Offerer. The Offerer must also identify those persons authorized to negotiate on its behalf with the City in connection with this RFP.

Section 11. Cost Proposals.

Cost Proposals **shall not** be included in the Offerer's proposal, but shall be made available by the top evaluated firm(s) with 48 business hours after the City's request.

1. A Man-hour and Fee Schedule will be used in summarizing the cost proposal, with adequate back-up detail to verify the proposed rates, and shall include the following information. This pricing information shall be used in negotiating the contract price (Ref. NMSA 1978 13-1-120 through 13-1-124).
2. The itemized cost for individual elements, such as studies, reports, etc.
3. The cost of each task or segment of the task shall be itemized.
4. 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.
5. Travel and per diem or subsistence costs, if any, supported by a breakdown including destination, duration and purpose. Automobile mileage and per diem shall not exceed the amounts authorized by the New Mexico per diem and mileage act. Air transportation shall be coach fare.

6. Breakdown of other expenses such as clerical support, overhead costs, supplies, etc.
7. Breakdown of fee or profit.

Section 12. Pricing.

The rates proposed shall remain firm for the first two years of the agreement and, if applicable, subject to negotiation and concurrence of the City which then remain fixed for the remaining two years of the agreement. On the two year anniversary date following the Effective Date of the Agreement, escalation of rates proposed may be negotiated for the remaining two years of the agreement. Any fee adjustment shall not exceed the seasonally unadjusted index percentage change in the Producers Price Index as published by the Bureau of Labor Statistics, for Series ID PCU5413, Architectural, Engineering and Related Services.

Section 13. Period of Acceptance.

All proposals must remain valid for a minimum period of one hundred-twenty (120) days after the Proposal Due Date. No proposal may be modified or withdrawn by the Offerer during this period of time unless prior written permission is granted by the City.

The City reserves the right to request additional information from the Offerer at any time during the selection process. The City also reserves the right to extend by sixty (60) days the proposal of any Offerer, at no additional cost to the City, to allow for the completion of the final contract documents. If the notification of selection of a Offerer or request for time extension has not been made by the City after one hundred-twenty (120) days, Offerers may, at their discretion, withdraw their proposals or provide the City with written extensions of time.

Section 14. Binding Offers.

All proposals submitted by Offerer are required to be binding offers, enabling acceptance by the City to form a binding contract. Proposals are to remain as binding offers for the full period of time of the initial 120-day Period of Acceptance and as such time period may be extended by the City. The City reserves the right to request revisions to proposals in the form of binding best and final offers.

Section 15. Subcontracts and Other Contractual Arrangements.

The use of subcontracts or other contractual arrangements to provide the requested services is permitted. The City, however, is looking for a contracting entity that provides for a single, technically and financially capable party to be fully responsible to the City for all contractual obligations.

All existing or anticipated subcontracting and other arrangements relating to the entity that will contract with the City and to the services to be provided by such entity must be fully and clearly disclosed in proposals and are subject to further clarification by the Offerer, and the review and approval by the City.

Section 16. Independence of Offeror.

The employees, officers and agents of the Offerer are not, nor shall they be deemed for any purpose, employees or agents of the City, nor shall they be entitled to any rights, benefits, or privileges of City employees. It is understood that the relationship of the Offerer to City, if a contract is successfully negotiated, will be that of independent contractor.

Section 17. Business License.

Offerer's are advised that they should have or obtain a current City of Aztec business license for the goods or services required under this contract before task order is fully executed, work commences or a Purchase Order is issued.

Section 18. Laws And Regulations.

This procurement shall be governed by and construed and enforced in accordance with the laws of the State of New Mexico, and the laws, ordinances, rules and regulations of the City of Aztec. The City also requires that all responses to this RFP, and any contracts that may arise as a result of this procurement, be in accordance with laws, ordinances, and regulations of the State of New Mexico and the City of Aztec.

Section 19. Confidentiality.

It is understood by the Offerer that the City is a New Mexico municipal corporation and, as such, is subject to the provisions of the New Mexico Inspection of Public Records Act, Section through 14-2-12 NMSA 1978 and the Public Records Act, Chapter 14 Article 3 NMSA 1978. In the event Offerer has responded to a City Request For Bid or Proposal (RFP) and marked all or any part of the information submitted as "CONFIDENTIAL INFORMATION" or as "PROPRIETARY INFORMATION," City agrees to notify Seller of any third party request for any rates, terms, compensation amounts, or other information documented in the Purchase Order, Agreement, or Contract. To the extent Offerer provides City with written direction to withhold such requested Confidential Information or Proprietary Information and litigation results, Offerer agrees that the action would be brought in a New Mexico court of competent jurisdiction under New Mexico law. Offerer, being aware of said facts, agrees to provide legal counsel on behalf of the City in any such litigation and shall bear the complete cost of litigation, including attorney fees and court costs. If Offerer fails or refuses to provide legal counsel at its expense within ten (10) calendar days after written notification, as aforesaid, such failure may result in the City agreeing to release the Purchase Order, Agreement, or Contract or any portion thereof which is relevant to the denied request.

Confidential data are normally restricted to confidential financial information concerning the Offerer's organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, §57-3A-1 to §57-3A-7 NMSA, 1978.

Section 20. Bribery and Kickbacks.

By law (Section 13-1-191, NMSA, 1978) the City is required to inform Offerers of the following:

1. it is a third-degree felony under New Mexico law to commit the offense of bribery of a public officer or public employee (Section 30-24-1, NMSA, 1978);

2. it is a third-degree felony to commit the offense of demanding or receiving a bribe by a public officer or public employee (Section 30-24-2, NMSA, 1978);
3. it is a fourth-degree felony to commit the offense of soliciting or receiving illegal kickbacks (Section 30-41-1, NMSA, 1978);
4. it is a fourth-degree felony to commit the offense of offering or paying illegal kickbacks (Section 30-41-2, NMSA, 1978).

Section 21. Debarment, Suspension, and Ineligibility.

By submitting a response to this solicitation (RFP, Bid, RFP) the business (Bidder/Offerer/Contractor) represents and warrants that it is not debarred, suspended, or placed in ineligibility status under the provisions of Federal Executive Order 12549.

Section 22. Protest Deadline.

Any protest by an Offerer must be timely and in conformance with Section 13-1-172, NMSA, 1978 and applicable procurement regulations. The fifteen (15) day protest period for responsive Offerers shall begin on the day following the City's written notification to all responding Offerers. Protests must be written and must include the name and address of the protester and the number assigned to this RFP by the City. It also must contain a statement of grounds for protest including appropriate supporting exhibits. The timely protest must be delivered to:

Vanessa Tanner, Procurement Specialist
City of Aztec
201 W Chaco St Aztec NM 87410
505-334-7652
vtanner@aztecnm.gov

PROPOSAL FORMAT REQUIREMENTS

Section 1. General Format for Proposals.

