



Communities Working Together

Mid-Region Council of Governments

## REQUEST FOR PROPOSALS

# MRCOG 2020 Regional Digital Orthophotography Project

Issued: July 25, 2019

Procurement No.: RFP #2020-01

Proposal Due Date/Time: September 3, 2019, 2:00 PM (MST)

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## 1.0 INTRODUCTION

### 1.1 Purpose of this Request for Proposals

The Mid-Region Council of Governments (MRCOG) invites qualified firms (Offerors) to submit proposals for professional services for the work indicated in the title page in accordance with the specifications contained in this Request for Proposal (RFP). This RFP contains specific requests for information.

The purpose of this procurement is to select a Contractor(s) that will provide the MRCOG and cooperating entities with professional services in 2020 to obtain 4 band high-resolution, high quality, natural color digital orthophotography for a region in central New Mexico encompassing all or portions of Bernalillo, Sandoval, Santa Fe, Tarrant, and Valencia Counties. In addition, professional services for the acquisition and processing of aerial Light Detection and Ranging (LiDAR) data and building footprint data may be requested under a Contract amendment negotiated for services described in this RFP.

Contingent upon MRCOG's satisfaction with the performance of the selected Contractor and acceptance of project deliverables, MRCOG may consider a Contract amendment extending or renewing the Contract to include services to obtain subsequent digital orthophotography, LiDAR or related products in 2022 and in intervening years. The Contract including any extensions or renewals, shall not exceed four (4) years in total.

This project may be funded in part through federal funds. As such, applicable federal laws, regulations and guidelines shall be adhered to by the Contractor as part of the Contract.

### 1.2 Scope of Work

The MRCOG may desire services that cover a range of areas related to the digital camera system acquisition of aerial photography, production of 4 band high-resolution, natural color digital orthophotography. Other optional services include aerial Light Detection and Ranging (LiDAR) data acquisition and processing, elevation contours, building footprints, and related digital elevation data.

An area of approximately 3,000 to 9,000 square miles in and around the Albuquerque metropolitan area has been identified for aerial photography acquisition and digital orthophotography production in the Spring of 2020. The exact extent of this initial project may increase or decrease based on cooperating entities, available funding and the final negotiated contract.

### 1.3 Scope of Procurement

The scope of the procurement shall encompass the defined scope of work and any extensions or renewals thereof, as part of a multi-year Contract. A detailed Scope of Work with technical specifications and cost categories is found in Appendix 7 attached to this RFP.

### 1.4 Procurement Manager

The MRCOG has designated a Procurement Manager who is responsible for the conduct of this procurement. The Procurement Manager is:

Kim Monjaras, Procurement Manager  
809 Copper N.W.  
Albuquerque, NM 87102  
Phone: 505-247-1750, Fax: 505-247-1753  
[E-mail: kmonjaras@mrcog-nm.gov](mailto:kmonjaras@mrcog-nm.gov)

Any inquiries or requests regarding this procurement should be submitted to the Procurement Manager in writing. Offerors may contact ONLY the Procurement Manager regarding the procurement. Other MRCOG employees do not have the authority to respond on behalf of the MRCOG.

## 1.5 Definitions

This section contains definitions and abbreviations that are used throughout this RFP.

"Close of Business" means 5:00 PM local time.

"Contract" means a written agreement for the procurement of items of tangible personal property or services.

"Contractor" means a successful Offeror who enters into a binding contract.

"Determination" means the written documentation of a decision by the Procurement Manager or Procurement Officer including findings of fact supporting a decision. A determination becomes part of the procurement file.

"Desirable" The terms "may", "can", "should", "preferably", or "prefers" identifies a desirable or discretionary item or factor (as opposed to "mandatory").

"Evaluation Committee" means a body appointed by the MRCOG Executive Director to evaluate Offerors proposals.

"Finalist" is defined as an Offeror whose offer complies with all the mandatory specifications of this RFP and whose score on evaluation factors is sufficiently high to merit further consideration by the Evaluation Committee.

"Mandatory" The terms "must", "shall", "will", "is required", or "are required", identify a mandatory item or factor (as opposed to "desirable"). Failure to comply with a mandatory item or factor will result in the rejection of the Offeror's proposal.

"MRCOG" means the Mid-Region Council of Governments of New Mexico.

"Offeror" is any person, corporation, or partnership who submits a proposal.

"Procurement Manager" means the person or designee authorized by the Executive Director of MRCOG to manage and administer procurements and contracts.

"Procurement Officer" means the person or designee designated by the MRCOG to oversee all MRCOG procurement.

"Request for Proposals" or "RFP" means all documents, including those attached or incorporated by

reference, used for soliciting proposals.

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

"Responsive Offer" or "Responsive Proposal" means an offer or proposal that conforms in all material respects to the requirements set forth in the request for proposals. Material respects of a request for proposals include, but are not limited to, price, quality, quantity or delivery requirements.

## 1.6 Background Information

The MRCOG is an association of local governments in central New Mexico. Members include county, municipal and special purpose units of government in the Counties of Bernalillo, Sandoval, Tarrant, and Valencia.

Cooperating entities, or potential cooperating entities for the MRCOG 2020 Regional Digital Orthophotography Project include, but are not limited to: City of Albuquerque, Albuquerque Bernalillo County Water Utility Authority (ABCWUA), Albuquerque Metropolitan Arroyo Flood Control Authority (AMAFCA), Bernalillo County, Kirtland Air Force Base (KAFB), Village of Los Lunas, Middle Rio Grande Conservancy District (MRGCD), New Mexico Department of Transportation (NMDOT), City of Rio Rancho, Sandia Pueblo, Southern Sandoval County Arroyo Flood Control Authority (SSCAFCA), Santa Ana Pueblo, and Valencia County.

This RFP is requesting services similar to 2008 through 2018, where regional digital orthophotography projects that MRCOG coordinated with cooperating agencies, were conducted to acquire aerial photography using a digital camera system. The high-resolution orthophotography from these projects is utilized by a variety of entities for feature extraction and updating, land use/land cover analysis, detecting property improvements, and facilities management and planning.

The 2020 digital orthophotography will be distributed to the cooperating entities and other governmental agencies and is expected to be accessible to the general public through electronic internet applications. MRCOG's intent is to coordinate projects to obtain digital orthophotography in the region every two (2) years.

## 2.0 PROCUREMENT CONDITIONS

This section of the RFP contains the schedule for the procurement, describes the major procurement events and the conditions governing the procurement.

### 2.1 Sequence of Events

The Procurement Manager will make every effort to adhere to the Procurement Schedules shown in this RFP. The time frames shown however may be subject to change at the discretion of the MRCOG.

Issue RFP – July 25, 2019

Questions Due – August 20, 2019, 12:00 (noon) p.m. MST

Proposals Due- September 3, 2019, 2:00 p.m. MST

Evaluation Committee- Week of September 16, 2019

Orals (if Necessary) - Week of September 16, 2019

Selection of Finalist(s) - September 23, 2019

## 2.2 Explanation of Events

### 2.2.1 Pre-Proposal Conference

MRCOG there will be no pre-proposal conference for this RFP.

### 2.2.2 Deadline to Submit Additional Questions

Potential Offerors may submit additional written questions as to the intent or clarity of this solicitation to the Procurement Manager. All written questions must be emailed to the Procurement Manager at the address specified in this solicitation. The Procurement Manager will provide a written response only to written requests that are received at least ten (10) working days prior to the submittal due date.

### 2.2.3 Notification of Written Responses and Amendments

In order to receive notification of written responses to written questions and solicitation amendments, if any, potential Offerors must complete and submit Appendix 1 Acknowledgement of RFP Receipt as contained herein. The Acknowledgement of RFP Receipt may be hand-delivered, electronically mailed, returned by facsimile, registered or certified mail to the Procurement Manager. Offerors must include an email address on the Acknowledgement of Receipt. The Acknowledgement of RFP Receipt must be received at least five (5) working days prior to the proposal submittal due date in order for a potential Offeror to be placed on the procurement distribution list.

### 2.2.4 Procurement Distribution List for Written Responses and Amendments

Only Offerors who submit the Acknowledgement of RFP Receipt as provided in Appendix 1 will be included on the procurement distribution list. Written responses to written questions and any solicitation amendments will be emailed to all potential Offerors whose organization appears on the procurement distribution list.

### 2.2.5 Submission of Proposal

All proposals must be received by the Procurement Manager or designee no later than by the time on the date shown on the cover page of this Request for Proposals. Proposals received after this deadline will not be accepted.

The date and time will be recorded on each proposal as it is received. Proposals must be addressed and delivered to the Procurement Manager at the address listed herein. Proposals must be sealed and labeled on the outside of the package to clearly indicate that they are in response to the name of the procurement on the cover sheet. Proposals submitted by facsimile or electronic mail will not be accepted.

A public log will be kept of the names of all Offeror organizations that submitted proposals. Pursuant to Section 13-1-116 NMSA 1978, the contents of any proposal shall not be disclosed to competing Offerors prior to contract award.

### 2.2.6 Proposal Evaluation

An Evaluation Committee will evaluate proposals. During this time, the Procurement Manager may initiate discussions with Offerors who submit responsive or potentially responsive proposals for the

purpose of clarifying aspects of the proposals, but proposals may be accepted and evaluated without such discussion. The Offerors SHALL NOT initiate discussions. Potentially responsive proposals are proposals that are reasonably susceptible of being made responsive.

#### 2.2.7 Selection of Finalists

The Procurement Manager will provide the list of finalists to the Executive Director. The Procurement Manager will notify the finalist Offerors of their selections. Only finalists will be invited to participate in the subsequent steps of the procurement. The final schedule for the oral presentations (if necessary) will be determined at this time.

#### 2.2.8 Oral Presentation by Finalists (Optional)

Finalist Offerors may be required to present their proposals to the Evaluation Committee. The Procurement Manager will schedule the time for each Offeror presentation. All Offeror presentations will be held at the MRCOG address noted herein. Each presentation will be limited to thirty minutes with an additional fifteen minutes for questions and answers.

#### 2.2.9 Best and Final Offers from Finalists

Finalist Offerors may be asked to submit revisions to their proposals for the purpose of obtaining best and final offers.

#### 2.2.10 Contract Negotiations

The contract will be negotiated with the most advantageous Offeror(s). In the event that mutually agreeable terms cannot be reached within a reasonable time, defined herein as within fifteen (15) calendar days from the date that the Finalist Offeror is notified of the award, the MRCOG reserves the right to negotiate a contract with another Finalist Offeror without undertaking a new procurement process.

#### 2.2.11 Contract Award

The contract shall be awarded to the Offeror or Offerors whose scores on the evaluation factors specified herein is sufficiently high and who negotiates a Contract of mutually agreeable terms with the MRCOG within a reasonable time as defined in this solicitation.

Contracts are not valid until signed by the Executive Director of the MRCOG.

