

**City of Portales Procurement Office**



**REQUEST FOR PROPOSALS (RFP)**

**Banking Services**

Contracting Agency:  
City of Portales  
1028 Community Way  
Portales, NM 88130

**RFP #  
2023-10-25**

**Banking Services**

**SEALED PROPOSAL DUE DATE: November 13, 2023  
2:00 p.m. (MST)**

**NIGP Commodity Code(s): 94625, 94629, 94649**

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## INTRODUCTION

### A. PURPOSE OF THIS REQUEST FOR PROPOSALS

The purpose of the Request for Proposal (RFP) is to solicit sealed proposals from local financial institutions who can provide requested banking services. The objective is to identify the Institution to establish a contract through competitive negotiations for the procurement of banking services that offer the most comprehensive services at the most competitive rates.

### B. BACKGROUND INFORMATION

The City of Portales is a municipality in Roosevelt County, New Mexico. The Mayor is Ronald L. Jackson. The city consists of the City Manager, Sarah Austin, who oversees multiple department heads and employees. The City Manager is under the direction of the City Council.

### C. SCOPE OF PROCUREMENT

The City of Portales desires to enter into a multi-year, non-exclusive contractual relationship identified in this RFP with a Financial Institution to provide Banking services to the City of Portales. The term of the contract shall be four (4) year, with the option to extend for four (4) subsequent one (1) year terms at the same price, with the same terms and conditions stated on the Offeror's original proposal in response to this RFP. The scope of procurement shall encompass the Scope of Work in Section B of the RFP effective beginning upon execution of the last signatory signature executing the contract.

This procurement will result in a contractual agreement between two parties; the procurement may ONLY be used by those two parties exclusively.

### D. PROCUREMENT MANAGER

The City of Portales has assigned a Procurement Manager who is responsible for the conduct of this procurement whose name, telephone number, and email address are listed below:

Name:	Jo McVey
Telephone:	(575)825.1061
Email:	<a href="mailto:JMcvvey@portalesnm.gov">JMcvvey@portalesnm.gov</a>

1. Any inquiries or requests **regarding this procurement should be submitted, in writing, to the procurement Manager. Offeror's may contact ONLY** the Procurement Manager regarding this procurement. Other city employees, city council, elected officials, or Evaluation Committee members do not have the authority to respond on behalf of the State Procurement Department.
2. **Protests of the solicitation or award must be submitted in writing to the Chief Procurement Officer** . As a Protest Manager has been named in this Request for Proposals, pursuant to § 13-1-172 NMSA 1978 and 1.4.1.82 NMAC, **ONLY protests delivered directly to the Chief Procurement Officer in writing and in a timely fashion will be considered to have been submitted properly and in accordance with statute, rule, and this Request for Proposals.** Protests submitted or delivered to the Procurement Manager will **NOT** be considered properly submitted.

### E. PROPOSAL SUBMISSION

*Submissions of all proposals must be accomplished via the Procurement Manager. All submissions are to be submitted electronically or physically to Jo McVey, Procurement Manager, [JMcvvey@portalesnm.gov](mailto:JMcvvey@portalesnm.gov) or to 1028 Community Way, Portales, NM 88130.*

## F. DEFINITION OF TERMINOLOGY

This section contains definitions of terms used throughout this procurement document, including appropriate abbreviations:

1. **“AGENCY”** means the State Purchasing Division of the General Services Department or that State Agency sponsoring this Procurement.
2. **“AWARD”** means the final execution of the contract document.
3. **“CONFIDENTIAL”** means confidential financial information concerning Offeror’s organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act §§57-3-A-1 through 57-3A-7 NMSA 1978. See also NMAC 1.4.1.45. The following items may **not** be labelled as confidential: Offeror’s submitted Cost response, Staff/Personnel Resumes/Bios (excluding personal information such as personal telephone numbers and/or home addresses), and other submitted data that is **not** confidential financial information or that qualifies under the Uniform Trade Secrets Act.
4. **“CONTRACT”** means any agreement for the procurement of items of tangible personal property, services or construction.
5. **“CONTRACTOR”** means any business having a contract with a state agency or local public body.
6. **“DETERMINATION”** means the written documentation of a decision of a procurement officer including finding of fact required to support a decision. A determination becomes part of the procurement file to which it pertains.
7. **“FINAL AWARD”** means, in the context of this Request for Proposals and all its attendant documents, that point at which the final required signature on the contract(s) resulting from the procurement has been affixed to the contract(s) thus making it fully executed.
8. **“FINALIST”** means an Offeror who meets all the mandatory specifications of this Request for Proposals and whose score on evaluation factors is sufficiently high to merit further consideration by the Evaluation Committee, as explained in Section II.B.8.
9. **“MANDATORY”** – the terms “must,” “shall,” “will,” “is required,” or “are required,” identify a mandatory item or factor. Failure to meet a mandatory item or factor may result in the rejection of the Offeror’s proposal.
10. **“PROCUREMENT MANAGER”** means any person or designee authorized by a state agency or local public body with the responsibility, authority, and resources to conduct the RFP procurement, make written determinations regarding the RFP procurement, and/or enter into or administer contracts as a result of the RFP procurement.
11. **“PROJECT”** means a temporary process undertaken to solve a well-defined goal or objective with clearly defined start and end times, a set of clearly defined tasks, and a budget. The project terminates once the project scope is achieved, and project acceptance is given by the project executive sponsor.
12. **“REQUEST FOR PROPOSALS (RFP)”** means all documents, including those attached or incorporated by reference, used for soliciting proposals.

13. **“SEALED”** means, in terms of electronic submission, an Offeror’s proposal and all accompanying documents that have been completely and successfully emailed to the procurement manager as referenced in the Request for Proposals.
14. **“STAFF”** means any individual who is a full-time, part-time, or an independently contracted employee with the Offerors’ company.
15. **“STATE (THE STATE)”** means the State of New Mexico.
16. **“STATE AGENCY”** means any department, commission, council, board, committee, institution, legislative body, agency, government corporation, educational institution or official of the executive, legislative or judicial branch of the government of this state. “State agency” includes the Purchasing Division of the General Services Department and the State Purchasing Agent but does not include local public bodies.
17. **“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.
18. **“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.
19. **“FAMILY MEMBER”** means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law, or son-in-law.
20. **“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.
21. **“PERSON”** means any corporation, partnership, individual, joint venture, association, or any other private legal entity.
22. **“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.
23. **“COMMUNITY REINVESTMENT ACT (CRA) RATINGS”** means The OCC assigns one of four CRA ratings to a bank; outstanding satisfactory needs to Improve, or substantial noncompliance.

**LEGAL NOTICE**  
**Request For Proposals (RFP)**

Notice is hereby given that the City of Portales calls for competitive Sealed Proposals for RFP# **2023-10-25** Banking Services.