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

Section 2. Number of Copies.

Offerers shall provide three (3) identical copies of their proposal and one electronic version to the location specified in Proposal Process on or before the closing date and time for receipt of proposals.

Section 3. Organization of Materials.

- A. Cover Letter
- B. Table of Contents
- C. General Information or Proposal Summary (optional)
- D. Response to Specifications
- E. Contractual Considerations of Draft Agreement
- F. Submittal Form, Campaign Contribution Disclosure Form, Drug Free Workplace, Disclosure of Lobbying Activities, Nondebarment Certification, W9 and Certificate of Insurance. Documents are included in Proposal Forms section. These items do NOT count towards total page restriction.

Section 4. Proposal Format.

The proposal must be limited in format and length. Format will be 8-1/2" x 11" with foldout sheets, allowed up to 11" x 17" in size. All foldout sheets, up to a maximum of 11" x 17" sheets will be counted as two pages and shall be labeled as such. Proposals may be either single-sided or double-sided copying and must be bound. If double sided pages are used, each side shall be numbered and counted as separate pages. If there is any question as to format requirements they shall be directed to the Purchasing Agent prior to submittal of documents.

Maximum Page Limitation: 30 (Single-Sided)

If supplied, the following pages will be excluded from being counted as part of the maximum page limitation:

- Front and back cover and binding pages
- Resumes
- Tables of Contents
- Exceptions to Draft Agreement
- Divider between proposal information categories

Any proposal deemed non-conforming by the Procurement Manager in regard to format will be considered non-responsive. Offerers shall contact the City of Aztec Purchasing Department, to clarify any questions concerning format prior to submission.

PROPOSAL SPECIFICATIONS

Offerers should respond in the form of a thorough narrative to each specification, unless otherwise instructed. The narratives, including required supporting materials will be evaluated and awarded points accordingly.

Section 1. Potential Projects List.

The City is seeking professional services from firms interested in providing Riverbank Stabilization Planning and Engineering Services for various improvement projects expected or anticipated.

The following projects are included for preparation of the proposal.

- Cultural, geomorphic and biological assessments/surveys
- Analyze survey data and prepare stabilization options for each site
- Prepare conceptual plan
- Prepare construction plans and specifications.
- Quantity and cost estimates
- Permitting as required
- Pre and post construction monitoring and management
- One year post construction monitoring
- Apply for federal and state Clean Water Act authorizations and permits
- Other projects that may be approved over the period of this contract for services

Projects listed are dependent upon funding and approval of the Sponsor (City), so it shall be understood that some of the services related to the above-listed projects may be deleted. The City reserves the right to initiate services not included in the initial procurement.

These projects may have multiple funding sources such as New Mexico Office of the Attorney General grant and the City of Aztec funds.

Offerers must certify compliance with all applicable federal and state requirements to which the City is obligated as a result of receiving federal and/or state funding assistance.

Section 2. Scope of Services.

The Engineering firm will be primarily responsible for, but not limited to the following on site and/or all other means of communication:

Basic engineering services are utilized in four distinct and sequential phases. Proposers are required to set out their qualifications and to propose on the following scope of work.

A. Preliminary Phase: This phase involves those activities required for defining the scope of a project and establishing preliminary requirements including, but not limited to, the following:

1. Conferring with the Sponsor on project requirements, programming, finances, schedules, early phases of the project, and other pertinent matters and meeting with other concerned agencies and parties on matters affecting the project.

2. Assisting the Sponsor in the preparation of necessary pre-applications, applications, and required documents for grants.
 3. Planning, procuring, and/or preparing necessary surveys, field investigations, and architectural and engineering studies required for preliminary design considerations.
 4. Develop design schematics, sketches, environmental and aesthetic considerations, project recommendations, and preliminary layouts and cost.
- B. Design Phase: This phase includes all activities required to undertake and accomplish a full and complete project design including, but not limited to, the following:
1. Meetings and design conferences to obtain information and to coordinate or resolve design matters.
 2. Collecting engineering data and undertaking field investigations and surveys and engineering and environmental studies.
 3. Preparing necessary engineering reports and recommendations.
 4. Preparing detailed plans, specifications, and cost estimates.
 5. Conducting a detailed value engineering analysis, if applicable and requested.
- C. Bidding or Negotiation Phase: This phase, at a minimum, involves providing plans, specifications, and all bid documents. The phase also includes assisting the Sponsor in advertising and securing bids, negotiating for services, analyzing bid results, furnishing recommendations on the award of contracts, and preparing contract documents.
- D. Construction Phase: This phase includes all basic services rendered after the award of a construction contract including, but not limited to, the following:
1. Providing consultation and advice to the Sponsor during all phases of construction.
 2. Representing the Sponsor at pre-construction conferences.
 3. Providing on site construction inspection and management involving the services of a full-time resident engineer, inspector, or manager during the construction or installation phase of a project, and providing appropriate reports to the Sponsor.
 4. Reviewing and approving shop and erection drawings submitted by contractors for compliance with design concept.
 5. Reviewing, analyzing, and approving laboratory and mill test reports of materials and equipment.
 6. Preparing and negotiating change orders and supplemental agreements.
 7. Observing or reviewing performance tests required by specifications.
 8. Determining payment amounts to contractors, and assisting Sponsor in the preparation of payment requests for amounts reimbursable from grant projects.
 9. Conducting wage rate reviews of certified payrolls.
 10. Making final inspection and submitting a report of the completed project to the Sponsor, including "as built" drawings.
- E. Proposers may be required to provide other incidental services, or subcontract with third party individuals or companies for such services. Incidental services include, but are not limited to, the following:
1. Soils investigation, including core sampling, laboratory tests, related analyses, and reports.

2. Detailed mill, shop, and/or laboratory inspections of materials and equipment.
3. Land surveys and topographic maps.
4. Field and/or construction surveys.
5. Expert witness testimony in litigation involving specific projects.
6. Miscellaneous plans, studies, and assessment reports including environmental, noise, etc.
7. Assist Sponsor in preparing equipment (i.e. snow removal, sweeper, mower, etc.) specifications for procurement purposes.

For each project, the City will provided the awarded Offerer a detailed project description, including scope of work and any other special instructions needed by the awarded Offerer to prepare items such as preliminary and final cost estimates, complete project plans and specifications, construction inspection project reports and other related engineering services.

The awarded Offerer will be expected to communicate with the State agencies to ensure engineering requirements are met.

Section 3. Organizational Experience.

Offerers must provide a description of relevant experience with government and private sector, specifically with local public bodies of government. The narrative must thoroughly describe how the Offerer has supplied expertise for similar contracts and must include the extent of their experience, expertise, and knowledge as a provider of Engineering Services.

