

NOTICE OF REQUEST FOR PROPOSALS

Competitive sealed proposals will be received by the Town of Taos, New Mexico (Owner), for the Town of Taos Comprehensive Plan Update.

CDBG Project No. 18-C-RS-I-06-G-102;
RFP # 20-21-02.

Sealed proposals will be received by the Town of Taos at the Purchasing Division, Room 202 of Town Hall, 400 Camino de la Placita, Taos, New Mexico 87571 until August 14, 2020 @ 3:00 p.m. MDT.

Copies of the Request for Proposals can be obtained at the office of the Sharon Voigt, Chief Procurement Officer, Purchasing Division, Room 202 of Town Hall, 400 Camino de la Placita, Taos, New Mexico 87571, (575) 751-2025, svoigt@taosgov.com or it may be downloaded from Vendor Registry <https://vrapp.vendorregistry.com/vendor/register/signup>

This Project is funded in whole or in part by a grant from the State of New Mexico Small Cities' Community Development Block Grant Program and is subject to the requirements of the United States Department of Housing and Urban Development and the funding agency.

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

As per NMSA 1978, Sections 13-1-131 and 13-1-132, the Town of Taos reserves the right to cancel this procurement or reject any/all bid proposals if it is in the best interest of the Town to do so, and to waive all technical irregularities not involving price, time or changes in work.

By Order of the Governing Body
Town of Taos
/s/Sharon Voigt
Chief Procurement Officer
(575) 751-2025
Email: svoigt@taosgov.com

[For Contracting Agency Use Only]

Newspaper: The Taos News	Publish: July 23, 2020
Newspaper: The Taos News	Publish: July 30, 2020
Newspaper: Albuquerque Journal	Publish: July 23, 2020
Newspaper: Santa Fe New Mexican	Publish: July 24, 2020

Note: This Notice is issued pursuant to the requirements of §13-1-104 NMSA 1978 and must be published not less than 10 calendar days prior to the date set for the receipt of proposals (§13-1-1 13 NMSA 1978) and published in a newspaper of general circulation in the area.

PROJECT DESCRIPTION: (Project Description, Desired Period of Performance & Schedule of Work)

The Town of Taos' Vision 20/20 Master Plan was developed in 1999 and must be updated with a Municipal Comprehensive Plan (as defined by New Mexico State Statute). Various elements of the master plan have been amended or updated since 1999 to include housing, land, economic development, water and sewer, parks and recreation. The Town would now like to update and consolidate all the plans into one document that addresses future needs through 2040. The new comprehensive plan will build on the following plans: Vision 20/20 (1999), Community Economic Development Strategic Plan (2013), Water & Sewer Master Plan (2015), 40 Year Water Plan, Park Master Plan (2018), Youth & Family Center Plan (2018), Taos County Hazard Mitigation Plan (2018), Community Tree Care Plan (2018), and the most recent Strong at Heart Plan (2018) focusing on downtown strategies. These plans, and other relevant documents, can be found at: www.Taosgov.com.

In addition, the Town has received funding for the following plans currently underway: Chamisa Park Development Plan, Affordable Housing Plan, and the Taos Regional Airport Master Plan.

The Town is seeking to update its comprehensive plan through a highly interactive, public process with various community stakeholders. It is expected that the end product will be a plan that reflects the aspirations and values of the community. The plan will serve as a basis for the establishment of future priorities and policies for the coordinated development and redevelopment of the Town. The adopted update will meet the provisions of New Mexico Statutes Annotated.

Period of Performance: The updated comprehensive plan shall be finalized and accepted by the Planning Commission by August 6, 2021.

Schedule of Work will include:

Community Engagement:

The consultant will assist the Town in leading a highly interactive, public engagement process for updating the comprehensive plan. It is expected that the process will include an advisory committee made-up of representative sampling of the community (business owner, property owner, home owner, renter, new resident, old resident, young resident, mature resident, etc.). This advisory committee will provide guidance in identifying key areas of focus for the plan update and key stakeholders and desired public input processes. It is expected that there will be one or two public workshops, one or two focus groups, several stakeholder interviews, and a joint Town Council / Planning Commission workshop. Social media and an active website with maps, analysis, and draft recommendations for community feedback will be an important component of this process.

Preparation and Presentation of a Draft Plan:

The consultant will prepare a nearly finished, draft plan that will be presented to the Advisory Committee, Planning Commission and Historic Preservation Commissions, and Town Council as well as in a general public forum and subsequently adopted by the Planning Commission. The presentation should include a methodology or process for gathering input and weighting the value of the input on the final plan. Such presentation(s) will provide for a systematic, participatory process for gathering and recording comments on the plan and its recommendations. The consultant will then lead the advisory committee in evaluating recorded comments and making final adjustments to the recommendations in the plan.

Preparation and Presentation of Final Plan:

A final, completed update to the Comprehensive Plan will be presented to the Planning Commission for formal adoption per the requirements of New Mexico State Statutes. The plan will be an electronic form that is posted on the Town's web site and will include necessary maps, tables, and graphs to further clarify and support the analysis, narrative and recommendations of the comprehensive plan update. The plan will be presented in a format that is user-friendly and easily comprehensible. The consultant should make every effort to minimize the use of technical, planning language.

SCOPE OF WORK

The Consultant shall perform the following professional planning services:

General:

The consultant shall create a legally defensive and sufficient comprehensive plan that meets all the requirements for a comprehensive plan under the Laws of the State of New Mexico and its Zoning Enabling Act and extraterritorial statutes, and consistent with the due process, substantive due process and property clauses of the United States Constitution. Accordingly, the comprehensive plan shall make careful and comprehensive surveys and studies of existing conditions and probable future growth of the municipality and its environs. The plan shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted and harmonious development of the municipality which shall, in accordance with existing and future needs, best promote health, safety, morals, order, convenience, prosperity or the general welfare as well as efficiency and economy in the process of development.

The comprehensive plan shall make recommendations concerning: (i) the general location, character and extent of streets, bridges, viaducts and parkways; parks and playgrounds, floodways, waterways and waterfront development, airports and other ways, grounds, places and spaces; (ii) the general location of public schools, public buildings and other public property; (iii) the general location and extent of public utilities and terminals, whether publicly or privately owned; (iv) the general location, character, layout and extent of community centers and neighborhood units and the re-planning of blighted districts and slum areas; and (v) the acceptance, widening, removal, extension, relocation, narrowing, vacation, abandonment or change of use of any of the foregoing public ways, grounds, places, spaces, buildings, properties, utilities or terminals. The comprehensive plan shall study those elements required by the Zoning Enabling Act to serve as a basis for zoning, such as the means to: (i) lessen congestion in the streets and public ways; (ii) secure safety from fire, flood waters, panic and other dangers; (iii) promote health and the general welfare; (iv) provide adequate light and air; (v) prevent the overcrowding of land; (vi) avoid undue concentration of population; (vii) facilitate adequate provision for transportation, water, sewerage, schools, parks and other public requirements; and (viii) control and abate the unsightly use of buildings or land. The comprehensive plan shall specifically plan All of these items need to be considered, documented, and included in the comprehensive plan.

Review of Existing Plans:

The consultant will become familiar with the Town's current comprehensive plan, as well as area master plans and studies. This review should not only be for background, but also with an eye toward whether these plans are still relevant and the recommendations applicable.

Analysis of Community Population and Emerging Trends:

The consultant will review current community population and demographics in order to project future population and demographic trends for set periods of time. Emerging demographic trends will be important in this analysis.

Update the following Comprehensive Plan elements (described as per NMAC 2.110.2.11). *(Please note the Housing Element is currently being updated and will be integrated into the final comprehensive plan.)*

Land Use, including (1) an analysis and mapping of existing land patterns and an inventory of the amount, type and intensity of uses by land category; (2) an analysis of trends in the supply and demand of land by land use category, including a projection of the distribution, location and extent of future land uses by land use category over a twenty-year period; (3) goals, objectives and policies that address maintaining a broad variety of land uses, including the range of uses existing in the contracting agency when the plan is adopted or amended; and (4) specific actions and incentives that the contracting agency may use to promote planned development or otherwise encourage certain identified development patterns and the locations where such development patterns should be encouraged.