#### 2.2.12 Protest of Award

An Offeror who has submitted a responsive Offer on this RFP may protest the award of a contract resulting from the RFP. The protest must be timely and in conformance with Section 13-1-172 NMSA 1978 and applicable procurement regulations. The protest period will begin on the day following the contract award and will end at close of business on the following fifteenth calendar day. Protests must be written and must include the name and address of the protestor and the request for proposal number. It must also contain a statement of grounds for protest including appropriate supporting exhibits and it must specify the ruling requested from the Procurement Officer. The protest must be delivered to the Procurement Officer.

Kim Monjaras,  
Procurement Officer  
Mid-Region Council of Governments  
809 Copper N.W. Albuquerque, New Mexico 87102  
Phone: 505-247-1750, Fax: 505-247-1753

Protests received after the deadline will not be accepted.

## 2.3 General Requirements

This procurement will be conducted in accordance with the MRCOG procurement policy, the New Mexico Procurement Code and applicable Federal regulations.

The MRCOG requires that all Offerors agree to be bound by the "General Requirements" contained in this RFP. Any Offeror concerns must be promptly brought to the attention of the Procurement Manager.

### 2.3.1 Acceptance of Conditions Governing the Procurement

Offerors should indicate their acceptance of the "Conditions Governing the Procurement" section in the letter of transmittal.

Submission of a proposal constitutes acceptance of this solicitation's governing conditions and the evaluation factors contained herein.

### 2.3.2 Incurring Cost

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

### 2.3.3 Prime Contractor Responsibility

Any Offeror awarded a contract as a result of this RFP will be solely responsible for fulfillment of the contract with MRCOG. The MRCOG will make contract payments to only the prime contractor.

### 2.3.4 Subcontractors

Intended use of subcontractors must be clearly explained in the proposal, and major subcontractors must be identified by name. The prime contractor shall be solely responsible for the entire performance of the contract whether or not subcontractors are identified in the proposal or used in the performance of the contract.

### 2.3.5 Amended Proposals

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

### 2.3.6 Offerors' Rights to Withdraw Proposal

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

### 2.3.7 Proposal Offer Firm

Responses to this RFP will be considered firm in that revisions, alteration or changes will not be considered, other than Best and Final Offers solicited by the Evaluation Committee, for a period of ninety (90) calendar days after the due date for receipt of proposals.

### 2.3.8 Disclosure of Proposal Contents

The proposals will be kept confidential until a contract is awarded. At that time, all proposals and documents pertaining to the proposals will be open to the public, except for the material that is proprietary or confidential. The Procurement Manager will not disclose or make public any pages of a proposal on which the Offeror has stamped or imprinted "proprietary" or "confidential" subject to the following requirements.

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

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

### 2.3.9 No Obligation

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

### 2.3.10 Termination of RFP

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

### 2.3.11 Sufficient Appropriation

Any contract awarded as a result of this RFP process may be terminated if sufficient appropriations or authorizations do not exist. Sending written notice to the contractor will affect such termination. The contractor will accept the MRCOG's decision as to whether sufficient appropriations and authorizations are available as final.

### 2.3.12 Governing Law

The laws of the state of New Mexico shall govern this procurement and any agreement with Offerors that may result.

### 2.3.13 Basis for Proposal

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

### 2.3.14 Contract Terms and Conditions

The contract between the MRCOG and a contractor will follow the format specified by the MRCOG. An Offeror may review the form of contract at the office of the Procurement Manager. However, the MRCOG reserves the right to negotiate with a successful Offeror provisions in addition to those contained in this RFP.

Should an Offeror object to any of the MRCOG's terms and conditions, as contained in this Section, that Offeror must propose specific alternative language. The MRCOG may or may not accept the alternative language. General references to the Offerors terms and conditions or attempts at substantive or complete substitutions are not acceptable to the MRCOG and will result in disqualification of the Offerors proposal.

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

### 2.3.15 Approval of Contractor Personnel

Personnel proposed in the Contractor's written proposal to the procuring agency are considered material to any work performed under this RFP and subsequent contract.

During the course of this procurement and after the contract has been signed, no changes of personnel will be made by the Contractor without prior written consent of the Procurement Manager. Replacement of any Contractor personnel, if approved, shall be with personnel of equal ability, experience and qualifications. The Contractor will be responsible for any expenses incurred in familiarizing the replacement personnel to insure their being productive immediately upon receiving assignments.

Approval of the replacement personnel shall not be unreasonably withheld.

The MRCOG shall retain the right to request the removal of any of the Contractor's personnel at any time.

### 2.3.16 Contract Deviations

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

### 2.3.17 Offeror Qualifications

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

### 2.3.18 Right to Waive Technical Irregularities

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

### 2.3.19 Project Team Prohibited Activities

MRCOG employees or MRCOG committee or board members or volunteers are prohibited from participating directly or indirectly in the preparation of this procurement when the employee knows that the individual or any member of the individual's family has a financial interest in the business seeking or obtaining a contract.

### 2.3.20 Notice - Civil and Criminal Penalties

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

### 2.3.21 MRCOG Rights

The MRCOG reserves the right to accept all or a portion of the proposal of an Offeror selected for award.

### 2.3.22 Right to Publish

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

### 2.3.23 Ownership of Proposals

All documents submitted in response to this RFP shall become the property of the MRCOG. However, any technical or user documentation submitted with the proposals of non-selected Offerors shall be returned upon written request after the expiration of the protest period: Offerors not selected for award of a contract that request return of materials within the time frame specified above may pick up the documentation at the MRCOG office within a fifteen-day period following the protest period.

### 2.3.24 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.

### 2.3.25 Use of Electronic Versions of this RFP

This RFP is being made available by electronic means. If accepted by such means, the Offeror acknowledges and accepts full responsibility to ensure that no changes are made to the RFP. In the event of conflict between a version of the RFP in the Offeror's possession and the version maintained by the MRCOG, the version maintained by the MRCOG shall govern.

## 2.4 Special Provisions

This procurement may be supported in part or in whole from time to time with federal, state and local public funds. Therefore, the following certifications are required for this solicitation:

### 2.4.1 Prohibition Against Use of Federal Funds for Lobbying

Neither the Contractor nor any subcontractor may use Federal assistance funds for publicity or propaganda purposes designed to support or defeat legislation pending before Congress. An executed Certification of Restrictions on Lobbying is required as provided in Appendix 3 of this solicitation.

### 2.4.2 Debarment and Suspension

The Contractor shall provide certification required by Department of Transportation regulations, Government-wide Debarment and Suspension, 49 C.F.R. Part 29 and otherwise comply with the requirements of those regulations. Certification is required as provided in Appendix 4 of this solicitation.

### 2.4.3 Campaign Contribution Disclosure

Pursuant to the Procurement Code, Sections 13-1-28, et seq., NMSA 1978 and NMSA 1978, 13-1-191.1 (2006), as amended by Laws of 2007, Chapter 234, any prospective Contractor 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. Certification is required as provided in Appendix 5 of this solicitation.

### 2.4.4 Affirmative Action/Civil Rights Compliance

All proposals must include a certification for Affirmative Action/Civil Rights Compliance as provided in Appendix 6 of this solicitation.

## 3.0 RESPONSE FORMAT AND ORGANIZATION

### 3.1 Number of Responses

Offerors shall submit only one proposal for each Contract listed in this RFP.

### 3.2 Number of Copies

Offerors shall deliver: one original, seven identical copies, one digital copies: one complete copy and one electronic copy without "Proprietary" information in PDF format to the location specified herein on or before the closing date and time for receipt of proposals.

### 3.3 Proposal Format

All proposals must be typewritten on standard 8 1/2 x 11 paper (larger paper is permissible for charts, spreadsheets, etc.) and placed within a binder with tabs delineating each section. Proposals shall be no longer than 45 pages (single sided) excluding tabs and front and back covers.

Pages shall be single spaced with a font of no less than number 10.

#### 3.3.1 Proposal Organization

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

Tab 1. Proposal Form: Appendix 2

Tab 2. Project Understanding and Technical Approach to Tasks

Tab 3. Quality Assurance/Quality Control Plan

Tab 4. Qualifications and Resources

Tab 5. Experience Providing Products/Services and Client References

Tab 6. Schedule

Tab 7. Project Cost (Baseline and Optional) (UNDER SEPARATE COVER)

Tab 8. Forms and Certifications

Appendix 3: Certification Restriction on Lobbying

Appendix 4: Certification Debarment Suspension

Appendix 5: Campaign Contribution Disclosure Form

Appendix 6: Certification Affirmative Action/Equal Employment Opportunity

Within each section of the proposal, Offerors shall address the items in the order in which they appear in this RFP. All forms provided in the RFP must be thoroughly completed and included in the appropriate section of the proposal.

Forms and certifications included in Tab 8 are required to ensure that an Offeror has completed a responsive proposal. The completed certifications will not count toward the page limits for this solicitation.

Any proposal that does not adhere to these requirements may be deemed non-responsive and rejected on that basis.

#### 3.3.2 Proposal Form

Each proposal must contain - as the first item in the organized and indexed sequence - the fully executed Proposal Form as contained in Appendix 2. Failure to provide the form with all the information indicated to be inserted will result in rejection of the proposal as non-responsive.

## 4.0 SPECIFICATIONS

Offerors should respond in the form of a thorough narrative to each mandatory specification. The narratives along with required supporting materials will be evaluated and awarded points accordingly.

#### 4.1 Project Understanding and Technical Approach to Tasks

Offerors shall provide a detailed narrative on their technical approach and expertise in performing the tasks necessary to achieve the orthophotography products conforming to the accuracy criteria and technical specifications described in Appendix 7, Scope of Work, attached to this RFP.

For orthophotography, Offerors shall specifically address project control and targeting; preflight mission planning and flying height; the digital camera imagery capture system and specific camera model to be used on the project, sensor platform, flight management system, and aircraft; proposed flying height and photo scale; aerial triangulation (AT) techniques, approach, software, and equipment; leveraging existing DEM/DTM data for this product; new DEM/DTM data preparation and horizontal and vertical accuracies necessary for orthorectification; and, the orthophotography production process through acceptance of the deliverables.

Although the Scope of Work in Appendix 7 does not include services for acquisition and processing of LiDAR data or building footprints, these services may be requested and negotiated under a separate Contract amendment in the future. Offerors shall briefly address their expertise, including examples of previous work in LiDAR acquisition and post-processing to produce typical 1-foot and 2-foot equivalent contour accuracy bare earth surfaces.

Offerors shall indicate whether they intend to subcontract any part of the work described in this RFP. In this section, the Offeror shall identify any subcontractors including complete contact information (firm name, contact name, address, location where work will be performed, phone, fax, email), and clearly describe what type and the portion of work they will provide.

#### 4.2 Quality Assurance/Quality Control Plan

Offerors shall provide a description of quality control/quality assurance measures, standards, and processes in the project methodology that will ensure high-quality project deliverables that meet or exceed the specifications outlined in this RFP.