Section 4. Organizational References.

Offerers should provide a minimum of three (3) references from similar projects performed for private, state or large local government clients within the last three years. **Offerors are required to submit Organization Reference Questionnaire, to the business references they list. The business references must submit the Reference Form directly to the Procurement Manager identified in the Proposal Process.** It is the Offerer's responsibility to ensure the completed forms are received on or before **Thursday, November 9, 2023** for inclusion in the evaluation process.

Organizational References that are not received or are not complete, may adversely affect the vendor's score in the evaluation process. The Evaluation Committee may contact any or all business references for validation of information submitted. If this step is taken, the Procurement Manager and the Evaluation Committee must all be together on a conference call with the submitted reference so that the Procurement Manager and all members of the Evaluation Committee receive the same information.

Additionally, the City reserves the right to consider any and all information available to it (outside of the Organizational Reference information required herein), in its evaluation of Offerer's proposal.

Offerers shall submit the following Organizational Reference information as part of Offer:

- a) Client name;
- b) Project description;
- c) Project dates (starting and ending);

- d) Staff assigned to reference engagement that will be designated for work per this RFP; and Client project manager name, telephone number, fax number and e-mail address.

Section 5. Mandatory Specifications.

- a) Recent experience in related planning and development projects.
- b) Capability to perform all aspects of project.
- c) Reputation.
- d) Ability to meet schedules within budget.
- e) Quality of previous projects undertaken.
- f) Familiarity with Sponsor and project location.
- g) Understanding the proposed projects.
- h) Understanding the Sponsor's special concerns.
- i) Demonstrated capability to meet schedules/deadlines, without delays, cost escalations or overruns, and contractor claims.
- j) Identification of those key individuals who will involved in the contemplated projects and their qualifications, backgrounds, experience, and specific responsibilities.

REVIEW AND EVALUATION

Section 1. Proposal Evaluation.

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

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

Section 2. Evaluation Criteria.

Selection criteria will be applied in the following manner:

Criteria	Points Possible
<p>1</p> <p>Provide examples of Project Manager's experience within the past five (5) years that serve to demonstrate knowledge of performance on contracts with government agencies.</p> <p>Provide organizational plan for management of the project. Plan or chart should include relationship between key team members, support staff and consultants who are expected to participate on the project.</p> <p>Identify all consultants to be used on the project including description of work to be performed by each consultant.</p>	20
<p>2</p> <p>Specialized design and technical competence of the firm;</p> <p>Recent experience with similar projects including past performance for costs, scheduling, and quality;</p> <p>Include a narrative that describes the team's overall experience, particularly as it relates to the services proposed. Also include information on the specific project size, location, cost, and the scope of work.</p> <p>Projects described should be projects that were worked on by the people shown in the organizational plan. Specific project responsibilities of these individuals should be addressed.</p> <p>Include client contact information and phone, fax and email address and the number of years services provided.</p>	20

	Criteria	Points Possible
3	<p>Capability and capacity to perform projects including planning, design, construction management, and construction inspection;</p> <p>Describe how expenditures are controlled within your organization for work hours, direct costs, and other costs associated with direct service fees;</p> <p>Describe how costs are estimated and controlled to construct the project as design progresses compared to the budget for the project;</p> <p>Indicate corrective actions you have taken when it appears the budget will be exceeded or project scope can be achieved at a lower cost than what was negotiated.</p> <p>Provide comparisons of bid award amount to final cost estimate for previous projects designed within the past ten (10) years; include the name of the project, month and year bid, number of bids received, final cost estimate, bid award amount, number of change orders, and final contract amount including change orders. Final cost estimate is the estimate provided to the Client for use at the bid opening including adjustments resulting from addenda issued during bid phase.</p> <p>Provide the volume of work which is not seventy-five percent complete. Include project name, contract date, contract amount and % completed and invoiced to date.</p>	15
4	<p>Understanding of issues and City's concerns;</p> <p>Provide a summary of projects ongoing or completed which address riverbank stabilization or similar projects.</p>	5
5	<p>Familiarity with or proximity to the geographic location of the project;</p> <p>Provide a summary addressing projects completed by your firm which address proximity to or familiarity with the area in which the project is located.</p>	5
6	<p>Qualifications of key personnel assigned to the projects including professional background, education, specialization(s), experience, and availability;</p> <p>Provide resumes of key personnel including membership in professional organizations and any unique knowledge possessed by team members relevant to the project;</p> <p>Each key member should also include list of relevant projects including client name, project name, project description, role of the</p>	15

Criteria		Points Possible
	individual and project completion date.	
7	<p>Qualifications of sub consultants and subcontractors.</p> <p>If sub-consultants or joint consultants are proposed, describe any relevant association with the proposed sub-consultants.</p> <p>Provide examples of past projects on which the lead firm has worked with each sub-consultant. Indicate the percentage of the work allocated for each participating consultant and/or sub-consultant.</p> <p>(If no sub-consultants and/or subcontractors identified, full points will be awarded for this criteria)</p>	10
8	Completeness, originality and creativity of Offerer's proposed approach to the services requested.	5
The proposal will be evaluated based on the above criteria. If oral presentations are held, the oral presentations will be based upon re-evaluation of the above criteria.		100 Points Total

This contract is subject to the provisions of Executive Order 11246 (Affirmative Action to Ensure Equal Employment Opportunity) and to the provisions of the Department of Transportation Regulations 49 CFR Part 26 (Disadvantaged Business Enterprise Participation) and to foreign trade restrictions. DBE firms are encouraged to submit.

Section 3. Interviews with Finalists.

For those proposals selected for interview, notices to finalists will include the interview date and time. Interviews are generally held at the City Commission Room, 201 W Chaco, Aztec, New Mexico. The interview location may be changed at the discretion of the Evaluation Committee. Scoring for the interview will be based on responses to the questions presented at the interview meeting. Interview scoring will total approximately 100 points. The points will be equally divided between the prepared questions and points will be allocated, by each member. Each member's point totals will be translated into a numeric ranking of all interviewed firms. The five individual member rankings will be totaled together to determine the overall ranking of firms for the interview.

Section 4. Contract Award.

Selection of a consultant and placement on the on-call list is not a guarantee that a contract will be awarded to the consultant. Selection of consultant is awarded and entering into a contract is by action of the City Commission and is not in force until fully executed by the Commission.

PROPOSAL FORMS

Acknowledgment of Receipt Form

Project Name: RFP REBID 2024-838 Professional Planning and Engineering Services

In acknowledgment of receipt of RFP REBID 2024-838 the undersigned agrees that he/she has received the complete proposal document. Proposals are due Thursday, November 9, 2023, 3:00 PM.

