

**CITY OF FARMINGTON
800 MUNICIPAL DRIVE
FARMINGTON, NEW MEXICO 87401**

**Request for
Qualifications-based Proposals**



**Professional Architectural Services for
Municipal Operations Center Expansion West
RFQP #12-90247**

PROPOSAL OPENING DATE

February 15, 2012
2:00 PM

Pre-Proposal Conference
February 1, 2012
10:00 AM

Tentative Council Approval Date
March 20, 2012

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**REQUEST FOR QUALIFICATION-BASED PROPOSAL FOR
PROFESSIONAL ARCHITECTURAL SERVICES FOR MUNICIPAL OPERATIONS CENTER
EXPANSION WEST
RFQP # 12-90247
OPENING DATE: FEBRUARY 15, 2012
TIME: 2:00 PM**

ACKNOWLEDGMENT OF RECEIPT FORM

In acknowledgment of receipt of the distribution packet #12-90247, the undersigned agrees that he/she has received a complete copy, beginning with the title page and ending with Draft Agreement Exhibit B, for a total of 52 pages.

The acknowledgment of the receipt should be signed and returned to the Buyer no later than February 1, 2012. Only potential Offerors who elect to return this form will receive copies of all future communications relating to, and including amendments to #12-90247 if issued.

FIRM: _____

REPRESENTED BY: _____

TITLE: _____ PHONE NO.: _____

EMAIL: _____ FAX NO.: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

SIGNATURE: _____ DATE: _____

This name and address will be used for all correspondence related to document # 12-90247

Firm does/does not (circle one) intend to respond to Professional Architectural Services for Municipal Operations Center Expansion West, #12-90247.

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

Return To:

Rosalyn Potter
Buyer II
City of Farmington
Central Purchasing
800 Municipal Drive
Farmington, NM 87401

Telephone Number: 505-599-1365

Fax Number: 505-599-1377

Faxed copies of this form will be accepted.
Faxed copies of the RFQP will not be accepted

REQUEST FOR QUALIFICATIONS-BASED PROPOSALS (RFQP) SUBMITTAL FORM

RFQP TITLE: Professional Architectural Services for
Municipal Operations Center Expansion West
RFQP # 12-90247

Approved as to Form:

/s/ Edward Smylie

PROPOSALS SHALL BE DELIVERED TO:

CITY OF FARMINGTON
CENTRAL PURCHASING DEPARTMENT
800 MUNICIPAL DRIVE (MAILING
ADDRESS)
OR
805 MUNICIPAL DRIVE (PHYSICAL
LOCATION)
FARMINGTON, NEW MEXICO 87401

Edward Smylie, Purchasing Officer

If you have any questions regarding this Request
for Qualification-based Proposal please contact:

Rosalyn Potter

Rosalyn Potter, Buyer II
Telephone Number: (505) 599-1365

PROPOSAL OPENING DATE:
February 15, 2012 at 2:00pm./MT

PRE-PROPOSAL CONFERENCE

DATE: February 1, 2012

TIME: 10:00 a.m./MT

PLACE: Kilowatt Conference Room, 101 N. Browning
Parkway, Farmington, NM

IMPORTANT - PROPOSALS MUST BE SUBMITTED IN A SEALED ENVELOPE WITH THE RFQP NUMBER AND OPENING DATE CLEARLY INDICATED ON THE BOTTOM LEFT HAND SIDE OF THE FRONT OF THE ENVELOPE.

FAXED OR EMAILED PROPOSALS WILL NOT BE ACCEPTED.

Sealed proposals will be received until the above specified date and local time, then opened at the City of Farmington Central Purchasing Department. The opening of proposals shall be conducted in private in order to maintain the confidentiality of the contents of all proposals during the negotiation process.

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

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

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

OFFEROR MUST COMPLETE THE FOLLOWING

| | | | | |
|---|-----------------|---------------|------------------|----------|
| COMPANY NAME | MAILING ADDRESS | CITY | STATE | ZIP CODE |
| CONTACT PERSON | | EMAIL ADDRESS | TELEPHONE NUMBER | |
| In-State Preference will be applied only to those in-state certified businesses who have completed the following: | | | | |
| Offeror has received certification from the State of New Mexico for Resident Business Certification. Offeror has been issued Certification # _____ and is therefore eligible for the 5% preference. In-state certification approval is required at the time of the proposal opening to be eligible for in-state preference. | | | | |
| ***To be a valid proposal, Offeror must sign here*** | | | | TITLE |

Offeror must check the appropriate box below:

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

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

CITY OF FARMINGTON, NEW MEXICO

NOTICE TO OFFERORS

Professional Architectural Services for Municipal Operations Center Expansion West, RFQP #12-90247

Opening Date: February 15, 2012 @ 2:00 P.M.

A pre-proposal conference will be held at the Kilowatt Conference Room, 101 N. Browning Parkway, Farmington, New Mexico at 10:00 a.m., on February 1, 2012.

RFQP documents may be retrieved by accessing the Purchasing page of the City of Farmington website, www.fmtn.org, by calling (505) 599-1373 or visiting the Central Purchasing Office at 805 Municipal Drive, Farmington, New Mexico.

Publication Date: January 15, 2012

1 General Conditions

2 **Qualifications-based Proposals**

3
4 As required by 13-1-111 NMSA 1978 the City of Farmington (City) is requesting
5 qualifications-based proposals (RFQPs) for professional services pursuant to Sections
6 13-1-120 to 13-1-124, NMSA 1978.

7 Proposals must include, but are not limited to, the requirements set forth in
8 RFQP Professional Architectural Services for Municipal Operations Center Expansion
9 West, #12-90247. Proposals deposited with the City may be withdrawn or modified
10 prior to the time set for opening of proposals by delivering written notice on company
11 letterhead.

12 The opening of sealed proposals shall be conducted in private in order to
13 maintain the confidentiality of the information/data provided. Proposals will remain
14 confidential during the negotiation process.

15 Offerors submitting proposals may be afforded an opportunity for discussion and
16 revision of proposals. Revisions may be permitted after submission of proposals and
17 prior to award.

18 The City will open all proposals, assign an evaluation committee and evaluate all
19 proposals; determine the need for, conduct any negotiations; and make a final
20 recommendation to the City Council for award of the agreement or contract.

21 The agreement or contract award shall be made to the responsible Offeror or
22 Offerors whose proposal is most advantageous to the City of Farmington, taking into
23 consideration the evaluation factors set forth in the RFQP. The award of an agreement
24 or contract for professional services shall be made based upon the criteria which does
25 not include price.

26 The City reserves the right to reject any or all proposals or to waive irregularities
27 at its option when it is in the best interest of the City of Farmington.

28 Award of an agreement or contract is contingent upon the budgeting and
29 appropriation of funds for continuation of the professional services contemplated by this
30 RFQP.

Request for Qualifications-based Proposals
Professional Architectural Services for Municipal Operations Center Expansion West,
RFQP #12-90247

I. Background Information

A. Introduction

Through this Request for Qualifications-based Proposal (RFQP), the City of Farmington (City) seeks proposals for development of a complete set of design plans to enable the bidding of construction and remodel of the west end of the Municipal Operations Center (MOC) building and the construction of one multiple-truck maintenance bay to allow Vehicle Maintenance to work on large electric utility vehicles.

B. Description of the Project

The City of Farmington is requesting qualifications-based proposals from qualified professional consulting services for the projects described below.

The project entails preparation of specific site development plans, construction documents, and cost estimates for Professional Architectural Services for Municipal Operations Center Expansion West: To include approximately 9,500 square feet of new construction and approximately 7,500 square feet of renovation space to the existing Municipal Operations Center, and a new covered parking area attached to the far west end of the new building construction for utility line trucks (60' x 200' x 16').

Budget Estimate: \$3.5 million. Exhibit A, attached, is the Preliminary Design and is intended for general project concept information.

C. Scope of Services

Professional Architectural Services for Municipal Operations Center Expansion West and Construction of Truck Bays design projects shall include as a minimum the following information:

The building additions will be 5" slab on engineered fill, assuming a 5' over-excavation and figure approximately 1 foot of additional fill, 8" split faced masonry exterior walls, except for the Transformer Shop which will be 12" split faced masonry and TPO roofing over metal deck, rigid insulation (R-30) over steel joists. Interior partitioning will be 3 5/8 gypsum board each side, VCT floor covering except in the transformer shop, meeting room, relay shops and storage areas, which will be sealed concrete. All large doors will be roll-up metal. Exterior doors and frames, and window frames will be hollow metal and interior doors will be solid core wood set in hollow metal frames. Office areas will have lay-in ceilings with the new restroom having a suspended gypsum board ceiling. Furnishings are not part of the scope.

The Transformer Shop will have a five ton bridge crane the full length of the bay, there will be a large air compressor that services the entire new construction adjacent to the Transformer Shop and will be covered. One roof top mechanical unit shall service all of the new addition area, with photovoltaic collectors on the Transformer Shop roof. The Tool Room, Storage and Foreman's roofs shall have skylights.

The renovated spaces are where the existing Transformer Shop, Meter Shop, Break room and current supervisor offices are currently located. One of the existing restrooms at the right hand side of the floor plan shall be remodeled from a Men's restroom/locker to a Women's restroom. All of the renovated area is metal stud and gypsum board construction and will be patched or repaired, repainted and new lay-in ceiling installed.

