



**Request for Proposals
RFP # 2020-742**

FURNISH AND INSTALL FIBER OPTIC CABLE AND MATERIALS

PROPOSAL DUE DATE/TIME/PLACE:

Monday, March 30, 2020, 3:00 PM
City of Aztec Finance Conference Room
201 W Chaco
Aztec NM 87410

FINAL DATE FOR QUESTIONS

March 20, 2020 5:00 PM

Tentative Commission Contract Approval Date

April 2020

For further information contact:

Kathy Lamb

Finance Director

City of Aztec

Phone: 505-334-7653

Fax: 505-334-7649

Email: klamb@aztecnm.gov

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I. INTRODUCTION

A. PURPOSE OF THIS REQUEST FOR PROPOSALS

The City of Aztec desires to establish a price agreement with a qualified firm to provide fiber optic installation and repair services:

- Splicing of single and multi mode fiber optic cable via fusion splicing
- Termination of single mode and multi mode fiber optic cable using factory made terminations via fusionsplicing
- Handmade terminations of single and multi mode fiber optic cable.
- Installation of fiber optic cable inside plant and outside plant.
- Installation of splicing enclosures and related equipment, inside and outside plant.
- Power meter testing
- OTDR testing
- Documentation of installation and splicing test results.
- Respond to emergency call for testing and repair of fiber

Scheduled projects include:

Tantalus AMI Project: 1) Fusion splice and make up to 12 count fiber on pole , install closer, locate 4 dark fiber, splice or Terminate fiber with ST connectors at each end of run at City Hall complex. Fusion Splice 12 count fiber to 48 count in outside splice vault. Fusion Splice 4 to 48 count fiber on pole,2) Fusions Splice 12 of 96 fiber at two locations, install over head closer, locate and splice to 2 dark fiber to head end at City Complex. OTDR Test all splices, fiber and connectors on fiber run. Contractor to provide all materials needed to complete project. Fiber provided and installed by City personnel.

San Juan Communications Fiber to Airport project: Fusion splice 12 count fiber on pole and make up in two or more locations, Terminate fiber with appropriate connectors in building at San Juan Communications Center and Airport communications building location, OTDR Test all splices, fiber runs and terminations. Contractor to provide all materials needed to complete project. Fiber installed and provided by City personnel.

B. SCOPE OF PROCUREMENT

Request for Proposal for Furnish and Install Fiber Optic Cable and Materials.

TERM: An agreement will be executed specific to these services, starting with the effective date of the Agreement. The City's intent is to enter into an annual agreement with the opportunity for three (3) consecutive one (1) year renewals

C. PROCUREMENT MANAGER

1. The City of Aztec has assigned a Procurement Manager who is responsible for the conduct of this procurement whose name, address, telephone number and e-mail address are listed below:

Name: Kathy Lamb, Procurement Manager
Address: 201 W Chaco, Aztec NM 87410
Telephone: (505) 334-7653
Fax: (505) 334-7649
Email: klamb@aztecnm.gov

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

Name: Kathy Lamb
Reference RFP Name:

RFP 2020-742 FURNISH & INSTALL FIBER OPTIC CABLE AND MATERIALS

Address: City of Aztec
Purchasing Office
201 W Chaco
Aztec, New Mexico 87410

Please note, Aztec, New Mexico is not a guaranteed delivery area by express carriers. Responses must be received by the due date and time to be considered, not the date when delivered to carrier. The City is closed on Fridays (4-10 work schedules, Monday through Thursday); documented attempted deliveries by the carrier may be considered as timely responses IF provided by the date and time proposals are due.

3. **Any inquiries or requests** regarding this procurement should be submitted, in writing, to the Procurement Manager. Offerors may contact **ONLY** the Procurement Manager regarding this procurement. Other city employees or Selection Committee members do not have the authority to respond on behalf of the Purchasing Office. **Protests of the solicitation or award must be delivered by mail to the Protest Manager.** As A Protest Manager has been named in this Request for Proposals, pursuant to NMSA 1978, § 13-1-172, **ONLY** protests delivered directly to the Protest Manager in writing and in a timely fashion will be considered to have been submitted properly and in accordance with statute, rule and this Request for Proposals. Emailed protests will not be considered as properly submitted nor will protests delivered to the Procurement Manager be considered properly submitted.

D. DEFINITION OF TERMINOLOGY

This section contains definitions of terms used throughout this procurement document, including appropriate abbreviations:

“**Agency**” means the City of Aztec

“**Amendment**” means a written or graphic instrument issued prior to the opening of Proposal, which clarifies, corrects, or changes the Request for Proposal.

“**Award of Contract**” shall mean a formal written notice by the City that a firm has been selected to enter into a contract for services. Any Award of Contract that has not resulted in a written contract offer to the Offeror, within 6 months of written notice, shall not be considered an award for the purposes of the Project Listing Form.

“**Business Hours**” means 8:00 am thru 5:00 PM Mountain Standard or Mountain Daylight Time, whichever is in effect on the date given.

“**City**” means the City of Aztec

“**Close of Business**” means 5:00 PM Mountain Standard or Mountain Daylight Time, whichever is in effect on the date given.

“**Confidential**” means confidential financial information concerning respondent’s organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act NMSA 1978 57-3-A-1 to 57-3A-7. See NMAC 1.4.1.45. As one example, no information that could be obtained from a source outside this request for proposals can be considered confidential information

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

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

“**Desirable**” the terms "may", "can", "should", "preferably", or "prefers" identify a desirable or discretionary item or factor.

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

“**Electronic Version/Copy**” means a digital form consisting of text, images or both readable on computers or other electronic devices that includes all content that the Original and Hard Copy proposals contain. The digital form may be submitted using a compact disc (cd) or USB flash drive. The electronic version/copy can NOT be emailed.

“**Evaluation Committee**” means a body appointed to perform the evaluation of Offerors’ proposals.

“**Evaluation Committee Report**” means a report prepared by The Procurement Manager and Evaluation Committee for contract award. It will contain written determinations resulting from the procurement.

“**Finalist**” means an Offeror who meets all the mandatory specifications of this Request for Proposals and whose score on evaluation factors is sufficiently high to merit further consideration by the Evaluation Committee.

“**Hourly Rate**” means the proposed fully loaded maximum hourly rates that include travel, per diem, fringe benefits and any overhead costs for contractor personnel, as well as subcontractor personnel if appropriate.

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

“**Minor Technical Irregularities**” means anything in the proposal that does not affect the price quality and quantity or any other mandatory requirement.

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

“**Owner**” is the City of Aztec (COA).

“**Price Agreement**” means a definite quantity contract or indefinite quantity contract which requires the contractor to furnish items of tangible personal property, services or construction to a state agency or a local public body which issues a purchase order, if the purchase order is within the quantity limitations of the contract, if any.

“**Procurement Manager**” means any person or designee authorized by a state agency or local public body to enter into or administer contracts and make written determinations with respect thereto.

“**Procuring Agency**” means all State of New Mexico agencies, commissions, institutions, political subdivisions and local public bodies allowed by law to entertain procurements.

“**Proposal**” is the offeror’s response to this RFP

“**Redacted**” means a version/copy of the proposal with the information considered confidential as defined by NMAC 1.4.1.45 and defined herein and outlined in Section II.C.8 of this RFP blacked out BUT NOT omitted or removed.

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

“**Responsible Offeror**” means an Offeror who submits a responsive proposal and who has furnished, when required, information and data to prove that his financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services, or items of tangible personal property described in the proposal.

“Responsive Offer” or **“Responsive Proposal”** means an offer or proposal, which conforms in all material aspects to the requirements set forth in the Request for Proposals (RFP). Material aspects of responses to the Request for Proposals(RFP) include, but are not limited to price, quality, quantity or delivery requirements.

“Sealed” means, in terms of a non-electronic submission, that the proposal is enclosed in a package which is completely fastened in such a way that nothing can be added or removed. Open packages submitted will not be accepted except for packages that may have been damaged by the delivery service itself. The City reserves the right, however, to accept or reject packages where there may have been damage done by the delivery service itself. Whether a package has been damaged by the delivery service or left unfastened and should or should not be accepted is a determination to be made by the Procurement Manager. By submitting a proposal, the Offeror agrees to and concurs with this process and accepts the determination of the Procurement Manager in such cases.

