

SANTA FE COUNTY
TREASURER'S OFFICE
REQUEST FOR PROPOSALS



MERCHANT SERVICES

SEPTEMBER 2018

2019-0042-TRS/KE

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I. ADVERTISEMENT

Merchant Services
2019-0042-TRS/KE
(NM State Commodity Code 94670)

Santa Fe County (“the County”) is soliciting proposals to provide Merchant Services for multiple County departments. The County seeks a Contractor to provide payment card acceptance and processing services to multiple County Departments in accordance to the Scope of Work stated in the RFP 2019-0042-TRS/KE.

All proposals submitted shall be valid for ninety (90) days subject to action by the County. Santa Fe County reserves the right to reject any and all proposals in part or in whole. A completed proposal shall be submitted in a sealed container indicating the proposal title and number along with the Offeror’s name and address clearly marked on the outside of the container. **All proposals must be received by 2:00 pm on Thursday, October 25, 2018, at the Santa Fe County Purchasing Division, 142 W. Palace Avenue (Second Floor), Santa Fe, NM 87501.** By submitting a proposal for the requested services each Offeror is certifying that their proposal complies with regulations and requirements stated within the Request for Proposals.

A Pre-Proposal Conference will be held on Thursday, September 27, 2018 at 10:00 am at the Santa Fe County Legal Conference Room, 102 Grant Ave. (Second Floor), Santa Fe, NM 87501. Attendance at the pre-proposal conference is not mandatory but strongly recommended.

EQUAL OPPORTUNITY EMPLOYMENT: All qualified Offerors will receive consideration of contract(s) without regard to race, color, religion, sex, national origin, ancestry, age, physical and mental handicap, serious mental condition, disability, spousal affiliation, sexual orientation or gender identity.

Request for proposals will be available by contacting Karen K. Emery, Procurement Specialist, Senior, 142 W. Palace Avenue (Second Floor), Santa Fe, New Mexico 87501, by telephone at (505) 992-6759 or by email at kkemery@santafecountynm.gov or on our website at https://www.santafecountynm.gov/asd/current_bid_solicitations

PROPOSALS RECEIVED AFTER THE DATE AND TIME SPECIFIED ABOVE WILL NOT BE CONSIDERED AND WILL BE REJECTED BY SANTA FE COUNTY.

Santa Fe County
Purchasing Division

Advertised: September 9 & 10, 2018

II. INTRODUCTION

A. PURPOSE OF THIS REQUEST FOR PROPOSAL

Santa Fe County (“the County”) is soliciting proposals to provide Merchant Services for multiple County departments. The County seeks a Contractor to provide payment card acceptance and processing services to multiple County Departments in accordance to the Scope of Work. Although the County makes no guarantee as to the volume or value of payments to be processed, the chart below provides information on the County’s current payment processing volume and value. Only a portion of property taxes are currently collected by payment card.

Chart of Santa Fe County Incoming Payment Details for Fiscal Year 2018

Type of Payment	Payment Count	Amount	Average \$/Payment
Property Tax Payments to County Treasurer	142,738	\$ 187,405,641	\$ 1,312.93
Online Payment Card Property Tax Payments	5,421	\$ 5,353,597	\$ 987.57
Over-the-Counter Payment Card Property Tax Payments	1,258	\$ 533,095	\$ 423.76
Non-Payment Card Property Tax Payments	136,059	\$ 181,518,949	\$ 1,334.12
Solid Waste Permits to Public Works Department	5,900	\$ 421,837	\$ 71.50
Utility Payments to Public Works Department	70,085	\$ 5,028,971	\$ 71.76
Business Licenses to Growth Management Department	2,072	\$ 89,696	\$ 43
Land Use Permits - PZ	1,546	\$ 1,116,241	\$ 722
Clerks Fees	1,909	\$ 866,689	\$ 454
Ambulance Billing	809	\$ 1,331,350	\$ 1,646
*Other	7,292	\$ 126,782,106	\$ 17,386
Total Cash Receipts (excludes Gross Receipts Tax distributed from State of New Mexico)	165,650	\$ 323,042,531	\$ 1,950

*Other includes but is not limited to: Animal Control, Film Permits, Teen Court, etc.

B. SCOPE OF WORK

All qualified institutions are invited to submit a proposal. Institutions responding to this RFP must be able to demonstrate a capacity to meet the County’s requirements as stated in the Scope of Work.

The Contractor shall:

1. Provide options for multiple County departments to accept payment card payments via in person (face to face), mobile, online, kiosk, Interactive Voice Response (IVR), and touch-tone response. These payments will be required to be processed through the same payment portal and transmitted to the County’s fiscal agent bank for deposit. Payment card options should include credit, debit and e-check options. Functionality should include “shopping cart” functionality to bundle multiple payments owed across various departments.
2. Host a secure administrative website where payment card transaction data is accessible to the County Treasurer and other County staff for payment history, monthly reporting and daily

payment listings in order to reconcile payments being uploaded to the County's general ledger accounting system (Superion/AS 400).

3. Provide a secure payment site capable of providing customer refunds directly to the cards used for payments.
4. Provide all customer-interfacing in both in English and Spanish.
5. Build and host a secure payment website/portal that is not located on the County's server and that is fully compliant with all Payment Card Industry-Data Security Standards (PCI-DSS). The site must have a customized look and feel that integrates with the County's Website (www.santafecountynm.gov).
6. Provide a system that interfaces with the County's financial system (Superion/AS400) in real time to allow the Contractor to pull accurate profile information and balance data from Superion.
7. Provide approved County staff the online capabilities of voiding same day transactions that are made in error or have been requested by the customer that they be voided via a secure and separate portal that requires additional permissions and authentication to access.

C. QUALIFICATIONS

Contractor must be Payment Card Industry-Data Security Standards (PCI-DSS) Certified.

D. INSURANCE REQUIREMENTS

The insurance coverages required are listed below.