The Metering Services and Relay Shops will be thoroughly cleaned and repainted.

Minor modifications to the HVAC and Electrical systems will be made in the Metering Services and Relay Shop areas.

Minor asphalt and concrete paving, replacement and repair will be completed around the new structure.

In addition to, but as alternatives in the construction bid phase, the Architect is to address the following.

Two Large Truck Vehicle Bays will be designed with recommendations from the awarded Architect on the best location within the Municipal Operation Center (MOC) complex. The Vehicle Maintenance Bays will include: independent wheel jacks; lube tubes, benches, racks and tools; and a ceiling mounted winch.

Repaving of the MOC compound shall be designed and will be bid in the construction phase of this project as an alternate.

Deliverables:

Narratives (Reports) that outline the reasons for the two alternatives, project cost estimates, recommended time-line for completion will be required. The Offeror shall submit a detailed schedule, including deliverables, for their work to be completed on this project.

Final Design Concepts with narrative to include a site plan, elevations, sketches, perspectives, or other suitable presentation forms.

The preparation of complete plans and specifications for construction of the Municipal Operations Center Expansion West including construction of Truck Bays (Alternative #1) and asphalt of the MOC compound (Alternative #2). Construction plans and specifications will be required to be submitted to the City electronically and on CD.

These proposals shall include, but not limited to, the following:

Concept and design on a site plan; preliminary plan; assessments to facilitate all required permits; project cost estimates; alternatives #1 and #2; construction plans and specifications; bidding process; construction coordination and overview. (Summary Scope: Planning to Project Completion)

D. Qualifications of Offerors

The Offeror shall submit with each Proposal a qualification statement addressing the specialized design and technical competence of the firm and key personnel, based on similarly sized facilities designed within the last five (5) years. The Offeror shall submit a list of current projects assigned to the key personnel that will be assigned to this project.

Key Project Team Members: Personnel listed, as submitted by your firm, shall remain responsible throughout the period of the agreement and be available for anticipated public meetings to be held regarding this project. No substitution may be made without written submission of the proposed replacement and final approval being granted by the City's Project Manager.

The Offeror will provide a list of five (5) references of clients who are or have been provided the same or similar type service within the past five (5) years. The reference list shall include current clients and shall provide a contact person, telephone number and if available, an e-mail address. The City reserves the right to contact clients for reference checks.

E. Information Provided by City

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

Should an Offeror find discrepancies in, or omissions from, this RFQP and related documents, or should Offeror be in doubt as to meaning, Offeror shall immediately notify the City's designated representative and, if the point in question is not clearly set forth, a written addendum or bulletin of instructions will be mailed or delivered to each person obtaining an RFQP. Each person requesting an interpretation will be responsible for the delivery of such requests to the City's designated representative in writing as outlined in this RFQP. The City will not be bound by, nor responsible for, any explanation or interpretation of the proposed documents other than those given in writing.

Before submitting a proposal, Offerors should visit the site to ascertain by inspection pertinent local conditions such as locations, character and accessibility of sites, availability of facilities, labor conditions, and any other items which may be pertinent to the Offerors submittal. The City shall make available to all prospective Offerors, prior to the Proposal Due Date, information regarding facilities, processes, and current operations. However, such information shall be given as the best factual information available without any assumption of responsibility for its accuracy or for any conclusions that the Offeror might draw therefrom.

F. Agreement

A sample agreement is attached as "Exhibit A". A written contract will be entered into between the City and the successful Offeror.

G. Contract Completion

The contract completion date shall be 365 calendar days following contract notice to proceed, except for causes beyond the control of the Offeror. Any alterations in the completion date shall be agreed to in writing by the City and the Offeror.

- The remainder of this page has been intentionally left blank -

II. Proposal Process

A. Introduction

Until the final award by the Farmington City Council, the City reserves the right to reject any and/or all submittals, to waive technicalities, to re-advertise, or to otherwise proceed when the best interest of the City will be realized.

B. Preliminary Schedule

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

| Activity | Date |
|--|-----------------------|
| Issue RFQP | 1/15/2012 |
| Deadline to Submit Questions | 2/1/2012 |
| Pre-Proposal Conference | 2/1/2012 |
| Response to Written Questions/Amendment | 2/6/2012 |
| Proposal Due Date | 2/15/2012 |
| Presentations | Tentatively 2/29/2012 |
| Recommendation to City Council of Top-evaluated firm to begin negotiations | Tentatively 3/13/2012 |
| Anticipated Contract Date (no later than) | Tentatively 3/20/2012 |
| Notice to Proceed Date | Tentatively 4/1/2012 |

C. Pre-Proposal Conference

A Pre-Proposal Conference will be held to provide an overview of the RFQP and introduce Offerors to the potential site and present facilities and systems. It will also provide a forum to receive questions and comments from Offerors. The Pre-Proposal Conference will be held on February 1, 2012 at 10:00 a.m. Mountain Time, at the City of Farmington, Kilowatt Conference Room, 101 N. Browning Parkway, Farmington, NM,.

D. Directions for Submission

The Offeror shall submit six (6) copies of the proposal and one (1) original proposal in a sealed envelope plainly marked "Proposal for Professional Architectural Services for Municipal Operations Center Expansion West, RFQP #12-90247".

The Offeror shall submit their technical proposals at the time and place designated on the cover sheet and page 4 of this proposal packet.

The Offeror shall be prepared to respond to requests by the City for personal presentations, oral presentations and other areas deemed necessary to assist in the detailed evaluation process. All expenses associated with this presentation will be borne by the Offeror.

E. Cost Proposal

Cost Proposals shall not be included in the Offeror's proposal, but shall be made available by the top evaluated firm within 48 business hours after the City's request.

- A Man-hour and Fee Schedule will be used in summarizing the cost proposal, with adequate back-up detail to verify the proposed fixed fee, and shall include the following information. This

pricing information shall be used in negotiating the contract price (Ref. NMSA 1978 13-1-120 through 13-1-124).

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

F. Pricing

The subsequent contract is considered a FIRM FIXED-PRICE CONTRACT. The fee proposed shall remain firm and shall include all charges that may be incurred in fulfilling the terms of the contract.

G. Access to Facilities

To assist the Offerors in preparing submittals, the City, will arrange for access to facilities at the time of the Pre-Proposal Conference. Should an additional site visit be requested by Offerors, the City, will schedule the additional visit and publish notification of date and time. Once the architect is selected, the necessary access shall be provided.

Offerors shall have no claim against the City for failure to obtain sufficient access to the sites, or for problems in subsequent operations or maintenance caused by inadequate site data which the Offeror could have remedied through the exercise of due diligence.

H. Inquiries

Questions and/or clarifications concerning this RFQP will be accepted in writing until **5:00 PM on February 1, 2012**. Requests may be transmitted via email or facsimile. Written responses to all written inquiries will be provided and distributed to all recipients of this RFQP. Responses and addenda to this RFQP, if necessary, is scheduled to be issued by **5:00 PM on February 6, 2012**. No Offeror may rely upon oral responses made by any City employee or any representative of the City.

Questions and/or clarifications concerning this RFQP shall be directed to:

Rosalyn Potter
Buyer II
(505) 599-1365
Fax: (505) 599-1377
rpotter@fmtn.org

or

Edward Smylie
Purchasing Officer
(505) 599-1369
Fax: (505) 599-1377
esmylie@fmtn.org

I. Prohibited Contacts

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

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

J. 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 City's Purchasing Officer if any employee(s) of the requesting department or the Central Purchasing Division have a financial interest in the bidder. If yes, the Offeror must specify the employee(s) name in their proposal.

K. Format and Content

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

L. Signing of Proposals and Authorization to Negotiate

The original proposal shall be executed by a duly authorized officer of the Offeror. The Offeror must also identify those persons authorized to negotiate on its behalf with the City in connection with this RFQP. In addition, the Offeror shall provide evidence, in the form of a duly adopted resolution of its governing body, of the capacity of the person signing the proposal to bind the Offeror should its proposal be accepted by the City.

M. Period of Acceptance

All proposals must remain valid for a minimum period of one hundred-fifty (150) days after the Proposal Due Date. No proposal may be modified or withdrawn by the Offeror during this period of time unless prior written permission is granted by the City.

The City reserves the right to request additional information from the Offeror at any time during the selection process. The City also reserves the right to extend by sixty (60) days the proposal of any Offeror, at no additional cost to the City, to allow for the completion of the final contract documents. If the notification of selection of a Offeror or request for time extension has not been made by the City after one hundred-fifty (150) days, Offerors may, at their discretion, withdraw their proposals or provide the City with written extensions of time.

N. Binding Offers

All proposals submitted by Offeror are required to be binding offers, enabling acceptance by the City to form a binding contract. Proposals are to remain as binding offers for the full period of time of the initial 150-day Period of Acceptance and as such time period may be extended by the City.