“Selection Committee” means a body appointed by the Procurement Manager to perform the evaluation of Offeror proposals.

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

“Staff” means any individual who is a full-time, part-time, or an independently contracted employee with the Offerors’ company.

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

“Statement of Concurrence” means an affirmative statement from the Offeror to the required specification agreeing to comply and concur with the stated requirement(s). This statement shall be included in Offerors proposal. (E.g. “We concur”, “Understands and Complies”, “Comply”, “Will Comply if Applicable” etc.)

“Unredacted” means a version/copy of the proposal containing all complete information including any that the Offeror would otherwise consider confidential, such copy for use only for the purposes of evaluation.

“Written” means typewritten on standard 8 ½ x 11 inch paper. Larger paper is permissible for charts, spreadsheets, etc.

II. CONDITIONS GOVERNING THE PROCUREMENT

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

A. SEQUENCE OF EVENTS

The Procurement Manager will make every effort to adhere to the following schedule:

Action	Responsible Party	Due Dates
1. Issue RFP	City	March 12, 2020
2. Acknowledgement of Receipt Form	Potential Offerors	March 23, 2020 by 1:00 PM MST/MDT
3. Site Visit	City	Not Applicable
4. Deadline to submit Questions	Potential Offerors	March 20, 2020 by 5:00 PM MST/MDT
5. Response to Written Questions	Procurement Manager	March 23, 2020
6. Submission of Proposal	Potential Offerors	March 30, 2020, 3:00 PM
7. Proposal Evaluation	Evaluation Committee	April 2020
8. Selection of Finalists	Evaluation Committee	April 2020
9. Best and Final Offers	Finalist Offerors	April 2020
10. Oral Presentation(s)	Finalist Offerors	April 2020
11. Finalize Contractual Agreements	City/Finalist Offerors	April 2020
12. Contract Awards	City/ Finalist Offerors	April 2020
13. Protest Deadline	City	April 2020

B. EXPLANATION OF EVENTS

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

1. Issuance of RFP

This RFP is being issued on behalf of the City of Aztec for Furnish and Install Fiber Optic Cable and Materials on March 16, 2020.

2. Acknowledgement of Receipt

Potential Offerors should email, hand deliver, return by facsimile, or by certified mail the "Acknowledgement of Receipt of Request for Proposals Form" that accompanies this document, APPENDIX A, to have their organization placed on the procurement distribution list. The form should be signed by an authorized representative of the organization, dated and returned to the Procurement Manager by 1:00 pm on March 23, 2020.

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

3. Site Visit

Not Applicable.

4. Deadline to Submit Written Questions

Questions and/or clarifications concerning this RFP will be accepted in writing through March 20, 2020 5:00 pm. Requests may be transmitted via facsimile (505-334-7649) or email (klamb@aztecmn.gov). Written responses to all written inquiries will be provided and distributed to all recipients of this RFP. Responses and addenda to this RFP, if necessary, are scheduled to be issued by March 23, 2020, 5:00 PM. No Offeror may rely upon oral responses made by any City employee or any representative of the City.

5. Response to Written Questions

Written responses to written questions will be distributed as indicated in the sequence of events to all potential Offerors whose organization name appears on the procurement distribution list. An e-mail copy will be sent to all Offerors that provide Acknowledgement of Receipt Forms described in II.B.2 before the deadline. Additional copies will be posted to: <http://www.aztecmn.gov/purchasing/office.html>.

6. Submission of Proposal

ALL OFFEROR PROPOSALS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE PROCUREMENT MANAGER OR DESIGNEE NO LATER THAN 3:00 PM MOUNTAIN STANDARD TIME/DAYLIGHT TIME ON March 30, 2020. Proposals received after this deadline will not be accepted. The date and time of receipt will be recorded on each proposal.

Proposals must be addressed and delivered to the Procurement Manager at the address listed in Section I, Paragraph D2. Proposals must be sealed and labeled on the outside of the package to clearly indicate that they are in response to the RFP 2020-742 FURNISH & INSTALL FIBER OPTIC CABLE AND MATERIALS. Proposals submitted by facsimile, or other electronic means will not be accepted.

A public log will be kept of the names of all Offeror organizations that submitted proposals. Pursuant to NMSA 1978, § 13-1-116, the contents of proposals shall not be disclosed to competing potential Offerors during the negotiation process.

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

Please note that after the proposal submission due date, Offerors are not allowed any contact with City staff, governing body or representatives regarding their proposal without the City of Aztec's Procurement Manager approval. The City of Aztec, may, however, contact Offerors for clarification purposes, changes in the Schedule of Events, notices of nonresponsiveness or responsiveness of proposals, and notices of evaluation status and/or interviews

7. Proposal Evaluation

The Evaluation Committee will review each Offerors proposal independently. Points will be allocated, by each member, as outlined in Section V of this RFP. Each member's point totals will be translated into a numeric ranking of all proposals. The evaluation committee may hold interviews with the three 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.

8. Selection of Finalists

The Evaluation Committee will select and the Procurement Manager will notify the finalist Offerors as per schedule Section II. A., Sequence of Events or as soon as possible. A schedule for the oral presentation and demonstration will be determined at this time.

9. Best and Final Offers

Finalist Offerors may be asked to submit revisions to their proposals for the purpose of obtaining best and final offers as per schedule Section II. A., Sequence of Events or as soon as possible. Best and final offers may also be clarified and amended at finalist Offeror's oral presentation and demonstration.

10. Oral Presentations

Finalist Offerors may be required to conduct an oral presentation at a location to be determined as per schedule Section II. A., Sequence of Events or as soon as possible. Whether or not oral presentations will be held is at the discretion of the Evaluation Committee. Oral presentations, if required, will be evaluated on the basis of 100 total points.

11. Finalize Contractual Agreements

Any Contractual agreement(s) resulting from this RFP will be finalized with the most advantageous Offeror(s) as per schedule Section II. A., Sequence of Events or as soon thereafter as possible. This date is subject to change at the discretion of the City of Aztec Procurement office. In the event mutually agreeable terms cannot be reached with the apparent most advantageous Offeror in the time specified, the City of Aztec reserves the right to finalize a contractual agreement with the next most advantageous Offeror(s) without undertaking a new procurement process.

12. Contract Awards

After review of the Evaluation Committee Report and the signed contractual agreement, the City of Aztec Procurement Manager will award as per the schedule in Section II. A., Sequence of Events or as soon as possible thereafter. This date is subject to change at the discretion of the City of Aztec Procurement Manager.

The contract shall be awarded to the Offeror (or Offerors) whose proposals are most advantageous to the City of Aztec, taking into consideration the evaluation factors set forth in this RFP. The most advantageous proposal may or may not have received the most points. The award is subject to appropriate Department and Commission approval.

13. Protest Deadline

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

Kathy Lamb
Finance Director/Chief Procurement Officer
City of Aztec
201 W Chaco
Aztec, NM 87410

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

C. GENERAL REQUIREMENTS

1. Acceptance of Conditions Governing the Procurement

Potential Offerors must indicate their acceptance of the Conditions Governing the Procurement section in the letter of transmittal. Submission of a proposal constitutes acceptance of the Evaluation Factors contained in Section V of this RFP.

2. Incurring Cost

Any cost incurred by the potential Offeror in preparation, transmittal, and/or presentation of any proposal or material submitted in response to this RFP shall be borne solely by the Offeror. Any cost incurred by the Offeror for set up and demonstration of the proposed equipment and/or system shall be borne solely by the Offeror.

3. Prime Contractor Responsibility

Any contractual agreement that may result from this RFP shall specify that the prime contractor is solely responsible for fulfillment of all requirements of the contractual

agreement with the City of Aztec which may derive from this RFP. The City of Aztec entering into a contractual agreement with a vendor will make payments to only the prime contractor.

4. Amended Proposals

An Offeror may submit an amended proposal before the deadline for receipt of proposals. Such amended proposals must be complete replacements for a previously submitted proposal and must be clearly identified as such in the transmittal letter. The City of Aztec's personnel will not merge, collate, or assemble proposal materials.

