

**COUNTY OF MCKINLEY
P. O. BOX 70
GALLUP, NM 87305-0070
(505) 722-3868
FAX (505) 863-6362**



RFP NO. 2021-01

REQUEST FOR PROPOSALS

**ON-CALL ARCHITECTURAL DESIGN SERVICES FOR MCKINLEY
COUNTY - NEW ADULT DETENTION CENTER**

Proposal Deadline: Tuesday, February 23, 2021 at 2:00 p.m. Local Time

PROCUREMENT AGENT: Hugo G. Cano, Procurement Manager



County of McKinley

207 West Hill Avenue
Gallup, New Mexico 87301
505-722-3868
Fax 505-863-6362

Commissioner, Dist. 1
Billy Moore

Commissioner, Dist. 2
Vacant

Commissioner, Dist. 3
Robert Baca

Manager
Anthony Dimas Jr.

REQUEST FOR PROPOSALS

THE COUNTY OF MCKINLEY IS REQUESTING PROPOSALS FOR THE FOLLOWING GOODS OR SERVICES:

TITLE: ON-CALL ARCHITECTURAL DESIGN SERVICES FOR MCKINLEY COUNTY - NEW ADULT DETENTION CENTER

RFP NO.: 2021-01

OPEN: February 23, 2021 @ 2 p.m. Local Time

NIGP Commodity Code(s): 90607, 90610, 90669

FOR ADDITIONAL INFORMATION CONTACT:

HUGO G. CANO
PROCUREMENT MANAGER
(505) 722-3868, EXT 1010

THE OFFICE OF THE MANAGER, COUNTY OF MCKINLEY, WILL RECEIVE COMPETITIVE SEALED PROPOSALS FOR THE GOODS OR SERVICES DESCRIBED IN THIS BID PROPOSAL AT:

VIA MAIL
PROCUREMENT MANAGER
COUNTY OF MCKINLEY
207 WEST HILL AVENUE
GALLUP, NM 87301

HAND CARRIED
PROCUREMENT MANAGER
COUNTY COURTHOUSE, 3RD FLOOR
207 WEST HILL AVENUE
GALLUP, NM 87301

ANY PROPOSAL RECEIVED AFTER BID OPENING DATE/TIME WILL BE RETURNED UNOPENED.

NOTE: USE OF THE MAIL SERVICE IS AT YOUR OWN RISK FOR PROPER DELIVERY.

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NOTICE OF REQUEST FOR PROPOSALS

Qualifications-based competitive sealed proposals for

RFP No. 2021-01

ON-CALL ARCHITECTURAL DESIGN SERVICES FOR MCKINLEY COUNTY – NEW ADULT DETENTION CENTER

will be received by McKinley County, 207 West Hill Avenue, Gallup, New Mexico 87301 until Tuesday, February 23, 2021 2:00 p.m. local time. Proposals will be received in the County Manager's Office. Copies of the Request for Proposals can be obtained in person at the Office of the Manager at 207 West Hill Ave., Third Floor, Gallup, NM 87301, be mailed upon written request to Hugo G. Cano, Procurement Manager (505) 722-3868, Ext. 1010, or may be obtained from McKinley County Website: www.co.mckinley.nm.us/212/Bids-RFPs-Solicitations. McKinley County reserves the right to accept or reject any or all proposals and to waive all formalities. **The Procurement Code, Sections 13-1-28 Through 13-1-199, NMSA, 1978 imposes civil and criminal penalties for code violations. In addition the New Mexico criminal statutes impose felony/penalties for illegal bribes, gratuities and kickbacks.**

DATED this 29th day of January 2021 BY: /s/ Billy Moore
Chairman, Board of Commissioners

PUBLISHED: Friday, January 29, 2021 Gallup Sun

PUBLISHED: Sunday, January 31, 2021 Albuquerque Journal

PROPOSAL REVIEW SCHEDULE

1. ADVERTISEMENT **January 29, 2021**
2. ISSUANCE OF PROPOSAL PACKET **January 29, 2021**
3. PROPOSAL SUBMITTAL DEADLINE **February 23, 2021**
4. EVALUATION OF PROPOSALS **February 25 - March 5, 2021**
5. RECOMMENDATION OF AWARD..... **March 9, 2021**
6. EXECUTION OF AGREEMENT AND
NOTICE TO PROCEED **TBD**

**DATES AFTER THE PROPOSAL DEADLINE ARE TENTATIVE
AND ARE SUBJECT TO CHANGE WITHOUT NOTICE.**

ACKNOWLEDGMENT OF RECEIPT OF PROPOSAL

In acknowledgment of receipt of this Proposal the undersigned agrees that they have received a complete copy of the proposal consisting of **thirty-eight (38)** pages.

The acknowledgment of receipt should be signed and returned to the Purchasing Office as soon as possible but no later than 5:00 P.M. local time on **February 9, 2021**. **Only potential bidders who elect to return this form completed with the indicated intention of submitting a proposal are guaranteed to receive copies of all written questions and the County's written responses to those questions, as well as copies of Addendums, if any are issued.**

FIRM: **DOES / DOES NOT** (**Circle one**) intend to respond to this Request for Proposals.

FIRM NAME: _____

REPRESENTED BY: _____

TITLE: _____ PHONE NO _____

FAX NO.: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE : _____

SIGNATURE: _____

DATE: _____

EMAIL: _____

The above name and address will be used for all correspondence related to this Proposal.

Return this form to:
(by fax or email acceptable)

McKinley County Purchasing Department
Hugo G. Cano
207 West Hill
Gallup, New Mexico 87301
(505) 722-3868
(505) 863-6362 Fax
Email: hugo.cano@co.mckinley.nm.us

Please return this form by February 9, 2021

SECTION 1	GENERAL INFORMATION
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GENERAL INFORMATION/PROJECT DESCRIPTION

McKinley County, hereinafter referred to as the "County," is soliciting proposals from Architectural firms, hereinafter referred to as the "Architect," or "Contractor" for the purpose of having such Architect available to provide on-call architectural services for McKinley County as needed for various projects. Specifically, said responding firms must have a **minimum of ten (10) years previous experience** in designing adult detention centers in addition to general architectural design experience.

The County intends to enter into a General Architectural Services Agreement, hereinafter referred to as "Agreement," with an Architectural firm showing that they are qualified and able to provide the services requested in this proposal. These services are listed under the Scope of Work. The agreement to be executed by the Architect whose proposal is accepted by the County, shall be substantially in the form attached as the Draft Architectural Contract attached to this Request for Proposals (RFP).

NOTE: USE OF THE MAIL SERVICE IS AT YOUR OWN RISK FOR PROPER DELIVERY.

SECTION 2 SCOPE OF WORK

2.1 SCOPE OF WORK

A. This RFP is for architectural design services and related incidental, planning, project management, and special services for various projects as they arise. McKinley County is planning for projects varying in scope and is primarily seeking to contract with an experienced firm to begin with the design of a new adult detention center. The successful firm shall have, at a minimum, ten years of demonstrated experience and specialization in the design and project management of detention centers. This project is at the forefront of planned construction for the County and will require a firm with the experience necessary to ensure the most effective and efficient delivery of this type of project.

B. Although the initial design project desired is specific, the successful firm shall also have broad experience in general architectural design to employ on varying successive projects. McKinley County seeks to enter into a multi-year professional services agreement with a firm that can assist the County with a diverse range of construction projects. Aside from a detention center, projects can range from the design of an industrial manufacturing facility to renovations of current County facilities.

C. The evaluation criteria shall be formulated primarily to determine the firm which has the proven expertise in detention center design with partial weight given to its general architectural experience and capabilities. For best consideration, proposers shall detail their expertise and experience in detention center design and also address their comprehensive experience in general architectural design.

2.2 INSURANCE (IF APPLICABLE)

A. Contractor shall obtain and maintain throughout the life of this contract the following insurance, at contractor's expense. Contractor shall provide insurance of the following types and in the amounts stated prior to commencing operations. The County shall be named as additional insured on all policies.

1. Worker's Compensation: The successful bidder, referred to as the Contractor shall maintain as his/her expense during the life of the contract, adequate Workman's Compensation Insurance with agencies licensed to do business in the state of New Mexico, for all employees on the work. In the case any work or portions of work are sublet the Contractor will insure and require the subcontractor similarly provide Workman's Compensation Insurance for his employees, unless such employees are covered under the Contractor's coverage. The Contractor, if requested, will provide proof of such coverage, including an endorsement by the insurer that the policy may not be cancelled nor allowed to lapse without ten (10) days' notice thereof first being given to the City.
2. Other required coverage: The successful bidder, referred to as the Contractor shall maintain at his expense during the life of the contract, such Public Liability and Property Damage Insurance as shall protect him the City and any subcontractor(s) performing work covered by the Contract, for all claims for damages, personal injury, wrongful death as well as claims for property damages which may arise from work covered under this contract, whether such work be performed by himself or by any subcontractor or anyone directly or indirectly employed by either of them.
3. Coverage Required: The kinds and amounts of insurance required are as follows:

- a. Professional Liability **WILL** ☒ **WILL NOT** ☐ be required: If required, the Minimum shall be \$1,000,000 aggregate
- b. Commercial General Liability Insurance: A Commercial General Liability insurance policy with combined limits of liability for bodily injury or property damage as follows:

\$1,000,000	Per Occurrence
\$1,000,000	Vehicle & Automotive
\$1,000,000	Policy Aggregate
\$1,000,000	Products liability/Completed Operations
\$1,000,000	Personal and Advertising Injury
\$ 50,000	Fire Legal
\$ 5,000	Medical Payments

Said Policy of insurance must include coverage for all operations performed for the City by the Contractor and contractual liability coverage shall specifically insure the hold harmless provisions of this contract (agreement).