Economic Development, including (1) a description of existing job composition and trends by industry and locational characteristics, such as access to transportation or proximity to natural or human resources, that influence the economic development potential of the contracting agency; (2) goals, objectives and policies for promoting economic development; and (3) a description of the actions that the contracting agency will take to implement economic development goals, objectives and policies;

Infrastructure, including (1) a description and assessment of the location, type, capacity and condition of existing infrastructure, including emergency services, sewage, drainage, local utilities and other types of facilities; (2) goals, objectives and policies for promoting the efficient provision of infrastructure, including a description of proposed levels of service; and (3) a description and assessment of proposed facility expansion and improvements designed to support planned uses and implement infrastructure goals, objectives and policies;

Water, including, (1) description and assessment of the sources of water supply; (2) the demand for water by residential, commercial, institutional, industrial and recreational sectors; (3) assessment of the unaccounted for water losses due to leaks, theft or other reasons; (4) goals, objectives and policies for promoting the efficient use of water and for managing periods of drought; and (5) an analysis of the demand for water that will result from future growth projected in the plan, when added to existing uses, and how the demand for water that will result from future projected growth will be served by current water supplies, water conservation, or a plan to obtain additional water supplies or increase water use efficiencies;

Transportation, including (1) description and assessment of the location, type, capacity and condition of existing transportation facilities, such as freeways, arterial and collector streets or other modes of transportation as may be appropriate; (2) goals, objectives and policies for encouraging safe, convenient, efficient and economical transportation, including facilities for bicyclists and pedestrians, and a description of proposed levels of service and funding mechanisms; and (3) a description and assessment of proposed location, type and capacity of proposed transportation facilities designed to implement transportation goals, objectives and policies and a description of funding mechanisms that will be used to fund proposed transportation improvements;

Analysis of Commercial Development and Emerging Trends:

The consultant will review the community's current commercial development (retail, service, and office), as well as any emerging trends regionally and nationally in the commercial development sector.

This review will include a market analysis of commercial development in the Town with recommendations that better position the Town for current and future development and business activity

Extraterritorial Planning and Platting Jurisdiction:

The comprehensive plan shall include the extraterritorial platting and planning zones as defined in New Mexico statutes and thereby address platting and planning within the Town's planning, zoning and platting jurisdiction. The comprehensive shall plan provide a vision for future growth of the Town through annexation pursuant to New Mexico's Zoning Enabling Act, which states that "the planning commission shall make careful and comprehensive surveys and studies of existing conditions and *probable future growth of the municipality and its environs*. The plan shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted and harmonious development of the municipality which will, in accordance with existing and future needs".

Optional elements to Include:

Parks, Recreation & Open Space – In 2018, the Town completed a Parks Master Plan, Youth & Family Center Plan, and a Community Tree Care Plan which can be integrated into the new comprehensive plan.

Community Satisfaction Survey:

The Town will conduct a Community Direction Finder Survey in conjunction with the process to update

the Comprehensive Plan. It is expected that the consultant will participate in formulating questions for the survey to provide further analysis for recommendations in the Comprehensive Plan update.

Type of Planning Study:

Comprehensive Plan¹

Strategic or Element Specific Plan _____

Mapping _____

Zoning or Other Land Use Regulation _____

Infrastructure _____

Other Planning _____

INSTRUCTIONS TO OFFERORS

1. DEFINITIONS AND TERMS

1.1 *Addendum* means a written or graphic instrument issued prior to the opening of Proposals which clarifies, corrects, or changes the Request for Proposals. Plural: Addenda.

1.2 *Consultant* means the Successful Offeror awarded the Agreement/Contract.

1.3 *Determination* means the written documentation of a decision of the procurement officer including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains (§ 13-1-52 NMSA 1978).

1.4 *Offeror* means any person, corporation, or partnership that provides professional planning services, which chooses to submit a proposal in response to this Request for Proposals. The Lead Planner for the offeror must have at a minimum ten years experience in land use planning. A Master's degree in urban planning or equivalent and membership in American Institute of Certified Planners may be substituted for five years experience.

1.5 *Procurement Manager* means the person or designee authorized by the Contracting Agency to manage or administer a procurement requiring the evaluation of proposals.

1.6 *Request for Proposals or "RFP"* means all documents, including those attached or incorporated by reference, used for soliciting proposals (§ 13-1-81 NMSA 1978).

1.7 *Responsible Offeror or Proposer* means an offeror

or proposer who submits a responsive proposal and who has furnished, when required, information and data to prove that his financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services described in the proposal (§ 13-1-83 NMSA 1978).

1.8 *Responsive Offer or Proposal* means an offer or proposal which conforms in all material respects to the requirements set forth in the request for proposals. Material respects of a request for proposals include, but are not limited to, price, quality, quantity or delivery requirements (§ 13-1-85 NMSA 1978).

1.9 The terms must, shall, will, is required, or are required, identify a mandatory item or factor. Failure to comply with a mandatory item or factor will result in the rejection of the offeror's proposal.

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

2. REQUEST FOR PROPOSAL DOCUMENTS

2.1 Copies of Request for Proposals

A. A complete set of the Request for Proposals may be obtained from the Contracting Agency (unless another issuing office is designated in the RFP).

B. A complete set of the Request for Proposals shall be used in preparing proposals; the Contracting Agency assumes no responsibility for errors or misinterpretations resulting from the use of an incomplete set of the Request for Proposals.

C. The Contracting Agency in making copies of

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

D. A copy of the RFP shall be made available for public inspection and shall be posted on the Town's online bidding platform, Vendor Registry. Offerors must register at:

<https://vrapp.vendorregistry.com/vendor/register/signup>

2.2 Interpretations

A. All questions about the meaning or intent of the Request for Proposals shall be submitted to the Purchasing Agent of the Contracting Agency in writing. Replies will be issued by Addenda mailed or delivered to all parties recorded by the Contracting Agency as having received the Request for Proposals.

Questions received less than five days prior to the date for opening of proposals will not be answered. Only questions answered by formal written addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

B. Offerors should promptly notify the Contracting Agency of any ambiguity, inconsistency, or error which they may discover upon examination of the Request for Proposals.

2.3 Addenda

A. Addenda will be mailed by certified mail with return receipt requested, sent via email, by facsimile to all who are known by the Contracting Agency to have received a complete set of Request for Proposals. Addenda will also be posted on Vendor Registry.

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

C. No Addenda will be issued later than 5 days prior to the date for receipt of Proposals, except an Addendum withdrawing the Request for Proposals or one which includes postponement of the date for receipt of Proposals.

D. Each Offeror shall ascertain, prior to submitting the Proposal, that the Offeror has received all Addenda issued, and shall acknowledge their receipt in the Proposal transmittal letter.

3. PROPOSAL SUBMITTAL PROCEDURES

3.1 Number, Form and Style of Proposals

A. Offerors shall provide copies of their proposal to the location specified on the cover page on or before the closing date and time for receipt of proposals.

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

C. A maximum of 30 pages, including title, index, etc., not including front and back covers.

D. The firm's statement of qualifications must be organized and indexed in the following format and must contain, as a minimum, all listed items in the sequence indicated:

- Letter of transmittal, if any;
- Firm's qualifications (including subconsultants);
- Assigned personnel experience, and expertise on related projects;
- References (minimum of three) on past record of performance;
- Project understanding and familiarity with contracting community issues;
- Ability and resources to effectively manage and complete the work on schedule;
- Campaign Contribution Disclosure form; and
- Other supporting or resource material.

E. Any proposal that does not adhere to this format, and which does not address each specification and requirement within the RFP may be deemed non-responsive and rejected on that basis.

F. Offerors may request in writing nondisclosure of confidential data. Such data should accompany the proposal and should be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal. A request that states that the entire proposal be kept confidential will not be acceptable. Only matters that clearly are of a confidential nature will be considered.

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

3.2 Subconsultants

A. The Offeror shall list and state the qualifications for each Subconsultant the Offeror proposes to use for all subcontracted Work.