#### 4.3 Qualifications and Resources

Offerors shall provide a description of their qualifications and resources which demonstrate their technical expertise and ability to commit qualified personnel and resources to complete the project in a timely manner. This description shall contain complete contact information, firm establishment and primary business, experience and number of years providing the services requested in this RFP, location of the office or offices that would provide the project services; the roles of management and key personnel assigned to work on the project, including a certified photogrammetrist, and their hardware/software capabilities.

#### 4.4 Experience Providing Equivalent Products/Services and Client References

Offerors shall provide a description of relevant previous experience on past projects including area extent of the project, services provided, product deliverables and the length of time from date of notice to proceed to final product delivery. References and full contact information (organization, contact name, address, phone, fax and email address) from at least three (3) clients the Offeror has contracted with on similar projects within the last five (5) years shall be provided.

## 4.5 Schedule

Timeliness of the orthophotography data is important to MRCOG and project cooperators.

The Offeror is advised that it is intended to complete the work within a maximum of 150 calendar days after the completion of the data acquisition phase which shall occur prior to April 1, 2020 as specified in Appendix 7 of this RFP. In addition, liquidated damages will be included in the contract terms and be applied to project delays beyond the final negotiated schedule.

A Gantt chart of the project implementation schedule, including key milestones and project completion, shall be supplied by the Offeror. Offeror's shall describe their strategy for ensuring on-schedule delivery of services and products meeting all required specifications.

## 4.6 Project Cost

**MUST BE SUBMITTED UNDER SEPARTE COVER – NOT INCLUDED IN TECHNICAL PORTION OF RFP.**

Cost points shall be calculated based on the sum from the below calculation using the following formula:

Lowest Responsive Offeror's Price Compared Offeror's Price X 10 = Cost evaluation points

Cost points shall be calculated based on the sum from the below calculation using the following formula:

$$\frac{\text{Lowest Responsive Offeror's Price}}{\text{Compared Offeror's Price}} \times 10 = \text{Cost evaluation points}$$

Offerors shall provide project costs in total area as well as per square mile in accordance with Table 1 and Table 2 and Table 3 provided in Appendix 7 of this RFP. These costs shall not include applicable gross receiptstaxes.

## 5.0 EVALUATION

### 5.1 Evaluation Point Summary

The following is a summary of evaluation factors with point value assigned to each. These factors, along with the general requirements and special provisions, will be used in the evaluation of Offeror proposals.

Evaluation Factor	Points
1. Project Understanding and Technical Approach to Tasks	25
2. Quality Assurance/Quality Control Plan	15
3. Qualifications and Resources	15
4. Experience Providing Equivalent Products/Services and Client References	15
5. Schedule	20
6. Project Cost	10
<b>SUBTOTAL</b>	<b>100</b>
7. Oral Interview (If Necessary)	30
8. Best & Final Offers (If Necessary)	20
<b>TOTAL AVAILABLE</b>	<b>150</b>

## 5.2 Evaluation Process

The evaluation process will follow the steps listed below:

### 5.2.1 Proposal Compliance

All Offeror proposals will be reviewed for compliance with the mandatory requirements stated within the RFP. Proposals deemed non-responsive will be eliminated from further consideration.

### 5.2.2 Contacting Offerors

The Procurement Manager may contact the Offeror for clarification of the response as specified herein.

### 5.2.3 Finalist Selection

Responsive proposals will be evaluated on the factors detailed in this solicitation that have been assigned a point value. The responsible Offerors with the highest scores will be selected as finalist Offerors based upon the proposals submitted. The Evaluation Committee may then make a recommendation to MRCOG Executive Director for award or solicit Oral Interviews from the finalists. Finalist Offerors may then be asked to participate in Oral Interviews. At the conclusion of the Oral Interviews additional points may be awarded in accordance with the evaluation process specified herein. The Evaluation Committee may then make a recommendation to MRCOG Executive Director for award or solicit Best and Final Offers from any or all of the finalists. If Best and Final Offers are solicited, the Evaluation Committee will award additional points as specified herein and then make a final recommendation for award to the MRCOG Executive Director. A serious deficiency in the response to any one factor, however, may be grounds for rejection regardless of overall score.

**APPENDIX 1  
ACKNOWLEDGEMENT OF RFP FORM**

**RFP#: 2020-01**

In acknowledgement of receipt of this Request for Proposal the undersigned agrees that he/she has received a complete copy, beginning with the title page and table of contents, and ending with Appendix 7.

The acknowledgement of receipt should be signed and returned to the Procurement Manager. Only potential Offerors who elect to return this form completed with the indicated intention of submitting a proposal for the procurement checked below at least five (5) working days prior to the proposal due date, will receive copies of all Offeror written questions and the MRCOG's written responses to those questions as well as RFP amendments, if any are issued.

Firm / Individual	_____	
Represented by	_____	Title _____
Phone No.	_____	Fax No. _____
E-mail Address	_____	
Address	_____	
Qty/State/Zip Code	_____	
Signature *	_____	Date _____

\* Formal signature required - e-mail transmittal with scanned signature is acceptable.

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

Firm \_\_\_\_\_ does \_\_\_\_\_ does not (check one) intend to respond to this Request for Proposals.

Return to: Kim Monjaras  
809 Copper Ave. N.W., Albuquerque, NM 87102  
Phone : 505-247-1750 ; Fax : 505-247-1753  
E-mail : kmonjaras@mrcog-nm.gov

**APPENDIX 2  
PROPOSAL FORM**

**RFP#: 2020-01**

Proposing Organization \_\_\_\_\_  
Mailing Address \_\_\_\_\_  
City/State/Zip Code \_\_\_\_\_

Head of Organization \_\_\_\_\_  
Title \_\_\_\_\_  
Telephone Number \_\_\_\_\_ E-Mail Address \_\_\_\_\_

Proposal Contact Person \_\_\_\_\_  
Title \_\_\_\_\_  
Telephone Number \_\_\_\_\_ E-Mail Address \_\_\_\_\_

Contract Signatory Authority \_\_\_\_\_  
Title \_\_\_\_\_  
Telephone Number \_\_\_\_\_ E-Mail Address \_\_\_\_\_

Tax/Legal Status     Corporation     For Profit     Not-for-Profit     Government     Individual

Federal ID Number \_\_\_\_\_ State ID Number \_\_\_\_\_

1. I (We) am submitting on the procurement titled: \_\_\_\_\_
2. I (We) accept the Conditions Governing the Procurement stated within this solicitation.
3. I (We) acknowledge receipt of any and all amendments to this **RFP**, Nos. \_\_\_\_\_ to \_\_\_\_\_.

Signature of Officer \_\_\_\_\_ Date: \_\_\_\_\_

**APPENDIX 3**  
**CERTIFICATION REGARDING RESTRICTIONS ON LOBBYING**  
**RFP#: 2020-01**

I, \_\_\_\_\_, hereby certify on  
(name and title of official)

behalf of \_\_\_\_\_ that;  
(name of Contractor)

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence and officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or any employee or a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontract, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

For purposes of this Certification, this Agreement shall be considered a federal contract. This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

By: \_\_\_\_\_  
(Signature of authorized official)

\_\_\_\_\_  
(Title of authorized official)

**APPENDIX 4  
CERTIFICATION REGARDING DEBARMENT,  
SUSPENSION, AND OTHER RESPONSIBILITY MATTERS - PRIMARY COVERED  
TRANSACTIONS**

**RFP# 2020-01**

To be submitted with each bid or offer exceeding \$25,000.

The Contractor, certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and

(4) Have not within a three-year period preceding this agreement had one or more public transactions (Federal, State, or local) terminated for cause or default.

Where the Contractor is unable to certify to any of the statements in this certification, such Contractor shall attach an explanation to this proposal.

THE CONTRACTOR, \_\_\_\_\_, CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. sub- section 3801 ET SEQ. ARE APPLICABLE THERETO.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

By \_\_\_\_\_  
(Signature of authorized official)

\_\_\_\_\_  
(Title of authorized official)

**APPENDIX 5**  
**CAMPAIGN CONTRIBUTION DISCLOSURE FORM**  
**RFP#: 2020-01**

Pursuant to the Procurement Code, Sections 13-1-28, et seq., NMSA 1978 and NMSA 1978, 13-1-191.1 (2006), as amended by Laws of 2007, Chapter 234, any prospective contractor 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 bid 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 may cancel a solicitation or proposed award for a proposed contract pursuant to Section 13-1-181 NMSA 1978 or a contract that is executed may be ratified or terminated pursuant to Section 13-1-182 NMSA 1978 of the Procurement Code 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.

The state agency or local public body that procures the services or items of tangible personal property shall indicate on the form the name or names of every applicable public official, if any, for which disclosure is required by a prospective contractor.

**THIS FORM MUST BE INCLUDED IN THE REQUEST FOR PROPOSALS/BIDS AND 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 any 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 bid or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive bid.

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

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

**“Family member”** means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law of (a) a prospective contractor, if the prospective contractor is a natural person; or (b) an owner of a prospective contractor.

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

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

**“Prospective contractor”** means a person or business that is subject to the competitive sealed bid process set forth in the Procurement Code or is not required to submit a competitive sealed bid because that person or business 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 Officer of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

**DISCLOSURE OF CONTRIBUTIONS BY PROSPECTIVE CONTRACTOR:**

Contribution made by: \_\_\_\_\_ Relation to Prospective Contractor: \_\_\_\_\_

Name of Applicable Public Official: \_\_\_\_\_ Date contribution(s) Made: \_\_\_\_\_

Amount(s) of Contributions: \_\_\_\_\_

Nature of Contributions(s): \_\_\_\_\_ Purpose of Contributions(s): \_\_\_\_\_

\_\_\_\_\_  
**Signature, Title, Date**

-OR-

NO CONTRIBUTION(S) IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS (\$250.00) WERE MADE to an applicable public official by me, a family member or representative.

\_\_\_\_\_  
**Signature, Title, Date**

**APPENDIX 6**  
**CERTIFICATION REGARDING AFFIRMATIVE ACTION**  
**EQUAL EMPLOYMENT OPPORTUNITY AND NONDISCRIMINATION**  
**AHRO Form CC 2**  
**RFP#: 2020-01**

The Offeror hereby acknowledges and agrees to abide by the Special Provisions for Affirmative Action/Equal Employment Opportunity and Nondiscrimination and all other provisions, regulations and/or requirements of the Owner for Affirmative Action/Equal Employment Opportunity and Nondiscrimination.

The Offeror has participated with any agency in a previous contract or subcontract subject to any Equal Employment Opportunity and Nondiscrimination in Employment requirements.

Yes  No

Compliance reports were required to be filed in connection with such contract or subcontract.

Yes  No

The Offeror has filed all compliance reports due under applicable instruction. If this does not apply, leave blank.

Yes  No

\_\_\_\_\_  
Company Name of Offeror

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Signature

\_\_\_\_\_  
FAX Number

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
E-Mail Address

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

# **APPENDIX 7 DETAILED SCOPE OF WORK**

## **RFP #2020-01**

### **1. General Information**

#### **1.1. Overview**

The purpose of this Request for Proposals (RFP) is to receive proposals for the selection of a Contractor to provide professional services related to the production of 4 band high-resolution, natural color digital orthophotography, including, but not limited to, digital camera capture of aerial photography, project control, ground control, photogrammetry, and aerial triangulation.