- c. Automobile Liability Insurance: A comprehensive automobile liability insurance policy with liability limits in amounts not less than \$1,000,000 combined single limit of liability for bodily injury, including death, and property damage in any one occurrence. The policy must include coverage for the use of all owned, non-owned, hired automobiles, vehicles and any and all other equipment owned and non-owned, both on and off the work.
- d. Worker's Compensation Insurance:
- Worker's Compensation Insurance policy for the Contractor's employees, in accordance with the provisions of the Worker's Compensation Act of the State of New Mexico.
- e. Increased Limits: During the life of the Contract (agreement) the County may require the Contractor to increase the maximum limits of any insurance required herein. In the event that the Contractor is so required to increase the limits of such insurance, an appropriate adjustment in the contract amount will be made.
- e. Certificates, renewals, and notice of cancellation shall be sent to:

McKinley County
Manager's Office
Attn: Hugo G. Cano
Procurement Department
207 West Hill Avenue
Gallup, New Mexico 87301

2.2 SILENCE OF SPECIFICATIONS

The apparent silence of the foregoing specifications as to any detail or omission for it as a detailed description, concerning any specific shall be regarded as meaning that only the best commercial and/or professional practices are to prevail and that only materials and workmanship of first quality are to be used. All interpretations of these specifications shall be made upon the basis of this statement.

SECTION 3 INSTRUCTIONS TO PROPOSERS

NOTICE TO PROPOSER

FOR PROPOSAL SUBMITTAL FORMAT SEE SECTION 5

3.1 DEFINITIONS AND TERMS

- 3.1.1 Addendum:** a written or graphic instrument issued prior to the opening of Proposals, which clarifies, corrects, or changes the Request for Proposals. Plural: addenda.
- 3.1.2 Consultant:** means the Successful Proposer awarded the Agreement/Contract.
- 3.1.3 Determination:** means the written documentation of a decision of the procurement officer including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains (13-1-52 NMSA 1978).
- 3.1.4 Proposer or Offeror:** any person, corporation, or partnership legally licensed to provide professional services in this state, which chooses to submit a proposal in response to this Request for Proposals.
- 3.1.5 Procurement Manager:** means the person or designee authorized by the County of McKinley to manage or administer a procurement requiring the evaluation of proposals.
- 3.1.6 Request For Proposals:** or "RFP" means all documents, including those attached or incorporated by reference, used for soliciting proposals (13-1-81 NMSA 1978).
- 3.1.7 Responsible Proposer or Proposer:** means a proposer or proposer 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 described in the proposal (13-1-83 NMSA 1978).
- 3.1.8 Responsive Offer or Proposal:** means an offer or proposal which 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 (13-1-85 NMSA 1978).
- 3.1.9** The terms **must, shall, will, is required, or are required**, identify a mandatory item or factor. Failure to comply with a mandatory item or factor will result in the rejection of the proposer's proposal.

The terms **can, may, should, preferably, or prefers** identify a desirable or discretionary item or factor.

3.2 GENERAL REQUIREMENTS

3.2.0 COPIES OF REQUEST FOR PROPOSALS

- 3.2.0.1** A complete set of the Request for Proposals may be obtained from the County of McKinley as stated in the RFP Notice. A copy of the proposal is also available on our website: www.co.mckinley.nm.us/212/Bids-RFPs-Solicitations.
- 3.2.0.2** A complete set of the Request for Proposals shall be used in preparing proposals. The County of McKinley assumes no responsibility for errors or misinterpretations resulting from the use of an incomplete set of the Request for Proposals.

3.2.0.3 The County of McKinley, in making copies of Request for Proposals available on the above terms, does so only for the purpose of obtaining proposals on the Project and does not confer a license or grant for any other use.

3.2.0.4 A copy of the Notice for the RFP shall be posted at the Office of the Manager, 3rd Floor, County Courthouse

3.2.1 SUBMITTAL OF PROPOSALS

3.2.1.1 Proposals shall be submitted at the time and place indicated in the Notice of Request for Proposals and shall be enclosed in a sealed envelope.

3.2.1.2 The envelope shall be addressed to the Procurement Officer of the County of McKinley. If hand delivered note the Request for Proposal Number on the envelope in the lower left-hand corner. If the Proposal is sent by mail or Express delivery, the shipping container or envelope shall have the Proposal Number on the face thereof. Failure to do so shall not constitute a liability on the part of McKinley County if the proposal is subsequently misplaced or lost.

3.2.1.3 Proposals received after the date and time for receipt of Proposals will be returned unopened.

3.2.1.4 The Proposer shall assume full responsibility for timely delivery of proposals at the Purchasing Officer's office, including those proposals submitted by mail. Hand-delivered proposals shall be submitted to the Purchasing Officer or his designee and will be clocked in/time stamped at the time received, which must be prior to the time specified.

VIA MAIL

OFFICE OF THE MANAGER
COUNTY OF MCKINLEY
207 WEST HILL STREET
GALLUP, NM 87301

HAND DELIVERED

OFFICE OF THE MANAGER
COUNTY COURTHOUSE, 3RD FLOOR
207 WEST HILL STREET
GALLUP, NM 87301

3.2.1.5 After the date established for receipt of proposals, a register of proposals will be prepared which includes the name of each Proposer, a description sufficient to identify the service, and such other information as may be specified by the Purchasing Officer. Proposals shall not be publicly opened so as to maintain the confidentiality of all proposals.

3.2.1.6 Offeror agrees that the proposal shall remain in effect for ninety (90) days from the due date for proposals and subject to acceptance by the County within that period. No proposal may be withdrawn or modified by the Offeror during this period unless prior written permission is granted by the County. Acceptance period may be extended with the mutual agreement of the County and the Offeror.

3.2.1.7 Oral, telephonic, electronically transmitted (fax or email), or telegraphic proposals are invalid and will not receive consideration.

3.2.2 INTERPRETATIONS

3.2.2.1 All questions about the meaning or intent of the Request for Proposals shall be submitted in writing. Replies will be issued by Addenda and sent to all offerors of record. Addenda will also be posted on the McKinley County website at www.co.mckinley.nm.us/212/Bids-RFPs-Solicitations .

For questions or clarification regarding any aspect of this proposal, submit the questions in writing to: Hugo G. Cano; McKinley County Purchasing Office; 207 W. Hill Ave.; Gallup, NM 87301; (505) 722-3868; (505) 863-6362 (fax); hugo.cano@co.mckinley.nm.us who shall be the sole point of contact for this RFP.

When faxing in questions, please include the following:

1. All transmissions should include a cover sheet.
2. Cover sheet shall contain: a) the RFP number b) Proponent name, contact person, phone number, and return fax number.

Inquiries requiring clarification/modification to the RFP will be compiled and responded to via written addendum issued before the due date/time. Questions must be submitted no later than 7 days prior to the date set for opening of proposals. Questions submitted after February 16, 2021 may not be addressed.

In the event addendum is received by a proponent after its proposal is submitted, the proponent must acknowledge receipt of the addendum by notice to the Purchasing Department via fax/email/mail.

Except for communications during any informational meeting conducted by the County for this RFP and to ensure information is consistent to all prospective respondents, any direct or indirect contact with County elected officials or staff other than the Purchasing Section staff relating to this RFP is strictly prohibited throughout the duration of the RFP process, and, upon such finding, may render a respondent and/or related proposal non-responsive.

3.2.2.2 BRAND NAMES: Where a product or brand name is indicated in the specifications, it shall mean "minimum acceptable level or minimum quality required" by the County unless the specifications state that no substitutions or equivalents are allowed. If the bidder is offering, as an equal or equivalent, an item other than the one specified then the manufacturer's name and model number of that item must be specified in the offer and sufficient specification and descriptive data provided to permit a thorough evaluation. Failure to provide appropriate information may result in disqualification of the offer.

3.2.2.3 Proposers should promptly notify the County of McKinley of any ambiguity, inconsistency, or error, which they may discover upon examination of the Request for Proposals.

3.2.3 PROPOSAL INFORMATION

3.2.3.1 ADDENDA: If any questions or responses require revision to the solicitation as originally published, such revisions will be by formal written Addenda only. Offerors are cautioned that any oral or written representations made by any person that appear to change materially any portion of the solicitation shall not be relied upon unless subsequently ratified by a written Addendum to the solicitation issued by the Purchasing Office. Addenda will sent to all offerors of record. Addenda will also be posted on the McKinley County website at www.co.mckinley.nm.us/212/Bids-RFPs-Solicitations.

3.2.3.2 Copies of Addenda will be made available for inspection wherever Request for Proposals are on file for that purpose.

3.2.3.3 Each Proposer shall ascertain, prior to submitting the Proposal, that the Proposer has received all Addenda issued, and shall acknowledge their receipt in the Proposal.

3.2.3.4 CONFIDENTIAL DATA: Proposals will be open to public inspection only after award of a contract. Proposer may request in writing nondisclosure of confidential data. Such data should accompany the proposal and should be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal. A

request that states that the entire proposal is kept confidential will not be acceptable. Only matters which clearly are of a confidential nature will be considered. Offerors are cautioned that materials designated as confidential may nevertheless be subject to disclosure under the New Mexico Inspection of Public Records Act (Section 14-2-1 et seq. NMSA 1978). Confidential data are normally restricted to confidential financial information concerning the Offeror's organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, §57-3A-1 to §57-3A-7 NMSA, 1978. Prices, makes and models, or catalogue numbers of items offered shall be publicly available regardless of designation to the contrary.

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

3.2.3.6 PRE-PROPOSAL CONFERENCE: A pre-proposal conference **WILL** ☐ **WILL NOT** ☒ be held.

3.2.4 PREQUALIFICATION PROCESS

3.2.4.1 A business may be pre-qualified by the Purchasing Officer as a Proposer for particular types of service. Mailing lists of potential Proposers shall include but shall not be limited to such pre-qualified businesses (13-1-134 NMSA 1978). For purposes of this RFP, if pre-qualification is utilized, special instructions will be attached as an exhibit to this RFP.

3.2.4.2 It is the Proposer's responsibility to become fully informed as to the nature and extent of the work required and its relation to any other work in the area, including possible interference from any other activities in the surrounding area. Arrangements for proposer's inspection of facilities and/or activity schedules may be secured by contacting Hugo Cano, Procurement Manager (505)722-3868, Ext. 1010.

3.2.4.3 Offeror's, on their own, may visit the proposed site. County staff will not be available for unscheduled site tours. Offerors shall have no claim against the County for failure to obtain sufficient access to the site or for problems in subsequent operations caused by inadequate site data which the Offeror could have remedied through the exercise of due diligence.