O. Laws and Regulations

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

P. Confidentiality

It is understood by the Seller or Offeror and the City that the City is a New Mexico municipal corporation and, as such, is subject to the provisions of the New Mexico Inspection of Public Records Act, Section 14-2-1 through 14-2-12 NMSA 1978. In the event Seller or Offeror has responded to a City Request For Bid (RFB) or a City Request For Proposal (RFP) and marked all or any part of the information submitted as "CONFIDENTIAL INFORMATION" or as "PROPRIETARY INFORMATION," City agrees to notify Seller of any third party request for any rates, terms, compensation amounts, or other information documented in the Purchase Order, Agreement, or Contract. To the extent Seller or Offeror provides City with written direction to withhold such requested Confidential Information or Proprietary Information and litigation results, Seller or Offeror agrees that the action would be brought in a New Mexico court of competent jurisdiction under New Mexico law. Seller or Offeror, being aware of said facts, agrees to provide legal

counsel on behalf of the City in any such litigation and shall bear the complete cost of litigation, including attorney fees and court costs. If Seller or Offeror fails or refuses to provide legal counsel at its expense within ten (10) calendar days after written notification, as aforesaid, such failure may result in the City agreeing to release the Purchase Order, Agreement, or Contract or any portion thereof which is relevant to the denied request.

Confidential data are normally restricted to confidential financial information concerning the 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.

Q. Bribery and Kickbacks

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

R. Protest Deadline

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

Mr. Edward Smylie
Purchasing Officer
Central Purchasing Division
City of Farmington
800 Municipal Drive (Mailing Address) OR
805 Municipal Drive (Physical Location)
Farmington, NM 87401-2663

III. Proposal Format Requirements

A. General Format for Proposals

To facilitate comparison and evaluation, Offerors must follow the format outlined in this section. Failure of an Offeror to follow the required format may, at the sole discretion of the City, result in the rejection of the submittal. Proposals shall contain concise written material and illustrations that enable a clear understanding and evaluation of the capabilities of the Offeror. Legibility, clarity, and completeness are essential. An 8-1/2" x 11" format is required for typed submissions and an 11" x 17" format may be used for illustrations. Submittals may utilize either single-sided or double-sided copying and be bound in a three-ring binder with numbered tab dividers corresponding to the requirements contained in the balance of this section

It is the Offeror's responsibility to ensure that all information in the proposal is easily readable by the City. The City, at its sole discretion, may reject any proposal which is unclear in any way.

B. Organization of Materials

Proposals must be organized in the following manner:

- I. General Information
- II. Project Team Members
- III. Offeror's Experience
- IV. Technical Approach
- V. Cost Control
- VI. Contractual Considerations

C. Mandatory Items to Be Included in Proposals

- I. Submittal Form, Page 4 of RFQP, Exhibit A – Campaign Contribution Disclosure Form. One form must be the original all others may be copies;
- II. Conditions or Exceptions to Draft Agreement;
- III. All items identified in this section titled *Proposal Format Requirements*.

The submittal form, Page 4 of RFQP, shall be included as the cover sheet of the proposal. The City may, at its sole discretion, accept an executed cover sheet if deemed a binding offer. One submittal form must be the original with all others copies.

D. Contractual Considerations

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

E. Guidelines

The following guidelines have been prepared to assist Offerors in the preparation of their proposals by clarifying certain components of the evaluation criteria categories. All Offerors should adhere to the format shown below. Use of this format will help expedite our review process.

Category I - General Information

1. Provide name, address of Offeror, and telephone number of Offeror, and, if a firm, when firm was established.
2. Provide number of employees, technical discipline, registration, and registration number.
3. Indicate where the services are to be performed.

If the work is to be shared among firms and offices at different locations, or a joint venture with sub-consultants, indicate where each office is located, what work is to be performed at each location, and the percentage of work performed compared to the total scope of services. Provide this information using the following format:

| Firm Name, Location | Work to be Performed | % of Work Performed Compared to Total Scope |
|---------------------|----------------------|---|
|---------------------|----------------------|---|

Category II - Project Team Members

1. Provide an organization plan for management of the project.
2. Identify all consultants to be used on the project and their experience on similar projects.
3. Provide qualifications of project team members shown in the organizational plan, including registration and membership in professional organizations.
4. Provide any unique knowledge of key team members relevant to the project.

Component One can be accomplished using an organizational chart that shows the proposed relationships between the key team members and support staff who are expected to participate on the project. Also indicate which aspects of the work each person will be responsible for performing. When addressing Component Two, you should also provide a summary description of the work to be performed by each consultant proposed for the project and past experience in the design of similar projects.

For Component Three, describe each person’s work experience, field or fields of specialization, education, certifications. Component Three shall also outline a list of directly relevant projects for each key member which include client name, project name, project description, role of the individual, and project completion date. Component Four should be self explanatory.

Category III - Offeror Experience

1. Describe previous projects of a similar nature, including client contact (with phone numbers), the year(s) services were provided, construction costs (if applicable) (actual versus budget), and a narrative description of how those projects relate to this project.
2. Provide examples of Project Manager’s government agency experience within the past five (5) years that serve to demonstrate the Project Manager’s knowledge of performance on contracts with government agencies.
3. Provide the volume of work previously done for the City which is not seventy-five percent complete.
4. Provide this information using the following format:

| Name of Project | Contract Date | Contract Amount | % Completed and Invoiced to Date |
|-----------------|---------------|-----------------|----------------------------------|
|-----------------|---------------|-----------------|----------------------------------|

The projects described should be projects that were worked on by the people shown on the organizational chart provided under Item 1 of Category II. Specific project responsibilities of these individuals should be addressed.

Category IV - Design Approach

1. Describe Offeror’s understanding of the project scope.
2. Describe how Offeror plans to perform the services required by the project scope.
3. Describe specialized problem solving required in any phase of the project.
4. To demonstrate your understanding of the project scope, you must describe what you intend to do. You must also describe the quality control procedures you will use to assure the accuracy and adequacy of the work that you and your consultants propose to perform.

Category V - Cost Control

This category of the proposal evaluation criteria has two components:

1. Describe cost control and cost estimating techniques to be used for this project.

2. Provide comparisons of bid award amount to final cost estimate for projects designed by the Offeror during the past five (5) years. The consultant may provide justification for any discrepancies that may exist with this information.

Component One should be subdivided as follows:

- **Cost Control of the Design Process:** How will you control expenditures for this project within your organization for work hours, other direct costs, and all other costs associated with the basic services fee that you will negotiate with the City? For example, some firms use a project management application software program to monitor work hour usage and costs as a means of controlling total expenditures for accomplishing design tasks.
- **Cost Control of the Construction Cost:** How often do you make estimates of probable costs to construct the project as design progresses and compare these to the City's budget for the project? For example, some firms review project costs on a biweekly basis using a spreadsheet application software program and a job costing database.
- What corrective actions do you take if it appears that the budget will be exceeded or that the project scope can be achieved at a much lower cost than what was discussed during negotiations?
- **Cost Estimating Techniques:** Design professionals use a variety of cost estimating techniques such as:
 - In-house databases from bid prices on projects designed by the firm.
 - Estimating data published by specialists in construction estimating such as Means, Building News, etc. City of Farmington City Engineer's estimated unit prices for contract items.
 - Current six month compilation of New Mexico State Highway & Transportation Department (NMSHTD) unit prices.
 - Businesses specializing in construction cost estimating.
 - What techniques will you use for this project and why?

Component Two should be supplied in the following format:

| Name of Project | Month and Year Bid | No. of Bids Received | Final Cost Estimate | Bid Award Amount | Final Contract Amount including Change Orders |
|-----------------|--------------------|----------------------|---------------------|------------------|---|
| | | | | | |

The final cost estimate is the dollar amount your firm provided to your client at bid opening. For a City project, it would be the estimated construction cost your firm provided to the City for use at the bid opening and would contain all adjustments to earlier estimates caused by addenda issued during the bidding time for the project.

IV. Review and Evaluation

A. Evaluation Criteria

The City will receive proposals from firms having specific experience, resources and qualifications in the proposed scope of work.

Proposals for consideration for this project must contain evidence of the firm's experience and abilities in the specified area and other disciplines directly related to the proposed services. Other information required by the City to be submitted in response to this RFQP is included elsewhere in this solicitation.

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 for selection of finalists and, therefore, it is important that Offerors emphasize specific information considered pertinent to the services to be provided.

The City's Central Purchasing department has the option to initiate discussions with Offerors who submit responsive or potentially responsive proposals for the purpose of clarifying aspects of the proposals, but proposals may be accepted and evaluated without such discussion. Discussions SHALL NOT be initiated by the Offerors.