5. Offeror's Rights to Withdraw Proposal

Offerors will be allowed to withdraw their proposals at any time prior to the deadline for receipt of proposals. The Offeror must submit a written withdrawal request addressed to the Procurement Manager and signed by the Offeror's duly authorized representative.

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

6. Proposal Offer Firm

Responses to this RFP, including proposal prices for services, will be considered firm for one hundred twenty (120) days after the due date for receipt of proposals or ninety (90) days after the due date for the receipt of a best and final offer, if the Offeror is invited or required to submit one.

7. Disclosure of Proposal Contents

- A. Proposals will be kept confidential until negotiations and the award are completed by the City of Aztec. At that time, all proposals and documents pertaining to the proposals will be open to the public, except for material that is clearly marked proprietary or confidential. The Procurement Manager will not disclose or make public any pages of a proposal on which the potential Offeror has stamped or imprinted "proprietary" or "confidential" subject to the following requirements:
- B. Proprietary or confidential data shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal.
- C. Confidential data is restricted to:
 1. confidential financial information concerning the Offeror's organization;
 2. and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, NMSA 1978 § 57-3A-1 to 57-3A-7.
 3. PLEASE NOTE: The price of products offered or the cost of services proposed **shall not be designated** as proprietary or confidential information.

If a request is received for disclosure of data for which an Offeror has made a written request for confidentiality, the City of Aztec shall examine the Offeror's request and make a written determination that specifies which portions of the proposal should be disclosed. Unless the Offeror takes legal action to prevent the disclosure, the proposal will be so disclosed. The proposal shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential data.

8. No Obligation

This RFP in no manner obligates the City of Aztec to the use of any Offeror's services until a valid written contract is awarded and approved by appropriate authorities.

9. Termination

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

10. Sufficient Appropriation

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

11. Legal Review

The City of Aztec requires that all Offerors agree to be bound by the General Requirements contained in this RFP. Any Offeror's concerns must be promptly submitted in writing to the attention of the Procurement Manager.

12. Governing Law

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

13. Basis for Proposal

Only information supplied, in writing, by the City of Aztec through the Procurement Manager or in this RFP should be used as the basis for the preparation of Offeror proposals.

14. Contract Terms and Conditions

The contract between the City of Aztec and a contractor will follow the format specified by the City of Aztec and contain the terms and conditions set forth in the Sample Contract Appendix H. However, the City of Aztec reserves the right to negotiate provisions in addition to those contained in this RFP (Sample Contract) with any Offeror. The contents of this RFP, as revised and/or supplemented, and the successful Offeror's proposal will be incorporated into and become part of any resultant contract.

The City of Aztec discourages exceptions from the contract terms and conditions as set forth in the RFP Sample Contract. Such exceptions may cause a proposal to be rejected as nonresponsive when, in the sole judgment of the City of Aztec (and its evaluation team), the proposal appears to be conditioned on the exception, or correction of what is deemed to be a deficiency, or an unacceptable exception is proposed which would require a substantial proposal rewrite to correct.

Should an Offeror object to any of the terms and conditions as set forth in the RFP Sample Contract (APPENDIX H) strongly enough to propose alternate terms and conditions in spite of the above, the Offeror must propose **specific** alternative language. The City of Aztec may or may not accept the alternative language. General references to the Offeror's terms and conditions or attempts at complete substitutions of the Sample Contract are not acceptable to the City of Aztec and will result in disqualification of the Offeror's proposal.

Offerors must provide a brief description of the purpose and impact, if any, of each proposed change followed by the specific proposed alternate wording.

Describe any work, whether by subject area or nature of work, which would not be covered by your compensation proposal.

If an Offeror fails to propose any alternate terms and conditions during the procurement process (the RFP process prior to selection as successful Offeror), no proposed alternate terms and conditions will be considered later during the negotiation process. Failure to propose alternate terms and conditions during the procurement process (the RFP process prior to selection as successful Offeror) is an **explicit agreement** by the Offeror that the contractual terms and conditions contained herein are **accepted** by the Offeror.

15. Offeror's Terms and Conditions

Offerors must submit with the proposal a complete set of any additional terms and conditions they expect to have included in a contract negotiated with the City of Aztec. Please see Section II.C.15 for requirements.

16. Contract Deviations

Any additional terms and conditions, which may be the subject of negotiation (such terms and conditions having been proposed during the procurement process, that is, the RFP process prior to selection as successful Offeror), will be discussed only between the City of Aztec and the Offeror selected and shall not be deemed an opportunity to amend the Offeror's proposal.

17. Offeror Qualifications

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

18. Right to Waive Minor Irregularities

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

19. Change in Contractor Representatives

The City of Aztec reserves the right to require a change in contractor representatives if the assigned representative(s) is (are) not, in the opinion of the City of Aztec, adequately meeting the needs of the City of Aztec.

20. Notice of Penalties

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

21. City Rights

The City of Aztec in agreement with the Evaluation Committee reserves the right to accept all or a portion of a potential Offeror's proposal.

22. Right to Publish

Throughout the duration of this procurement process and contract term, Offerors and contractors must secure from the City of Aztec written approval prior to the release of any information that pertains to the potential work or activities covered by this procurement and/or the City of Aztec's contracts deriving from this procurement. Failure to adhere to this requirement may result in disqualification of the Offeror's proposal or removal from the contract.

23. Ownership of Proposals

All documents submitted in response to the RFP shall become property of the City of Aztec

24. Confidentiality

Any confidential information provided to, or developed by, the contractor in the performance of the contract resulting from this RFP shall be kept confidential and shall not be made available to any individual or organization by the contractor without the prior written approval of the City of Aztec.

The Contractor(s) agrees to protect the confidentiality of all confidential information and not to publish or disclose such information to any third party without the procuring the City of Aztec's written permission.

25. Electronic mail address required

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

26. Use of Electronic Versions of this RFP

This RFP is being made available by electronic means. In the event of conflict between a version of the RFP in the Offeror's possession and the version maintained by the City of Aztec, the Offeror acknowledges that the version maintained by the City of Aztec shall

govern. Please refer to: <http://www.aztecm.gov/purchasing/office.html> or City's electronic e-procurement system through vendor registry.

27. Campaign Contribution Disclosure Form

Offeror must complete, sign, and return the Campaign Contribution Disclosure Form, APPENDIX C, as a part of their proposal. This requirement applies regardless whether a covered contribution was made or not made for the identified official. Failure to complete and return the signed unaltered form will result in disqualification.

28. Submittal Form

Offeror's proposal must be accompanied by the Submittal Form located in APPENDIX B which must be completed and signed by an individual person authorized to obligate the company. The letter of transmittal MUST:

1. Identify the submitting business entity.
2. Identify the name, title, telephone, and e-mail address of the person authorized by the Offeror organization to contractually obligate the business entity providing the Offer.
3. Identify the name, title, telephone, and e-mail address of the person authorized to negotiate the contract on behalf of the organization (if different than (2) above).
4. Identify the names, titles, telephone, and e-mail addresses of persons to be contacted for clarification/questions regarding proposal content.
5. Identify sub-contractors (if any) anticipated to be utilized in the performance of any resultant contract award.
6. Describe the relationship with any other entity which will be used in the performance of this awarded contract.
7. Identify the following with a check mark and signature where required:
 - a. **Explicitly** indicate acceptance of the Conditions Governing the Procurement stated in Section II. C.1;
 - b. **Explicitly** indicate acceptance of Section V of this RFP; and
 - c. Acknowledge receipt of any and all amendments to this RFP.
8. Be signed by the person identified in paragraph 2 above.

