



County of Lincoln
Carrizozo, NM 88301

Request for Proposal (RFP)
21-22-001

**ON CALL SPRAY INJECTION ASPHALT & ASPHALT
MAINTENANCE SERVICE**
for the
County of Lincoln

Due: July 12, 2021
2:00 p.m. MDT



County of Lincoln

300 Central Avenue- P.O. Box 711
Purchasing Department
Carrizozo, New Mexico 88301
575-648-2385 x 105

REQUEST FOR PROPOSALS # 21-22-001

THE COUNTY OF LINCOLN IS REQUESTING PROPOSALS FOR THE FOLLOWING GOODS OR SERVICES:

TITLE: On Call Spray Injection Asphalt & Asphalt Maintenance Service
RFP NO.: 2021-22-001
OPEN: June 18, 2021
CLOSES: July 12, 2021 @ 2:00 p.m. Local Time (MDT)

FOR ADDITIONAL INFORMATION CONTACT:

Toni Foligno, Procurement Officer (575-) 648-2385, EXT 105
Or via email at: Purchasing@lincolncountynm.gov

THE OFFICE OF THE MANAGER, COUNTY OF LINCOLN, WILL RECEIVE COMPETITIVE SEALED PROPOSALS FOR THE GOODS OR SERVICES DESCRIBED IN THIS SOLICITATION AT:

VIA MAIL

PROCUREMENT OFFICER
COUNTY OF LINCOLN
PURCHASING DEPARTMENT
P.O. Box 711
CARRIZOZO, NM 88301

HAND DELIVERY

COUNTY OF LINCOLN
PURCHASING DEPT.
ANNEX BUILDING 2nd FLOOR
300 CENTRAL AVENUE
CARRIZOZO, NM 88301

***AND VIA E-MAIL: Purchasing@lincolncountynm.gov**

ANY PROPOSAL RECEIVED AFTER BID OPENING DATE/TIME WILL BE RETURNED UNOPENED.

**NOTE: USE OF THE MAIL SERVICE IS AT YOUR OWN RISK FOR PROPER DELIVERY.
*SEE RFP FOR DELIVERY INSTRUCTIONS**



**County of Lincoln
Request for Proposal (RFP) #21-22-001**

**ON CALL SPRAY INJECTION ASPHALT
& ASPHALT MAINTENANCE SERVICES**

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COUNTY OF LINCOLN
Carrizozo, NM

Request for Proposals # 21-22-001

**ON CALL SPRAY INJECTION ASPHALT &
ASPHALT MAINTENANCE SERVICES**

Due: July 12, 2021 @ 2:00 p.m., MDT

SCOPE OF PROCUREMENT

1. REQUIREMENTS

The County of Lincoln is requesting proposals to provide On Call Spray Injection Asphalt & Asphalt Maintenance Services and will include all time, labor and materials to complete each maintenance project.

2. SCOPE OF WORK

For On Call Spray Injection Asphalt & Asphalt Maintenance Service for minor repairs and maintenance of potholes; asphalt deterioration; "allegator" or other asphalt cracks; as well as radius or other such services in areas within the County of Lincoln, Ruidoso area and unincorporated areas of the County.

This service will be on an "on-call" basis, as well as on projects though out the service contract period.

2.1 Performance/Availability: The "On Call Services" contractor/vendor must;

- 1. be able to respond and schedule and perform requests for services within a reasonable time of which is 48-72 hours after request for services.*
- 2. work around the County Road Department's schedule, meet the County's start and completion dates schedule or timelines.*
- 3. be flexible to provide services due to weather and other related schedule changes at short notice.*
- 4. be located within close proximity to or within the County to provide these services that meet our criteria within reasonable travel time to our County and/or job sites.*
- 5. be familiar with; Lincoln County. such as possible job site's locations; terrain; types of roads within the County including surfaces, and subgrade materials they will encounter and provide the services applications to; and providing services with County government or similar agencies.*

2.2 Application/Specs or Standards:

- 1. A system, application and/or process using the Dura Patcher Road Repair Spray Injection System [see video:*

<https://www.youtube.com/watch?v=xS4f0YcetXU> or a similar comparable system/application approved by the Federal Highway Administration, capable of keeping oil at the correct temperature for long periods of time.

2. Fast or easy application with most efficient application time/cost.

2.3 Materials/Durability/Product(s) or process must have:

1. the ability to overspray area with oil and gravel to prevent additional surface cracking or minimize cracking to failing asphalt.
2. proven record of performance to be successful in our geographical terrain and climate or similar climate; to withstand extreme weather changes and road types that exist within Lincoln County.
3. the ability to be supplied and applied in smaller loads, due to the fact the amount of work within a specific area would not necessitate larger loads and to avoid wasted.
4. capable of keeping oil at the correct temperature for long periods of time.
5. the ability to change the oil mixture to repair potholes and surface cracking to mild winter applications.
6. the use of an oil/gravel mixture for sealing surface cracking on asphalt roadways.

2.4 Mobility/Public Impact:

1. A system or application of the Dura Patch System or comparable equipment able to maneuver within smaller residential roads and minimize traffic impacts.

Must be able to perform the services with as little impact on the public's mobility on treatments areas.

3. CONTRACT PERIOD

The initial period of the contract shall be August 1, 2021 through August 1, 2022, with an option to renew annually up to three (3) additional years upon agreement of both parties and under the same terms and conditions as the original contract, depending upon quality of service.

4. LICENSING

Contractor must hold a current State of New Mexico Contractor's License with an MM-1, MM-3 and MM--4 Classifications or with MM-98 Classification. **Copies of those documents must accompany Contractor's proposal response.**

5. PROPOSAL RESPONSE REQUIREMENTS

Proposal response shall include the following information:

- A. Hourly labor rate for services (shall include cost of tools or equipment normally used in the type of work described in the RFP).
- B. Materials markup rate. **(See *NOTE below)**

- C. Mobilization & Demobilization costs using Capitan as the destination of Service Response time.
- D. Charges for any equipment (leased or owned) not included in the hourly rate.