Evaluation of the responses will be based on the following criteria:

| | |
|-------------------------|--|
| 20 points | Completeness, originality and creativity of the proposed approach to the project. |
| 25 points | Specialized design and technical competence of the firm, based on similar experience, including joint venture or association, and qualification of personnel selected to perform the project. The personnel named in the statement of qualification submitted by your firm, shall remain responsible throughout the period of this project. No diversion or replacement may be made without submission of the proposed replacement with final approval being granted by the City's Project Administrator. |
| 25 points | Capacity and Capability of the business to perform the work, including any specialized services, within the time limitations. |
| 20 points | Past record of performance on contracts with government agencies or private industry with respect to such factors as control of costs, quality of work and ability to meet schedules. Provide a summary of projects completed by your firm which address the above factors referenced in this criteria. |
| 5 points | Proximity to or familiarity with the area in which the project is located. Provide a summary addressing projects completed by your firm which address proximity to or familiarity with the area in which the project is located. |
| 5 points | Summarize the amount of design work that will be produced by a New Mexico business. |
| 5 points | The volume of work previously done for the City of Farmington which is not seventy-five percent complete with respect to basic professional design services, with the objective of effecting an equitable distribution of contracts among qualified businesses and of assuring that the interest of the public in having available a substantial number of qualified businesses is protected; provided, however, that the principle of selection of the most highly qualified businesses is not violated. |
| 5 points | In-state preference |
| <hr/> 105 points | The Proposal will be evaluated based on the above 105 points. If oral presentations are held, the oral presentations will be based upon re-evaluation of the above criteria. |

Application of In-State 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:

1. If the contract is awarded based on a point-based system, a resident business shall be awarded the equivalent of five percent of the total possible points to be awarded based on the resident business possessing a valid resident business certificate.
2. The City'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.

(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.

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

| | | |
|---|----------------------|--|
| Firm Name, Location Of Resident Businesses | Work to be Performed | % of Work Performed Compared to Total Scope |
| Firm Name, Location Of Non-Resident Businesses | | |

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

B. Presentation Agenda

Offerors should be prepared to speak on the following issues during the course of their interview.

- Grasp of Project Requirements - Evaluation shall be based on firm's analysis, preparation and level of interest.
- Design Approach/Methodology - Discussion of the methodology the firm proposes to use in providing the required services.
- Key Personnel and Roles - Evaluation shall be based on personal qualifications and professional skills of key individuals.
- Pertinent Experience of the Firm - Evaluation shall be based on related projects presented as previous work of the firm.
- Consultant/In-House Resources - Evaluation shall be based on firm's abilities and importance of consultant or in-house support services.
- Discussion of how the firm will handle the planning, design and construction phase of the project. Discuss design approach, construction cost controls and involvement in the design and implementation phases of the work.
- Discussion of time schedule the firm proposes to complete the necessary preliminary work as well as a time schedule for the entire project.

C. Presentation Schedule

A Presentation Schedule of the top evaluated firms that will be continuing in the evaluation process will be issued after City Council approval. Copies of the Offeror's technical proposal will be distributed by City personnel to the Selection Committee at the time of the Request for Qualifications-based Proposal opening. Any additional presentation material shall be distributed at the time of the Offeror's presentation and shall be available for the Mayor, Council and invited observers that may be attending. City personnel will be available during the Offeror's set-up period, and during the presentation to offer assistance.

A forty-five (45) minute time allotment will be available for each firm. Thirty (30) minutes for the presentation and fifteen (15) minutes for a question and answer period. Two rooms will be used which will allow each firm to set up while another is making a presentation. This will allow each firm to be given approximately thirty (30) minutes to set up before the audience will move to that room.

The City is requesting Offerors address all concerns outlined in the RFQP during their scheduled interview. The RFQP outlines the City's project summary and it is our intent to clarify in detail the scope of services, project schedules, additional requirements and agreement format during negotiations with the top evaluated firm.

EXHIBIT A
CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to Chapter 81, Laws of 2006, any prospective contractor seeking to enter into a contract with any state agency or local public body must file this form with that state agency or local public body. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars (\$250) over the two year period.

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

The following definitions apply:

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

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

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

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

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

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

“Prospective contractor” means a person who is subject to the competitive sealed proposal process set forth in the Procurement Code or is not required to submit a competitive

sealed proposal because that person qualifies for a sole source or a small purchase contract.

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

DISCLOSURE OF CONTRIBUTIONS MADE TO: Mayor Tommy Roberts, Councilman Dan Darnell, Councilman Jason Sandel, Councilwoman Gayla McCulloch and Councilwoman Mary Fischer

Contribution Made By:

Relation to Prospective Contractor:

Name of Applicable Public Official:

Date Contribution(s) Made:

Amount(s) of Contribution(s)

Nature of Contribution(s)

Purpose of Contribution(s)

Signature

Date

Title (position)

--OR--

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

Signature

Date

Title (Position)

DRAFT SERVICES AGREEMENT

THIS SERVICES AGREEMENT (this “Agreement”) effective as of **[DATE]** (“Effective Date”) is entered into by and between [**Name of Architect**], a [**Business Entity Type and state in which it is incorporated**] (the “Architect”) and **City of Farmington**, a New Mexico municipal corporation (“City”). Architect and City may be referred to collectively as the “Parties” or individually as a “Party.”

(I) RECITALS

WHEREAS, Architect has represented to City that it is specifically qualified to perform services of the nature contemplated by this Agreement; and

WHEREAS, City desires to engage the services of Architect and Architect desires to perform such services for City.

NOW THEREFORE, in consideration of the mutual terms, covenants and conditions set forth in this Agreement, Architect and City agree as follows:

1. Services. Architect agrees to perform the services as set forth in **Exhibit A-1** attached hereto (“**Services**”) in a timely manner and in accordance with the terms and conditions of this Agreement and applicable laws. Architect shall furnish, at its own expense, all labor, transportation, materials, consumables, qualified supervisory personnel, tools, equipment and facilities, to properly perform the Services, except as otherwise provided in the Scope of Services.

2. Compensation. For Scope of Services, as described in Exhibit A-1, Section II, Compensation shall be computed as follows:

2.1. The total sum of [**Dollar Amount in Words**] and [**00 thru 99**]/100 dollars (\$[**Dollars & Cents in #**]) (“Lump Sum”), plus applicable gross receipts taxes which are payable by Contractor to the relevant taxing authority and reimbursable by City pursuant to **Section 11 “Taxes.”** The Lump Sum is payable in monthly progress payments as described in **Exhibit A-1, Section IV** attached hereto.

2.1.1 REIMBURSABLE EXPENSES, as described in Section VI, subparagraph e of Exhibit A-1, are included as part of the Scope of Services. All reimbursable expenses as described in shall not be incurred without prior written approval by the City.

2.1 Except, as specifically otherwise provided for in the Agreement, the foregoing compensation shall constitute the sole compensation payable to Contractor for performance of the work or anything done in connection thereto.

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

written agreement of the Parties signed and dated by a City contracting agent or City officer/official and Architect.

4. Term. This Agreement shall remain in full force and effect from the Effective Date until **[ONE YEAR FROM EFFECTIVE DATE OR AS NEGOTIATED]**, unless terminated earlier as provided herein.

5. Termination.

5.1 Termination by City for Cause. In the event of a default by Architect and if City elects to terminate this Agreement and the Services, then City shall give written notice of termination to Architect specifying the date of termination. City may, at its option, (a) take possession of work performed by Architect as of the date of termination to maintain the orderly progress of, and to finish the Services; or (b) finish the Services by whatever other reasonable method City deems expedient.

5.1.1 If the unpaid balance of Architect's compensation under **Section 2 "Compensation"** for Services performed prior to the effective date of termination exceeds the cost of finishing the Services and any other extra costs or damages incurred by City in completing the Services, or otherwise as a result of Architect's default, such excess shall be paid to Architect. If such costs exceed the unpaid balance of Architect's compensation for Services performed prior to the effective date of termination, Architect shall pay the difference to City. These obligations for payment survive termination.

5.1.2 Termination of this Agreement and the Services in accordance with this **Section 5.1** shall not relieve Architect or its surety of any responsibilities for Services performed.

5.1.3 If City terminates this Agreement for default under this **Section 5.1** and it is later determined that Architect was not in default, then such termination shall be deemed a termination for convenience pursuant to **Section 5.2 "Termination by City for Convenience."**

5.2 Termination by City for Convenience. The City Manager may, upon advance written notice to Architect, suspend, abandon or terminate the Services, or any portion of the Services thereof, and terminate this Agreement, for any reason whatsoever including for the convenience of City without regard to whether or not Architect has defaulted or failed to comply with the provisions of this Agreement. If the City Manager terminates the Services, or any portion of the Services thereof for convenience, City shall pay Architect for all parts of the Services performed prior to the effective date of termination, including materials provided, in conformity with this Agreement, plus an amount for the Architect's substantiated, reasonable direct costs necessarily incurred in preparation for the parts of the Services not yet performed and in shutting down its operations; plus an amount for a reasonable part of the profit Architect would otherwise have earned for the percentage of Services performed prior to such termination, provided that the total sum payable to Architect upon termination shall not exceed the unpaid balance of Architect's compensation under **Section 2 "Compensation"**. Architect shall not be entitled to any other costs or damages whatsoever arising out of Architect's performance of the Services and the termination by City for convenience. Architect is, under no circumstance, entitled to unearned or anticipated profits upon termination of this Agreement by City for convenience.

5.3 Stopping Services. When City terminates the Services in accordance with **Section 5.1 "Termination by City for Cause"** or **Section 5.2 "Termination by City for Convenience,"** Architect shall take the actions set forth herein. Unless City directs otherwise, after receipt of a written notice of termination for either cause or convenience, Architect shall promptly (a) stop performing Services on the date and as specified in the notice of termination; (b) place no further orders or subcontracts for materials, equipment, services or facilities, except as may be necessary for completion of such portion of the Services that is not terminated; (c) cancel orders and subcontracts, upon terms acceptable to City, to the extent that they relate to the performance of Services terminated; (d) assign to City all of the right, title, and interest of Architect in all orders and subcontracts related to Services which shall continue; (e) deliver completed work to City and take such action as may be necessary or as directed by City to preserve and protect the work, work site, and any other property related to the Services in the possession of Architect in which City has an interest; and (f) continue performance only to the extent not terminated.