29. Disclosure Regarding Responsibility

- A. Any prospective Contractor and any of its Principals who enter into a contract greater than sixty thousand dollars (\$60,000.00) with The City of Aztec for professional services, tangible personal property, services or construction agrees to disclose whether the Contractor, or any principal of the Contractor's company:
 1. is presently debarred, suspended, proposed for debarment, or declared ineligible for award of contract by any federal entity, state agency or local public body;
 2. has within a three-year period preceding this offer, been convicted in a criminal matter or had a civil judgment rendered against them for:
 - a. the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) contract or subcontract;

- b. violation of Federal or state antitrust statutes related to the submission of offers;
or
 - c. the commission in any federal or state jurisdiction of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violation of Federal criminal tax law, or receiving stolen property;
3. is presently indicted for, or otherwise criminally or civilly charged by any (federal state or local) government entity with the commission of any of the offenses enumerated in paragraph A of this disclosure;
4. has, preceding this offer, been notified of any delinquent Federal or state taxes in an amount that exceeds \$3,000.00 of which the liability remains unsatisfied. Taxes are considered delinquent if the following criteria apply.
- a. The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge of the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.
 - b. The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.
 - c. Have within a three year period preceding this offer, had one or more contracts terminated for default by any federal or state agency or local public body.)
- B. Principal, for the purpose of this disclosure, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity or related entities.
- C. The Contractor shall provide immediate written notice to the City of Aztec Procurement Manager or other party to this Agreement if, at any time during the term of this Agreement, the Contractor learns that the Contractor's disclosure was at any time erroneous or became erroneous by reason of changed circumstances.
- D. A disclosure that any of the items in this requirement exist will not necessarily result in termination of this Agreement. However, the disclosure will be considered in the determination of the Contractor's responsibility and ability to perform under this Agreement. Failure of the Contractor to furnish a disclosure or provide additional information as requested will render the Offeror nonresponsive.
- E. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the disclosure required by this document. The knowledge and information of a Contractor is not required to exceed that which is the normally possessed by a prudent person in the ordinary course of business dealings.

- F. The disclosure requirement provided is a material representation of fact upon which reliance was placed when making an award and is a continuing material representation of the facts during the term of this Agreement. If during the performance of the contract, the Contractor is indicted for or otherwise criminally or civilly charged by any government entity (federal, state or local) with commission of any offenses named in this document the Contractor must provide immediate written notice to the City of Aztec Procurement Manager. If it is later determined that the Contractor knowingly rendered an erroneous disclosure, in addition to other remedies available to the City of Aztec may terminate the involved contract for cause. Still further the City of Aztec may suspend or debar the Contractor from eligibility for future solicitations until such time as the matter is resolved to the satisfaction of the City of Aztec.

30. New Mexico Preferences

To ensure adequate consideration and application of NMSA 1978, § 13-1-21 (as amended), Offerors **must** include a copy of their preference certificate with their proposal. Certificates for preferences must be obtained through the New Mexico Department of Taxation & Revenue <http://www.tax.newmexico.gov/Businesses/in-state-veteran-preference-certification.aspx>.

A. New Mexico Business Preference

B. New Mexico Resident Veterans Business Preference

In addition to a copy of the certification, the Offeror should sign and complete the Resident Veterans Preference Certificate form, as provided in this RFP.

The City of Aztec shall not award a business both a resident business preference and a resident veteran business preference.

The New Mexico Preferences shall not apply when the expenditures for this RFP includes federal funds.

31. Bribery and Kickbacks

By law (Section 13-1-191, NMSA, 1978) the City is required to inform Offerors of the following: (1) it is a third-degree felony under New Mexico law to commit the offense of bribery of a public officer or public employee (Section 30-24-1, NMSA, 1978); (2) it is a third-degree felony to commit the offense of demanding or receiving a bribe by a public officer or public employee (Section 30-24-2, NMSA, 1978); (3) it is a fourth-degree felony to commit the offense of soliciting or receiving illegal kickbacks (Section 30-41-1, NMSA, 1978); (4) it is a fourth-degree felony to commit the offense of offering or paying illegal kickbacks (Section 30-41-2, NMSA, 1978).

32. Conflict of Interest

- a. Offeror warrants that it presently has no interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of service under this contract.

b. Offeror must notify the City's Chief Procurement Officer if any employee(s) of the requesting department or the Finance Department have a financial interest in the Offeror. If yes, the Offeror must specify the employee(s) name in their proposal.

III. RESPONSE FORMAT AND ORGANIZATION

NUMBER OF RESPONSES

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

NUMBER OF COPIES

Offeror's proposal must be clearly labeled and numbered and indexed as outlined in **Section III.C. Proposal Format**. Proposals must be submitted as outlined below. The original copy shall be clearly marked as such on the front of the binder. Each portion of the proposal (technical/cost) must be submitted in separate binders and must be prominently displayed on the front cover. Envelopes, packages or boxes containing the original and the copies must be clearly labeled and submitted in a sealed envelope, package, or box bearing the following information:

Offerors should deliver:

ONE (1) ORIGINAL, FOUR (4) HARD COPIES, and ONE (1) ELECTRONIC COPY of the proposal; ORIGINAL and COPY shall be in separate labeled binders. **The electronic version/copy can NOT be emailed.**

- Proposals containing confidential information **must** be submitted as two separate binders:
 - **Unredacted** version for evaluation purposes
 - **Redacted** version (information blacked out and not omitted or removed) for the public file

The electronic version/copy of the proposal **must** mirror the physical proposal submitted (i.e. One (1) **unredacted cd/usb**, one (1) **redacted cd/usb**). **The electronic version can NOT be emailed.**

The original, hard copy and electronic copy information **must** be identical. In the event of a conflict between versions of the submitted proposal, the Original hard copy shall govern.

Any proposal that does not adhere to the requirements of this Section and **Section III.C.1 Response Format and Organization**, may be deemed non-responsive and rejected on that basis.

PROPOSAL FORMAT

All proposals must be submitted as follows:

Hard copies must be typewritten on standard 8 ½ x 11 inch paper (larger paper is permissible for charts, spreadsheets, etc.) and placed within binders with tabs delineating each section.

Total pages allowed in the Proposal: 30 – limited to the proposal summary and technical specifications response. All other items required in the technical proposal do not count towards the total pages.

Proposal Content and Organization

Direct reference to pre-prepared or promotional material may be used if referenced and clearly marked. Promotional material should be minimal. The proposal must be organized and indexed in the following format and must contain, at a minimum, all listed items in the sequence indicated.

- A. Signed Submittal Form
- B. Table of Contents
- C. Proposal Summary (Optional)
- D. Technical Specifications Response
- E. Completed Cost Response Form
- F. Business Specifications
 - 1) Signed Campaign Contribution Form
 - 2) Debarment/Suspension Form
 - 3) Current Insurance Certificate
 - 4) Completed W-9
 - 5) New Mexico Preferences (If applicable)
 - 6) Response to Contract Terms and Conditions
 - 7) Offeror's Additional Terms and Conditions
- G. Other Supporting Material (If applicable)

Within each section of the proposal, Offerors should address the items in the order indicated above. All forms provided in this RFP must be thoroughly completed and included in the appropriate section of the proposal. All discussion of proposed costs, rates or expenses must occur only on the cost response form.

The proposal summary may be included by potential Offerors to provide the Evaluation Committee with an overview of the proposal; however, this material will not be used in the evaluation process unless specifically referenced from other portions of the Offeror's proposal.

IV. SPECIFICATIONS

Offerors 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.

DETAILED SCOPE OF WORK

Materials: The City may supply and install any and/or all materials needed for each project depending on the size and scope of each project assigned.

Job Order Limits: A single Job Order project will be limited to total costs not to exceed \$59,999. The City is not allowed to separate work and issue separate purchase orders whose combined total exceed the job order limits in order to utilize this agreement. It is unknown, the volume of work that may be generated by this Agreement.

New Mexico Contractors License: Contractors shall be licensed for the work to be performed by this Agreement by the State of New Mexico, Regulation and Licensing Department, Construction Industries Division (CID). Contractor shall have experience in all areas of work as described above. Staff performing work shall be experienced and qualified in areas related to the Agreement.