B. The Offeror is specifically advised that any person or other party, to whom it is proposed to award a subcontract under this proposal, must be acceptable to the Contracting Agency after verification by the Contracting Agency of the current eligibility status, including but not limited to suspension or debarment by the Contracting Agency.

3.3 Prequalification Process

A business may be prequalified by the Purchasing Agent as an Offeror for particular types of service. Mailing lists of potential Offerors shall include but shall not be limited to such prequalified businesses (§ 13-1-134 NMSA 1978). For purposes of this RFP, if prequalification is utilized, special instructions will be attached as an exhibit to this RFP.

3.4 Debarred or Suspended Contractors

A business (contractor, subcontractor or supplier) that has either been debarred or suspended pursuant to the requirements of §§ 13-1-177 through 13-1-180, and §§ 13-4-11 through 3-4-17 NMSA 1978 as amended, shall not be permitted to do business with the Contracting Agency and shall not be considered for award of the contract during the period for which it is debarred or suspended with the Contracting Agency.

3.5 Submittal of Proposals

A. Proposals shall be submitted at the time and place indicated in the Notice of Request for Proposals and shall be included in an opaque sealed envelope marked with the Project title and name and address of the Offeror and accompanied by the documents listed in the Request for Proposals.

B. The envelope shall be addressed to the Purchasing Agent/Procurement Officer of the Contracting Agency. The following information shall be provided on the front lower left corner of the Proposal envelope: Project Title, Project No., Request for Proposals number, date of opening, and time of opening. If the Proposal is sent by mail, the sealed envelope shall have the notation "**SEALED PROPOSAL ENCLOSED**" on the face thereof.

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

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

E. After the date established for receipt of proposals, a register of proposals will be prepared which includes the name of each Offeror, a description sufficient to identify the service, the names and addresses of the required witnesses, and such other information as may be specified by the Purchasing Agent.

F. Oral, telephonic, or telegraphic proposals are invalid and will not receive consideration.

3.6 Correction or Withdrawal of Proposals

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

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

3.7 Notice of Contract Requirements Binding on Offeror

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

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

3.8 Rejection or Cancellation of Proposals

This Request for Proposals may be canceled, or any or all proposals may be rejected in whole or in part, when it is in the best interest of the Contracting Agency. A determination containing the reasons therefor shall be made part of the project file

(§ 13-1-131 NMS A 1978).

4. CONSIDERATION OF PROPOSALS

4.1 Receipt, Opening and Recording

A. Proposals received on time will be opened publicly or in the presence of one or more witnesses and the name of the Offeror and address will be read aloud.

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

4.2 Proposal Evaluation

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

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

B. The Contracting Agency shall have the right to waive technical irregularities in the form of the Proposal of the Offeror that do not alter the quality or quantity of the services (§ 13-1-132 NMSA 1978).

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

D. Selection Process: (§ 13-1-120 NMSA 1978)

1) The evaluation of proposals will be performed by an evaluation committee composed of representatives selected by the Contracting Agency. The committee shall evaluate statements of qualifications and performance data submitted by at least three businesses in regard to the particular project and may conduct interviews with and may require public presentation by all businesses applying for selection regarding their qualifications, their approach to the project and their ability to furnish the required services.

2) If fewer than three businesses have submitted a statement of qualifications for a particular project, the committee may:

a) rank in order of qualifications and submit to the local governing body for award those businesses which have submitted a statement of qualifications; or

b) recommend termination of the selection process and sending out of new notices of the proposed procurement pursuant to § 13-1-104 NMSA 1978.

4.3 Negotiations (§ 13-1-122 NMSA 1978)

A. The Contracting Agency's designee shall negotiate a contract with the highest qualified business for the services contemplated under this RFP at compensation determined in writing to be fair and reasonable. In making this decision, the designee shall consider the estimated value of the services to be rendered and the scope, complexity and professional nature of the services.

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

C. The designee shall then undertake negotiations with the third most qualified business.

D. Should the designee be unable to negotiate a contract with any of the businesses selected by the committee, additional businesses shall be ranked in order of their qualifications and the designee shall continue negotiations in accordance with this section until a contract is signed with a qualified business or

the procurement process is terminated and a new request for proposals is initiated.

E. The Contracting Agency shall publicly announce the business selected for award.

4.4 Notice of Award

After award by the local governing body, a written notice of award shall be issued by the Contracting Agency after review and approval of the Proposal and related documents by the Contracting Agency with reasonable promptness (§ 13-1-100 and § 13-1-108 NMSA 1978).

5. POST-PROPOSAL INFORMATION

5.1 Protests

A. Any Offeror who is aggrieved in connection with a solicitation or award of an Agreement may protest to the Contracting Agency's Central Purchasing Office in accordance with the requirements of the Contracting Agency's Procurement Regulations and the state Procurement Code. The protest should be made in writing within 24 hours after the facts or occurrences giving rise thereto, but in no case later than 15 calendar days after the facts or occurrences giving rise thereto (§ 13-1-172 NMSA 1978).

B. In the event of a timely protest under this section, the Purchasing Agent and the Contracting Agency shall not proceed further with the procurement unless the Purchasing Agent makes a determination that the award of Agreement is necessary to protect substantial interests of the Contracting Agency (§ 13-1-173 NMSA 1978).

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

D. The Purchasing Agent of his designee shall promptly issue a determination relating to the protest.

The determination shall:

- 1) State the reasons for the action taken; and
- 2) Inform the protestant of the right to judicial review of the determination pursuant to § 13-1-183 NMSA 1978.

E. A copy of the determination issued under § 13-1-175 NMSA 1978 shall immediately be mailed to the protestant and other Offerors involved in the procurement (§ 13-1-176 NMSA 1978).

5.2 Execution and Approval of Agreement

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

5.3 Notice to Proceed

The Contracting Agency will issue a written Notice to Proceed to the Consultant.

5.4 Offeror's Qualification Statement

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

6. CAMPAIGN CONTRIBUTION DISCLOSURE AND PROHIBITION

6.1 Pursuant to the Procurement Code, Sections 13-1-28, et seq., NMSA 1978 and NMSA 1978, § 13-1-191.1 (2006), as amended by Laws of 2007, Chapter 234 any prospective contractor seeking to enter into a contract with any state agency or local public body **for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources** must file this form with that state agency or local public body. This form must be filed even if the contract qualifies as a small purchase or a sole source contract. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a 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.

See Exhibit A – Campaign Contribution Disclosure Form.

6.2 The form shall be filed with the Grantee as part of the competitive sealed proposal, or in the case of a sole source or small purchase contract, on the date on which the contractor signs the contract.

6.3 A prospective contractor submitting a disclosure statement pursuant to this section who has not contributed to an applicable public official, whose family members have not contributed to an applicable public official or whose representatives have not contributed to an applicable public official shall make a statement that no contribution was made.

6.4 A prospective contractor or a family member or representative of the prospective contractor shall not give a campaign contribution or other thing or value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or during the pendency of negotiations for a sole source or small purchase contract.

6.5 A solicitation or proposed award for a proposed contract may be canceled pursuant to §13-1-181 NMSA 1978 or a contract that is executed may be ratified or terminated pursuant to §13-1-181 NMSA 1978 if:

A. A prospective contractor fails to submit a fully completed disclosure statement pursuant to this section; or

B. A prospective contractor or family member or representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process.

6.6 As used in this section:

A. *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;

B. *Family member* means spouse, father, mother,

child, father-in-law, mother-in-law, daughter-in-law or son-in-law;

C. *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;

D. *Prospective contractor* means a person who is subject to the competitive sealed proposal process set forth in the Procurement Code, § 13-1-28 NMSA 1978, or is not required to submit a competitive sealed proposal because that person qualifies for a sole source or small purchase contract; and

E. *Representative of the 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.

7. OTHER INSTRUCTIONS TO OFFERORS

NONE

GENERAL TERMS AND CONDITIONS

1. GOVERNING LAW

The Agreement shall be governed exclusively by the Laws of the State of New Mexico as the same from time to time exist.