Interested parties may secure a copy of the request for proposals, including all specifications and any updates from:

Jo McVey, Interim Chief Procurement Officer  
City of Portales  
1028 W Community Way  
Portales, NM 88130  
(575) 359-4815  
jmcvey@portalesnm.gov

A pre-proposal conference will be held on November 09, 2023 from 9:00 am -10:00 am.

Sealed Proposals must be received by the City of Portales, CPO Office, City of Portales City Hall, 1028 W Community Way, Portales, New Mexico 88130 no later than **2:00 PM Local Time, Monday, November 13, 2023.**

The City of Portales reserves the right to make multiple awards under this RFP pursuant to (§13-1-150 through 13-1-154.1, NMSA, 1978).

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

NIGP Commodity Codes: 94625, 94629, 94649

**Jo McVey**  
**City of Portales**  
**Interim CPO**

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(For Contracting Agency's Use Only)

Newspaper The Eastern NM News

Publish Date 10/29/2023

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 bids/proposals (§13-1-113 NMSA 1978) and published in a newspaper of general circulation in the area.

**NOTIFICATION OF INTENT TO SUBMIT PROPOSAL**

**Please complete the following form and fax or email IMMEDIATELY to:**

City of Portales Purchasing Department  
ATTN: Jo McVey, Interim Chief Procurement Officer  
1028 W Community Way  
Portales, New Mexico 88130  
Facsimile: (575) 356-3158  
jmcvey@portalesnm.gov

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***Failure to return this form may result in a termination of communication regarding this RFP.***

**RFP # 2023-10-25 BANKING SERVICES**

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Postal Code: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Phone No.: \_\_\_\_\_ Fax No: \_\_\_\_\_

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

**I have received a copy of the above noted RFP.**

\_\_\_\_\_ **Yes**, I will be responding to this RFP. I also authorize the City of Portales Purchasing Department to send further correspondence that it deems to be of an urgent nature by the following method:

\_\_\_\_\_ **Courier Collect**      \_\_\_\_\_ **Facsimile**      \_\_\_\_\_ **E-Mail**

\_\_\_\_\_ **No**, I will not be responding to this RFP. I understand that if I do not submit a proposal, this will not affect our company's status as a potential proponent to City of Portales in the future. I also understand that If I do not return this form, our company will not receive any further notices with regard to this RFP.

SIGNATURE: \_\_\_\_\_

TITLE: \_\_\_\_\_ DATE: \_\_\_\_\_

**CITY OF PORTALES  
REQUEST FOR PROPOSALS #2023-10-25**

The City of Portales requests Qualification-Based Competitive Sealed Proposals for **Banking Services** to be delivered to the City of Portales Purchasing Department at 1028 Community Way, Portales, NM by Monday, November 13, 2023, at 2:00 p.m. (MST).

The Proposal contents will not be read aloud. An evaluation committee will provide a recommendation for award(s) to the City of Portales Council based on the offer(s) in regard to the specific criteria outlined in this Request for Proposals. The City of Portales reserves the right to reject any proposal or any part thereof; to defer action on the request for proposals; to reject all proposals; to waive any technicalities or informalities in solicitation process and to accept the proposal which, in its judgment, is most advantageous to the City of Portales. All potential Offerors are encouraged to read this RFP carefully, especially mandatory requirements.

The purpose of this Request for Proposal (hereinafter “RFP”) is a means to select an Offeror that results in the selection of the best qualified professional most suitable to the needs of the City.

**IMPORTANT:** The words **“SEALED PROPOSAL”** along with the **RFP NUMBER AND TITLE** **MUST** appear clearly on the outside sealed envelope or package of all proposals. Offeror’s name and address must also be written on the envelope or package.

**It is the responsibility of the prospective Offeror to review the entire Request for Proposal (RFP) packet and to notify the purchasing department if the specifications are formulated in a manner which would unnecessarily restrict competition. Any such protest or question regarding the specifications or RFP procedures must be received in the purchasing department not less than seventy-two hours prior to the time set for due date of proposal.**

**IF THERE IS ANY PROBLEM REGARDING THE FOLLOWING PROPOSAL SPECIFICATIONS OR CONDITIONS THAT WOULD PREVENT YOU FROM SUBMITTING A PROPOSAL, CONTACT THE PURCHASING AGENT IMMEDIATELY FOR CLARIFICATION OR CONSIDERATION OF AN ADDENDUM.**

Proposals may be mailed, or hand/courier delivered to or online at the following.

**Mailed or hand/courier:**

City of Portales  
Interim Chief Procurement Officer  
1028 Community Way  
Portales, NM 88130

**Online:**

[www.portalesnm.gov](http://www.portalesnm.gov); Services;  
Departments N-Z;  
Purchasing Department  
See All Active RFPs, ITB’s, RFQs, Current Bids  
Click on Banking Services

**It is the Offeror’s responsibility to see that the Proposal arrives on time.**

**NOTE: WHEN SHIPPING OVERNIGHT DELIVERY, IT IS RECOMMENDED THAT SHIPMENT BE MADE 2 DAYS PRIOR TO DEADLINE, IF POSSIBLE, TO ENSURE DELIVERY. IT IS ALSO RECOMMENDED TO VERIFY DELIVERY PRIOR TO DEADLINE.** Some of the delivery services do not guarantee Overnight priority delivery to the City of Portales. If the proposals are sent by mail to the Purchasing Department, the Offeror shall be responsible for actual delivery of the proposal to the Purchasing Department office before the advertised date and hour for the opening. Proposals which are delayed will not be considered and will be returned unopened.



**PURPOSE OF THIS REQUEST FOR PROPOSALS**

The purpose of the Request for Proposal (RFP) is to solicit sealed proposals from local financial institutions who can provide requested banking services. The objective is to identify the Institution that can offer the most comprehensive services at the most competitive rates.

**A. SPECIFIC CONDITIONS**

1. The individual/company submitting an offer or proposal will be referred to as “Offeror” and the City of Portales will be referred to as “City”
2. Specific capabilities and experience shall address the information included and show how it relates specifically to the Portales area. The format of response shall follow the outline as required in the RFP document.
3. Award will be made to the Offeror(s) whose proposal is determined to be most professionally and technically complete.
4. A proposal may be modified, or withdrawn, prior to the established due date in accordance with the requirements of the NM Procurement Code. (§13-1-106 NMSA 1978).
5. Following award, both the Offeror(s) and the City shall designate representatives and identify a main point of contact for all communications. Such individuals shall have authority to coordinate with or direct personnel assigned to the project.
6. Contract terms: the City intends to contract with an Offeror to provide Banking Services for the City of Portales. The term of the contract resulting from this RFP shall be for a period not to exceed the allowed amount pursuant 13-1-150 (NMSA 1978). The City of Portales reserves the right, by mutual agreement of the parties, to extend the contract on an annual basis at the same price, terms and conditions, not to exceed a total of eight (8) years.
7. Proposed Dates – See below.

The City will make reasonable efforts to adhere to the schedule outlined below; however, the City reserves the right to modify the schedule if necessary and deemed to be in the best interest of the City. All Offerors will be notified in writing if any date is delayed.