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

5.5 Termination by Architect for City Default. Subject to City's right of set-off, if City fails to pay Architect any undisputed amount due hereunder, and such failure continues for thirty (30) days following receipt of written notice thereof from Architect, then Architect shall be entitled to suspend further performance of the Services and be paid its costs during the period of suspension in the same manner as provided in **Section 5.4** until the undisputed amount due, plus applicable interest, has been paid. If (a) such failure continues for an additional period of thirty (30) days or (b) Architect's Services under this Agreement are delayed by an event of Uncontrollable Forces (as defined in **Section 14** herein), and/or suspended by City, for one hundred eighty (180) days or more, then Architect shall be entitled to terminate this Agreement by written notice to City and be paid its costs in the same manner as provided in **Section 5.4**.

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

6. Architect Representations and Corrective Action.

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

a) Architect has performed similar Services and possesses the specific training, skills, knowledge, necessary personnel, and legal right to perform the Services. Architect shall provide in connection with the Services the standard of care, skill, and diligence normally provided by a Architect in the performance of similar services and warrants that all such Services shall be performed in accordance with sound and accepted industry standards and practices, and in accordance with all applicable federal, state and local laws, statutes, regulations, rules and ordinances, as amended from time to time (including but not limited to all applicable environmental, health and safety, cultural preservation and natural resources management laws, statutes, regulations, rules, and ordinances, as amended from time to time).

(b) The compensation described in **Section 2 "Compensation"** is reasonable compensation for the performance of the Services, as represented by this Agreement, including all exhibits, and Architect's independent evaluation of the Services to be performed and investigation of site conditions.

(c) Architect is financially solvent, able to pay its debts as they mature, and possesses sufficient working capital to complete the Services and perform Architect's obligations required by this Agreement.

(d) Architect is able to furnish the plant, tools, materials, supplies, equipment and labor required to complete the Services and perform the obligations required by this Agreement and has sufficient experience and competence to do so and is properly insured and licensed to perform the Services.

(e) Architect is the holder of or will take the necessary action to obtain all consents, licenses, permits, or other authorizations required to allow it to operate or conduct its business now and as contemplated by this Agreement and to perform the Services under this Agreement.

(f) No services performed or goods provided by Architect shall cause any process, procedure, hardware, software, firmware, micro-code, equipment, component or device or any part thereof that is used in City's operations and is currently Date Data Compliant, to thereafter cease to be Date Data Compliant. Architect represents and warrants that all services rendered by Architect to City pursuant to this Agreement shall be Date Data Compliant and that all processes, procedures, hardware, software, firmware, micro-code, equipment, components, devices or any part thereof provided by Architect to City in rendering such services are designed to be Date Data Compliant. For purposes of this Agreement, "Date Data Compliant" means that all date-data is electronically recognized, handled and manipulated without interruptions or inaccuracies.

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

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

8. Independent Contractor. In performing the Services, Architect is acting and shall be deemed for all purposes to be an independent contractor. City and Architect are not partners, agents or joint venturers with each other, and this Agreement is not intended to nor shall it be construed to create a partnership, joint venture, or agency relationship between City and Architect. Architect shall complete the Services according to Architect's own means and methods of work, which shall be in the exclusive charge and control of Architect, and which shall not be subject to the control and supervision of City, except as to the results of the Services. Architect shall be entirely and solely responsible for its acts and the acts of its employees and agents while engaged in the performance of the Services. Architect, its employees and agents shall not hold themselves out as employees or agents of City. Architect and its employees are hereby expressly precluded from and not entitled to any employee benefits from City. For the purpose of clarifying the ineligibility of the Architect under City's employee benefits plans or programs, Architect and its employees are hereby specifically excluded from any eligibility and/or are deemed a "temporary employee" when such term is used to define ineligibility in benefits in any City employee benefit plan or program.

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

Address: City of Farmington
800 Municipal Drive
Farmington, New Mexico 87401

Attention: Accounts Payable

If City has no objections to an invoice, it shall pay the invoice in full within thirty (30) days after receipt of such invoice. If City objects to an invoice or any portion thereof, it shall notify the Architect of its objections within thirty (30) days after receipt and may withhold payment of the disputed amount. Any objections or disputes concerning invoices shall be resolved in accordance with **Section 21 "Dispute Resolution."** Reference additional payment terms in Exhibit A-1, Section VI.

10. Audit. Architect shall maintain complete and accurate records concerning the Services and all related transactions for at least three (3) years from the date of final payment for the Services. At any time but not later than three (3) years after final payment under this Agreement, City may make such audit of the invoices and substantiating material (including time records) as deemed necessary by City. Each payment made shall be subject to reduction and refund to City, or offset on future payments due Architect, to the extent of amounts which are found by City not to have been properly payable or to have been overpaid, and shall also be subject to increase and payment to Architect for underpayments to the extent of any amounts which are found by City to have been underpaid. Upon request by City, Architect shall insert a clause containing all the provisions of this **Section 10** in all subcontracts to permit City to make identical audits and inspections of the records of all subcontractors involved in performance of the Services.

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

12. Liability.

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

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

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

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

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

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

13. Insurance.

13.1 Obtaining Insurance. Prior to commencement of the Services, Architect shall obtain the insurance required by this Agreement and all insurance that may be required under the applicable laws, ordinances and regulations of any governmental authority. Architect shall furnish to City a completed certificate of insurance coverage which references City's project number and project title for the Services and which specifically requires thirty (30) days prior notice to City of cancellation, termination or any material change of any such insurance policy. Review of the Architect's insurance by City shall not relieve or increase the liability of Architect. Where applicable, all insurance policies shall provide for waiver of subrogation in favor of the City, include cross liability provisions, and all policies, except Workers' Compensation, shall name the City as additional insured.

13.2 Minimum Coverage. Without limiting any of the liabilities or other obligations of Architect under this Agreement, including but not limited to **Section 12 "Liability,"** Architect shall obtain and maintain in effect, at its sole cost and expense, with forms and insurers acceptable to City, until all the obligations under this Agreement are satisfied, insurance policies providing coverage protecting against claims for personal and bodily injury or death, as well as claims for property damage which may arise from operations in connection with the Services whether such operations are by Architect or any subcontractor for at least the following minimum coverage:

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

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

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

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

13.3 Subcontractors. Architect shall require that each subcontractor comply with the insurance requirements set forth in **Section 13.2 “Minimum Coverage.”**

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

15. Confidentiality. Any information or data of City provided to Architect or to which Architect is given access during the term of this Agreement, whether such information is in written, verbal, electronic or any other form, is proprietary to City and shall be treated as confidential and not disclosed by Architect to any third party, without City's prior written consent. Architect may disclose such information and data to its employees and Architects, but only on a "need to know" basis. Such information and data may only be used for the purpose of performing the Services that are required of Architect pursuant to this Agreement, and for no other purpose. Such information and data may not be copied except as required to perform the Services, and upon completion of the Services, Architect shall destroy all copies in its possession. Further, Architect acknowledges and agrees that all data and information collected, produced or generated, and all reports, test results, plans, models, documents and other written materials produced pursuant to this Agreement or in connection with any services to be performed hereunder shall be and remain the sole property of City, shall be confidential, shall not be copied or reproduced in any way, except for the use of the Architect and City personnel assigned to this project, and shall not be disclosed or communicated, verbally or in writing, by Architect to any third party, or used in any way except as required by law or for the purposes required or intended by the Agreement. If required by City, Architect and any of its employees or agents performing services under or in connection with this Agreement shall execute confidentiality and nondisclosure agreements in the form required by City. If Architect is served with process of law, including but not limited to subpoenas requiring Architect to produce, release or disclose information of a confidential nature received, collected, produced or generated by Architect pursuant to this Agreement, Architect shall immediately notify City and allow City, at its sole expense and cost, to challenge the process of law, including any subpoena. The duties of this **Section 15** will survive the expiration or early termination of this Agreement following such expiration or early termination. This Agreement is subject to the provisions of the Public Records Act (Chapter 14 Article 3 NMSA 1978).

16. Conflict of Interest.

16.1 Architect shall exercise reasonable care and diligence to prevent any actions or conditions which would result in a conflict with City's interest. Architect shall immediately notify the person specified in **Article 24, Notices** of this Agreement in the event a conflict with the City's interest is recognized.

16.2 Architect warrants that it has no interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of Services under this Agreement.