The acknowledgment of receipt should be signed and returned no later than November 2, 2023. Only potential Bidders/Offerers who return this form will receive copies of future communications, relating to, and including amendments to the Proposal if issued. Returning this form is not mandatory to submit a proposal.

Firm:	_____	Represented by:	_____
Phone:	_____	Title:	_____
Fax:	_____	E-mail:	_____
Address:	_____		
Signature:	_____	Date:	_____

This name and address will be used for all correspondence related to document this RFP.

Firm [] does [] does not (check one) intend to respond to RFP REBID 2024-838 Riverbank Stabilization Planning and Engineering Services.

If firm does not intend to reply, please give a brief reason for not responding.

Return to:
Attn: RFP REBID 2024-838
Vanessa Tanner, Procurement Specialist
City of Aztec, 201 W Chaco, Aztec NM 87410
Fax: 505-334-7652
email: vtanner@aztecnm.gov

Faxed or emailed copies of this form will be accepted.

Faxed or emailed **BID/PROPOSAL** responses **will not** be accepted.

Qualifications Based Proposals Submittal Form

Project Name: RFP REBID 2024-838 Professional Planning and Engineering Services

Print All Information:

COMPANY NAME			
MAILING ADDRESS	CITY	STATE	ZIP
CONTACT PERSON	EMAIL	TELEPHONE	

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

Sealed proposals will be received until **Thursday, November 9, 2023, 3:00 PM, Mountain Standard Time**, and opened at the City of Aztec Finance Conference Room. The opening of proposals shall be conducted in private to maintain the confidentiality of the contents of all proposals during the negotiation process.

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

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

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

The undersigned hereby proposes to perform necessary professional services for the amount and upon the conditions stated in this proposal after notice of award. This proposal is subject to the Purchase Order "Terms and Conditions", Proposal Requirements, and Scope of Work.

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

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

To be a valid proposal, Bidder must sign here.

Signature: _____

Print Name: _____

Title: _____

Date: _____

Campaign Disclosure Form

Project Name: RFP REBID 2024-838 Professional Planning and Engineering Services

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 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.

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

The following definitions apply:

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

"Campaign Contribution" means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official's behalf for the purpose of electing the official to either statewide or local office.

"Campaign Contribution" includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

"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 Code or is not required to submit a competitive sealed proposal because that person qualifies for a sole source or a small purchase contract.

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

DISCLOSURE OF CONTRIBUTIONS MADE TO: Mayor Michael A. Padilla, Mayor Pro-Tem Kenneth B. George, Commissioner Austin R. Randall, Commissioner Colby L. King, and Commissioner Jim Crowley.

Contribution Made By: _____
Relation to Prospective Contractor: _____
Name of Applicable Public Official: _____
Date Contribution(s) Made: _____
Amount(s) of Contribution(s): _____
Nature of Contribution(s): _____
Purpose of Contribution(s): _____

Signature

Date

Title (Position)

--OR--

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

Signature

Date

Title (Position)

Drug-Free Workplace Certification.

Project Name: RFP REBID 2024-838 Professional Planning and Engineering Services

The Contractor named below hereby certifies to be in compliance with 49 CFR parts 40 and 382 by establishing a program designed to help prevent accidents and injuries resulting from the misuse of alcohol or use of controlled substances by drivers of commercial motor vehicles and to provide a workplace free of drug use and alcohol misuse. The below Contractor will:

1. Have in place a policy in compliance with 49 CFR Parts 40 and 382 that provides for pre-employment, post- accident, random, reasonable suspicion, return-to-duty, and follow-up testing for controlled substances and alcohol.
2. 49 CFR Part 382, section 382.603 requires that persons designated to supervise drivers receive at least 60 minutes of training on alcohol misuse and receive an additional 60 minutes of training on controlled substances use.
3. Have in place a drug free and alcohol free workplace policy that applies to everyone that works on the project described in the contract. The drug free and alcohol free workplace policy shall include an education and training program that informs employees about the following:
 - a. The dangers of drug use and alcohol misuse in the workplace;
 - b. The person's or organization's policy in maintaining a workplace free of drug use and alcohol misuse;
 - c. Any available counseling, rehabilitation and employee assistance programs;
 - d. Penalties that may be imposed upon employees for violations; and,
 - e. Provisions for pre-employment and reasonable suspicion testing.
4. All of the contractor's employees who perform work on this project must be provided with a copy of the above referenced policies as those policies apply to them, i.e. not all employees are commercial drivers, but all employees would be subject to the drug-free and alcohol-free workplace policies.
5. That everyone who works on the contract agrees to abide by the terms of the Contractor's Statement as a condition of continued employment on the contract.
6. That no one who has tested positive within the past year will be allowed to perform work on this project.

Certification

I, the official named below, hereby swear that I am duly authorized to legally bind the prospective contractor to the above described certification. I am fully aware that this certification, executed on the date and in the county below, is made under penalty of perjury under the laws of the State of New Mexico

Company Name

Federal Id Number

Official Name

Official Signature

Official Title

Date Executed

Organization Reference Questionnaire

Project Name: RFP REBID 2024-838 Professional Planning and Engineering Services

The City of Aztec, as a part of the RFP process, requires Offerers to submit a minimum of three (3) business references as required within this document. The purpose of these references is to document Offerer's experience relevant to the scope of work in an effort to establish Offerer's responsibility.

Offerer is required to send the following reference form to each business reference listed. The business reference, in turn, is requested to submit the Reference Form directly to:

Vanessa Tanner, Procurement Specialist
Attn: RFP REBID 2024-838
City of Aztec, 201 W Chaco, Aztec NM 87410
Phone: 505-334-7652
Fax: 505-334-7649
email: vtanner@aztecnm.gov

by Thursday, November 9, 2023 for inclusion in the evaluation process. The form and information provided will become a part of the submitted proposal. Business references provided may be contacted for validation of content provided therein.

ORGANIZATIONAL REFERENCE

Project Name: RFP REBID 2024-838 Professional Planning and Engineering Services

QUESTIONNAIRE DUE THURSDAY, November 9, 2023

FOR:

(Name of Offerer) _____
Company Providing Reference: _____
Contact Name & Title/Position: _____
Contact Telephone Number: _____
Contact E-mail address: _____
Project Description: _____
Project Dates: _____

1. In what capacity have you worked with this vendor in the past?

2. How would you rate this firm's knowledge and expertise? _____
(3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)
Comments:

3. How would you rate the vendor's ability to provide services in accordance with State Audit Rule and ability to meet required deadlines? _____
(3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)
Comments:

4. What is your level of satisfaction with materials produced by the vendor? _____
(3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)
Comments:

5. How would you rate the dynamics/interaction between the vendor and your staff? _____
(3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)
Comments:

6. **Who were the vendor's principal representatives involved in the audit and how would you rate them individually? _____**

(3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

Comments should be based on the skills, knowledge, behaviors or other factors which influence the rating.