***NOTE: Please be advised that in order for the County to provide payment to the Contractor for materials utilized in the course and scope of providing the indicated services to the County, a copy of the invoice showing the wholesale cost of the materials used MUST be submitted to the County in order for the County to verify the appropriate markup cost. FAILURE TO PROVIDE A COPY OF THE INVOICE INDICATING THE WHOLESALE COST OF MATERIALS WILL RESULT IN NON-PAYMENT OF THOSE MATERIALS UNTIL SAID INVOICE IS PROVIDED TO THE COUNTY.**

6. PROPOSAL CONDITIONS AND EVALUATION CRITERIA

The County of Lincoln has placed the work being requested out for proposals. Any person/business submitting a proposal must do so based on the following criteria. Criteria will be ranked on an evaluation process as shown in the Evaluation Criteria below.

Evaluations of proposals:

- Materials/ markup rate 25 Points
- Labor rates 25 Points
- Clean Up 25 Points
- Mobilization & Demobilization costs 25 Points
(Using Capitan as the service destination).
- Equipment Costs 25 Points

New Mexico Resident Business/Contractor
or Resident Veteran owned Business. Up to 10%.
(If applicable, only one applies) 137.50 TOTAL POSSIBLE POINTS

7. RECORDS AND AUDIT

During the term of this contract and for three (3) years thereafter, the Contractor shall maintain detailed records pertaining to the services rendered and products delivered. These records shall be subject to inspection by the County, the New Mexico State Auditor, and other appropriate state and federal authorities. The agency shall have the right to audit billings both before and after payment. Payment under this contract shall not foreclose the right of the County to recover excessive or illegal payments.

8. PROOF OF INSURANCE

Prior to the commencement of any work hereunder, Contractor shall furnish to the County of Lincoln proof of the required insurance(s) as set forth in the Instructions to Offerors. All such Certificates of Insurance shall provide that the Insurance Company(ies) shall give the County of Lincoln ten (10) days prior written notice before any change in materials or cancellation of any such policy.

9. PROPOSAL SUBMISSION

All proposals are due and must be received on or before July 12, 2021 at 2:00 p.m. MT. Proposals received after that time and date will not be accepted and will be returned unopened.

All proposals submitted must in a sealed package or opaque envelope; clearly marked on the outside front of the package with the RFP Title; RFP #; RFP due date; and the words "Sealed Proposal Enclosed"! Proposals must be submitted or delivered as follows:

Physical Delivery to:

County Manager's Office
Attn: Purchasing CPO
300 Central Avenue
Carrizozo, NM 88301

OR

US Mail to:

County Manager's Office
Attn: Purchasing CPO
PO Box 711
Carrizozo, NM 88301

***AND VIA E-MAIL: Purchasing@lincolncountynm.gov**

Oral, telephonic, or proposals sent by fax are invalid and will not receive consideration.

10. IMPORTANT INFORMATION REGARDING MAIL DELIVERY

Carrizozo is in a rural area of southern New Mexico. *Normal* mail delivery does not apply and **overnight delivery by any carrier is not guaranteed!**

- Within New Mexico, allow 3-5 days by United States Postal Service (USPS) mail.
- Out-of-state mail can take longer than 5 days via USPS mail.
- If using United Parcel Service (UPS), Federal Express or Priority Mail, Contractors should check with the selected carrier who may be able to assist in determining accurate delivery dates to Carrizozo, New Mexico.
- Mail early or hand deliver, the County cannot be responsible for mail delays. Contractor's proposal will be returned unopened if it arrives late.
- **Faxed, telephonic or oral responses to this Request for Proposal will not be accepted.**

11. INSTRUCTIONS TO OFFERORS

The "**COUNTY OF LINCOLN, REQUEST FOR PROPOSALS, INSTRUCTIONS TO OFFERORS**" is incorporated into this Request for Proposal and is attached hereto as **Attachment A**.

12. CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Effective May 17, 2006, Chapter 81, Laws of 2006 requires any prospective contractor seeking to enter into a contract with any state agency or local public body to file a "Campaign Contribution Disclosure Form" with that state agency or local public body. **THIS FORM MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.** The Campaign Contribution Disclosure Form is incorporated into this Request for Proposal and is attached hereto as Appendix D.

13. RESIDENT VETERAN PREFERENCE CERTIFICATION

New Mexico Resident Preference Certification example is attached hereto as Appendix E.

14. RIGHT TO REJECT

The County of Lincoln reserves the right to reject any or all proposals.

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ATTACHMENT A

INSTRUCTIONS TO OFFERORS

1. DEFINITIONS AND TERMS:

- A. "Addendum" means a written or graphic instrument issued prior to the opening of Proposals which clarifies, corrects, or changes the Request for Proposals. Plural: "Addenda".
- B. "Consultant" means the Successful Offeror awarded the Agreement/Contract.
- C. "Determination" means the written documentation of a decision of the Chief Procurement Officer including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains (13-1-52 NMSA 1978).
- D. "Offeror" means any person, corporation, or partnership legally licensed to provide professional services in this state, who chooses to submit a proposal in response to Request for Proposals.
- E. "Chief Procurement Officer" means the person or designee authorized by the County of Lincoln to manage or administer a procurement requiring the evaluation of proposals. In the County of Lincoln, this is the County Manager.
- F. "Request for Proposals" or "RFP" means all documents, including those attached or incorporated by reference, used for soliciting proposals (13-1-81 **NMSA** 1978).
- G. "Responsible Offeror or Proposer" means an Offeror or proposer who submits a responsive proposal and who has furnished, when required, information and data to prove that his financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services described in the proposal (13-1-83 **NMSA** 1978).
- H. "Responsive Offer or Proposal" means an offer or proposal which conforms in all material respects to the requirements set forth in the request for proposals. Material respects of a Request for Proposals include, but are not limited to, price, quality, quantity, or delivery requirements (13-1-85 NMSA 1978).
- I. The terms must, shall, will, is required, or are required, identify a mandatory item or factor. Failure to comply with a mandatory item or factor will result in the rejection of the Offeror's proposal.

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

2. REQUEST FOR PROPOSAL DOCUMENTS:

A. Copies of Request for Proposals:

A complete set of the Request for Proposals may be obtained from the County of Lincoln as stated in the RFP Notice.

- (1) A complete set of the Request for Proposals shall be used in preparing proposals; the County of Lincoln assumes no responsibility for errors or misinterpretations resulting from the use of an incomplete set of the Request for Proposals.
- (2) The County of Lincoln, in making copies of Request for Proposals available on the above terms, does so only for the purpose of obtaining proposals on the Project and does not confer a license or grant for any other use.
- (3) A copy of the RFP shall be made available for public inspection and shall be posted at the Office of the County Manager located at 300 Central Avenue, Carrizozo, New Mexico 88301, and on the County's website: www.lincolncountynm.gov, listed under Offices: Purchasing.