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

17. Intellectual Property.

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

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

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

18. Executive Orders.

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

19. Drug and Alcohol Policy. During the term of the Agreement, Architect is required to have in place, and to comply with a Drug and Alcohol Policy that meets or exceeds the requirements of the New Mexico Department of Transportation. Architect will provide the City with an electronic or written copy of any such policy and related procedure upon request by the City's Designated Representative. Architect's policy, at a minimum, must provide for: "a work environment that is free from the use, consumption, possession, sale or distribution of illegal drugs or alcohol and from the misuse of legal drugs on the Architect's premises or on the premises of its clients. This requirement must include Architect's vehicles (owned or leased) used for the purpose of performing Architect's Services or the management thereof. Accordingly, the Architect requires that its employees and subcontractors alike will be subject to testing to determine the presence of illegal drugs, alcohol or inappropriately used legal drugs while performing Services. Consumption of alcohol or ingestion/injection of drugs during employee breaks or lunch is strictly prohibited. Architect's or any tier subcontractor's

employees must be fit for duty and not be under the influence of alcohol or controlled substances (without a valid prescription for the controlled substances) when employees present for duty and at all times while at work or on duty.” Architect’s policy shall include: reasonable testing procedures, full compliance with all New Mexico Department of Transportation requirements for covered functions.” Architect is responsible for testing and other related costs, for providing all required reports to any government agency, and, at the City’s request, Architect shall make its drug/alcohol testing statistics available to the City’s Designated Representative upon request.

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

21. Dispute Resolution. If the Parties are unable to resolve any dispute within 30 (thirty) days of the occurrence of the event or circumstances giving rise to the dispute, the dispute may be submitted to mediation upon the mutual agreement of the Parties. In the event the Parties do not agree to mediate the dispute or are unable to resolve the dispute through mediation and the aggregate amount of the claim (including counterclaims) is less than \$250,000, then the dispute shall be resolved by binding arbitration. Such arbitration shall be governed by the New Mexico Uniform Arbitration Act, § 44-7A-8, *et seq.* (2001), as amended from time to time. A Party demanding arbitration shall give the other Party timely notice of such election pursuant to **Section 24 “Notices”** and such notice shall describe the nature of the dispute and the amount in controversy. The Parties shall then jointly select an arbitrator and failing such mutual agreement, the arbitrator shall be appointed by a District Court Judge from San Juan County, New Mexico. The arbitration shall be held in Farmington, New Mexico. Discovery shall be by agreement of the Parties or as ordered by the arbitrator, provided that the Parties shall comply with the following minimum discovery requirements: at least ten (10) calendar days prior to the arbitration, the Parties shall exchange copies of all exhibits to be used at the arbitration and a list of witnesses and a summary of the matters as to which each witness is expected to testify.

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

All costs of mediation or arbitration, including the fees of the mediator or arbitrator, shall be split equally by the Parties, except that the Parties shall be responsible for payment of their own attorney fees, expert fees, preparation fees, travel, and similar costs. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law of the State of New Mexico. Indemnity claims are not subject to mandatory arbitration. Nothing in this **Section 21** shall affect restrict, condition, or otherwise limit a Party’s right to terminate this Agreement pursuant to **Section 5 “Termination.”**

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

First: Changes to Services
Second: Exhibits and Attachments
Third: Scope and Drawings
Fourth: City's RFB/RFP
Fifth: Specifications
Sixth: Architect's proposal

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

23. Prohibition Against Assignment and Subcontracting. It is understood and agreed that City has chosen Architect based on Architect's qualifications to perform services of the nature contemplated by this Agreement. Accordingly, Architect shall not assign, transfer, subcontract or otherwise dispose of any of its obligations pursuant to this Agreement without first obtaining the written consent of City, which consent may be withheld if City, in its sole opinion, considers that it is not in its best interests, economic or otherwise, to do so. City may, at its option and at any time, assign this Agreement, in whole or in part. City shall promptly notify Architect in writing of any such assignment, unless such assignment is to an affiliate of City. In the event City assigns this Agreement, it shall be relieved of all financial responsibility related to the portion of this Agreement so assigned.

24. Notices. Except as expressly provided otherwise herein, any formal notice, demand, or request provided for in this Agreement shall be in writing and shall be deemed properly made if personally delivered, delivered by courier, or sent by first-class mail, postage prepaid, or by facsimile transmission to the facsimile number to the person specified below and shall be deemed received, if personally delivered, or delivered by courier, upon delivery, and if mailed, on the third day following deposit in the U.S. mail, and if sent by facsimile, upon transmission as evidenced by a confirmation report generated by the facsimile device.

To Architect: Address:

Attention:
Phone:
Fax:
Email:

To City: Address: City of Farmington
800 Municipal Drive
Farmington, New Mexico 87401
Attention: Purchasing Officer
Phone: 505-599-1373
Fax: 505-599-1377
Email: esmylie@fmrn.org

Invoices to City: Address: City of Farmington
800 Municipal Drive
Farmington, New Mexico 87401
Attention: Accounts Payable

The Parties may change their addresses, contact persons, or facsimile numbers to which notices are to be sent by providing the other Party with notice of such changes in the manner provided in this **Section 24**. Nothing contained herein shall preclude the transmission of routine invoices or correspondence, messages and information between the Parties by a representative of a Party in the ordinary course of performing their respective obligations under this Agreement.

25. Designated Representative and Project Manager.

25.1 City's Designated Representative. City appoints the following individual as its "**Designated Representative**":

| | |
|-------------|---|
| Name: | |
| Address: | City of Farmington, 800 Municipal Drive, Farmington, NM 87401 |
| E-mail: | |
| Telephone: | |
| Cell Phone: | |
| Fax: | |

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

Designated Representative. City may appoint another Contract Administrator at any time by written notice to Architect.

25.2 Architect’s Project Manager. Architect appoints the following individual as its “**Project Manager**” in charge of Architect’s performance and execution of the Services:

| | |
|-------------|--|
| Name: | |
| Address: | |
| E-mail: | |
| Telephone: | |
| Cell Phone: | |
| Fax: | |

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

26. No Waiver. No term, covenant or condition of this Agreement or any breach thereof shall be deemed waived, unless such waiver shall be in writing and executed by the Party claimed to have waived the same. The waiver of any breach by a Party, whether express or implied, shall not constitute a waiver of any subsequent breach.

27. Severability. If a court or regulatory agency having jurisdiction over the Parties determines that a condition of this Agreement, or any part thereof, is void, illegal or unenforceable, said condition or part shall be deemed to have been severed from this Agreement, and the remaining conditions, or parts, shall be unaffected and shall be enforced to the fullest extent allowed by law.

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

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

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

31. Survival of Obligations. In addition to the continuation of confidentiality obligations as specified in **Section 15 “Confidentiality,”** Architect’s representations and warranties under **Section 6 “Architect Representations and Corrective Action,”** indemnity obligations, including those under **Section 12 “Liability,”** and **Section 19**

“**Drug and Alcohol**” of this Agreement, shall survive the expiration or any termination of the Agreement, it being agreed that said obligations are and shall be of a continuing nature.

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

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

IN WITNESS WHEREOF, Architect and City have caused this Agreement to be executed on their behalves by their duly authorized representatives as of the Effective Date set forth above.

| | |
|---|---|
| <p>CITY OF FARMINGTON A Municipal Corporation</p> <p>By: _____ Title: Mayor</p> <p>_____</p> <p>Date</p> <p>(SEAL)</p> <p>ATTEST:</p> <p>_____</p> <p>City Clerk</p> <p>_____</p> <p>Date</p> <p>Approves Compliance NMSA 1978 Annotated, Chapter 13 Public Purchases and Property</p> <p>_____</p> <p>Edward Smylie, Purchasing Officer</p> <p>_____</p> <p>Date</p> <p>_____</p> <p>Department Head Approval</p> <p>_____</p> <p>Date</p> <p>_____</p> <p>Legal Department Approved to Content</p> <p>_____</p> <p>Date</p> | <p>ARCHITECT</p> <p>By: _____ Duly Authorized Signature</p> <p>By: _____ (Printed Name)</p> <p>Title: _____</p> <p>Date: _____</p> <p>Signer has read the document and affirms that it is true and complete and accurately represents the agreement of the parties.</p> <p>NOTARY PUBLIC SIGNATURE (REQUIRED)</p> <p>State of New Mexico County of San Juan</p> <p>_____</p> <p>(SEAL) Signature of notarial officer My commission expires: _____</p> <p>_____</p> <p>New Mexico State Taxation and Revenue Department Taxpayer Identification Number</p> <p>_____</p> <p>_____</p> <p>Federal Taxpayer Identification or Social Security Number</p> <p>_____</p> |
|---|---|

Exhibit A-1
Services

[THIS IS ONLY AN “EXAMPLE” DESCRIPTION OF SERVICES]

Introduction

Architect shall provide for City professional Architect services in all phases of the Project to which this Agreement applies as hereinafter provided. These services will include serving the City with professional consultation, advice and customary architectural services incidental thereto.

I. Location Services to be Performed

State descriptive location ... may include address if appropriate **EXAMPLE** Municipal Operations Center (MOC), 101 North Browning Parkway, Farmington, NM 87401

Example:

Approximately _____ percent (___%) of the Services performed under this Agreement will consist of research, document development, architectural and design, analysis, phone solicitation, civil Architecting (electrical, mechanical, chemical, etc.) and such shall be performed within the immediate confines of Architect’s office premise located at

Approximately _____ percent (___%) of the Services performed under this Agreement will consist of traveling in Architect owned or rented vehicle to and from_____
_____. Architect’s designated representative will attend meetings in the City’s offices located at Municipal Operations Center (MOC), 101 North Browning Parkway, Farmington, NM to discuss scope, issues, progress, alternatives, etc.