Name: _____ Rating: _____

Name: _____ Rating: _____

Name: _____ Rating: _____

Comments: _____

7. **How satisfied are you with the services provided by the vendor? _____**

(3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

Comments:

8. **With which aspect(s) of this vendor's services are you most satisfied?**

9. **With which aspect(s) of this vendor's services are you least satisfied?**

10. **Would you recommend this vendor's services to your organization again?**

W9

Include current completed W9 with proposal. W9 is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>

APPENDIX A

Sample Professional Services Agreement

CITY OF AZTEC Professional Services Agreement

This agreement is made and entered into on this ___/___/2023 (“Effective Date”) by and between _____, hereinafter referred to as the “Contractor”, and the City of Aztec, New Mexico, hereinafter referred to as the “City”.

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

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

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

1. **Scope of Services:**

_____ will provide all services, outlined in proposal dated _____, the following services:

<Insert Scope or Identify Exhibit>

2. **Compensation:**

In consideration for the services provided pursuant to Paragraph 1, the Contractor shall charge the City on a **Net 30 Days** basis and City shall pay only the following charges for services performed as stated: **Exhibit A Cost**.

3. **Changes to Services:**

City may, at any time, revise the Services by providing written notice to Contractor of the required changes. Contractor may propose changes to the Services to City, but such proposed changes will only become effective upon obtaining the written approval of a City contracting agent or City officer/official. The rate of compensation set forth in **Section 2 “Compensation”** may only be changed by a written agreement of the Parties signed and dated by a City contracting agent or City officer/official and Contractor.

4. **Term:**

This agreement shall be effective from the Effective Date until completion of services unless terminated earlier as provided herein. This agreement shall not be renewed automatically.

5. **Termination:**

5.1 Termination for Cause: If, through any cause, the CONTRACTOR fails to fulfill in a timely and proper manner the Contractor’s obligations under this Agreement, or if the CONTRACTOR violates any of the covenants,

agreements, or stipulations of this Agreement, the CITY may order CONTRACTOR by written notice to stop the services or any portion of them until the cause for such order has been eliminated. If the CONTRACTOR fails to correct the cause within five (5) working days of date of written notice, CITY shall have the right to immediately terminate this Agreement. The CONTRACTOR shall be entitled to receive just and equitable compensation for any work satisfactorily completed.

5.2 Termination for Convenience: The City Manager may, upon advance written notice to Contractor, suspend, abandon or terminate the Services, or any portion of the Services thereof, and terminate this Agreement, for any reason whatsoever including for the convenience of City without regard to whether or not Contractor has defaulted or failed to comply with the provisions of this Agreement. If the City Manager terminates the Services, or any portion of the Services thereof for convenience, City shall pay Contractor for all parts of the Services performed prior to the effective date of termination, including materials provided, in conformity with this Agreement, plus an amount for the Contractor's substantiated, reasonable direct costs necessarily incurred in preparation for the parts of the Services not yet performed and in shutting down its operations; plus an amount for a reasonable part of the profit Contractor would otherwise have earned for the percentage of Services performed prior to such termination, provided that the total sum payable to Contractor upon termination shall not exceed the unpaid balance of Contractor's compensation under **Section 2 "Compensation"**. Contractor shall not be entitled to any other costs or damages whatsoever arising out of Contractor's performance of the Services and the termination by City for convenience.

5.3 Stopping Services. When City terminates the Services in accordance with "**Termination by City for Cause**" or "**Termination by City for Convenience,**" Contractor shall take the actions set forth herein. Unless City directs otherwise, after receipt of a written notice of termination for either cause or convenience, Contractor shall promptly (a) stop performing Services on the date and as specified in the notice of termination; (b) place no further orders or subcontracts for materials, equipment, services or facilities, except as may be necessary for completion of such portion of the Services that is not terminated; (c) cancel orders and subcontracts, upon terms acceptable to City, to the extent that they relate to the performance of Services terminated; (d) assign to City all of the right, title, and interest of Contractor in all orders and subcontracts related to Services which shall continue; (e) deliver completed work to City and take such action as may be necessary or as directed by City to preserve and protect the work, work site, and any other property related to the Services in the possession of Contractor in which City has an interest; and (f) continue performance only to the extent not terminated.

5.4 Suspension of the Services. City may, for any reason, at any time and from time-to-time, by written notice to Contractor, suspend the carrying out of the Services or any part thereof, whereupon Contractor shall suspend the carrying out of the Services or any part thereof for such time or times and in such manner as City may require. During any such suspension, Contractor shall properly protect and secure the results of the Services in such manner as City may reasonably require. Unless otherwise instructed by City, Contractor shall, during any such suspension, maintain its staff and labor on or near the work site and otherwise be ready to proceed with the Services upon receipt of City's further instructions. City and Contractor shall negotiate a change order to address the impact of such suspension on Contractor's compensation and the term of this Agreement in accordance with **Section 3 "Changes to Services"** of this Agreement.

5.5 Termination by Contractor for City Default. Subject to City's right of set-off, if City fails to pay Contractor any undisputed amount due hereunder, and such failure continues for thirty (30) days following receipt of written notice thereof from Contractor, then Contractor shall be entitled to suspend further performance of the Services and be paid its costs during the period of suspension in the same manner as provided in **Section 5.4** until the undisputed amount due, plus applicable interest, has been paid. If (a) such failure continues for an additional period of thirty (30) days or (b) Contractor's Services under this Agreement are delayed by an event of Uncontrollable Forces (as defined in **Section 18** herein), and/or suspended by City, for one hundred eighty (180) days or more, then Contractor shall be entitled to terminate this Agreement by written notice to City and be paid its costs in the same manner as provided in **Section 5.4**.