3.2.5 DEBARRED OR SUSPENDED CONTRACTORS

3.2.5.1 A business (contractor, subcontractor or supplier) that has either been debarred or suspended pursuant to the requirements of 13-1-177 through 13-1-180, and 13-4-11 through 13-4-17 NMSA 1978 as amended, shall not be permitted to do business with the County of McKinley and shall not be considered for award of the contract during the period for which it is debarred or suspended.

3.2.6 CORRECTION OR WITHDRAWAL OF PROPOSALS

3.2.6.1 A Proposal containing a mistake discovered before proposal opening may be modified or withdrawn by an Proposer prior to the time set for proposal opening by delivering written or telegraphic notice to the location designated in the Request for Proposals as the place where Proposals are to be received.

3.2.6.2 Withdrawn Proposals may be resubmitted up to the time and date designated for the receipt of Proposals, provided they are then fully in conformance with the Request for Proposals.

3.2.7 NOTICE OF CONTRACT REQUIREMENTS BINDING ON PROPOSER

3.2.7.1 In submitting this proposal, the Proposer represents that the Proposer has familiarized himself with the nature and extent of the Request for Proposals dealing with federal, state, and local requirements, which are a part of these Request for Proposals.

3.2.7.2 Laws and Regulations: The Proposer's attention is directed to all applicable federal and state laws, local ordinances and regulations and the rules and regulations of all authorities having jurisdiction over the services of the Project.

3.2.8 REJECTION OR CANCELLATION OF PROPOSALS

3.2.8.1 This Request for Proposals may be canceled, or any or all proposals may be rejected in whole or in part, when it is in the best interest of the County of McKinley. A determination containing the reasons therefore shall be made part of the RFP file (13-1-131 NMSA 1978).

3.2.9 RECEIPT, OPENING AND RECORDING

3.2.9.1 Proposals received on time will be recorded and the name of each Proposer and address will be read aloud. The opening of proposals shall be conducted in private to maintain the confidentiality of the contents of all proposals.

3.2.9.2 The names of all businesses submitting proposals and the names of all businesses, if any, selected for interview shall be public information. After an award has been made, evaluation scores for all proposals shall become public information. (13-1-120 NMSA 1978). The contents of any proposal shall not be disclosed so as to be available to competing Proposers during the negotiation process (13-1-116 NMSA 1978).

3.2.10 PROPOSAL EVALUATION

3.2.10.1 Proposals shall be evaluated on the basis of demonstrated competence and qualification for the type of service required and shall be based on the evaluation factors set forth in this RFP. For the purpose of conducting discussions, proposals may initially be classified as:

- 1) acceptable
- 2) potentially acceptable, that is, reasonably assured of being made acceptable, or
- 3) unacceptable (Proposers whose proposals are unacceptable shall be notified promptly).

The review committee will evaluate all proposals, determine the need for, and conduct any negotiations. Negotiations may be conducted to:

1. Promote understanding of the County's requirements and the Offerors' proposal.
2. Obtaining best and final offers
3. Facilitate arrival at a contract that will be most advantageous to McKinley County considering the factors set forth in the proposal.

The County is under no obligation to conduct any negotiations or discussions with an Offeror.

3.2.10.2 The County of McKinley shall have the right to waive **minor** or **technical irregularities** in the form of the Proposal of the Proposer, which do not alter the quantity or quality of the goods or services (13-1-132 NMSA 1978).

3.2.10.3 MANDATORY REQUIREMENTS: Mandatory requirements may be waived by the evaluation committee if all of the otherwise responsive offerors failed to comply with the same mandatory requirement and the failure to do so does not otherwise materially affect the procurement. The evaluation committee shall have the right to request subsequent information from the otherwise responsive offerors.

If, in the opinion of the evaluation committee a specification is poorly worded or confusing the evaluation committee may waive the specification for all offerors, and if points were assigned reduce the total points by the number of points assigned to the specification.

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. Mandatory General Conditions or specifications contain the terms “must”, “shall”, “will”, “is required” or “are required”.

3.2.10.4 If a Proposer who otherwise would have been awarded a contract is found not to be a responsible Proposer, a determination that the Proposer is not a responsible Offeror, setting forth the basis of the finding, shall be prepared by the Procurement Officer. The unreasonable failure of the Proposer to promptly supply information in connection with an inquiry with respect to responsibility is grounds for a determination that the Proposer is not a responsible Proposer (13-1-133 NMSA 1978). Businesses, which have not been selected, shall be so notified in promptly after an award is made (13-1-120 NMSA 1978).

3.2.11 CONTRACT NEGOTIATIONS (13-1-122 NMSA 1978)

3.2.11.1 The County of McKinley’s designee shall negotiate a contract with the highest qualified business for the services contemplated under this RFP at compensation determined in writing to be fair and reasonable. In making this decision, the designee shall take into account the estimated value of the services to be rendered and the scope, complexity and professional nature of the services.

3.2.11.2 Should the designee be unable to negotiate a satisfactory contract with the business considered to be the most qualified at a price determined to be fair and reasonable, negotiations with that business shall be formally terminated. The designee may then undertake negotiations with the second most qualified business or terminate the procurement process. Failing accord with the second most qualified business, the designee shall formally terminate negotiations with that business.

3.2.11.3 The designee may then undertake negotiations with the third most qualified business, or terminate the procurement process.

3.2.11.4 Should the designee be unable to negotiate a contract with any of the businesses selected by the committee, additional businesses may be ranked in order of their qualifications and the designee may continue negotiations in accordance with this section until a contract is signed with a qualified business or the procurement process is terminated and a new request for proposals is initiated.

3.2.11.5 The County of McKinley will publicly announce the business selected for award.

3.2.11.6 The contract between the County and Offeror will follow the format specified by the County and contain the terms and conditions set forth in this RFP and Section 7 of this RFP. The contents of this RFP, as revised and/or supplemented, and the successful offeror’s proposal will be incorporated into the contract. Should an offeror object to any of the County’s terms and conditions, that offeror must propose specific alternative language that would be acceptable to the County. Offeror’s must provide a brief discussion of the purpose and impact, if any, of each proposed change followed by the specific proposed

alternate wording. General references to the Offeror's terms and conditions or attempts at complete substitutions are not acceptable to the County and will result in disqualification of the offeror's proposal.

3.2.12 NOTICE OF AWARD

3.2.12.1 Award, if made, shall be made to the responsible and responsive Offeror whose proposal is most advantageous to the County, taking into consideration the evaluation factors set forth in the Request for Proposals. McKinley County will be the sole judge in determining if the product proposed and delivery time meets our requirements. The County reserves the right to cancel the RFP, accept, or reject any or all proposals in whole or in part, to waive informalities or technicalities at its option and to accept the proposal it deems to be in the best interests of the County.

3.2.12.2 After award by the County of McKinley, a written notice of award shall be issued by the County of McKinley with reasonable promptness (13-1-100 and 13-1-108 NMSA 1978).

3.2.13 CONTRACT TERM

3.2.13.1 The contract period will begin upon award through June 30, 2022 and will auto-renew for up to Three (3) additional one-year terms based on the same terms, conditions, specifications remain the same, and both parties agree to the extension.

3.2.14 INVOICES/PAYMENT

3.2.14.1 Invoices: Submitted to the McKinley County Finance Department for approval and forwarded to McKinley County Finance for Payment. Each invoice shall be accompanied by records fully detailing the amounts stated on the invoice. All goods or services must be billed to the County and at prices not exceeding those stated on the Purchase Order or contract. If prices or terms do not agree with your quotation, notify the Purchasing Department immediately. Invoices shall be paid completely by the County within thirty (30) days of receipt of the invoice, except for items questioned. The McKinley County Finance Department shall notify the Contractor within ten (10) days of receipt of invoice of any items questioned. The Contractor shall prepare verification data for the amount claimed and provide complete cooperation during such investigation of any areas in the invoice subject to question.

3.2.15 TAXES AND PERMITS

3.2.15.1 The State, any county, municipality or political subdivision of this State is exempt from the sales tax, except this exemption shall not include sales of tangible personal property made to contractors employed either directly or as agents of any such government or political subdivision thereof when such tangible personal property goes into or becomes a part of public works owned by such government or political subdivision thereof. The bidder shall take these factors into consideration in preparing his proposal, including therein the cost of the State and Use Tax on materials, but excluding the cost of those taxes and permits not applicable.

3.2.16 PREFERENCES

3.2.16.1 A 5% preference of the total possible points used in evaluating the Request for Proposal shall be awarded to a business that has registered with the State of New Mexico Department of Taxation and Revenue as a resident New Mexico business. A Resident New Mexico Veteran's business may be awarded a 10% preference of the total possible points, and in any case shall be applied in accordance with the provisions of New Mexico Statute 13-1-21 and 13-1-22 NMSA 1978.

McKinley County also grants a 3.5% County Procurement Preference to those businesses that have qualified with McKinley County Purchasing Department for the McKinley County Procurement Preference. Either the State of New Mexico Resident Business Preference, or State of New Mexico Resident Veteran's Business will be factored into the Request for Proposal scores where applicable but are not cumulative. The McKinley County Preference is cumulative with the New Mexico Resident or New Mexico Resident Veterans business preferences after application of the New Mexico Resident Preference.

For information on State of New Mexico resident business or Veteran's Resident Business bidder's certification call 505-827-0951 or to download applications, go to: www.tax.newmexico.gov , select "Forms and Publications" and click on "Recently Updated". For Information on the McKinley County Procurement preference contact the County Purchasing Department at (505) 722-3868.

You must submit a copy of your NM Resident Business or Resident Veteran's Business Certificate, and your McKinley County Procurement preference certificate with your proposal in order to qualify for the New Mexico Resident and/or McKinley County Procurement preferences.

3.2.17 PROTESTS

3.2.17.1 Any Proposer who is aggrieved in connection with a solicitation or award may protest to the County of McKinley Purchasing Officer in accordance with the requirements of the County of McKinley's Procurement Regulations and the State Procurement Code. The protest should be made in writing within 15 calendar days after knowledge of the facts or occurrences giving rise thereto (13-1-172 NMSA 1978).