Optional products in the future may include aerial Light Detection and Ranging (LiDAR) acquisition, building footprints, and processing of digital elevation data. Similar services as described in this Appendix may be requested by the MRCOG over the course of a contract negotiated for services or the extension of such contract.

MRCOG is coordinating a project with public and private entities to acquire regional digital orthophotography in spring 2020 for approximately 3,000 to 9,000 square miles in and around Albuquerque, New Mexico. The metropolitan area includes urban, suburban and rural landscapes in Bernalillo, Sandoval, Tarrant, and Valencia Counties. Terrain varies across the area, with river valleys, sloping mesas, rugged foothills, and mountainous areas reaching over 10,000 feet in elevation.

Map 1 shows the area proposed for acquisition in 2020. The exact extent of the project in 2020 may increase or decrease based on cooperating entities and available funding.

#### **1.2. Background Information**

MRCOG and project cooperators have obtained digital orthophotography every two years since 2004 and enjoy the benefits of current, high-quality regional data and cost-sharing of products. Timely delivery of imagery is important to project cooperators and increases the value of the product for all users.

In Spring 2010, MRCOG, in cooperation with US Army Corps of Engineers, Albuquerque District and the USGS National Spatial Data Infrastructure Partnership Office, acquired 1,350 square miles of LiDAR-derived digital elevation data suitable for input into the National Elevation Dataset (NED) at 1/9 arc second resolution. In addition, a bald earth DTM derived from an aerial LiDAR survey conducted at 1- and 3-meter postings in 1999 (acquired by Bernalillo County) has been used in previous projects for orthorectification.

In Spring of 2018, MRCOG, in cooperation with other agencies representing the central region of New Mexico, acquired LiDAR Quality Level 2 data according to USGS specifications. Because of this recent acquisition MRCOG will not be acquiring additional LiDAR this Spring 2020, however MRCOG may request some add on products in the future.

### **2. Digital Orthophotography**

MRCOG seeks to acquire six inch (6") or better GSD, four band (red, green, blue and near infrared), multispectral digital orthophotography from imagery acquired prior to April 1, 2020, under leaf-off conditions.

MRCOG would also like a quote for 3" resolution four band (red, green, blue and near infrared), multispectral digital orthophotography.

**2.1. Capture of aerial photography shall be accomplished using a precision digital aerial mapping camera with "area CCD array" camera architecture. **Technical Specifications****

**2.1.1. General**

Orthophotography will be delivered in the coordinate system shown below.

Ground Resolution:	0.5 US Survey Foot (6 inch) or better
Image Type:	4 Band CIR Imagery
File Format:	Geotiff
Compressed File Formats:	ECW and SID compressed format for entire project area, and other potential partial areas, at compression ratio determined in consultation with MRCOG; all compression formats shall be fully compatible with ESRI© and Trimble© software suites.
Coordinate System:	NM State Plane, Central Zone
Horizontal Datum:	NAD 1983(1992)/HARN
Map Units:	U.S. Survey Feet
Map Scale:	1:1,200 (1"=100')
Tile Size:	Full tiles required. Approximately 2700' X 2700' based on the previous acquisition grid structure. An index grid established for the project will be provided. Each tile will be approximately 60 mb or smaller.
Image Overedge:	Varies-generally ~ 200'

**2.1.2. Data Capture Method**

Data capture shall be in direct, digital form using a precision digital aerial mapping camera with "area CCD array" camera architecture, Imagery shall be acquired at a nominal ground pixel resolution sufficient for developing 6" (six inch) pixel or better orthophotography (or 3" pixel or better if this option is selected). The Contractor may resample from a smaller pixel resolution to achieve the specified pixel resolution, but in no case shall the Contractor resample from a larger pixel resolution to achieve the specified pixel resolution.

**2.1.3. Capture Conditions**

Leaf-off conditions and no haze, clouds, fog, dust, smoke, air pollution, snow, or other ground obscuring conditions shall be present. Capture shall occur within two (2) hours before and two hours after maximum sun angle, and when the sun angle is not less than 35 degrees above the horizon. Images shall not contain objectionable shadows caused by relief or low solar altitude. The downtown area of Albuquerque will be collected at high noon to minimize shadow effects of tall buildings.

In order to assure leaf-off conditions, aerial photography capture will occur prior to April 1, 2020. The capture window for central New Mexico is typically late winter through early spring, with snow conditions in the mountains varying from year to year. MRCOG may grant an exception to the April 1, 2020 acquisition period for the higher elevation terrain in the Sandia Mountains if snow cover is obscuring the ground.

#### **2.1.4 Flight Design**

The flying height above mean terrain shall be appropriate for achieving the required pixel resolution and for achieving DEM accuracy sufficient to support rectification in areas where new DTM data is required. The flight mission shall be designed such that forward lap is 60% and sidelap 30% in areas of gentle terrain and, in areas of rugged terrain, forward lap is 60% and sidelap 40% in order to ensure total project area coverage. Crab shall not be in excess of three (3) degrees; and, tilt of the camera from verticality at the instant of exposure shall not exceed three (3) degrees.

The flight mission schedule must include sufficient time for captured data to be inspected and for any necessary reflights to be completed within the capture window and prior to April 1, 2020 (see section 2.2.3 above). Reflights shall be centered on the plotted flight lines and must be taken with the same camera system. The Contractor at no additional fee must correct aerial imagery that does not meet defined specifications.

The Contractor shall notify and secure clearance from Kirtland Air Force Base (by means of electronic mail) to fly for the day or days that aerial photography will be acquired over KAFB and for any changes in this schedule due to weather or other factors.

#### **2.1.5 Horizontal Positional Accuracy**

Horizontal accuracy shall test at 2.45 feet or better at 95% confidence level (RMSE, of 1.4142 feet); National Standard for Spatial Data Accuracy (NSSDA) (reference FGDC- STD-007 .3-1998). Accuracy testing and reporting must conform to the NSSDA requirements.

Accuracy testing parameters (well-defined points, the independent source of higher accuracy acquired separately from data used in the AT solution or other production procedures, and check point distribution) shall be determined by the Contractor in consultation and with concurrence of MRCOG's Project Manager. Complete NSSDA accuracy testing results of all well-defined points shall be provided to MRCOG at the time of data delivery. MRCOG may choose to use a third party to validate the accuracy of the dataset.

#### **2.1.6 Aerial Triangulation (AT)**

Aerial triangulation will be performed using industry-standard procedures and software packages to support the horizontal accuracy requirements of the orthophotography.

#### **2.1.7 Image Quality**

Orthophotography shall be clear and sharp in detail with no noticeable blemishes and be radiometrically and geometrically corrected to enable adjacent files to be displayed simultaneously without obvious differences in tone, contrast, or position of ground features between single images, across the block, or across the database.

The most nadir part of every image will be used in mosaicing. Seam lines will be created to ensure that joins do not cut hard detail and will not cross through above ground structures. Visible seams within a tile or between tiles, which exhibit a noticeable "edge" or "displacement" effect, will be grounds for rejection of tiled or mosaiced data.

- The imagery shall not contain defects such as out-of-focus imagery, blurs, whorls, color blemishes, or any other kind of digital blemish or data corruption.
- Feature warp or misalignment, smearing, double image, or image stretching indicating bad elevation data shall not be present and will be grounds for rejection of tiled or mosaiced data.

- Distortion resulting from elevated surfaces such as bridges and interchanges or other abrupt changes in elevation shall be corrected or removed.
- Occlusion and smearing in areas of extremely high relief shall be fixed or minimized to the extent possible using overlapping orthophotos.
- Color and contrast adjustments are allowed in post process production provided that information is not lost in the shadows or highlights as a result of the process.

### **2.1.8 Image Tiling**

See Section 2.2.1 of this Scope. Tile grids be supplied by the MRCOG and extended by the Contractor in any new imagery areas.

Two attribute fields will be added to the US Survey Foot tile index: 1) TILE-locally used tile identification system; and 2) ALT\_TILE-based on township/range/section/quarter section as follows by example, T13NR02E12\_SW. Orthophoto files will be named according to the locally used tile identification.

### **2.1.9 Image Mosaics**

ECW compressed format image mosaics shall be produced in such a manner so that adjacent county mosaics can be viewed together simultaneously, and with no overlap areas (e.g. white/black "No Data" areas) obscuring any portion of the adjacent county mosaics. If 3" imagery is selected then mosaics will also be produced in 3" resolution. The following mosaics shall be produced:

- SID and ECW compressed format image mosaic at six-inch (6") GSD resolution or better shall be produced for all counties or partial counties.
- SID and ECW compressed format image mosaic at six-inch (6") GSD resolution or better of the entire project area shall be produced.
- SID and ECW format mosaic for Pueblo areas at a compression ratio determined in consultation with MRCOG shall be produced.

### **2.1.10 Project Control**

Project control shall include ground control points acquired under the supervision of a registered surveyor at sufficient density and accuracy to support production of digital orthophotography according to the technical specifications outlined in this Appendix. In addition, Airborne Global Positioning System (AGPS) control and Inertial Measurement Unit (IMU) technology shall be used as part of the digital capture system.

To the maximum extent possible and practicable, Offerors are encouraged to utilize existing ground control points or to establish points that are within public properties (i.e. within road right-of-ways). In the event ground control or targets are needed on private property, the Contractor shall notify and obtain written permission of the property owner or proper agency prior to placing these ground control targets. The Contractor shall be responsible for obtaining permissions from tribal governments for establishing control, targeting, or travel on tribal lands.

Control will be collected in NM State Plane, Central, U.S. Survey Feet, horizontal datum NAD83 (1992) HARN, and vertical datum NAVD88.

The Contractor shall provide the location and identification of all ground control and photo control points established and used during the flyover in ArcGIS shapefile or geodatabase format.

### **2.1.11 DEM/DTM**

A DTM/DEM shall be developed at a density level necessary to accurately represent the shape of the ground and support the orthophoto production and accuracy specifications as outlined in this Scope. Terrain/elevation data used in the development of the DTM/DEM shall be captured by photogrammetric techniques or derived from recent LiDAR data.

In Spring 2010, MRCOG, in cooperation with US Army Corps of Engineers, Albuquerque District and the USGS National Spatial Data Infrastructure Partnership Office, acquired LiDAR-derived digital elevation data suitable for input into the National Elevation Dataset (NED) at 1/9 arc second resolution.

The project had two acquisition components: a) LiDAR for 1000 square miles at 1.4 meters nominal pulse spacing (NPS); and b) LiDAR acquired for 300 square miles at 1.0 meter NPS in the Rio Grande floodplain (as shown in Map 2). Where this data exists, the LiDAR-derived elevation data shall be used for rectification of the 2020 aerial imagery.