Delivery of Documents. Upon the suspension, abandonment, or termination of this Agreement, in whole or in

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

6. Contractor Representations and Corrective Action.

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

- (a) Contractor has performed similar Services and possesses the specific training, skills, knowledge, necessary personnel, and legal right to perform the Services. Contractor shall provide in connection with the Services the standard of care, skill, and diligence normally provided by a Contractor in the performance of similar services and warrants that all such Services shall be performed in accordance with sound and accepted industry standards and practices, and in accordance with all applicable federal, state and local laws, statutes, regulations, rules and ordinances, as amended from time to time (including but not limited to all applicable environmental, health and safety, cultural preservation and natural resources management laws, statutes, regulations, rules, and ordinances, as amended from time to time).
- (b) The compensation described in **Section 2 "Compensation"** is reasonable compensation for the performance of the Services, as represented by this Agreement, including all exhibits, and Contractor's independent evaluation of the Services to be performed and investigation of site conditions.
- (c) Contractor is financially solvent, able to pay its debts as they mature, and possesses sufficient working capital to complete the Services and perform Contractor's obligations required by this Agreement.
- (d) Contractor is able to furnish the plant, tools, materials, supplies, equipment and labor required to complete the Services and perform the obligations required by this Agreement and has sufficient experience and competence to do so and is properly insured and licensed to perform the Services.
- (e) Contractor is the holder of or will take the necessary action to obtain all consents, licenses, permits, or other authorizations required to allow it to operate or conduct its business now and as contemplated by this Agreement and to perform the Services under this Agreement.
- (f) No services performed or goods provided by Contractor shall cause any process, procedure, hardware, software, firmware, micro-code, equipment, component or device or any part thereof that is used in City's operations and is currently Date Data Compliant, to thereafter cease to be Date Data Compliant. Contractor represents and warrants that all services rendered by Contractor to City pursuant to this Agreement shall be Date Data Compliant and that all processes, procedures, hardware, software, firmware, micro-code, equipment, components, devices or any part thereof provided by Contractor to City in rendering such services are designed to be Date Data Compliant. For purposes of this Agreement, "Date Data Compliant" means that all date-data is electronically recognized, handled and manipulated without interruptions or inaccuracies.

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

7. **Regulatory Proceedings:**

Contractor shall testify, when required by City, on City's behalf in any court or governmental or regulatory agency hearings or proceedings relative to the Services performed under this Agreement. Contractor's testimony shall be limited to the scope of services performed by Contractor per the Services, subject to compensation at negotiated rates.

8. **Status of Contractor:**

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

9. **Liability:**

9.1 Contractor General Indemnity. To the fullest extent permitted by law, the Contractor agrees to indemnify and hold harmless the City, including its affiliates, directors, officers, officials, employees, and agents, from and against liability, claims, damages, losses or expenses, including attorney fees, arising out of, or resulting from performance of the Services or this Agreement, but only to the extent that the liability, damages, losses, or costs are caused by, or arise out of, the acts or omissions of Contractor, any subcontractor of Contractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable. This indemnification provision shall apply equally to injuries to Contractor's employees.

9.2 Compliance with Laws. Contractor shall indemnify, defend, and hold harmless City from and against any claims, damage and expense (including reasonable attorney fees) arising out of the violation by Contractor of any applicable law, rule regulation, or ordinance relating to Contractor's operations and performance of the Services.

9.3 Intellectual Property Rights Infringement Indemnity. Contractor warrants that none of the Services, or the results thereof, performed by Contractor, or the documents, goods or equipment produced, designed, fabricated, or assembled by Contractor pursuant to this Agreement infringe upon or violate any patent, copyright, trade secret, or any other intellectual or property rights of any third party. If any third party makes a claim or commences a proceeding against City alleging such an infringement or violation, Contractor shall indemnify, defend and save harmless City, its directors, officers, officials, employees, agents and affiliates from and against all damages and costs incurred by or awarded against City (including court costs and reasonable attorney fees). City will notify Contractor if any such claim is made or proceeding is commenced. City may, at its option, be represented by separate legal counsel in any such claim or proceeding. Contractor shall reimburse City the costs and expenses incurred by City in being so represented, including reasonable attorney fees. If the use of any of the Services, or the results of such Services, or documents, goods, or equipment, or any part thereof, furnished under this Agreement is held in any such claim or proceeding to

constitute an infringement and/or is enjoined, whether temporarily or permanently, Contractor shall, at its sole cost and expense, either:

- (a) procure for City the right to use the results of such Services or such documents, goods and equipment; or
- (b) replace the results of such Services or such documents, goods, or equipment with non-infringing results, documents, goods or equipment having the equivalent functionality as the infringing or allegedly infringing results, documents, goods or equipment; or
- (c) modify the results of such Services or such documents, goods, or equipment so as to make them non-infringing, but equivalent in functionality.

9.3.1 Best Efforts. Contractor shall use its best efforts to obtain for the benefit of City identical intellectual property rights indemnification protection in all subcontracts, purchase orders, and other agreements entered into under this Agreement.

9.4 Limitation. NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR SPECIAL, INDIRECT, NOR CONSEQUENTIAL DAMAGES RESULTING FROM OR ARISING OUT OF THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS OR BUSINESS INTERRUPTION, HOWEVER SAME MAY BE CAUSED. THIS LIMITATION ON CONSEQUENTIAL DAMAGES DOES NOT APPLY TO CLAIMS FOR PERSONAL INJURY, WRONGFUL DEATH OR DIRECT DAMAGES TO PROPERTY. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR PUNITIVE DAMAGES.

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

- (a) it is a third-degree felony under New Mexico law to commit the offense of bribery of a public officer or public employee (Section 30-24-1, NMSA, 1978);
- (b) it is a third-degree felony to commit the offense of demanding or receiving a bribe buy a public officer or public employee (Section 30-24-2, NMSA, 1978);
- (c) it is a fourth-degree felony to commit the offense of soliciting or receiving illegal kickbacks (Section 30-41-1, NMSA, 1978); and
- (d) it is a fourth-degree felony to commit the offense of offering or paying illegal kickbacks (Section 30-41-2, NMSA, 1978).

10. Assignment:

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

11. Subcontracting:

It is understood and agreed that City has chosen Contractor based on Contractor's qualifications to perform services of the nature contemplated by this Agreement. Accordingly, Contractor shall not assign, transfer, subcontract or otherwise dispose of any of its obligations pursuant to this Agreement without first obtaining the written consent of City, which consent may be withheld if City, in its sole opinion, considers that it is not in its best interests, economic or otherwise, to do so. City may, at its option and at any time, assign this

Agreement, in whole or in part. City shall promptly notify Contractor in writing of any such assignment, unless such assignment is to an affiliate of City. In the event City assigns this Agreement, it shall be relieved of all financial responsibility related to the portion of this Agreement so assigned.

12. Invoicing and Payment:

Contractor shall submit invoices to City, referencing this Agreement number and Purchase Order number, together with such documentation as City may require, at the following address:

Address: City of Aztec, Attn Accounts Payable
201 W Chaco, Aztec NM 87410

Email: acctspayable@aztecnm.gov

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

13. Records and Audit:

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

14. Taxes:

Contractor shall pay all taxes and contributions for unemployment insurance, retirement benefits, pensions, annuities, and similar benefits, which may now or hereafter be imposed on Contractor by law or collective bargaining agreements with respect to persons employed by Contractor for performance of the Services. Contractor shall be liable for and shall pay and shall indemnify, defend, and hold City harmless from, all such taxes and contributions or any interest accrued and penalties imposed, and reasonable attorney fees and all taxes (including but not limited to, income, withholding, gross receipts, compensating, use and all other taxes of whatsoever kind and whatsoever nature), excises, assessments, and other charges levied by any governmental agency or authority on or because of the Services, or on any materials, equipment, services, or supplies furnished in the performance of the Services. On all invoices, Contractor shall separately show all New Mexico gross receipts, compensating, sales, and other similar taxes which are reimbursable by City to Contractor, provided that in no event will interest or penalties on such taxes be reimbursable by City. Contractor shall utilize appropriate New Mexico Nontaxable Transaction Certificates, or similar certificates from other states, where applicable, to minimize such gross receipts, compensating, sales, and other similar taxes.