Action	Date
Release Date	10/29/2023
Pre-Proposal Conference	11/09/2023 9:00 am – 10:00 am
Proposal Submission Deadline	11/13/2023
Proposal Review/Interviews/Committee Report	11/14/2023 – 11/16/2023
Staff Recommendation to City Council	11/28/2023

**B. PROJECT DESCRIPTION/SCOPE OF WORK**

The City of Portales desires to enter into a non-exclusive contractual relationship with a Financial Institution to provide Banking services to the City of Portales, including but not limited to:

**1. FINANCIAL SERVICES: MANDATORY SERVICES REQUIRED**

The following guidelines shall be utilized to ascertain the level of collateral required from the offeror. These ratios are in agreement with those set by the State Board of Finance for the State of New Mexico.

<b>Ratios</b>	<b>50%</b>	<b>75%</b>	<b>100%</b>
Primary Capital Assets	Above 6.0%	5.0% - 6.0%	Less than 5.0%
Net Operating Income			
Total Average Assets	Above .60%	.51% - .61%	Less than .51%
Non-Performing Loans	Under 35.0%	35.0% - 49.9%	Above 49.9%

The offeror shall submit a current Statement of Financial Condition and a completed Risk Assessment Ratio Form with the RFP proposal.

**2. Bank/City Collateral Security Agreement**

After the award of the contract, the Bank and the City must sign a “Collateral Security Agreement” as specified in the City of Portales Investment Policy signed and on file in the City Treasurer’s Office.

**C. MINIMUM SERVICES REQUIRED**

1. Security: Offeror must be in good standing with FDIC.
2. Support Hours available – Please provide your hours of operation for Support Services.
3. Conducting Business in Portales, New Mexico: Offeror must have a physical location in Portales.
4. Disaster Recovery: Offeror must describe what their disaster recovery plan consists of.
5. Lock bags and zip bank bags must be provided for daily deposits. How many of each would be provided and at what cost? Are there alternatives to the bank bags and if so, please describe?
6. Bank statements to end on the last day of each month and statement received by the Treasurer’s Office by what dates of the following month.
7. Desktop/Remote Capture – What is the availability and cost?
8. Online Services –
  - a. Online reports including check images, daily balances, EDI reporting and bank statements, how quickly is this information is available and how long are these reports /images available for retrieval.
  - b. Online services include ACH origination, stop payments, payee-positive pay, ACH payee-positive pay. Include deadline for file submission and same day service options.
  - c. What file formats are available for transaction, report, and image downloads?
  - d. Dual authorization requirements for online banking, what are the user options? What kinds of control can the City have regarding access to the different online services?

Describe what kind of security features are provided both for logging onto the system and controlling user access to different features on the system.

- e. What kind of control does the Offeror have over online services and if there is no direct control of the system(s) what assurances are provided of the same level of service without interruption or inconvenience?
- 9. How often are incoming transactions processed?
- 10. Notification of all corrections upon occurrence by email and hard copy by mail.
- 11. Purchasing Card Services – What Purchasing Card Services does your organization offer?

**D. INVESTMENTS**

- 1. The City funds will accrue interest at the average monthly Federal Funds Rate. The bank handling the investments will provide a report monthly and interest will be credited monthly.
- 2. Provide the formula for computing the rate for these investments.
- 3. Please provide details for investment products offered, such as CD's, ICS, etc.

**Existing Bank Accounts Volumes and Balances (Estimated Annual Total)**

**OPERATING ACCOUNT:**

	<b>Average Daily Balance:</b>	<b>\$13,000,000</b>
<b>Paper credits:</b>	<b>300</b>	
<b>Electronic Credits:</b>	<b>600</b>	
<b>Paper debits:</b>	<b>4,000</b>	
<b>Electronic debits:</b>	<b>120</b>	
<b>Returned deposited items:</b>	<b>60</b>	

**CAPITAL PROJECTS FUND CDBG:**

	<b>Average Daily Balance:</b>	<b>\$1,301</b>
<b>Return Items:</b>	<b>0</b>	
<b>Incoming Wire Transfers:</b>	<b>1</b>	
<b>Outgoing Wire Transfers:</b>	<b>0</b>	
<b>Checks Cleared:</b>	<b>0</b>	

**E. ADDITIONAL SERVICES AVAILABLE**

In addition to the standard banking services listed above, please provide details on any additional services available to the City.

**F. SUBMISSION OF PROPOSALS**

To facilitate comparison and evaluation, Offeror(s) must follow the format outlined in this section. Failure of an Offeror to follow the required format may, at the sole discretion of the City, result in the rejection of the submittal. Proposals will contain concise written material and illustrations that enable a clear understanding and evaluation of the capabilities of the Offeror(s). Legibility, clarity, and completeness are essential. The City, at its sole discretion, may reject any proposal which is unclear in any way.

All proposals MUST be received by the city no later than Monday, November 13, 2023, at 2:00 pm Mountain Time. Proposals received after the deadline will not be accepted and will be returned unopened. The Purchasing Department will record the date and time of each proposal when they are received.

**1. Number of Responses**

Only one (1) proposal may be submitted by each individual entity for the one (1) project, which is the subject of this RFP.

**2. Proposal Format**

The proposal must be limited in format and length. All proposals must be typewritten on Standard 8 ½” by 11” paper and placed in a binder with tabs delineating each section.

**3. Page Submission Criteria**

A maximum of ten (10) pages, including title, index, etc., not including front and back covers and not including proposal forms.

**4. Number of Copies**

a. One (1) ORIGINAL and Three (3) HARD COPY of Binder 1 (Technical Proposal); ORIGINAL and COPY shall be in separate labeled binders and/or envelopes; all confidential information in the proposal shall be clearly identified and easily segregated from the rest of the proposal.

Any proposal that does not adhere to the requirements listed in this section “Form of Proposal” may be deemed non-responsive and rejected on that basis, by the Evaluation Committee. Offerors shall contact the Purchasing Department to clarify any questions concerning the format to submission.

**5. Online:**

a. <https://vrapp.vendorregistry.com/Bids/View/BidsList?BuyerId=0de3f86e-1c09-4300-a7b6-ddff103ef959>

**6. Required Information/Forms**

a. Proposal Form

b. Campaign Disclosure Form, Related Party Disclosure, Debarment, Conflict of Interest

c. Addendums (if applicable)

d. Copy of Resident Business Preference Certificate & Certification Form (if applicable)

e. Copy of Resident Veteran Business Preference Certificate & Certification Form (if applicable)

f. Response to Proposal Requirements

g. Three (3) reference contacts

**G. CRITERIA FOR AWARD**

1. Proposals for Consideration for this project must contain evidence of the Offeror’s experience and abilities in the specified area and other disciplines directly related to the proposed services. Other information, required by the City, to be submitted in response to this RFP is included elsewhere in this solicitation.
2. An evaluation committee will review and evaluate all replies and detailed proposals, may conduct oral presentations or a combination of both, unless otherwise indicated in this RFP. The evaluation committee will have only the response to this solicitation to review for selection of finalists and therefore, it is important that Offerors emphasize specific information considered pertinent to the services to be provided.