3.2.17.2 PROTEST BOND: A Protest Bond in the amount of **Eight Hundred (\$800.00)** Dollars from a surety company authorized to do business in this state, or in the form of a cashier's check made payable to McKinley County, or cash shall be included with the timely protest to cover the County's administrative costs incurred to administer the protest. In the event that the protest is upheld the Protest bond shall be returned to the protesting bidder. If the protest is disallowed then the protesting bidder will forfeit the bond to McKinley County.

3.2.17.3 In the event of a timely protest under this section, the Purchasing Officer and the County of McKinley shall not proceed further with the procurement unless the Purchasing Officer makes a determination that the award is necessary to protect substantial interests of the County of McKinley (13-1-173 NMSA 1978).

3.2.17.4 The Purchasing Officer or his designee shall have the authority to take any action reasonably necessary to resolve a protest of an aggrieved Proposer concerning procurement. This authority shall be exercised in accordance with adopted regulations but shall not include the authority to award money damages or attorney's fees (13-1-174 NMSA 1978).

3.2.17.5 The Purchasing Officer or his designee shall promptly issue a determination relating to the protest. The determination shall:

- 1) state the reasons for the action taken; and
- 2) inform the Protester of the right to judicial review of the determination (13-1-183 NMSA 1978).

3.2.17.6 A copy of the determination issued under 13-1-175 NMSA 1978 shall immediately be sent to the Protester and other Proposers involved in the procurement (13-1-176 NMSA 1978).

3.3 POST-PROPOSAL INFORMATION

3.3.1 EXECUTION AND APPROVAL OF AGREEMENT

3.3.1.1 The Agreement shall be signed by the Successful Proposer and returned within an agreed upon time frame after the date of the Notice of Award. No Agreement shall be effective until it has been fully executed by all of the parties thereto.

3.3.2 NOTICE TO PROCEED

3.3.2.1 The County of McKinley will issue a written Notice to Proceed to the Proposer.

3.3.3 PROPOSER'S QUALIFICATION STATEMENT

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

3.3.4 EQUAL OPPORTUNITY COMPLIANCE/WORKERS' COMPENSATION

3.3.4.1 McKinley County does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in the employment or the provisions of services. The Contractor agrees to comply strictly with the policies of County, as well as all Federal and State Laws pertaining to Equal Employment Opportunity, including the Americans with Disabilities Act, and will not discriminate against any person or deny any person participation or benefit from the performance of this Agreement as a result of any discriminatory action. The Contractor agrees to comply with State Laws and rules applicable to workers' compensation benefits for its employees. If the Contractor fails to comply with the Workers' Compensation Act and applicable rules when required to do so, the County may terminate this agreement.

3.3.5 APPROPRIATIONS:

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

3.3.8 COOPERATIVE PROCUREMENT AGREEMENT:

3.3.8.1 EXISTING AGREEMENT:

Under the terms and conditions of this proposal all public bodies allowed by law may procure the supplies or services under this proposal as described herein. The terms and conditions of this proposal shall form a part of each order issued herein. Each public body shall be responsible for their own orders and McKinley County accepts no responsibility for other entities.

McKINLEY COUNTY does not in any way guarantee the proposer any services other than for the county needs; other cooperative agencies only have an option to participate off this bid and will be liable for their own requirements.

3.3.9 PROCUREMENT CODE VIOLATIONS:

3.3.9.1 The Procurement Code imposes civil and criminal penalties for its violation. In addition, the New Mexico State Statutes impose felony penalties for illegal bribes, gratuities, and kickbacks.

SECTION 4 SUPPLEMENTAL CONDITIONS

THESE SUPPLEMENTAL TERMS AND CONDITIONS ARE IN ADDITION TO THE GENERAL INSTRUCTIONS, TERMS AND CONDITIONS AND, IN THE EVENT OF A CONFLICT BETWEEN THE PROVISIONS OF THE GENERAL INSTRUCTIONS, TERMS AND CONDITIONS AND THESE SUPPLEMENTAL TERMS AND CONDITIONS, THE PROVISIONS OF THESE SUPPLEMENTAL TERMS AND CONDITIONS SHALL CONTROL.

4.1 SUPPLEMENTAL TERMS AND CONDITIONS

- 4.1.1 ELECTRONIC COMMUNICATIONS:** Communications regarding this procurement, including issuance of addendums, may be conducted by electronic means (e-mail or fax). However, electronic submittals of the proposal whether by fax, email or other electronic means are not acceptable as noted in the General Conditions.
- 4.1.2 DEBARRED OR SUSPENDED CONTRACTORS:** A business (contractor, subcontractor or supplier) that has either been debarred or suspended pursuant to the requirements of § 13-1-177 through § 13-1-180, and § 13-4-11 through § 13-4-17 NMSA 1978 as amended, shall not be permitted to do business with McKinley County and shall not be considered for award of the contract during the period for which it is debarred or suspended.
- 4.13 ACKNOWLEDGE RECEIPT OF AMENDMENTS:** Offerors will acknowledge receipt of amendments by returning one signed copy of the amendment with their proposal. Failure to acknowledge receipt of addenda may render your proposal as non-compliant.
- 4.14 PROHIBITED CONTACT:** Except for communications during any informational meeting conducted by the County for this RFP and to ensure information is consistent to all prospective respondents, any direct or indirect contact with County elected officials or staff other than the Purchasing Section staff relating to this RFP is strictly prohibited throughout the duration of the RFP process, and, upon such finding, will render a respondent and/or related proposal non-compliant. Any and all inquiries must be submitted by the prospective respondent to the Purchasing Department no later than one week before the proposal due date/time unless otherwise specified in the request for proposal. Inquiries received after the deadline may not be considered.
- 4.14 CONTACT:** For questions or clarification regarding any aspect of this proposal, submit the questions in writing to:

McKinley County Purchasing Office,
Attn Hugo G. Cano;
207 W. Hill; Gallup, NM 87301;
(505) 722-3868; (505) 863-6362 (fax);
hugo.cano@co.mckinley.nm.us

who shall be the sole point of contact for this RFP.

When faxing in questions, please include the following:

1. All transmissions should include a cover sheet.
2. Cover sheet shall contain: a) The RFP number b) Proponent name, contact person, phone number, and return fax number.

Inquiries requiring clarification/modification to the RFP will be compiled and responded to via written addendum issued before the due date/time. Questions must be submitted no later than 7 days prior to the date set for opening of proposals. Questions submitted after **February 16, 2021** may not be addressed.

In the event addendum is received by a proponent after its proposal is submitted, the proponent must acknowledge receipt of the addendum by notice to the Purchasing Section via fax/email/mail.

- 4.15 CONFLICT OF INTEREST:** Offeror warrants that it presently has no interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of service under this contract. Offeror must notify the County's Purchasing Officer if any employee(s) of the requesting department or the Central Purchasing Division have a financial interest in the Offeror.
- 4.16 ACKNOWLEDGEMENT OF RECEIPT:** **Return Acknowledgement of Receipt form as soon as possible but no later than February 9, 2021.** Only potential offerors who return this form are guaranteed to receive copies of addendums and correspondence.
- 4.17 TAXES:** The cost/fee proposal total shall exclude all applicable taxes. The County will pay any taxes due on the contract based upon billing submitted by the contractor, at the applicable tax rate. Taxes shall be shown as a separate amount on any billing or request for payment. McKinley County is non-taxable on tangible goods.
- 4.18 APPLICABLE LAW:** This proposal and Agreement shall be governed by the ordinances of the County of McKinley and the laws of the State of New Mexico.
- 4.19 CONTRACT TERMS AND CONDITIONS:** The contract between the County and Offeror will follow the format specified by the County and contain the terms and conditions set forth in Section 7. The contents of this RFP, as revised and/or supplemented, and the successful offeror's proposal will be incorporated into the contract. Should an offeror object to any of the County's terms and conditions, that offeror must propose specific alternative language that would be acceptable to the County. Offeror's must provide a brief discussion of the purpose and impact, if any, of each proposed change followed by the specific proposed alternate wording. General references to the Offeror's terms and conditions or attempts at complete substitutions are not acceptable to the County and will result in disqualification of the offeror's proposal.
- 4.19 PROPOSAL DOCUMENTS:** Bid documents may be retrieved by accessing the Purchasing page of the County website, www.co.mckinley.nm.us/212/Bids-RFPs-Solicitations , by calling (505) 722-3868 or visiting the Central Purchasing Office at 207 West Hill, Gallup, NM 87301.

The County will notify offerors of record of amendments/addenda that are issued. If you are not an offeror of record for the solicitation, or if you have downloaded a copy of a solicitation from our website it shall be your responsibility to check our website frequently for copies of any addenda/amendments or correspondence concerning the solicitation. Failure to acknowledge all addenda could result in rejection of your bid/proposal as non-responsive. In the case of an inconsistency between information on this site and the file document, the file document shall prevail.

SECTION 5 PROPOSAL FORMAT & ORGANIZATION

5.1 PROPOSAL SUBMITTAL PROCEDURES

5.1.1 NUMBER, FORMAT AND STYLE OF PROPOSALS

5.1.1.1 Proposers shall provide **one (1) original and three (3) copies** of their proposal to the location specified on the cover page on or before the closing date and time for receipt of proposals. **Submit one (1) original fee estimate in the same shipping container but under separate sealed cover and mark it "Fee Estimate."** **RESPONDENTS WHO INCLUDE COST WITHIN THE TECHNICAL PROPOSAL WILL COMPROMISE THE EVALUATION PROCESS AND MAY SUBJECT ITS PROPOSAL TO IMMEDIATE DISQUALIFICATION.**

5.1.1.2 All proposals must be typewritten on standard 8 1/2" x 11" paper and bound on the left-hand margin;

5.1.1.3 All proposals must be a maximum of **25 pages** (printed sheet faces) of text no smaller than 10 point and including graphics. All pages shall be numbered except for those specifically excluded from the page count. All foldout pages to a maximum of 11" X 17" shall be counted as two (2) pages and shall be numbered as such. Points will be deducted for proposals that exceed the maximum page count.