15. Appropriation:

The terms of this Agreement are contingent upon sufficient monies being made available by the City of Aztec for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the City of Aztec, this Agreement shall terminate upon written notice being given by the City to the Contractor. The City's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

16. **Release:**

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

17. **Confidentiality:**

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

18. **Uncontrollable Forces:**

Neither Party shall be considered to be in default in respect to any obligation hereunder, if delays in or failure of performance shall be due to Uncontrollable Forces. The term "Uncontrollable Forces" shall mean any cause beyond the control of the Party affected and not due to its fault or negligence, including, but not limited to, acts of God, flood, earthquake, storm, fire, lightning, epidemic, war, terrorist activity, riot, civil disturbance, sabotage, inability to obtain permits, licenses, and authorizations from any local, state, tribal, or federal agency or person for any of the materials, supplies, equipment, or services required to be provided hereunder, fuel shortages, breakdown or damage to generation and transmission facilities belonging to City, failure of facilities, strikes or other labor disputes, or restraint by court or public authority, any of which by exercise of due foresight such Party could not reasonably have been expected to avoid, and which by the exercise of due diligence it is unable to overcome. Neither Party shall, however, be relieved of liability for failure of performance if such failure is due to removable or remediable causes which it fails to remove or remedy with reasonable dispatch. Nothing contained herein, however, shall be construed to require either Party to prevent or settle a strike or other labor disputes against its will. The Party whose performance hereunder is so affected shall immediately notify the other Party of all pertinent facts and take all reasonable steps to promptly and diligently prevent such causes if feasible to do so, or to minimize or eliminate the effect thereof without delay. Contractor shall make no claim for additional compensation or damages by reason of any delay due to an Uncontrollable Force; however, Contractor shall be entitled to a reasonable extension to the time schedule for delays resulting from an Uncontrollable Force.

19. **Conflict of Interest:**

The Contractor warrants that it currently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under this Agreement. The Contractor further covenants that, in the performance of this Agreement, no person having any such interest shall be employed by the Contractor. The Contractor warrants that it does not employ, has not employed, and will not employ during the term of this Agreement any City employee while such employee was or is employed by the City and participating directly or indirectly in the City's contracting process.

Contractor shall notify the City's Chief Procurement Officer if any employee(s) of the requesting department or the Purchasing Division have a financial interest in the Contractor's business operations.

20. **Intellectual Property:**

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

20.2 License. Contractor hereby grants to City a fully paid, royalty free, non-exclusive, non-terminable, perpetual license to use, copy, and create derivative works of any pre-existing copyrighted, patented and/or proprietary work that is incorporated into the Services or the results of the Services, or into the documents, goods and equipment produced, designed, fabricated and assembled by Contractor pursuant to this Agreement, including the right to create sub-licenses without any duty to account to Contractor. If so requested by City, Contractor shall cooperate with City in executing all such assignments, oaths, declarations and other documents as may be prepared by City to effect and evidence the foregoing.

20.3 Best Efforts. Contractor shall use its best efforts to obtain for the benefit of City identical intellectual property indemnification protection in all subcontracts, purchase orders, and other agreements entered into under this Agreement.

21. **Amendment:**

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

22. **Scope of Agreement:**

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

23. **Equal Opportunity Clause:**

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

24. Fair Labor Standards

Contractor shall comply with the Fair Labor Standards Act of 1938, as amended, and any regulations issued pursuant thereto by the Department of Labor. It is agreed that all applicable laws, rules and regulations are incorporated herein by referenced in this Agreement and bind Contractor as a contractor of City.

25. Executive Orders

City is an equal opportunity employer. Pursuant to Executive Orders 11246, 11625, 11701, 11758 and 13201, as amended or superseded, in whole or in part from time-to-time, and all regulations issued thereunder, it is agreed that all applicable laws, rules, and regulations are incorporated by reference in this Agreement and bind Contractor as a contractor of City.

26. Drug and Alcohol Policy

26.1 Contractor, in the performance of any Services requiring the physical presence of its employees on City's property or on the property of others for which City has acquired access rights, shall maintain a drug and alcohol policy, as respects its employees and subcontractors involved in the performance of such Services, which policy at a minimum includes reasonable testing procedures and which advances the policy of providing a work environment that is free from the use, consumption, possession, sale, or distribution of illegal drugs or alcohol, and from the misuse of legal drugs on City's premises and work sites, including vehicles used on company business.

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

26.3 Contractor shall provide City and any public authority having jurisdiction with access to Contractor's facilities and records to audit Contractor's drug and alcohol policy, records and testing program including, if applicable, United States Department of Transportation requirements, as provided in Section 8 "Audit."

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

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

27. Unlawful Discriminatory Practice

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

28. Insurance:

28.1 Prior to commencement of the Services, Contractor shall obtain the insurance required by this Agreement and all insurance that may be required under Applicable Laws. Unless otherwise indicated below, each insurance policy of Contractor shall provide, either in its printed text or by endorsement, that it shall be primary with respect to the interest of the City, and any insurance maintained by the City is in excess and not contributory to Contractor's insurance policies regardless of any like insurance coverage that the City may

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

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

Where applicable, all insurance policies shall provide for waiver of subrogation in favor of the City, include cross liability provisions, and all policies, except Workers' Compensation, shall name the City and its directors, officers, officials, managers, representatives, agents and employees as additional insured, to the extent allowable under such policies.

28.2 Minimum Coverage. Without limiting any of the liabilities or other obligations of Contractor under this Agreement, including but not limited to **Section 9 "Liability,"** Contractor shall obtain and maintain in effect, at its sole cost and expense, with forms and insurers acceptable to City, until all the obligations under this Agreement are satisfied, insurance policies providing coverage protecting against claims for personal and bodily injury or death, as well as claims for property damage which may arise from operations in connection with the Services whether such operations are by Contractor or any subcontractor for at least the following minimum coverage:

Worker's Compensation Insurance. To cover obligations imposed by federal and state statutes pertaining to Contractor's employees engaged in the performance of any services, and Employer's Liability Insurance with a minimum limit of One Million Dollars (\$1,000,000).