1. General Conditions. Contractor shall submit evidence of insurance as is required herein. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico.
2. General Liability Insurance, Including Automobile. Contractor shall procure and maintain during the life of this Agreement a comprehensive general liability and automobile insurance policy with liability limits in amounts not less than \$1,000,000 combined single limits of liability for bodily injury, including death, and property damage for any one occurrence. Said policies of insurance shall include coverage for all operations performed for County by Contractor; coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment, both on and off work; and contractual liability coverage under which this Agreement is an insured contract. County of Santa Fe shall be a named additional insured on the policy.
3. Workers' Compensation Insurance. Contractor shall comply with the provisions of the Workers' Compensation Act.
4. Professional Liability Insurance. The Contractor shall procure and maintain during the life of this Agreement a Professional Liability Insurance.

5. Increased Limits. If, during the life of this Agreement, the Legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act (NMSA 1978, §41-4-1 through §41-4-29, as amended), Contractor shall increase the maximum limits of any insurance required herein.

E. PROCUREMENT MANAGER

The County has designated a Procurement Manager who is responsible for the conduct of this procurement whose name, address and telephone number is listed below. All deliveries via express carrier should be addressed as follows:

Karen K. Emery, Senior Procurement Specialist
Santa Fe County Purchasing Division
142 W. Palace Avenue (Second Floor)
Santa Fe, New Mexico 87501
Phone (505) 992-6759
Fax (505) 989-3243
kkemery@santafecountynm.gov

Any inquiries or requests regarding this procurement should be submitted to the Procurement Manager in writing. Offerors may contact ONLY the Procurement Manager regarding the procurement. Other County employees do not have the authority to respond on behalf of the County. Any contact with other County employees or elected officials during the procurement process (until an agreement has been approved and signed by all parties) may be grounds for disqualification of Offerors' proposal.

F. DEFINITION OF TERMINOLOGY

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

“BCC” means the Santa Fe County Board of County Commissioners.

“Close of Business” means 5:00 PM Mountain Standard Time or Mountain Daylight Time, whichever is in effect on the given date.

“Contract” or “Agreement” 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.

“County” means Santa Fe County.

“Determination” means the written documentation of a decision by the Procurement Manager including findings of fact supporting a decision. A determination becomes part of the procurement file.

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

“Evaluation Committee” means a body appointed by the County management to perform the evaluation of offeror proposals.

“Finalist” is defined as an Offeror who meets all the mandatory specifications of this Request for Proposals and whose score on evaluation factors is sufficiently high to merit further consideration by the Evaluation Committee.

“Mandatory” The terms “must”, “shall”, “will”, “is required”, or “are required”, identify a mandatory item or factor (as opposed to “desirable”). Failure to meet a mandatory item or factor will result in the rejection of the Offeror’s proposal.

“Offeror” is any person, corporation, or partnership that chooses to submit a proposal.

“Procurement Manager” means the person or designee authorized by the County to manage or administer a procurement requiring the evaluation of competitive sealed proposals.

“Purchasing Department” means the Santa Fe County Purchasing Department, Finance Division.

“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 its 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, which conforms in all material, respects to the requirements set forth in the request for proposals. Material respects of a request for proposals include, but are not limited to, price, quality, quantity or delivery requirements.

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III. CONDITIONS GOVERNING THE PROCUREMENT

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

A. SEQUENCE OF EVENTS

The Procurement Manager will make every effort to adhere the following schedule:

	<u>Action</u>	<u>Responsibility</u>	<u>Date</u>
1.	Issue of RFP	Purchasing Division	September 10, 2018
2.	Pre-Proposal Conference 10:00 AM MDT	Owner/Purchasing Offerors	September 27, 2018
3.	Acknowledgement Form Due	Offerors	September 27, 2018
4.	Deadline to Submit Additional Questions	Offerors	October 4, 2018
5.	Response to Written Questions	Purchasing Division	October 11, 2018
6.	Submission of Proposal 2:00 PM MDT	Offerors	October 25, 2018
7.	Proposal Evaluation	Evaluation Committee	October 26, 2018 thru November 1, 2018
8.	Selection of Finalists	Evaluation Committee	November 5, 2018
9.	Best and Final Offers from Finalists	Offeror	November - 2018
10.	Oral Presentation by Finalists	Offeror	November - 2018
12.	Finalize Contract	County, Offeror	December - 2018
13.	Contract Award	Purchasing Division	December - 2018

Note: If the Evaluation Committee makes a selection at the Selection of Finalists, events 8-10 will not apply.

B. EXPLANATION OF EVENTS

The following paragraphs describe the activities listed in the sequence of events shown in Section III, Paragraph A.

1. Issue RFP

This RFP is being issued by the Santa Fe County Treasurer and the Purchasing Division.

2. Pre-Proposal Conference

A Pre-Proposal Conference is scheduled to occur on the date indicated in the "Sequence of Events" at Section III.A. Your attendance is **highly recommended**. Questions may be submitted at the Pre-Proposal Conference and after up until the date indicated in the "Sequence of Events" at Section III.A, all questions must be submitted in writing. A public log will be kept of the names of potential offerors that attended the pre-proposal conference. The pre-proposal conference is not mandatory but strongly recommended.

3. Acknowledgement of Receipt Form Due

A potential Offeror should hand-deliver, return by facsimile or e-mail the "Acknowledgement of Receipt Form" provided as Appendix A to have its name and firm placed on the procurement distribution list. The form should be signed by an authorized representative of the organization, dated and returned by close of business on the date indicated in the "Sequence of Events" at Section III.A.

The procurement distribution list will be used for the distribution of written responses to questions and any RFP addenda.

4. Deadline to Submit Additional Written Questions

Potential Offerors may submit written questions regarding this RFP until the close of business on the date indicated in the "Sequence of Events" at Section III.A. All written questions must be addressed to the Procurement Manager, listed in Section II, Paragraph E and sent via facsimile or e-mail. **Any contact during the procurement, prior to a contract award with any elected official or other county staff member other than the Procurement Manager named in this solicitation, may be grounds for disqualification.**

5. Response to Written Questions

Written responses to written questions and any RFP addenda will be distributed on the date indicated in the "Sequence of Events" at Section III.A, to all potential Offerors whose names appear on the procurement distribution list.

Additional written requests for clarification of distributed answers or addenda must be received by the Procurement Manager no later than one (1) day after the answers or addenda were issued.

6. Submission of Proposal

ALL OFFEROR PROPOSALS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE PROCUREMENT MANAGER OR DESIGNEE NO LATER THAN 2:00 P.M. (MOUNTAIN DAYLIGHT TIME) ON October 25, 2018. Proposals received after this deadline will not be accepted. The date and time of receipt will be recorded on each proposal. Proposals must be addressed and delivered to the Procurement Manager at the address listed in Section II, E. Proposals must be sealed and labeled on the outside of the package to clearly indicate that they are in response to the County's Request for Proposals and refer to the RFP number and title. Proposals submitted by facsimile or other electronic means will not be accepted.

Proposals must be delivered to:

Karen K. Emery, Senior Procurement Specialist
Santa Fe County Purchasing Division
142 W. Palace Avenue (Second Floor)
Santa Fe, New Mexico 87501

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

7. Proposal Evaluation

The evaluation of proposals will be performed by an Evaluation Committee appointed by the Procurement Manager. This process will take place during the timeframe indicated in the "Sequence of Events" at III.A. During this time, the Procurement Manager 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. Discussions SHALL NOT be initiated by the Offerors.

8. Selection of Finalists (If Applicable)

The Evaluation Committee may select and the Procurement Manager may notify the Finalist Offerors on the date indicated in the "Sequence of Events" at Section III.A. Only Finalists will be invited to participate in the subsequent steps of the procurement if the Finalist process is used.

9. Best and Final Offers from Finalists (If Applicable)

Finalist Offerors may be asked to submit revisions to their proposals for the purpose of obtaining best and final offers by the date indicated in the "Sequence of Events" at Section III.A.

10. Oral Presentation by Finalists (If Applicable)

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 Santa Fe County Purchasing Division, 142 W. Palace Avenue (Second Floor), Santa Fe, New Mexico, unless notified otherwise. Each presentation will be limited to one (1) hour in duration. NOTE: The scores from the proposal evaluation will only carry over to the Oral Presentation evaluation in the case of a tie score after Oral Presentations.

11. Contract Negotiations

The contract will be finalized with the most advantageous Offeror during the timeframe indicated in the "Sequence of Events" at Section III.A. In the event that mutually agreeable terms cannot be reached within the time specified, the County reserves the right to finalize a contract with the next most advantageous Offeror without undertaking a new procurement process.

12. Contract Award

The County anticipates awarding the contract on the date in the "Sequence of Events" at Section III.A. These dates are subject to change at the discretion of the Santa Fe County Purchasing Manager.

The contract shall be awarded to the Offeror or Offerors whose proposal is most advantageous to the County, taking into consideration the evaluation factors set forth in the RFP. The most advantageous proposal may or may not have received the most points.

13. Right to Protest

Any protest by an Offeror must be timely and in conformance with NMSA 1978, §13-1-172 and applicable procurement regulations. Protests must be written and must include the name and address of the protestor and the request for proposals number. It must also contain a statement of grounds for protest including appropriate supporting exhibits. The protests must be delivered to the Santa Fe County Purchasing Division:

Santa Fe County
Attn: Procurement Office
P.O. Box 276
Santa Fe, New Mexico 87504

Protests will not be accepted by facsimile or other electronic means. Protests received after the deadline will not be accepted.

C. GENERAL REQUIREMENTS

This procurement will be conducted in accordance with the New Mexico State Procurement Code and Santa Fe County Procurement Regulations.

1. Acceptance of Conditions Governing the Procurement

Offerors must indicate their acceptance of the Conditions Governing the Procurement section in the letter of transmittal. Submission of a proposal constitutes acceptance of the terms and conditions in the sample contract attached hereto as Appendix D.

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.

3. Prime Contractor Responsibility

Any contract that may result from this RFP shall specify that the prime contractor is solely responsible for fulfillment of the contract with the County. The County will make contract payments to only the prime contractor.

4. Subcontractors

Use of subcontractors must be clearly explained in the proposal, and major subcontractors must be identified by name. The prime contractor shall be wholly responsible for the entire performance whether or not subcontractors are used.

5. 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. County personnel will not merge, collate, or assemble proposal materials.

6. Offerors' 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 Manager. The approval or denial of withdrawal requests received after the deadline for receipt of the proposals is governed by the applicable procurement regulations.

7. Proposal Offer Firm

Responses to this RFP, including proposal prices, will be considered firm for ninety (90) days after the due date for receipt of proposals or ninety (90) days after receipt of a best and final offer if one is submitted.

8. 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 Manager 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 offeror's organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, NMSA 1978, §57-3A-1 to §57-3A-7. 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 Santa Fe County Procurement Manager shall examine the offeror's 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 data.

9. No Obligation

This procurement in no manner obligates Santa Fe County or any of its departments to the use of any proposed professional services until a valid written contract is awarded and approved by the appropriate authorities.

10. Termination

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

11. Sufficient Appropriation

Any contract awarded as a result of this RFP process may be terminated if sufficient appropriations or authorizations do not exist. Such termination will be effected by sending written notice to the contractor. The County's decision as to whether sufficient appropriations and authorizations are available will be accepted by the contractor as final.

12. Legal Review

The County 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 Manager.

13. Governing Law

This procurement and any agreement with offerors that may result shall be governed by the laws of the State of New Mexico.

14. Basis for Proposal

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

15. Contract Terms and Conditions

The contract between the County and the contractor will follow the format specified by the County and contain the terms and conditions set forth in Appendix D. However, the County reserves the right to negotiate with a successful Offeror provisions in addition to those contained in this RFP.

Should an Offeror object to any of the County's terms and conditions as contained in this Section or in Appendix D, Offeror must propose specific alternative language. The County may or may not accept the alternative language. General references to the Offeror's terms and conditions or attempts at complete substitutions are not acceptable to the County and will result in disqualification of the Offeror's 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.

16. Contract Deviations

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

17. Offeror Qualifications

The Evaluation Committee may make such investigations as necessary to determine the ability of the Offeror to adhere to the requirements specified within this RFP. The Evaluation Committee will reject the proposal of any Offeror who is not a responsible Offeror or fails to submit a responsive offer as defined in NMSA 1978, §13-1-83 and §13-1-85, subject to Procurement Manager approval.

18. Right to Waive Minor Irregularities

The Evaluation Committee reserves the right to waive minor irregularities. The Evaluation Committee 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 the Evaluation Committee, subject to Procurement Manager approval.

19. Change in Contractor Representatives

The County reserves the right to require a change in contractor representatives if the assigned representatives are not, in the opinion of the County, meeting its needs adequately. Any change in contractor representative must receive prior County approval.

20. Notice

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

21. County Rights

The County reserves the right to accept all or a portion of an Offeror's proposal.

22. Right to Publish

Throughout the duration of this procurement process and contract term, potential Offerors must secure from the County 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 Offeror's proposal or termination of the contract.

23. Ownership of Proposals

All documents submitted in response to this Request for Proposals shall become the property of the County. However, any technical or user documentation submitted with the proposals of non-selected Offerors shall be returned after the expiration of the protest period.

24. Electronic Mail Address Recommended

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

25. Preferences in Procurement by Santa Fe County

a. *New Mexico In-state Preference*

New Mexico law, Section 13-1-21 NMSA 1978, provides a preference in the award of a public works contract for an “**in-state resident business**”. Application of a resident business preference for any Offeror requires the Offeror to provide a copy of a valid and current certificate as a resident business. Certificates are issued by the state taxation and revenue department.

If an Offeror submits with its proposal a copy of a valid and current in-state resident business certificate, 5% of the total weight of all evaluation factors used in the evaluation of proposals may be awarded or added to the Offeror’s score.

Certification by the department of taxation and revenue for the resident contractor takes into consideration such activities as the business or contractor’s payment of property taxes or rent in the state and payment of unemployment insurance on employees who are residents of the state.

OR**b. New Mexico Resident Veteran Preference**

New Mexico law, Section 13-1-22 NMSA 1978, provides a preference in the award of a public works contract for a “**resident veteran business**”. Certification by the department of taxation and revenue for the resident veteran business requires the Offeror to provide evidence of annual revenue and other evidence of veteran status.

An Offeror who wants the veteran contractor preference to be applied to its proposal is required to submit with its proposal the certification from the NM Department of Taxation and Revenue and the sworn affidavit attached hereto as Appendix C.

If an Offeror submits with its proposal a copy of a valid and current veteran resident business certificate, 10%, of the total weight of all the evaluation factors used in the evaluation of proposals may be awarded or added to the Offeror’s score.

The resident business preference is not cumulative with the resident veteran business preference.

AND**c. Santa Fe County Preference**

Santa Fe County Ordinance 2012-4 provides for a **County preference** for a “Santa Fe County business.” Application of the County preference in procurement requires an Offeror to obtain and provide a Santa Fe County Business Certificate issued by the Santa Fe County Procurement Manager. Certification by the Procurement Manager takes into consideration the business’ corporate standing in the state, business licensure or registration, the duration of the business’ primary office location and the payment of taxes.

If an Offeror submits with its proposal a copy of its Santa Fe County Business Certificate issued by the Purchasing Manager, 5% of the total weight of all the evaluation factors used in the evaluation of proposals may be awarded to the Offerors score.

The in-state, veteran or County preferences do not apply to procurement of services or goods involving federal funds or federal grant funds.

26. Double-Sided Documents

All submitted bids/proposal documents shall be double-sided, pursuant to Santa Fe County Resolution No. 2013-7, Adopting Sustainable Resource Management Principles, Section 2. A. Waste Reduction and Reuse...”all documents are to be double-sided, including those that are generated by outside entities using County funds and by consultants and contractors doing business with the County”.

27. Living Wage

Contractor shall comply with the requirements of Santa Fe County Ordinance 2014-1 (Establishing a Living Wage).

IV. RESPONSE FORMAT AND ORGANIZATION

A. NUMBER OF RESPONSES

Offerors shall submit only one proposal in response to this RFP.

B. NUMBER OF COPIES

Offerors shall deliver one (1) original and five (5) identical copies of their proposal to the location specified in Section II, Paragraph E on or before the closing date and time for receipt of proposals.

C. PROPOSAL FORMAT

All proposals shall be limited to twenty-five (25) pages, with exception to professional licenses and certifications, which shall be added as appendices. The document shall be typewritten on standard 8 1/2 x 11 paper, with a font no smaller than 12 pt. pitch, with nominal 1” margins and normal line spacing. Proposals shall be placed within a binder with tabs delineating each section.

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.

VOLUME I

- a) Letter of Transmittal
- b) Table of Contents
- c) Proposal Summary (optional)
- d) Response to Specifications – Binder 1 (limited to 25 pages)
- e) Attachments (any additional information required by the Offeror, statements, certifications/licensing, resumes, insurance, appendices, sample reports, etc.)

VOLUME II

- a) Offeror’s Cost Proposal – Binder 2 (separate sealed and marked envelope)

Within each section of their proposal, Offerors should 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. **All discussion of proposed costs, rates or expenses must occur only in Volume II, Binder 2.**

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

The proposal summary may be included by offerors to provide the Evaluation Committee with an overview of the technical and business features of the proposal; however, this material will not be used in the evaluation process unless specifically referenced from other portions of the offeror's proposal.

Offerors may attach other materials that they feel may improve the quality of their responses. However, these materials should be included as items in a separate appendix.

2. Letter of Transmittal

Each proposal must be accompanied by a letter of transmittal. The letter of transmittal MUST:

- a) Identify the submitting organization;
- b) Identify the name and title of the person authorized by the organization to contractually obligate the organization;
- c) Identify the name, title, email address and telephone number of the person authorized to negotiate the contract on behalf of the organization;
- d) Identify the names, titles, email address and telephone numbers of persons to be contacted for clarification;
- e) Explicitly indicate Acceptance of the Conditions Governing the Procurement stated in Section III, Paragraph C.1;
- f) Be signed by the person authorized to contractually obligate the organization;
- g) Acknowledge receipt of any and all amendments to this RFP.
- h) Acknowledge and acceptance of the terms and conditions of the Agreement attached as Appendix D.

THIS SECTION LEFT INTENTIONALLY BLANK

V. SPECIFICATIONS

Offerors should respond in the form of a thorough narrative to each specification. The narratives along with required supporting materials will be evaluated and awarded points accordingly.

A. INFORMATION

The contract is scheduled to begin in or around December, 2018. Santa Fe County intends on awarding a contract with a term of one (1) year with the option to extend for three (3) additional one (1) year terms, not to exceed a total of four (4) years.

B. EVALUATION FACTORS

A brief explanation of each specification is listed below. Offerors are encouraged to fully address each category completely, as points are assigned for responses to each.

1. Introduction

- Provide a brief introduction and overview including history and background of firm

2. Technical Competence and Specialized Experience

- Describe your ability to capture specialized remittance data elements specified by each County department needed to post customer payments.
- Describe your ability to interface with Superior Software.
- Explain how you will manage chargebacks and refunds? How will each occurrence be reported to the County?
- Describe the process and your ability to provide the County with daily transaction reports.
- Describe your commitment and accessibility to provide the County and cardholders with high quality customer service and your ability to resolve any issues related to service delivery.

3. Evidence of Understanding Scope of Work

- Provide a sample timeline of how merchant services would be employed for a County department from the time the department makes the request for services, until the time services are implemented.
- Describe cut off times for merchant deposits.
- Describe the resources County staff will be expected to provide to receive Offeror's services, including but not limited to staff time, equipment, purchase and lease, etc.

4. Capacity and Capability

- Do you have the capability to electronically deposit payments nightly via automated clearinghouse (ACH) directly to the bank account designated by the County? Describe the process.

- Provide your overall service capabilities with regard to merchant services, including a description of delivery of these services to other New Mexico-based public entities.
 - Provide the resumes of key personnel and what roles they will perform in providing services to the County under the Contract.
 - Describe in detail your ability and willingness to build and host a payment card acceptance website that is not housed on the County's network.
 - Describe your experience with the Superior/AS400 system, the general ledger accounting system used by the County.
 - Describe the process used to ensure a seamless real-time interface with the County's Superior/AS400 system.
 - Explain your company's compliance with payment card industry data security standards (PCI-DSS).
 - Describe your capabilities to provide all customer-interfacing materials in English and Spanish.
 - Demonstrate your ability to provide a toll-free, Interactive Voice Response (IVR) system to assist customers with making payments online or by phone.
 - Demonstrate your ability to develop a payment card website customized to have the look and feel of the County's main website, www.santafecountynm.gov.
 - Demonstrate your ability to accept payments via Discover, MasterCard, and Visa and any other card associations.
5. Cost Proposal Specifications: (in a separate sealed envelope; clearly marked)
- Offeror must provide a comprehensive listing of all relevant purchase and lease prices for merchant equipment and any other equipment or materials that must be purchased or leased under the Scope of Work of the RFP. Offeror's cost proposal must contain a comprehensive listing of all fees to be borne by cardholders and by the County, including all charges and fees including but not limited to fees for set-up, processing, chargebacks, monthly service, statements, rejections, authorization, verification, compliance, and foreign exchange. Any fees not proposed and included in a final Agreement will not be paid.
 - Offeror's may propose a tiered cost structure depending on the volume of credit card payments accepted per fiscal year by the County. As volume increases, The County anticipates the Offeror would provide the advantage of a more competitive pricing.

VI. EVALUATION

A. EVALUATION SCORING

The County will evaluate the content and substance of the Offeror’s response to each evaluation factor and assign a numerical score not to exceed the maximum allowed score for that factor. The amount of discussion for each factor is an individual choice of the Offeror; however, discussion should be detailed enough to inform and educate the Evaluation Committee.

Proposals will be scored based upon the Evaluation Committee’s review and consideration of the Offeror’s response to each Evaluation Factor.

1. Introduction	<u>100</u>
2. Technical Competence & Specialized Experience	<u>200</u>
3. Evidence of understanding Scope of Work	<u>200</u>
4. Capacity & Capability	<u>300</u>
5. Cost Proposal	<u>200</u>
 TOTAL (Before preferences are applied)	 <u>1000</u>

PREFERENCES

If a proposal contains an In-State Resident Business Certificate or Resident Veterans Business Certificate and/or Santa Fe County Business Certificate, the applicable preference will be applied.

- 1. Proposal contains a valid N.M. Resident Business Certificate **50 points**
OR
- 2. Resident Veteran Business Certificate **100 points**
AND/OR
- 3. Santa Fe County Preference Certificate **50 points**

B. EVALUATION PROCESS

The evaluation process will follow the steps listed below:

- 1. All Offeror proposals will be reviewed for compliance with the mandatory specifications stated within the RFP. Proposals deemed non-responsive will be eliminated from further consideration.
- 2. The Procurement Manager may contact the Offeror for clarification of the response as specified in Section III, Paragraph B.7.

3. The Evaluation Committee may use other sources of information to perform the evaluation as specified in Section III, Paragraph C.18.
4. Responsive proposals will be evaluated on the factors in Section V 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 who are asked to submit revised proposals for the purpose of obtaining best and final offers will have their points recalculated accordingly. Points awarded from the oral presentations will not be added to the previously assigned points to attain final scores, except in the case of a tie. The responsible Offeror whose proposal is most advantageous to the County, taking into consideration the evaluation factors in Section VI, will be recommended for contract award as specified in Section III, Paragraph B.12. Please note, however, that a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.

APPENDIX A
ACKNOWLEDGEMENT OF RECEIPT FORM
Merchant Services
RFP # 2019-0042-TRS/KE

In acknowledgement of receipt of this Request for Proposal the undersigned agrees that it has received a complete copy, beginning with the title page and table of contents, and ending with Appendix E.

The acknowledgement of receipt should be signed and returned to the Procurement Manager no later than close of business on **September 27, 2018**. Potential Offerors who elect to return this form completed with the indicated intention of submitting a proposal will receive copies of all Offeror written questions and the County's written responses to those questions as well as RFP amendments, if any are issued.

FIRM: _____

REPRESENTED BY: _____

TITLE: _____ PHONE NO.: _____

E-MAIL: _____ FAX NO.: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

SIGNATURE: _____ DATE: _____

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

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

Karen K. Emery, Procurement Specialist, Senior
Santa Fe County Purchasing Division
142 W. Palace Avenue (Second Floor)
Santa Fe, New Mexico 87501
(505) 992-6759
(505) 989-3243
kkemery@santafecountynm.gov

APPENDIX B CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to the Procurement Code, NMSA 1978, §13-1-28, et seq., 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 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 NMSA 1978, §13-1-181, or a contract that is executed may be ratified or terminated pursuant to NMSA 1978, §13-1-182, of the Procurement Code if: 1) a prospective contractor, a family member of the prospective contractor, or a representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or 2) a prospective contractor fails to submit a fully completed disclosure statement pursuant to the law.

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

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

The following definitions apply:

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

“Campaign Contribution” means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official's behalf for the purpose of electing the official to statewide or local office. “Campaign Contribution” includes the payment of a debt

incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

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

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

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

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

Name(s) of Applicable Public Official(s) if any: _____
(Completed by State Agency or Local Public Body)

DISCLOSURE OF CONTRIBUTIONS BY PROSPECTIVE CONTRACTOR:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Date Contribution(s) Made: _____

Amount(s) of Contribution(s) _____

Nature of Contribution(s) _____

Purpose of Contribution(s) _____

(Attach extra pages if necessary)

Signature

Date

Title (position)

--OR--

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

Signature

Date

Title (Position)

APPENDIX C
Resident Veterans Preference Certification

_____ (NAME OF CONTRACTOR) hereby certifies the following in regard to application of the resident veterans' preference to this procurement.

Please check the box below:

I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 allows me the 10% preference discount on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

“I agree to submit a report or reports to the State Purchasing Division of the General Services Department declaring under penalty of perjury that during the last calendar year starting January 1 and ending on December 31, the following to be true and accurate:

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

“I understand that knowingly giving false or misleading information on this report constitutes a crime”.

I declare under penalty of perjury that this statement is true to the best of my knowledge. I understand that giving false or misleading statements about material fact regarding this matter constitutes a crime.

(Signature of Business Representative)*

(Date)

*Must be an authorized signatory of the Business.

The representation made in checking the box constitutes a material representation by the business that is subject to protest and may result in denial of an award or un-award of the procurement involved if the statements are proven to be incorrect.

SIGNED AND SEALED THIS _____ DAY OF _____, 2018.

NOTARY PUBLIC

My Commission Expires:

**APPENDIX D
SAMPLE AGREEMENT**

**SANTA FE COUNTY
PROFESSIONAL SERVICES AGREEMENT
WITH _____ FOR MERCHANT SERVICES**

THIS AGREEMENT is made and entered into on this ____ day of _____, 2018, by and between **SANTA FE COUNTY** (hereinafter referred to as the "County"), a New Mexico political subdivision, and _____ (hereinafter referred to as the "Contractor").

WHEREAS, Santa Fe County Treasurer's Office requires Merchant Services.

WHEREAS, pursuant to NMSA 1978, Section 13-1-112 and 13-1-117, competitive sealed proposals were solicited via a formal request for proposals, RFP No.2019-0042-TRS/KE, for the procurement of services for Merchant Services;

WHEREAS, the Contractor is licensed to do business in the State of New Mexico and as required by the RFP, can provide merchant services to the County;

WHEREAS, the County requires the services of the Contractor, and the Contractor is willing to provide these merchant services and both parties wish to enter into this Agreement.

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

1. SCOPE OF WORK

A. The Contractor shall:

(Insert Scope of Work)

2. COMPENSATION, INVOICING, AND SET-OFF

A. In consideration of its obligations under this Agreement the Contractor shall be compensated as follows:

1. The services provided by the Contractor shall be compensated in accordance with the Fee Proposal, attached hereto as Exhibit A.

2. The total amount payable to the Contractor _____dollars (\$00).

3. This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. The contractor will notify the County when the services provided under this Agreement reach the total

compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services.

4. The Contractor shall submit a written request for payment to the County when payment is due under this Agreement. Upon the County's receipt of the written request, the County shall issue a written certification of complete or partial acceptance or rejection of the contractual items or services for which payment is sought. The Contractor acknowledges and agrees that the County may not make any payment hereunder unless and until it has issued a written certification accepting the contractual items or services. Within thirty (30) days of the issuance of a written certification accepting the contractual items or services, the County shall tender payment for the accepted items or services. In the event the County fails to tender payment within thirty (30) days of the written certification accepting the items or services, the County shall pay late payment charges of one and one-half percent (1.5%) per month, until the amount due is paid in full.
5. In the event the Contractor breaches this Agreement, the County may, without penalty, withhold any payments due the Contractor for the purpose of set-off until such time as the County determines the exact amount of damages it suffered as a result of the breach.
6. Payment under this Agreement shall not foreclose the right of the County to recover excessive or illegal payment.

3. EFFECTIVE DATE AND TERM

This Agreement shall, upon due execution by all parties, become effective as of the date first written above and shall terminate one (1) years later, unless earlier terminated pursuant to Section 5 (Termination) or Section 6 (Appropriations and Authorizations). The County has the option to extend the contract at the same price, terms and conditions for three (3) additional one (1) year terms, not to exceed four (4) years including any extensions. The County may exercise this option by submitting a written notice to Contractor that the Agreement will be extended an additional year. The notice must be submitted to Contractor at least sixty (60) days prior to expiration of the initial Agreement or any extension thereof.

4. ADDITIONAL SERVICES

- A. The parties agree that all tasks set forth in Paragraph 1, SCOPE OF WORK of this Agreement, shall be completed in full, to the satisfaction of the County, for the amount set forth in Section 2, COMPENSATION, INVOICING, AND SET-OFF, of this Agreement, and for no other cost, amount, fee, or expense.
- B. The County may from time-to-time request changes in the Scope of Work to be performed hereunder. Such changes, including any increase or decrease in the amount of the Contractor's compensation, which are mutually agreed upon by and between the County and the Contractor, shall be incorporated in written amendments to this Agreement.

5. TERMINATION

- A. Termination of Agreement for Cause. Either party may terminate the Agreement based upon any material breach of this Agreement by the other party. The non-breaching party shall give the breaching party written notice of termination specifying the grounds for the termination. The termination shall be effective thirty (30) days from the breaching party's receipt of the notice of termination, during which time the breaching party shall have the right to cure the breach. If, however, the breach cannot with due diligence be cured within thirty (30) days, the breaching party shall have a reasonable time to cure the breach, provided that, within thirty (30) days of its receipt of the written notice of termination, the breaching party began to cure the breach and advised the non-breaching party in writing that it intended to cure.
- B. Termination for Convenience of the County. The County may, in its discretion, terminate this Agreement at any time for any reason by giving the Contractor written notice of termination. The notice shall specify the effective date of termination, which shall not be less than fifteen (15) days from the Contractor's receipt of the notice. The County shall pay the Contractor for work performed before the effective date of termination but shall not be liable for any work performed after the effective date of termination.

6. APPROPRIATIONS AND AUTHORIZATIONS

This Agreement is contingent upon sufficient appropriations and authorizations being made for performance of this Agreement by the Board of County Commissioners of the County and/or, if state funds are involved, the Legislature of the State of New Mexico. If sufficient appropriations and authorizations are not made in this or future fiscal years, this Agreement shall terminate upon written notice by the County to the Contractor. Such termination shall be without penalty to the County, and the County shall have no duty to reimburse the Contractor for expenditures made in the performance of this Agreement. The County is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure by the County. The County's decision as to whether sufficient appropriations and authorizations have been made for the fulfillment of this Agreement shall be final and not subject to challenge by the Contractor in any way or forum, including a lawsuit.

7. INDEPENDENT CONTRACTOR

The Contractor and its agents and employees are independent contractors and are not employees or agents of the County. Accordingly, the Contractor and its agents and employees shall not accrue leave, participate in retirement plans, insurance plans, or liability bonding, use County vehicles, or participate in any other benefits afforded to employees of the County. Except as may be expressly authorized elsewhere in this Agreement, the Contractor has no authority to bind, represent, or otherwise act on behalf of the County and agrees not to purport to do so.

8. ASSIGNMENT

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the advance written approval of the County. Any attempted assignment or transfer without the County's advance written approval shall be null and void and without any legal effect.

9. SUBCONTRACTING

The Contractor shall not subcontract or delegate any portion of the services to be performed under this Agreement without the advance written approval of the County. Any attempted subcontracting or delegating without the County's advance written approval shall be null and void and without any legal effect. Upon execution of this Agreement, the County agrees that Contractor will identify a designee or substitute contractor to provide bank custodial services in Contractor's absence.

10. PERSONNEL

- A. All work performed under this Agreement shall be performed by the Contractor or under its supervision.
- B. The Contractor represents that it has, or will secure at its own expense, all personnel required to discharge its obligations under this Agreement. Such personnel (i) shall not be employees of or have any contractual relationships with the County and (ii) shall be fully qualified and licensed or otherwise authorized or permitted under federal, state, and local law to perform such work.

11. RELEASE

Upon its receipt of all payments due under this Agreement, the Contractor releases the County, its elected officials, officers, agents and employees from all liabilities, claims, and obligations whatsoever arising from or under or relating to this Agreement.

12. CONFIDENTIALITY

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

13. PUBLICATION, REPRODUCTION, AND USE OF MATERIAL

The County has the unrestricted right to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data, or other material prepared under or pursuant to this Agreement.

14. CONFLICT OF INTEREST

The Contractor represents that it has no and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of its obligations under this Agreement.

15. NO ORAL MODIFICATIONS; WRITTEN AMENDMENTS REQUIRED

This Agreement may not be modified, altered, changed, or amended orally but, rather, only by an instrument in writing executed by the parties hereto. The Contractor specifically acknowledges and agrees that the County shall not be responsible for any changes to Section 1, "SCOPE OF WORK", of this Agreement unless such changes are set forth in a duly executed written amendment to this Agreement.

16. ENTIRE AGREEMENT; INTEGRATION

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

17. NOTICE OF PENALTIES

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

18. EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

- A. The Contractor agrees to abide by all federal, state, and local laws, ordinances, and rules and regulations pertaining to equal employment opportunity and unlawful discrimination. Without in any way limiting the foregoing general obligation, the Contractor specifically agrees not to discriminate against any person with regard to employment with the Contractor or participation in any program or activity offered pursuant to this Agreement on the grounds of race, age, religion, color, national origin, ancestry, sex, physical or mental handicap, serious medical condition, spousal affiliation, sexual orientation, or gender identity.
- B. Contractor agrees to abide by Santa Fe County Ordinance 2014-1 Establishing a Living Wage within Santa Fe County. Contractor acknowledges and agrees that failure to comply with this Section of the agreement/contract shall constitute a material breach of the Agreement.
- C. The Contractor acknowledges and agrees that failure to comply with this Section shall constitute a material breach of this Agreement.

19. COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW

- A. In performing its obligations hereunder, the Contractor shall comply with all applicable laws, ordinances, and regulations.
- B. This Agreement shall be construed in accordance with the substantive laws of the State of New Mexico, without regard to its choice of law rules. Contractor and the County agree that the exclusive forum for any litigation between them arising out of or related to this Agreement shall be the state district court of New Mexico, located in Santa Fe County.

20. RECORDS AND INSPECTIONS

- A. To the extent its books and records relate to (i) its performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to the County as part of the procurement process, the Contractor agrees to (i) maintain such books and records during the term of this Agreement and for a period of six (6) years from the date of final payment under this Agreement; (ii) allow the County or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with generally accepted accounting principles (GAAP).
- B. To the extent its books and records relate to (i) its performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to County as part of the procurement process, the Contractor also agrees to require any subcontractor it may hire to perform its obligations under this Agreement to (i) maintain such books and records during the term of this Agreement and for a period of six (6) years from the date of final payment under the subcontract; (ii) to allow the County or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with GAAP.

21. INDEMNIFICATION

The Contractor must agree to wholly indemnify the County for any and all loss, damages, costs, expenses (including, without limitation, legal fees and expenses) and liability (collectively hereinafter “Loss”) resulting from errors, omissions, fraud, embezzlement, theft, negligence, (collectively hereinafter “Actions or Omissions”) or neglect by the Contractor, its employees, officers, agents and directors in performing their duties under this Agreement. The Contractor must also acknowledge and agree that any loss shall, unless such loss can be demonstrated by the Contractor to have been due to a cause or causes beyond the reasonable control of the Contractor (such as acts of god, acts of the public enemy, insurrections, riots, fires, explosions, orders or acts of civil or military authority and other cataclysmic events, to the extent all reasonable and diligent precautions by the Contractor could not have been prevented the damage or loss resulting from such event) be conclusively presumed to be the result of Actions or Omissions on part of the Contractor. Limited exceptions to this indemnification requirement may be permitted in any agreement entered by the County with

the Contractor as to information supplied by the County Treasurer's Office pursuant to any safekeeping or other collateral agreement or such other limited exception as may be required in order to enable the provision of a particular service by the Contractor. Any such limited exception must be included in this Agreement and be acceptable to and specifically approved by the County.

22. SEVERABILITY

If any term or condition of this Agreement shall be held invalid or non-enforceable by any court of competent jurisdiction, the remainder of this Agreement shall not be affected and shall be valid and enforceable to the fullest extent of the law.

23. NOTICES

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the County: Santa Fe County
 Office of the County Manager
 102 Grant Avenue
 Santa Fe, New Mexico 87501

To the Contractor:

24. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

The Contractor hereby represents and warrants that:

- A. This Agreement has been duly authorized by the Contractor, the person executing this Agreement has authority to do so, and, once executed by the Contractor, this Agreement shall constitute a binding obligation of the Contractor.
- B. This Agreement and Contractor's obligations hereunder do not conflict with Contractor's corporate agreement or any statement filed with the Public Regulation Commission on Contractor's behalf.
- C. Contractor is legally registered and licensed to operate as a business in New Mexico to do the work anticipated by this Agreement and shall maintain such registration and any applicable licensure in good standing throughout the duration of the Agreement.

25. FACSIMILE SIGNATURES

The parties hereto agree that a facsimile signature has the same force and effect as an original for all purposes.

26. LIMITATION OF LIABILITY

The County's liability to the Contractor for any breach of this Agreement by the County shall be limited to direct damages and shall not exceed the maximum amount of potential compensation specified in Section 2, "COMPENSATION AND INVOICING," of this Agreement. In no event shall the County be liable to the Contractor for special or consequential damages, even if the County was advised of the possibility of such damages prior to entering into this Agreement.

27. NO THIRD-PARTY BENEFICIARIES

This Agreement was not intended to and does not create any rights in any persons not a party hereto.

28. INSURANCE

- A. General Conditions. The Contractor shall submit evidence of insurance as is required herein. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico.
- B. General Liability Insurance, Including Automobile. The Contractor shall procure and maintain during the life of this Agreement a comprehensive general liability and automobile insurance policy with liability limits in amounts not less than \$1,050,000.00 combined single limits of liability for bodily injury, including death, and property damage for any one occurrence. Said policies of insurance shall include coverage for all operations performed for the County by the Contractor; coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment, both on and off work; and contractual liability coverage under which this Agreement is an insured contract. The County of Santa Fe shall be a named additional insured on the policy.
- C. Workers' Compensation r. The Contractor shall comply with the provisions of the Workers' Compensation Act.
- D. Increased Limits. If, during the life of this Agreement, the Legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act (NMSA 1978, Sections 41-4-1 through 41-4-29, as amended), the Contractor shall increase the maximum limits of any insurance required herein.

29. PERMITS, FEES, AND LICENSES

Contractor shall procure all applicable permits and licenses, pay all charges, fees, and royalties, and give all notices necessary and incidental to the due and lawful of its obligations hereunder.

30. NEW MEXICO TORT CLAIMS ACT

No provision of this Agreement modifies or waives any sovereign immunity or limitation of liability enjoyed by County or its "public employees" at common law or under the

New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, et seq.

31. CAMPAIGN CONTRIBUTION DISCLOSURE FORM

The Contractor agrees to compute and submit simultaneous with execution of this Agreement a Campaign Contribution Disclosure Form approved by the County.

32. SURVIVAL

The provisions of following paragraphs shall survive termination of this Contract; INDEMNIFICATION; RECORDS AND INSPECTION; RELEASE, CONFIDENTIALITY, PUBLICATION, REPRODUCTION, AND USE OF MATERIAL; COPYRIGHT; COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW; NO THIRD-PARTY BENEFICIARIES; SURVIVAL.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the last signature by the parties.

SANTA FE COUNTY:

Katherine Miller,
Santa Fe County Manager

Date

Approved as to form:

R. Bruce Frederick
Santa Fe County Attorney

Date

Finance Department:

Stephanie S. Clarke
Santa Fe County Finance Director

Date

CONTRACTOR:

(Print name and title)

Date