DESCRIPTION OF THE PROJECT

- A. Through this Request for Proposal (RFP), the City of Aztec (City) is requesting RFP's from qualified firms (Offerors) to furnish all labor, equipment, and materials for installation and termination of optical fiber cable for multiple projects over a four (4) year term for the City of Aztec (COA).
- B. The Contract will include a multi-term contract for multiple fiber optic projects during the term of this contract. The optical fiber cable will be a continuation of the City of Aztec's network connecting major electric facilities, City buildings and Schools.
- C. The unit prices for each line item on the Cost Proposal shall include all overhead cost such as labor, equipment, and all materials necessary to furnish and install, test, and termination of optical fiber cable. The total cost for each project is derived from estimated quantities multiplied by unit cost for each segment required. If actual quantities of work differ from the estimated quantities on the Cost Proposal, unit pricing shall prevail and the unit prices quoted shall be used to add or deduct from the project total cost, by appropriate Change Order.
- D. All projects shall adhere to the City of Aztec Joint Use Guidelines, the National Electric Code (NEC) and the National Electric Safety Code (NESC). The

Contractor shall be responsible for any and all fees/penalties for non-compliance.

E. Work Order Request

- a. Each project will be requested using a Work Order or project request process.
- b. The Work Order Request or Project Request, with signatures of the Contractor and COA representatives will serve as the supplemental agreement for each project.
- c. The Work Order Request or Project request will include the project details, including but not limited to the following: project description, location (description/map), itemized line items based on the contract pricing, start date, and number of days for completion.

TECHNICAL SPECIFICATIONS

- A. For each project the path designated shall be followed and splice points installed, as indicated on the map provided for that project. The primary fiber cable to be used as the backbone will consist of 96 fiber single-mode optical fiber cable.
- B. Contractor is responsible for all materials not supplied by COA, tools, labor, equipment, and any other items necessary to completely install the optical fiber backbone between all of the nodes reference the drawing for each project, terminate said cables and test said cables in accordance with this RFP. This includes, but is not limited to, optical fiber cable, fiber distribution centers, connector panels, optical fiber connectors, labels, fire-stopping and tools and materials necessary to effect a complete installation.

The Contractor shall supply all materials using the manufacturers and catalog numbers provided on the attached Cost Response Form. Alternate materials may be accepted with written approval from COA.

C. OPTICAL FIBER CABLE

The fiber optic cable shall be supplied using the manufacturers and catalog numbers as listed on Cost Response Form. The City will specify the estimated total lineal feet of optical fiber cable to be used for each project. Any waste cable, cable attributed to span sag, or other miscellaneous cable lengths will be the responsibility of the Contractor and City will not be charged for the unused cable.

D. CABLE SUPPORTING HARDWARE

1. Cable supporting hardware shall be supplied using the manufacturer and catalog numbers as listed on Cost Response Form. Alternate materials may be accepted with written approval from COA.
2. Anchor and Guy Assemblies shall be connected to existing anchors. Any additional anchors needed, will be provided by the Contractor as part of the project cost.

E. MARKING

A marker will be attached beginning with the first (1st) pole attachment, from any crossing, underground riser or segment beginning point and every pole thereafter. Cable marking labels will be provided by the Contractor. The cable shall be marked with the appropriate owners label when dark fiber is leased by COA. This label will be installed on the City's fiber outside of the splicing enclosure.

F. CABLE INSTALLATION

1. The optical cable shall be attached to existing COA poles and placed above the communications space (as prescribed by the COA). The cable shall be placed 12" to 20" below the lowest electrical conductor when the cable is placed on pole line paths known as "distribution". The cable shall be placed at a distance specified by the COA when the cable is placed on pole line paths known as "transmission".
2. All terminations shall be fusion type with a dB loss of less than .04dB per splice. No mechanical terminations will be accepted.
3. Underground sections will be place in trenches provided by the Contractor.
4. Installation requirements: Tracer wire must be installed with every underground installation. Any over-head cable must have a cable tag installed at every pole attachment. Installation of cables shall meet all NESC, NEC, and COA installations and guidelines and codes.
5. Only COA fiber will occupy this space. Any other COA entity or an entity leasing dark fiber from COA shall be installed in the communication space.
6. Overhead to underground transition points shall have 12ft of U-Duct installed from ground level.

G. FIRE-STOPPING

1. All penetrations through fire or smoke rated partitions or structures effected either vertically or horizontally, shall be restored to their original rating using the methods specified in the Nelson Fire-stopping Technical Manual.
2. Each entrance conduit into each building occupied by the new cable shall be fire-stopped using a cementitious compound in accordance with Nelson's Technical Manual.

H. OPTICAL FIBER TERMINATION HARDWARE

1. All optical fiber cables will be terminated in rack-mounted termination enclosures and shall be supplied using the manufacturer and catalog numbers as listed on Cost Response Form. Alternate materials may be accepted with written approval from COA.

I. RACK MOUNT PANELS

1. Panels shall be supplied using the manufacturer and catalog numbers as listed on Cost Response Form. Alternate materials may be accepted with written approval from COA.
2. Each optical fiber panel shall be assigned a unique identifier that identifies its location on the relay rack upon which it is mounted. A self-adhesive label will be installed on the outside of each panel in a visible location and will comply with UL 969 for performance and legibility.
3. Each port of each optical fiber distribution center shall be equipped with a unique identifier that relates to the housing and termination position. A self-adhesive label will be installed at each port number and will comply with UL 969 for performance and legibility.

J. OPTICAL FIBER TESTING

1. Testing shall be carried out in accordance with this RFP. This includes bi-directional pre-testing and testing (on the reel) and testing of the installed condition of the cabling system and its components with an optical time domain reflectometer (OTDR).
2. Testing shall be performed on each cabling link (connector to connector).
3. Testing shall not include any active devices or passive devices within the link or

channel other than cable, connectors, and splices, i.e. link attenuation does not include such devices as optical bypass switches, couplers, repeaters, or optical amplifiers.

4. All tests shall be documented including optical loss testing, (OLT) dual wavelength attenuation measurements for singlemode links and channels and OTDR traces and event tables for singlemode links and channels. Documentation shall also include optical length measurements.

K. QUALITY ASSURANCE

1. TESTING. All testing procedures and field-test instruments shall comply with applicable requirements of:
 - i. ANSI Z136.2, ANS For Safe Use Of Optical Fiber Communication Systems Utilizing Laser Diode And LED Sources
 - ii. ANSI/EIA/TIA-455-50B, Light Launch Conditions For Long-Length Graded-Index Optical Fiber Spectral Attenuation Measurements
 - iii. ANSI/TIA/EIA-455-59A, Measurement of Fiber Point Discontinuities Using an OTDR.
 - iv. ANSI/TIA/EIA-455-60A, Measurement of Fiber or Cable Length Using an OTDR.
 - v. ANSI/TIA/EIA-455-61A, Measurement of Fiber or Cable Attenuation Using an OTDR.
 - vi. ANSI/TIA/EIA-526-7, Optical Power Loss Measurements of Installed Singlemode Fiber Cable Plant.
 - vii. ANSI/TIA/EIA-568-B.1, Commercial Building Telecommunications Cabling Standard, Part 1, General Requirements.
 - viii. ANSI/TIA/EIA-568-B.3, Optical Fiber Cabling Components Standard.

L. FIELD PERSONNEL

1. Trained technicians who have successfully attended an appropriate training program, which includes testing with an OLT and an OTDR and have obtained a certificate as proof thereof shall execute the tests. These certificates may have been issued by any

of the following organizations or an equivalent organization and shall be submitted with the RFP:

- a) Manufacturer of the fiber optic cable and/or the fiber optic connectors.
- b) Manufacturer of the test equipment used for the field certification.
- c) Training organizations (e.g., BICSI, A Telecommunications Association headquarters in Tampa, Florida; ACP [Association of Cabling Professionals™] Cabling Business Institute located in Dallas, Texas)

M. WITNESS AND REVIEW OF TESTING

1. The City's designated representative shall be invited to witness and/or review field-testing.
2. The City's designated representative shall be notified of the start date of the testing phase five (5) business days before testing commences.
3. The City's designated representative may select a random sample of 5% of the installed links. The City's designated representative shall test these randomly selected links and the results are to be stored in accordance with Section S., Administration of this RFP. The results obtained shall be compared to the data provided by the installation contractor. If more than 2% of the sample results differ in terms of the pass/fail determination, the installation contractor under supervision of the representative shall repeat 100% testing at no cost to the City.