2. INDEPENDENT CONTRACTORS

The Consultant (planning professionals) and his/her agents and employees are independent Contractors and are not employees of the Contracting Agency. The Consultant and his agents and employees shall not accrue leave, retirement, insurance, bonding, use of Contracting Agency vehicles, or any other benefits afforded to employees of the Contracting Agency as a result of the Agreement.

3. BRIBES, GRATUITIES AND KICK-BACKS

Pursuant to §13-1-191 NMSA 1978, reference is hereby made to the criminal laws of New Mexico (including §30-14-1, §30-24-2, and §30-41-1 through §30-41-3 NMSA 1978) that prohibit bribes, kickbacks, and gratuities, violation of which constitutes a felony. Further, the Procurement Code, §13-1-28 through §13-1-199 NMSA 1978, imposes civil and criminal penalties for its violation.

4. STANDARD FORM OF AGREEMENT BETWEEN CONTRACTING AGENCY AND CONSULTANT

The form of agreement required by the funding agency or issued by the Contracting Agency will be used for this project. Copies are provided with this Request for Proposals.

5. FEES

A lump sum fixed fee for Basic Service will be negotiated with the Offeror selected. Construction Observation, if appropriate or required, will be calculated on a Payroll Cost times a multiplier. Additional Services will be calculated on a Payroll Cost times a multiplier, or as appropriate or agreed upon.

6. FUNDING

This solicitation is subject to the availability of funds to accomplish the work.

7. PROFESSIONAL LIABILITY INSURANCE

The Offeror shall be required to carry professional liability (errors and omissions) insurance.

EVALUATION CRITERIA

Criteria and Point Values

Each proposal must address each of the following criteria and may be awarded points up to the amount listed.

	<u>Suggested Points</u> [25]	<u>Points this RFP</u> _____
1. Firm qualifications Proposal addresses the qualifications of the firm and any proposed subconsultants.	[25]	_____
2. Planning Experience Assigned personnel experience and expertise on related projects.	[25]	_____
3. References and Past Record of Performance Three references and past record of performance with local governments such as control of costs, quality of work and ability to meet schedules.	[20]	_____
4. Familiarity with the Contracting Agency Proximity to or familiarity with the area in which the project is located.	[10]	_____
5. Project Management Ability and resources to effectively manage and complete the work on schedule	[20]	_____
	TOTAL: [100]	_____

The TOTAL BUDGET available for this project is \$50,000.

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to the Procurement Code, Sections 13-1-28, et seq., NMSA 1978 and NMSA 1978, § 13-1-191.1 (2006), as amended by Laws of 2007, Chapter 234, any prospective contractor seeking to enter into a contract with any state agency or local public body **for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources** must file this form with that state agency or local public body. This form must be filed even if the contract qualifies as a small purchase or a sole source contract. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars (\$250) over the two year period.

Furthermore, the state agency or local public body may cancel a solicitation or proposed award for a proposed contract pursuant to Section 13-1-181 NMSA 1978 or a contract that is executed may be ratified or terminated pursuant to Section 13-1-182 NMSA 1978 of the Procurement Code if: 1) a prospective contractor, a family member of the prospective contractor, or a representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or 2) a prospective contractor fails to submit a fully completed disclosure statement pursuant to the law.

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

THIS FORM MUST BE INCLUDED IN THE REQUEST FOR PROPOSALS AND MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

The following definitions apply:

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

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

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

“Prospective contractor” means a person or business that 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 or business qualifies for a sole source or a small purchase contract.

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

Name(s) of Applicable Public Official(s): **MAYOR: DANIEL R. BARRONE**

COUNCIL MEMBERS:

*PASCUALITO M. MAESTAS
NATHANIEL EVANS*

*DARIEN D. FERNANDEZ
GEORGE “FRITZ” HAHN*

DISCLOSURE OF CONTRIBUTIONS BY PROSPECTIVE CONTRACTOR:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Date Contribution(s) Made: _____

Amount(s) of Contribution(s) _____

Nature of Contribution(s) _____

Purpose of Contribution(s) _____

(Attach extra pages if necessary)

Signature

Date

Title (position)

--OR--

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

Signature

Date

Title (Position)

AGREEMENT BETWEEN OWNER AND PLANNER

Project _____

Contract N°. _____ Project N°. _____



Distribution to:

- Owner
- Planner
- Project Representative
- Funding Agency
- Other

This Agreement entered into this _____ day of _____, 2020, by and between
the **Owner, the Town of Taos, New Mexico,** and the **Planner**

┌ _____ ┌ _____ ┌ _____ ┌ _____

└ _____ └ _____ └ _____ └ _____

[This document was prepared to be used with Community Development Block Grant and state funded projects. This document has important legal consequences; consultation with an Attorney is encouraged with respect to its completion or modification]

TABLE OF CONTENTS

- Article 1** Definitions
- Article 2** Planner's Services and Responsibilities
- Article 3** User Representative
- Article 4** Owner's Responsibilities
- Article 5** Reimbursable Expenses
- Article 6** Payment to the Consultant
- Article 7** Planner's Accounting Records
- Article 8** Ownership and Use of Documents
- Article 9** Termination of Agreement
- Article 10** General and Special Provisions
- Article 11** Basis of Compensation
- Article 12** Additional Terms and Conditions of Services

RECITALS

WHEREAS this project is funded in whole or in part by a federal or state grant or loan program administered by the Local Government Division, Department of Finance and Administration, state of New Mexico, hereinafter referred to as the "funding agency"; and

WHEREAS, the funding agency has funded the above referenced project pursuant to Title I of the Housing and Community Development Act of 1974 (PL 95-383) as amended; and

WHEREAS the Planner was selected pursuant to Sections 13-1-117 through 13-1-118 NMSA 1978 and the Owner's Procurement Regulations; and

WHEREAS the Owner agrees to hire the Planner, and the Planner agrees to provide professional and technical services as required hereinafter for the Project in accordance with the terms and conditions set forth in this Agreement;

IT IS THEREFORE AGREED AS FOLLOWS

ARTICLE 1 DEFINITIONS

For purposes of this Agreement, the following definitions shall apply throughout the contract and to all attachments incorporated herein, unless otherwise specified.

1.1 *Central Purchasing Officer* means the Central agreement of the Owner.

1.2 *Codes* means federal, state, and local codes applicable to the project.

1.3 *Direct Salary* means the gross wages, which do not include costs of employer and beyond the amounts of the paychecks.

1.4 *Governing Authority* means the local governing authority for the award of planning contracts is the governing body, and the governing authority for the execution of planning contract is the mayor/county commission chairperson.

1.5 *Purchasing Office* is any division, office, branch, section, unit, or other organizational element charged with the functions of procuring supplies or services.

1.6 *Owner* means the public corporation or association with whom the Consultant has entered into the Agreement and for whom the Work is to be provided, in this case, the Town of Taos, a municipal corporation organized and existing under the Laws of the State of New Mexico.

1.7 *Owner Representative* for purposes of this Agreement is the person designated by the Owner and whose names shall be submitted in writing to the Planner. The Owner Representative shall be responsible for administrative decisions and approvals and for contact with the Planner regarding contractual matters and Project execution.

1.8 *Project* means the total plan under the Scope of Services of which the Work performed under the Contract Documents may be the whole or a part. The Project is further defined as follows in Paragraph 12.1.

1.9 *Planner* means the individual who shall conduct all plans that involve the Project. The Project Consultant shall be mutually agreed upon by Owner and Planner at the time this Agreement is entered into by the parties and shall be named herein.

1.10 *Reimbursable Expenses* means expenses in addition to the basic services compensation which shall include actual expenditures made by the Planner or its employees in the interest of the Project (while performing consulting

services pursuant to this Agreement) and limited to those items listed in Article 5 of this Agreement and authorized in writing by the Owner.

- 1.11 *Site or area* means the physical location on which the planning project is to occur.
- 1.12 *User (or User Agency)* means the agency or department or designated entity for whose use the Project is being planned. For purposes of this Agreement, see paragraph 12.2 for User designation.
- 1.13 *User Representative* means the individuals designated by the User as the principal contact regarding the Owner's requirements for the Project. Unless specifically designated by the Owner, the User Representative shall not have the authority to render administrative decisions or approvals. See also Article 3 herein. For purposes of this Agreement, the User Representative shall be designated by the Owner and whose names shall be submitted in writing to the Planner.
- 1.14 *Other Definitions* means the definitions in the Federal Terms and Conditions for Professional Services, as provided in Exhibit E hereto.

ARTICLE 2 PLANNER'S SERVICES AND RESPONSIBILITIES

2 Basic Services

2.1 General. The Planner's basic services shall consist of the following: A) Initial Citizen Input Phase; B) Data Collection Phase; C) Study Phase; D) Secondary Citizen Input Phase; E) Final Report Phase; and F) Implementation Phase. The services to be provided during each phase are listed below and shall include all consulting services required by the Planner to provide the service listed in the Request for Proposals under "Project Description" (beginning on page 3F-3) and "Scope of Work" (beginning on page 3F-4).

2.2 The Planner shall request from the User Representative information sufficient for the Planner to develop program criteria including the User's

goals, objectives, and needs, and the organizational chart of individuals and equipment that shall occupy the Project.

2.3 Project Legislation or Authorization. The Planner shall request from the Owner and the User copies of documents supporting the funding request which were presented to the funding entity or other regulatory agencies that provided funds for planning of the envisioned Project. These documents will be furnished for information only. The Owner will establish a budget for utilization by the Planner in the performance of the services.

2.4 Standard of Care. The standard of care for all professional consulting and related services performed or furnished by the Planner under this Agreement will be the care and skill ordinarily used by members of the Planner's profession as proscribed by the American Institute of Certified Planners practicing under similar conditions at the same time and in the same locality. The Planner makes no warranties, express or implied, under this Agreement or otherwise, in connection with the Planner's services.

2.1 Planning Services

2.1.1 The study shall establish goals, collect facts, identify concepts, and determine functional needs necessary to complete the Project within the funding mandate. Based on the data provided by the User Representative and pursuant to adequate consultation with the User Representative, the Planner shall prepare a document that adequately defines the scope of the Project.

2.1.2 The Owner and the User Representative shall work with the Planner to ensure that the information required by the Owner is made available to the Planner. This information and other requests concerning organization of functions shall be provided in the form of written memoranda.

2.1.3 The Owner shall schedule a meeting with the Planner and the User Representative to define the relationship among these parties. The Planner shall advise the Owner, in writing, of any information he requires that has not been provided by the Owner and/or the User Representative, or any conflicts between the established program requirements and the funding authorizing the Project.

2.2 Time

2.2.1 The Planner shall perform Basic and Additional Services as expeditiously as is consistent with professional skill and care and the orderly progress of the Work. The Planner shall submit, for the Owner's approval and as a part of this Contract, a schedule for the performance of the Planner's services. This schedule, when approved by the Owner, shall not, except for reasonable cause not within the control of the Planner, be exceeded by the Planner (see Exhibit A, Time Schedule for Project Phases).

2.3 Implementation Phase. During the Implementation Phase, the Planner shall, when requested by the Owner:

2.3.1 Provide assistance in connection with the refining and adjusting of any portion of the plan.

2.3.2 Assist the Owner in training the Owner's staff to implement and maintain the plan.

2.3.3 Provide miscellaneous services as requested by the Owner in connection with Project closeout.

ARTICLE 3 THE USER REPRESENTATIVE

3 The Owner shall designate one or more departments of the Owner or a designated entity as a User, or User Agency. Such User, or User Agency, shall provide an individual User Representative to perform those functions required of the User Agency.

3.1 The User Representatives and the Owner shall provide the Planner with information required under Article 2 of this Agreement, as well as additional information required by the Planner for the purpose of defining the Scope of the Project and to assist the Planner and the Owner in the development and completion of the Project.

3.2 The User Representatives shall meet with the Planner and/or the Owner at times required by the Owner. The User Representatives shall respond to all inquiries submitted by the Planner and/or the Owner within any reasonable time limits set forth in the inquiry.

3.3 Information submitted directly by the User Representatives to the Planner is subject to subsequent approval by the Owner.

ARTICLE 4 OWNER'S RESPONSIBILITIES

4.1 The Owner shall designate, in writing, an Owner Representative who has the authority to act on his behalf; however, authority for final approval of the Plan and Drawings and Specifications, if applicable, the Contract Documents, or any Change Order is retained by the Owner. The Owner and the Owner Representative shall examine documents submitted by the Planner and shall render decisions promptly to avoid unreasonable delay in the progress of the Planner's services. The Owner Representative, through coordination with the User Representatives, shall provide information to the Planner regarding the User's requirements in the development of Program Documents for the Project.

4.3 The Owner shall assist the Planner by placing at Planner's disposal all available information pertinent to the Project including previous plans and any other relevant data.

ARTICLE 5 REIMBURSABLE EXPENSES

5.1 Reimbursable expenses are those above and beyond Basic Services compensation and are the actual expenditures made by the Planner or his employees in the interest of the Project. Reimbursable expenses shall be limited to the following:

5.1.1. Expenses of transportation when traveling in connection with the Project when specifically set out in Article 12. Such expenses are limited to per diem and mileage rates as set forth in the Owner's Travel Rule or Regulation.

5.1.2 Expense of fees paid for securing approvals of authorities having jurisdiction over the Project. Fees for approval by the permitting agency shall be paid directly by the Owner after submittal of the documents by the Planner to the permitting agency.

5.1.3 The Planner shall charge Bidders a deposit fee equal to the full cost of reproduction of drawings, specifications, and other documents required by the

Owner to solicit bids, if applicable, and execute the Planning Contract. This fee shall be completely refunded if the documents are returned in usable condition within the time limits specified in the Invitation for Bid. All forfeited fees shall be returned to the Owner for use in this Project.

All reproduction required may be approved in writing by the Owner prior to request. This expense shall be paid by the Owner. All other reproductions as may be required by the Owner's review or for the office use of the Planner and the Planner's

consultants shall be provided as part of the Planner's Basic Compensation.

5.1.4 Applicable gross receipts taxes on reimbursable expenses or additional services received by the Planner under the provisions of this Contract. The Planner shall use and require the use of tax-exempt certificates by Planners whenever allowed by law. In any event, the Planner shall not include taxes paid as a part of the base dollar amount upon which taxes are calculated. Payment pursuant to this provision does include payment for gross receipts taxes pursuant to Subparagraph 13.1.1.

ARTICLE 6 PAYMENTS TO THE PLANNER

6.1 Payments on Account of Basic Services

6.1.1 Payments for Basic Services shall be made monthly and shall be in proportion to services performed within each phase of services, on the basis set forth in Article 11.

6.1.2 When 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 Subparagraph 11.1.2, based on the lowest bona fide bid or negotiated proposal.

6.2 Payment for Services and Costs

6.2.1 The Planner shall submit quarterly or as required by the funding agency or the Owner a fully completed request for payment for all services and costs on the form provided as Exhibit D to this agreement.

6.2.2 Upon the Owner's request, the Planner shall submit, with his billings at the completion of the Project, certification that payment has been made or will be made upon receipt of payment to consultants, and others for materials and services required by this Agreement. At this time, the Planner shall notify the Owner of any disputes regarding payments by the Planner that may exist at the completion of the Project.

6.3 Payments Withheld

6.3.1 No deductions or withholdings shall be made from the Planner's compensation on account of penalty, liquidated damages, or other sums withheld from payments to Contractors, or on account of the cost of changes in the Work other than those for which the Planner may be legally liable and as required in Paragraph 2.8.

6.4 Project Suspension or Termination, Other Parties

6.4.1 In the event of termination or suspension of the Project due to the fault of parties other than the Planner, the Planner shall be compensated for services performed to termination date pursuant to Article 9.

ARTICLE 7 PLANNER'S ACCOUNTING RECORDS

7.1 Records of expenses by the Planner and his consultants pertaining to all services under this Agreement shall be kept on the basis of generally accepted accounting principles and shall be available at mutually convenient times to the Owner or the Owner's authorized representative. The Owner shall have the right to audit all such records and billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Owner to recover excessive or illegal payments.