II. Scope of Services

a. The Architect's Basic Services consist of the five phases described in Paragraphs i through vi and include normal structural, mechanical and electrical engineering services and any other services included as part of Basic Services.

i. Scope of Work

(a) The Architect shall provide for the Planning and Design; Preparation of Construction Inspection for **[Brief description of project]**

ii. Schematic Design Phase

(a) The Architect shall review the program furnished by the City to ascertain the requirements of the Project and shall review the understanding of such requirements with the City.

(b) The Architect shall provide a preliminary evaluation of the program and the Project budget requirements, each in terms of the other, subject to the limitations set forth in Section V, b (i) below.

(c) The Architect shall review with the City alternative approaches to design and construction of the Project.

(d) Based on the mutually agreed upon program and Project budget requirements, the Architect shall prepare, for approval by the City, Schematic Design Documents consisting of drawings and other documents illustrating the scale and relationship of Project components.

(e) The Architect shall submit to the City a Statement of Probable Construction Cost based on current area, volume or other unit costs.

iii. Design Development Phase

(a) Based on the approved Schematic Design Documents and any adjustments authorized by the City in the program or Project budget, the Architect shall prepare, for approval by the City, Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the entire Project as to architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate.

(b) The Architect shall submit to the City a further Statement of Probable Construction Cost.

iv. Construction Documents Phase

(a) Based on the approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the Project budget authorized by the City, the Architect shall prepare, for approval by the City, Construction Documents consisting only of Drawings and Specifications setting forth in detail the requirements for the construction of the Project.

(b) The City shall prepare the necessary bidding information, bidding forms, the Conditions of the Contract, and the form of Agreement between the City and the Contractor. City approved Construction Documents and Agreement Forms shall be utilized.

(c) The Architect shall advise the City of any adjustments to previous Statements of Probable Construction Cost indicated by changes in requirements or general market conditions.

(d) The Architect shall assist the City in connection with the City's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

v. Bidding or Negotiation Phase

(a) The Architect, following the City's approval of the Construction Documents and of the latest Statement of Probable Construction Cost, shall assist the City in obtaining bids and assist in awarding and preparing contracts for construction.

vi. Construction Phase - Administration of the Construction Contract

(a) The Construction Phase will commence with the award of the Contract for Construction and, together with the Architect's obligation to provide Basic Services under this Agreement, will terminate when final payment to the Contractor is due, or in the absence of a final Certificate for Payment or of such due date, sixty days after the Date of Substantial Completion of the Work, whichever occurs first.

(b) Unless otherwise provided in this Agreement and incorporated in the Contract Documents, the Architect shall provide administration of the Contract for Construction as set forth below and in the edition of General Conditions of the Contract for Construction, current as of the date of this Agreement.

(c) The Architect shall be a representative of the City during the Construction Phase, and shall advise and consult with the City. Instructions to the Contractor shall be forwarded through the Architect. The Architect shall have authority to act on behalf of the City only to the extent provided in the Contract Documents unless otherwise modified by written instrument in accordance with Subparagraph p.

(d) The Architect shall visit the site at intervals appropriate to the stage of construction or as otherwise agreed by the Architect in writing to become generally familiar with the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of such on-site observations as an Architect, the Architect shall keep the City informed of the progress and quality of the Work, and shall endeavor to guard the City against defects and deficiencies in the Work of the Contractor.

(e) The Architect shall not have control or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, for the acts or omissions of the Contractor, Subcontractors or any other persons performing any of the Work, or for the failure of any of them to carry out the Work in accordance with the Contract Documents.

(f) The Architect shall at all times have access to the Work wherever it is in preparation or progress.

(g) The Architect shall determine the amounts owing to the Contractor based on observations at the site and on evaluations of the Contractor's Applications for Payment, and shall issue Certificates for Payment in such amounts, as provided in the Contract Documents.

(h) The issuance of a Certificate for Payment shall constitute a representation by the Architect to the City, based on the Architect's observations at the site as provided in Subparagraph d and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated;

that, to the best of the Architect's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests, required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in the Certificate for Payment); and that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment shall not be a representation that the Architect has made any examination to ascertain how and for what purpose the Contractor has used the moneys paid on account of the Contract Sum.

(i) The Architect shall be the interpreter of the requirements of the Contract Documents and the judge of the performance thereunder by both the City and Contractor. The Architect shall render interpretations necessary for the proper execution or progress of the Work with reasonable promptness on written request of either the City or the Contractor, and shall render written decisions, within a reasonable time, on all claims, disputes and other matters in question between the City and the Contractor relating to the execution or progress of the Work or the interpretation of the Contract Documents.

(j) Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in written or graphic form. In the capacity of interpreter and judge, the Architect shall endeavor to secure faithful performance by both the City and the Contractor, shall not show partiality to either, and shall not be liable for the result of any interpretation or decision rendered in good faith in such capacity.

(k) The Architect's decisions in matters relating to artistic effect shall be final if consistent with the intent of the Contract Documents. The Architect's decisions on any other claims, disputes or other matters, including those in question between the City and the Contractor, shall be subject to arbitration as provided in this Agreement and in the Contract Documents.

(l) The Architect shall have authority to reject Work which does not conform to the Contract Documents. Whenever, in the Architect's reasonable opinion, it is necessary or advisable for the implementation of the intent of the Contract Documents, the Architect will have authority to require special inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work be then fabricated installed or completed.

(m) The Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for conformance with the design concept of the Work and with the information given in the Contract Documents. Such action shall be taken with reasonable promptness so as to cause no delay. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

(n) The Architect shall prepare Change Orders for the City's approval and execution in accordance with the Contract Documents, and shall have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time which are not inconsistent with the intent of the Contract Documents.

(o) The Architect shall conduct inspections to determine the Dates of Substantial Completion and final completion, shall receive and forward to the City for the City's review written warranties and related documents required by the Contract Documents and assembled by the Contractor, and shall issue a final Certificate for Payment.

(p) The extent of the duties, responsibilities and limitations of authority of the Architect as the City's representative during construction shall not be modified or extended without written consent of the City, the Contractor and the Architect.

vii. Project Representation Beyond Basic Services

(a) If the City and Architect agree that more extensive representation at the site than is described in Paragraph vi shall be provided, the Architect shall provide one or more Project Representatives to assist the Architect in carrying out such responsibilities at the site.

(b) Such Project Representatives shall be selected, employed and directed by the Architect, and the Architect shall be compensated therefore as mutually agreed between the City and the Architect as set forth in an exhibit appended to this Agreement, which shall describe the duties, responsibilities and limitations of authority of such Project Representatives.

(c) Through the observations by such Project Representatives, the Architect shall endeavor to provide further protection for the City against defects and deficiencies in the Work, but the furnishing of such project representation shall not modify the rights, responsibilities or obligations of the Architect as described in Paragraph vi.

viii. Time

(a) The Architect shall perform Basic and Additional Services as expeditiously as is consistent with professional skill and care and the orderly progress of the Work. Upon request of the City, the Architect shall submit for the City's approval a schedule for the performance of the Architect's services which shall be adjusted as required as the Project proceeds, and shall include allowances for periods of time required for the City's review and approval of submissions and for approvals of authorities having jurisdiction over the Project. This schedule, when approved by the City, shall not, except for reasonable cause, be exceeded by the Architect.

(b) City's Preliminary Time Schedule:
Construction Documents: [#] Calendar Days after date of Agreement

Bidding and Construction: [#] Calendar Days after receipt of City approved Construction Documents

Warranty Acceptance: One (1) year after substantial project completion

III. ADDITIONAL SERVICES OF ARCHITECT

a. Additional Services

The following Services are not included in Basic Services unless so identified in **Section IV, Payments to the Architect**. They shall be provided if authorized or confirmed in writing by the City, and they shall be paid for by the City as provided in this Agreement, in addition to the compensation for Basic Services.

- (a) Providing analyses of the City's needs, and programming the requirements of the Project.
- (b) Providing financial feasibility or other special studies.
- (c) Providing planning surveys, site evaluations, environmental studies or comparative studies of prospective sites, and preparing special surveys, studies and submissions required for approvals of governmental authorities or others having jurisdiction over the Project.
- (d) Providing services relative to future facilities, systems and equipment which are not intended to be constructed during the Construction Phase.
- (e) Providing services to investigate existing conditions or facilities or to make measured drawings thereof, or to verify the accuracy of drawings or other information furnished by the City.
- (f) Preparing documents of alternate, separate or sequential bids or providing extra services in connection with bidding, negotiation or construction prior to the completion of the Construction Documents Phase, when requested by the City.
- (g) Providing coordination of Work performed by separate contractors or by the City's own forces.
- (h) Providing services in connection with the work of a construction manager or separate consultants retained by the City.
- (i) Providing Detailed Estimates of Construction Cost, analyses of owning and operating costs, or detailed quantity surveys or inventories of material, equipment and labor.
- (j) Providing interior design and other similar services required for or in connection with the selection, procurement or installation of furniture, furnishings and related equipment.
- (k) Making revisions in Drawings, Specifications or other documents when such revisions are inconsistent with written approvals or instructions previously

given, are required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents or are due to other causes not solely within the control of the Architect.