**H. EVALUATION CRITERIA:**

Proposals must address each of the following criteria. Each proposal may be awarded percentage points up to the amount listed in brackets below. The assigned points will be considered in order to select the most qualified Institution(s) to serve the City’s needs. The City reserves the right to contract with multiple Institutions if we determine it is in our best interest to split the contract for services.

<b>Net Overall Cost Comprising Four Components:</b>	<b>[ 20 ]</b>
➤ Treasury Management Service Fees	
➤ Investment/Sweep Yield	
➤ Availability Schedule Applied to Deposited Items	
<b>Live Support Services – Hours of Operation</b>	<b>[ 20 ]</b>
<b>Ability of Institution Representatives to Serve the needs of City</b>	<b>[ 20 ]</b>
<b>Availability and Commitment to Implementing New Technologies</b>	<b>[ 20 ]</b>
<b>Financial Strength</b>	<b>[ 20 ]</b>
<b>TOTAL POINTS</b>	<b><u>100</u></b>

**I. GENERAL CONDITIONS**

1. Until the final award, by the City of Portales Council, the City reserves the right to reject any or all submittals, to waive technicalities, to re-advertise or to otherwise proceed when the best interest of the City will be realized. This procurement is governed by the New Mexico State Statutes 1978, Chapter 13, Public Purchases and Property. (§13-1-131, NMSA, 1978).
2. If there is any clarification, problem, ambiguity, or question regarding this RFP, contact the City of Portales Purchasing Department at 575-825-1061 immediately. Clarifications and ambiguities will not be considered after the proposal opening. Answers provided regarding the RFP package **MUST** be answered by the Chief Procurement Officer or designee. Questions answered by any other person or City official shall be considered completely non-applicable to the legal provisions of this Proposal, except as specifically authorized by the Chief Procurement Officer.
3. Prior to, and after submittal of proposal, prospective Offerors shall not make contact with any official or staff member regarding this RFP, other than contact to obtain a copy of this RFP. The **ONLY** approved contact shall be with the below referenced Purchasing and City staff. Offerors making contact with any other City official, evaluation committee member, or City

employees regarding this RFP may be disqualified. Questions and/or suggestions concerning this RFP may be directed to:

Jo McVey – Interim Chief Procurement Officer 575-825-1061 (RFP Related)

4. All information contained in the proposal response must be legible. Any and all corrections and/or erasures must be initialed. Changes will not be permitted after the deadline for receipt. Proposals must be signed in ink by an authorized representative of the Offeror and the required information must be provided. The contents of the proposal, submitted by the successful Offeror of the RFP, will become public record upon award, and may become a part of any contract approved as a result of this solicitation. An Offeror may submit an amended proposal before the due date and time. Any amended proposal must be complete, as it will be substituted for the earlier proposal(s). Any amended proposal must be clearly identified as such in the cover letter.
5. A public log will be kept of the names of all Offerors who submit proposals. Pursuant to Section 13-1-116 NMSA 1978 of the Procurement Code, the contents of any proposal shall not be disclosed to competing Offerors during the negotiation process. The contents of the proposal, submitted by the successful Offeror, will become public record upon award and may become a part of any contract approved as a result of this RFP. Proposals are subject to provisions of State Law relating to inspection of public records. Proposals will be kept confidential until a list of recommended Offerors is approved by the City Council. Following that approval, all documents pertaining to this submittal will be open for public inspection, except material(s) previously designated by the Offeror as proprietary or confidential. The City will not disclose or make public any pages of a proposal on which the Offeror has stamped or imprinted the words “proprietary” or “confidential.” Confidential data is normally restricted to confidential financial information concerning the Offeror’s organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, §57-3A-1 to §57-3A-7 NMSA, 1978. It is not acceptable, under the NM State Procurement Code, to request that either the entire proposal or the proposed cost of services be kept confidential. Such materials must be readily separable from the submittal in order to facilitate eventual public inspection of the non-confidential portion. If a request is received for disclosure of data, for which an Offeror has made a written request for confidentiality, the Purchasing Department shall examine the Offeror’s submittal and make a written determination specifying which portions of the proposal should be disclosed in accordance with applicable New Mexico law. Unless the Offeror takes action to prevent the disclosure, the proposal may be so disclosed. The proposal shall be open to public inspection, subject to any continuing prohibition on the disclosure of confidential data.
6. **Addendum:** A written, or graphic instrument issued prior to the opening of Proposals which clarifies, corrects, or changes the RFP. Plural: addenda. Addenda will be mailed by certified mail with return receipt requested, by facsimile, emailed, or hand delivered to all who are known by the Contracting Agency to have received a complete set of RFPs. Copies of addenda will be made available for inspection wherever RFP is on file for that purpose. No Addenda will be issued later than five (5) days prior to the date for receipt of Proposals, except an Addendum withdrawing the RFP or one which includes postponement of the date for receipt of Proposals. Verbal responses and/or representation are not acceptable.
7. **Payment Terms:** For all purchases made by Purchase Order, payment shall be made net 30 days from invoice date, after receipt of goods/services, unless otherwise specified on bid form or as otherwise agreed by both parties. Payments shall be paid to Offeror on the condition that the Offeror has accomplished the services to the satisfaction of the City. Any taxes

(specifically including the New Mexico Gross Receipts Tax), licenses, or other governmental fees and charges are the responsibility of the Offeror. Invoices shall provide detailed billing for services provided no later than ninety (90) calendar days after the date of services have been rendered. Invoices received after this time has elapsed may be considered null and void. All invoices shall be submitted directly to the City of Portales, Accounts Payable Department at 1028 Community Way, Portales, NM 88130.

8. **Evaluation Committee:** Proposals will be reviewed by an Evaluation Committee. Offerors who are deemed, on the basis of the selection criteria, fully qualified and best suited among those submitting proposals may be requested to participate in discussions or interviews regarding their proposals. Discussion may cover cost, methods of delivery, and other relevant factors. Offerors will be ranked on the basis of selection criteria and/or information presented during discussions/interview(s).
  - a. Best and Final Offers from Finalists. Finalists may be asked to submit revisions to their proposals for the purpose of obtaining best and final offers. Best and final offers may be clarified, in writing, at a finalist's oral presentation, if any, and points may be recalculated accordingly.
  - b. A recommendation will be taken before the City of Portales Council for award. Once awarded, negotiations will be conducted with the successful Offeror. If a satisfactory agreement can be reached, the contract will be awarded to the Offeror. Otherwise, negotiations will either be conducted with each subsequent Offeror until a satisfactory contract can be established, or until the City determines the cancellation of the process is in the best interest of the City. Failure to submit requested information or documentation, or the submission of incorrect information or documentation may result in disqualification of the proposal.
9. **Indemnification:** The successful Offeror expressly agrees to defend, indemnify and hold harmless the City and its agents and employees from and against any and all claims, suits, demands, actions, or proceedings of every nature and description brought because of any injury or damage received or sustained by any person, person(s), or property arising out of the provision of goods or services pursuant to the RFP, or by reason of any act or omission, neglect or misconduct of the Offeror, the agents, employees or subcontractors of the Offeror or the agents or employees of any subcontractor of the Offeror. The indemnity required herein shall not be limited by reason of the specification of any particular insurance coverage.
10. **Method of Award:** Award will be made to the Offeror whose proposal is determined to be most professionally and technically complete, as well as the best value and best interest to the City. Notice is hereby given that the City of Portales Council reserves the right to reject any and all proposals received.
10. **Multiple Source Award:** means an award of an indefinite quantity contract for one or more similar services, items of tangible personal property or construction to more than one Offeror. The City of Portales reserves the right to make multiple awards under this RFP. (§13-1-150 through 13-1-154.1, NMSA, 1978).
11. **Protest Deadline:** Any protest by an Offeror must be in conformance with §13-1-172 NMSA, 1978 and applicable procurement regulations. The fifteen (15) day protest period shall begin on the day following the contract award and will end at 2:00 p.m. on the 15<sup>th</sup> day. A protest must be written and must include the name and address of the protestor, identify the RFP by name and number, contain a statement of grounds for protest, include appropriate supporting exhibits,

and specify the ruling requested. The protest must be addressed and delivered to the Chief Procurement Officer. Protests received after the statutory deadline will not be accepted.

12. **Commence Work:** The successful Offeror shall commence work only after the transmittal of a fully executed contract and/or after receiving other written notification to proceed from the City. The successful Offeror will perform all services indicated in the proposal in compliance with the negotiated contract. The successful Offeror must, in performance of work on this contract, agree to fully comply with all applicable federal, state, and local laws, rules and regulations.
13. **Modifications and Withdrawal of Proposal(s):** A proposal containing a mistake, discovered before the proposal opening, may be modified, or withdrawn by an Offeror. Modifications must be delivered in written form in a sealed envelope prior to the due date of the proposal. Withdrawals may be faxed to the City of Portales Purchasing Department prior to the due date of the proposal. After the due date of the proposal, no modifications or withdrawal of proposal(s) will be permitted.
14. **Proposals Binding 90 days:** Unless otherwise specified, all proposals submitted shall be binding for ninety (90) calendar days following the due date of the RFP, unless the Offeror(s), upon request of the Chief Procurement Officer, agrees to an extension.
15. **Equivalency:** The City hereby reserves the right to approve as equivalent, or to reject as not being equivalent, any item the Offeror proposes to furnish which contains variations from specification requirements but may comply substantially therewith. Such Decisions are strictly at the discretion of the City. **Offerors shall list, on a separate sheet of paper, any variations from or exceptions to the conditions and specifications of this RFP. This sheet shall be labeled "Exception(s) to Specifications" and shall be included with proposal.**
16. **Kickback Statement:** The State of New Mexico's Procurement Code, Sections 13-1-21 through 13-1-199 NMSA 1978, imposes civil and criminal penalties for this violation. In addition, New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities, and kickbacks. As required by Section 13-1-191, NMSA, 1978, it is a third-degree felony under New Mexico law to commit the offense of bribery of a public officer or public employee (Section 30-24-1, NMSA, 1978); it is a third-degree felony to commit the offense of demanding or receiving a bribe by a public officer or public employee (Section 30-24-2, NMSA, 1978); it is a fourth-degree felony to commit the offense of soliciting or receiving illegal kickbacks (Section 30-41-1, NMSA, 1978); it is a fourth-degree felony to commit the offense of offering or paying illegal kickbacks (Section 30-41-2), NMSA, 1978).
17. **Non-discrimination:** Vendors, during the performance of this contract, will not discriminate against any employee or applicant for employment because of race, color, religion, creed, political ideas, sex, national origin, age, marital status or physical or mental disability except where such is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. By signing and submitting a proposal, Vendor agrees to comply with this paragraph.
18. **Assignment:** Responding Offerors are prohibited from assigning, transferring, conveying, subletting, or otherwise disposing of this proposal or any resulting agreement, its rights, title, or interest therein, or its power to execute such agreement to any other person, company, or corporation without the previous written approval of the City of Portales.
19. **Independent Contractors:** The consultant and his 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 the employees of the Contracting Agency.

20. **Subcontractors:** The Offeror shall not subcontract any portion of the services to be performed under this RFP without written approval from the City of Portales.
21. **Debarred or Suspended Contractors:** A business (contractor, subcontractor, or supplier) that has either been debarred or suspended pursuant to the requirements of §13-1-177 through §13-1-180, and §13-4-11 through §13-4-17 NMSA 1978 as amended, shall not be permitted to do business with 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.
22. **Funding:** Award of the contract is contingent upon the budgeting and appropriation of funds for continuation of the professional services contemplated by this RFP.
23. **Offeror:** To whom award of an Agreement is under consideration shall submit, upon request, information, and data to prove that their financial resources, production or service facilities, personnel, and service reputation and experience are adequate to make satisfactory delivery of the services described in the RFP (§13-1-82 NMSA 1978).
24. **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).
25. **Public Information:** 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 overall evaluation scores for all proposals shall become public information (§13-1-120 NMSA 1978).
26. **Technical Irregularities:** The City of Portales shall have the right to waive technical irregularities in the form of the Proposal of the Offeror which do not alter the quality or quantity of the services (§13-1-132 NMSA 1978).
27. **Responsible Offeror:** 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 Chief Procurement Officer. 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 which have not been selected shall be so notified, in writing, within twenty-one (21) days after an award is made (§13-1-120 NMSA 1978).
28. **Licenses:** Offeror(s) will maintain in current status all Federal, State and Local Licenses and permits required.
29. **Offeror(s) shall have no claim against the City:** For failure to obtain information made available by the City which the Offeror(s) could have remedied through the exercise of due diligence.
30. **Signing of proposals and authorization to negotiate:** The original proposal shall be executed by a duly authorized officer of the Offeror. The Offeror must also identify those

persons authorized to negotiate on its behalf, with the city in connection with this RFP. In addition, the Offeror shall provide evidence, in the form of a duly adopted resolution of its governing body, of the capacity of the person signing the proposal to bind the Offeror should its proposal be accepted by the City.

**31. 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 RFP dealing with federal, state, and local requirements which are a part of these RFP.
- 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.

**32. Rejection or Cancellation of Proposals:** This RFP 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, therefore, shall be made part of the project file (§13-1-131 NMSA 1978).

**33. Campaign Disclosure Form:** Pursuant to Chapter 81, Laws of 2006, any prospective contractor (engineer or Contractor) seeking to enter into a contract with any state agency or local public body must file a Campaign Contribution Disclosure Form with that state agency or local public body. This form must be filed by the prospective contractor with their response to the RFP. 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 (2) years prior to the date on which the contractor submits a proposal.

**34. Business License:** Successful Offeror(s) may be required to obtain a City of Portales business license within ten (10) days of successful RFP Award.

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

**36. Insurance:** Offeror may be required to provide the City a Certificate of Insurance reflecting the agreed upon minimum amount.

**37. Resident Business or Resident Veteran Business:** Points will be awarded based on Offeror's ability to provide a copy of a current Resident Business Certificate or Resident Veteran Business Certificate.

This is a notice to all New Mexico resident businesses, New Mexico resident Veteran businesses and New Mexico contractors:

- a. All resident businesses, resident veteran businesses and contractors must
- b. Apply for a current certification issued by the Tax and Revenue Department.

- c.** Applications for in-state preference will NOT be processed through the State Purchasing Division. All resident businesses, resident veteran businesses and contractors must obtain a preference number and certificate with the New Mexico Department of Taxation & Revenue.
- d.** Your preference will only apply if a copy of a Certificate, issued on or after July 1, 2016, accompanies your bid or proposal.
- e.** Certificates must be provided with each and every bid and proposal submission individually, even if the Certificate was previously provided to the City of Portales with a prior procurement. Certificates missing from procurement submissions will not benefit from the preference.
- f.** For additional information and application forms:  
Call Tax & Revenue Department at: (505) 827-0926, (505) 827-0949, (505) 827-0948  
or Web link to: <http://www.tax.newmexico.gov/Businesses/in-state-veteran-preference-certification.aspx>

**PREFERENCE CERTIFICATION**

**Reminder, a copy of your Preference Certificate (issued after July 1, 2016, by the Tax and Revenue Department) must be submitted with the proposal in order to ensure adequate consideration and application of NMSA 1978, § 13-1-21 (as amended).**

\_\_\_\_\_ (Name of Contractor) hereby certifies the following in regard to application of the resident veteran preference to this formal request for proposals process:

“In conjunction with this procurement and the requirement of this business’ application for a Resident Veteran Business Preference/Resident Veteran Contractor Preference under Sections 13-1-21 or 13-1-22 NMSA 1978, when awarded a contract which was on the basis of having such veteran’s preference, I agree to report to the State Purchasing Division of the General Services Department the awarded amount involved. I will indicate in the report the award amount as a purchase from a public body or as a public works contract from a public body as the case may be.”

“I declare under penalty of perjury that this statement is true to the best of my knowledge.”

“I understand that giving false or misleading statements about material fact regarding this matter constitutes a crime.”

\_\_\_\_\_  
(Signature of Business Representative) \*

\_\_\_\_\_  
(Date)

**\*Must be an authorized signatory for the Business.**

***Note: Neither the Resident Business Preference nor the Resident Veteran Business Preference can be awarded for any project/contract if it includes federal funds.***

**PROPOSAL FORM**  
**CAMPAIGN CONTRIBUTION DISCLOSURE FORM**

Pursuant to NMSA 1978, § 13-1-191.1 (2018), any person 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 shall void an executed contract or cancel a solicitation or proposed award for a proposed contract 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.

***THIS FORM MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT HE/SHE/IT, HIS/HER/ITS FAMILY MEMBER, OR 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.

**NAME(S) OF APPLICABLE LOCAL PUBLIC OFFICIAL(S)** if any:

Ronald L. Jackson (Mayor), Michael G. Miller (Mayor Pro-Tem/Councilor), Jake J. Lopez (Councilor), Veronica A. Cordova (Councilor), Oscar H. Robinson (Councilor), Danial W. Boan (Councilor), Chadrick H. Heflin (Councilor), Dianne Y. Parker (Councilor), Michael James “Jim” Lucero, (Councilor), Barbara George (Municipal Judge).

**DISCLOSURE OF CONTRIBUTIONS:**

Contribution Made By: \_\_\_\_\_

Relation to Prospective Contractor: \_\_\_\_\_

Name of Applicable Public Official: \_\_\_\_\_

Date Contribution(s) Made: \_\_\_\_\_

Amount(s) of Contribution(s) \_\_\_\_\_

Nature of Contribution(s) \_\_\_\_\_

Purpose of Contribution(s) \_\_\_\_\_

*(Attach extra pages if necessary)*

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Title (Position)**

\_\_\_\_\_  
**Date**

—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**

\_\_\_\_\_  
**Title (Position)**

\_\_\_\_\_  
**Date**

**PROPOSAL FORM  
RELATED PARTY DISCLOSURE**

1. Are you indebted to or have a receivable from any member of the Council of the City of Portales; elected City Officials, administration officials, department heads or key management supervisors with the City of Portales?

YES \_\_\_\_\_ NO \_\_\_\_\_

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2. Are you, or any officer of your company, related to any member of the Council of the City of Portales, elected City officials, administrative officials, department heads, key management supervisors of the City of Portales and have you had any of the following transactions since to which City of Portales was, is to be, a party?

	YES	NO
Sales, Purchase, or leasing property?	_____	_____
Receiving, furnishing of goods, services or facilities?	_____	_____
Commissions or royalty payments?	_____	_____

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3. Does any member of the Council of the City of Portales, elected City officials, Administrative officials, department heads, key management supervisors with the City of Portales, have any financial interest in your company, whether a sole proprietorship, partnership, or corporation of any kind that currently conducts business with the City of Portales?

YES \_\_\_\_\_ NO \_\_\_\_\_

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4. At any time during 2021, did you, your company, or any officer of your company have an interest in or signature authority over a bank account for the benefit of a member of the Council of the City of Portales, elected City officials, administrative officials, department heads, and key management supervisors with the City of Portales?

YES \_\_\_\_\_ NO \_\_\_\_\_

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5. Are you negotiating to employ, or do you currently employ any employee, officer or family member of an employee or officer of the City of Portales?

YES \_\_\_\_\_ NO \_\_\_\_\_

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The answers to the foregoing questions are correctly stated to the best of my knowledge and belief.

Signature of Owner or Company President: \_\_\_\_\_ Date: \_\_\_\_\_

(Print Name and Title) \_\_\_\_\_

**PROPOSAL FORM  
DEBARMENT CERTIFICATION**

**Certification Regarding  
Debarment, Suspension, and Other Responsibility Matters**

The prospective participant certifies to the best of its knowledge and belief that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three year period preceding this proposal been convicted of all had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State Antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
4. Have not within a three-year period preceding this application/proposal had one or more public transaction (Federal, State, or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of award. Under 18USC Sec. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

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**Typed Name & Title of Authorized Representative**

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**Date**

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**Signature of Authorized Representative**



**PROPOSAL FORM**  
**CONFLICT OF INTEREST DISCLOSURE STATEMENT**

Provide an explanation for Yes answers in the space provided.

1. Are you or is any member of your immediate family an employee of the City of Portales or elected or appointed to a committee, board, subcommittee, or council under the direction of the City of Portales?

YES \_\_\_\_\_ NO \_\_\_\_\_

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2. Do you or any member of your immediate family have a direct or indirect interest in a business that supplies property, goods, or services to the City of Portales?

YES \_\_\_\_\_ NO \_\_\_\_\_

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3. If you answered "Yes" to questions 1 and/or 2 above, in the past 12 months have you made a decision on behalf of the City of Portales relating to any business named in the responses to those questions?

YES \_\_\_\_\_ NO \_\_\_\_\_

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4. Do you have any other business or personal relationships, not covered in your answers to Questions 1 through 4 above that could appear to be a conflict of interest?

YES \_\_\_\_\_ NO \_\_\_\_\_

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Signature: \_\_\_\_\_ Date: \_\_\_\_\_

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

Address: \_\_\_\_\_ Phone: \_\_\_\_\_

**DRAFT SERVICES CONTRACT  
CITY OF PORTALES  
CONTRACT FOR SERVICES**

**THIS CONTRACT** is made and entered into by and between the City of Portales, a New Mexico Municipal Corporation (City) whose principal address is 1028 Community Way, Portales, New Mexico, and \_\_\_\_\_ whose principal address is \_\_\_\_\_, hereinafter referred to as “Contractor” and collectively referred to as “the Parties.”

**WHEREAS**, the City prepared RFP# 2023-10-25 Banking services which was issued 10/29/2023; and,

**WHEREAS**, Contractor has submitted its response to the City’s RFP and after review, Contractor’s proposal was accepted as the best proposal City with regard to providing \_\_\_\_\_ for Financial Banking Services and on behalf of the City, as needed, pursuant to RFP #2023-10-25; and,

**WHEREAS**, the City and Contractor have agreed to the terms and conditions set forth herein regarding Contractor providing services as may be requested by the City and as set forth and outlined in said RFP #2023-10-25.

In consideration of the terms and conditions set forth herein, as evidenced by the signatures hereto, the Parties stipulate and agree as follows:

**1) SCOPE OF WORK**

Services to be provided by Contractor to City are set forth in attached hereto and incorporated herein as though set forth in writing. All work to be performed by Contractor under this Contract shall meet the requirements, terms and specifications set forth in City’s RFP #2023-10-25.

**2) TERM**

Contract terms: the City intends to contract with an Offeror to provide Banking Services for the City of Portales. The contract will be a multi-year contract. Upon written agreement of the Parties, this Contract can be renewed for an additional four (4), one (1) year periods on an annual basis at the same price, terms, and conditions, not to exceed a total of eight (8) years.

**3) APPROPRIATIONS**

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the City of Portales for the performance of this Agreement. If sufficient appropriations and authorization are not made by the City of Portales, this Agreement shall terminate upon written notice being given by the City to the Contractor.

The Contract shall terminate upon written notice being given by the City to Contractor. The City decision as to whether sufficient distributions have been made shall be accepted by Contractor and shall be final.

4) **STATUS OF CONTRACTOR**

Contractor is, and at all times throughout the term of this Contract, be acting as an independent contractor, and not an agent, employee, or representative of and, Contractor shall be responsible for the management of its business affairs. In the performance of the work under this Contract, Contractor will at all times be acting and performing as an independent contractor, as that term is understood for federal and state law purposes, and not as an employee of the City. Without limitation upon the foregoing, Contractor shall not accrue sick leave, jury duty pays, retirement, insurance, bonding, welfare benefits, or any other benefits, which may or may not be afforded employees of the City. Contractor will not be treated as an employee for purposes of: Workers' Compensation benefits; the Federal Unemployment Tax Act; Social Security; other payroll taxes, federal or any state income tax withholding; or the employee benefit provisions described in the Internal Revenue Code of 1986, as amended. Neither City, nor its agents or representatives, shall have the right to control or direct the manner, details, or means by which Contractor accomplishes and performs its services. Nevertheless, Contractor shall be bound to fulfill the duties and responsibilities contained in the Contract.

Contractor represents that it has, or will secure, at its own expense, all personnel require in performing the services under this Contract. Such personnel shall not be employees of, nor have any contractual relationship with City. Contractor, consistent with its status as an independent contractor, further agrees that its personnel will not hold themselves out as, nor claim to be officers or employees of by reason of this Contract.

To the extent that Contractor employs any employees, Contractor shall be solely responsible for providing its own form of insurance for its employees and in no event, shall Contractor's employees be covered under any policy of City.

Contractor's retention hereunder is not exclusive. Subject to the terms and provisions of this Contract: (i) Contractor is able, during the Term hereof, to perform services for other parties; and (ii) Contractor may perform for its own account other professional services outside the scope of this Contract.

5) **ASSIGNMENT**

Contractor shall not assign or transfer any interest in this Contract or assign any claims for money due or to become due under this Contract without prior written approval of the City.

6) **SUBCONTRACTING**

Contractor shall not subcontract any portion of the services to be performed under this Contract without prior written approval of the City.

7) **RECORDS OF AUDIT**

Contractor shall maintain, for seven (7) years, detailed time records which indicate the date, time and nature of the services rendered. These records shall be subject to inspection by the City, the Department of Finance, and the State Auditor. The City shall have the right to audit billings both before and after payment; payment under this Contract shall not foreclose the right of the City to recover excessive and/or payments.

8) **TERMINATION**

This Agreement may be terminated by either of the parties hereto upon written notice delivered to the party at least thirty (30) days prior to the intended date termination. By such termination, neither party may nullify obligations already incurred for performance or failure to perform prior to the date of termination.

**THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE OTHER LEGAL RIGHTS AND REMEDIES AFFORDED THE CITY IN SUCH CIRCUMSTANCES AS CONTRACTOR'S DEFAULT/BREACH OF CONTRACT.**

9) **RELEASE**

Contractor's acceptance of final payment of the amount due under this Contract shall operate as a release of the City, its elected officials, officers, and employees of the City from all liabilities, claims and obligations, whatsoever arising from or under this Contract. Contractor agrees not to purport to bind the City to any obligation not assumed herein by the City unless Contractor has express written authority to do so and then only within the strict limits of that authority.

10) **CONFIDENTIALITY**

Any confidential information provided or developed by the Contract in the performance of this Contract shall be kept confidential and shall not be made available to any individual or organization by Contractor without the prior written approval of the City.

11) **PRODUCT OF SERVICE-COPYRIGHT**

All materials developed or acquired by Contractor under this Contract shall become the property of the City and shall be delivered to the City no later than the termination date of this Contract. Nothing produced, in whole or in part, by Contractor under this Contract shall be subject to an application for copyright or other claim of ownership by or on behalf of Contractor.