N. EXECUTION

1. All tests performed on optical fiber cabling that use a laser or LED in a test set shall be carried out with safety precautions in accordance with ANSI Z136.2.
2. All outlets, cables, patch panels and associated components shall be fully assembled and labeled prior to field-testing. Any testing performed on incomplete systems shall be redone on completion of the work.

O. OPTICAL FIBER CABLE TESTING

1. Testing shall be performed on each cabling segment (connector to connector).

2. Testing of the cabling shall be performed using high-quality test cords of the same fiber type as the cabling under test. The test cords for OLT testing shall be between 1 m and 5 m in length. The test cords for OTDR testing shall be approximately 100 m for the launch cable and at least 25m for the receive cable.
3. All installed cabling links and channels shall be field-tested and pass the test requirements and analysis as described in here. Any link or channel that fails these requirements shall be diagnosed and corrected. Any corrective action that must take place shall be documented and followed with a new test to prove that the corrected link or channel meets performance requirements. The final and passing result of the tests for all links and channels shall be provided in the test results documentation in accordance with Section T below.

P. Acceptance of the test results shall be given in writing and digital PDF after the project is fully completed and tested in accordance with Contract Documents and to the satisfaction of the Owner. If the owner is not the City of Aztec, an additional copy will be delivered to the City of Aztec Electric Director or Electric Superintendent in both formats.

Q. OPTICAL LOSS TESTING – Backbone Link

1. Singlemode backbone links shall be tested at 1310 nm and 1550 nm in accordance with ANSI/TIA/EIA-526-7, Method A.1, One Reference Jumper or the equivalent method.
2. Link attenuation does not include any active devices or passive devices other than cable, connectors, and splices, i.e. link attenuation does not include such devices as optical bypass switches, couplers, repeaters, or optical amplifiers.
3. Use the One Reference Jumper Method specified by ANSI/TIA/EIA-526-14A, Method B and ANSI/TIA/EIA-526-7, Method A.1 or the equivalent method. The user shall follow the procedures established by these standards or application notes to accurately conduct performance testing.

R. OTDR TESTING

1. Backbone, horizontal and centralized links shall be tested at the appropriate operating wavelengths for anomalies and to ensure uniformity of cable attenuation and connector insertion loss.
 - a) Backbone singlemode: 1310 nm and 1550 nm.

2. Each fiber link and channel shall be tested in one direction.
3. A launch cable shall be installed between the OTDR and the first link connection.
4. A receive cable shall be installed after the last link connection.
5. Reflective events (connections) shall not exceed 0.75 dB.
6. Non-reflective events (splices) shall not exceed 0.4 dB.
7. Manufacturers fiber cable loss specifications will be used to calculate link total link loss.
8. Length Measurement
 - a) The length of each fiber shall be recorded and delivered to the COA Electric Director or Electric Superintendent.
 - b) It is preferable that the optical length be measured using an OLT or OTDR.

9. Chromatic Dispersion Measurement

Chromatic Dispersion testing of each fiber shall be performed on each fiber of each segment of the installation. The bit error rate (BER) for each fiber shall not exceed 1176 at 10 Gb/s (1000 Gigabits per second).

S. ADMINISTRATION

1. Test results documentation
 - a) Test results saved within the field-test instrument shall be transferred into a Windows™-based spreadsheet that allows for the maintenance, inspection and archiving of the test records. These test records shall be uploaded to the PC unaltered, i.e., “as saved in the field-test instrument”.
 - b) The test results documentation shall be available for inspection by the Owner Engineer or the Owner’s representative as well as COA during the installation period and shall be passed to the Owner's representative as well as COA's Electric Director or Electric Superintendent within five (5) working days of completion of tests on cabling served by a telecommunications room or of backbone cabling. The

installer shall retain a copy to aid preparation of as-built information.

- c) The documentation for the complete project shall be stored and delivered on CD-ROM prior to Owner acceptance of the project. This CD-ROM shall include the software tools required to view, inspect, and print any selection of the test reports.
- d) Circuit IDs reported by the test instrument should match the specified label ID.
- e) The detailed test results documentation data is to be provided in an electronic format for each tested optical fiber and shall contain the following information:
 - i. The identification of the customer site as specified by the end- user.
 - ii. The fiber identification number
 - iii. The length for each optical fiber
 - iv. Test results to include OTDR link and channel traces and event tables at the appropriate wavelength(s).
 - v. The length for each optical fiber as calculated by the OTDR.
 - vi. The overall Pass/Fail evaluation of the link-under-test for OLT and OTDR measurements.

2. Record copy and as-built drawings

- a) Record hard copy drawings at the end of the project shall be in CAD format and include notations reflecting the as built conditions of any additions to or variation from the drawings provided such as, but not limited to cable paths and termination point. Digital copies will also be provided and shall be in PDF format. As-built CAD files shall be given to the Owner as well as COA's Electric Director or Electric Superintendent within five (5) business days of completion.
- b) The as-built drawings shall include, but are not limited to block diagrams, frame and cable labeling, cable termination points, equipment room layouts and frame installation details. The as-built shall include all field changes made up to construction completion:
 - i. Field directed changes to pull schedule.

- ii. Field directed changes to cross connect and patching schedule.
- iii. Horizontal cable routing changes.
- iv. Backbone cable routing or location changes.
- v. Associated detail drawings.

T. WARRANTY

1. The fiber optic cable manufactures warranty shall be provided to the City with the Proposal submittal.
2. The successful awarded Offeror shall provide an installation warranty from any defects of installation for a period of two (2) years. Since the fiber optic backbone will provide increased reliability for the customers of the City's electric utility, a maximum twenty-four (24) hour onsite response time shall be required during the warranty period.

U. SAFETY

1. The successful Offeror shall provide evidence of a safety program based on American Public Power Association (APPA) guidelines and occupational safety and health act (OSHA) guidelines. Contractor tail board documents shall be available at all times for review by COA personnel. Upon the completion of the project, all tail board documentation shall be submitted to the COA's Project Manager.
2. The successful Offeror shall coordinate all traffic restrictions and issues with the City Of Aztec's Project Manager, Electric Director or Electric Superintendent. All Traffic Control Plans shall be submitted to the City of Aztec's Project Manager for approval a minimum of one (1) week before the project is scheduled.
3. When working the "Power Space", as defined by the COA and or NESC, the successful Offeror shall use qualified personnel for the work. OSHA defines qualified personnel. The bid documents shall include names and qualifications of qualified personnel.

V. ON-CALL EMERGENCY REPAIR SERVICES

1. Offeror shall provide on-call emergency repairs to the fiber optic cable system. Emergency repairs will be available twenty-four (24) hours per day, 365 days per year. This will include repair of cable knockdown or cable break or any service outage related to the fiber optic cable or termination panels.
 - a) Offeror shall be on site within six (6) hours of receiving an emergency service call from a City of Aztec representative. Offeror shall assess the damages, and provide the City of Aztec representative with recommendations for the repair. After Offeror has obtained authorization from the City of Aztec representative, Offeror shall begin repairs within eight (8) hours of receiving a repair service call. The repair work shall continue until repairs and testing are completed.
 - b) Offeror must include their hourly rate sheet for emergency repair services for after normal business hours.
 - c) Tracer wire must be installed with every underground installation. Any over-head cable needs a cable tag installed at every pole attachment.

BUSINESS SPECIFICATIONS

Submittal Form

The Offeror's proposal **must** be accompanied by the Submittal Form located in APPENDIX B. The form **must** be completed and **must** be signed by the person authorized to obligate the company.

Campaign Contribution Disclosure Form

The Offeror **must** complete an unaltered Campaign Contribution Disclosure Form and submit a signed copy with the Offeror's proposal. This must be accomplished whether or not an applicable contribution has been made. (See APPENDIX C)

Debarment/Suspension Form

The Offeror must complete the Debarment/Suspension Form and submit a signed copy with the Offeror's proposal. (APPENDIX D)

Certificate(s) of Insurance

The Offeror must include current Certificate(s) of insurance

W-9 Form

The Offeror must include a completed W-9 form. IRS link to current form and instructions:
<https://www.irs.gov/forms-pubs/about-form-w-9>

Resident Business or Resident Veterans Preference

To ensure adequate consideration and application of NMSA 1978, § 13-1-21 (as amended), Offerors must include a copy of their preference certificate in this section. In addition, for resident Veterans Preference, the attached certification Form (APPENDIX E) must accompany any Offer and any business wishing to receive the preference must complete and sign the form.