Commercial General Liability Insurance, or the equivalent, with a minimum limit of One Million Dollars (\$1,000,000) per occurrence. The policy shall include coverage for bodily injury liability, broad form property damage liability, blanket contractual, contractor's protective, products liability and completed operations. Where applicable, the policy shall include coverage for the hazards commonly referred to as "XCU." The policy shall be endorsed to include City as an additional insured only to the extent City is vicariously liable for the negligence, acts or omissions of Contractor.

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

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

28.3 Subcontractors. Contractor shall require that each subcontractor comply with the insurance requirements set forth in **Section 28.2 "Minimum Coverage."**

29. Dispute Resolution

If the Parties are unable to resolve any dispute within 30 days of the occurrence of the event or circumstances giving rise to the dispute, the dispute may be submitted to mediation upon the mutual agreement of the Parties. In the event the Parties do not agree to mediate the dispute or are unable to resolve the dispute through mediation and the aggregate amount of the claim (including counterclaims) is less than Two Hundred Fifty Thousand Dollars (\$250,000), then the dispute shall be resolved by binding arbitration. Such arbitration shall be governed by the New Mexico Uniform Arbitration Act, § 44-7A- 8, *et seq.* (2001), as amended from time to time. A Party demanding arbitration shall give the other Party timely notice of such election pursuant to **Section 33 “Notice”** and such notice shall describe the nature of the dispute and the amount in controversy. The Parties shall then jointly select an arbitrator and failing such mutual agreement, the arbitrator shall be appointed by a District Court Judge from San Juan County, New Mexico. The arbitration shall be held in Farmington, New Mexico. Discovery shall be by agreement of the Parties or as ordered by the arbitrator, provided that the Parties shall comply with the following minimum discovery requirements: at least ten (10) calendar days prior to the arbitration, the Parties shall exchange copies of all exhibits to be used at the arbitration and a list of witnesses and a summary of the matters as to which each witness is expected to testify.

In the event the Parties do not agree to mediate the dispute or are unable to resolve the dispute through mediation, and the aggregate amount of the claim in dispute equals or exceeds Two Hundred Fifty Thousand Dollars (\$250,000), then the Parties may agree to submit the matter to binding arbitration under the New Mexico Uniform Arbitration Act, § 44-7A-8, *et seq.* (2001), as amended from time to time, and failing such agreement, either Party may bring an action in the federal or state courts of New Mexico.

All costs of mediation or arbitration, including the fees of the mediator or arbitrator, shall be split equally by the Parties, except that the Parties shall be responsible for payment of their own attorney fees, expert fees, preparation fees, travel, and similar costs. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law of the State of New Mexico. Indemnity claims are not subject to mandatory arbitration. Nothing in this **Section 29** shall affect, restrict, condition, or otherwise limit a Party’s right to terminate this Agreement pursuant to **Section 5 “Termination.”**

In the event of a conflict between the terms and provisions of any Purchase Order (that is incorporated herein by reference) and the terms and provisions contained in the main body or any other part of this Agreement, the terms and provisions of the Agreement shall govern and control. In the event of a conflict between or among the terms and provisions of any of the other documents forming a part of the Agreement (incorporated by reference), the following order of priority shall apply (with higher-listed documents governing and controlling over lower-listed documents):

- | | |
|----------------------------------|------------------------------|
| First: Changes to Services | Fourth: City’s RFB/RFP |
| Second: Exhibits and Attachments | Fifth: Specifications |
| Third: Scope and Drawings | Sixth: Contractor’s proposal |

30. Non-Exclusive Relationship:

Contractor expressly acknowledges and agrees that City may enter into similar contractual arrangements with other parties and that City may assign similar services to such other parties. Further, City acknowledges and agrees that Contractor may enter into contractual arrangements with other parties during the term of this Agreement provided that the obligations of Contractor pursuant to such contractual arrangements do not in any manner interfere with Contractor’s performance of its obligations to City pursuant to this Agreement.

31. **Waiver of Contractual Right:**

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

32. **Severability:**

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

33. **Notice:**

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

City of Aztec: Jeff Blackburn, City Manager
City of Aztec, 201 W Chaco, Aztec, New Mexico 87410

Contractor:

34. **Designated Representative:**

City Designated Representative: Contact Name
201 W Chaco
Aztec, New Mexico 87410

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

Contractor Project Manager: Contact Name

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

35. **Binding Effect:**

This Agreement and all provisions hereof shall inure to the benefit of and be binding upon the Parties, their successors, and permitted assigns.

36. Governing Law and Venue:

This Agreement shall be governed and interpreted in accordance with the laws of the State of New Mexico, without regard to the conflicts of law rules of that State. Any action at law or in equity or judicial proceedings instituted by a Party for the enforcement of this Agreement shall be instituted only in state or federal courts of the State of New Mexico.

37. Counterparts:

This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument. City and Contractor may retain a duplicate copy (e.g. electronic image, photocopy, facsimile) of this Agreement, which shall be considered an equivalent to this original.

38. Survival of Obligations:

In addition to the continuation of confidentiality obligations as specified in **Section 17 “Confidentiality,”** Contractor’s representations and warranties under **Section 6 “Contractor Representations and Corrective Action,”** indemnity obligations, including those under **Section 9 “Liability,”** and **Section 26 “Drug and Alcohol”** of this Agreement, shall survive the expiration or any termination of the Agreement, it being agreed that said obligations are and shall be of a continuing nature.

39. Agreement Authors:

The Parties have agreed to this Agreement and no ambiguity shall be construed against any Party based on the identity of the author or authors of this Agreement.

40. Entire Agreement:

This Agreement represents the entire agreement and understanding between City and Contractor with respect to the subject matter hereof and performance of the Services, and supersede any prior understandings, representations or agreements, whether verbal or written, prior to execution of this Agreement. If any Services were performed by Contractor under verbal agreement or under a limited notice to proceed prior to the execution of this Agreement, then this Agreement shall apply thereto in the same manner as if made before such Services were performed.

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

In witness hereof, the parties have executed this agreement as of the ____ day of _____ 20____.

CONTRACTOR:

Company Name: _____

Signed By: _____ Date: _____

Printed Name: _____ Title: _____

Federal Taxpayer Identification or
Social Security Number

NM Taxpayer Identification
Number

City Business License
Number

CITY OF AZTEC, NEW MEXICO

By: _____
Jeff Blackburn, City Manager

Date: _____

Attest: _____
Karla Saylor, City Clerk

Date: _____

Approved as To Form: _____
_____, City Attorney

Date: _____

PROFESSIONAL SERVICES AGREEMENT EXHIBIT A COST

Professional services cost: \$

EXHIBIT

Aerial Photo of Project:

