

CITY OF CLOVIS



RFP 21-0607-03
REGIONAL MENTAL HEALTH FACILITY FEASIBILITY STUDY
DUE DATE:
AUGUST 12, 2021
2:00 P.M. MST

IMPORTANT
PROPOSAL MUST BE SUBMITTED IN A SEALED ENVELOPE WITH THE RFP
NUMBER AND
DEADLINE DATE CLEARLY INDICATED ON THE BOTTOM LEFT
HAND SIDE OF THE ENVELOPE.

COMMODITY CODE 91846

GENERAL CONDITIONS

As required by 13-1-111 NMSA 1978, the City of Clovis (hereinafter "City") in cooperation with the Cities of Portales, Fort Sumner and Counties of Curry, DeBaca, Quay and Roosevelt, collectively "Community" is seeking proposals for professional services.

Proposals must include but are not limited to the requirements set forth in the "Form of Proposal". Proposals deposited with the City may be withdrawn or modified prior to the time set for opening of proposals by delivering written or telegraphic notice to the City. Offerors submitting proposals may be afforded an opportunity for discussion and revision of proposals.

The opening of proposals shall be conducted in private in order to maintain the confidentiality of the contents of all proposals during the negotiation process. Upon reviewing the Proposal, top qualified offers may be contacted for additional qualifying information in the form of a formal presentation.

Negotiations may be conducted with all responsible Offerors who submits proposals found to be reasonably likely to be selected for award.

The award shall be made to the responsible Offeror or Offerors whose proposal is most advantageous to the Community, taking into consideration the evaluation factors set forth in the request for proposals. The award of a contract for professional services may be made based upon criteria which does not include price.

The Community will open and evaluate all proposals; determine the need for, and conduct any negotiations; and make a final recommendation to the City Commission for award of the contract.

The Community reserves the right to reject any or all proposals and to waive any technicalities at its option when in the best interest of the Community.

Award of the contract is contingent upon the budgeting and appropriation of funds for the continuation of the services contemplated by this Request for Proposal (RFP).

The proposal excludes all applicable taxes including applicable state gross receipts tax or applicable local option tax. The Community will pay for any taxes due on the contract and will pay any increase in applicable taxes which come effective after the date the contract is entered into. Taxes shall be shown as a separate amount on each billing or request for payment and shall separately identify each tax being billed.

COOPERATIVE PROCUREMENT: By submitting a proposal the vendor agrees to allow other municipalities or other authorized governmental agencies to purchase from this Request for Proposal.

PENALTIES: If the winning contractor is not fulfilling the terms of the RFP, to include delivery date, the Community will initiate the following procedures:

- A. **First Notice:** Written warning describing unsatisfactory work rendered or non-performance of term of the contract. The contractor will be given 10 working day to respond to this notice.
- B. **Second Notice:** Issuance of a second written notice after ten business days will assess the contractor a \$100.00 penalty fee per day for unsatisfactory work, non-delivery, or non-performance of contract. The fee will not be charged if notice of assessment for unsatisfactory work rendered, non-delivery, or non-performance of contract is made satisfactory within 48 hours of notice. Each day that there is a violation may constitute a separate offense.

PROTEST BOND: Protest may be filed in accordance with 13-1-172 NMSA. A \$5000.00 protest bond will be filed for each protest. If protest is upheld, the contract will be awarded to the next qualified Proposer. If the protest is disallowed the protesting contractor will forfeit the \$5000.00 bond.

NOTICE: The Procurement Code, 13-1-21 through 13-1-199, NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

TERMINATION OF NEGOTIATIONS: The Community at its sole discretion may, at any time, to the extent permitted by Applicable Law, exclude a Proposer from further participation in any negotiation process if the Community determines that such Proposer is failing to progress in the negotiations or if the terms of its Proposal are less advantageous than those of other Proposers and such Proposer is deemed to be no longer eligible for selection. The Community will give written notice of its decision to the Proposer, which shall be sent in writing, signed by the Community.

CONFIDENTIALITY/PROPRIETARY INFORMATION: Proposers should give specific attention to the identification of those portions of proposals deemed to be confidential, proprietary information or trade secrets, and provide justification of why such materials, upon request, should not be disclosed by the Community under the Public Records Act under New Mexico Law and must clearly indicate each and every section that is deemed to be confidential, proprietary, or a trade secret. It is not sufficient to preface the proposal with a proprietary statement. Unless materials are properly noted as confidential/proprietary and proper justification is provided as required above, all materials submitted by the Proposer become the property of the Community and may be returned to the Proposer at the sole discretion of the Community. The Community has the right to use any/all ideas, not noted as confidential/proprietary, presented in any response to the RFP, whether the Proposer is selected by the Community or not. All proposals are kept confidential until an award is made by the RFP Evaluation Committee.

EEO STATEMENT: The Community is committed to the policy that all persons shall have equal access to its programs, facilities, and employment without regard to race, color, creed, religion, national origin, gender, age, marital status, disability, public assistance status, veteran status or sexual orientation.

PREPARATION COSTS: The Community is not responsible for any costs associated with the preparation or submittal of this RFP.

PRECEDENT: All items in the General Conditions may be modified in the body of the Request for Proposal (RFP). The written RFP takes precedent over the General Conditions listed above.

CITY OF CLOVIS
RFP 21-0607-03
REGIONAL MENTAL HEALTH FACILITY FEASIBILITY STUDY

GENERAL DISCUSSION

The City of Clovis, in cooperation with the Cities of Portales and Ft. Sumner and Counties of Curry, De Baca, Quay and Roosevelt collectively "Community" is seeking proposals from qualified consultants to prepare a feasibility study (Study) relating to the development of a community mental health center that will provide facilities for the delivery of mental health care services to the Community and the surrounding area.

The estimated population of the Community is as follows:

Clovis -----	37,765
Portales -----	11,300
Ft. Sumner -----	1,249
Curry County -----	10,186
De Baca County -----	437
Quay County -----	8,275
Roosevelt County-----	<u>6,682</u>
Total -----	75,894

The current local health care services are delivered through the following resources:

- Family practitioners;
- A Public Health Unit operated by The New Mexico Department of Health;
- Hospital services and emergency care are provided in Clovis at Plains Regional Medical Center, and Roosevelt General Hospital in Portales;
- Private practice- dentist, physio, chiropractic and massage clinics;
- Mental Health- private and public;
- Medical laboratories;
- Other natural health practitioners.

For purposes of this Study the “Population” is defined as the community population plus the population of the surrounding area.

PURPOSE OF RFP

The City of Clovis, on behalf of the Communities is seeking competitive proposals from qualified consultants to prepare a feasibility study “Study” relating to the development of a community mental health center that will provide facilities for the delivery of mental health care services to the Community. The mental health facility will be located in Clovis.

SEQUENCE OF EVENTS

Release RFP-----	July 18 th , 2021
Pre-Proposal Meeting-----	July 29 th , 2021

Deadline for Questions by 5:00 p.m.-----	August 5 th , 2021
Questions Answered/Final Addenda Issued-----	August 6 th , 2021
Proposals Due by 2:00 p.m.-----	August 12 th , 2021
Evaluations Begin -----	August 19 th , 2021
Final Recommendation to Commission-----	TBD
Award of Contracts -----	TBD

PRE-PROPOSAL MEETING

There will be a recommended **Pre-Proposal meeting** at City Hall (321 N. Connelly Street, Clovis, NM). This meeting shall be held on **July 30th, 2021 at 10:00 a.m.** local time. Offerors may attend in person or via video conference at meet.google.com/wsv-kdgu-ueo or (813) 563-0067
PIN: 408 734 536#.

Failure to attend the Pre-Proposal meeting will not disqualify an Offeror from submitting a proposal. The failure of an Offeror to attend shall be interpreted to mean the proposal documents are clear and acceptable to all nonparticipants at the Pre-Proposal Conference. Such clarity and acceptability shall be presumed with respect to all Offerors.

SCOPE OF WORK

1. Complete a mental health services gap analysis in our Community’s current mental health delivery system.
2. Determine if and/or how a regional medical center delivering multidisciplinary services will assist addressing service gaps or increasing the efficiency of the current system.
3. Determine the potential services and service delivery participants interest in participating in a regional mental health service delivery model.
4. Determine the feasibility of a regional mental health services center including the physical make-up of the facility, construction costs and the operating costs.
5. Determine if a project of this nature can attract private sector investment for construction and operation or it must be developed by public funding with a cost recovery period identified.
6. Explore current mental health care funding programs that may assist in facility development.

DELIVERABLES

At a minimum, deliverables of the Study will include the following:

1. Inventory current issues affecting mental health care service delivery in the Community.
2. Inventory and assessment of the community’s current mental health care service delivery model’s ability to meet current and future needs.
3. Comparison of the current service levels against any available state and/or national service benchmarks.
4. Provide assessment of the value-added of central mental health care services building in mental services delivery and its impacts or relationship to the local hospitals and health care providers.

5. Provide examples of working models of regional mental health care facilities in communities.
6. Determine working space, administrative areas and related amenities required to service current practitioners, service gaps and potential service amalgamations.
7. Identify how a central mental health care center can address the business startup needs of new mental health care practitioners.
8. Develop preliminary floors plans, ideal location site criteria, identify potential development sites and construction and operating estimates for a multiservice community mental health facility that will house services identified in #6 above.
9. Provide a summary of public funding sources for this project and an analysis of private sector investment potential or public investment with cost recovery schedule.
10. Using current leasing charges and rental unit charges determine a cost recovery model based on the construction and operating estimates.

REQUIREMENTS OF PROPOSAL

Complete proposal packages along with any published addenda can be obtained on Bidnet at www.bidnetdirect.org. Please contact the Purchasing Department with any questions at purchasing@cityofclovis.org.

Delivery of Proposals: Proposals should be submitted to the Office of the Purchasing Agent no later than Thursday August 12th, 2021, @ 2:00 p.m. local time.

Proposals shall be delivered as follows:

By mail:
City of Clovis
Purchasing Department
321 Connelly Street
P.O. Box 760
Clovis, NM 88101

By Carrier:
City of Clovis
Purchasing Department
321 Connelly Street
Clovis, NM 88101

Clarification of Offers: The Community may, in the evaluation of offers, request clarification from offerors regarding their offers, obtain additional material or literature, and pursue other avenues of research as necessary to insure that a thorough evaluation is conducted.

1. TECHNICAL PROPOSAL

Submit one (1) original hard copy and one (1) digital (USB thumb drive) copy of the Technical Proposal in a sealed envelope distinctly marked:

RFP 21- 0607- 03
COMPANY NAME
TECHNICAL PROPOSAL

TECHNICAL PROPOSAL FORMAT

Submit the following as labeled and in the same order as follows:

- A. Letter of Introduction: Provide the following information:
 - 1. Identify offeror: Name, address, telephone number, and email address.
 - 2. Statement that the proposal is effective for 60 days from the proposal due date.
 - 3. Statement that the offeror will comply with all terms and conditions as stated in this RFP; or identify any exceptions taken to any of the requirements.
 - 4. NOTE: No cost information whatsoever shall be included in the Technical Proposal.
- B. Resumes: Names and resumes of key personnel to be assigned to the performance of the contract, including any subcontractors that may be utilized. Resumes describing the qualifications of personnel to be utilized in the performance of the contract must show at a minimum; the person's name, education, position, and total years and types of experience relevant to the performance of the contract.
- C. Knowledge and Experience: Offerors skill, knowledge, and experience in at least three (3) similar studies in the last three years. Describe the challenges and successes of each project.
- D. References: List of three (3) references for the Offeror's work on similar projects. Include address, telephone number, and email address of each reference. Describe the scope of work and dates of the project/service.
- E. Capacity and Capability: Where does this project fit in your work schedule. Do you have the capacity and capability to complete the study in a reasonable amount of time?
- F. Project Plan: Describe the methodology to be used to gather the necessary information and prepare the deliverables.

2. COST PROPOSAL

Submit one (1) original hard copy of the Fee Proposal in a sealed envelope distinctively marked:

RFP 21-0607-03
COMPANY NAME
FEE PROPOSAL

One (1) digital copy (USB thumb drive) shall be submitted in the Technical Proposal envelope. The digital copy of the Fee Proposal shall be a separate file on the thumb drive.

COST PROPOSAL FORMAT

- A. Fees Charged for Services: This amount shall be a lump sum of the cost of the required minimum deliverables. (This is the amount considered for evaluation purposes.)
- B. Itemize the cost of any additional recommended services that might be offered.

The Community reserves the right to select the fee that is most advantageous.

EVALUATION CRITERIA

The Community will award a contract to the Offeror whose proposal is most advantageous to the Community. A serious deficiency in any category may be grounds for rejection. The Community reserves the right to reject any or all proposals.

Proposals deemed non-responsive will be eliminated from further competition. The proposal(s) will form the basis of negotiations between the Community and the Offeror with the highest evaluation score.

EVALUATION SCORING/PROCESS

The above criteria will be evaluated as follows:

- A. Knowledge and ExperienceMaximum Points: 30
- B. ReferencesMaximum Points: 20
- C. CapabilityMaximum Points: 20
- D. Project PlanMaximum Points: 20
- E. CostMaximum Points: 10

The evaluation process will follow the steps listed below:

- a. All proposals will be reviewed for compliance with the requirements and specifications stated within the RFP. Proposals deemed non-responsive will be eliminated from further consideration.
- b. The Procurement Officer may contact the Proposer for clarification of the response as specified.
- c. Responsive proposals will be evaluated on the factors which have been assigned a point value.
- d. The responsible Offeror(s) whose proposal is most advantageous to the City, taking into consideration the evaluation factors will be recommended for award.
- e. The Evaluation Committee will review each Offeror’s proposal. Points will be allocated as outlined by each member of the committee. Each member’s points total will be translated to a numeric ranking. The committee member rankings will be totaled to determine the overall ranking of the firms.
- f. The Chief Procurement Officer will notify all Finalist Offerors in writing of the final determination of the Evaluation Committee and approval of the City Commission.
- g. Cost Proposal shall be calculated based on a lump sum and divided by the lowest cost of each item to obtain points earned.

- h. All committee rankings, including the shortlist, interview and final rankings are public record and will be available for public inspection at the City after the successful Offeror's contract is signed by the City.
- i. Ties in ranking shall be scored using the sum of the ranking places, divided by the number of firms in a tie.
- j. The following is an example of scoring, for a tie at first:

Scoring	Numerical Ranking
Firm A Tie	$(1st + 2nd/2) = 1.5$
Firm B Tie	$(1st + 2nd/2) = 1.5$
Firm C	3rd = 3

A tie for first, at the end of the final rankings after the completion of short listing and interviews, shall be broken by a separate ranking by the committee members, only ranking the firms involved in the tie.

If a tie still exists after ranking only the tied firms, the tie shall be broken by the chairman of the Evaluation Selection Committee.

MAXIMUM POSSIBLE POINTS 100

QUESTIONS

Questions concerning the procurement process shall be directed to the Purchasing Office in writing to purchasing@cityofclovis.org.

ATTACHMENTS

Submittal Sheet Appendix A
 Campaign Contribution Disclosure Form Appendix B
 Scoring example Appendix C
 Sample contract Appendix D

**ATTACHMENT A
SUBMITTAL SHEET
RFP 21-0607-03**

REGIONAL MENTAL HEALTH FACILITY FEASIBILITY STUDY

The items to which this sheet is attached represents our proposal as described therein. We certify that we have read the terms and conditions of the Request for Proposal and that we understand and agree to them fully. We understand that any discrepancies in this invitation which come to our attention must be mentioned to the Community prior to the opening of bids or adjudication will be made by executive decision.

Please type or print.

NAME OF PROPOSING FIRM

NAME AND TITLE OF AGENT

ORDER ADDRESS

CITY

STATE ZIP

TELEPHONE NUMBER

FAX NUMBER

TOLL FREE NUMBER

E-MAIL

SIGNATURE

(Submittal sheet must be signed to be considered)

___ Attachment B - Signed Campaign Contribution Disclosure Form

___ Attachment C - Signed Cost Submittal -To be submitted in a separate envelope.

ATTACHMENT B
CAMPAIGN CONTRIBUTION DISCLOSURE FORM

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

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

The following definitions apply:

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

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

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

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

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

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

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

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

ITB 21-0607-03 DISCLOSURE OF CONTRIBUTIONS:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Please See List of Applicable Public Officials Below

Name of Applicable Public Official: _____

Date Contribution(s) Made: _____

Amount(s) of Contribution(s): _____

Nature of Contribution(s): _____

Purpose of Contribution(s): _____

(Attach extra pages if necessary)

Signature

Date

Title (position)

--OR--

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

Signature

Date

Title (Position)

List of Applicable Public Officials

Clovis Mayor: Mike Morris; Commissioners: Juan Garza, Leo Lovett, Lauren Rowley, Gary Elliot, Helen Casaus, Fidel Madrid, Chris Bryant, and Megan Palla;

Curry County Commissioners: James Ridling, Seth Martin, Robert Sandoval, Chet Spear and Robert Thornton; Treasurer: Kendall Kempf; Assessor: Candace Morrison; Clerk: Anastasia Hogland; Probate Judge: Mark Lansford;

Roosevelt County Commissioners: Dennis Lopez, Rodney Savage, Lewis Shane Lee, Tina Dixon, Paul Grider;

Ft. Sumner Mayor: Louie Galleogs; Mayor Pro-Tem Esther Segura; Clerk/Treasurer: Jamie Wall; Municipal Judge: Martha Sena; Councilors: Albert Sena, Elizabeth Steele, Gerald Cline;

De Baca County Commissioners: Scot Stinnett, William West, Joe Steele; Clerk: Jeffrey Hromas; Treasurer: Tonya Elwarth; Assessor: Josephine Cones; Sheriff: Chad Roybal; Probate Judge: Linda Sena;

Quay County Commissioners: Franklin McCasland; Robert Lopez, Jerri Rush; Sheriff: Russel Shafer; Clerk: Ellen White; Assessor: Janie Hoffman; Treasurer: Patsy Gresham; Probate Judge: Nelda Burson;

Portales Mayor: Ronald Jackson; Councilors: Veronica Cordova, Jake Lopez, Oscar Robinson, Daniel Boan, Michael Miller, Chadrick Heflin, Michael Lucero, Dianne Parker; Municipal Judge: Barbara George.

ATTACHMENT C
COST SUBMITTAL SHEET
RFP 21-0607-03

REGIONAL MENTAL HEALTH FACILITY FEASIBILITY STUDY

1. In submitting this Proposal, the Offeror, as more fully set forth in the Agreement, that:

A. the Bidder has examined copies of all the Bidding Documents and of the following Addenda (receipt of all of which is hereby acknowledged):

No. _____	Title: _____	Date: _____
No. _____	Title: _____	Date: _____
No. _____	Title: _____	Date: _____
No. _____	Title: _____	Date: _____

B. the Offeror acknowledges that he has attended any mandatory pre-proposal conference scheduled by the Owner;

C. the Offeror will complete the Study for the following price(s) **(do not include any gross receipts tax in the price(s)).**

1. Proposals shall be presented in the form of a total Base Cost proposal under a Lump Sum Contract.

LUMP SUM COST (use words): _____

_____ (\$ _____)

2. Offeror recommends the following additional services and the corresponding cost. (Add additional pages if needed.)

SERVICE: _____

LUMP SUM COST (use words): _____

_____ (\$ _____)

COMPANY NAME: _____

COMPANY ADDRESS: _____

SIGNATURE & TITLE: _____

PHONE : () _____ **EMAIL:** _____

ATTACHMENT C
Contract Routing Number: **XXXXXXXXXX**

**CITY OF CLOVIS PROFESSIONAL, PERSONAL SERVICES,
CONSTRUCTION, AND PRODUCTS CONTRACT**

THIS CONTRACT, dated this (DAY) day of (MONTH), (YEAR), by and between the City of Clovis, for the use and benefit of the City of Clovis, located at, 321 N. Connelly, Clovis , New Mexico, 88101 (“**City**”), and COMPANY NAME, an (XXXXXXX)located at (ADDRESS), (CITY), (STATE) (ZIP), (“**Contractor**”). This contract applies to services or product for XXXXXXXXXXXXXXXXXXXX, Clovis, New Mexico 88101. Short title: XXXXXXXXXXXXX.

FACTUAL RECITALS

- A.** Authority exists in the law and funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance thereof remains available for encumbering and subsequent payment of this contract through the City of Clovis Finance Department.
- B.** Required approval, clearance and coordination have been accomplished from and with appropriate agencies.
- C.** Contractor’s bid was selected in accordance with New Mexico State Procurement Law 13-1-28 and City of Clovis Ordinance 1830-2006 pursuant to the City’s issuance of a Request for Proposal.

OR:

Contractor’s bid, RFP, or offer was selected in accordance with State, Federal, or other law(s) or grant(s) through Federal or State Programs which specifically name(s) Contractor as the awarded supplier or specifies the supplier selection method.

- D.** Authority for the agency entering into this contract arises from City of Clovis Ordinances and New Mexico State Statutes.
- E.** The City requires a letter of certification. Contractor is ready, willing and able to provide such services and goods, if applicable.

NOW THEREFORE, in consideration of and subject to the terms, conditions, provisions and limitations contained in this contract, the City and Contractor agree as follows:

AGREEMENT

1. Definitions

The following terms as used in this contract shall be construed and interpreted as follows, unless the context otherwise expressly requires a different construction and interpretation:

- 1.1. **“Compensation”** means the funds payable to Contractor by the City which are related to the Goods and Services set forth in the Statement of Work set forth in **Exhibit A**, attached hereto and incorporated herein.
- 1.2. **“Contract”** means this contract for Goods and Services, its terms and conditions, attached exhibits, documents incorporated by reference under the terms of this contract, and any future modifying agreements, exhibits, attachments or references that are incorporated pursuant to City Fiscal Rules and Policies.
- 1.3. **“Exhibit”** means a statement of work document, schedule, budget, or other identified exhibit which has been incorporated into and attached to this contract.
- 1.4. **“Goods”** means anything that is produced or manufactured and that is obtained by the City, either in and of itself, or in conjunction with services.
- 1.5. **“Services”** means services performed or tangible material produced or delivered in the performance of services.

BASIC CONTRACT TERMS

2. Statement of Work

- 2.1 Contractor shall perform the Services and provide the Goods (if applicable) described in Exhibit A, Statement of Work.

Time is of the essence for the performance of this contract. The failure of Contractor to complete the delivery of goods or services by the date specified in this contract shall be grounds for termination of Contractor for default by the City, subject to adjustment or extension in the time for performance, agreed to by the City, in its sole discretion.

OPTION #2 USED YES/NO

OPTION #3 USED YES/NO

3. Performance Standard

Contractor shall perform the Services and deliver the goods, if applicable, described in **Exhibit A**, Statement of Work, in accordance with the highest standard of care, skill and diligence provided by a professional person or company in performance of work similar to the Services, and all services, and all consumables, products, and materials used in performance of the Services shall be of good quality and free from faults and defects. Contractor warrants that (a) services or goods provided under this contract shall meet the description in **Exhibit A**, Statement

of Work, (b) there are no pending or threatened suits, claims, or actions of any type with respect to the services or goods provided and (c) the services and goods shall be free and clear of any liens, encumbrances, or claims arising by or through Contractor or any party related to Contractor.

4. Performance Term

4.1. This contract shall be effective upon approval of bid, RFP, quote, or other procurement process by the City Commission, authorized authority, or designee. The contract effective date is the 1st of July, , 2020(the “Effective Date”) and extend through the 30th day of June, 2021. Performance of this contract shall commence as soon as practicable after the Effective Date and shall be undertaken and performed in the sequence and manner set forth in **Exhibit A**, Statement of Work.

4.2. In the event the City desires to continue the Services and a replacement contract has not been fully approved by the termination date of this contract, the City, upon written notice to Contractor, may unilaterally extend this contract for a period of up to six (6) months. The contract shall be extended under the same terms and conditions as the original contract, including, but not limited to prices, rates and service delivery requirements. This extension shall terminate at the end of the six (6) month period or when the replacement contract is signed by the City or an authorized delegate.

OPTION #4 USED YES/NO

5. Compensation

5.1. Payment of compensation pursuant to this contract will be made as earned, in whole or in part, from available City funds encumbered in an amount(s) or payment schedule listed in **Exhibit A**, Statement of Work for the performance of the Services and acquisition of Goods required by this contract and **Exhibit A**, Statement of Work. Satisfactory performance under the terms of this contract shall be a condition precedent to the City’s obligation to compensate Contractor.

5.2. The maximum compensation payable under this contract and under any renewal hereof, shall include all Contractor fees, costs and expenses.

5.3. The City shall not be liable to Contractor for payment of work or services or for costs or expenses incurred by Contractor prior to the “Effective Date”.

[FOR USE ONLY WITH MULTI-YEAR CONTRACTS]

5.4. Multi-year contracts will be for an initial term and annual renewals thereafter. Each renewal must be approved by the City Commission before expiration of the current period. The Contractor will be notified in writing 30 days prior for submission of adjustments or change orders. If no changes are received the City will default to the term listed in the contract and **Exhibit A**, Statement of work. This contract will be for an initial one year(s) with three renewal periods for a total of four year(s):

OPTION #5 USED YES/NO

6. Availability of Funds

This contract is contingent upon the continuing availability of City appropriations as provided in City of Clovis Budget Report. The City is prohibited by law from making fiscal commitments beyond the term of its current fiscal period. If Federal appropriations or grants fund this contract in whole or in part, the contract is subject to and contingent upon the continuing availability of appropriated Federal funds for this contract. If State of New Mexico or Federal funds are not appropriated, or otherwise become unavailable to fund this contract, the City may immediately terminate the contract in whole or in part without further liability.

PROCEDURES FOR AND OBLIGATIONS OF CONTRACT PERFORMANCE

7. Billing/Payment Procedure

- 7.1. The City shall establish billing procedures and pay Contractor the contract price or rate for Services performed, reviewed, and accepted or Goods delivered, inspected, and accepted pursuant to all the terms and conditions of this contract, including without limitation, performance, quality, milestones and completion requirements for payment set forth in **Exhibit A**, Statement of Work, and the City's and/or the State's inspections and acceptance under applicable laws and rules and section 8 of this contract. Contractor shall submit invoices for payment on forms and provide requested documentation in a manner prescribed or approved by the Purchasing Agent. Payments pursuant to this contract shall be made as earned, in whole or in part, from available funds encumbered for the purchase of the described Services and Goods. Incorrect payments by the City to Contractor due to omission, error, fraud, or defalcation shall be recovered from Contractor by deduction from subsequent payments under this contract or other contracts between the City and Contractor or collected as a debt due to the City.
- 7.2. Invoices and payments shall be mailed using the US Postal Service or other delivery service with a properly addressed stamped envelope to the address specified by the Contractor on form W-9 or other similar form and by the City in its billing procedures.
- 7.3. The City shall make payment in full with respect to each invoice within thirty (30) days of receipt thereof; provided that the amount invoiced represents Goods and/or Services which have been accepted by the City and the form of the invoice is acceptable to the Purchasing Office. Uncontested amounts not paid by the City within thirty (30) days shall bear interest on the unpaid balance beginning with the thirty-first (31st) day at a rate of one percent (1%) per month until paid in full; provided, however, that no interest shall accrue with respect to unpaid amounts for which the City has delivered to Contractor notice of a good faith dispute. Contractor shall invoice the City separately for accrued interest on delinquent amounts. The billing shall reference the delinquent payment, the number of day's interest to be paid and the applicable interest rate.

8. Inspection and Acceptance

The City reserves the right to inspect Services and Goods provided under this contract at all reasonable times and places during the term of this contract, including any extensions. If any of the Services or Goods does not conform to contract requirements, the City may require Contractor to promptly perform the Services or provide Goods again in conformity with contract requirements, at no additional cost to the City. When defects in the quality or quantity of Services and Goods cannot be corrected by re-performance, the City may:

- a. require Contractor to take necessary action to ensure that future performance conforms to this contract requirements; and
- b. equitably reduce the payment due to Contractor to reflect the reduced value of the Services performed or Goods provided.

These remedies shall in no way limit the remedies available to the City in other provisions of this contract or remedies otherwise available in equity or at law, all of which may be exercised by the City, at its option, in lieu of or in conjunction with the preceding measures. Furthermore, the reduction, delay or denial of payment under this provision shall not constitute a breach of contract or default by the City.

9. Reporting

Unless otherwise provided in this contract or the exhibits hereto, Contractor shall submit, on a quarterly basis and upon termination or completion of work, a written progress report analyzing the performance under this contract and specifying progress made for each activity identified in Contractor's duties and obligations under **Exhibit A**, Statement of Work. Such written analysis shall be in accordance with the procedures developed and prescribed by the City. The preparation of reports in a timely manner shall be the responsibility of Contractor and failure to comply may result in the delay of payment of funds and/or termination of this contract. Required reports shall be submitted to the City not later than the end of each calendar quarter, or at such time as otherwise specified. Notwithstanding anything herein to the contrary, including without limitation the priority provisions set forth in Section 35, specific reporting requirements set forth in **Exhibit A**, Statement of Work, or in other exhibits to this contract, shall take precedence over this general reporting provision.

10. Rights in Data, Documents, and Computer Software

10.1 Any software, research, reports, studies, data, photographs, negatives or other documents, drawings, models, materials, or work product of any type, including drafts, prepared by Contractor in the performance of its obligations under this contract (the "Work Product"), shall be the exclusive property of the City and all Work Product shall be delivered to the

City by Contractor upon completion, termination, or cancellation of this contract. The rights of the City with respect to such Work Product shall include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use such Work.

- 10.2 Contractor shall not use, willingly allow, cause or permit such property to be used for any purpose other than the performance of Contractor's obligations under this contract, without the prior written consent of the City. The rights of the City with respect to such property shall include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use such property.

OPTION #6 USED YES/NO

11. Maintenance, Inspection and Monitoring of Records

- 11.1 Contractor shall maintain a complete file of all records, documents, communications, notes and other written materials or electronic media, files or communications, which pertain in any manner to the operation of programs or the delivery of Services or Goods under this contract, and shall maintain such records for a period of three (3) years after the date of termination of this contract or final payment hereunder, whichever is later, or for such further period as may be necessary to resolve any matters which may be pending, or until an audit has been completed; provided, that if an audit by or on behalf of the City of Clovis, Federal and/or New Mexico State government has begun but is not completed or audit findings have not been resolved after a three (3) year period, such materials shall be retained until the resolution of the audit findings.
- 11.2 Contractor shall permit the City, State, or Federal Government or any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and/or transcribe Contractor's records during the term of this contract and for a period of three (3) years following termination of this contract or final payment hereunder, whichever is later, to assure compliance with the terms hereof or to evaluate Contractor's performance hereunder.
- 11.3 Contractor also shall permit these same described entities to monitor all activities conducted by Contractor pursuant to the terms of this contract. As the monitoring agency, in its sole discretion, may deem necessary or appropriate, such monitoring may consist of internal evaluation procedures, examination of program data, special analyses, on-site checking, formal audit examinations, or any other reasonable procedure. All such monitoring shall be performed in a manner that will not unduly interfere with contract performance.

12. Confidentiality of City Records and Information

- 12.1 Contractor acknowledges that it may come into contact with confidential information in connection with this contract or in connection with the performance of its obligations under this contract, including but not limited, to personal records and information of individuals. It shall be the responsibility of Contractor to keep all City records and information confidential at all times and to comply with all City of Clovis, New Mexico State and Federal laws and regulations concerning the confidentiality of information to the same extent applicable to the City. Any request or demand for information in the possession of

Contractor made by a third party who is not an authorized party to this contract shall be immediately forwarded to the City's principal representative for resolution.

12.2 Contractor shall notify all of its agent, employees, subcontractors and assigns who will come into contact with City information that they are subject to the confidentiality requirements set forth herein, and shall provide each with a written explanation of the requirements before they are permitted to access information or data. Contractor shall provide and maintain a secure environment that ensures confidentiality of all City records and information wherever located. No City information of any kind shall be distributed or sold to any third party or used by Contractor or its agents in any way, except as authorized by the contract and as approved by the City. City information shall not be retained in any files or otherwise by Contractor or its agents, except as set forth in this contract and approved by the City. Disclosure of City records or information may be cause for legal action against Contractor or its agents. Defense of any such action shall be the sole responsibility of Contractor.

OPTION #7 USED YES/NO

13. Litigation Reporting

Contractor, within fifteen (15) days after being served with a summons, complaint, or other pleading in a case which involves Services or Goods provided or Contractor's performance under this contract, which has been filed in any Federal or state court or administrative agency, shall deliver copies of such document to the City's principal representative, or in absence of such designation, to the chief executive officer of the department, agency, or institution executing this contract on behalf of the City.

14. Conflict of Interest

14.1 During the term of this contract, Contractor shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the full performance of Contractor's obligations under this contract.

14.2 Additionally, Contractor acknowledges that in governmental contracting, even the appearance of a conflict of interest is harmful to the interests of the City. Thus, Contractor shall refrain from any practices, activities or relationships that could reasonably be considered to be in conflict with the full performance of Contractor's obligations to the City in accordance with the terms and conditions of this contract, without the prior written approval of the City.

14.3 In the event that Contractor is uncertain whether the appearance of a conflict of interest may reasonably exist, Contractor shall submit to the City a full disclosure statement setting forth the relevant details for the City's consideration and direction. Failure to promptly submit a disclosure statement or to follow the City's direction in regard to the apparent conflict shall be grounds for termination of the contract.

- 14.4 Contractor and subcontractors, permitted under the terms of this contract, shall maintain a written code of standards governing the performance of their respective employees engaged in the award and administration of contracts. No employee, officer or agent of Contractor or any permitted subcontractor shall participate in the selection, or in the award or administration of a contract or subcontract supported by City, State, or Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:
- (a) an employee, officer or agent;
 - (b) any member of the employee's immediate family;
 - (c) an employee's partner; or
 - (d) an organization, which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. Contractor's or subcontractor's officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from Contractor, potential contractors, or parties to sub-agreements.

REPRESENTATIONS AND WARRANTIES

15. Warranties

During the term of this contract and for a period of «lengofwarr» months following the City's final acceptance under this contract, Contractor warrants as follows:

- 15.1 All Goods furnished under this contract shall be new and in good working order, free from defects in materials or workmanship, installed properly and in accordance with manufacturers' recommendations or other industry standards and will function in a failure-free manner. Contractor shall repair or replace, at its option, any Goods that fail to satisfy this warranty.
- 15.2 All Services under this Contract shall be performed in accordance with the specifications set forth in this contract and **Exhibit A** and in a manner acceptable to the City. Contractor shall re-perform any Services that fail to satisfy this warranty.
- 15.3 All deliverables delivered under this contract by Contractor shall meet the specifications set forth in this contract and **Exhibit A**. Contractor shall correct or replace any deliverables which fail to satisfy this warranty.

The foregoing warranties and such other warranties as may be set forth in **Exhibit A**, Statement of Work, are a part of the minimum work requirements of this contract, and as such will be at no additional cost to the City.

16. Licenses, Permits, and Responsibilities

Contractor certifies that, at the time of entering into this contract, it has currently in effect all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform the Services and/or deliver the Goods covered by this contract. Contractor

warrants that it shall maintain all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform this contract, without reimbursement by the City or other adjustment in contract price. Additionally, all employees of Contractor performing services under this contract shall hold the required licenses or certification, if any, to perform their responsibilities. Contractor, if a foreign corporation or other entity transacting business in the State of New Mexico, City of Clovis, further certifies that it currently has obtained and shall maintain any applicable certificate of authority to do business in the State of New Mexico and the City of Clovis and has designated a registered agent in New Mexico to accept service of process. Any revocation, withdrawal or non-renewal of licenses, certifications, approvals, insurance, permits or any such similar requirements necessary for Contractor to properly perform this contract, shall be deemed to be a default by Contractor and grounds for termination of this contract by the City.

17. Tax Exempt Status

Contractor acknowledges that the City of Clovis is not liable for any sales, use, excise, property or other taxes imposed by any Federal, State or local government tax authority. The City also is not liable for any Contractor franchise or income related tax. No taxes of any kind shall be charged to the City except for compensation tax on service or construction projects or Gross Receipts Taxes where applicable.

18. Legal Authority

Contractor warrants that it possesses the legal authority to enter into this contract and that it has taken all actions required by its procedures, by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this contract and to bind Contractor to its terms. Contractor agrees it shall submit voluntarily to the personal jurisdiction of the Federal and State courts in the State of New Mexico and venue in the State of New Mexico, City of Clovis, and County of Curry. The person(s) executing this contract on behalf of Contractor warrant(s) that such person(s) have full authorization to execute this contract.

19. Compliance with Applicable Law

19.1 Contractor shall at all times during the execution of this contract strictly adhere to, and comply with, all applicable City, Federal and New Mexico State laws, and their implementing regulations, as they currently exist and may hereafter be amended, which laws and regulations are incorporated herein by this reference as terms and conditions of this contract. Contractor also shall require compliance with such laws and regulations by subcontractors under subcontracts permitted under this contract.

OPTION #8 USED YES/NO

REMEDIES

20. Remedies

In addition to any other remedies provided for in this contract, and without limiting the remedies otherwise available at law or in equity, the City may exercise the following remedial actions if Contractor substantially fails to satisfy or perform the duties and obligations in this contract. “Substantial failure” to satisfy duties and obligations shall be defined to mean material,

insufficient, incorrect or improper performance, activities, or inaction by Contractor. These remedial actions are as follows:

- (a) Suspend Contractor's performance pending necessary corrective action as specified by the City, without Contractor's entitlement to adjustment in price/cost or schedule. Furthermore, at the City's option, a directive to suspend may include suspension of this entire contract or any particular part of this contract that the City determines in good faith would not be beneficial or in the City's best interests due to Contractor's substantial non-performance.

Accordingly, the City shall not be liable to Contractor for costs incurred after the City has duly notified Contractor of the suspension of performance under this provision, and Contractor shall promptly cease performance and incurring costs in accordance with the City's directive;

- (b) Withhold payment to Contractor until the necessary Services or Goods or corrections in performance, development or manufacture are satisfactorily completed;
- (c) Request the removal from work on this contract of employees or agents of Contractor identified by the City, in its reasonable judgment, as being incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued employment on this contract the City deems to be contrary to the public interest or not in the best interests of the City;
- (d) Deny payment for those Services or obligations which have not been performed and/or Goods which have not been provided and which, due to circumstances caused by Contractor, cannot be performed, or if performed would be of no value to the City. Denial of the amount of payment must be reasonably related to the value of work or performance lost to the City; and/or
- (e) Terminate this contract for default.

The above remedies are cumulative and the City, in its sole discretion, may exercise any or all of them individually or simultaneously.

21. Termination for Convenience

21.1 When the interests of the City so require, the City may terminate this contract in whole or in part, for the convenience of the City. The City shall give written notice of termination to Contractor specifying the termination of all or a portion of this contract and the effective date of such. Exercise by the City of this termination for convenience provision shall not be deemed a breach of contract by the City. Upon receipt of written notice, Contractor shall incur no further obligations in connection with the terminated work and, on the date set in the notice of termination, Contractor shall stop work to the extent specified. Contractor also shall terminate outstanding orders and subcontracts as they relate to the terminated work. All finished or unfinished documents, data, studies, research, surveys, drawings, maps, models, photographs, and reports or other materials prepared by Contractor under this contract shall, at the option of the City, be delivered by Contractor to the City and shall become the City's property. The City may direct Contractor to assign Contractor's right, title, and interest under terminated orders or subcontracts to the City. Contractor shall

complete and deliver to the City the work not terminated by the notice of termination and may incur obligations as are necessary to do so within the contract terms.

21.2 If this contract is terminated by the City as provided herein, Contractor shall be paid an amount which bears the same ratio to the total compensation as the Services satisfactorily performed or the Goods or deliverables satisfactorily delivered or installed bear to the total Services, Goods or deliverables covered by this contract, less payments of compensation previously made. In addition, for contracts that are less than 60% completed, the City may reimburse the contractor for a portion of actual out-of-pocket expenses (not otherwise reimbursed under this contract) incurred by Contractor during the contract period which are directly attributable to the uncompleted portion of Contractor's obligations covered by this contract. In no event shall reimbursement under this clause exceed the contract amount. If this contract is terminated for cause, or due to the fault of the Contractor, the Termination for Cause or Default provision shall apply.

22. Termination for Default/Cause

If Contractor refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time and pursuant to the requirements and terms specified in this contract, the City may notify Contractor in writing of such non-performance. If Contractor fails to promptly correct such delay or non-performance within the time specified, the City, may, at its option, terminate this entire contract or such part of this contract as to which there has been delay or a failure to properly perform. If terminated for cause, the City shall only reimburse Contractor for accepted work or deliverables received up to the date of termination and final payments may be withheld. In the event of termination, all finished or unfinished documents, data, studies, research surveys, reports, other materials prepared by Contractor, or materials owned by the City in the possession of Contractor, at the option of the City, shall be returned immediately to the City or retained by the City as its property. At the City's option, Contractor shall continue performance of this contract to the extent not terminated, if any, and shall be liable for excess costs incurred by the City in procuring from third parties replacement services or substitute goods as cover. Notwithstanding any remedial action by the City, Contractor also shall remain liable to the City for any damages sustained by the City by virtue of any breach by Contractor and the City may withhold any payment to Contractor for the purpose of mitigating the City's damages, until such time as the exact amount of damages due to the City from Contractor is determined. Upon termination by the City, Contractor shall take timely, reasonable and necessary action to protect and preserve property in the possession of Contractor in which the City has an interest. Further, the City may withhold amounts due to Contractor as the City deems necessary to protect the City against loss because of outstanding liens or claims of former lien holders and to reimburse the City for the excess costs incurred in procuring similar goods or services. Any action taken by the City hereunder or pursuant to paragraph 15 shall not be cause for Contractor to terminate this Contract for default or material breach. If, after termination by the City, it is determined for any reason that Contractor was not in default or that Contractor's action/inaction was excusable, such termination shall be treated as a termination for convenience and the rights and obligations of the parties shall be the same as if this contract had been terminated for convenience, as described herein.

23. Insurance

23.1 The Contractor shall obtain, and maintain at all times during the term of this agreement, insurance in the following kinds and amounts:

- a. Worker's Compensation Insurance as required by state statute, and Employer's Liability Insurance covering all of the contractor's employees acting within the course and scope of their employment.
- b. Commercial General Liability Insurance written as required to cover the terms of this contract for the goods or services listed in **Exhibit A**, Statement of Work. Contractor must meet requirements covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability. The following limit are recommend but may not be required based on the good or services under this contract:
 - i. \$1,000,000 each occurrence;
 - ii. \$1,000,000 general aggregate;
 - iii. \$1,000,000 products and completed operations aggregate; and
 - iv. \$50,000 any one fire.

23.2 The City of Clovis shall be named as additional insured on the Commercial General Liability Insurance policies (leases and construction contracts will require the additional insured coverage for completed operations on endorsements. Coverage required of the contract will be primary over any insurance or self-insurance program carried by the City of Clovis.

23.3 The Insurance shall include provisions preventing cancellation or non-renewal without at least 45 days prior notice to the City by certified mail.

23.2 The contractor will require all insurance policies in any way related to the contract and secured and maintained by the contractor to include clauses stating that each carrier will waive all rights of recovery, under subrogation or otherwise, against the City of Clovis, its agencies, institutions, organizations, officers, agents, employees and volunteers.

23.3 All policies evidencing the insurance coverages required hereunder shall be issued by insurance companies satisfactory to the City.

23.4 The contractor shall provide certificates showing insurance coverage required by this contract to the City within 7 business days of the effective date of the contract, but in no event later than the commencement of the services or delivery of the goods under the contract. No later than 15 days prior to the expiration date of any such coverage, the contractor shall deliver the City certificates of insurance evidencing renewals thereof. At any time during the term of this contract, the City may irequest in writing, and the contractor shall thereupon within 10 days supply to the City, evidence satisfactory to the City of compliance with the provisions of this section.

23.5 Notwithstanding subsection a of this section, if the Contractor is a "public entity" within the meaning of the New Mexico Governmental Immunity, the contractor shall at all times during the term of this contract maintain only such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the State Law. Upon request by the City, the contractor shall show proof of such insurance satisfactory to the City.

24. Governmental Immunity

Notwithstanding any other provision of this contract to the contrary, no term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Governmental Immunity. The parties understand and agree that liability for claims for injuries to persons or property arising out of negligence of the City of Clovis, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of State Law as now or hereafter amended and the risk management statutes and Tort Laws as now or hereafter amended.

25. Force Majeure

Neither Contractor nor the City shall be liable to the other for any delay in, or failure of performance of, any covenant or promise contained in this contract, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to the extent that, such delay or failure is caused by "force majeure." As used in this contract "force majeure" means acts of God; acts of the public enemy; public health/safety emergency acts of the City, State, or any governmental entity in its sovereign capacity; fires; floods, epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather.

MISCELLANEOUS PROVISIONS

26. Representatives

Each individual identified below is the principal representative of the designating party. All notices required to be given to a party pursuant to this contract shall be hand delivered with receipt required or sent by certified or registered mail to such party's principal representative at the address for such party set forth below. Either party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent

For the **City**: _____
Name: XXXXXXXXXXXX
Title: Mayor
Address: P.O. Box 760
Clovis, New Mexico 88101
Telephone: (575) 769-7828

For **Contractor**: _____
Name: XXXXXXXXXXXX

Title: XXXXXXXXXXXXX
Address XXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
Telephone (XXXXXXXXXX)

27. Assignment and Successors

Contractor's rights and obligations under this contract shall be deemed to be personal and may not be transferred, assigned or subcontracted without the prior, written consent of the City, which shall not be unreasonably withheld. Any attempt at assignment, transfer or subcontracting without such consent shall be void, except that Contractor may assign the right to receive payments from the City pursuant to State Law. All subcontracts and subcontractors consented to by the City shall be made subject to the requirements, terms and conditions of this contract. Contractor alone shall be responsible for all subcontracting arrangements, directions and delivery of subcontracted work or Goods, and performance of any subcontracted Services. Contractor shall require and ensure that each subcontractor shall assent in writing to all the terms and conditions of this contract, including an obligation of the subcontractor to indemnify the City as is required under State Law, incorporated as a part of this contract.

28. Third Party Beneficiaries

The enforcement of the terms and conditions of this contract and all rights of action relating to such enforcement shall be strictly reserved to the City and Contractor. Nothing contained in this contract shall give or allow any claim or right of action whatsoever by any third person. It is the express intention of the City and Contractor that any such person or entity, other than the City or Contractor, receiving services or benefits under this contract shall be deemed an incidental beneficiary only.

29. Severability

To the extent this contract may be executed and performance of the obligations of the parties may be accomplished within the intent of the contract, the terms of this contract are severable. Should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.

30. Waiver

The waiver of any breach of a term, provision, or requirement of this contract shall not be construed or deemed as waiver of any subsequent breach of such term, provision, or requirement, or of any other term, provision, or requirement.

31. Entire Understanding

This contract is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or affect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a writing executed and approved pursuant to the New Mexico State Law or Fiscal Rules.

32 Survival of Certain Contract Terms

Notwithstanding anything herein to the contrary, all terms and conditions of this contract, including but not limited to its exhibits and attachments, which may require continued performance, compliance, or effect beyond the termination date of the contract, shall survive

such termination date and shall be enforceable by the City in the event of the Contractor's failure to perform or comply as required.

33. Modification and Amendment

33.1 This contract is subject to such modifications as may be required by changes in Federal or New Mexico State law, or their implementing regulations. Any such required modification automatically shall be incorporated into and be part of this contract on the effective date of such change, as if fully set forth herein.

33.2 Except as specifically provided in this contract, no modification of this contract shall be effective unless agreed to in writing by both parties in an Amendment to this contract, properly executed and approved in accordance with New Mexico State law and City Fiscal Rules.

34. Venue

Venue for any action related to performance of this contract shall be in the City of Clovis and County of Curry, New Mexico.

35. Order of Precedence

The provisions of this contract shall govern the relationship of the City and Contractor. In the event of conflicts or inconsistencies between this contract and its exhibits or attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- (a) New Mexico State Law
- (b) This Contract Document.
- (c) **Exhibit A**, Statement of Work (includes bid or RFP Documents and response).
- (d) **Exhibit B**, Modifications to Contract Provisions.
- (e) Remaining pages of the contract labeled pages 1A to end.
- (f) List other exhibits, if any, in order of priority.

a. _____ Initial _____

b. _____ Initial _____

c. _____ Initial _____

d. _____ Initial _____

e. _____ Initial _____

Mark though items not included in this contract.

Contract Options

2. **Option #2.** If an option is used to increase or decrease the grant funding dollars provided by the City in federal or state grant type contracts is part of this contract, add the following provision:

2.1 “The City may allocate more or less funds available on this contract using a Grant Funding Letter substantially equivalent to the Grant Exhibit and bearing the approval of the State or Federal Agency their designee. The grant funding letter shall not be deemed valid until it shall have been approved by the State or Federal Agency designee.”

If the City has the option to increase or decrease quantities, add the following provision:

2.2 “The City may increase the quantity of goods/services described in paragraph/schedule/exhibit at the unit prices established in the contract. The City may exercise the option by written notice to the Contractor within 15 days before the option begins in a form substantially equivalent to Quantity Increase Exhibit Letter. Delivery/performance of the goods/service shall continue at the same rate and under the same terms as established in the contract.”

If the City allows for the option to increase or decrease the total contract price based upon a change in the service schedule established by the agency, add the following provision:

2.3 “The City may unilaterally increase/decrease the maximum amount payable under this contract based upon the unit prices established in the contract and the schedule of services required, as set by the City. The City may exercise the option by providing a fully executed option to the Contractor, in a form substantially equivalent to Contract Pricing Letter Exhibit immediately upon signature of the City its delegate. Performance of the service shall continue at the same rate and under the same terms as established in the contract.”

If the City has an option to initiate the next phase for a phased contract, add the following provision:

2.4 “The City may require the Contractor to begin performance on the next phase of the contract as outlined in the Statement of Work in **Exhibit A**. The City may exercise the option by written notice to the Contractor within 30 days prior to the end of the current contract phase in a form substantially equivalent to Next Phase Letter. If the City exercises this option, the contract will be considered to include this option provision.”

3. **Option #3.** The following language must be included in the original contract to allow the City to use change orders to make changes to the specifications:

3.1 “Bilateral changes within the general scope of this contract and **Exhibit A**, Statement of Work, may be executed using the change order letter process described in this Section,

substantially in the form of the Change Order Letter or recognized AIA Documents and incorporated herein, for any of the following reasons:

- (a) Where the agreed changes to the specifications result in an adjustment to the price, delivery schedule, or time of performance;
- (b) Where the agreed changes result in no adjustment to the price, delivery schedule, or time of performance. The change order shall contain a mutual release of claims for adjustment of price, schedules, or time of performance;
- (c) Where the changes to this contract are priced based on the unit prices to be paid for the goods and/or services established in this contract or **Exhibit A**, Statement of Work; or
- (d) Where the changes to this contract are priced equal to or less than established catalog prices generally extended to the public or on prices or rates set by law or regulation.