Material **excluded** from the **twenty-five (25) page** maximum count is limited to:

- Front cover (photos with captions on inside cover allowed)
- Divider pages (blank except for title information)
- Back cover (photos with captions on inside of back cover allowed)
- Tables of Contents page (two page maximum)
- Letter of Transmittal form (Page XX)
- Resumes
- Certificate(s) of insurance
- Campaign Contribution Disclosure Form (Page XX)
- Acknowledge Receipt of Amendment forms
- Copy of New Mexico Resident Bidder or Resident Veteran Business Certificate (if - applicable)
- Copy of McKinley County Resident Business Certificate (if - applicable)
- New Mexico Resident Business Preference Table (Page ____; if Applicable)
- Current I.R.S. W-9 Form
- New Mexico Resident Veterans Preference Certification Form (if applicable)
- Comments on attached Contract, if any
- Fee/Cost Proposal – submit under separate sealed cover (Page XX)

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

- A. Submit a Table of Contents and Responses to the Evaluation Criteria and organized in the same order as the Evaluation Criteria.
- B. A separately tabbed Appendix shall be included at the end of offeror's proposal consisting of:
 1. Letter of Transmittal – Each proposal must be accompanied by the Letter of Transmittal form. The Transmittal letter identifies the Offerors as follows:

a. The name and title of the person(s) authorized to contractually obligate the Offeror for the purpose of this RFP and the contract.

b. Be signed by a person authorized to contractually obligate the Offeror that explicitly indicates substantial acceptance of the Agreement between Owner and Contractor and compliance with all codes, regulations, facilities, County standards and requirements and laws that shall apply to this project.

2. Campaign Contribution Disclosure Form –A form is included with this RFP. Any prospective contractor must fill this form whether or not they, their family member, or their representative has made any contributions subject to disclosure.

3. Acknowledgement of Receipt of Amendment forms (if any issued)

4. Copy of current insurance certificate indicating coverages in the amount indicated in the proposal should be submitted if available. Insurance will be required prior to award, but not to submit a proposal.

5. Cost/Fee Proposal to be submitted within the same shipping container but under separate sealed cover

6. Copy of New Mexico Resident Bidder or Resident Veterans Certificate – Offeror MUST include a copy of their New Mexico Resident Business or New Mexico Resident Veteran Business Certificate for purposes of receiving the New Mexico Resident Business or New Mexico Resident Veteran Business Preference, if applicable.

7. Copy of McKinley County Resident Business Preference certificate - Offeror MUST include a copy of their McKinley County Resident Business Certificate for purposes of receiving the McKinley County Business Preference, if applicable.

8. Resident Veterans Preference Certification form

9. Resident Business Preference Table (Page 26; if Applicable)

10. Current I.R.S. W-9 Form

11. Comments on Contract (if Any)

5.1.1.5 Any Proposal that does not adhere to this format, and which does not address each specification or requirement within the RFP MAY be deemed non-responsive and rejected on that basis.

SECTION 6 EVALUATION

6.1 CRITERIA AND POINT VALUES

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

- (1) **Specialized design** and technical competence of the business, including a joint venture or association, regarding the type of services required.....**250 points**
- (2) **Capacity and capability** of the business, including any consultants, their representatives, to perform the work, including any specialized services, within time limitations.....**250 points**
- (3) **Evidence of Understanding** the Scope of Work.....**150 points**
- (4) **Past record of performance** on contracts with government agencies and private industry with respect to such factors as control of costs, quality of work, and ability to meet schedules.....**250 points**
- (5) **Proximity to** or familiarity with the area in which the project is located.....**40 points**
- (6) **Amount of design work** that will be produced by a NM business within this state.....**30 points**
- (7) **Volume of design work** done for this entity not 75% complete.....**30 points**

TOTAL 1000 points

A brief explanation of each evaluation category is listed below. Information in one category may overlap information in other categories. Offerors are encouraged to fully address each category completely, as points are assigned for responses to each. Responses to the RFP shall include information and past project experiences specific to the team submitting the proposal.

1. Specialized Design and Technical Competence:

- General architectural design experience and technical competence including a joint venture or association.
- Specialized design and technical competence in detention center design, including a joint venture or association, regarding the type of services required for this proposal.

2. Capacity and Capability

- Information regarding project team's past capability to meet schedules, meet budgets and meet project administration requirements.
- Resumes indicating Qualifications/competence of key personnel assigned to the project including professional background, education, certifications, and experience, including known subcontractors. Provide resumes of key staff and subcontractors
- Information regarding the firm's available resources to undertake and complete projects effectively and efficiently.

3. Evidence of Understanding Scope of Work

- Understanding of County needs and goals both initially and over the long term
- Technical Quality of work plan approaches and methodologies
- Quality and Completeness of Proposal

4. Past Record of Performance

- Information on three (3) recent projects (within the past five years) preferably with public sector entities and similar or larger in size and scope to this project. Include contact information.
 - Explain your approach to how any project difficulties/issues are handled.
 - Brief history of firm and firm's experience working with government entities to provide similar services
 - Information on these projects showing owners schedule compared to actual project schedule.
 - Information on these projects showing original budget compared to final project costs.
5. Proximity to or familiarity with the area in which the project is located
6. Amount of design work that will be produced by a NM business within this state
7. Volume of design work done for this entity not 75% complete

Cost Proposal

- Total Not-to-Exceed price exclusive of Taxes. Submit Cost Proposal within same shipping container but under separate sealed cover. The cost proposal will not receive any evaluation points per NMSA 13-1-120.

<<SAMPLE PURPOSES-INSERT CRITERIA>>

Factor	Points Available
A Technical Specifications	
A(1) Qualifications, Experience And Past Performance Of Firm	30
A(2) Capacity And Capability	25
A(4) Past record of performance	30
A(5) Quality & Completeness	10
A(6) Proximity To And Familiarity With McKinley County	5
TOTAL	100 points
New Mexico Resident Business Preference	5 points
New Mexico Resident Veteran's Business Preference	10 points maximum
McKinley County Resident Business Preference	3.5 points maximum
TOTAL POSSIBLE POINTS WITH PREFERENCES	113.5 points
B Mandatory Submittals	
B(1) Letter Of Transmittal	Pass/Fail
B(2) Campaign Contribution Disclosure Form	Pass/Fail
B(3) Financial Stability	Pass/Fail
B(4)	Pass/Fail
C Mandatory Requirements	
C(1) Ten years previous experience	Pass/Fail
C(2)	Pass/Fail

Response to Mandatory Requirements: Pass/Fail only. The County reserves the right to contact any references whether listed or not; or make any investigation as deemed necessary.

6.1.2 APPLICATION OF STATE OF NEW MEXICO RESIDENT BUSINESS OR RESIDENT VETERANS BUSINESS PREFERENCE, AND MCKINLEY COUNTY BUSINESS PREFERENCE

1. Pursuant to Section 13-1-21(C) (2), NMSA 1978, when a public body makes a purchase using a formal request for proposals process.
 - i. If the contract is awarded based on a point-based system, a resident business shall be awarded the equivalent of (5) five percent of the total possible points to be awarded based on the resident business possessing a valid resident business certificate. A resident Veteran's business may be awarded up to a (10) ten percent preference of the total possible points. A McKinley County Resident Business will be awarded an additional 3.5%
 - ii. The County's RFP award process is based on a point system with 100 points possible. With the in-state preference applied, 105 points will be possible; with the resident Veteran's preference applied a maximum of 110 points are possible. With the McKinley County Business preference, a total of 113.5 points are possible.
2. Pursuant to Section 13-1-21 (D), NMSA 1978. When a joint bid or joint proposal is submitted by both resident and nonresident businesses, the resident business preference provided pursuant to Subsection B or C of this section shall be reduced in proportion to the percentage of the contract, based on the dollar amount of the goods or services provided under the contract, that will be performed by a nonresident business as specified in the joint bid or proposal.

Offeror will complete the following table if submitting a joint proposal:

Firm Name, Location Of Resident Business	Work to be Performed	% of Work Performed Compared to Total Contract Cost
Firm Name, Location Of Non-Resident Businesses	Work to be Performed	% of Work Performed Compared to Total Contract Cost

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

Example: 35% of work will be performed by the certified resident business: 35% of 5 points = 1.75 points.

6.1.3 Best and Final Offers From Finalists

Qualified Offerors may be asked to submit revisions to their proposals for the purpose of obtaining best and final offers. Best and Final offers may include an opportunity to revise prices or clarify their proposal.

6.2 PROPOSAL EVALUATION

- 1.2.1 Offerors submitting proposals may be afforded the opportunity for discussion and revision of proposals. Revisions may be permitted after submissions of proposals and prior to award for the purpose of obtaining best and final offers. Negotiations may be conducted with responsible Offerors who submit proposals found to be reasonably likely to be selected for award.

1.2.2 Shortlisting - A total of 100 points are possible. With application of State of New Mexico Resident Business preference, and up to 113.5 points with Application of the State of New Mexico Veterans Preferences per 13-1-21 NMSA 1978 and the McKinley County Local preference as per Ordinance No. JAN-12-002 As Amended in scoring each proposal. Offerors must include a copy of the New Mexico AND McKinley County preference certificate in their proposal to receive consideration for the preferences. The Selection Committee will evaluate the proposals and may develop a shortlist of the top ranked respondents.

1.2.3 Scoring - A selection committee will review and evaluate all replies and detailed proposals, may conduct oral presentations or a combination of both, unless otherwise indicated in this solicitation. The selection committee will have only the response to this solicitation to review and, therefore, it is important that Offerors emphasize specific information considered pertinent to the services to be provided.

At the committee meeting, the Procurement Manager will poll members of the committee to provide any comments relative to the proposals that influenced their scores, and whether to seek clarification from Offerors.

Following discussion by the members, each member may review scores and may make any changes. Scoring may take place over several rounds. Based upon the results of scoring, the committee will determine whether oral presentations will be conducted, whether to solicit Best and Final Offers from the top respondents, or both.

6.2.4 Oral Presentations - Oral Presentations will be conducted if a majority of the members present at the meeting determine whether they are in the best interest of the County.

Should the committee elect to conduct oral presentations, the top respondents may be interviewed. The Purchasing staff will coordinate the presentations with each interviewee as to the time, date and place the committee will conduct presentations and the time allowed for each presentation. The Committee members may question each interviewee during or after its presentation. Interviews will be closed to any persons not representing the interviewee. {A Maximum of 100 additional points may be awarded a firm based on Oral Presentation/Interviews. If Oral Presentations are not held, no additional points shall be awarded} OR {at the conclusion of all interviews, each member shall freshly rate each interviewee in accordance with the criteria and standards stated.} The County is under no obligation to conduct oral presentations with any Offeror.

Only the final combined summary committee score for each firm shall be available for public inspection after award of the contract. Any individual committee members score sheets and rankings shall remain confidential

SECTION 7 CONTRACT TERMS AND CONDITIONS

ARCHITECTURAL SERVICES AGREEMENT

(Name of Project): **On-call Architectural Services for McKinley County**

THIS AGREEMENT, made and entered into on the date last entered below by the signatories hereto, is by and between McKinley County, New Mexico, a New Mexico municipal corporation, hereinafter referred to as the "County", and

Name of Firm

XXXXXXXX XXXX XXXXXX XXX

XXXXXXXX XXXXX XXXXXXXXX

said business entity is hereinafter referred to as the "Architect".

WITNESSETH:

WHEREAS, on XXXXXXXX, 2021 the County desires that the Architect provide the County with professional services relating to the Project described in Article II of this Agreement; and

WHEREAS, the County desires to engage the Architect to render professional architectural and engineering services in connection therewith and the Architect is willing to provide such services; and

WHEREAS, the Architect represents that the person who has executed this Agreement on behalf of the Architect has the authority to bind the Architect to this Agreement pursuant to Section 61-15-6H., NMSA 1978;

NOW, THEREFORE, in consideration of the premises and covenants hereinafter contained, the parties hereto hereby agree as follows:

ARTICLE I DEFINITIONS

- A. Architect means the firm named in this Agreement which employs a currently registered Architect of New Mexico or the individual named in this Agreement who is a currently registered Architect of New Mexico. In the instance of a firm, the term "Architect" shall include the Project Architect(s) listed in this Agreement.
- B. AUTHORIZED AGENT means the Procurement Manager, McKinley County, or his successor or designee.
- C. County Project Manager means that person designated as the County's representative to the Architect.
- D. Contractor means the construction contractor or contractors awarded the contract by the County for the construction of the Project.
- E. Estimated Construction Cost means the total estimated cost for the construction of the project described in this Agreement, excluding fees, taxes and costs for legal and architectural or other design professional services, right-of-way and land acquisition, administrative services, County Project contingency funds, and all costs which are the responsibility of the County, or any costs for which design effort or activity by the Architect is incidental.

ARTICLE II DESCRIPTION OF PROJECT

The project shall be for: **On-call Architectural Design and Project Administration for McKinley County Projects as Needed**

ARTICLE III SCOPE OF SERVICES

The Architect shall perform professional services relevant to the Project in accordance with the terms and conditions set forth herein, and as provided in Exhibit I, Architect's Scope of Services, which is attached hereto and by this reference is incorporated herein and made a part of this Agreement as though set forth in full. If changes occur in the terms and conditions of this Agreement, scope of services, or the description of the Project, a supplemental agreement may be negotiated at the request of either party.

ARTICLE IV COMPENSATION

- A. BASIC FEE: Per proposal, attached
- B. PAYMENT SCHEDULE FOR BASIC FEE: Per proposal, attached
- C. PAYMENT FOR ADDITIONAL SERVICES: Per proposal, attached
- D. GROSS RECEIPTS TAX/NON-TAXABLE TRANSACTIONS: Per State Law all payments shall be in arrears for services or goods delivered. The Architect may add any applicable gross receipts tax to the fees and other payments payable hereunder. The Architect shall use and require the use of non-taxable transaction certificates by consultants and suppliers whenever allowed by law. In all events, the Architect shall not include gross receipts taxes paid to others as a part of the base dollar amount upon which Architect calculates its gross receipts taxes when billing the Architect's fees and expenses to the County.

ARTICLE V OWNERSHIP AND USE OF DOCUMENTS

- A. Original construction document drawings, calculations, technical data, and data related specifically to the Project, designs, specifications, notes (including field notes), project manuals, and/or related documents and other work developed in the performance of this Agreement by the Architect shall vest in and shall become the sole property of the County whether the Project for which they are made is constructed or not. Production costs of such materials shall be included within the Architect's basic fee. With respect to computer programs and computer data., the County, at its option and at its cost, may require that the Architect provide any and all computer licensing agreements necessary to permit the County to use computer programs and data related to the Project. As part of the Basic Fee, the Architect may maintain and retain a complete reproducible set of any and all record documents developed under this Agreement. Delivery of original documents shall not be required by the County prior to completion of the performance or termination of this Agreement.
- B. All documents, including drawings and specifications prepared by the Architect pursuant to this Agreement, are instruments of service in respect to the Project. They are not intended or represented by the Architect to be suitable for reuse by the County on any other project except as provided in Article V(E), below.
- C. The original drawings may be marked by the County or the Architect to designate the restrictions of use of these documents as set forth in this Article.
- D. Copyright: no reports, maps, or other documents produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of the Architect. However, the Architect may use these documents as reference and research materials and as representations of the design of the Project, including photographs of the work among the Architect's promotional and professional materials, provided however that such documents and materials shall not include the County's confidential or proprietary information in the event the County has previously advised Architect in writing of matters that the County considers confidential or proprietary. The County shall provide professional credit for the Architect in promotional materials for the Project if so requested, in writing, by the Architect.
- E. Unless provided otherwise in Article XVII, reuse of drawings, specifications and other work developed by Architect in its performance of this Agreement shall be prohibited except as base documents for subsequent phases., additions, alterations, or remodeling of the Project. The County agrees to hold the Architect harmless for damages arising from the use of drawings, specifications, and other work developed in the performance of this Agreement, and the Project included therein, when such drawings, specifications, and other work are used for purposes other than as base documents for subsequent

phases, additions, remodeling, or alterations to the Project. The Architect does not represent that the documents described in this Article are suitable for reuse under different conditions and the parties understand that the documents described in this Article are designated specifically for the site of the Project described in Article II of this Agreement. This paragraph shall not apply to the performance of this Agreement nor in instances where the Architect is retained as the Architect of record on any such subsequent Project using the same drawings, specifications, and other work product from the Project.

- F. The County shall make copies, for the use of the Architect, of all of its maps, records, laboratory tests, or other data pertinent to the services to be performed by the Architect pursuant to this Agreement, and also make available any other maps, records, or other materials available to the County from any other public agency or body.
- G. In the event the County requires additional copies of the documents prepared under this Agreement prior to the Architect's delivery of the original documents to the County, the Architect agrees to promptly provide copies upon request, and the County agrees to reimburse the Architect for reasonable costs of reproduction, not to exceed actual costs of reproduction, including labor costs expended in providing the requested copies.

ARTICLE VI ACCOUNTING PROCEDURES AND RECORDS REQUIRED

- A. Records of expenses by the Architect and its consultants pertaining to all services provided under this Agreement (other than lump sum fees) shall be kept on the basis of generally accepted accounting principles and shall be available at mutually convenient times to the County or the County's authorized representative, but only upon the request of the Authorized Agent. The County shall have the right to audit all such records and billings both before and after payment. Payment under this Agreement shall not foreclose the right of the County to recover excessive or illegal payments.
- B. Required records of expenses shall be kept by the Architect and its consultants and shall be available to the County until all applicable Statutes of Limitations have run, and this Article VI shall survive and continue beyond the termination of any other terms of this Agreement.
- C. In the event the County audits the Architect's records, pursuant to this Article, Architect shall make available to the County for examination all of the Architect's records with respect to all matters covered by this Agreement and shall permit the County to audit, examine, and make copies at its own expense, excerpts or transcripts from all such records, and to make audits including, but not limited to: all contracts; invoices; materials; payrolls; records of personnel, to the extent allowed by law; conditions of employment and other data relating to all matters covered by this Agreement. The Architect and its subconsultants shall not be compensated under this Agreement for its time or any costs incurred in complying with the paragraph.

ARTICLE VII SUSPENSION AND TERMINATION OF AGREEMENT

- A. **PROJECT SUSPENSION:** If the Project is suspended for more than three (3) months or abandoned in whole or in part, the Architect shall be compensated for its services performed prior to receipt of written notice from the County of such suspension or abandonment, together with expenses then due. If the Project is resumed after being suspended for more than three (3) months, the Architect's compensation shall be subject to renegotiation. In the event fees cannot be agreed upon, the County may select another architect, and the Architect shall be entitled to no further fees.
- B. **TERMINATION:** If either party should fail to fulfill in timely and proper manner its obligations under this Agreement, or if either party should violate any of the covenants, agreements, or stipulations of this Agreement, such party, in addition to remedies available under the terms of this Agreement thereupon shall have the right to terminate this Agreement by giving written notice to the other party of such termination and specifying the effective date thereof at least fifteen (15) days before the effective date of such termination. The Architect shall be responsible for all direct and consequential costs and damages which may arise out of the Architect's failure to complete the services in accordance with the schedule of Architect's services defined in or pursuant to this Agreement, provided however, that the Architect shall not be responsible for damages caused by the County's delay. The Architect shall not be entitled to delay damages against the County for delay of the performance of this Agreement caused by the County or any

third parties.

1. In the event that the Project is abandoned by the County, the County may terminate this Agreement at any time by giving at least fifteen (15) days written notice to the Architect.
 2. Termination for convenience of the County: The County may terminate this Agreement, in whole or in part, for the County's convenience at any time by giving at least fifteen (15) days written notice to the Architect.
 3. Termination Due to Non-Funding: In the event the construction project funds out of which this Agreement is funded are depleted to the extent the funds are inadequate for the County to make the payments required pursuant to this Agreement, the County may terminate this Agreement by giving at least ten (10) days written notice to the Architect.
 4. Effect of Termination: Upon Architect's receipt of a notice of termination, the Architect shall promptly discontinue all services affected, unless otherwise directed in writing by the County. All finished or unfinished documents, data, sketches, calculations, summaries, estimates, records, schedules, studies, surveys, drawings, maps, models, photographs, reports, and such other information and data accumulated in the performance of services under this Contract, whether complete or in progress, prepared by the Architect under this Contract shall become the County's property, regardless of the cause for termination. The Architect shall be entitled to receive compensation for actual work satisfactorily completed hereunder, including reimbursable expenses authorized by County which are then due, but shall not be entitled to recover any consequential damages from the County, including, but not limited to loss of anticipated profits, for any termination allowed pursuant to this Article. In the event of termination for convenience, the County may take over the work of the Project and continue the Project by contract with another party or with its own staff.
- C. GIVING NOTICE: The time required to give notice in this Article VII shall begin to run from and including the date of the postmark of the notice of termination or date of personal delivery.

ARTICLE VIII STANDARD OF CARE

The Architect agrees that it and its employees shall possess the experience, knowledge, and character necessary to qualify them individually for the particular duties they perform in connection with the services to be performed under this Agreement. These services shall be performed in accordance with the standards of the profession. Architect further agrees that it will require its consultants, subconsultants, joint venturers., and agents to agree with Architect that they possess the experience, knowledge, and character necessary to qualify them individually for the particular duties that are performed in connection with the services to be performed for the Architect on the projects. Such agreement by consultants, subconsultants, joint venturers, and agents shall further provide that the services required of them shall be performed in accordance with the standards of their profession and shall not be construed as a diminution of Architect's liability and responsibilities to the County.

ARTICLE IX INDEMNIFICATION

- A. The Architect agrees to defend, indemnify, and hold harmless the County and its officers, and employees from and against all suits, actions, or claims of any character brought against the County because of any injury or damage received or sustained by any person, persons, or property arising out of or resulting from any negligent act, error, or omission of the Architect, its agents or its employees arising out of the performance of this Agreement. Nothing in the Agreement shall be construed to require the Architect to (defend) indemnify and hold harmless the County, its officers, and employees from and against liability, claims, damages, losses or expenses, including attorney's fees, arising out of bodily injury to persons or damage to property caused by or resulting from in whole or in part the negligence, act or omission of the County, its officers and employees or any legal entity for whose negligence, acts, or omissions any of them

may be liable, as to liability, claims, damages, losses or expenses, including attorney's fees, arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications by the County, or the agents or employees or officers of the County or the giving or failure to give directions or instructions by the County or agents or employees or officers of the County where such giving or failure to give directions or instructions is the primary cause of bodily injury to persons or damage to property. This indemnification provision is subject to the limitations and provisions of Section 56-7-1 NMSA 1978.

The Architect's time and expenses spent in defending allegations in claims or lawsuits that the Architect was negligent shall be at the Architect's own expense, and the Architect shall cooperate with the County in defending claims and lawsuits arising out of the negligence of the Architect. This will not require of the Architect analyses, computations, and other engineering work which is not in the scope of this Agreement.

- B. The Architect's time and expenses spent in defending allegations in claims or lawsuits that the Architect was negligent shall be at the Architect's own expense, and the Architect shall cooperate with the County in defending claims and lawsuits arising out of the negligence of the Architect. This will not require of the Architect analyses, computations, and other engineering work which is not in the scope of this Agreement.

ARTICLE X FINAL PAYMENT

The Architect, by its acceptance of final payment of the amounts due under this Agreement, releases the County, its officers, and employees, from all liabilities and obligations for fees and costs due under this Agreement, including, but not limited to, all damages, losses, costs, liability, and expenses (including, but not limited to, attorney's fees and costs of litigation) that the Architect may have. All representations, warranties, and guarantees made in this Agreement will survive final payment and termination or completion of this Agreement.

ARTICLE XI GENERAL AND SPECIAL PROVISIONS

- A. COMPLIANCE WITH LAWS: Architect agrees to perform this Agreement in compliance with all Federal, State, and Local codes, regulations, ordinances and laws.
- B. GOVERNING LAW: This Agreement shall be governed exclusively by the provisions hereof and by the laws of the State of New Mexico.
- C. CONTRACT FOR CONSTRUCTION: ARCHITECT'S STATUS: The extent of the Architect's duties and responsibilities, the Architect's relationship with the Contractor, and the limitations of the Architect's authority during the Construction Phase of this Agreement, if applicable, shall be in accordance with the General Conditions of the Construction Contract, as specified in Article XVII of this Agreement, all of which are incorporated herein as though set forth in full. The term "Engineer" shall be replaced with the term "Architect" throughout said General Conditions. Such General Conditions and supplements thereto shall not be modified without the Architect's written consent to the extent such changes effect the architectural services required by this Agreement.
- D. INDEPENDENT CONTRACTOR STATUS: The Architect, and its agents and employees, are independent contractors performing professional and technical services for the County and are not employees of the County. The Architect, and its agents and employees, shall not as a result of this Agreement accrue leave or retirement, and shall not be entitled to insurance or bonding benefits or coverage, and shall not be entitled to use County vehicles, or any other benefits afforded to employees of the County.
- E. TIME OF ESSENCE: All time limits stated in this Agreement are of the essence in the performance of this Agreement.
- F. ARCHITECT'S CHANGE OF STATUS
 - 1. ASSIGNMENT OF CONTRACT: The Architect shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written consent of the County.
 - 2. JOINT VENTURE: In the event the Architect proposes to perform this Agreement as part of a joint

venture, all such joint venture Agreements shall be reviewed by and meet the requirements of the Authorized Agent and made an incorporated exhibit to this Agreement. Such joint venture Agreements shall clearly identify the duties and responsibilities of each joint venturer as such duties and responsibilities relate to the performance of this Agreement.

3. **MERGERS, DISSOLUTION, SUCCESSORS, AND ASSIGNS:** The Architect agrees that during the term hereof it will maintain its existing business structure and will not dissolve or otherwise dispose of all or substantially all of its assets and will not consolidate with or merge into another business structure or permit one or more other business structures to consolidate or merge into it, unless the surviving, resulting, or transferrer business structure, as the case may be, (1) is capable of performing, and agrees in writing to perform all of the obligations of the Architect hereunder; (2) qualifies to do business in the State of New Mexico, including providing a legal resident registered architect of New Mexico as Project Architect; and (3) Authorized Agent approves of the firm or individual Architect, or new Architect, if any, who is to proceed with the performance of this Agreement. The terms and provisions hereof shall extend to and be binding upon and inure to the benefit of the successors and assigns of the respective parties hereto. The failure of the Architect to comply with the foregoing provisions of this paragraph shall constitute a default of this Agreement by the Architect.
4. **PROJECT ARCHITECT/CHANGE OF STATUS:** The Authorized Agent shall have sole discretion to determine whether the Project Architect or the firm named as Architect in this Agreement shall continue to have all contract rights under this Agreement and continue to represent the County under this Agreement in all instances where all or some of the Project Architects cease to be associated with the firm named in this Agreement.
5. **SUBCONTRACTING:** In the event that the Architect subcontracts out any portion of its duties or responsibilities under this Agreement or if the Architect hires subconsultants to assist it with its duties or responsibilities under this Agreement, the Architect shall require that all terms of this Agreement applicable to the subconsultant, subcontractor, or joint venturer shall be incorporated into any contract or agreement entered into with such subconsultant, subcontractor, or joint venture, and the County shall be entitled to receive a copy of all such contracts or agreements from the Architect.

H. CONTRACT INTERPRETATION:

1. **SEPARABILITY:** If any clause or provision in this Agreement is illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, then and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby.
2. **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.
3. **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.
4. **CAPTIONS AND SECTION HEADINGS:** The captions and section headings 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.
5. **MULTIPLE ORIGINALS:** This document may be executed in counterparts, each of which shall be deemed an original.
6. **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.

7. INTERCHANGEABLE TERMS: For purposes of all provisions within this Agreement and all attachments hereto, the terms Agreement and Contract shall have the same meaning and shall be interchangeable.
8. WORDS AND PHRASES: Words, phrases, and abbreviations which have well-known technical or trade meanings used in the Contract Documents shall be used according to such recognized meanings. In the event of a conflict, the more stringent meaning shall govern.
9. 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.
10. EXHIBITS, CERTIFICATES, DOCUMENTS INCORPORATED AND ATTACHMENTS: Incorporation by Reference: All certificates, documents, exhibits, attachments, riders, and addenda referred to in this Agreement, including but not limited to the exhibits referred to in this Agreement, as well as those listed hereinafter, 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. The following exhibits are attached hereto and incorporated herein as though set forth in full:

(1) Exhibit I: Architect's Scope of Services and Proposal dated XXXXXXXXXXXX

- I. FORMAL NOTICES: All notices herein provided to be given, or which may be given, by either party to the other shall be deemed to have been fully given when made in writing and deposited in the United States mail, postage prepaid. In the instance of termination of this Agreement, notice shall be sent by certified mail. Notices shall be addressed as follows:

MCKINLEY COUNTY:

McKinley County
Attn: Hugo Cano
P.O. Box 70
Gallup, NM 87305

ARCHITECT:

XXXXXXXXXXXXX
XXXXXXXXXXXXX
XXXXXXXXXXXXX

Nothing herein contained shall preclude the giving of any such written notice by personal service. The address to which notices shall be mailed to either party may be changed by written notice given by such party to the other as herein above provided. In addition, nothing contained herein shall preclude the transmission of routine correspondence, messages, and information between the respective parties to this agreement, either at the project site or at the home offices of either party, or by an official of either party or their representatives.

- J. CONFLICT OF INTEREST: The Architect warrants that it currently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under this Agreement. The Architect further covenants that, in the performance of this Agreement, no person having any such interest shall be employed by the Architect. The Architect also agrees that neither it nor anyone employed by it shall have an interest, direct or indirect, in any company hired for the Project as Contractor, subcontractor, manufacturer, or supplier, except for those areas of construction for which the County provides construction phase inspection that is independent of the Architect.
- L. LIMIT ON AUTHORITY: The Architect agrees not to purport to bind the County to any obligation not assumed herein by the County, unless the Architect has express written authority to do so, and then only within the strict limits of that authority.
- M. ADMINISTRATION OF THE AGREEMENT: The County's Authorized Agent, or authorized representative thereof, shall administer this Agreement for the County.
- N. DISCLOSURE: The Architect hereby affirms that within the two (2) years preceding the execution of this Agreement, neither the Architect nor any of the Architect's officers, agents or employees have made or

agreed to make any valuable gift whether in the form of service, loan, thing or promise to any person or any of the person's immediate family, having the duty to recommend, the right to vote upon, or any other direct influence on the selection of firms or persons to provide professional architectural, engineering, landscape architectural, and other related services to the County.

- O. LEGAL SERVICES: Architect shall not be entitled to receive payment pursuant to the terms of this Agreement or otherwise for legal services the Architect procures or employs for any matter related to the study, design, and/or the construction of the Project except when advanced written approval, which specifies the scope of such legal services, is given by the County Attorney of McKinley County.
- P. REAL PROPERTY APPRAISAL AND ACQUISITION: The Architect shall not be entitled to receive payment pursuant to the terms of this Agreement or otherwise for providing services of real property appraisal or acquisition and is expressly prohibited from obtaining appraisals of real property or instituting or causing to be instituted any negotiations or legal proceeding of any nature related to the acquisition of real property as part of the Architect's services under this Agreement.
- Q. SUBSEQUENT CONFLICTS OF INTEREST: Architect agrees to not serve in the capacity of Architect, Consultant, Expert, or Expert Witness for any party to litigation or pending litigations holding an adverse position to, or claim against, McKinley County on the same subject matter for which the Architect performs services pursuant to the terms of this Agreement.

ARTICLE XII INSURANCE

Except as provided in paragraph D of this Article, the Architect shall procure and maintain at its expense until final payment by the County for services covered by this Agreement, insurance in the kinds and amounts hereinafter provided with insurance companies authorized to do business in the State of New Mexico, covering all operations under this Agreement, whether performed by it or its agents. Before commencing the work, the Architect shall furnish to the County a certificate or certificates in a form satisfactory to the County showing that it has complied with this Article. Such certificate(s) is required in addition to a copy of each insurance policy required in Article XII-E. Various types of required insurance may be written in one or more policies. Kinds and amounts of insurance required are as follows:

- A. Commercial General Liability Insurance Including Automobile: Commercial general liability and automobile insurance policies with liability limits in amounts not less than \$1,000,000.00 per occurrence and \$1,000,000 aggregate for bodily injury, including death, and property damage in any one occurrence, for each policy.
Said policies of insurance shall be in effect for the term of this Agreement and include coverage for all operations performed for the County by the Architect, coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment both on and off work, and contractual liability coverage shall not exclude the indemnification provisions (including but not limited to Article IX) of this Agreement. The County shall be named an additional insured on the Commercial General Liability Insurance policies.
- B. Worker's Compensation Insurance: Worker's Compensation Insurance in accordance with the provisions of the Workers' Compensation Act, Chapter 52, Article 1, NMSA 1978.
- C. Professional Liability Insurance:
 - 1. Professional liability insurance in an amount of not less than \$1,000,000.00 in the aggregate.,
- D. Costs of Insurance and Increased Limits: In the event the County elects to require insurance coverage pursuant to paragraphs C.1 the cost directly incurred by the Architect which is in addition to the Architect's Basic Professional Liability Insurance shall be a direct reimbursable expense (Additional insurance premium cost only), which shall be paid by the County. If, during the term of this Agreement, the County requires the Architect to increase the minimum limits of any insurance required herein, an adjustment in the Architect's compensation will be made in the amount of the actual cost of additional insurance attributable directly to this Agreement.
- E. All policies of insurance required by this Agreement shall be attached to this Agreement at the time it

is submitted by the Architect to the County. Architect shall cause all amendments to such policies and all replacement policies to be submitted to the County at the time of issuance of such amendments or replacement policies.

ARTICLE XIII DISCRIMINATION PROHIBITED

In performing the services required hereunder, the Architect shall not discriminate against any person on the basis of race, color, religion, sex, national origin or ancestry, age, or physical handicap.

ARTICLE XIV MULTI-PHASE CONSTRUCTION CONTRACTS

Where multi-phase construction contracts other than multi-phase construction contracts that are specifically provided in this Agreement, are deemed to be in the best interest of the County and are so ordered in writing by the County, then a supplement to this Agreement shall be negotiated between the Architect and the County.

ARTICLE XV DISPUTE RESOLUTION

- A. PRE-ARBITRATION PROCEDURES: In the event a dispute concerning this Agreement arises, any party seeking relief shall mail or deliver a written demand to the other party, describing the relief sought and the basis for such relief. The County and the Architect shall attempt to informally negotiate a resolution of such demand. In the event the negotiations fail or no resolution is reached within fifteen days after receipt of the demand, whichever first occurs, the dispute shall be submitted to non-binding mediation. The party making the demand shall submit the dispute to the American Arbitration Association (AAA) pursuant to the Commercial Mediation Rules of the AAA in effect at the time the dispute is submitted to the AAA. Said rules shall govern the mediation. Each party shall pay in equal shares all fees and costs assessed by the AAA for its services and those of the mediator. Unless agreed in writing otherwise, the failure of any party making a demand to request mediation within thirty days of the original submission of the demand shall be deemed a waiver of mediation requirements herein, and the parties shall proceed pursuant to Section B of this Article. Nothing provided in this paragraph shall be construed to prohibit any party from demanding arbitration in order to comply with Section F of this Article or to proceed pursuant to Section C of this Article. In the event the dispute is submitted to Arbitration., the parties may enter into a written agreement to stay arbitration pending completion of mediation.
- B. Any dispute concerning this Agreement, or the performance, interpretation, or breach hereof, shall be settled by arbitration pursuant to the Uniform Arbitration Act (44-7-1 et seq NMSA 1978). The Arbitrator(s) shall have no power to render an award which has the effect of altering or amending or changing in any way any provision of this Agreement. The award of the arbitrator(s) shall be final and binding. Judgment upon any such award shall be rendered only by any state or federal court sitting in McKinley County, New Mexico. Any and all arbitration proceedings, including discovery ordered by the arbitrator(s) shall take place in McKinley County, New Mexico or in the County in which the construction site which is the subject of this Agreement is located. In the event this Agreement requires a study phase only, the arbitration proceedings shall be held only in McKinley County. In any such arbitration, the arbitrator(s) shall have the powers of a court having jurisdiction as well as all of the powers pursuant to the Rules. Without limiting the generality of the foregoing, the Arbitrators shall have the power to issue orders for injunctive relief.
- C. INJUNCTIVE RELIEF: County and Architect consent and agree to the issuance of any temporary restraining order or preliminary injunction, by any Court sitting in McKinley County having jurisdiction, upon the application of any party to the arbitration. Such authority of a Court to order injunctive relief shall terminate upon completion of the appointment of an arbitrator(s) who will then have jurisdiction to issue orders for injunctive relief. Any party to the arbitration may apply to the Arbitrator(s) for issuance of an injunction or similar relief, and such application shall be heard by the arbitrator(s) within ten (10) days after the application is filed. Any Court in McKinley County, New Mexico having jurisdiction to render an order confirming the award of the arbitrator(s) shall have jurisdiction to enter an order confirming the issuance of such injunction and making it an order of the Court.

- D. CONSOLIDATION AND JOINDER: The County and the Architect consent to the joinder in arbitration of any party necessary for the complete resolution of all disputes arising out of the performance of contracts pertaining to the Work of the Project, including but not limited to the Architect and its subcontractors and subconsultants and the Contractor and its subcontractors and suppliers. The County and the Architect also consent to the consolidation of any arbitration under this Agreement with any other arbitration involving the performance of contracts pertaining to the Work of the Project.
- E. Notice of demand for arbitration must be filed in writing with the other parties to this Dispute Resolution Article. The demand must be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event may the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

ARTICLE XVI
APPROVAL REQUIRED

This Agreement shall not become binding or effective until approved by the County's Authorized Agent or his authorized representative.

ARTICLE XVII
OTHER PROVISIONS

All additions, deletions, or modifications to the above Articles I through XVII and to any exhibits to this Agreement shall be entered in this Article. All other modifications shall not be binding or enforceable.

IN WITNESS WHEREOF, the County and the Architect have executed this Agreement as of the day and year last entered below.

MCKINLEY COUNTY:

ARCHITECT:

BY: _____
Authorized Agent

BY: _____

Title

Title

DATE: _____, 2021

Phone Number

Email Address

DATE: _____, 2021

SECTION 8 ESCALATION CLAUSE

The Escalation Clause is not intended to allow any increase in profit margin, only to compensate for actual cost increases. Price decreases as well as increases shall apply. If vendor's prices are reduced for any reason, the County shall receive the benefit of such reductions. Price increases will not be retroactive to orders already placed, or to backorders. Orders will be filled at the price in effect on the date of receipt of the order by the vendor.

Price escalations may be considered only under the following conditions:

- A. Offered prices must be firm for at least three hundred sixty (360) calendar days after written notification of contract.
- B. All requests for price increases shall be in writing and accompanied by:
 - 1.) a letter from the Contractor's supplier certifying the price increase to the Contractor; or
 - 2) evidence of verifiable market conditions resulting in increased costs such as mandated labor rate increases and significant fuel or energy cost increases.
- C. All invoices of the offered items, including from suppliers to the bidder, shall be subject to auditing by the County and furnished without delay upon request.
- D. The County reserves the right to purchase on the open market or cancel a contract resulting from this request and/or solicit a new contract if the escalated price is above the current open market price for the same item. Cancellation of the contract shall not affect any outstanding orders.
- E. All revisions of the price list shall become effective when they are accepted by the Purchasing Office of the County, provided that they do not conflict with paragraph (F) or (G).
- F. All approved price changes resulting from this escalation clause shall be firm for a period of three hundred sixty (360) calendar days after acceptance in writing from the County.
- G. The Offeror shall be limited to a maximum of two (2) price escalations per contract period unless otherwise specified in this request.
- H. The Offeror shall provide to the County written notice of any requested price changes, which shall become effective upon acceptance by the County of McKinley.
- I. If the Offeror receives any price de-escalations from the supplier of goods sold to the County through a contract resulting from this request, the Offeror is responsible for notifying the County of such de-escalations and passing those price changes on to the COUNTY immediately