7.2 Records of expenses shall be kept by the Planner and his consultants and shall be available to the Owner until all applicable statutes of limitations have run, and this provision shall survive and continue beyond the termination of other terms of this Agreement.

7.3 The review of "Records of Expenses" for Lump Sum Fixed Fee portions of the Planner's services shall be limited to those records that define

the percentage of completion, except as otherwise required by federal regulation detailed in Exhibit E.

ARTICLE 8 OWNERSHIP AND USE OF DOCUMENTS

8.1 All documents including plans, drawings, maps and specifications provided or furnished by the Planner shall become the sole property of the Owner whether the Project for which they are made is completed or not. These documents shall be kept on file by the Owner. The Planner may maintain a complete reproducible set of any and all record documents developed under this Agreement.

8.2 The Planner shall provide a reproducible copy of the original plans, documents or drawings to the Owner and a copy on CD in MS WORD or "pdf" format for reproducible and archival purposes.

8.3 Copyright. No reports, maps, or other documents produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of the Architect.

ARTICLE 9 TERMINATION OF AGREEMENT

9.1 Termination of Agreement for Cause. If, through any cause, the Planner shall fail to fulfill in timely and proper manner his obligations under this Agreement, or if the Planner shall violate any of the covenants, agreements, or stipulations of this Agreement, the Owner shall thereupon have the right to terminate this Agreement by giving written notice to the Planner of such termination and specifying the effective date thereof, at least five days before the effective date of such termination. In such event, the Planner may make copies of all finished or unfinished documents, data, studies, drawings, maps, photographs, and reports prepared by the Planner under this Agreement, except for deliverable identified under this Agreement that the Planner shall provide at no additional cost.

9.1.1 Notwithstanding the above, the Planner shall not be relieved of liability to the Owner damages sustained by the Owner by virtue of any breach of the Agreement by the Planner, and the Owner may withhold any payments to the Planner for the purpose of set-off until such time as the exact amount of damages due the Owner from the Planner

is determined.

9.2 Termination for Convenience of the Owner. The Owner may terminate this Agreement at any time by giving at least ten (10) days' notice in writing to the Planner. If the Agreement is terminated by the Owner as provided herein, the Planner will be paid for the time provided and expenses incurred up to the termination date. If this Agreement is terminated due to the fault of the Planner, paragraph 10.1 relative to termination shall apply.

ARTICLE 10 GENERAL AND SPECIAL PROVISIONS

10.1 This Agreement shall be governed exclusively by the provisions hereof and by the laws of the state of New Mexico as the same from time to time exist. Venue for any disputes between the Owner and the Planner shall be in the Eighth Judicial District Court, Taos, New Mexico.

10.2 Unless expressly provided otherwise, terms in this Agreement shall have the same meaning as those in the Conditions of the Contract for Planning, as provided in Exhibit E of this Agreement.

10.3 As between the parties to this Agreement. As to all acts or failures to act by either party to this Agreement, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the relevant Date of Substantial Completion of the Work, and as to any acts or failures to act occurring after the relevant Date of Substantial Completion, not later than the date of the Owner's approval of the Final Certificate of Payment.

10.4 The Planner shall defend, hold harmless and indemnify the Owner from and against any injury, loss, or damage, including but not limited to court costs and reasonable attorneys' fees, arising out of the negligent acts, errors, or omissions of the Planner.

10.5 This Agreement shall not become effective until signed by all parties required to sign this Agreement.

10.6 The Planner and his agents and employees are independent contractors performing professional and technical services for the Owner and are not employees of the Owner. The Planner and his agents and employees shall not as a result of this Agreement accrue leave, retirement, insurance, bonding, use of Owner vehicles, or any other benefits afforded to employees of the Owner.

10.7 The Planner's plan shall be in compliance with applicable federal, state, and local codes and laws related to the Work, including but not limited to provisions of the Civil Rights Act of 1964 and Executive Order 11246, Title VI, Section 3 and 109. In all cases, the more restrictive code or statute adopted shall govern.

10.8 The Planner shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written consent of the Owner and review by the funding agency.

10.9 Whenever the Planner contracts for an additional Project Representative or enters into a joint venture to share the duties and responsibilities of the Planner under this Agreement, all such agreements require prior Owner approval and must outline the duties and responsibilities of the Planner and his representative, or joint venture, or consultant; and a copy of such approved agreement shall be filed with the Owner. Such agreements shall be amendments to this Agreement.

10.10 The Planner agrees not to purport to bind the Owner to any obligation not assumed herein by the Owner unless the Planner has express written authority to do so, and then only within the strict limits of that authority.

10.11 The Planner affirms that he currently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. The Planner further affirms that, in the performance of this Agreement, the Planner shall employ no person having such interest. The Planner also agrees that neither he nor anyone employed by him shall have an interest, direct or indirect, in any company hired for the Project as Contractor, subcontractor, or supplier, except when the Project is a design-build project and/or the

Owner provides inspections independent of the Planner.

10.12 Pursuant to Section 13-1-191 NMSA 1978, reference is hereby made to the criminal laws of New Mexico (including Section 30-14-1, 30-24-2, and 30-41-1 through 3, NMSA 1978) which prohibit bribes, kickbacks, and gratuities, violation of which constitutes a felony. Further, the Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and criminal penalties for its violation.

10.13 Professional Liability (Errors and Omissions) Insurance. The Planner is **not** required to obtain professional liability insurance and provide a certificate of coverage.

10.14 No work requiring the approval of the Owner shall be undertaken until the Owner's written approval has been requested and obtained. Any deviation from this requirement shall be considered a material breach of this Agreement and grounds for termination.

10.15 Notices. All notices herein provided to be given, or which may be given, by either party to the other shall be deemed to have been fully given when made in writing and deposited in the United States mail, postage prepaid, in the instance of notice of termination of work also by certified mail, and addressed as shown on the cover sheet to this Agreement.

Nothing herein contained shall preclude the giving of any such written notice by personal service. The address to which notices shall be mailed to either party may be changed by written notice given by such party to the other as hereinabove provided.

10.16 Gender, Singular/Plural. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context requires otherwise.

10.17 Captions and Section Headings. The captions and section headings contained in this Agreement are for convenience of reference only, and in no way limit, define, or enlarge the terms, scope, and conditions of this Agreement.

10.18 This document shall be executed in at least two counterparts, each of which shall be deemed an

original.

10.19 Certificates and Documents Incorporated. All certificates and documentation required by the provisions of this Agreement shall be attached to this Agreement at the time of execution and are hereby incorporated by reference as though set forth in full in this Agreement to the extent they are consistent with its conditions and terms.

10.20 Separability. If any clause or provision of this Agreement is illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, then and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby.

10.21 Waiver. No provision of this Agreement shall be deemed to have been waived by either party unless such waiver be in writing signed by the party making the waiver and addressed to the other party; nor shall any custom or practice which may evolve between the parties in the administration of the terms hereof be construed to waive or lessen the right of either party to insist upon performance by the other party in strict accordance with the terms hereof. Further, the waiver by any party of a breach by the other party or any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or any term, covenant, or condition thereof.

10.22 Mergers, Dissolution, Successors, and Assigns. The Planner agrees that during the term hereof it will maintain its existing business structure and will not dissolve or otherwise dispose of all or substantially all of its assets and will not consolidate with or merge into another business structure or permit one or more other business structures to consolidate or merge into it, unless the surviving, resulting, or transferred business structure, as the case may be: A. assumes, is capable of, and agrees in writing to perform all of the obligations of the Planner hereunder; B. qualifies to do business in the state of New Mexico; and C. the Owner approves the firm or individual consultant, or new consultant, if any, who is to proceed. The terms and provisions hereof shall extend to and be binding upon and inure to the benefit of the successors and assigns of the respective parties hereto.

10.23 The Owner shall determine whether or not the

Planner or the firm named as Planner in this Agreement shall continue to have all contract rights under this Agreement and continue to represent the Owner under this Agreement in all instances where the Project Planner ceases to be associated with the firm names in this Agreement.