- (l) Preparing Drawings, Specifications and supporting data and providing other services in connection with Change Orders to the extent that the adjustment in the Basic Compensation resulting from the adjusted Construction Cost is not commensurate with the services required of the Architect, provided such Change Orders are required by causes not solely within the control of the Architect.
- (m) Making investigations, surveys, valuations, inventories or detailed appraisals of existing facilities, and services required in connection with construction performed by the City.
- (n) Providing consultation concerning replacement of any Work damaged by fire or other cause during construction, and furnishing services as may be required in connection with the replacement of such Work.
- (o) Providing services made necessary by the default of the Contractor, or by major defects or deficiencies in the Work of the Contractor, or by failure of performance of either the City or Contractor under the Contract for Construction.
- (p) Preparing a set of reproducible record drawings showing significant changes in the Work made during construction based on marked-up prints, drawings and other data furnished by the Contractor to the Architect.
- (q) Providing extensive assistance in the utilization of any equipment or system such as initial start-up or testing, adjusting and balancing, preparation of operation and maintenance manuals, training personnel for operation and maintenance, and consultation during operation.
- (r) Providing services after issuance to the City of the final Certificate for Payment, or in the absence of a final Certificate for Payment, more than sixty days after the Date of Substantial Completion of the Work.
- (s) Preparing to serve or serving as an expert witness in connection with any public hearing, arbitration proceeding or legal proceeding.
- (t) Providing services of consultants for other than the normal architectural, structural, mechanical and electrical engineering services for the Project.
- (u) Providing any other services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted Architectural practice.

IV. CITY'S RESPONSIBILITIES

City shall do the following in a timely manner so as not to delay the services of Architect:

a. The City shall provide full information regarding requirements for the Project including a program, which shall set forth the City's design objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability, special equipment and systems and site requirements.

b. If the City provides a budget for the Project it shall include contingencies for bidding, changes in the Work during construction, and other costs which are the responsibility of the City, including those described in this section and in Section V a (ii). The City shall, at the request of the Architect, provide a statement of funds available for the Project, and their source.

c. The City shall designate, when necessary, a representative authorized to act in the City's behalf with respect to the Project. The City or such authorized representative shall examine the documents submitted by the Architect and shall render decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of the Architect's services.

d. The City shall furnish a legal description and a certified land survey of the site, giving, as applicable, grades and lines of streets, alleys, pavements and adjoining property; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and complete data pertaining to existing buildings, other improvements and trees; and full information concerning available service and utility lines both public and private, above and below grade, including inverts and depths.

e. The City shall furnish the services of soil engineers or other consultants when such services are deemed necessary by the Architect. Such services shall include test borings, test pits, soil bearing values, percolation tests, air and water pollution tests, ground corrosion and resistivity tests, including necessary operations for determining sub-soil, air and water conditions, with reports and appropriate professional recommendations.

f. The City shall furnish structural, mechanical, chemical and other laboratory tests, inspections and reports as required by law or the Contract Documents.

g. The City shall furnish all legal, accounting and insurance counseling services as may be necessary at any time for the Project, including such auditing services as the City may require to verify the Contractor's Applications for Payment or to ascertain how or for what purposes the Contractor uses the moneys paid by or on behalf of the City.

h. The services, information, surveys and reports required by Paragraphs e through g, inclusive shall be furnished at the City's expense, and the Architect shall be entitled to rely upon the accuracy and completeness thereof.

i. If the City observes or otherwise becomes aware of any fault or defect in the Project or nonconformance with the Contract Documents, prompt written notice thereof shall be given by the City to the Architect.

j. The City shall furnish required information and services and shall render approvals and decisions as expeditiously as necessary for the orderly progress of the Architect's services and of the Work.

V. Construction Cost

a. Definition

i. The Construction Cost shall be the total cost or estimated cost to the City of all elements of the Project designed or specified by the Architect.

ii. The Construction Cost shall include at current market rates, including a reasonable allowance for overhead and profit, the cost of labor and materials furnished by the City and any equipment which has been designed, specified, selected or specially provided for by the Architect.

iii. Construction Cost does not include the compensation of the Architect and the Architect's consultants, the cost of the land, rights-of-way, or other costs which are the responsibility of the City as provided in Section IV above.

b. Responsibility for Construction Cost

i. Evaluations of the City's Project budget, Statements of Probable Construction Cost and Detailed Estimates of Construction Cost, if any, prepared by the Architect, represent the Architect's best judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the Architect nor the City has control over the cost of labor, materials or equipment, over the Contractor's methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent the bids or negotiated prices will not vary from the Project budget proposed, established or approved by the City, if any, or from any Statement of Probable Construction Cost or other cost estimate or evaluation prepared by the Architect.

ii. No fixed limit of Construction Cost shall be established as a condition of this Agreement by the furnishing, proposal or establishment of a Project budget under Section II, (ii) (b) or Section IV (b), or otherwise, unless such fixed limit has been agreed upon in writing and signed by the parties hereto. If such a fixed limit has been established, the Architect shall be permitted to include contingencies for design, bidding and change order to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents, to make reasonable adjustments in the scope of the Project and to include in the Contract Documents alternate bids to adjust the Construction Cost to the fixed limit. Any such fixed limit shall be increased in the amount of any increase in the Contract Sum occurring after execution of the Contract for Construction.

iii. If the Bidding or Negotiation Phase has not commenced within three months after the ARCHITECT submits the Construction Documents to the City, any Project budget or fixed limit of Construction Cost shall be adjusted to reflect any change in the general level of prices in the construction industry between the date of submission of the Construction Documents to the City and the date on which proposals are sought.

iv. If a Project budget or fixed limit of Construction Cost (adjusted as provided in Subparagraph c) is exceeded by the lowest bona fide bid or negotiated proposal, the City shall (1) give written approval of an increase in such fixed limit, (2) authorize rebidding or renegotiating of the Project within a reasonable time, (3) if the Project is abandoned, terminate in accordance with Section 5, or (4) cooperate in revising the Project scope and quality as required to reduce the Construction Cost. In the case of (4), provided a fixed limit of Construction Cost has been established as a condition of this Agreement, the Architect, without additional charge, shall modify the Drawings and Specifications as necessary to comply with the fixed limit. The providing of such service shall be the limit of the Architect's responsibility arising from the establishment of such fixed limit, and having done so, the Architect shall be entitled to compensation for all services performed, in accordance with this Agreement, whether or not the Construction Phase is commenced.

VI. PAYMENTS TO ARCHITECT

a. Payments on Account of Basic Services

i. For payment due for basic services the Architect shall submit invoices at the end of each four-week billing period. Invoice amounts shall be based on the Architect's estimated percent completion.

ii. If and to the extent that the Contract Time initially established in the Contract for Construction is exceeded or extended through no fault of the Architect, compensation for any Basic Services required for such extended period of Administration of the Contract shall be computed as set forth in Section III above for Additional Services.

iii. When compensation is based on a percentage of Construction Cost, and any portions of the Project are deleted or otherwise not constructed, compensation for such portions of the Project shall be payable to the extent services are performed on such portions, in accordance with the schedule set forth in Article 1.

b. Payment Terms

i. Payments shall be paid to Architect within 30 days contingent upon the following:

a) Application of payment discounts, if considered to be in the best interest of the City;

b) From date of receipt by the Architect of properly documented invoices for payment as determined by the budgetary and fiscal guidelines of the City;

c) On the condition that the Architect has accomplished the Services to the satisfaction of the City. Any taxes (specifically including the New Mexico Gross Receipts tax), licenses, or other governmental fees and charges, are the responsibility of the Architect.

c. Payments on Account of Additional Services

a) Payments on account of the Architect's Additional Services as defined in Section III and for Reimbursable Expenses as defined below shall be made monthly upon presentation of the Architect's statement of services rendered or expenses incurred.

d. Payments Withheld

a) No deductions shall be made from the Architect's compensation on account of penalty, liquidated damages or other sums withheld from payments to contractors, or on account of the cost of charges in the Work other than those for which the Architect is held legally liable.

e. Reimbursable Expenses

a) Reimbursable Expenses are in addition to the Compensation for Basic and Additional Services and include actual expenditures made by the Architect and the Architect's employees and consultants in the interest of the Project for the expenses listed in the following Subparagraphs:

i) Expense of transportation in connection with the Project; living expenses in connection with out-of-town travel; long distance communications; and fees paid for securing approval of authorities having jurisdiction over the Project.

ii) Reimbursement to the Architect shall be limited to that allowable under Federal cost, which are allowable under Federal cost principals contained in 48 CFR, Chapter 1, Part 31, Federal Acquisition Regulation (FAR31).

b) Expense of reproductions, postage and handling of Drawings, Specifications and other documents, excluding reproductions for the office use of the Architect and the Architect's consultants.

c) Expense of data processing and photographic production techniques when used in connection with Additional Services.

d) If authorized in advance by the City, expense of overtime work requiring higher than regular rates.

- e) Expense of renderings, models and mock-ups requested by the City.

Insert Insurance form Attachment C