Other bilateral modifications not within the terms of this Section must be executed by formal amendment to this contract, approved in accordance with New Mexico State law and City Fiscal Rules.”

4. **Option #4.** If a renewal (extending the contract term) option is a part of this contract, add the following “Renewal Option” provision:

4.3 “The City unilaterally may require continued performance of Contractor’s obligations under this contract for one (1) additional year at the *same rates and same terms specified in the contract and Exhibit A*, Statement of Work.] [ONLY THE AGGREGATE AMOUNT APPEARS IN THE CONTRACT.] The City may exercise this option by the delivery of written notice to Contractor, in accordance with Section 4 and 5 of this contract, substantially in the form of the Option Letter, sent to the City 30 days prior, and incorporated herein, within thirty (30) days of the contract term or any renewal term. Upon exercise of this option by the City, the extended contract shall include this option provision for future use; provided, however, that the total duration of this contract, including the exercise of all options under this provision, shall not exceed a total contract period as listed in City of Clovis Ordinance 1830-2006. Financial obligations of the City of Clovis payable after any current fiscal year are contingent upon the availability of funds for that purpose as set forth in Section 6 of this contract.”

5. **Option #5.** If this is a master contract with task orders, add the following provision:

5.5 “Tasks will be defined, negotiated, and ordered by agreement of the parties based on the rates established in an attached appendix which will be referred to as “Appendix of Established Rates” and are subject to the same terms and same conditions established in the contract. The Contractor understands that there is no guaranteed minimum commitment by the City to issue task orders pursuant to this contract. Changes to terms, conditions, and prices specified, or other provisions of the contract shall be completed by formal amendment and signed by the City of Clovis designee.

Task Orders processed in accordance with this paragraph shall occur as follows:

If the City has need of services, and the Contractor agrees to provide those services, the City shall provide a definition of the requirements to the Contractor. The Contractor will propose a price for the task using the rates agreed to and identified as “Appendix of Established Rates” to the contract and attached to the Contractor’s proposal. The proposal shall include the estimated number of hours, material costs, and amount of other elements of cost priced by the parties in the rates established in “Appendix of Established Rates”, as well as the proposed time of performance, in a form acceptable to the City.

Upon negotiation and agreement of the parties concerning the statement of work, the price, and the time of performance, the Task Order Form will be provided by the City and will become part of this contract and shall be prepared and signed by both parties.

Performance of the work and payment for that work shall be governed by the standards and procedures set forth in this contract. Upon negotiation and acceptance of the task order, the Contractor warrants that performance will be successfully completed within the time frame and price stated in the task order. The City’s financial commitment stated in the task order shall not be considered valid until the City’s delegate executes the task order.”

Additional language:

This additional language is provided for those City agencies wishing to encumber all available funds when the master contract is executed or wish to establish a not to exceed amount in the master contract.

“The cumulative not to exceed amount for all task orders issued pursuant to this contract shall not exceed the amount stated in the Task Order. The City’s financial obligation is limited by this amount, and the Contractor shall accept no task orders, which result in a cumulative amount in excess of the not to exceed amount stated in this original Task Order. Increases or decreases to the not to exceed amount shall be completed by formal amendment and signed by the City’s designee.”

6. **Option #6.** If intellectual property or technology is part of this contract, add the following “Intellectual Property Indemnification” provisions:

10.3 Contractor shall indemnify, hold harmless and defend, at Contractor’s sole expense, the City, its employees and agents, against any and all loss, cost, expense or liability, including but not limited to attorney fees, court costs and other legal expenses and damages arising out of a claim that a product, goods, or service/work product (“product”) provided by Contractor under this contract, or its use, infringes a patent, copyright, trademark, license, trade secret or other intellectual property right. Contractor’s obligation shall not extend to any combination of the product with any other product, system or method, unless the product or system is:

(a) provided by Contractor or Contractor’s subsidiaries or affiliates;

- (b) specified by the Contractor to work with the product;
- (c) reasonably required to use the product in its intended manner, and the infringement could not have been avoided by substituting another reasonably available product, system or method capable of performing the same function; or (d) reasonably expected to be used in combination with such other product, system or method.

10.4 The City shall notify Contractor within a reasonable time after receiving notice of a claim of infringement. The City shall furnish, at the Contractor’s reasonable request and expense, information and assistance necessary for the defense of such claim. Contractor, at its sole expense, shall (a) obtain the right for the City to continue using the product, (b) replace the product with a non-infringing product with equivalent functionality, (c) modify the product so that it retains equivalent functionality, but is non-infringing or (d) reimburse the City for the removal and replacement of the product. In the event Contractor fails to vigorously and timely pursue the defense or settlement of such claim, the City may assume such defense and settlement and Contractor shall be liable for all costs and expenses incurred by the City.”

7. **Option #7.** If the Health Insurance Portability & Accountability Act of 1996 (“HIPAA”) applies to this contract, add the following provision:

12.3 “Health Insurance Portability & Accountability Act of 1996 (“HIPAA”). Federal law and regulations governing the privacy of certain health information requires a “Business Associate Contract” between the City and Contractor. 45 C.F.R. Section 164.504(e). Incorporated herein by reference and agreed to by the parties is a HIPAA Business Associate Addendum for HIPAA compliance. Terms of the Addendum shall be considered binding upon execution of this contract and shall remain in effect during the term of this contract including any extensions.”

8. **Option #8.** If the Federal funding is a part of this contract, add the following provisions:

20.2 “Federal laws and regulations incorporated into this contract include, without limitation:

- | | |
|---|---|
| (a) Age Discrimination Act of 1975 | 42 U.S.C. Sections 6101, <i>et seq.</i> |
| (b) Age Discrimination in Employment Act of 1967 | 29 U.S.C. 621-634 |
| (c) Americans with Disabilities Act of 1990 (ADA) | 42 U.S.C. 12101, <i>et seq.</i> |
| (d) Equal Pay Act of 1963 | 29 U.S.C. 206(d) |
| (e) Immigration Reform and Control Act of 1986 | 8 U.S.C. 1324b |
| (f) Section 504 of the Rehabilitation Act of 1973 | 29 U.S.C. 794 |
| (g) Title VI of the Civil Rights Act of 1964 | 42 U.S.C. 2000d |
| (h) Title VII of the Civil Rights Act of 1964 | 42 U.S.C. 2000e |

(i) Title IX of the Education Amendment of 20 U.S.C. 1681, *et seq.*
1972

(j) Section 24-34-302, *et seq.*, Colorado Revised Statutes 1997, as amended

20.3 Contractor also shall comply with any and all laws and regulations prohibiting discrimination in the performance of Contractor's obligations under this contract. In consideration of and for the purpose of obtaining any and all Federal and/or New Mexico State financial assistance, Contractor makes the following assurances, upon which the City relies:

- (a) Contractor shall not discriminate against any person on the basis of race, color, national origin, age, sex, religion and handicap, including Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions, in performance of work under this contract.
- (b) At all times during the performance of this contract, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in, or denied benefits of the service, programs, or activities performed by Contractor, or be subjected to any discrimination by Contractor.

20.4 Contractor shall take all necessary affirmative steps, as required by New Mexico State Law and City Procurement Rules to assure that small and minority businesses and women's business enterprises are used, when possible, as sources of supplies, equipment, construction, and services purchased under this contract."

EXHIBIT A

STATEMENT OF WORK

All documents in the statement of work have been approved by the City and the Contractor. Basic description of this contract is:

**FULL COMPLIANCE WITH ALL TERMS &
CONDITIONS OF RFP XX-XXXX-XX**

END OF RFP