Contractual Considerations

All commercial, technical, legal or other conditions or exceptions relating to the provisions of the RFP and the draft Agreement must be clearly stated in this section of the proposal. Respondents should be aware that any conditions or exceptions are made solely at the risk of the Respondent and the City reserves the right to reject proposals containing any unacceptable conditions or exceptions. Respondents shall use this section to discuss guarantees and warranties that the Respondent will offer the City and the risks it is willing to take.

COST

Offerors must complete the Cost Response Form in APPENDIX F.

V. EVALUATION

EVALUATION POINT SUMMARY

The following is a summary of evaluation factors with point values assigned to each. These weighted factors will be used in the evaluation of individual potential Offeror proposals by sub-category.

Factors	Points Available
Quality and completeness of the RFP. The proposal will be evaluated on the basis of thoroughness, and a demonstrated and proven insight into the scope of work.	5
Technical competence and experience installing fiber optic cable and materials.	20
Certification(s) of Contractor's staff.	10
Safety Compliance Program	5
Repair and Warranty Service. Ability to provide timely repair and warranty services.	15
Past record of performance on contracts with City of Aztec, government agencies or private industry with respect to such factors as control of costs, quantity and quality fo work and ability to meet schedules.	25
Cost Proposal	20
Business Specifications	
Bus1. Submittal Form	Pass/Fail
Bus2. Signed Campaign Contribution Disclosure Form	Pass/Fail
Bus3. Debarment/Suspension Form	Pass/Fail
Bus4. Certificate of Insurance	Pass/Fail
Bus5. W9 Complete	Pass/Fail
Total Possible Points	100
Bus7.A New Mexico Preference - Resident Vendor Points per Section IV C. 6 <i>Certification must be included to be considered</i> OR	5
Bus.5.B New Mexico Preference - Resident Veterans Points per Section IV C.6 <i>Certification must be included to be considered</i>	10

Table 1: Evaluation Point Summary

EVALUATION FACTORS

Cost Proposal

The evaluation of each Offeror's cost proposal will be conducted using the following formula:

$$\frac{\text{Lowest Responsive Offer Bid}}{\text{-----}} \quad \text{X 20}$$

This Offeror's Bid

EVALUATION PROCESS

1. All Offeror proposals will be reviewed for compliance with the requirements and specifications stated within the RFP. Proposals deemed non-responsive will be eliminated from further consideration.
2. The Procurement Manager may contact the Offeror for clarification of the response as specified in Section II. B.7.
3. The Evaluation Committee may use other sources to perform the evaluation as specified in Section II. C.18.
4. Responsive proposals will be evaluated on the requirements in Section IV, which have been assigned a point value. The responsible Offerors with the highest scores will be selected as finalist Offerors, based upon the proposals submitted. The responsible Offerors whose proposals are most advantageous to the City of Aztec taking into consideration the evaluation factors in Section IV will be recommended for award (as specified in Section II. B.8). Please note, however, that a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.

APPENDIX A: ACKNOWLEDGEMENT OF RECEIPT FORM

REQUEST FOR PROPOSAL
RFP 2020-742 FURNISH & INSTALL FIBER OPTIC CABLE AND MATERIALS
ACKNOWLEDGEMENT OF RECEIPT FORM

In acknowledgement of receipt of this Request for Proposal the undersigned agrees that s/he has received a complete copy, beginning with the title page and table of contents, and ending with APPENDIX H.

The acknowledgement of receipt should be signed and returned to the Procurement Manager no later than 1:00 PM MST/MDT on March 23, 2020. Only potential Offerors who elect to return this form completed with the indicated intention of submitting a proposal will receive copies of all Offeror written questions and the written responses to those questions as well as RFP amendments, if any are issued.

FIRM: _____

REPRESENTED BY: _____

TITLE: _____ PHONE NO.: _____

E-MAIL: _____ FAX NO.: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

SIGNATURE: _____ DATE: _____

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

Firm does/does not (circle one) intend to respond to this Request for Proposal.

Kathy Lamb, Procurement Manager
RFP 2020-742 FURNISH & INSTALL FIBER OPTIC CABLE AND MATERIALS
City of Aztec
201 W Chaco
Aztec NM 87410
Fax: 505-334-7649
E-mail: klamb@aztecnm.gov

APPENDIX B: SUBMITTAL FORM

REQUEST FOR PROPOSALS SUBMITTAL FORM
RFP 2020-742 FURNISH & INSTALL FIBER OPTIC CABLE AND MATERIALS
Sealed proposals due by **March 30, 2020, 3:00 P.M. MDT**

1. OFFEROR INFORMATION

COMPANY NAME

ADDRESS/CITY/STATE/ZIP

If a corporation, state of incorporation: _____

New Mexico Tax ID No: _____ Federal Tax Id No: _____

2. CONTACT PERSON TO CLARIFY/RESPOND TO INQUIRIES

NAME TELEPHONE NUMBER

TITLE EMAIL ADDRESS

3. PERSON AUTHORIZED TO CONTRACTUALLY OBLIGATE ON BEHALF OF THIS OFFER

NAME TELEPHONE NUMBER

TITLE EMAIL ADDRESS

4. PERSON AUTHORIZED TO NEGOTIATE ON BEHALF OF THIS OFFER

NAME TELEPHONE NUMBER

TITLE EMAIL ADDRESS

IMPORTANT – PROPOSALS SUBMITTED ELECTRONICALLY MUST BE SUBMITTED THROUGH THE CITY’S E-PROCUREMENT SYSTEM ONLY. HARD COPY 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 PROPOSALS WILL NOT BE ACCEPTED.

Sealed proposals will be received until **March 30, 2020, 3:00 P.M. MDT** and then opened at the **City of Aztec Finance Department**. The opening of proposals shall be conducted in private in order to maintain the confidentiality of the contents of all proposals during the negotiation process.

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 Request for Proposal (“RFP”), and that the undersigned Offeror has read and understands the scope and conditions of the RFP.

The undersigned accepts the Conditions Governing the Procurement, as required in Section II.C.1.

The undersigned concurs that submission of our proposal constitutes acceptance of Section V of this RFP.

The undersigned acknowledges receipt of any and all amendments.

The undersigned hereby proposes to perform necessary professional services for the amount and upon the conditions stated in this proposal after notice of the contract.

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

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

To be a valid proposal, person authorized to contractually obligate organization must sign:

Signature

Title

Date

APPENDIX C: CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Campaign Contribution Disclosure Form

Pursuant to NMSA 1978, § 13-1-191.1 (2006), any person seeking to enter into a contract with any state agency or local public body for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources must file this form with that state agency or local public body. This form must be filed even if the contract qualifies as a small purchase or a sole source contract. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars (\$250) over the two year period.

Furthermore, the state agency or local public body shall void an executed contract or cancel a solicitation or proposed award for a proposed contract if: 1) a prospective contractor, a family member of the prospective contractor, or a representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or 2) a prospective contractor fails to submit a fully completed disclosure statement pursuant to the law.

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

The following definitions apply:

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

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

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

“Pendency of the procurement process” means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals.

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

“Prospective contractor” means a person who is subject to the competitive sealed proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person qualifies for a sole source or a small purchase contract.

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

DISCLOSURE OF CONTRIBUTIONS MADE TO: Mayor Victor C. Snover, Mayor-ProTem Rosalyn A. Fry, Commissioner Mark E. Lewis, Commissioner Austin R. Randall, Commissioner Sherri A. Sipe and/or Commissioner-Elect Michael Padilla, Sr.