12) **CONFLICT OF INTEREST**

Contractor warrants that it presently has no interest and will not acquire an interest direct or indirect which would conflict in any manner or degree with the performance or services required under the Contract. Contractor represents to City that the services to be provided to City pursuant to this Agreement are not in violation of or contrary to the terms and the provisions of the New Mexico Governmental Conduct Act, Sections 10-16-1 through 10-16-18, NMSA 2008. Contractor also agrees that in the performance of this contract shall comply with those terms and conditions set forth in said Governmental Conduct Act that apply or may apply to those services provided by Contractor to City pursuant to this Agreement.

13) **NO JOINT VENTURE OR PARTNERSHIP**

Nothing contained in this Contract shall create any partnership, association, joint venture, fiduciary or agency relationship between Contractor and City. Except as otherwise specifically set forth herein, neither Contractor nor City shall be authorized or empowered to make and representation or commitment or to perform any act which shall be binding on the other unless expressly authorized or empowered in writing.

14) **AMENDMENT**

This Contract shall not be altered, changed, or amended except by instrument in writing executed by the Parties hereto.

15) **MERGER**

This Contract incorporates all the agreements, covenants and understandings between the Parties hereto concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into this written Contract. No prior agreement or understanding, oral or otherwise, of the Parties, or their agents shall be valid or enforceable unless embodied in this Contract.

16) **PROCUREMENT CODE**

The Procurement Code, Sections §13-1-21 through §13-1-199 NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statute §13-1-191 impose felony penalties for illegal bribes, gratuities, and kickbacks.

17) **NOTICE**

All Notice Under this Agreement shall be sufficient if sent by United States First Class Mail, postage prepaid to:

TO CITY: City of Portales  
1028 W Community Way  
Portales, NM 88130  
Attn: Sarah Austin, City Manager  
Phone: [\(575\) 356-6662](tel:5753566662)  
Fax: [\(575\) 356-3158](tel:5753563158)  
Email: [saustin@portalesnm.gov](mailto:saustin@portalesnm.gov)

TO CONTRACTOR: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

18) **DISCLAIMER**

City, by entering into this contract, shall not assume or otherwise be held liable for any act or omission of Contractor or any of its agents, employees and/or representatives in their performance or fulfillment of the terms and obligations of this contract.

19) **INDEMNIFY AND LIMITATION**

Contractor shall indemnify, defend, and hold harmless City from and against any and all claims, suits, actions, judgments, demands, losses, costs, expenses, damages, and liability caused solely by, resulting solely from, or arising solely out of the negligent, intentional and/or criminal acts, errors, or omissions of Contractor, its officers, employees, agents, or representatives in the performance of services under this Contract.

20) **BREACH**

In the event Contractor breaches any obligation contained in this Contract, prior to instituting any action or dispute resolution procedure, City shall give Contractor written notice of such breach. In the event Contractor fails to remedy the breach within five (5) working days of receiving such written notice, City, at its sole discretion, without any obligation to do so and in addition to other remedies available under applicable law, may remedy Contractor's breach and recover any and all costs and expenses in so doing from Contractor.

21) **CONFLICT OF INTEREST; GOVERNMENTAL CONDUCT ACT**

Contractor warrants that it presently 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 contract. Contractor certifies that the requirements of the Governmental Conduct Act, Section 10-16-1 through 10-16-18, NMSA1978 regarding contracting with a public officer or state employee, or former state employee, have been followed.

22) **PENALTIES FOR VIOLATION UNDER LAW**

In addition to the Governmental Conduct Act, the Procurement Code, Sections §13-1-28 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.

24) **APPLICABLE LAW**

Contractor, by submitting its response to the City and entering into this contact, consents and acknowledges that this contract and the rights and obligations of the parties shall be governed by and construed by the laws of the State of New Mexico applicable to agreements between New Mexico parties made and performed in that state, without regard to conflicts of law principles. Contractor also stipulates and agrees that by submitting its response and doing business in Portales, New Mexico, venue for any legal proceeding shall be in the Ninth Judicial District Court.

Contractor shall abide and be governed by all applicable state law, City ordinances and laws regarding Contractor's services or any work done pursuant to this Contract. Contractor is accountable for ensuring compliance with Sections 11.1.2; 11.1.2.9 B (3), B (6) and C (1), NMAC 2016 as amended.

25) **DISPUTE RESOLUTION**

In the event that a dispute arises between City and Contractor under this Contract, or as a result of breach of this Contract, the parties agree to act in good faith to attempt to resolve the dispute.

In the event of termination, Contractor shall be compensated for all services performed and costs incurred up to the effective date of termination for which Contractor has not been previously compensated.

Upon receipt of notice of termination from City, Contractor shall discontinue the services unless otherwise directed and upon final payment from City deliver to the City all data, reports, summaries, and such other information and materials as may have been accumulated by Contractor in the performance of this Contract.

26) **INSURANCE**

Contractor agrees to obtain and maintain in full force throughout the duration of this Contract, a general liability policy of insurance within a minimum coverage of \$1,000,000 per occurrence, which specifically covers, and applies to the type and nature of work Contractor is performing for City under this Contract. The purpose of this insurance coverage is to hold harmless and indemnify City, as required in Paragraph 20 of this Contract, from any and all claims, causes of action, demands, or otherwise as may be asserted, made, alleged, or filed against City or any of its employees, agents, representatives, or properties. Contractor shall obtain said insurance and provide City with proof of insurance as may be required at any/all times during the duration of this Contract and any extension thereof.

27) **EQUAL OPPORTUNITY COMPLIANCE**

Contractor agrees to abide by all federal and state laws, rules, regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, Contractor agrees to assure that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Contract. If Contractor is found not to be in compliance with these requirements during the life of the Contract, Contractor agrees to take appropriate steps to correct these deficiencies.

28) **FORCE MAJEURE**

Neither Contractor nor the parties 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 the contract “force majeure” means acts of God; acts of the public enemy; public health/safety emergency acts of both parties, 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.

1. **INDEMNIFICATION**

Contractor agrees to accept responsibility for loss or damage to any person(s) or property, to defend, indemnify, hold harmless or release the parties, its officials and employees from actions, claims, damages, disabilities, or the costs of litigation that are asserted by any person or entity to the extent arising out of the negligent acts of the parties or its employees. The indemnity required herein shall not be limited by reason of the specifications of any particular insurance coverage.

30) **OSHA REQUIREMENTS**

The parties require that all Contractors comply with OSHA (Occupational Safety and Health Administration) standards in the performance of their work under this contract.

31) **GENERAL TERMS AND CONDITIONS.**

Commence Work: The successful Offeror shall commence work only after the transmittal of a fully executed contract and/or after receiving CPO approved purchase order to proceed from

the parties. The successful offeror will perform all services indicated in the proposal in compliance with the negotiated contract. The successful offeror must, in performance of work on this contract, agree to fully comply with all applicable federal, state, and local laws, rules and regulations.

**IN WITNESS WHEREOF**, the Parties have executed this Contract as of this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

**CITY OF PORTALES**

**CONTRACTOR**

\_\_\_\_\_  
City of Portales Representative

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

(SEAL)

ATTEST

\_\_\_\_\_  
Danielle Swopes, Interim City Clerk