B. Interpretations:

- (1) All questions about the meaning or intent of the Request for Proposals shall be submitted to the Chief Procurement Officer of the County of Lincoln in writing. Replies will be issued by addenda mailed or delivered to all parties recorded by the County of Lincoln having received the Request for Proposals. Questions received less than five (5) days prior to the date for opening of proposals will not be answered. Only questions answered by formal written addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.
- (2) Offerors should promptly notify the County of Lincoln of any ambiguity, inconsistency, or error which they may discover upon examination of the Request for Proposals.

C. Addenda:

- (1) Addenda will be sent by e-mail and U.S.Mail, to all who are known by the County of Lincoln to have received a complete set of Request for Proposals.
- (2) Copies of addenda will be made available for inspection wherever Request for Proposals are on file for that purpose.
- (3) No addenda will be issued later than five (5) days prior to the date for receipt of Proposals, except an Addendum withdrawing the Request for Proposals or one which includes postponement of the date for receipt of Proposals.

3. PROPOSAL SUBMITTAL PROCEDURES:

A. Number, Form and Style of Proposals

- (1) Offerors shall provide one (1) original and (3) copies of their proposal to the location specified on the cover page on or before

the closing date and time for receipt of proposals. AND in addition, one copy via e-mail to the Purchasing agent's email* as identified in section 3.F.4.

- (2) All proposals must be typewritten on standard 8 1/2 "x 11" paper and bound on the left-hand margin.
- (3) Proposals shall contain a maximum of fifteen (15) pages, including title, index, etc, notincluding front and back covers.
- (4) Offeror may request in writing nondisclosure of confidential data. Such data should accompany the proposal and should be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal. A request that states that the entire proposal be kept confidential will not be acceptable. Only matters which clearly are of a confidential nature will be considered.
- (5) 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.
- (6) Proposal will not be returned to the Offeror, unless clearly requested in their proposal.
- (7) A pre-proposal conference [X] will not be held.

B. Sub-consultants:

- (1) The Offeror shall list and state the qualifications for each sub-consultant the Offeror proposes to use for all sub-contracted work.
- (2) The Offeror is specifically advised that any person or other party to whom it is proposed to award a sub-contractor under this proposal, must be acceptable to the County of Lincoln after verification by the County of Lincoln of the current eligibility status, including, but not limited to, suspension or debarment by the County of Lincoln.

C. Prequalification Process

- (1) A business may be pre-qualified by the County Manager as an Offeror for particular types of service. Mailing lists of potential Offerors shall include, but shall not be limited to, such pre-qualified businesses (13-1-134 **NMSA** 1978).

D. Debarred or Suspended Contractors

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

E. Submittal of Proposals

- (1) Proposals shall be submitted at the time and place indicated in this Notice of Request for Proposals.
- (2) **Proposals received after that time and date will not be accepted and will be returned unopened.**
- (3) All proposals submitted must clearly marked on the outside front of the package with the RFP Title; RFP #; RFP due date; and the words "**SEALED PROPOSAL ENCLOSED**" on the face thereof.

- (4) The Offeror shall assume full responsibility for timely delivery of proposals at the County Manager's Office, including those proposals submitted by mail. Proposals must be addressed to the attention of the Chief Procurement Officer of the County of Lincoln; and delivered by means of:

Physical Delivery to:	OR	US Mail to:
County Managers Office		County Managers Office
Attn: Chief Procurement Officer		Attn: Chief Procurement Officer
300 Central Avenue		PO Box 711
Carrizozo, NM 88301		Carrizozo, NM 88301

***AND** one (1) copy VIA E-MAIL: Purchasing@lincolncountynm.gov

- (5) After the date established for receipt of proposals, a register of proposals will be prepared which includes the name of each Offeror, a description sufficient to identify the service and such other information as may be specified by the County Manager.
- (6) Oral, telephonic, or electronic mail proposals are invalid and will not receive consideration.
- F. Correction or Withdrawal of Proposals
- (1) A Proposal containing a mistake discovered before proposal opening may be modified or withdrawn by an Offeror prior to the time set for proposal opening by delivering written or electronic mail notice to the location designated in the Request for Proposals as the place where Proposals are to be received.
- (2) Withdrawn proposals may be resubmitted up to the time and date designated for the receipt of Proposals, provided they are then fully in conformance with the Request for Proposals.
- G. Notice of Contract Requirements Binding on Offeror
- (1) In submitting this proposal, the Offeror represents that the Offeror has familiarized himself with the nature and extent of the Request for Proposals dealing with federal, state and local requirements which are a part of this Request for Proposals.
- (2) Laws and Regulations. The Offeror's attention is directed to all applicable federal and state laws, local ordinances and regulations and the rules and regulations of all authorities having jurisdiction over the services of the project.
- H. Rejection or Cancellation of Proposals
- (1) This Request for Proposals may be cancelled, or any or all proposals may be rejected in whole or in part, when it is in the best interests of the County of Lincoln. A determination containing the reasons therefore shall be made part of the RFP file. (13-1-131 NMSA 1978).

4. **CONSIDERATION OF PROPOSALS**

- A. Receipt, Opening and Recording
- A. Proposals received on time will be opened publicly or in the

presence of two witnesses, and the name of the Offeror and address will be read aloud.

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

B. Proposal Evaluation

- (1) Proposals shall be evaluated on the basis of demonstrated competence and qualification for the type of service required and shall be based on the evaluation factors set forth in this RFP. For the purpose of conducting discussions, proposals may initially be classified as:
 - (a) acceptable
 - (b) potentially acceptable, that is reasonably assured of being made acceptable
 - (c) unacceptable (Offerors whose proposals are unacceptable)
- (2) The County of Lincoln shall have the right to waive technical irregularities in the form of the Proposal of the Offeror which do not alter the quality of the services (13-1-132 NMSA 1978).
- (3) If an Offeror who otherwise would have been awarded a contract is found not to be a responsible Offeror, a determination that the Offeror is not a responsible Offeror, setting forth the basis of the finding, shall be prepared by the Chief Procurement Officer. The unreasonable failure of the Offeror to promptly supply information in connection with an inquiry with respect to responsibility is grounds for a determination that the Offeror is not a responsible Offeror (13-1-133 NMSA 1978). Businesses which have not been selected shall be so notified in writing within twenty- one (21) days after an award is made (13-1-120 NMSA 1978).
- (4). Selection Process
 - (a) The evaluation of proposals will be performed by an evaluation committee composed of representatives selected by the County of Lincoln. The committee shall evaluate statements of qualifications and performance data submitted by at least three businesses in regard to the particular request and may conduct interview with and may require public presentation by all businesses applying for selection regarding their qualifications, their approach, and their ability to furnish the required services.
 - (b) If fewer than three businesses have submitted a statement of qualifications for this RFP, the committee may:
 - (i) rank in order of qualifications and submit to the County of Lincoln for award those businesses which have submitted a statement of qualifications.

- (ii) recommend termination of the selection process and request of new notices of the proposed procurement to be sent out (13-1-104 NMSA 1978).
- C. Negotiations (13-1-122 NMSA 1978)
 - (1) The County of Lincoln's designee shall negotiate a contract with the highest qualified business for the services contemplated under this RFP at compensation determined in writing to be fair and reasonable. In making this decision, the designee shall take into account the estimated value of the services to be rendered and the scope, complexity and professional nature of the services.
 - (2) Should the designee be unable to negotiate a satisfactory contract with the business considered to be the most qualified at a price determined to be fair and reasonable, negotiations with that business shall be formally terminated. The designee shall then undertake negotiations with the second most qualified business. Failing accord with the second most qualified business, the designee shall formally terminate negotiations with that business.
 - (3) The designee shall then undertake negotiations with the third most qualified business.
 - (4) Should the designee be unable to negotiate a contract with any of the businesses selected by the committee, additional businesses shall be ranked in order of their qualifications, and the designee shall continue negotiations in accordance with this section until a contract is signed with a qualified business or the procurement process is terminated, and a new Request for Proposals is initiated.
 - (5) The County of Lincoln will publicly announce the business selected for award.
- D. Notice of Award
 - (1) After award by the County of Lincoln, a written notice of award shall be issued by the County of Lincoln with reasonable promptness. (13-1-100 and 13-1-109 **NMSA** 1978).
- E. Contract Term
 - (1) The contract period will begin August 1, 2021 through August 1, 2022, with the option to extend annually for 3 additional years, based on the same terms and conditions.

5. **POST-PROPOSAL INFORMATION**

- A. Protests
 - (1) Any Offeror who is aggrieved in connection with a solicitation or award may protest to the County Manager of Lincoln County in accordance with the requirements of the County of Lincoln's Procurement Regulations and the State Procurement Code. The protest should be made in writing within twenty-four (**24**) hours after the facts or occurrences giving rise thereto, but in no circumstance later than fifteen (**15**) calendar days after the facts or occurrences giving rise thereto (13-1-172 **NMSA** 1978).
 - (2) In the event of a timely protest under this section, the County Manager and the County of Lincoln shall not proceed further with

the procurement unless the County Manager makes a determination that the award is necessary to protect substantial interests of the County of Lincoln (13-1-173 NMSA 1978).

- (3) The County Manager or his designee shall have the authority to take any action reasonably necessary to resolve a protest of an aggrieved Offeror concerning a procurement. This authority shall be exercised in accordance with adopted regulations but shall not include the authority to award money damages or attorney's fees (13-1-174 **NMSA** 1978).
- (4) The County Manager or his designee shall promptly issue a determination relating to this protest. The determination shall:
 - a. state the reasons for the action taken and,
 - b. inform the Protester of the right to judicial review of the determination (13-1-183 NMSA 1978).
- (5) A copy of the determination issued under 13-1-175 **NMSA** 1978 shall immediately be mailed to the protestant and other Offerors involved in the procurement (13-1-176 **NMSA** 1978).

B. Execution and Approval of Agreement

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

C. Notice of Proceed

- (1) The County of Lincoln will issue a written Notice to Proceed to the Offeror.

D. Offeror's Qualification Statement

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

6. OTHER INSTRUCTIONS TO OFFERORS

A. Equal Opportunity Employment

Lincoln County does not discriminate on the basis of race, color, national origin, sex, religion, age or disability in the employment or the provision of services. Contractors shall be in compliance with the Americans with Disabilities Act requirements.

B. OSHA Requirements in Employment

Lincoln County shall contract with companies or firms whose operators and equipment meet OSHA (Occupational Safety and Health Administration) standards in their field of expertise and shall also comply with the Lincoln County Loss Control Manual as if an employee of Lincoln County.

7. GOVERNING LAW

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

8. **INDEPENDENT CONTRACTORS**

The Offeror and his agents and employees are independent Contractors and are not employees of the County of Lincoln. The Offeror and his agents and employees shall not accrue leave, retirement, insurance, bonding, use of County of Lincoln vehicles, or any other benefits afforded to employees of the county of Lincoln as a result of the Agreement.

9. **BRIBES, GRATUITIES AND KICKBACKS**

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

10. **STANDARD FORM OF AGREEMENT BETWEEN CONTRACTING AGENCY AND OFFEROR**

The form of agreement required by the funding agency or issued by the County of Lincoln is available and may be reviewed upon request.

11. **FEES**

A lump sum fixed fee for Basic Service will be negotiated with the Offeror selected.

12. **FUNDING**

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

13. **CONTACT WITH COUNTY OF LINCOLN OFFICIALS OR STAFF MEMBERS**

Prior to, and after submittal of proposal, prospective Offerors shall not make contact with any official or staff member regarding this RFP, other than contact to obtain a copy of this RFP.

14. **CONTRACTOR'S AND SUB-CONTRACTOR'S INSURANCE**

The contractor may carry such other insurance as he deems necessary to protect his own interests. He shall, at his sole cost and expense, procure and carry throughout the life of the agreement the insurance hereinafter specified. Such insurance shall cover both the Contractor and his Subcontractors, or separate policies shall be provided for each Subcontractor and shall be carried with an insurance company licensed to transact business in the State of New Mexico. The insurance shall be for the protection of the Contractor and Sub-contractors from claims under worker's compensation law, disability benefit laws or other employee benefit laws: from claims for damages to property, including loss of use thereof, any or all of which may arise out of or result from the Contractor's operations under the Contract Documents whether such operations be at the site of the work or elsewhere and whether they be carried on by the

Contractor or by any sub-contractor or anyone directly employed by any of them or for whose acts any of them may be legally liable. Such insurance shall be written for not less than the limits of liability set out below. Work may not be started on the project until the Certificate of Insurance on the form provided has been filed and approved with the owner or engineer.

A Comprehensive General Liability Insurance

The Contractor shall procure and maintain during the life of this Contract, and shall require Sub-contractors, if any, to procure and maintain during the life of his sub-contract, comprehensive general liability insurance in amounts of not less than Three Hundred Thousand Dollars (\$300,000.00) for injuries, including death, to any one person and subject to the same limit each person, in amounts not less than Three Hundred Thousand Dollars (\$300,000.00) in any one occurrence and in amounts not less than Three Hundred Thousand Dollars (\$300,000.00) for property damages in any one accident. Such policies of insurance must include coverage under all sections of the schedule of hazards of the said comprehensive general liability policy form and must include collapse (c), explosion(x) and underground (u) liability coverage.

The above requirements shall include protection from:

- (1) Damage to, or destruction of public and private property located below the surface of the ground, including telephone conduit, power conduit, traffic signal cables, fire alarm circuits, gas mains, gas serve connections, sanitary sewers, house sewers or building sewer connections, water mains, water service connections, steam lines, petroleum products pipelines, storm sewers and inlet lines, and including all appurtenances thereto, injury or death to a trenching and beautifying with or without the use of mechanical equipment.
- (2) The collapse of, or structural damage to any building, house or structure, utility poles, curb and gutter and sidewalk on public or private property, destruction of or damage to other public and private property including injury or death to a person or persons caused by the Contractor's operations under the Contract. Removal of buildings, structures (including their supports), trees, and utility poles, excavations below the surface of the grounds, including blasting, trenching and beautifying with or without the use of mechanical equipment. "Other public and private property" as used above, shall include lawns, plants, flowers, trees, fences, yard walls, etc. The liability insurance shall include the standard assault and battery endorsement.

B. Owner's Protective Public Liability and Protective Property Damage Insurance

The Contractor shall procure and maintain during the life of this Contract, at his own expense, owner's protective public liability and

protective property damage insurance in favor of the Owner in the amount not less than (1) the sum of Two Hundred Thousand Dollars (\$200,000) for damage to or destruction of real property arising out of a single occurrence (2) the sum of Three Hundred Thousand Dollars (\$300,000) for all past and future medical and medically related expenses arising out of a single occurrence (3) the sum of Four Hundred Thousand Dollars (\$400,000) to any person for any number of claims arising out of a single occurrence for all damages other than property damage and medical and medically related expenses as permitted under the Tort Claims Act, or (4) the sum of Seven Hundred Fifty Thousand Dollars (\$750,000) for all claims arising out of a single occurrence. This policy shall also include the standard assault and battery endorsement.

C. Worker's Compensation Insurance

The Contractor shall procure and shall maintain during the life of this Contract, Worker's Compensation Insurance in statutory or standard form in an amount covering all of his employees to be engaged in the work under this Contract, as required by the State of New Mexico or the regulatory requirements of the Contractor's licensing bureau. Such insurance policies must include coverage under Section 52-1-10. **NMSA** 1978 for safety devices.

D. Automobile Public Liability and Property Damage

The Contractor shall maintain automobile public liability insurance to protect him and the Owner from any and all claims arising from the use of the following in the execution of work included in this Contract.

- (1) Contractor's own automobile and trucks
- (2) Hired automobiles and trucks
- (3) Automobiles and trucks not owned by Contractor
- (4) BI/PD no less than Three Hundred Thousand Dollars (\$300,000.00)

E. Transit Insurance

The Contractor shall secure insurance to protect himself from damage to equipment in transit.

F. Approval of Insurance

Neither approval by the County of Lincoln of any insurance supplied by a Contractor or a Sub-contractor, nor a failure to disapprove that insurance shall relieve the Contractor or Sub-contractor of full responsibility to maintain in full force and effect the above-described insurance or for liability, damages and accidents as set forth herein.

G. Proof of Insurance

Prior to the commencement of any work hereunder, Contractor shall furnish to the Owner proof of the insurances required in this Section. All such certificates of Insurance shall provide that the Insurance company(ies) will give Owner ten (10) days prior written notice before any material change in or cancellation of any such policy.

APPENDIX A

ACKNOWLEDGMENT OF RECEIPT OF BID

In acknowledgment of receipt of this Proposal the undersigned agrees that they have received a complete copy of the proposal consisting of 35 pages (including all attachments).

The acknowledgment of receipt should be signed and returned to the Purchasing Office as soon as possible but no later than 5:00 P.M. local time on June 30, 2021.

Only potential bidders who elect to return this form completed with the indicated intention of submitting a proposal are guaranteed to receive copies of all written questions and the County's written responses to those questions, as well as copies of Addendums, if any are issued.

FIRM: **DOES** or **DOES NOT** (**Circle one**) intend to respond to this Request for Proposals.

FIRM NAME: _____

REPRESENTED BY: _____

TITLE: _____ PHONE NO.: _____

FAX NO.: _____

MAILING ADDRESS: _____

COUNTY: _____ STATE: _____ ZIP CODE : _____

SIGNATURE: _____ DATE: _____

E-MAIL ADDRESS: _____ & Copy to: _____

The above name and address should be the primary contact and will be used for all correspondence related to this Proposal.

Return this form to:
(by U.S. Mail)

Lincoln County Purchasing Department
Toni T Foligno, CPO
P.O. Box 711
Carrizozo New Mexico 88301

Or by E-mail:

Purchasing@lincolncountynm.gov

Please return this form by June 30, 2021

APPENDIX B
LETTER OF TRANSMITTAL FORM
Request for Proposals # 21-22-001

Items #1 to 4 **MUST** EACH BE RESPONDED TO. Failure to respond to all four items **WILL** RESULT IN THE DISQUALIFICATION OF THE PROPOSAL!

1. Identity (Name) and Mailing Address of the submitting organization:

2. For the person authorized by the organization to contractually obligate the organization

Name: _____

Title: _____

3. For the person authorized to negotiate the contract on behalf of the organization:

Name: _____

Title: _____

E-Mail Address: _____

Telephone Number: _____

4. For the person to be contacted for clarifications:

Name: _____

Title: _____

E-Mail Address: _____

Telephone Number: _____

On behalf of the organization named in item #1, above, I accept the Conditions Governing the Procurement as required in Section 6.

I concur that submission of our proposal constitutes acceptance of the Evaluation Factors contained in Section 9 of this RFP.

I acknowledge receipt of any and all amendments to this RFP.

_____ Date: _____

Authorized Signature (**Must be Signed** by the person identified in **item #2** above.)

APPENDIX C
FEE ESTIMATE/COST RESPONSE FORM

Submit under separate sealed cover.

Request for Proposals 21-22-001

State gross receipts and local option taxes (if any) shall not be included in the proposed cost. Such taxes shall be separately reimbursed by the County.

OFFEROR NAME: _____

TOTAL PROPOSED COST \$ _____

Cost Estimate of services must be provided in per square foot cost which are/is to include;

1. Materials
2. Labor
3. Clean up.
4. Equipment costs.
5. Mobilization and Demobilization costs.

(Total cost to perform Scope of Work, not including tax.)

APPENDIX D
CAMPAIGN CONTRIBUTION DISCLOSURE FORM
RFP # 21-22-001

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

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

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

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

The following definitions apply:

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

“Campaign Contribution” means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an

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

"Contract" means any Agreement for the procurement of items of tangible personal property services, professional services, or construction.

"Family member" means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law, or son-in-law 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: _____

Name of Applicable Public Official: _____

Date Contribution(s) Made: _____

Amount(s) of Contribution(s) _____

Nature of Contribution(s) _____

Purpose of Contribution(s) _____

(Attach extra pages if necessary)

Signature

Date

Title (position)

--OR--

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

Signature

Date

Title (Position)

APPENDIX E

NEW MEXICO RESIDENT VETERANS' CERTIFICATION

Reminder, a copy of Resident Veterans Preference Certificate must be submitted with the proposal in order to ensure adequate consideration and application of NMSA 1978, § 13-1-21 (as amended).

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

Please check one box only

- I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is less than \$1M allowing me the 10% preference on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.
- I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than \$1M but less than \$5M allowing me the 8% preference on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.
- I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than \$5M allowing me the 7% preference 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 NMSA 1978, § 13-1-21 or 13-1-22, when awarded a contract which was on the basis of having such veteran's preference, I agree to report to the State Purchasing Division of the General Services Department the awarded amount involved. I will indicate in the report the award amount as a purchase from a public body or as a public works contract from a public body as the case may be.

"I 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 for the Business. The representations made in checking the boxes constitutes a material representation by the business that is subject to protest and may result in denial of an award or termination of award of the procurement involved if the statements are proven to be incorrect.

APPENDIX F
“SAMPLE” CONTRACT
County of Lincoln
CONTRACT #NUMBER

THIS AGREEMENT is made and entered into by and between the County of Lincoln, _____, hereinafter referred to as the "County" and **NAME OF CONTRACTOR**, hereinafter referred to as the "Contractor", and is effective as of the date set forth below upon which it is executed by the Procurement Manager and the Board of County Commissioners.

IT IS AGREED BETWEEN THE PARTIES:

1. Scope of Work and Deliverables

CONTRACTOR shall perform and deliver what the County is seeking in the Scope of Work "On Call Spray Injection Asphalt and Asphalt Maintenance Services". The selected candidate should be thoroughly familiar with current laws, regulations, and standard procedures.

2. Compensation.

A. County shall pay to the Contractor in full payment for services satisfactorily performed [at the rate of] _____ dollars (\$_____) [per hour (OR BASED UPON DELIVERABLES, MILESTONES, BUDGET, ETC.)], such compensation not to exceed (AMOUNT), excluding gross receipts tax. The New Mexico gross receipts tax levied on the amounts payable under this Agreement totaling (AMOUNT) shall be paid by the County to the Contractor. The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed (AMOUNT). 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. Contractor is responsible for notifying 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 in excess of the total compensation amount being provided.

B. Payment is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work. All invoices **MUST BE** received by the County no later than fifteen (15) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date **WILL NOT BE PAID**.

C. Contractor must submit a detailed statement accounting for all services performed and expenses incurred. If the County finds that the services are not acceptable, within thirty days after the date of receipt of written notice from the Contractor that payment is requested, it shall provide the Contractor a letter of exception explaining the defect or objection to the services and

outlining steps the Contractor may take to provide remedial action. Upon certification by the County that the services have been received and accepted, payment shall be tendered to the Contractor within thirty days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, the County shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

D. Payment of taxes due for any money received under this Agreement shall be Contractor's sole responsibility and shall be reported under Contractor's Federal and State tax identification number(s).

3. Term.

This Agreement shall terminate on _____ unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations). In accordance with Section 13-1-150 NMSA 1978, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

4. Termination.

Termination. This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. Except as otherwise allowed or provided under this Agreement, the County's sole liability upon such termination shall be to pay for acceptable work performed prior to the Contractor's receipt of the notice of termination, if the County is the terminating party, or the Contractor's sending of the notice of termination, if the Contractor is the terminating party; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to Contractor if Contractor becomes unable to perform the services contracted for, as determined by the County or if, during the term of this Agreement, the Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement, or other crime due to misuse of government funds or due to the Appropriations paragraph herein. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE COUNTY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.

5. Termination Management.

Immediately upon receipt by either County or Contractor of notice of termination of this Agreement, Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of County; 2) comply with all directives issued by County in the notice of termination as to the performance of work under this Agreement; and 3) take such action as County shall direct for the protection, preservation, retention or transfer of all property titled to County and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by Contractor with contract funds shall become property of County upon termination and shall be submitted to County as soon as practicable.

6. Appropriations.

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Board of County Commissioners for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Board of County Commissioners, this Agreement shall terminate immediately upon written notice being given by County to Contractor. County's decision as to whether sufficient appropriations are available shall be accepted by Contractor and shall be final. If County proposes an amendment to the Agreement to unilaterally reduce funding, Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

7. Status of Contractor.

Contractor and its agents and employees are independent contractors performing professional services for County and are not employees of the County of Lincoln. Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of county vehicles, or any other benefits afforded to employees of the County of Lincoln as a result of this Agreement. Contractor acknowledges that all sums received hereunder are reportable by Contractor for tax purposes, including without limitation, self-employment, and business income tax. Contractor agrees not to purport to bind County unless Contractor has express written authority to do so, and then only within the strict limits of that authority.

8. Assignment.

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 prior written approval of County.

9. Subcontracting.

Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of County. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from County. In all cases, the Contractor is solely responsible for fulfillment of this Agreement. A list of all sub-contractors is to be provided to the County Procurement Manager and Contractor agrees to report all subcontractors on the NM Workforce Solutions and notice to the Procurement Manager.

10. Insurance Requirements of Contractor and Sub-Contractors.

Contractor may carry such other insurance as he deems necessary to protect his own interests. Contractor shall, at Contractor's sole cost and expense, procure and carry throughout the life of this Agreement the insurance hereinafter specified. Such insurance shall cover both Contractor and all Sub-Contractors, if any, or separate policies shall be provided for each Sub-Contractor and shall be carried with an insurance company licensed to transact business in the State of New Mexico. The insurance shall be for the protection of Contractor and Sub-Contractors from claims under worker's compensation law, disability benefit laws or other employee benefit laws; from claims for damages to property, including loss of use thereof, any or all of which may arise out of or result from the Contractor's operation under this Agreement and the Contract Documents whether such operations be at the site of the work or elsewhere and whether they be carried on by Contractor or by any Sub-Contractor or anyone directly employed by any of them or for whose acts any of them may be legally liable. Such insurance shall be written for not less than the limits of liability set out below. Work

may not be started on the project until the Certificate of Insurance on the form provided has been filed and approved by County.

The offeror will be required to carry, at minimum, the following insurance coverage with Lincoln County” and “to be identified parties at the time of contract” listed as co-insureds on all policies:

1. General and professional liability insurance in the amount of \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate.
2. Automobile insurance in the amount of \$1,000,000.00.
3. Workers’ Compensation insurance as required by state statute.
4. The insurance shall be provided by insurance companies authorized to do business in New Mexico and shall cover all operations under the contract whether performed by the contractor, their agents, or employees, or by subcontractors. All insurance shall remain in full force and effect for the entire term of the contract.

Proof of coverage must be provided prior to entering into a contract.

11. Release.

Final payment of the amounts due under this Agreement shall operate as a release of the procuring agency of the County, its officers and employees, and the County of Lincoln from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

12. Confidentiality.

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

(1) in accordance with Section 10-16-4.3 NMSA 1978, Contractor does not employ, has not employed, and will not employ during the term of this Agreement any County employee while such employee was or is employed by the County and participating directly or indirectly in County’s contracting process.

(2) this Agreement complies with Section 10-16-7(B) NMSA 1978 because (i) Contractor is not a public officer or employee of County; (ii) Contractor is not a member of the family of a public officer or employee of County; (iii) Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if Contractor is a public officer or employee of County, a member of the family of a public officer or employee of County, or a business in which a public officer or employee of County or the family of a public officer or employee of County has a substantial interest, public notice was given as required by Section 10-16-7(B) NMSA 1978 and this Agreement was awarded pursuant to a competitive process;

(3) in accordance with Section 10-16-8(C) NMSA 1978, (i) Contractor is not, and has not been represented by, a person who has been a public officer or employee of County within the preceding year and whose official act directly resulted in this Agreement and; (ii) Contractor is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of County whose official act, while in County employment, directly resulted in County's making this Agreement;

(4) in accordance with Section 10-16-13 NMSA 1978, Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement, or any procurement related to this Agreement; and

(5) in accordance with Section 10-16-3 and Section 10-16-13.3 NMSA 1978, the any confidential information provided to or developed by Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by Contractor without the prior written approval of County.

13. Product of Service - Copyright.

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

14. Conflict of Interest; Governmental Conduct Act.

A. Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.

B. Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, and Article 16 NMSA 1978. Without in anyway limiting the generality of the foregoing, Contractor specifically represents and warrants that:

1) in accordance with Section 10-16-4.3 NMSA 1978, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any County employee while such employee was or is employed by the County and participating directly or indirectly in the County's contracting process;

2) this Agreement complies with Section 10-16-7(B) NMSA 1978 because (i) the Contractor is not a public officer or employee of the County; (ii) the Contractor is not a member of the family of a public officer or employee of the County; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee of the County, a member of the family of a public officer or employee of the County, or a business in which a public officer or employee of the County or the family of a public officer or employee of the County has a substantial interest, public notice was given as required by Section 10-16-7(B) NMSA 1978 and this Agreement was awarded pursuant to a competitive process;

3) in accordance with Section 10-16-8(C) NMSA 1978, (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the County within the preceding year and whose official act directly resulted in this Agreement and (ii) the Contractor is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the County whose official act, while in County employment, directly resulted in the County's making this Agreement;

4) in accordance with Section 10-16-13 NMSA 1978, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement, or any procurement related to this Agreement; and

5) in accordance with Section 10-16-3 and Section 10-16-13.3 NMSA 1978, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the County.

C. Contractor's representations and warranties in Sub-paragraphs A and B of this Paragraph are material representations of fact upon which the County relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the County if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in Sub-paragraphs A and B of this Paragraph were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in Sub-paragraphs A and B of this Paragraph were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the County and notwithstanding anything in the Agreement to the contrary, the County may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in Sub-paragraph B of this Paragraph.

15. Amendment.

A. This Agreement shall not be altered, changed, or amended except by instrument in writing executed by the parties hereto and all other required signatories.

B. If County proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in Paragraph 4 herein, or to agree to the reduced funding.

16. Merger.

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

17. Penalties for violation of law.

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

18. Equal Opportunity Compliance.

Contractor agrees to abide by all federal, state and county laws and rules and regulations, pertaining to equal employment opportunity. In accordance with all such laws, Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation, or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take

appropriate steps to correct these deficiencies.

19. Applicable Law.

The laws of the State of New Mexico shall govern this Agreement and shall be enforceable in the Twelfth Judicial District Court in Lincoln County. By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

20. Worker's Compensation.

Contractor agrees to comply with state laws and rules applicable to worker's compensation benefits for its employees. If Contractor fails to comply with the Worker's Compensation Act and applicable rules when required to do so, this Agreement may be terminated by County.

21. Records and Financial Audit.

Contractor shall maintain detailed time and expenditure records that indicate the date; time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by County, the Department of Finance and Administration, and the State Auditor. County shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of County to recover excessive or illegal payments.