10.24 Entire Agreement. This Agreement represents the entire contract between the parties and, except as otherwise provided herein, may not be amended, changed, modified, or altered without the written consent of the parties hereto. This Agreement incorporates all of the conditions, agreements, and understandings between the parties concerning the subject matter of this Agreement, and all such conditions, understandings, and agreements have been merged into this written Agreement. No prior condition, agreement, or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

10.25 Interchangeable Terms. For purposes of all provisions within this Agreement and all attachments hereto, the terms "Agreement" and "Contract" shall have the same meaning and shall be interchangeable.

10.26 Words and Phrases. Words, phrases, and abbreviations that have well-known technical or trade meanings used in the Contract Documents shall be used according to such recognized meanings. In the event of a conflict, the more stringent meaning shall govern.

10.27 Relationship of Contract Documents. The Contract Documents are complementary, and any requirement of one contract document shall be as binding as if required by all.

10.28 Exhibits and Attachments Incorporated by Reference. All exhibits, attachments, riders, and addenda referred to in this Agreement, including but not limited to the exhibits referred to in this Agreement, as well as those listed in paragraph 10.29 below, are hereby incorporated into this Agreement by reference and made a part hereof as though set forth in full this Agreement to the extent they are consistent with its conditions and terms.

10.29 The following Exhibits are attached to and made a part of this Agreement:

Exhibit A - Time Schedule for Project Phases

- Exhibit B** - List of Consultants and Subconsultants
- Exhibit C** - Planner Additional Services Proposal/Amendment Form
- Exhibit D** - Planner Pay Request Form
- Exhibit E** - Federal Terms & Conditions for Professional Services, if applicable

**ARTICLE 11
BASIS OF COMPENSATION**

11.0 The Owner shall compensate the Planner for the Scope of Services provided in accordance with Article 6, Payments to the Planner, and other Terms and Conditions of this Agreement, as follows:

11.1 Compensation

11.1.1 For Basic Services, as described in Paragraphs 2 through 2.3, and other services included in Article 12 as part of Basic Services, the compensation is shown in paragraph 12.4.

11.1.2 Payments for Basic Services shall be made monthly in proportion to services performed so that the compensation at the completion of each phase, except when the compensation is on the basis of a Multiple of Direct Personnel Expense, shall equal the Compensation detailed in paragraph 12.4.

11.1.3 Applicable Gross Receipts and Local Option Taxes and Total Compensation presented in 12.4 shall be modified by amendment to this Agreement if the tax rate changes during the term of this Agreement.

11.2 For Project Representation beyond Basic Services, compensation shall be computed separately and included with additional services in paragraph 12.5.

11.3 Compensation for Additional Services, this includes all additional services, shall be computed as a lump sum amount as shown in paragraph 12.5, plus applicable gross receipts and local option taxes.

11.3.1 For Additional Services of the Planner, as described in Paragraph 2.9, and any other services included in Article 12 as part of

Additional Services, but excluding additional services of consultants, compensation shall be computed as shown in paragraph 12.5, plus applicable gross receipts and local option taxes.

11.3.2 For Additional Services of Consultants, a multiple of 1.10 times the amounts billed to the Planner for such services. The Planner shall provide the Owner with hourly rates for his consultants and their employees detailed by professional levels within the firm. Multiples applied to Direct Personnel Expenses, when approved by the Owner, shall be the basis for compensation for the additional services of the consultant.

11.3.3 For all Additional Services of the Planner, as described in paragraphs 11.3.1 and 11.3.2, these services and lump sum amount directly related to such services shall be specifically identified here and included with the additional services as a lump sum amount as shown in paragraph 12.5.

For Reimbursable Expenses, if allowed, as described in this Agreement at cost, compensation shall be computed as shown in paragraph 12.3, plus applicable gross receipts and local option taxes.

**ARTICLE 12
OTHER TERMS AND CONDITIONS OR SERVICES**

The following terms, condition or services apply to projects funded through the Community Development Block Grant program:

12.1 Project Description. As defined in paragraph 1.8 the Project is: The Project is the creation of a legally defensive and sufficient comprehensive plan for the Town of Taos and its extraterritorial planning, platting and zoning jurisdiction that meets all the requirements for a comprehensive plan under the Laws of the State of New Mexico and its Zoning Enabling Act and extraterritorial statutes, and consistent with the due process, substantive due process and property clauses of the United States Constitution. The Project is defined by the Scope of Work in the Request for Proposals.

12.2 User Agency. As defined in paragraph 1.12

the User (or User Agency) is: Town of Taos

12.6 Federal Terms and Conditions. Exhibit E modifies the Terms and Conditions of this Agreement only to the extent delineated in Exhibit E.

12.3 Reimbursables. Final reimbursable expenses shall be determined prior to the final request for payment under this agreement and shall be adjusted by amendment upward or downward as necessary. The Planner is responsible for keeping the Owner informed if the budgeted amount is anticipated to be exceeded as the project progresses.

Per Diem and Mileage	\$	_____
Fees for Securing Approvals	\$	_____
Reproduction of plans, drawings and specifications # of sets	\$	_____
Applicable gross receipt taxes	\$	_____
TOTAL:	\$	_____

12.4 Compensation. Pursuant to paragraphs 12.1.2.3 and 4, compensation for all services, including basic, inspections, additional, reimbursables and gross receipts taxes shall be computed as follows:

On the basis of a Fixed Fee of \$ _____

Plus, all applicable GRT @ _____ %
\$ _____

TOTAL BASIC COMPENSATION \$ _____

Total Reimbursable \$ _____

TOTAL Lump Sum

CONTRACT AMOUNT \$ _____

12.5 Additional Services shall be computed as follows:

<u>Position</u>	<u>Per Hour Rate</u>
-----------------	----------------------

Planner Principals' time \$ _____

Project Planners' time \$ _____

Employees' time (other than Principals') shall be at the following hourly rates, which shall not exceed 2.5 times the employee's direct salary:

Design/Specification Writer \$ _____

Drafting/CADD Operator \$ _____

Clerical \$ _____

Other (list): \$ _____

\$ _____

PLANNER PROFESSIONAL SERVICES AGREEMENT SIGNATURE PAGE

Contract No. _____

AGREED

Planner _____ By: _____

Project Planner _____ By: _____

NM Tax ID No: _____

Federal Tax ID No. _____

REVIEWED AS TO BUDGETARY SUFFICIENCY

Finance Officer _____ By: _____
 Approved Disapproved

REVIEWED AS TO LEGAL FORM AND SUFFICIENCY

Legal Counsel _____ By: _____

APPROVED

Owner: _____ By: _____
(Owner's Name)

Attest: _____ By: _____
(Municipal/County Clerk)

Agency Concurrence _____ By: _____

Title: _____

TIME SCHEDULE FOR PROJECT PHASES

Project _____	Date/Day to be Completed _____
Begin Project	_____
Citizen Input Phase	_____
Study Phase	_____
Study Phase Review	_____
Preliminary Plan Phase	_____
Preliminary Plan Phase Review	_____
Final Plan	_____
Final Plan Review	_____

EXHIBIT B

LIST OF CONSULTANTS AND SUBCONSULTANTS

	<u>Firm</u>	<u>Address</u>	<u>Phone/Fax No.</u>
Planning			
Architectural			
Engineering			
Cost Estimating			
Other (list)			

PLANNER ADDITIONAL SERVICES PROPOSAL/AMENDMENT

Project: _____ Project N°. _____

Planner: _____ Contract N°. _____

_____ Proposal/Amendment N°. _____

Reason and Justification for Proposal: (use additional sheets, if necessary)

Requested or initiated by: User Agency Owner Planner Other

In accordance with Article 2 and/or Article 13, where applicable, Additional Services to the Agreement between Owner and Planner, the Planner is authorized to provide the following described services (scope of services and upset maximum compensation).