In Spring 2018, MRCOG updated their LiDAR to Quality 2 data that will be made available to the contractor. Where this data exists, the LiDAR-derived elevation data shall be used for rectification of the 2020 aerial imagery.

Existing LiDAR data shall be reviewed by the Contractor to determine if significant terrain altering activity has occurred since the LiDAR data was acquired. If such an area is identified the Contractor shall update the DTM in that area.

DTM/DEM data produced by photogrammetric techniques from 2020 acquired imagery (supplemented with points and breaklines as needed to produce orthophotography meeting the accuracy requirements specified in this Scope) shall be used for rectification of 2020 imagery in project areas where no appropriate LiDAR data exists.

### **2.1.12 Metadata**

Complete, Federal Geographic Data Committee (FGDC) compliant (reference FGDC- STD-001-1998) metadata shall be provided for each component of the project, including digital orthophotography, LiDAR data, and DEM/DTM data. In addition, file-based FGDC compliant metadata shall be provided for the US Survey Foot digital orthophotography. All metadata shall be delivered at the same time and on the same media as the dataset delivery.

## **2.2. Project Deliverables**

### **2.2.1. Data**

Multiple sets of deliverables shall be required to meet the demands of distribution to project cooperators. Each drive shall include the total dataset, and three drives shall be provided. MRCOG and most cooperators will use the final deliverables with ESRI software packages and all data requested must be useable in this suite of software with no further manipulation.

Deliverables shall include:

1. Three (3) sets US Survey Foot tiled orthophotography and accompanying deliverables
  - a) A set of bundled 4-band Geotiffs
  - b) If requested, separate Natural color (RGB) Geotiff tile set and Color IR Geotiff tile set
  - c) Compression for all deliverables must be acceptable for viewing in an online

environment

- d) Tiled Geotiff and compressed ECW and SID formats
  - e) County or partial county mosaics in SID and ECW format
  - f) Pueblo area(s) (as identified with consultant) mosaic in ECW and SID formats
  - g) A full area mosaic in ECW and SID formats
  - h) Tile index with file names and alternate names in ESRI shapefile format
  - i) MRCOG will supply the tile index
  - j) Complete FGDC compliant metadata for each ortho file and by project
2. A digital flight index showing actual photo centers and dates and time of capture in ESRI shapefile format
  3. A project control list in ASCII comma delimited text format and an ESRI shapefile with point identification and x, y, and z values for all ground control positions used or acquired for the project
  4. Final AT Report describing all aspects of the AT process including graphical maps and tabular information for ground control, pass and tie points quality, and adjustment statistical results
  5. Table of NSSDA accuracy testing results for all well-defined points
  6. One (1) set of any new, tiled, DEM areas produced for this project and used in the orthorectification process including each of the following formats:
    - a) ArcGIS ASCII grid format
    - b) ArcGIS shapefile format for point and line files.
    - c) ASCII/CAD In-.txt and pt-.txt format for points and lines
    - d) Complete FGDC compliant metadata

Optional product deliverables include:

1. Map caching image creation services compatible with ESRI ArcGIS Server by county or partial county. Map cache properties including scales, storage settings, tiling scheme origin, tile width and height, image format, and DPI settings shall be determined in consultation with the project cooperators requiring caching services.
2. Building footprints with elevation
3. Contour intervals from 2018 LiDAR data

### **2.2.2. Media**

Digital data deliverables shall be provided on industry standard removable hard drives with the highest speed transfer rates available. Each "set" of deliverables as described herein will require a drive.

## **3. LiDAR Data Acquisition and Digital Elevation Data**

The acquisition of digital elevation data using Light Detection and Ranging (LiDAR) technology is identified as an option for professional services under this RFP in the future. Typical elevation data, which may be requested under a contract, includes USGS quality level 2 data. Typical local uses for LiDAR derived elevation data include floodplain mapping and risk assessment, urban planning, infrastructure planning, and preliminary engineering assessments. These products and uses are typical, but not inclusive of all possible LiDAR data services that may be requested.

Should professional services for LiDAR-derived elevation data be required, the Contractor shall consult with the Project Manager and elevation data users to determine project technical specifications, acquisition parameters, post-processing, classification, vertical accuracy, data formats, and elevation derivatives that are needed to fulfill the business use requirements of users.

#### **4. Product Acceptance Procedures**

The Contractor is responsible to assure that all services and products required by this Scope are performed and provided in a manner that meets all professional and engineering quality standards and industry accepted photogrammetric principles.

The Contractor shall warranty all project deliverables for a period of two (2) years from the final product delivery date in the project schedule as negotiated in a contract for services. The warranty shall include compliance of all deliverables to the technical specifications, product accuracy specifications, and data format and software compatibility as outlined in this Scope, or as stated and affirmed by the Contractor.

The Contractor is responsible for replacing deliverables found to be deficient or defective and costs associated with accomplishing the replacement of data under warranty shall be borne by the Contractor with no additional cost to MRCOG.

Project cooperators shall notify the MRCOG Project Manager of any observed deficiencies or defects in the data. The Project Manager shall be the point of contact with the Contractor for notification of deficiencies or defects. The warranty shall stipulate that the Contractor shall complete the repair or replacement of the defective product within ten (10) working days from receipt of a written notice from the Project Manager, or the Contractor shall meet with the Project Manager within five (5) days of receipt of the written notice of defective product or product not in compliance with specifications. If after meeting with the MRCOG Project Manager, the data is found to be deficient or defective, the repair and replacement shall be completed within ten (10) working days as stipulated herein, or within a reasonable time period agreed upon by MRCOG and the Contractor.

#### **5. Submittal Schedule**

A project schedule shall be provided by the Offeror and submitted as Tab 6 of the Offeror's proposal. The schedule shall include project tasks, duration, and a final product delivery point in calendar days from a Notice to Proceed. The project schedule serves as the basis for the Schedule of Fees negotiated as part of a contract for services for the Project.

#### **6. Project Costs**

Project costs shall be posted to Table 1 by the Offeror and submitted as Tab 7 of the Offeror's proposal.

##### **6.1 Digital Orthophotography**

Estimates of project areas in Table 1 may increase or decrease prior to data acquisition based upon project costs, number of cooperators, and final negotiated contract. Project planning efforts to this point in time indicate the area estimates shown on Table 1.

Table 1 includes costs for 4 band imagery at 3" and 6" resolution for three different project areas identified in Map 1.

Project deliverables under Table 1 shall be subject to time-sensitive pricing, including liquidated damages applied to project delays beyond the on-schedule delivery date negotiated in a contract for services.

##### **6.2 LiDAR Acquisition and Processing and Digital Elevation Data**

Professional services for the acquisition and processing of aerial Light Detection and Ranging (LiDAR) data and LiDAR-derived digital elevation products may be requested under a contract amendment that is mutually agreeable to by all Parties.

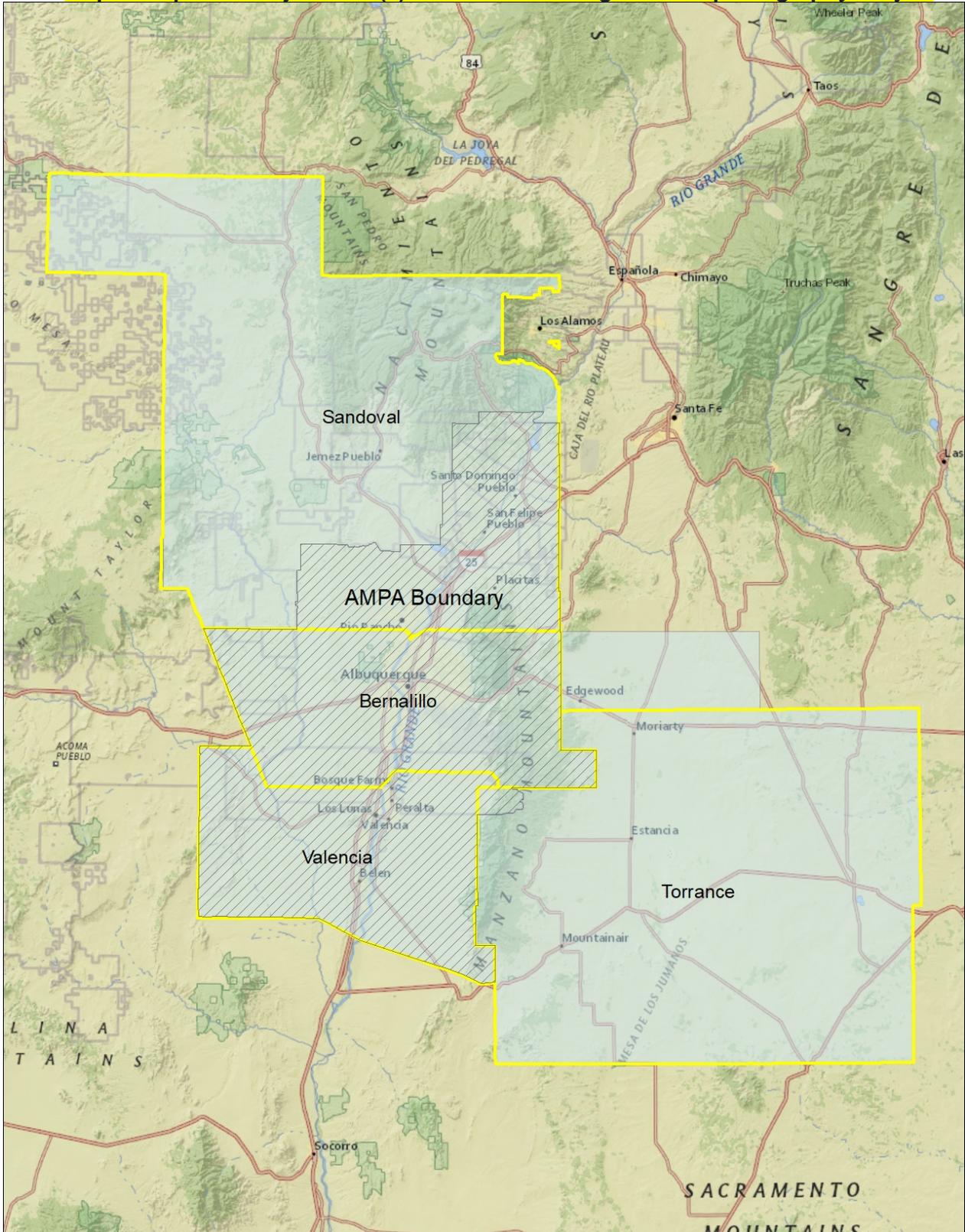
This initial acquisition will not include LiDAR but may be negotiated later if services are required during the contract period and any extension of such contract.