Contribution Made By: _____

Relation to Prospective Contractor: _____

Name of Applicable Public Official: _____

Date Contribution(s) Made: _____

Amount(s) of Contribution(s) _____

Nature of Contribution(s) _____

Purpose of Contribution(s) _____

(Attach extra pages if necessary)

Signature

Date

Title (position)

—OR—

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

Signature

Date

Title (Position)

APPENDIX D: DEBARMENT/SUSPENSION CERTIFICATION FORM

DEBARMENT/SUSPENSION CERTIFICATION FORM

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

CONFLICT OF INTEREST

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

DEBARMENT/SUSPENSION STATUS

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

CERTIFICATION

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

Signature: _____ Title: _____ Date: _____

Names Typed: _____ Company Name: _____

Address: _____ City/State/Zip: _____

APPENDIX E: NEW MEXICO PREFERENCE RESIDENT VETERANS CERTIFICATION

New Mexico Preference Resident Veterans Certification

Reminder, a copy of Resident Veterans Preference Certificate must be submitted with the proposal in order to ensure adequate consideration and application of NMSA 1978, § 13-1-21 (as amended).

_____ (NAME OF CONTRACTOR) hereby certifies the following in regard to application of the resident veterans' preference to this procurement:

Please check one box only

- I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is less than \$1M allowing me the 10% preference on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

- I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than \$1M but less than \$5M allowing me the 8% preference on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

- I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than \$5M allowing me the 7% preference on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

"I agree to submit a report, or reports, to the State Purchasing Division of the General Services Department declaring under penalty of perjury that during the last calendar year starting January 1 and ending on December 31, the following to be true and accurate:

"In conjunction with this procurement and the requirements of this business' application for a Resident Veteran Business Preference/Resident Veteran Contractor Preference under NMSA 1978, § 13-1-21 or 13-1-22, when awarded a contract which was on the basis of having such veterans preference, I agree to report to the State Purchasing Division of the General Services Department the awarded amount involved. I will indicate in the report the award amount as a purchase from a public body or as a public works contract from a public body as the case may be.

"I understand that knowingly giving false or misleading information on this report constitutes a crime."

I declare under penalty of perjury that this statement is true to the best of my knowledge. I understand that giving false or misleading statements about material fact regarding this matter constitutes a crime.

(Signature of Business Representative)*

(Date)

*Must be an authorized signatory for the Business. The representations made in checking the boxes constitutes a material representation by the business that is subject to protest and may result in denial of an award or termination of award of the procurement involved if the statements are proven to be incorrect.

APPENDIX F: COST RESPONSE FORM

RFP 2020-742 FURNISH & INSTALL FIBER OPTIC CABLE & MATERIALS**APPENDIX F: COST RESPONSE FORM**

Item	Description	UOM	Unit Cost
1	ADSS 12 Count Fiber	FT	
2	ADSS 48 Count Fiber	FT	
3	ADSS 96 Count Fiber	FT	
4	ADSS 144 Count Fiber	FT	
5	Clearfield 288 Cross Connect Cabinet w/SC/APC Cabinet	EA	
6	Clearfield 432 Count Cross Connect Cabinet w/SC/APC Connectors	EA	
7	Clearfield DWDM Cassette - w/SC/APC	EA	
8	Clearfield Rack Mount 2 Port Chassis	EA	
9	PLP Coyote Dome Closure (UG)	EA	
10	PLP Coyote DTC Closure (OH)	EA	
11	PLP Coyote Pole Mount Bracket	EA	
12	Vandal Proof Splice Case	EA	
13	Trunnion Assemblies ADSS Inline Pole Attachment	EA	
14	Inline Pole Attachment w/Standoff	EA	
15	Double Dead End Pole Attachment	EA	
16	Dead End with Underground Riser	EA	
17	19" Rack Terminal Shelf includes 96 Bulkheads and Pigtailed, installed	EA	

Item	Description	UOM	Unit Cost
18	In-Span Storage Rack (NM)	EA	
19	On Pole Storage Rack (3 spool, single arm)	EA	
20	19" Rack Terminal Shelf includes 48 Bulkheads and Pigtails, installed	EA	
21	19" Floor Mount Cabinet Rittal w/acc (installed)(p/n 5506099/acc, p/n 5502255,5502120,5502105)	EA	
22	19" Rack/Wall Cabinet(installed) Chatsworth (p/n 12419736:black)	EA	
23	Clearfield/Pencell Vault 30x48x24 for use with Clearfield Cabinets (p/nV7A-CZP)	EA	
24	Splice Point including 100' of Fiber Cable	EA	
25	U 4-Riser Protection U Guard	EA	
26	Cable Markers 5/8" Lettering "COA Fiber Optics" Color: Cyan with Black Lettering, Size 7"x8"	EA	
27	100 feet Yellow OFNR 2 Fiber Jumper LC to SC/APC	EA	
28	100 feet Yellow OFNR 2 Fiber Jumper SC to SC	EA	
29	SC/APC to LC/UPC SM Duplex 3 Meter Jumper	EA	
30	SC/APC to SC/APC SM Duplex 1 Meter Jumper	EA	
31	SC/APC to SC/UPC SM Duplex 1 Meter Jumper	EA	
32	36x40x24 Ply Cast Traffic Rated Vaults	EA	
33	Pencell Vault 30x48x24	EA	
34	Pencell Vault 30x48x24 - Split Lid	EA	
35	Single Fiber Fusion Splice	FT	

Item	Description	UOM	Unit Cost
36	OTDR Testing	FT	
37	Foreman and Truck Emergency Rate	HR	
38	Foreman and Truck OT Rate	HR	
39	Foreman and Truck Straight Rate	HR	
40	Groundman and Truck Straight Rate	HR	
41	Groundman/Laborer Emergency Rate	HR	
42	Lead Tech and Truck Emergency Rate	HR	
43	Lead Tech and Truck Straight Rate	HR	
44	Supervisor and Bucket Truck Emergency Rate	HR	
45	Tech and Bucket Truck OT Rate	HR	
46	Tech and Truck Emergency Rate	HR	
47	Tech and Truck Straight Rate	HR	
48	Technician Emergency Rate	HR	
49	Technician OT Rate	HR	
50	Technician Straight Rate	HR	
51	Groundman Emergency Rate	HR	
52	Groundman OT Rate	HR	
53	Groundman Straight Rate	HR	

Item	Description	UOM	Unit Cost
54	Journeyman Emergency Rate	HR	
55	Journeyman Lineman Straight Rate	HR	
TOTAL OF ALL ITEMS (QUANTITY OF 1 EA)			\$ -
<p>*NOTE: Unless otherwise indicated, all items include labor, equipment and materials necessary to properly furnish, install and/or complete the work. Minor material, tooling ect. shall be included in prices listed above.</p>			

APPENDIX G: SERVICE AGREEMENT DRAFT

**CITY OF AZTEC
Services Agreement
for (RFP Name)
Agreement # (RFP Number)**

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

WHEREAS, the City has deemed it necessary to retain the services of the Contractor to perform
planning 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:**

The Contractor shall perform professional planning services to the City, as per contractor's
response to (RFP Name), as hereafter stated: **Exhibit A Scope of Services**

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 B Payment Schedule**.

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 or End
Date) unless terminated earlier as provided herein. This agreement shall be renewed
automatically, subject to the appropriation of funds by the City Commission, from year to year
for three (3) additional consecutive one (1) year periods.

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**.

5.6 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 by 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
201 W Chaco
Aztec NM 87410

Attention: Accounts Payable
Email: acctspayable@aztecnm.gov

If City has no objections to an invoice, it shall pay the invoice in full within thirty (30) 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 thirty (30) days after receipt and may withhold payment of the disputed amount. Any objections or disputes concerning invoices shall be resolved in accordance with **Section 28 “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:

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.

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.

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
- Second: Exhibits and Attachments
- Third: Scope and Drawings
- Fourth: City's RFB/RFP
- Fifth: Specifications
- 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: Steve Mueller
City Manager
City of Aztec
201 W Chaco
Aztec, New Mexico 87410

Contractor:

34. Designated Representative and Project Manager:

City Designated Representative: Ken George
Electric Utility Director
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:

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 supercede 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.

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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 _____ 2020.

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: _____ Date: _____
City Manager Steve Mueller

Attest: _____ Date: _____
Karla Sayler, City Clerk

Approved as To Form: _____ Date: _____
Tyson K .Gobble, City Attorney