22. Disclaimer and Hold Harmless.

County shall not be liable to Contractor, or Contractor's successors, heirs, administrators, or assigns, for any loss, damage, or injury, whether to Contractor's person or property, occurring in connection with Contractor's performance of Contractor's duties according to this Agreement. Contractor shall hold County harmless from all loss, damage, and injury, including court costs and attorney fees, incurred by County in connection with the performance by Contractor of Contractor's duties according to this Agreement.

23. Indemnification.

Contractor agrees to hold harmless, indemnify, and defend County and its "public employees" as defined in the New Mexico Tort Claims Act Sections 41-4-1 through 41-4-29 NMSA 1978 against and from any and all claims, losses, demands, judgments, damages, liabilities, lawsuits, expenses, fees of attorneys, costs or actions of any kind or nature, whether from death, bodily injury or damage to property arising from or out of, connected with, resulting from or related to Contractor's activities in connection herewith, including, but not limited to, any negligence or intentional acts or omissions of Contractor, employees, servants, agents, representatives, customers, invitees, patrons, contractors, subcontractors, successors, assigns, or suppliers, as well as all of the persons doing business with or receiving services from Contractor. Contractor's agreement to hold harmless, indemnify, and defend County shall not be affected or terminate by cancellation, expiration of the term or renewal period or any other termination of this contract.

By entering into this Agreement, County and its "public employees" as defined in the New Mexico Tort Claims Act, *supra* do not waive sovereign immunity, do not waive any defenses, and do not waive any limitations of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act, *supra*.

It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions or any part of this Agreement to create in the public or any member thereof a third-party beneficiary or to authorize anyone not a party to this Agreement to maintain any suit for wrongful death, bodily or personal injury, damage to property or any other matter whatsoever, pursuant to the provision of this Agreement.

24. Invalid Term or Condition.

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

25. Enforcement of Agreement.

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

26. Authority.

Individual(s) signing this Agreement on behalf of Contractor represents and warrants that he or she has the power and authority to bind Contractor, and that no further action, resolution, or approval from Contractor is necessary to enter into a binding contract.

27. Approval of Contractor Personnel.

Personnel proposed in the Contractor's written proposal to the County are considered material to any work performed under this Agreement. No changes of personnel will be made by the Contractor without prior written consent of the procuring agency of the County. 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 to the project immediately upon receiving assignments. Approval of replacement personnel shall not be unreasonably withheld. The procuring agency of the County shall retain the right to request the removal of any of the Contractor's personnel at any time.

28. Survival.

Paragraphs titled "Patent, Copyright, Trademark, and Trade Secret Indemnification"; and "Indemnification" shall survive the expiration of this agreement. Software licenses, leases, maintenance, and any other unexpired agreements that were entered into under the terms and conditions of this agreement shall survive this agreement.

29. Succession.

This Agreement shall extend to and be binding upon the successors and assigns of the parties.

30. Force Majeure.

A party shall be excused from performance under this agreement for any period that the party is prevented from performing as a result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination.

31. Notice to Proceed.

It is expressly understood that this Agreement is not binding upon County until it is executed by the Board of County Commissioners after voting on the contract at a public meeting or unless it is executed by the Lincoln County Manager, if the amount of the contract is \$5,000.00 or less. Contractor is not to proceed with its obligations under the Agreement until Contractor has received a fully signed copy of the Agreement.

32. Attorney's Fees.

In the event this Agreement results in dispute, mediation, litigation, or settlement between the parties to this Agreement, the prevailing party of such action shall NOT be entitled to an award of attorneys' fees and court costs.

33. Cooperation.

The parties hereto will fully cooperate with the other and their respective counsel, accountant, and agents in connection with any steps required to be taken under this Agreement.

34. Incorporation and Order of Precedence.

Request for Proposals No. 21-22-001 and Contractor's proposal are incorporated by reference into this Agreement and are made a part of this Agreement. In the event of any conflict among these documents, the following order of precedence shall apply:

- A. Any Contract amendment(s), in reverse chronological order; then
- B. this Contract itself; then
- C. the Request for Proposals; then
- D. the Contractors Best and Final Offer(s), in reverse chronological order; then
- E. the Contractor's proposal; then
- F. the Contractor's standard agreement terms and conditions (which may or may

not

have been submitted as part of the contractor's proposal).

35. Dispute Resolution.

The parties hereby agree to attempt to mediate any dispute to a resolution prior to filing litigation. In the event the parties are unable to settle their dispute through mediation, the parties shall be free to pursue any and all remedies available to them through appropriate judicial proceedings. Further, in the event either party is required to enforce the provisions of this Agreement through judicial proceedings, the prevailing party shall be entitled to reasonable attorney's fees and court costs from the non-prevailing party.

36. Patent, Copyright, Trademark and Trade Secret Indemnification.

A. Contractor shall defend, at its own expense, County against any claim that any product or service provided under this agreement infringes any patent, copyright or trademark in the United States or Puerto Rico, and shall pay all costs, damages, and attorneys' fees that a court finally awards as a result of any such claim. In addition, if any third party obtains a judgment against County based upon Contractor's trade secret infringement relating to any product or service provided under this Agreement, Contractor agrees to reimburse County for all costs, attorneys' fees, and the amount of the judgment. To qualify for such defense and/or payment, County shall:

- i. give Contractor prompt written notice of any claim;
- ii. allow Contractor to control the defense or settlement of the claim; and
- iii. cooperate with Contractor in a reasonable way to facilitate the defense or settlement of the claim.

B. If any product or service becomes, or in Contractor's opinion is likely to become the subject of a claim of infringement, Contractor shall at its option and expense:

- i. provide a procuring agency of the County the right to continue using the product or service;
- ii. replace or modify the product or service so that it becomes non-infringing; or
- iii. accept the return of the product or service and refund an amount equal to the depreciated value of the returned product or service, less the unpaid portion of the purchase price and any other amounts which are due to Contractor. Contractor's obligation will be void as to any product or service modified by the procuring agency of County to the extent such modification is the cause of the claim.

Upon completion of all work and the contract is over, there will be a review of all work done by Contractor and/or any sub-contractors to be kept on file by County for future use to help ensure County picks the best potential Offerors and Awardees.

37. 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: County Manager, Ira Pearson
P.O. Box 711
Carrizozo, NM 88301

To the Contractor: [insert name and address].

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and signature below.

By: _____ Date: _____

Printed Name: _____

Address: _____

By: _____ Date: _____

_____, Board of County Commissioners Chairman