The Original Contract Sum was	\$ _____
Net Change by previously authorized Contract Amendments	\$ _____
Net Change by previously authorized Additional Services	\$ _____
The Contract Sum prior to this request was	\$ _____
The Contract Sum will be <u>increased</u> <u>decreased</u> <u>unchanged</u>	\$ _____
The new Contract Total including this proposal will be	\$ _____

Approved by the governing body at its meeting of

AGREED AND RECOMMENDED

APPROVED

PLANNER

OWNER

By _____ By: _____

Mayor/Chairperson

Title _____

Attest:

Municipal/County Clerk

PLANNER PAY REQUEST

Planner: _____

Date: _____

Statement N°: _____

Purchase Order N°: _____

Project: _____

Project N°: _____

	Contract Sum	Completed to Date	Less Previous Payments	Amount this Request
Basic Services				
Initial Citizen Input Phase	\$	\$	\$	\$
Data Collection Phase	\$	\$	\$	\$
Study Phase	\$	\$	\$	\$
Secondary Citizen Input Phase	\$	\$	\$	\$
Final Report Phase	\$	\$	\$	\$
Implementation Phase	\$	\$	\$	\$
Additional Services **	\$	\$	\$	\$
Reimbursables **	\$	\$	\$	\$
Gross Receipt Taxes	\$	\$	\$	\$
Total Lump Sum Fixed Amount	\$	\$	\$	\$

TO DATE: \$ _____

TOTAL AMOUNT DUE: \$ _____

** All Additional Services and Reimbursables other than what has been shown in paragraph 12 must be authorized by Contract Amendment.

CERTIFICATION

I do hereby certify that the work described herein has been performed and that no previous payment for the Total Amount due has been received.

By: _____ Title _____

OWNER USE ONLY

I certify that the above services were rendered as stated; that they were necessary and proper and that the amounts claimed are just and reasonable and that no part thereof has been paid.

By: _____ Title _____

EXHIBIT E

FEDERAL TERMS AND CONDITIONS FOR PROFESSIONAL SERVICES

State administered Community Development Block Grant monies are federal funds. Section 13-1-30B NMSA 1978 of the Procurement Code stipulates: "When a procurement involves the expenditure of federal funds, the procurement shall be conducted in accordance with mandatory applicable federal law and regulations. When mandatory applicable federal law or regulations are inconsistent with the provisions of the Procurement Code, compliance with federal law or regulations shall be compliance with the Procurement Code." The applicable governing federal procurement standards are defined in OMB Circular A-102, Attachment O. When federal and state procurement policies are different, the more restrictive policies apply so long as they are consistent with Circular A- 102 standards.

1. Termination of Contract for Cause. If, through any cause, the Planner shall fail to fulfill in timely and proper manner his obligations under this Contract, or if the Planner shall violate any of the covenants, agreements, or stipulations of this Contract, the Owner shall there-upon have the right to terminate this Contract by giving written notice to the Planner of such termination and specifying the effective date thereof, at least five days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the Planner under this Contract shall, at the option of the Owner, become its property and the Planner shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder.

1.1 Notwithstanding the above, the Planner shall not be relieved of liability to the Owner damages sustained by the Owner by virtue of any breach of the Contract by the Planner, and the Owner may withhold any payments to the Planner for the purpose of set-off until such time as the exact amount of damages due the Owner from the Planner is determined.

2. Termination for Convenience of the Owner. The Owner may terminate this contract at any time by giving at least ten (10) day's notice in writing to the Planner. If the Contract is terminated by the Owner as provided herein, the Planner will be paid for the time

provided and expenses incurred up to the termination date. If this Contract is terminated due to the fault of the Planner, paragraph 1 hereof relative to termination shall apply.

F

3. Changes. The Owner may, from time to time, request changes in the scope of the services of the Planner to be performed hereunder. Such changes, including any increase or decrease in the amount of the Planner compensation, which are mutually agreed upon by and between the Owner and the Planner, shall be incorporated in written amendments to this contract.

4. Personnel.

4.1 The Planner represents that he has, or will secure at his own expense, all personnel required in performing the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the Owner.

4.2 All of the services required hereunder will be performed by the Planner or under his supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state and local law to perform such services.

4.3 None of the work or services covered by this contract shall be subcontracted without the prior written approval of the Owner. Any work or services subcontracted hereunder be specified by written contract or agreement and shall be subject to each provision of this Contract.

5. Assignability. The Planner shall not assign any interest on this Contract, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the Owner thereto: Provided, however, that claims for money by the Planner from the Owner under the Contract may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment or transfer shall be furnished promptly to the Owner.

6. Reports and Information. The Planner, at such times and in such forms as the Owner may require, shall furnish the Owner such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Contract, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Contract.

7. Records and Audits. The Planner shall maintain accounts and records, including personnel, property and

financial records, adequate to identify and account for all costs pertaining to the Contract and such other records as may be deemed necessary by the Owner and to assure proper accounting for all project funds, both federal and non-federal shares. These records will be made available for audit purposes to the Owner or any authorized representative, and will be retained for six (6) years after the expiration of this Contract unless permission to destroy them is granted by the Owner and the funding agency.

8. Findings Confidential. All of the reports, information, data, etc., prepared or assembled by the Planner under this Contract are confidential and the Planner agrees that they shall **not** be made available to any individual or organization without the prior written approval of the Owner.

9. Copyright. No report, maps, or other documents produced in whole or in part under this Contract shall be the subject of an application for copyright by or on behalf of the Planner.

10. Compliance with Local Laws. The Planner shall comply with all applicable laws, ordinances and codes of the State and the Owner, and the Planner shall save the Owner harmless with respect to any damages arising from any tort done in performing any of the work embraced by this Contract.

11. Equal Employment Opportunity. During the performance of this Contract, the Planner agrees as follows:

11.1 The Planner will not discriminate against any employee or applicant for employment because of race, creed, sex, color or national origin. The Planner will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, sex, color or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Planner agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Owners setting forth the provisions of this non-discrimination clause.

11.2 The Planner will, in all solicitation or advertisements for employees placed by or on behalf of the Planner, state that all qualified applicants will receive consideration for employment without

regard to race, creed, color, sex, or national origin.

11.3 The Planner will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Contract so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

11.4 The Planner will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

11.5 The Planner will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the Owner's representative, the funding agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

11.6 In the event of the Planner's non-compliance with the equal opportunity clauses of this Agreement or with any of such rules, regulations or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the Planner may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

11.7 The Planner will include the provisions of paragraphs 11.1 through 11.7 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Planner will take such action with respect to any subcontract or purchase order as the Owner's representative may direct as a means of enforcing such provisions including sanctions for non-compliance; provided, however, that in the event the Planner becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Owner, the Planner may request the United States to enter into such litigation to protect the interests of the United States.

12. Civil Rights Act of 1964. Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, or national origin, be excluded

from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

13. Section 109 of the Housing and Community Development Act of 1974.

131 No person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

14. "Section 3" Compliance in the Provision of Training, Employment and Business Opportunities.

141 The work to be performed under this contract is on a project assisted under a program providing direct federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the project.

142 The parties to this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.

143 The contractor will send to each labor organization or representative or workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

14.4.1 contractor will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial

assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135. The contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

145 Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued hereunder prior to the execution of the contract, shall be a condition of the federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors and assigns to those sanctions specified by the grant or loan agreement or contract through which federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.

15. Interest of Members of the Owner. No member of the governing body of the Owner and no other officer, employee, or agent of the Owner, who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this contract; and the Planner shall take appropriate steps to assure compliance.

16. Interest of other Local Public Officials. No member of the governing body of the Owner and no other public official of the Owner, who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this Contract; and the Planner shall take appropriate steps to assure compliance.

17. Interest of Planner and Employees. The Planner covenants that he presently has no interest and shall not acquire interest, direct or indirect, in the study area or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his services hereunder. The Planner further covenants that in the performance of this Contract, no person having any such interest shall be employed.

The

Access to Records. The State funding (grantor) agency, the Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives, shall have

access to any books, documents, papers, and records of the Planner which are directly pertinent to this specific contract, for the purpose of audits, examinations, and making excerpts and transcriptions.

All records connected with this contract will be maintained in a central location by the Owner and will be maintained for a period of six (6) years from the official date of close-out of the grant.