Table 1

MRCOG 2020 Digital Orthophotography Project Costs

Project Areas	Square Miles	Cost for 4 band 3 inch	Cost for 4 band 6 inch
AMPA Boundary Project Area			
MRCOG Boundary Project Area			
AMPA Boundary with full Sandoval County Project Area			

**Map 1 Proposed Project Area(s) - 2020 MRCOG Digital Orthophotography Project**



**\*AMPA Boundary hash marked, MRCOG Boundary in Blue, Counties outline in yellow**

## **ATTACHEMENT A DRAFT CONTRACT**

This Agreement ("Agreement") made and entered into on the date last entered below by and between the Mid-Region Council of Governments of New Mexico ("MRCOG"), an association composed of and representing local governments within New Mexico State Planning and Development District Three, and \_\_\_\_\_ ("Contractor"), collectively herein referred to as the "Parties."

In consideration of the premises and mutual obligations herein, the parties hereto do mutually agree as follows:

### **Section 1. Miscellaneous Representations.**

- A. The Contractor is licensed or otherwise authorized to conduct the business activities described in this Agreement by all governmental agencies having jurisdiction over Contractor, and Contractor has the experience and expertise to perform the work or services required in this Agreement; and MRCOG has the right and power to enter into this Agreement.
- B. MRCOG issued a Request for Proposals (RFP) for Professional Services RFP #2020-01 on \_\_\_\_\_, 2019. The Contractor submitted its proposal, dated \_\_\_\_\_, 2019 in response to the RFP.

**Section 2. Scope of Services.** The Contractor shall personally perform the following services (hereinafter referred to as the "Services") in a satisfactory and proper manner, and shall provide all necessary personnel, material, and facilities and perform all matters necessary or incidental to the Services as determined by MRCOG:

- A. Contractor shall provide all professional services to the MRCOG as described in the Scope of Work attached hereto as Exhibit A.
- B. Staffing. MRCOG designates Forest Replogle, as Project Manager. The Contractor shall keep the Project Manager fully informed on all aspects of its performance of the Services. The Project Manager will review and approve Contractor's invoices prior to payment. In the absence of the Project Manager, the MRCOG's Executive Director shall serve as Project Manager.
- C. Contractor designates \_\_\_\_\_ as Contractor's Project Manager. Contractor's Project Manager shall transmit all work product and invoices to MRCOG's Project Manager. The Contractor's Project Manager shall direct the technical, financial and staffing for the Services provided under this Agreement. Any change in Contractor's appointments of its Project Manager shall not be allowed until approved in writing by MRCOG.

**Section 3. Time of Performance.** The services described in Section 2 above shall commence on the date this Agreement is executed by the MRCOG Executive Director and shall be completed within the time frame agreed upon unless the time for completion is extended in writing by the MRCOG Executive Director.

- A. Section 4. Compensation and Method of Payment.
- B. Compensation. For performing the Services specified in Section 2 hereof, MRCOG agrees to pay Contractor pursuant to Exhibit A, Scope of Work, and Exhibit B, Schedule of Fees, attached hereto a total not to exceed \_\_\_\_\_ and No Cents (\$).
- C. Expenses. The amounts to be paid in Paragraph A of this section shall include any applicable

gross receipts taxes and shall constitute full and complete compensation for Contractor's Services under this Agreement, including all expenditures made and expenses incurred by Contractor in performing the Services.

- D. Method of Payment. Amounts due Contractor shall be paid to Contractor upon receipt by MRCOG of properly documented invoices for payment as determined by the budgetary and fiscal guidelines of MRCOG and after receipt of payment by MRCOG from the funding agencies. MRCOG shall be entitled to verify the personnel time charges and other costs charged to MRCOG pursuant to the provisions of Section 10 of this Agreement. Payments to the Contractor shall be paid within the time periods prescribed by statute.
- E. Invoices and Progress Reports. Contractor shall submit an invoice and progress report identified by individual work tasks and subtasks as illustrated in Figure 1 attached hereto. Progress reports shall include work accomplished to date, work anticipated for the next period, a description of problems, if any, and their resolution. Progress reports shall show percentage completion for tasks and subtasks. Payments shall be made only after verification and acceptance of the invoice and progress report by the MRCOG Project Manager for the amount attributable to the percentage completion of each task and subtask.
- F. Retainage. MRCOG will retain \_\_\_\_\_ and No Cents (\$) from the Exhibit B, Schedule of Fees, until the final base product identified in the Schedule of Fees, is delivered and verified complete by the MRCOG Project Manager. Retainage is being withheld to ensure the delivery of the base product pursuant to the agreed schedule and to cover any costs that may be associated with liquidated damages, as specified in Section 6 of Exhibit A, Scope of Work.
- G. Liquidated Damages. Project shall be subject to time-sensitive pricing, including liquidated damages applied to project delays beyond the on-schedule delivery date negotiated in a contract for services. Liquidated damages assessed shall be limited to the Retainage of this Agreement. For base product deliverables received after agreed upon due date and certified complete by the MRCOG Project Manager, the "On-Schedule Delivery" total project costs will be reduced by \$2,000.00 per week for Weeks 1 through 4, \$3,000.00 per week for Weeks 5 through 8 and \$4,000.00 per week for Weeks 9 through 12. Liquidated damages will not be assessed for periods of less than a week. If the Contractor anticipates that base product deliverables will not be forthcoming for receipt by the Project Manager by the conclusion of Week 12, the Contractor shall contact the Project Manager in writing prior to the conclusion of week 12. Liquidated damages assessed after the conclusion of Week 12, will be in the amount of \$4,000.00 per week until such time all Parties mutually agree to terms for all subsequent liquidated damages. Liquidated damages assessed shall be limited to the Retainage of this Agreement.

**Section 5. Independent Contractor.** Neither Contractor nor its employees are considered to be employees of MRCOG for any purpose whatsoever. Contractor is considered as an independent contractor at all times in the performance of the Services described in Section 2. Contractor further agrees that neither it nor its employees are entitled to any benefits from MRCOG under the provisions of the Workers' Compensation Act of the State of New Mexico, or to any of the benefits granted to employees of MRCOG.

#### **Section 6. Personnel.**

- A. Contractor represents that it has, or will secure at its own expense, all personnel required in performing all of the Services required under this Agreement. Such personnel shall not be employees of or have any contractual relationship with MRCOG.
- B. All the Services required hereunder will be performed by Contractor or under its supervision

and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state and local law to perform such Services.

- C. None of the work or the Services covered by this Agreement shall be subcontracted without the prior written approval of MRCOG. Any work or Services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this Agreement.

## **Section 7. Insurance.**

- A. General Requirements. The Contractor shall, at its own cost and expense, procure and maintain in full force and effect during the term of this Agreement, such insurance as is required in this Agreement. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico, and policies of insurance shall be on forms properly filed and approved by the Superintendent of Insurance, State of New Mexico. When requested by the MRCOG, Contractor shall provide to the MRCOG copies of any or all policies of insurance for the insurance coverage required in this Section. Policies of insurance shall be procured for all required coverage limits of such policies of insurance and shall not be reduced or replaced in part or in whole by self-insurance, including self-insurance retention amounts, except as provided hereinafter.
  - a. If the Contractor subcontracts, or assigns or otherwise transfers any interest in any part of this Agreement, the Contractor shall include any or all transferees in the Contractor's insurance policies or require such transferees to secure insurance to cover all hazards enumerated in this Agreement that are not covered by the Contractor's insurance policies.
  - b. The Contractor shall not violate the terms or prohibitions of insurance policies required to be furnished by the Contractor. The Contractor shall promptly notify the MRCOG of any claim or loss exceeding the amount of the deductible under such insurance policies, and certify that proper notice has been given the appropriate insurance carrier.
- B. The Contractor shall furnish the MRCOG with certificates of insurance, substantially the same as Exhibit C, and shall deliver said certificates to the Project Manager, MRCOG, 809 Copper Ave., N.W., Albuquerque, New Mexico 87102. All insurance certificates shall provide that thirty (30) days written notice be given to the Project Manager before a policy is canceled, materially changed, or not renewed.
  - a. Various types of required insurance may be written in one or more policies. A certificate or policy which states that the failure to give MRCOG notice imposes no liability or obligation on the insurer shall not be in compliance with this Section. For instance, certificates or policies stating that the insurance company shall "endeavor to notify" and that "failure to give such notice imposes no obligation" on the insurance company are unacceptable to MRCOG. Documents establishing the continuation or replacement of insurance shall be received by the MRCOG no less than 30 days prior to the expiration of the insurance coverage.
  - b. Approval of Insurance. Even though a "Notice to Proceed" may have been given, neither the Contractor nor any contractors, assignees or other transferees of the Contractor shall begin any operations pursuant to this Agreement until the required insurance has been obtained and proper certificates of insurance delivered to the Project Manager. Neither approval nor failure to disapprove insurance certificates of insurance by the MRCOG shall relieve the Contractor or any transferees of full responsibility to maintain the required insurance in full force and effect.
- C. Commercial General Liability Including Automobile. The Contractor shall procure and

maintain policies of insurance for commercial general liability insurance and vehicle liability insurance for all vehicles used in its operation, as further described below. All such policies of insurance shall have liability limits in amounts of One Million Dollars (\$1,000,000) single limit liability for bodily injury, including death, and property damage in any one occurrence. Said policies of insurance shall include coverage for premises (if applicable), operations, and the Contractor's contractual liability to the MRCOG hereunder, and claims arising out of or from the Contractor's performance of this Agreement. Contractual liability coverage shall specifically insure the indemnification provision of this Agreement. The insurance policies shall contain "products" and "completed operations" coverage (if applicable) and shall not be written on a "claims made" form. The insurance policies shall include coverage for all use of, activities on, or operations with respect to MRCOG premises, coverage for the use of all owned, non-- owned, hired automobiles, vehicles, and other equipment, both on and off work. MRCOG reserves the right to review and modify the limits stated above at one-year intervals to give effect to the changing risk management environment and inflationary trends.

- D. Increased Limits. If, during the term of this contract, the legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act (Sections 41-4-1 through 41-4-27, NMSA 1978) to an amount greater than that required for commercial general liability including auto above, the MRCOG may require Contractor to increase the limits of any insurance required herein to an amount equal to such increased Tort Claim Act maximum limits of liability.
- E. Additional Insured. The MRCOG shall be named as an additional insured on each insurance policy required for commercial general liability including auto above.
- F. Workers' Compensation Insurance. The Contractor shall comply with the provisions of the New Mexico Workers' Compensation Act, the Subsequent Injury Act, and the New Mexico Occupational Disease Disablement Law. The Contractor shall procure and maintain during the term of this Agreement, complete Workers' and Employer's Liability Insurance in accordance with New Mexico laws and regulations. Such insurance shall include coverage permitted under Section 52-1-10, NMSA 1978,
- G. For safety devices. With respect to Worker's Compensation Insurance, if the Contractor elects to be self-insured, the Contractor shall comply with the applicable requirements of law. If any portion of the work is to be sublet, the Contractor shall require the subtenants similarly to provide such coverage (or qualify as a self-insured) for all the latter's employees to be engaged in such work. The Contractor hereby covenants and agrees that the MRCOG, its officers, or employees will not be liable or responsible for any claims or actions occasioned by the Contractor's failure to comply with the provisions of this subparagraph and that the indemnification provision of this Agreement shall apply to this paragraph. It is expressly agreed that the employees of Contractor are not MRCOG employees for any purpose.
- H. Self-Insurance Retention/Deductibles. In the event, any of the insurance policies required in this Section 7 (except as allowed by New Mexico law regarding Workers' Compensation) contain a self-insurance retention provision (whether or not in the form of a deductible) for each such amount, the Contractor shall post a bond or an irrevocable letter of credit made exclusively for the benefit of the MRCOG and held by a bank authorized to do business in New Mexico which is acceptable to MRCOG.
- I. Contents Insurance. Contractor shall be solely responsible for obtaining insurance policies that provide coverage for losses of Contractor owned property. MRCOG shall not be required to provide such insurance coverage or be responsible for payment of Contractor's cost for such insurance.

- J. Professional Liability Insurance. The small, at its own cost and expense, procure and maintain in full force and effect during the term of this Agreement, Professional Liability (errors and omissions) insurance in an amount not less than One Million Dollars (\$1,000,000) combined single limit of liability per occurrence with a general aggregate of (\$1,000,000).

**Section 8. Reports and Information and Ownership of and Use of Documents.**

- A. Reports and Information. During the performance of this Agreement and upon the completion or earlier termination of the services required under this Agreement, Contractor shall furnish to MRCOG such statements, records, reports, data and information as requested by MRCOG pertaining to matters covered by this Agreement.
- a. Release of Information. Contractor shall not release any data, reports or other information of any nature whatsoever to any entity or person other than to MRCOG unless specifically authorized to do so in writing in advance by MRCOG.
- B. Ownership and Use of Documents. Contractor's work product produced pursuant to this Agreement shall become the sole property of the MRCOG. Such work product shall include but not be limited to reports, background data, drawings, calculations, technical data, data related specifically to this Agreement, specifications, manuals and/or related documents.
- C. Computer Program Licensing Agreements. MRCOG shall have the option to require (at MRCOG's cost) that the Contractor provide any and all computer licensing agreements necessary to permit MRCOG to use computer programs and data related to the services performed by Contractor under this Agreement.
- D. Future Use. MRCOG's use of computer programs and computer stored data developed under the requirements of this Agreement for purposes other than the services required of Contractor as specified in this Agreement shall be at MRCOG's risk, and Contractor shall be held harmless for such use. Contractor does not represent that the computer programs and computer data developed under this Agreement are suitable for reuse under different conditions. This paragraph shall not apply to the performance of this Agreement nor in instances where the Contractor is retained to perform subsequent services using the work product developed pursuant to this Agreement.
- E. Publication, Reproduction and Use of Materials. No materials or documents produced in whole or in part under this Agreement shall be subject to copyright in the United States or in any other country. The MRCOG shall have the unrestricted authority and right to copyright, publish, disclose, distribute and otherwise use, in whole or in part, any reports, data, or other materials (hereafter "Materials") prepared under this Agreement. Contractor may use Materials created under this Agreement as reference and research materials and as representations of the services performed under this agreement only after the Materials are completed and accepted by MRCOG, provided that such Materials shall not include the MRCOG's confidential or proprietary information, to the extent the MRCOG provides Contractor with notice that such materials are considered confidential or proprietary by the MRCOG. The MRCOG shall provide professional credit for Contractor in promotional materials for services rendered pursuant to this Agreement, if so, requested in writing by Contractor.

**Section 9. Establishment and Maintenance of Records.** Records shall be maintained by Contractor in accordance with applicable law and requirements prescribed by MRCOG with respect to all matters covered by this Agreement. Except as otherwise authorized by MRCOG, such records shall be maintained for a period of three (3) years after receipt of final payment under

this Agreement.

**Section 10. Audits and Inspections.** At any time during normal business hours and as often as MRCOG may deem necessary, there shall be made available to MRCOG or the funding agency and the State Auditor for examination all of Contractor's records with respect to all matters covered by this Agreement. Contractor shall permit such agency to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement. Contractor shall maintain such records at its office and provide them to the MRCOG within fifteen days after receiving a written request for such records by the MRCOG. In the event Contractor does not wish to make its books and records available at the MRCOG offices, then Contractor shall pay reasonable travel and accommodation expenses for the State Auditor, funding agency, MRCOG staff or their duly authorized representatives to travel to Contractor's offices to conduct the audit.

**Section 11. Changes.** MRCOG may, from time to time, request changes in the Services to be performed hereunder. Such changes, including any increase or decrease in the amount of Contractor's compensation, that are mutually agreed upon by and between MRCOG and Contractor shall be incorporated in written amendments to this Agreement.

#### **Section 12. Suspension.**

- A. **Suspension of Work.** MRCOG shall be entitled at any time to suspend, delay, or interrupt all or any part of the Services required of Contractor by this Agreement. Such order shall be in writing and identified as a "Suspension of Work Order". Contractor shall incur no further costs allocable to the Services during the period of suspension, delay, or interruption. Contractor shall be reimbursed for all services performed up to the time of its receipt of the Suspension of Work Order, to the extent such services are accepted pursuant to Section 4 of this Agreement.
- B. **Resumption of Work.** In the event MRCOG cancels a Suspension of Work Order, Contractor shall resume performing the Services in a timely manner and shall be entitled to an equitable adjustment in compensation but only if MRCOG determines that the Suspension of Work Order resulted in additional costs to Contractor in its performance of the Services and Contractor asserts a claim for such additional costs within thirty days after the cancellation of the Suspension of Work Order.

#### **Section 13. Breaches and Dispute Resolution**

- A. **Disputes.** Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of MRCOG, herein defined as the MRCOG Procurement Officer. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the MRCOG Procurement Officer. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the MRCOG Procurement Officer shall be binding upon the Contractor and the Contractor shall abide by the decision.
- B. **Performance during Dispute.** Unless otherwise directed by MRCOG, the Contractor shall continue performance under this Contract while matters in dispute are being resolved.
- C. **Remedies.** If any controversy or claim arising out of this Contract cannot be settled by the Parties directly, the Parties will submit the controversy or claim to mediation using a mediator mutually acceptable to the Parties or, if the Parties cannot agree on a mediator, a mediator chosen by mediators chosen by each Party. If the Parties are unable, after a

reasonable period of time, to produce through such mediation a mutually satisfactory resolution on the matter, the dispute will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the MRCOG is located.

- D. Right and Remedies. The duties and obligations imposed by this Contract and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by MRCOG or the Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

#### **Section 14. Termination.**

- A. Termination by MRCOG for Cause, Ten Days' Notice. If through any cause, Contractor shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if Contractor shall violate any of the covenants, agreements or stipulations of this Agreement, MRCOG shall thereupon have the right to terminate this Agreement by giving written notice to Contractor of such termination and specifying the effective date thereof at least ten (10) days before the effective date of such termination.
  - a. Notwithstanding the above, Contractor shall not be relieved of liability to MRCOG for damages sustained by MRCOG by virtue of any breach of this Agreement by Contractor, and MRCOG may withhold any payment to Contractor for the purposes of set-off until such time as the exact amount of damages due MRCOG from Contractor is determined.
- B. Termination by MRCOG: 20 Days' Notice. MRCOG may terminate this Agreement at any time without cause by giving at least twenty (20) days' notice in writing to Contractor. Said twenty (20) days shall run from the day on which Contractor received said notice of termination. In the event this Agreement is terminated by MRCOG as provided herein, the Contractor shall be paid an amount that bears the same ratio to the total compensation as the Services actually performed bear to the total Services of Contractor covered by this Agreement, less payments of compensation previously made. If this Agreement is terminated due to the fault of Contractor, Section 14A hereof, relative to termination, shall apply.
- C. Work Product. In the event of termination under the provisions of Section 14, all finished or unfinished documents, data, maps, studies, surveys, drawings, models, photographs and reports prepared by Contractor under this Agreement shall, at the option of the MRCOG, become the property of the MRCOG, and Contractor shall deliver such work product to MRCOG within thirty (30) days of receipt of the request of the MRCOG.
- D. Termination by Contractor: 30 Days' Notice. The Contractor shall be entitled to terminate this Agreement in the event of a default by the MRCOG in the performance of any covenant or agreement herein required to be performed by the MRCOG and the failure of the MRCOG to remedy such default for a period of thirty (30) days after receipt from the Contractor of written notice to remedy the same; provided, however, that no notice of termination, as above provided, shall be of any force or effect if the MRCOG shall have remedied the default prior to receipt of the Contractor's notice of termination.
- E. **Non-Funding. The performance of this Agreement is contingent upon the MRCOG and funding agencies making the appropriations and authorizations necessary for the performance of this Agreement. If sufficient appropriations and authorizations are not made, this Agreement may be terminated by MRCOG by giving notice to Contractor.**

**Such event shall not constitute an event default by MRCOG. All payment obligations of the MRCOG shall cease upon the date of termination. The MRCOG's decision as to whether sufficient appropriations are available or sufficient shall be binding on Contractor and shall be final. The date of termination issued pursuant to this paragraph shall be the date a notice of termination is received by Contractor.**

## **Section 15. General Conditions.**

### **A. Contract Interpretation.**

- a. **Separability.** In the event any covenant, condition or provision herein is held to be invalid, illegal, or unenforceable by any court of competent jurisdiction on, such covenant, condition or provision shall be deemed amended to conform to applicable laws so as to be valid or enforceable or, if it cannot be so amended without materially altering the intention of the parties, it shall be stricken. If stricken, all other covenants, conditions and provisions of this Agreement shall remain in full force and effect provided that the striking of such covenants, conditions or provisions does not materially prejudice either the MRCOG or the Contractor in its respective rights and obligations contained in the valid covenants, conditions or provisions of this Agreement.
- b. **Waiver.** No provision of this Agreement shall be deemed to have been waived by either party unless such waiver is in writing, signed by the party making the waiver and addressed to the other party, nor shall any custom or practice which may evolve between the parties in the administration of the terms of this Agreement be construed to waive or lessen the right of either party to insist upon the performance of the other party in strict accordance with the terms of this Agreement. Further, the waiver by any party of a breach by the other party or any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition thereof.
- c. **Gender, Singular/Plural.** Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.
- d. **Captions and Section Headings.** The captions, section headings, and table of contents contained in this Agreement are for convenience of reference only, and in no way limit, define, or enlarge the terms, scope, and conditions of this Agreement.
- e. **Entire Agreement.** This Agreement represents the entire contract between the parties and, except as otherwise provided herein, may not be amended, changed, modified, or altered without the written consent of the parties hereto. This Agreement incorporates all of the conditions, agreements, and understandings between the parties concerning the subject matter of this contract, and all such conditions, understandings and agreements have been merged into this written Agreement. No prior condition, agreement, or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this written Agreement.
- f. **Relationship of Contract Documents.** All documents attached to this Agreement or incorporated into this Agreement are complementary, and any requirement of one contract document shall be as binding as if required by all.
- g. **Exhibits Certificates, Documents Incorporated and Attachments - Incorporation by Reference.** All certificates, documents, exhibits, attachments, riders, and addenda referred to in this Agreement are hereby incorporated into this Agreement by

reference and made a part hereof as though set forth in full in this Agreement to the extent they are consistent with its conditions and terms.

