



Mid-Region Council of Governments



REQUEST FOR PROPOSALS

For

On-Call Legal Services

RFP Issued: January 28, 2021
MRCOG Procurement No. 2021-01

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REQUEST FOR PROPOSALS

For

On-Call Legal Services

For

Mid-Region Council of Governments (MRCOG)
Rio Metro Regional Transit District (RMRTD)

MRCOG Procurement No. 2021-01

RFP Issue Date: January 28, 2021

Pre-proposal Conference: None

Proposal Due Time/Date: February 25, 2021, 2:00 p.m. (MDT)

Mid-Region Council of Governments
809 Copper Ave., NE, Albuquerque, New Mexico 87102
Phone: (505) 247-1750, Fax: (505) 247-1753
www.mrcog-nm.gov

1.0 INTRODUCTION

1.1 Purpose of this Request for Proposals

The Mid-Region Council of Governments (MRCOG), invites individuals and firms to submit proposals for a Contract for the work indicated in the title page of this solicitation in accordance with specifications contained in this Request for Proposals (RFP).

The purpose of this solicitation is to select multiple individual(s)/firm(s) that will assist the MRCOG, its employees, Board of Directors, and governing board, the Rio Metro Regional Transit District ("RMRTD") and its employees, Board of Directors and governing board in providing the necessary expertise and resources to provide legal services to support the Board of Directors of the MRCOG and RMRTD. For the purposes of this proposal, the term "MRCOG" shall mean MRCOG, RMRTD and the governing boards for both entities, their officers, directors and employees. MRCOG desires to secure legal expertise on an "on call" basis for assistance with specific tasks delineated in the Scope of Work. Successful Offeror(s) will be asked to research specific aspects for the MRCOG and to issue findings on an as needed basis. Licensure by the State Bar of New Mexico shall be a requirement of this solicitation.

Contingent upon MRCOG's satisfaction with the performance of the selected Contractor, and acceptance of project deliverables under a Contract negotiated for services described in this RFP, MRCOG may consider extending or renewing the Contract at one-year intervals. Prices for subsequent years, if any, will be subject to negotiations prior to the release of a new annual contract. The Contract, including any extensions or renewals, may not exceed four (4) years in total.

This project may be funded in whole or in part with federal funds. As such, required certifications are included in this solicitation and applicable federal laws, regulations and guidelines shall be adhered to by the Contractor as part of the Contract.

1.2 Scope of Work

The Contractor shall provide the following legal representation and other legal services (hereinafter the "Services") in conjunction and association with the MRCOG Executive Director or his designee. Offeror(s) may submit proposals on individual areas of law listed below or multiple areas. Contract award may be made to multiple Offerors.

The Contractor will provide professional expertise to assist the MRCOG with legal representation related to the following list of services, which may arise on a day-to-day basis in the operation of MRCOG.

Services to include but not be limited to:

- Administrative Law
- Bonding
- Contract law
- Licensing
- Employment, Labor & Human Resources
- General Litigation
- Insurance
- Intellectual Property
- Purchasing and Procurement
- Railroad law
- Real Estate and Property
- Taxation: Federal, state and local
- Workers Compensation

Work under the contract shall be performed on a task order basis. Upon request of MRCOG, the Contractor shall provide a detailed scope of work including detailed estimate of total cost and gross receipts tax for a task ordered under this Contract. After approval of the scope of work submitted, MRCOG shall issue a notice to proceed to the Contractor. Any change to the Scope of Work or cost under a task order must be approved by MRCOG in writing prior to beginning the additional work or task.

1.3 Background

The Mid-Region Council of Governments (MRCOG) is an association of local governments in central New Mexico. Members include county, municipal and special purpose units of government in the Counties of Bernalillo, Sandoval, Torrance and Valencia. The MRCOG acts as the administrative entity for:

The Rio Metro Regional Transit District (RMRTD), which was created by the NM Regional Transit District Act [Chapter 73, Article 25, NMSA 1978]. The RMRTD manages and operates transit services throughout its district in central New Mexico.

1.4 Procurement Officer

MRCOG has designated a Procurement Officer who is responsible for the conduct of this procurement. The Procurement Officer is:

Kim Monjaras
Procurement Officer
809 Copper Ave., N.W.
Albuquerque, NM 87102
Phone : 505-247-1750, Fax : 505-247-1753
E-mail : kmonjaras@mrcog-nm.gov

Any inquiries or requests regarding this procurement shall be submitted to the Procurement Officer in writing. Offerors may contact ONLY the Procurement Officer regarding the procurement. Other employees do not have the authority to respond on behalf of this RFP.

1.5 Definitions

This section contains definitions and abbreviations that are used throughout this RFP.

"Close of business" means 5:00 p.m. MST.

"Contract" means a written agreement for the procurement of items of tangible personal property or services.

"Contractor" means a successful Offeror who enters into a binding Contract.

"Determination" means the written documentation of a decision by the Procurement Officer or Procurement Officer including findings of fact supporting a decision. A determination becomes part of the procurement file.

"Desirable" The terms "may", "can", "should", "preferably", or "prefers" identifies a desirable or discretionary item or factor (as opposed to "mandatory").

"Evaluation Committee" means a body appointed by the Director to evaluate Offerory proposals.

"Evaluation Committee Report" means a document prepared by the Procurement Officer and the Evaluation Committee for submission to the Director for Contract award. It contains all written determinations resulting from the procurement.

"Finalist Offeror" is defined as an Offeror whose offer complies with all the mandatory specifications of this RFP and whose score on evaluation factors is sufficiently high to merit further consideration by the Evaluation Committee.

"Mandatory" The terms "must", "shall", "will", "is required", or "are required", identify a mandatory item or factor (as opposed to "desirable"). Failure to comply with a mandatory item or factor will result in the rejection of the Offerors proposal.

"MRCOG" means the Mid-Region Council of Governments of New Mexico. "Offeror" is any person, corporation, or partnership who submits a proposal.

"Offeror" is any person, corporation, or partnership who submits a proposal.

"Procurement Officer" means the person or designee authorized by the Executive Director to manage, administer and oversee all procurements and Contracts.

"Request for Proposals" or "RFP" means all documents, including those attached or incorporated by reference, used for soliciting proposals.

"Responsible Offeror" means an Offeror who submits a responsive proposal and who has furnished, when required, information and data to prove that the Offeror's financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services or items of tangible personal property described in the proposal.

"Responsive Offer" or "Responsive Proposal" means an offer or proposal that conforms in all material respects to the requirements set forth in the request for proposals. Material respects of a request for proposals include, but are not limited to, price, quality, quantity or delivery requirements. Upon the recommendation of staff, the Director will make the final determination as to whether an Offer is considered to be responsive.

"RMRTD" means the Rio Metro Regional Transit District.

2.0 CONDITIONS GOVERNING PROCUREMENT

This section of the RFP contains the schedule for the procurement, describes the major procurement events and the conditions governing the procurement.

2.1 Sequence of Events

The Procurement Officer will make every effort to adhere to the Procurement Schedules shown in this RFP. The time frames shown may be subject to change at the discretion of the MRCOG.

Issue RFP	January 28, 2021
Written Questions Due	February 18, 2021, 12:00 p.m. (MST)
Proposals Due	February 25, 2021, 2:00 p.m. (MST)
Evaluation Committee	Week of March 1, 2021
Orals (if Necessary)	Week of March 1, 2021
Selection of Finalist(s)	Week of March 8, 2021

2.2 Explanation of Events

2.2.1 Pre-Proposal Conference

There will be no pre-proposal conference associated with this RFP.

2.2.2 Deadline to Submit Additional Questions

Potential Offerors may submit additional written questions as to the intent or clarity of this solicitation to the Procurement Officer. All written questions must be **emailed** to the Procurement Officer at the address specified in this solicitation. The Procurement Officer will provide a written response only to written requests that are received at least five (5) working days prior to the submittal due date.

2.2.3 Notification of Written Responses and Amendments

In order to receive notification of written responses to written questions and solicitation amendments, if any, potential Offerors must complete and submit Appendix 2 Acknowledgement of RFP Receipt as contained herein. The Acknowledgement of RFP Receipt may be hand-delivered, electronically mailed, returned by facsimile, registered or certified mail to the Procurement Officer. Offerors **must include an email address** on the Acknowledgement of Receipt. The Acknowledgement of RFP Receipt must be received at least five (5) working days prior to the proposal submittal due date in order for a potential Offeror to be placed on the procurement distribution list.

2.2.4 Procurement Distribution List for Written Responses and Amendments

Only Offerors who submit the Acknowledgement of RFP Receipt as provided in Appendix 2 will be included on the procurement distribution list. Written responses to written questions and any solicitation amendments will be **emailed** to all potential Offerors whose organization appears on the procurement distribution list.

2.2.5 Submission of Proposal

All proposals must be received by the Procurement Officer or designee **no later than 2:00 p.m. (MDT) on February 25, 2021**. Proposals received after this deadline will not be accepted. The date and time will be recorded on each proposal as it is received. Proposals must be addressed and delivered to the Procurement Officer at the address listed herein. Proposals must be sealed and labeled on the outside of the package to clearly indicate that they are in response to the name of the procurement on the cover sheet. Proposals submitted by facsimile or electronic mail will not be accepted.

A public log will be kept of the names of all Offeror organizations that submitted proposals. Pursuant to Section 13-1-116 NMSA 1978, the contents of any proposal shall not be disclosed to competing Offerors prior to Contract award.

Offers will be considered to be responsive if they conform to all material respects to the requirements set forth herein. All offers must include certifications that are made a part of this solicitation.

2.2.6 Proposal Evaluation

An Evaluation Committee will evaluate proposals. During this time, the Procurement Officer may initiate discussions with Offerors who submit responsive or potentially responsive proposals for the purpose of clarifying aspects of the proposals, but proposals may be accepted and evaluated without such discussion. The Offerors **SHALL NOT** initiate discussions. Potentially responsive proposals are proposals that could reasonably be anticipated as capable of being made responsive.

2.2.7 Selection of Finalists

The Purchasing Officer will provide the list of finalists to the Executive Director. The Purchasing Officer will notify the finalist Offerors of their selections. Only finalists will be invited to participate in the subsequent steps of the procurement. The final schedule for the oral presentations (if necessary) will be determined at this time.

2.2.8 Oral Presentation by Finalists (Optional)

Finalist Offerors may be required to present their proposals to the Evaluation Committee. The Procurement Manager will schedule the time for each Offeror presentation. All Offeror presentations will be held at the MRCOG address noted herein. Each presentation will be limited to one hour with an additional fifteen minutes for questions and answers.

2.2.9 Best and Final Offers from Finalists

Finalist Offerors may be asked to submit revisions to their proposals for the purpose of obtaining best and final offers.

2.2.10 Contract Negotiations

A draft Contract is made a part of this solicitation as evidenced in Exhibit A. The Contract is subject to change and shall be negotiated with the Finalist Offerors selected for award by the Executive Director. In the event that mutually agreeable terms cannot be reached within a reasonable time, defined herein as within fifteen (15) calendar days from the date that the Finalist Offeror is notified of the award, the MRCOG reserves the right to negotiate a Contract with another Finalist Offeror without undertaking a new procurement process. MRCOG also reserves the right to make multiple Contract awards per element.

2.2.11 Contract Award

The Contract shall be awarded to the Finalist Offeror or Offerors whose scores on the evaluation factors specified herein is sufficiently high and who negotiates a Contract of mutually agreeable terms with the MRCOG within a reasonable time as defined in this solicitation. Contract award may be to multiple Offerors.

Contracts are not valid until signed by all parties to the Contract issued in response to this RFP.

2.2.10 Protest of Award

An Offeror who has submitted a responsive Offer on this RFP may protest the award of a Contract resulting from the RFP. The protest must be timely and in conformance with Section 13-1-172 NMSA 1978 and applicable procurement regulations. The protest period will begin on the day following the Contract award and will end at close of business on the following fifteenth calendar day. Protests must be written and must include the name and address of the protestor and the Request for Proposal number. It must also contain a statement of grounds for protest including appropriate supporting exhibits and it must specify the ruling requested from the Procurement Officer. The protest must be delivered to the Procurement Officer.

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Albuquerque, NM 87102
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Protests received after the deadline will not be accepted.

2.3 General Requirements

This procurement will be conducted in accordance with the MRCOG procurement policy, the New Mexico Procurement Code and applicable Federal regulations.

MRCOG requires that all Offerors agree to be bound by the “General Requirements” contained in this RFP. Any Offeror concerns must be promptly brought to the attention of the Procurement Officer.

2.3.1 Acceptance of Conditions Governing the Procurement

Offerors should indicate their acceptance of the “Conditions Governing the Procurement” section in the letter of transmittal. However, submission of a proposal constitutes acceptance of the evaluation factors contained specified in this RFP.

2.3.2 Incurring Cost

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

2.3.4 Prime Contractor Responsibility

Any Offeror awarded a Contract as a result of this RFP will be solely responsible for fulfillment of the Contract with MRCOG. MRCOG will make Contract payments only to the prime Contractor.

2.3.5 Subcontractors

Intended use of subcontractors must be clearly explained in the proposal, and major subcontractors must be identified by name. The prime Contractor shall be solely responsible for the entire performance of the Contract whether or not subcontractors are identified in the proposal or used in the performance of the Contract.

2.3.6 Amended Proposals

An Offeror may submit an amended proposal before the deadline for receipt of proposals. Such amended proposals must be complete replacements for a previously submitted proposal and must be clearly identified as such in the transmittal letter. MRCOG personnel will not merge, collate, or assemble proposal materials.

2.3.7 Offeror's Rights to Withdraw Proposal

Offerors will be allowed to withdraw their proposals at any time prior to the deadline for receipt of proposals. The Offeror must submit a written withdrawal request signed by the Offeror's duly authorized representative addressed to the Procurement Officer.

2.3.8 Proposal Offer Firm

Responses to this RFP will be considered firm in that revisions, alteration or changes will not be considered, other than Best and Final Offers solicited by the Evaluation Committee, for a period of ninety (90) calendar days after the due date for receipt of proposals.

2.3.9 Disclosure of Proposal Contents

The proposals will be kept confidential until a Contract is awarded. At that time, all proposals and documents pertaining to the proposals will be open to the public, except for the material that is proprietary or confidential. The Procurement Officer will not disclose or make public any pages of a proposal on which the Offeror has stamped or imprinted "proprietary" or "confidential" subject to the following requirements.

Proprietary or confidential data shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal.

Confidential data is normally restricted to confidential financial information concerning the Offerors 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. The price of products offered or the cost of services proposed shall not be designated as proprietary or confidential information.

If a request is received for disclosure of data for which an Offeror has made a written request for confidentiality, the Procurement Officer shall examine the Offerors request and make a written determination that specifies which portions of the proposal should be disclosed. Unless the Offeror takes legal action to prevent the disclosure, the proposal will be so disclosed. The proposal shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential or proprietary data.

2.3.10 No Obligation

This procurement in no manner obligates MRCOG to the use of any proposed professional services until a valid written Contract is awarded and approved by the appropriate authorities.

2.3.10 Termination of RFP

This RFP may be canceled at any time and any and all proposals may be rejected in whole or in part when MRCOG determine such action to be in the best interest of MRCOG.

2.3.11 Sufficient Appropriation

Any Contract awarded as a result of this RFP process may be terminated if sufficient appropriations or authorizations do not exist. Sending written notice to the Contractor will affect such termination. The Contractor will accept MRCOG's decision as to whether sufficient appropriations and authorizations are available as final.

2.3.12 Governing Law

The laws of the state of New Mexico and applicable Federal regulations shall govern this procurement and any agreement with Offerors that may result. In the case where there is disparity among applicable regulations, the most stringent regulations, those that supersede all other regulations pertaining to this RFP, shall control in the first order under this solicitation.

2.3.13 Basis for Proposal

Only information supplied by MRCOG in writing through the Procurement Officer or in this RFP should be used as the basis for the preparation of Offeror proposals.

2.3.14 Contract Terms and Conditions

The contract to be executed between the MRCOG and Contractor will include language similar to that put forth in Exhibit A of this RFP. The Contract between MRCOG and a Contractor will follow the format specified by the MRCOG. An Offeror may review the form

of the Contract at the office of the Procurement Officer. However, MRCOG reserves the right to negotiate with a successful Offeror Contract provisions in addition to those contained in this RFP.

Should an Offeror object to any of the terms and conditions as contained in this Section, the Offeror should propose specific alternative language. MRCOG may or may not accept the alternative language. General references to the Offeror's terms and conditions or attempts at substantive or complete substitutions are not acceptable to the MRCOG and will result in disqualification of the Offerors proposal.

Offerors must provide a brief discussion of the purpose and impact, if any, of each proposed change followed by the specific proposed alternate wording.

2.3.15 Approval of Contractor Personnel

Personnel proposed in the Contractor's written proposal are considered material to any work performed under this RFP and subsequent Contract.

During the course of this procurement and after the Contract has been signed, no changes of personnel will be made by the Contractor without prior written consent of the Procurement Officer. Replacement of any Contractor personnel, if approved, shall be with personnel of equal ability, experience and qualifications. The Contractor will be responsible for any expenses incurred in familiarizing the replacement personnel to insure their being productive immediately upon receiving assignments. Approval of the replacement personnel shall not be unreasonably withheld.

MRCOG shall retain the right to request the removal of any of the Contractor's personnel at any time.

2.3.16 Contract Deviations

Any additional terms and conditions, which may be the subject of negotiation, will be discussed only between MRCOG and the selected Offeror and shall not be deemed an opportunity to amend the Offerors proposal.

2.3.17 Offeror Qualifications

The Procurement Officer may make such investigations as necessary to determine the ability of the Offeror to adhere to the requirements specified within this RFP. The Procurement Officer will reject the proposal of any Offeror who is not a responsible Offeror or fails to submit a responsive offer as defined in Sections 13183 and 13-1-85 NMSA 1978.

2.3.18 Right to Waive Technical Irregularities

The Procurement Officer reserves the right to waive technical irregularities. The Procurement Officer also reserves the right to waive mandatory requirements provided that all of the otherwise responsive proposals failed to meet the mandatory requirements and/or doing so does not otherwise materially affect the procurement. This right is at the sole discretion of MRCOG.

2.3.19 Project Team Prohibited Activities

MRCOG employees, members or volunteers and its affiliates' employees, members or volunteers are prohibited from participating directly or indirectly in the preparation of this procurement when the employee knows that the individual or any member of the individual's family has a financial interest in the business seeking or obtaining a Contract.

2.3.20 Notice – Civil and Criminal Penalties

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

2.3.21 MRCOG Rights

The MRCOG reserves the right to accept all or a portion of the proposal of an Offeror selected for award.

2.3.22 Right to Publish

Throughout the duration of this procurement process and Contract term, potential Offerors, and Contractors must secure from MRCOG written approval prior to the release of any information that pertains to the potential work or activities covered by this procurement or the subsequent Contract. Failure to adhere to this requirement may result in disqualification of the Offerors proposal or termination of the Contract.

2.3.23 Ownership of Proposals

All documents submitted in response to this RFP shall become the property of MRCOG. However, any technical or user documentation submitted with the proposals of non-selected Offerors shall be returned upon written request to the Procurement Officer after the expiration of the protest period. Offerors not selected for award of a Contract may pick up the documentation at MRCOG office within a fifteen (15) day period following the close of the protest period.

2.3.24 Electronic Mail Address Required

A large part of the communication regarding this procurement will be conducted by electronic mail (e-mail). Offeror must have a valid e-mail address to receive this correspondence.

2.3.25 Electronic and Web Site Versions of this RFP

This RFP is available by electronic means upon request to the Procurement Officer and from the following websites:

www.mrcog-nm.gov
www.riometro.org

If accepted by such means, the Offeror acknowledges and accepts full responsibility to ensure that no changes are made to the RFP. In the event of conflict between a version of the RFP in the Offerors possession and the version maintained by MRCOG, the version maintained by the MRCOG shall gov.

2.4. Special Provisions

This procurement may be supported in part or in whole from time to time with federal and state funds. Therefore, the following certifications and requirements apply to this solicitation:

2.4.1 Prohibition Against Use of Federal Funds for Lobbying

In accordance with Federal Acquisition Regulations (FAR) 52.203-12, neither the Contractor nor any subcontractor may use Federal assistance funds for publicity or propaganda purposes designed to support or defeat legislation pending before Congress. Certification

of Restrictions on Lobbying is required for this solicitation as provided in Appendix 3 of this solicitation.

2.4.2 Debarment and Suspension

Pursuant to FAR 52.209-6, the Contractor shall provide certification to protect the MRCOG's interests related to Government-wide Debarment and Suspension, and otherwise comply with the requirements of those regulations. Certification is required as provided in Appendix 4 of this solicitation.

2.4.3 Affirmative Action/Civil Rights Compliance

In accordance with FAR 52.222-21/36, the Contractor shall adhere to Affirmative Action / Equal Employment Opportunity policies. Certification for Affirmative Action/Civil Rights Compliance as provided in Appendix 6 of this solicitation provides that assurance.

2.4.4 Campaign Contribution Disclosure

Pursuant to the State of New Mexico Procurement Code, Sections 13-1-28, et seq., NMSA 1978 and NMSA 1978, 13-1-191.1 (2006), as amended by Laws of 2007, Chapter 234, any prospective Contractor seeking to enter into a Contract with any state agency or local public body for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources must file this form with that state agency or local public body. Certification is required as provided in Appendix 5 of this solicitation.

2.5. Federal Provisions

This Agreement is supported by Federal Transit Administration (FTA) funds. Hence, Federal-Aid requirements and the following contractual clauses and certifications are required.

A. No Government Obligations to Third Parties.

The Parties acknowledge and agree that, notwithstanding any concurrence by the Federal Government for approval of the award of the underlying Agreement, absent the express written consent by the Federal Government, the Federal Government is not a party to this Agreement and shall not be subject to any obligations or liabilities to the parties, or any other party (whether or not a party to the Agreement) pertaining to any matter resulting from the underlying Agreement. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

B. Program Fraud and False or Fraudulent Statements and Related Acts.

- (1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC. § 3801 *et seq.* and U.S. DOT regulations, Program Fraud Civil Remedies, 49 CFR. Part 31, apply to its actions pertaining to this Agreement. Upon execution of the underlying Agreement, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Agreement or the FTA assisted project for which this work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the

right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

- (2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 USC § 5307, the Government reserves the right to impose the penalties of 18 USC. § 1001 and 49 USC. § 5307(n) (1) on the Contractor, to the extent the Federal Government deems appropriate.
- (3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

C. Access to Records and Reports.

Pursuant to 49 CFR 18.36(i), the Contractor agrees to provide Rio Metro, the FTA Administrator, the Comptroller General of the United States or any other authorized representative access to any books, documents, papers and records of the Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions. The Contractor agrees to permit the reproduction by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. The Contractor agrees to maintain all books, records, accounts, and reports required under this Agreement for a period of not less than three (3) years after the date of termination or expiration of this Agreement, in which case, the Contractor agrees to maintain same until Rio Metro, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims, or exceptions related thereto.

D. Federal Changes.

The Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the *Master Agreement* between Rio Metro and FTA, as they may be amended or promulgated from time to time during the term of this Agreement. The Contractor's failure to so comply shall constitute a material breach of this contract.

E. Termination.

This Agreement may be terminated without cause by either of the Parties and for the convenience of the terminating Party upon written notice delivered to the other Party at least ninety (90) days prior to intended termination and specifying the effective date of such termination. A termination pursuant to this provision does not nullify a Party's obligations for performance or liabilities for failure to perform Services already incurred prior to the date of termination.

F. Civil Rights Compliance.

- (1) Nondiscrimination In accordance with Title VI of the Civil Rights Act, as amended, 42 USC § 2000d, Section 303 of the Age Discrimination Act of 1975, as amended, 42 USC § 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 USC § 12132, and Federal transit law at 49 USC § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or

disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations or other implementing regulations that FTA may issue.

(2) Equal Employment Opportunity The following equal employment opportunity requirements apply to the underlying Agreement:

- a. *Race, Color, Creed, National Origin, Sex* - In accordance with Title VI of the Civil Rights Act, as amended, 42 USC § 2000e, and Federal transit laws at 49 USC § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor, 41 CFR. Parts 60 *et seq.*, (which implement Executive Order No. 11246, Equal Employment Opportunity, as amended by Executive Order No. 11375, Amending Executive Order 11246 Relating to Equal Employment Opportunity, 42 USC. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies undertaken in the course of the Project.
- b. *Affirmative Action* - The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any Federal implementing requirements.
- c. *Age* - In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 USC § 623 and Federal transit law at 49 USC § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any further Federal implementing requirements.
- d. *Disabilities* - In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 USC § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act, 29 CFR. Part 1630, pertaining to employment of persons with disabilities.

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary, to identify the affected parties.

G. Disadvantaged Business Enterprise

(1) This Agreement is subject to the requirements of 49 CFR Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. A list of certified Disadvantage Business Enterprise (DBE) businesses can be obtained from the New Mexico State Highway and Transportation Department, Office of Equal Employment Opportunity Programs website: <https://nmdot.dbesystem.com>. A separate contract goal has not been established for this Agreement.

(2) The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Contractor shall carry out applicable

requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of the Agreement, which may result in the termination of the Agreement or such other remedy as deemed appropriate. Each subcontract to this Agreement that the Contractor signs with must include the assurance in this paragraph.

(3) The Contractor agrees to pay each subcontractor under the Agreement for satisfactory performance no later than thirty (30) days from the receipt of each payment the Contractor receives from Rio Metro. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Rio Metro. This clause applies to both DBE and non-DBE subcontracts.

(4) If applicable, the Contractor is required to pay all retainage owed to each subcontractor for satisfactory completion of accepted work within thirty (30) days from the receipt of each payment the Contractor receives from the Rio Metro. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Rio Metro. This clause applies to both DBE and non-DBE subcontracts.

(5) The Contractor may be required to report its DBE participation obtained through race-neutral means throughout the period of the Agreement. For this purpose, the Contractor may be requested to create a subcontractors list, consisting of information about all DBE and non-DBE firms under this Agreement.

H. Incorporation of Federal Transit Administration (FTA) Terms.

All contractual provisions required by USDOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any requests that would cause the agency to be in violation of the FTA terms and conditions

I. Debarment and Suspension.

This Agreement is a covered transaction for purposes of 49 CFR Part 29. As such, the Contractor verifies that none of the subcontractors, principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, engaged under this Agreement are excluded or disqualified as defined at 49 CFR 29.940 and 29.945. The Contractor agrees to and assures that its third-party contractors and sub recipients will review the Excluded Parties Listing System (EPLS) at <https://www.sam.gov/> before entering into any contracts.

J. Fly America.

The Contractor shall comply with 49 USC 40118, the Fly America Act, in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and sub-recipients of federal funds and their Contractors are required to use U.S. Flag air carriers for Federal Government financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless traveled by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier is used, an appropriate certification or memorandum adequately explaining why service by a U.S. Flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements in this section in all subcontracts that may involve international air transportation.

K. Energy Conservation Requirements.

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 USC 6321 *et seq.*

L. Prohibition Against Use of Federal Funds for Lobbying

Neither the Contractor nor any subcontractor may use Federal assistance funds for publicity or propaganda purposes designed to support or defeat legislation pending before Congress. Certification of Restrictions on Lobbying is required. Certification is required.

M. Breaches and Dispute Resolutions

(1) Disputes. Disputes arising in the performance of this Agreement, which are not resolved by agreement of the parties, shall be decided in writing by an authorized representative of Rio Metro. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Village mails or otherwise furnishes a written appeal to the authorized representative of Rio Metro. In connection with any such appeal, the Village shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the authorized representative of Rio Metro shall be binding upon the Village and the Village shall abide by the decision.

(2) Performance During Dispute. Unless otherwise directed by Rio Metro, the Contractor shall continue performance under this Contract while matters in dispute are being resolved.

(3) Remedies. If any controversy or claim arising out of this Contract cannot be settled by the Parties directly, the Parties will submit the controversy or claim to mediation using a mediator mutually acceptable to the Parties or, if the Parties cannot agree on a mediator, a mediator chosen by mediators chosen by each Party. If the Parties are unable, after a reasonable period of time, to produce through such mediation a mutually satisfactory resolution on the matter, the dispute will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the Rio Metro is located.

(4) Right and Remedies. The duties and obligations imposed by this Agreement and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by Rio Metro or the Village shall constitute a waiver of any right or duty afforded any of them under the Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

N. Clean Air

The Village agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 USC §§ 7401 *et seq.* The Village agrees to report each violation to Rio Metro and understands and agrees that Rio Metro will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Village also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

O. Clean Water

The Village agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq. The Village agrees to report each violation and understands and agrees that the Rio Metro will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Village also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

P. Cargo Preference

The Contractor agrees to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels.

Q. Access Requirements for Individuals with Disabilities

The Contractor shall, at all times, be in compliance with all statutory requirements imposed by or pursuant to Section 504 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990 at 49 CFR Parts 27, 37 and 38, as well as any additional requirements which may be placed into effect during this Contract.

R. Seismic Safety

The Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The Contractor agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

S. Recycled Products

The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

T. Rights in Data

These following requirements apply to each contract involving experimental, developmental or research work:

(1) The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

(2) The following restrictions apply to all subject data first produced in the performance

of the contract to which this Attachment has been added:

(a) Except for its own internal use, the Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

(b) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

1. Any subject data developed under that contract, whether or not a copyright has been obtained; and

2. Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA.

(c) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Purchaser and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

(d) Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government. (e) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent. (f) Data developed by the Purchaser or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work. (g) Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

(3) Unless the Federal Government later makes a contrary determination in writing,

irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those NYSDOT - December 2009 Federal Government Required Clauses & Certifications (FTA Procurements) Page 22 of 24 rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401. (4) The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

U. Patent Rights

The following requirements apply to each contract involving experimental, developmental, or research work:

(1) General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

(2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401. (3) The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

V. Preliminary Engineering/Construction Engineering

(1) Preliminary Engineering/Construction Engineering consultant selection procedures shall be in accordance with 23 CFR Part 172 and the State Procurement Code, NMSA 1978, §§ Chapter 13-1-1 et. seq.

(2) Engineering consultants shall prepare a final fee estimate of any work to be performed, indicating each element or task with estimated personnel-hours and associated unit costs to be kept on file for five (5) years.

3.0 RESPONSE FORMAT AND ORGANIZATION

3.1 Number of Responses

Offerors shall submit only **one** (1) proposal for contracts associated with this RFP.

3.2 Number of Copies

Offerors shall deliver **one (1) original, five (5) identical copies and two (2) digital copies**. Digital copies shall include one complete copy and one copy without "Proprietary" information in PDF format to the location specified herein on or before the closing date and time for

receipt of proposals.

3.3 Proposal Format

All proposals must be typewritten on standard 8 1/2 x 11 paper (larger paper is permissible for charts, spreadsheets, etc.) and placed within a binder with tabs delineating each section. Pages shall be single spaced with a font of no less than number 10. Proposals shall be no longer than twenty (20) pages, single sided, excluding tabs, front and back covers, cover letters and Certifications in Appendix 1 through 6 as noted in this RFP.

It is recognized that some Offerors may wish to propose on one service of this RFP, others may wish to propose on multiple services, and some Offerors may wish to propose on every service of the RFP. Any and all of these options are acceptable for this RFP.

3.3.1 Proposal Organization

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

- Tab 1. Appendix 1: Proposal Form
- Tab 2. Project Understanding
- Tab 3. Past Performance
- Tab 4. Resources, Expertise, References
- Tab 5. Price
- Tab 6. Certifications
 - Appendix 3: Certification Restrictions on Lobbying
 - Appendix 4: Certification Debarment, Suspension
 - Appendix 5: Campaign Contribution Disclosure
 - Appendix 6: Certification Affirmative Action

Note that Appendix 2: Acknowledge of RFP Receipt is an optional form, submitted by Offerors who wish to receive written responses to written questions and solicitation amendments as specified in this solicitation. Certifications to be included in Tab 6 are required to ensure that an Offeror has completed a responsive proposal. The completed certifications will not count toward the page limits of the proposal.

Within each section of the proposal, Offerors shall address the items in the order in which they appear in this RFP. All forms provided in the RFP must be thoroughly completed and included in the appropriate section of the proposal.

Any proposal that does not adhere to these requirements may be deemed nonresponsive and rejected on that basis.

3.3.2 Proposal Form

Each proposal must contain - as the first item in the organized and indexed sequence – the fully executed Proposal Form as presented in Appendix 1 of this solicitation. Failure to provide the form with all the information indicated will result in rejection of the proposal as non-responsive.

4.0 SPECIFICATIONS

Proposal narratives along with required supporting materials will be evaluated and awarded points as detailed in the Evaluation Section of this solicitation. This solicitation includes eight (8) key elements which will be evaluated and ranked according to four (4) evaluation factors described in Section 4.2. Evaluation factors, including Project

Understanding, Past Performance, Resources, Expertise and References, and Price will be examined in the scoring of responsive proposals. Offerors should respond in the form of a thorough narrative to each evaluation factor in the proposal.

4.1 Project Understanding

Offerors shall provide a detailed narrative on their understanding of the proposed work and activities which will achieve the deliverables therein. A description must be provided of the general approach to be utilized in order to achieve the overall scope.

4.2 Past Performance

Offerors must clearly identify past or current contracts, including those with Federal, State, or local government as well as private entities that entail similar work effort and activities as sought in this solicitation. Offerors shall provide the name and contact information for the program manager overseeing the prior work activity and describe the work activity, provide information on problems encountered and related corrective actions implemented.

4.3 Resources, Expertise and References

MRCOG desires to engage Offerors with experience in legal services. Offerors shall provide a description of resources available and expertise germane to the tasks identified in this solicitation. This description should include the relevant education and licensure of key personnel. Licensure by the State Bar of New Mexico shall be a requirement of this solicitation. Offerors also shall provide a description of previous experience for each of the key individuals proposed in the solicitation.

4.4 Price – Provide under separate cover

Offerors shall provide a fully burdened hourly rate, including direct labor and overhead, for each of the key individuals or principals in the proposal, and a description of **any** other potential expenses that the Offeror expects payment for under the Contract that are **not** covered by the burdened hourly rate. Offerors are not required to provide a total project fee or total quantity of staff hours; only fully burdened hourly rates are required. A full and complete proposal stating the full Contract price will be negotiated at the time of Contract award with the proposal finalist.

5.0 EVALUATION

5.1 Evaluation Point Summary

The following is a summary of evaluation factors with point values assigned to each. These factors, along with the general requirements, will be used in the evaluation of Offeror proposals.

<u>Evaluation Factors</u>	<u>Points</u>
1. Project Understanding	30
2. Past Performance	30
3. Resources, Expertise and References	30
4. Price	10
SUBTOTAL	100
5. Best & Final Offers (If Necessary)	20
TOTAL AVAILABLE	120

5.2 Evaluation Process

The evaluation process will follow the steps listed below:

5.2.1 Proposal Compliance

All Offeror proposals will be reviewed for compliance with the mandatory requirements stated within the solicitation. At the discretion of MRCOG, proposals deemed non-responsive will be eliminated from further consideration.

5.2.2 Contacting Offerors

The Procurement Officer may contact the Offeror for clarification of the response as specified in in this solicitation.

5.2.3 Finalist Selection

Responsive proposals will be evaluated on the factors specified herein that have been assigned a point value. The responsible Offerors with the highest scores will be selected as Finalist Offerors based upon the proposals submitted. Finalist Offerors may then be asked to participate in Oral Interviews. At the conclusion of the Oral Interviews additional points may be awarded in accordance with this section. The Evaluation Committee may then make a recommendation to the Executive Director for award or solicit Best and Final Offers from any or all of the finalists. If Best and Final Offers are solicited, the Evaluation Committee will award additional points in accordance with this section and then make a final recommendation for award to the Executive Director. Finalist Offerors providing the most advantageous proposal taking into consideration the evaluation factors specified herein will be recommended for Contract award. Please note, however, that a serious deficiency in the response of any one factor may be grounds for rejection regardless of overall score.

APPENDIX 1

**REQUEST FOR PROPOSALS
RFP#: 2021-01**

PROPOSAL FORM

Proposing Organization			
Mailing Address			
City/State/Zip Code			
Head of Organization			
Title			
Telephone Number		Fax Number	
Proposal Contact Person			
Title			
Telephone Number		E-Mail Address	
Contract Signatory Authority			
Title			
Telephone Number			
Tax/Legal Status	<input type="checkbox"/> Corporation	<input type="checkbox"/> For Profit	<input type="checkbox"/> Not-for-Profit <input type="checkbox"/> Government
	<input type="checkbox"/> Individual		
Federal ID Number		State ID Number	

1. I (We) am submitting on the procurement titled: _____
2. I (We) accept the Conditions Governing the Procurement stated in Section 2.3.1.
3. I (We) acknowledge receipt of any and all amendments to this RFP, Nos. _____ to _____.

Signature of Officer _____ Date _____

APPENDIX 2

**REQUEST FOR PROPOSALS
RFP#: 2021-01**

ACKNOWLEDGEMENT OF RFP RECEIPT
(Optional)

In acknowledging the receipt of this Request for Proposal, the undersigned agrees that a complete solicitation has been received, beginning with the title page and table of contents, and ending with Appendix 6.

The acknowledgement of receipt should be signed and returned to the Procurement Officer. Only potential Offerors who elect to return this form completed with the indicated intention of submitting a proposal for the procurement checked below at least five (5) working days prior to the proposal due date, will receive copies of all potential Offeror written questions and the MRCOG's written responses to those questions as well as solicitation amendments, if any, that are issued.

Firm / Individual

Represented by

Title

Phone No.

Fax No.

E-mail Address

Address

City/State/Zip Code

Signature *

Date

* Formal signature required - e-mail transmittal with scanned signature is acceptable.

This name and address will be used for all correspondence related to the Request for Proposals.

Firm does does not (**check one**) intend to respond to this Request for Proposals.

Return to: Kim Monjaras
Procurement Officer
809 Copper Ave. N.W., Albuquerque, NM 87102
Phone : 505-247-1750 ; Fax : 505-247-1753
E-mail : kmonjaras@mrcog-nm.gov

APPENDIX 3

**REQUEST FOR PROPOSALS
RFP#: 2021-01**

CERTIFICATION REGARDING RESTRICTIONS ON LOBBYING

To be submitted with each proposal or offer exceeding \$100,000.

I, _____ hereby certify on behalf of _____ that;
(name & title of official) (name of contractor)

1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or any employee or a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontract, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

For purposes of this Certification, this Agreement shall be considered a federal contract. This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Executed this _____ day of _____, 20____.

By _____
(Signature of authorized official)

(Title of authorized official)

APPENDIX 4

**REQUEST FOR PROPOSALS
RFP#: 2021-01**

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER
RESPONSIBILITY MATTERS - PRIMARY COVERED TRANSACTIONS**

To be submitted with each proposal or offer exceeding \$25,000.

The Contractor, 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 or 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 governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and

(4) Have not within a three-year period preceding this agreement had one or more public transactions (Federal, State, or local) terminated for cause or default.

Where the Contractor is unable to certify to any of the statements in this certification, such Contractor shall attach an explanation to this proposal.

THE CONTRACTOR, _____, CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. sub- section 3801 ET SEQ. ARE APPLICABLE THERETO.

Executed this _____ day of _____, 20____.

By _____
(Signature of authorized official)

(Title of authorized official)

APPENDIX 5

REQUEST FOR PROPOSAL

RFP#: 2021-01

CAMPAIGN CONTRIBUTION DISCLOSURE

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

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

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

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

The following definitions apply:

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

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

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

"Pendency of the procurement process" means the time period commencing with the public

notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals.

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

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

Name(s) of Applicable Official(s) if any: _____

DISCLOSURE OF CONTRIBUTIONS BY PROSPECTIVE CONTRACTOR:

Contribution Made By: _____
Relation to Prospective Contractor: _____
Date Contribution(s) Made: _____
Amount(s) of Contribution(s) _____
Nature of Contribution(s) _____
Purpose of Contribution(s) _____

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

APPENDIX 6

**REQUEST FOR PROPOSAL
RFP#: 2021-01**

**CERTIFICATION REGARDING
AFFIRMATIVE ACTION/EQUAL EMPLOYMENT
OPPORTUNITY AND NONDISCRIMINATION
AHRO Form CC 2**

The Offeror hereby acknowledges and agrees to abide by the Special Provisions for Affirmative Action/Equal Employment Opportunity and Nondiscrimination and all other provisions, regulations and/or requirements of the Owner for Affirmative Action/Equal Employment Opportunity and Nondiscrimination.

The Offeror has participated with any agency in a previous contract or subcontract subject to any Equal Employment Opportunity and Nondiscrimination in Employment requirements. Yes () No ()

Compliance reports were required to be filed in connection with such contract or subcontract. Yes () No ()

The Offeror has filed all compliance reports due under applicable instructions. If this does not apply, leave blank. Yes () No ()

Company Name of Offeror _____

Title _____ Date _____

Address _____

City/State/Zip Code _____

Telephone Number _____ Fax No. _____

Signature _____

Printed Name _____ Email Address _____

EXHIBIT A

**REQUEST FOR PROPOSALS
RFP#: 2021-01**

DRAFT CONTRACT

**EXHIBIT A
DRAFT CONTRACT**

This Agreement ("Agreement") is made and entered into on the date last entered below, by and between _____ ("Contractor"), and the Mid-Region Council of Governments ("MRCOG"), an association composed of and representing local governments within New Mexico State Planning and Development District Three, herein referred to as "Parties."

RECITALS

WHEREAS, the MRCOG issued a Request for Proposals RFP _____ - ___, titled _____, dated _____, which is attached hereto as Appendix A, and by this reference made part of this reference made a part of this agreement; and

WHEREAS, the Contractor submitted its proposal, dated _____ in response to RFP _____ - ___, which proposal is attached hereto as Appendix B, and by this reference made a part of this agreement; and

WHEREAS, MRCOG desires to engage the Contractor to render certain services in connection therewith, and the Contractor is willing to provide such services.

NOW, THEREFORE, in consideration of the premises and mutual obligations herein, the parties hereto do mutually agree as follows:

Section 1. Miscellaneous Representations

A. The Contractor is licensed or otherwise authorized to conduct the business activities described in this Agreement by all governmental agencies having jurisdiction over Contractor, and Contractor has the experience and expertise to perform the work or services required in this Agreement.

B. MRCOG has the right and power to enter into this Agreement.

Section 2. Scope of Services

A. The Contractor shall be available to assist the MRCOG in the services specified in Exhibit A (hereinafter referred to as "Services") related to the _____ Project in a satisfactory and proper manner, and shall provide all necessary personnel, material, and facilities and perform all matters necessary or incidental to the Services as determined by MRCOG.

B. Staffing. MRCOG designates _____ as MRCOG Project Manager. The Contractor shall keep the Project Manager fully informed on all aspects of its performance of the Services. The Project Manager will review and approve Contractor's invoices prior to payment. In the absence of the Project Manager, the MRCOG Director shall serve as Project Manager.

C. Contractor designates _____ as Contractor's Project Manager. Contractor's Project Manager shall transmit all work product and invoices to the MRCOG Project Manager. The Contractor Project Manager shall direct the technical aspects of the Services; however, the Contractor may provide additional qualified personnel to meet its obligations under this Agreement. Contractor shall provide to MRCOG a statement of qualifications for each individual performing work under this Agreement when requested to do so by MRCOG. Any change in Contractor's appointment of its Project Manager shall not be allowed until approved in writing by MRCOG.

Section 3. Compensation and Method of Payment

A. For performing the Services specified in Exhibit A hereof, MRCOG agrees to pay the Contractor up to the amount of _____ Dollars \$_____, which amount shall include any gross receipts tax and which shall constitute full and complete compensation for the Services under this Agreement, including all expenditures made and expenses incurred by the Contractor in performing such services in accordance with Exhibit B Schedule of Fees included in this Agreement.

B. This Contract is for on call services related to the tasks specified in Exhibit A attached hereto. Written work authorizations shall be issued that describe the task(s) specified in in Exhibit A in detail and the related level of compensation. No compensation shall be provided by the MRCOG for work not specifically authorized in this manner, or for work beyond the amount stated in the work authorization.

Section 4. Method of Payment.

A. Payment to Contractor. Amounts due to Contractor shall be paid to the Contractor upon receipt by MRCOG of properly documented invoices for payment as determined by the budgetary and fiscal guidelines of MRCOG and upon receipt of payment by MRCOG from the funding agency. Payments to the Contractor shall be paid within the time periods prescribed by statute.

B. Reports Required. Contractor will attach to the invoice a detailed work effort and progress report in a format mutually agreed upon by the MRCOG Project Manager and the Contractor. Payments shall be made only after verification and acceptance of the progress reports by the MRCOG Project Manager.

C. Verification of Invoices. MRCOG shall be entitled to verify the personnel time and other costs charged to MRCOG pursuant to the provisions of this Agreement.

Section 5. Time of Performance

The Services described herein shall commence on the date this Agreement is executed and shall be completed within _____ (__) years, unless the time for completion is extended pursuant to Option to Extend Term contract clause contained herein.

Section 6. Option to Extend Term

A. MRCOG may extend the term of this Agreement for up to _____ (___) years in one (1) year increments by written notice to the Contractor. If feasible, MRCOG shall give Contractor a preliminary written notice of its intent to extend at least sixty (60) days before the Agreement expires. The preliminary notice does not commit MRCOG to an extension, and any absence of notice shall not affect the validity of any exercise of the option to extend the term of this Agreement.

B. If MRCOG exercises this option to extend the term of the Agreement, the extended Agreement shall be considered to include this option provision.

C. The total duration of this Agreement, including the exercise of any options under this clause, shall not exceed _____ (___) years.

Section 7. Independent Contractor

Neither Contractor nor its employees are considered to be employees of MRCOG for any purpose whatsoever. Contractor is considered an independent contractor at all times in the performance of the Services described herein. Contractor further agrees that neither it nor its employees are entitled to any benefits from MRCOG under the provisions of the Workers' Compensation Act of the State of New Mexico, or to any of the benefits granted to employees of MRCOG.

Section 8. Personnel

A. Contractor represents that it has, or will secure at its own expense, all personnel required in performing all of the Services required under this Agreement. Such personnel shall not be employees of nor have any contractual relationship with MRCOG.

B. All the Services required hereunder will be performed by Contractor or under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state and local law to perform such Services.

D. None of the work or the Services covered by this Agreement shall be subcontracted without the prior approval of MRCOG. Any work or Services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this Agreement.

Section 9. Insurance

A. General Requirements. The Contractor shall, at its own cost and expense, procure and maintain in full force and effect during the term of this Agreement, such insurance as is required in this Agreement. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico, and policies of insurance shall be on forms properly filed and approved by the Superintendent of Insurance, State of New

Mexico. When requested by the MRCOG, Contractor shall provide to the MRCOG copies of any or all policies of insurance for the insurance coverage required in this Section. Policies of insurance shall be procured for all required coverage limits of such policies of insurance and shall not be reduced or replaced in part or in whole by self-insurance, including self-insurance retention amounts, except as provided hereinafter.

If the Contractor subcontracts, or assigns or otherwise transfers any interest in any part of this Agreement, the Contractor shall include any or all transferees in the Contractor's insurance policies or require such transferees to secure insurance if required by law to cover all hazards associated with Services provided hereunder that are not covered by the Contractor's insurance policies.

The Contractor shall not violate the terms or prohibitions of insurance policies required to be furnished by the Contractor. The Contractor shall promptly notify the MRCOG of any claim or loss exceeding the amount of the deductible under such insurance policies, and certify that proper notice has been given the appropriate insurance carrier.

The Contractor shall furnish the MRCOG with certificates of insurance, substantially the same as Exhibit D, and shall deliver said certificates to the Project Manager, MRCOG, 809 Copper Ave., N.W., Albuquerque, New Mexico 87102. All insurance certificates shall provide that thirty (30) days written notice be given to the Project Manager before a policy is canceled, materially changed, or not renewed. Various types of required insurance may be written in one or more policies. A certificate or policy which states that the failure to give MRCOG notice imposes no liability or obligation on the insurer shall not be in compliance with this Section. For instance, certificates or policies stating that the insurance company shall "endeavor to notify" and that "failure to give such notice imposes no obligation" on the insurance company are unacceptable to MRCOG. Documents establishing the continuation or replacement of insurance shall be received by the MRCOG no less than 30 days prior to the expiration of the insurance coverage.

B. Approval of Insurance. Even though a "Notice to Proceed" may have been given, neither the Contractor nor any contractors, assignees or other transferees of the Contractor shall begin any operations pursuant to this Agreement until the required insurance has been obtained and proper certificates of insurance delivered to the Project Manager. Neither approval nor failure to disapprove insurance certificates of insurance by the MRCOG shall relieve the Contractor or any transferees of full responsibility to maintain the required insurance in full force and effect.

C. Commercial General Liability Including Automobile. The Contractor shall procure and maintain policies of insurance for commercial general liability insurance and vehicle liability insurance for all vehicles used in its operation, as further described below. All such policies of insurance shall have liability limits in amounts of One Million Dollars (\$1,000,000) single limit liability for bodily injury, including death, and property damage in any one occurrence. Said policies of insurance shall include coverage for premises (if

applicable), operations, and the Contractor's contractual liability to the MRCOG hereunder, and claims arising out of or from the Contractor's performance of this Agreement. Contractual liability coverage shall specifically insure the indemnification provision of this Agreement. The insurance policies shall contain "products" and "completed operations" coverage (if applicable) and shall not be written on a "claims made" form. The insurance policies shall include coverage for all use of, activities on, or operations with respect to MRCOG premises, coverage for the use of all owned, non-owned, hired automobiles, vehicles, and other equipment, both on and off work. MRCOG reserves the right to review and modify the limits stated above at one-year intervals to give effect to the changing risk management environment and inflationary trends.

D. Increased Limits. If, during the term of this contract, the legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act (Sections 41-4-1 through 41-4-27, NMSA 1978) to an amount greater than that required for commercial general liability including auto above, the MRCOG may require Contractor to increase the limits of any insurance required herein to an amount equal to such increased Tort Claim Act maximum limits of liability.

E. Additional Insured. The MRCOG shall be named as an additional insured on each insurance policy required for commercial general liability including auto above.

F. Workers' Compensation Insurance. The Contractor shall comply with the provisions of the New Mexico Workers' Compensation Act, the Subsequent Injury Act, and the New Mexico Occupational Disease Disablement Law. The Contractor shall procure and maintain during the term of this Agreement complete Workers' and Employer's Liability Insurance in accordance with New Mexico laws and regulations. Such insurance shall include coverage permitted under Section 52-1-10, NMSA 1978, for safety devices. With respect to Worker's Compensation Insurance, if the Contractor elects to be self-insured, the Contractor shall comply with the applicable requirements of law. If any portion of the work is to be sublet, the Contractor shall require the subtenants similarly to provide such coverage (or qualify as a self-insured) for all the latter's employees to be engaged in such work. The Contractor hereby covenants and agrees that the MRCOG, its officers, or employees will not be liable or responsible for any claims or actions occasioned by the Contractor's failure to comply with the provisions of this subparagraph and that the indemnification provision of this Agreement shall apply to this paragraph. It is expressly agreed that the employees of Contractor are not MRCOG employees for any purpose.

G. Self-Insurance Retention/Deductibles. In the event any of the insurance policies required in this Section 7 (except as allowed by New Mexico law regarding Workers' Compensation) contain a self-insurance retention provision (whether or not in the form of a deductible) for each such amount, the Contractor shall post a bond or an irrevocable letter of credit made exclusively for the benefit of the MRCOG and held by a bank authorized to do business in New Mexico which is acceptable to MRCOG.

H. Contents Insurance. Contractor shall be solely responsible for obtaining insurance policies that provide coverage for losses of Contractor owned property. MRCOG shall

not be required to provide such insurance coverage or be responsible for payment of Contractor's cost for such insurance.

I. Professional Liability Insurance. The Contractor shall, at its own cost and expense, procure and maintain in full force and effect during the term of this Agreement, Professional Liability (errors and omissions) insurance in an amount not less than One Million Dollars (\$1,000,000) combined single limit of liability per occurrence with a general aggregate of (\$1,000,000).

Section 10. Reports, Information and Ownership of Documents

A. Reports and Information. During the performance of this Agreement and upon the completion or earlier termination of the services required under this Agreement, Contractor shall furnish to MRCOG such statements, records, reports, data and information as requested by MRCOG pertaining to matters covered by this Agreement.

B. Release of Information. Contractor shall not release any data, reports or other information of any nature whatsoever to any entity or person other than to MRCOG unless specifically authorized to do so in writing in advance by MRCOG.

C. Ownership and Use of Documents. Contractor's work product produced pursuant to this Agreement shall become the sole property of the MRCOG. Such work product shall include but not be limited to reports, background data, drawings, calculations, technical data, data related specifically to this Agreement, specifications, manuals and/or related documents.

D. Computer Program Licensing Agreements. MRCOG shall have the option to require (at MRCOG's cost) that the Contractor provide any and all computer licensing agreements necessary to permit MRCOG to use computer programs and data related to the services performed by Contractor under this Agreement.

E. Future Use. MRCOG's use of computer programs and computer stored data developed under the requirements of this Agreement for purposes other than the services required of Contractor as specified in this Agreement shall be at MRCOG's risk, and Contractor shall be held harmless for such use. Contractor does not represent that the computer programs and computer data developed under this Agreement are suitable for reuse under different conditions. This paragraph shall not apply to the performance of this Agreement nor in instances where the Contractor is retained to perform subsequent services using the work product developed pursuant to this Agreement.

F. Publication, Reproduction and Use of Materials. No materials or documents produced in whole or in part under this Agreement shall be subject to copyright in the United States or in any other country. The MRCOG shall have the unrestricted authority and right to copyright, publish, disclose, distribute and otherwise use, in whole or in part, any reports, data, or other materials (hereafter "Materials") prepared under this Agreement. Contractor may use Materials created under this Agreement as reference

and research materials and as representations of the services performed under this agreement only after the Materials are completed and accepted by MRCOG, provided that such Materials shall not include the MRCOG's confidential or proprietary information, to the extent the MRCOG provides Contractor with notice that such materials are considered confidential or proprietary by the MRCOG. The MRCOG shall provide professional credit for Contractor in promotional materials for services rendered pursuant to this Agreement, if so requested in writing by Contractor.

Section 11. Establishment and Maintenance of Records

Records shall be maintained by Contractor in accordance with applicable law and requirements prescribed by MRCOG with respect to all matters covered by this Agreement. Except as otherwise authorized by MRCOG, such records shall be maintained for a period of three (3) years after receipt of final payment under this Agreement.

Section 12. Audits and Inspections

At any time during normal business hours and as often as MRCOG may deem necessary, there shall be made available to MRCOG or the funding agency and the State Auditor for examination all of Contractor's records with respect to all matters covered by this Agreement. Contractor shall permit MRCOG, or its authorized representatives, to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement. Contractor shall maintain such records at its office and provide them to the MRCOG at the MRCOG offices in Albuquerque, New Mexico, within fifteen (15) days after receiving a written request for such records by the MRCOG. In the event Contractor does not wish to make its books and records available at the MRCOG offices, then Contractor shall pay reasonable travel and accommodation expenses for the MRCOG staff or its duly authorized representatives to travel to Contractor's offices to conduct the audit.

Section 13. Changes

MRCOG may, from time to time, request changes in the Services to be performed hereunder. Such changes, including any increase or decrease in the amount of Contractor's compensation, that are mutually agreed upon by and between MRCOG and Contractor shall be incorporated in written amendments to this Agreement.

Section 14. Suspension

A. Suspension of Work. MRCOG shall be entitled at any time to suspend, delay, or interrupt all or any part of the Services required of Contractor by this Agreement. Such order shall be in writing and identified as a "Suspension of Work Order". Contractor shall incur no further costs allocable to the Services during the period of suspension, delay, or interruption. Contractor shall be reimbursed for all services performed up to the time of

its receipt of the Suspension of Work Order; to the extent such services are accepted pursuant to Section 4 of this Agreement.

B. Resumption of Work. In the event MRCOG cancels a Suspension of Work Order, Contractor shall resume performing the Services in a timely manner and shall be entitled to an equitable adjustment in compensation but only if MRCOG determines that the Suspension of Work Order resulted in additional costs to Contractor in its performance of the Services and Contractor asserts a claim for such additional costs within thirty days after the cancellation of the Suspension of Work Order.

Section 15. Termination

A. Termination by MRCOG for Cause, ten (10) day notice. If through any cause Contractor shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if Contractor shall violate any of the covenants, agreements or stipulations of this Agreement, MRCOG shall thereupon have the right to terminate this Agreement by giving written notice to Contractor of such termination and specifying the effective date thereof at least ten (10) days before the effective date of such termination.

Notwithstanding the above, Contractor shall not be relieved of liability to MRCOG for damages sustained by MRCOG by virtue of any breach of this Agreement by Contractor, and MRCOG may withhold any payment to Contractor for the purposes of set-off until such time as the exact amount of damages due MRCOG from Contractor is determined.

B. Termination by MRCOG: twenty (20) day notice. MRCOG may terminate this Agreement at any time by giving at least twenty (20) day notice in writing to Contractor. Said twenty (20) days shall run from the day on which Contractor received said notice of termination. In the event this Agreement is terminated by MRCOG as provided herein, the Contractor shall be paid an amount that bears the same ratio to the total compensation as the Services actually performed bear to the total Services of Contractor covered by this Agreement, less payments of compensation previously made. If this Agreement is terminated due to the fault of Contractor, Paragraph A of this section hereof, relative to termination, shall apply.

C. Work Product. In the event of termination under the provisions of this section, all finished or unfinished documents, data, maps, studies, surveys, drawings, models, photographs and reports prepared by Contractor under this Agreement shall, at the option of the MRCOG, become the property of the MRCOG, and Contractor shall deliver such work product to MRCOG within thirty (30) days of receipt of the request of the MRCOG.

D. Termination by Contractor: thirty (30) Day notice. The Contractor shall be entitled to terminate this Agreement in the event of a default by the MRCOG in the performance of any covenant or agreement herein required to be performed by the MRCOG and the failure of the MRCOG to remedy such default for a period of thirty (30) days after receipt from the Contractor of written notice to remedy the same; provided, however, that no

notice of termination, as above provided, shall be of any force or effect if the MRCOG shall have remedied the default prior to receipt of the Contractor's notice of termination.

E. Non-Funding. The performance of this Agreement is contingent upon the necessary appropriations and authorizations forthcoming for the performance of this Agreement. If sufficient appropriations and authorizations are not made, this Agreement may be terminated by MRCOG by giving notice to Contractor. Such event shall not constitute an event default by MRCOG. All payment obligations of the MRCOG shall cease upon the date of termination. The MRCOG's decision as to whether sufficient appropriations are available or sufficient shall be binding on Contractor and shall be final. The date of termination issued pursuant to this paragraph shall be the date a notice of termination is received by Contractor.

Section 16. Breaches and Dispute Resolutions

A. Disputes. Disputes arising in the performance of this Agreement which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of Rio Metro, herein defined as the Rio Metro Procurement Manager. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Rio Metro Procurement Manager. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Rio Metro Procurement Manager shall be binding upon the Contractor and the Contractor shall abide by the decision.

B. Performance During Dispute. Unless otherwise directed by Rio Metro, the Contractor shall continue performance under this Agreement while matters in dispute are being resolved.

C. Remedies. If any controversy or claim arising out of this Agreement cannot be settled by the Parties directly, the Parties will submit the controversy or claim to mediation using a mediator mutually acceptable to the Parties or, if the Parties cannot agree on a mediator, a mediator chosen by each Party. If the Parties are unable, after a reasonable period of time, to produce through such mediation a mutually satisfactory resolution on the matter, the dispute will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the Rio Metro is located.

D. Right and Remedies. The duties and obligations imposed by this Agreement and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by Rio Metro or the Contractor shall constitute a waiver of any right or duty afforded any of them under the Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

Section 17. Special Federal Provisions

This procurement may be supported in part or in whole from time to time with federal funds. Hence, Federal-Aid requirements and the following contractual clauses and certifications are applicable to this solicitation.

A. Fly America. The Contractor shall comply with 49 U.S.C. 40118 (The "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and sub-recipients of federal funds and their Contractors are required to use US Flag air carriers for U.S. Government financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless traveled by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier is used, an appropriate certification or memorandum adequately explaining why service by a U.S. Flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements in this section in all subcontracts that may involve international air transportation.

B. Buy America. The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j) (2) I and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content. Contractor must submit the appropriate Buy America certification with all bids or offers on FTA-funded contracts exceeding \$100,000, except those subject to a general waiver. Certification is not required for this procurement due to lack of applicability per the scope of work detailed herein.

C. Seismic Safety. The Engineer agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The Engineer agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

D. Energy Conservation Requirements. The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

E. Energy Conservation Requirements. The Engineer agrees to comply with mandatory standards and policies relating to energy efficiency that are contained in the

state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

F. Prohibition Against Use of Federal Funds for Lobbying. Neither the Contractor nor any subcontractor may use Federal assistance funds for publicity or propaganda purposes designed to support or defeat legislation pending before Congress. Certification of Restrictions on Lobbying is required. Certification is required as provided in the solicitation.

G. Access to Records and Reports. The Contractor shall comply with all requirements of 49 U.S.C. 5325 18 CFR 18.36 (i) 49 CFR 633.17. The Contractor agrees to provide the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

H. Federal Changes. Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between MRCOG and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

I. Clean Air. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.* The Contractor agrees to report each violation to the MRCOG and understands and agrees that the MRCOG will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance.

J. Recycled Products. The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

K. No Government Obligations to Third Parties. The MRCOG and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the MRCOG, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

L. Program Fraud and False or Fraudulent Statements and Related Acts. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the Federal assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

M. Debarment and Suspension. The Contractor shall provide certifications required by Department of Transportation regulations, "Government-wide Debarment and Suspension (Nonprocurement)," 49 C.F.R. Part 29, and otherwise comply with the requirements of those regulations. Certification is required as provided in the solicitation.

N. Civil Rights Compliance. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations.

Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract: Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.*, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes,

executive orders, regulations, and Federal policies undertaken in the course of the Project.

Affirmative Action - The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any Federal implementing requirements.

Age - In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any further Federal implementing requirements.

Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance, modified only if necessary, to identify the affected parties. Acceptance of offer is contingent upon the bidder's certification and agreement by submittal of its offer, to comply and act in accordance with all provisions of the New Mexico Human Rights Act, Title VII of the U.S. Civil Rights Act of 1964, as amended, and all federal statutes and executive orders and New Mexico statutes relating to the enforcement of civil rights.

O. **Disadvantaged Business Enterprise.** The contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. Mid-Region Council of Governments (MRCOG) adheres to the annual DBE goal established by the State. The overall goal for DBE participation utilizing race-neutral measures is 3.94%. A list of certified Disadvantage Business Enterprises can be obtained from the New Mexico Department of Transportation, Office of Equal Employment Opportunity Programs (OEOP), P.O. Box 1148, Santa Fe, New Mexico 87504-1148 or from the following state website:
<https://nmdot.dbesystem.com/FrontEnd/VendorSearchPublic.asp?TN=nmdot&XID=177>.
A separate contract goal has not been established for this procurement.

Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may

result in the termination of this contract or such other remedy as deemed appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

The successful offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work. If applicable, the prime contractor is required to pay all retainage owed to each subcontractor for satisfactory completion of accepted work within 30 days from the receipt of each payment the prime contract receives from MRCOG. Any delay or postponement of payment beyond the above referenced time frame may occur only for good cause following written approval from the MRCOG

The contractor must promptly notify MRCOG whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent.

Q. Incorporation of Federal Transit Administration (FTA) Terms. All contractual provisions required by USDOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any requests that would cause the agency to be in violation of the FTA terms and conditions.

R. Text Messaging While Driving. In accordance with Executive Order No. 13513, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, 23 U.S.C.A. § 402 note, and DOT Order 3902.10, Text Messaging While December 30, 2009, the Contractor is encouraged to comply with the terms of the following Special Provision.

Definitions. As used in this Special Provision:

(1) "Driving" means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise. "Driving" does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.

(2) "Text Messaging" means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include the

use of a cell phone or other electronic device for the limited purpose of entering a telephone number to make an outgoing call or answer an incoming call, unless the practice is prohibited by State or local law.

Safety. The Contractor is encouraged to:

(1) Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving Contractor owned or rented vehicles or Government-owned, leased or rented vehicles; Privately-owned vehicles when on official Project related business or when performing any work for or on behalf of the Project; or any vehicle, on or off duty, and using an employer supplied electronic device.

(2) Conduct workplace safety initiatives in a manner commensurate with the Contractor's size, such as: Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

(3) Include this Special Provision in its subcontracts with its subcontractors and third party contracts and also encourage its subcontractors, lessees, and third party contractors to comply with the terms of this Special Provision, and include this Special Condition in each subcontract, lease, and third party contract at each tier financed with Federal assistance provided by the Federal Government.

Section 18. General Conditions

A. Contract Interpretation.

1) **Severability.** In the event any covenant, condition or provision herein is held to be invalid, illegal, or unenforceable by any court of competent jurisdiction, such covenant, condition or provision shall be deemed amended to conform to applicable laws so as to be valid or enforceable or, if it cannot be so amended without materially altering the intention of the parties, it shall be stricken. If stricken, all other covenants, conditions and provisions of this Agreement shall remain in full force and effect provided that the striking of such covenants, conditions or provisions does not materially prejudice either the MRCOG or the Contractor in its respective rights and obligations contained in the valid covenants, conditions or provisions of this Agreement.

2) **Waiver.** No provision of this Agreement shall be deemed to have been waived by either party unless such waiver is in writing, signed by the party making the waiver and addressed to the other party, nor shall any custom or practice which may evolve between the parties in the administration of the terms of this Agreement be construed to waive or lessen the right of either party to insist upon the performance of the other party in strict accordance with the terms of this Agreement. Further, the waiver by any party of a breach by the other party or any term, covenant, or condition hereof shall

not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition thereof.

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

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

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

6) Relationship of Contract Documents. All documents attached to this Agreement or incorporated into this Agreement are complementary, and any requirement of one contract document shall be as binding as if required by all.

7) Exhibits Certificates, Documents Incorporated and Attachments. Incorporation by Reference: All certificates, documents, exhibits, attachments, riders, and addenda referred to in this Agreement are hereby incorporated into this Agreement by reference and made a part hereof as though set forth in full in this Agreement to the extent they are consistent with its conditions and terms.

8) Applicable Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New Mexico, and the laws, rules and regulations of MRCOG.

9) Successors. All covenants, stipulations and agreements in this Agreement shall extend to and bind the legal representatives, successors, and assigns of the respective parties hereto.

10) Governmental Rights and Powers. Nothing in this Agreement shall be construed or interpreted as limiting, relinquishing, or waiving any rights of ownership enjoyed by MRCOG, or waiving or limiting the MRCOG's control over the management, operations, or maintenance of its property, except as specifically provided in this Agreement, or impairing, exercising or defining governmental rights and the police powers of the MRCOG.

B. Discrimination Prohibited.

1) General. In the use and occupation of the MRCOG premises, the Contractor shall not discriminate against any person or class of persons by reason of race, color, religion, sex, national origin or ancestry, age, or physical or mental handicap.

2) Civil/Human Rights Laws. In the operation and use of the MRCOG premises, the Contractor shall not on the grounds of race, color, religion, sex, national origin or ancestry, age, or physical or mental handicap, discriminate or permit discrimination against any person or group of persons in any manner prohibited by Title 49 CFR Part 21, the Civil Rights Act of 1964, as amended, the Equal Pay Act of 1963, the Rehabilitation Act of 1973, and the New Mexico Human Rights Act. Without limiting the generality of the foregoing, the Contractor agrees to not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin or ancestry, age, or physical or mental handicap. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, national origin or ancestry, age, or physical or mental handicap. Such action shall include, but not be limited to: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; selection for training; and disciplinary actions and grievances. The Contractor agrees to post in conspicuous places available to employees, and applicants for employment, notice to be provided setting forth the provisions of this non-discrimination clause.

3) The Contractor, for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration of this Agreement, does hereby covenant and agree that: (1) no person on the grounds of race, color, religion, sex, national origin or ancestry, age, or physical or mental handicap shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, religion, sex, national origin or ancestry, age, or physical or mental handicap shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Contractor shall use the MRCOG facilities (when applicable) in compliance with all other requirements imposed by, or pursuant to, the New Mexico Human Rights Act, and 49 CFR Parts 21 and 23, and as said regulations may be amended.

4) Contractor's violation of this section shall be deemed a material breach of this Agreement.

5) Contractor shall include the provisions of this section in every subcontract, including procurement of materials and leases of equipment (unless exempt by the above referenced regulations or orders of instructions issued pursuant thereto), in the performance of this Agreement.

C. Indemnification Agreement.

1) General Indemnification. The Contractor agrees to indemnify and hold harmless the MRCOG, including its officers, employees or agents, against all liability, claims, damages, losses or expenses, including attorney fees, only to the extent that the liability, claims, damages, losses or costs are caused by, or arise out of, the acts or omissions of the Contractor or its officers, employees or agents.

2) Insurance. The indemnity required herein shall not be limited by the specification of insurance coverages in this Agreement.

3) Survives the Term. This indemnification agreement shall survive the term of this Agreement.

4) Scope of Indemnification. With respect to any liability, claims, damages, losses or costs that are caused by, or arise out of, the acts or omissions of the Contractor or its officers, employees or agents, the Contractor shall: (a) investigate or cause the investigation of such liability, claims, damages, losses or costs, (b) negotiate or cause to be negotiated all claims made, even when Contractor considers such claims to be groundless, false or fraudulent in the name of the MRCOG and on behalf of the MRCOG, (c) and satisfy judgments finally establishing the liability of the MRCOG in all actions for which the Contractor is obligated to indemnify the MRCOG, including its officers, employees or agents, pursuant to this section, and (d) pay, or cause to be paid: (1) all costs assessed against MRCOG in any such legal proceeding, (2) any interest accruing up to the date of payment by Contractor, (3) all premiums charged upon appeal bonds required in such proceedings, and (4) all expenses incurred by MRCOG for investigation, negotiation, and defense, including but not limited to expert witnesses' and attorneys' fees incurred.

5) Miscellaneous. MRCOG shall, promptly upon receipt, give Contractor every demand, notice, summons, or other process received in any claim or legal proceeding for which Contractor is required to indemnify MRCOG. In the event MRCOG fails to give Contractor notice of any such demand, notice, summons, or other process received by MRCOG, and such failure to give said notice shall result in prejudice to Contractor in its defense of any action or legal proceeding in which Contractor is required to indemnify the MRCOG, then such failure or delay shall release Contractor of its liability as set forth in this Indemnification Agreement, but only insofar as the particular claim or legal proceeding is concerned, and only to the extent of such prejudice. Nothing in this subsection shall be deemed a change or modification in any manner whatsoever of the method or conditions of preserving, asserting, or enforcing any claim or legal liability against the MRCOG. This section shall not be construed as a waiver of the MRCOG's immunity. The provisions of this section shall not be construed to prohibit Contractor from seeking contribution or indemnity from any third party which may have caused or contributed to the event for which Contractor indemnifies the MRCOG.

D. Assignment and Subletting. The Contractor shall not assign or otherwise transfer, in whole or in part, any of the rights granted in this Agreement without the prior written

approval of the MRCOG. The MRCOG shall not be required to approve any assignment or other transfer of this Agreement that would result in the Services required in this Agreement being performed by any other person or entity than the Contractor.

E. Ethics.

1) Conflict of Interest. As a condition of this Contract, the Contractor shall furnish the MRCOG with a Campaign Contribution Disclosure form, substantially the same as Exhibit D, and shall deliver said disclosure to the Project Manager, Mid-Region Council of Governments, 809 Copper Ave., N.W., Albuquerque, New Mexico 87102. The Contractor shall disclose whether any member of the MRCOG Board of Directors, officer or employee of the MRCOG or the Mid-Region Council of Governments (MRCOG), an administrative entity for the MRCOG, has or hereafter acquires any direct, indirect, legal, or beneficial interest in the Contractor or in any contract, lease, or agreement between the MRCOG and the Contractor, or in any franchise, concession, right, or privilege of any nature granted by the MRCOG to the Contractor in this Agreement or otherwise.

2) Fair Dealing. The Contractor covenants and warrants that the only person or firm interested in this Agreement as principal (or principals) are named in this Agreement and that no other person or firm has any interest in this Agreement, and this Agreement is entered into by the Contractor without collusion on the part of the Contractor with any person or firm, without fraud and in good faith. The Contractor also covenants and warrants that no gratuities, in the form of entertainment, gifts or otherwise, were, or during the term of this Agreement, shall be, offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the MRCOG with a view toward securing this Agreement or for securing more favorable treatment with respect to making any determinations with respect to performing this Agreement.

F. Approvals, Consents and Notices.

1) All notices, consents, and approvals required by this Agreement shall be in writing and shall be given by registered or certified mail by depositing the same in the U.S. mail in the continental United States, postage prepaid, return receipt requested, or by personal delivery, or by facsimile transmission to the "FAX" number given below, provided that the completed transmission is electronically verified. Either party shall have the right, by giving written notice to the other, to change the address at which its notices are to be received. Until any such change is made, notices shall be delivered as follows:

MRCOG: Director
Certified Mail: 809 Copper Ave., N.W.
Albuquerque, New Mexico 87102
Personal Delivery: Same as above
Telephone: (505) 247-1750, FAX Transmission: (505) 247-1753

Contractor:
Contractor Official:

Title:
Certified Mail:

Personal Delivery:

Telephone:

FAX Transmission:

E-Mail Address:

2) If notice, consent or approval is given in any other manner or at any other place, it shall also be given at the place and in the manner specified above.

3) The effective date of such notice, consent or approval shall be the date of the receipt as shown by the U.S. Postal Service Return Receipt, or the date personal delivery is certified, or the date of electronic verification of the facsimile transmission, unless provided otherwise in this Agreement.

G. Non-Liability of Agents and Employees. No member, officer, agent, director, or employee of MRCOG or Contractor shall be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement or because of any breach thereof or because of their execution or attempted execution of this Agreement.

H. No Partnership or Agency. Nothing contained in this Agreement is intended or shall be construed in any respect to create or establish any relationship other than that of owner and contractor, and nothing herein shall be construed to establish any partnership, joint venture or association or to make Contractor the general representative or agent of MRCOG for any purpose whatsoever.

I. Force Majeure. Except as expressly provided in this Agreement, neither MRCOG nor Contractor shall be deemed to be in default hereunder if either party is prevented from performing any of the obligations, other than payment of rentals, fees and charges hereunder, by reason of strikes, boycotts, labor disputes, embargoes, shortages of energy or materials, acts of the public enemy, weather conditions and the results of acts of nature, riots, rebellion, sabotage, or any other similar circumstances for which it is not responsible or which are not within its control.

J. Forum Selection. Any cause of action, claim, suit, demand, or other case or controversy arising from or related to this Agreement shall only be brought in a state district court located in Bernalillo County, New Mexico or in a federal district court located in New Mexico. The parties irrevocably admit themselves to, and consent to, the jurisdiction of either or both of said courts. The provisions of this section shall survive the termination of this Agreement.

K. Compliance with Law. The Contractor shall comply with all applicable laws, ordinances, regulations and procedures of federal, state, and local governments, including, but not limited to MRCOG rules. The Contractor shall comply with all applicable

provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101) and federal regulations promulgated there under (28 C.F.R. Parts 35, 36, and 37).

L. Patents and Trademarks. Contractor represents that it is the owner or fully authorized to use any and all services, processes, machines, articles, marks, names or slogans used by it in its performance under this Agreement. Contractor agrees to defend, indemnify and hold harmless the MRCOG, pursuant to the Indemnification Agreement above, from any loss, liability, expense, suit or claim for damages in connection with any actual or alleged infringement of any patent, trademark, copyright, trade secret or proprietary right, or arising from any alleged or actual unfair competition or other similar claim arising out the performance of this Agreement by Contractor. In the event a claim is made that the use of materials is such an infringement, the Contractor shall either procure for MRCOG the right to continue using such materials, make modifications resulting in the elimination of the infringement (and continue to meet the requirements of this Agreement) or replace such material with non-infringing materials of a like functionality that meet the requirements of this Agreement.

M. Savings. MRCOG and Contractor acknowledge and agree that they have thoroughly read this Agreement, including all exhibits thereto, and have sought and received whatever competent advice and counsel was necessary for them to form a full and complete understanding of all rights and obligations herein. MRCOG and Contractor further acknowledge that the Agreement is the result of negotiations between them and that this Agreement shall not be construed against either party by reason of that party's preparation of all or part of this Agreement.

IN WITNESS WHEREOF, the Parties referenced herein have executed this Agreement on the dates specified below.

MID-REGION COUNCIL OF GOVERNMENTS

By: _____
Director

Date: _____

CONTRACTOR

By: _____

Date: _____

Title: _____

APPROVED AS TO FORM

By: _____
MRCOG Legal Counsel

Date: _____

EXHIBIT A
SCOPE OF SERVICES

EXHIBIT B
SCHEDULE OF FEES

EXHIBIT C CERTIFICATE OF INSURANCE FORM

CERTIFICATE OF INSURANCE					ISSUE DATE (MM/DD/YY)	
PRODUCER		THIS CERTIFICATE DOES NOT AMEND< EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW				
		COMPANIES AFFORDING COVERAGE				
		COMPANY				
		LETTER A				
		COMPANY				
INSURED		COMPANY				
		LETTER D				
		COMPANY				
<p>COVERAGES: THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED FOR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.</p>						
CO. LTR.	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE	POLICY EXPIRATION DATE	LIMITS	
	GENERAL LIABILITY* <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR. <input type="checkbox"/> OWNER'S & CONTRACTOR'S PROTECT. <input type="checkbox"/> SELF INSURANCE RETENTION				GENERAL AGGREGATE	\$
					PRODUCTS-	\$
					PERSONAL & ADV.	\$
					EACH OCCURRENCE	\$
					FIRE DAMAGE (Any one fire)	\$
					MED. EXPENSE (Any one person)	\$
					SELF INSURANCE AMOUNT	\$
	AUTOMOBILE LIABILITY * <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS <input type="checkbox"/> GARAGE LIABILITY				COMBINED SINGLE LIMIT	\$
					BODILY INJURY (Per Person)	\$
					BODILY INJURY (Per Accident)	\$
					PROPERTY DAMAGE	\$
					SELF INSURANCE AMOUNT	\$
	EXCESS LIABILITY * <input type="checkbox"/> UMBRELLA FORM <input type="checkbox"/> OTHER THAN UMBRELLA FORM				EACH OCCURRENCE	\$
					AGGREGATE	\$
	WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY				STATUTORY LIMITS	\$
					EACH ACCIDENT	\$
					DISEASE - POLICY LIMIT	\$
					DISEASE - EACH EMPLOYEE	\$
	OTHER					
DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS						
CERTIFICATE HOLDER				MODIFICATION/CANCELLATION: THE ABOVE IDENTIFIED POLICY (POLICIES) OF INSURANCE SHALL NOT BE MATERIALLY CHANGED OR ALTERED, OR CANCELED WITHOUT FIRST GIVING THIRTY (30) DAYS ADVANCE WRITTEN NOTICE BY CERTIFIED MAIL RETURN RECEIPT REQUESTED TO THE PARTIES.		