- h. Applicable Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New Mexico, and the laws applicable to and, rules and regulations of MRCOG.
- i. Successors. All covenants, stipulations and agreements in this Agreement shall extend to and bind the legal representatives, successors, and assigns of the respective parties hereto.
- j. Governmental Rights and Powers. Nothing in this Agreement shall be construed or interpreted as limiting, relinquishing, or waiving any rights of ownership enjoyed by MRCOG, or waiving or limiting the MRCOG's control over the management, operations, or maintenance of its property, except as specifically provided in this Agreement, or impairing, exercising or defining governmental rights and the police powers of the MRCOG.

#### B. Discrimination Prohibited.

- a. General. In the performance of this Agreement, the Contractor shall not discriminate against any person or class of persons by reason of race, color, religion, sex, sexual orientation, national origin or ancestry, age, or physical or mental handicap.
- b. Civil/Human Rights Laws. In the performance of this Agreement, the Contractor shall not on the grounds of race, color, religion, sex, national origin or ancestry, age, or physical or mental handicap, discriminate or permit discrimination against any person or group of persons in any manner prohibited by Title 49 CFR Parts 21 and 23, the Civil Rights Act of 1964, as amended, the Equal Pay Act of 1963, the Rehabilitation Act of 1973, and the New Mexico Human Rights Act. Without limiting the generality of the foregoing, the Contractor agrees to not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin or ancestry, age, or physical or mental handicap. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, national origin or ancestry, age, or physical or mental handicap. Such action shall include, but not be limited to, employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; selection for training; and disciplinary actions and grievances. The Contractor agrees to post in conspicuous places available to employees, and applicants for employment, notice to be provided setting forth the provisions of this non-- discrimination clause.
- c. The Contractor, for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration of this Agreement, does hereby covenant and agree that (1) no person on the grounds of race, color, religion, sex, national origin or ancestry, age, or physical or mental handicap shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of any property of MRCOG upon which the Services are performed, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, religion, sex, national origin or ancestry, age, or physical or mental handicap shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Contractor shall use the MRCOG property (when applicable) in compliance with all other requirements imposed by, or pursuant to, the New Mexico Human Rights Act, and 49 CFR Parts 21 and 23, and as said

regulations may be amended.

- d. Contractor's violation of this Section shall be deemed a material breach of this Agreement.
- e. Contractor shall include the provisions of this Section in every subcontract, including procurement of materials and leases of equipment (unless exempt by the above referenced regulations or orders of instructions issued pursuant thereto), in the performance of this Agreement.

C. Indemnification Agreement.

- a. General Indemnification. The Contractor agrees to indemnify and hold harmless the MRCOG, including its officers, employees or agents, against all liability, claims, damages, losses or expenses, including attorney's fees, only to the extent that the liability, claims, damages, losses or costs are caused by, or arise out of, the acts or omissions of the Contractor or its officers, employees or agents.
- b. Insurance. The indemnity required herein shall not be limited by the specification of insurance coverages in this Agreement.
- c. Survives the Term. This indemnification agreement shall survive the term of this Agreement.

D. Scope of Indemnification. With respect to any liability, claims, damages, losses or costs that are caused by, or arise out of, the acts or omissions of the Contractor or its officers, employees or agents, the Contractor shall: (a) investigate or cause the investigation of such liability, claims, damages, losses or costs, (b) negotiate or cause to be negotiated all claims made, even when Contractor considers such claims to be groundless, false or fraudulent in the name of the MRCOG and on behalf of the MRCOG, (c) and satisfy judgments finally establishing the liability of the MRCOG in all actions for which the Contractor is obligated to indemnify the MRCOG, including its officers, employees or agents, pursuant to this section, and (d) pay, or cause to be paid: (1) all costs assessed against MRCOG in any such legal proceeding, (2) any interest accruing up to the date of payment by Contractor, (3) all premiums charged upon appeal bonds required in such proceedings, and (4) all expenses incurred by MRCOG for investigation, negotiation, and defense, including but not limited to expert witnesses' and attorneys' fees incurred.

E. Miscellaneous. MRCOG shall, promptly upon receipt, give Contractor every demand, notice, summons, or other process received in any claim or legal proceeding for which Contractor is required to indemnify MRCOG. In the event MRCOG fails to give Contractor notice of any such demand, notice, summons, or other process received by MRCOG, and such failure to give said notice shall result in prejudice to Contractor in its defense of any action or legal proceeding in which Contractor is required to indemnify the MRCOG, then such failure or delay shall release Contractor of its liability as set forth in this Indemnification Agreement, but only insofar as the particular claim or legal proceeding is concerned, and only to the extent of such prejudice. Nothing in this subsection shall be deemed a change or modification in any manner whatsoever of the method or conditions of preserving, asserting, or enforcing any claim or legal liability against the MRCOG. This Section shall not be construed as a waiver of the MRCOG's immunity. The provisions of this Section shall not be construed to prohibit Contractor from seeking contribution or indemnity from any third party which may have caused or contributed to the event for which Contractor indemnifies the MRCOG.

F. Assignment and Subletting. The Contractor shall not assign or otherwise transfer, in whole or in part, any of the rights granted in this Agreement without the prior written approval of the MRCOG. The MRCOG shall not be required to approve any assignment or other transfer

of this Agreement that would result in the Services required in this Agreement being performed by any other person or entity than the Contractor.

G. Ethics.

- a. Conflict of Interest. Upon execution of this Agreement, or within five (5) days after the acquisition of any interest described in this Section during the term of this Agreement, the Contractor shall disclose in writing to the MRCOG whether any member of the MRCOG Board of Directors, officer or employee of the MRCOG has or hereafter acquires any direct, indirect, legal, or beneficial interest in the Contractor or in any contract, lease, or agreement between the MRCOG and the Contractor, or in any franchise, concession, right, or privilege of any nature granted by the MRCOG to the Contractor in this Agreement or otherwise.
- b. Fair Dealing. The Contractor covenants and warrants that the only person or firm interested in this Agreement as principal (or principals) are named in this Agreement and that no other person or firm has any interest in this Agreement, and this Agreement is entered into by the Contractor without collusion on the part of the Contractor with any person or firm, without fraud and in good faith. The Contractor also covenants and warrants that no gratuities, in the form of entertainment, gifts or otherwise, were, or during the term of this Agreement, shall be, offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the MRCOG with a view toward securing this Agreement or for securing more favorable treatment with respect to making any determinations with respect to performing this Agreement.

H. Approvals, Consents and Notices.

- a. All notices, consents, and approvals required by this Contract shall be in writing and shall be given by registered or certified mail by depositing the same in the U.S. mail in the continental United States, postage prepaid, return receipt requested, or by personal delivery, or by facsimile transmission to the "FAX" number given below, provided that the completed transmission is electronically verified. Either party shall have the right, by giving written notice to the other, to change the address at which its notices are to be received. Until any such change is made, notices shall be delivered as follows:

MRCOG: Dewey V. Cave, Executive Director  
Certified Mail : 809 Copper Avenue, NW  
Albuquerque, NM 87102

Personal Delivery: Same as above  
Telephone: 505-247-1750  
FAX: 505-247-1753

Contractor:  
Contractor Official:  
Title:  
Certified Mail:

Personal Delivery:  
Telephone:  
FAX Transmission:  
E-Mail Address:

- I. The effective date of such notice, consent or approval shall be the date of the receipt as shown by the U.S. Postal Service Return Receipt, or the date personal delivery is certified, or the date of electronic verification of the facsimile transmission, unless provided otherwise in this Agreement.
- J. Non-Liability of Agents and Employees. No member, officer, agent, director, or employee of MRCOG or Contractor shall be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement or because of any breach thereof or because of their execution or attempted execution of this Agreement.
- K. No Partnership or Agency. Nothing contained in this Agreement is intended or shall be construed in any respect to create or establish any relationship other than that of owner and contractor, and nothing herein shall be construed to establish any partnership, joint venture or association or to make Contractor the general representative or agent of MRCOG for any purpose whatsoever.
- L. Force Majeure. Except as expressly provided in this Agreement, neither MRCOG nor Contractor shall be deemed to be in default hereunder if either party is prevented from performing any of the obligations, other than payment of rentals, fees and charges hereunder, by reason of strikes, boycotts, labor disputes, embargoes, shortages of energy or materials, acts of the public enemy, weather conditions and the results of acts of nature, riots, rebellion, sabotage, or any other circumstances for which it is not responsible or which are not within its control.
- M. Forum Selection. Any cause of action, claim, suit, demand, or other case or controversy arising from or related to this Agreement shall only be brought in a state district court located in Bernalillo County, New Mexico or in a federal district court located in New Mexico. The parties irrevocably admit themselves to, and consent to, the jurisdiction of either or both of said courts. The provisions of this section shall survive the termination of this Agreement.
- N. Compliance with Law. The Contractor shall comply with all applicable laws, ordinances, regulations and procedures of Federal, State, and local governments, including, but not limited to MRCOG rules and regulations. The Contractor shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101) and federal regulations promulgated there under (28 C.F.R. Parts 35, 36, and 37).
  - a. Patents and Trademarks. Contractor represents that it is the owner or fully authorized to use any and all services, processes, machines, articles, marks, names or slogans used by it in its performance under this Agreement. Contractor agrees to defend, indemnify and hold harmless the MRCOG, pursuant to the Indemnification Agreement above, from any loss, liability, expense, suit or claim for damages in connection with any actual or alleged infringement of any patent, trademark, copyright, trade secret or proprietary right, or arising from any alleged or actual unfair competition or other similar claim arising out the performance of this Agreement by Contractor. In the event a claim is made that the use of materials is such an infringement, the Contractor shall either procure for MRCOG the right to continue using such materials, make modifications resulting in the elimination of the infringement (and continue to meet the requirements of this Agreement) or replace such material with non-infringing materials of a like functionality that meet the requirements of this Agreement.
  - b. Savings. MRCOG and Contractor acknowledge and agree that they have thoroughly read this Agreement, including all exhibits thereto, and have sought and received whatever competent advice and counsel was necessary for them to form a full and

complete understanding of all rights and obligations herein. MRCOG and Contractor further acknowledge that the Agreement is the result of negotiations between them and that this Agreement shall not be construed against either party by reason of that party's preparation of all or part of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the dates specified below.

MRCOG:

By:

\_\_\_\_\_  
Dewey V. Cave, Executive Director

\_\_\_\_\_  
Date

CONTRACTOR:

\_\_\_\_\_

\_\_\_\_\_  
Date

Title: \_\_\_\_\_

\_\_\_\_\_  
Date

APPROVED AS TO FORM BY MRCOG LEGAL COUNSEL:

By:

\_\_\_\_\_

\_\_\_\_\_  
Date

