



## ***County of Lincoln***

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

### **REQUEST FOR PROPOSALS # 21-22-03**

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

**TITLE:** Telecommunications Facilities Consultant  
**RFP NO.:** 2021-22-03  
**OPEN:** SEPTEMBER 9, 2021  
**CLOSES:** September 30, 2021 @ 4:00 p.m. Local Time (MT)

**NIGP Commodity Code(s):** 91895

**FOR ADDITIONAL INFORMATION CONTACT:**

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

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

**VIA MAIL**

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

**HAND DELIVERY**

COUNTY OF LINCOLN  
PROCUREMENT OFFICER  
300 CENTRAL AVENUE  
ANNEX BUILDING 2nd FLOOR  
CARRIZOZO, NM 88301

**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**

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## Telecommunications Facilities Consultant

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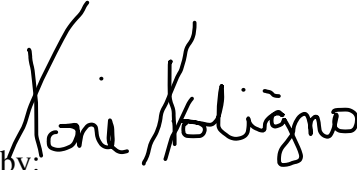
**Appendix G: Section 63-9I of the “Wireless Consumer Advanced Infrastructure Investment Act”**

**NOTICE OF REQUEST FOR PROPOSALS**

**Telecommunications Facilities Consultant**

**DUE: September 9, 2021, by 4:00 p.m. MT**

The County of Lincoln, 300 Central Avenue, Lincoln, New Mexico 88301 will receive proposals until **September 30, 2021 at 4:00 p.m. MT**. Proposals will be received in the County Manager's office, Purchasing Department. Copies of the Request for Proposals with full instructions can be obtained from Lincoln County Website: <https://www.lincolncountynm.gov/purchasing>; upon written request to the Procurement Officer via e-mail [Purchasing@lincolncountynm.gov](mailto:Purchasing@lincolncountynm.gov); or in person at the County Finance offices at 300 Central Avenue, Carrizozo, NM 88301. Lincoln County reserves the right to accept or reject any or all proposals and to waive all formalities. **The Procurement Code, Sections 13-1-28 Through 13-1-199, NMSA, 1978 imposes civil and criminal penalties for code violations. In addition, the New Mexico criminal statutes impose felony/penalties for illegal bribes, gratuities, and kickbacks.**



Dated this 9<sup>th</sup> day of September, 2021 by: \_\_\_\_\_  
Toni Foligno, Procurement Officer

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Published in *The County of Lincoln website* on September 9, 2021  
Published in *The Lincoln County News* on Thursday, September 9, 2021  
Published in *The Las Cruces Sun* on Sunday, September 12, 2021  
Published in *The Albuquerque Journal* on Sunday, September 12, 2021

**REVIEW SCHEDULE**

1. ADVERTISEMENT..... September 9, 2021
2. ISSUANCE OF PROPOSAL PACKET ..... September 9, 2021
3. PROPOSAL SUBMITTAL DEADLINE..... September 30, 2021 at 4:00 pm
4. EVALUATION OF PROPOSALS ..... Week of October 4-8, 2021
5. RECOMMENDATION OF AWARD ..... TBD/ October BOCC Meeting
6. EXECUTION OF AGREEMENT AND  
NOTICE TO PROCEED ..... TBD

**DATES AFTER THE PROPOSAL DEADLINE ARE TENTATIVE  
AND ARE SUBJECT TO CHANGE WITHOUT NOTICE.**

**SECTION 1 PROJECT DESCRIPTION/SCOPE OF WORK**

**1. GENERAL INFORMATION/PROJECT DESCRIPTION**

The County of Lincoln seeks sealed proposals to engage a person or firm to provide Expert Consultant Services and creation of a new Telecommunications Facilities Ordinance, reviewing and evaluating telecommunications facilities applications, managing tower permitting and outside inspection activities including construction and site modification, any requests for recertification, and consultation services on violations.

**1.1 SCOPE OF WORK**

Provide Expert Consultant Services and assistance for Telecommunications facilities within the County of Lincoln outside all outlying municipalities within the County; will include, but may not be limited to:

- A.1 Creation of a new Telecommunications Facilities Ordinance to replace Lincoln County Ordinance or modify and update the existing Ordinance, customized for the County considering factors among others such as size of facility, area/amount of citizens receiving services, overall cost of project, etc. All services provided shall be performed in accordance with the Wireless Consumer Advanced Infrastructure Investment Act, other applicable local, State or Federal laws and FCC Rules & Regulations.
- A.2 A copy of section 63-9I of the “Wireless Consumer Advanced Infrastructure Investment Act is attached herewith as Appendix G for informational purposes only. It shall be the Consultant’s responsibility to obtain the most current versions of applicable local, State or Federal laws and FCC Rules & Regulations.
- B. Reviewing and evaluating Telecommunications facilities applications, including the construction and modification of the site.
- C. Any requests for recertification.
- D. Consultation services on violations
- E. Offeror shall participate in hearings on applications as an expert witness or consultant as may be necessary in furtherance of the application process.
- F. The selected candidate must be thoroughly familiar with current laws, regulations, manuals, standards and guidelines, standard specifications, and standard procedures accepted by the FCC. In addition, all services provided shall be performed in accordance and compliance with FCC rules & regulations, including local, State or Federal laws and the

Telecommunications Guidelines, and shall provide and include updates of such, when and where applicable.

## 1.2 INSURANCE

A. Contractor shall obtain and maintain throughout the life of this contract the following insurance, at contractor's expense. Contractor shall provide insurance of the following types and in the amounts stated prior to commencing operations. The County shall be named as additional insured on all policies.

1. Worker's Compensation: If applicable, the successful bidder, referred to as the Contractor shall maintain as his/her expense during the life of the contract, adequate Workman's Compensation Insurance with agencies licensed to do business in the state of New Mexico, for all employees on the work. In the case any work or portions of work are sublet the Contractor will insure and require the subcontractor similarly provide Workman's Compensation Insurance for his employees unless such employees are covered under the Contractor's coverage. The Contractor, if requested, will provide proof of such coverage, including an endorsement by the insurer that the policy may not be cancelled nor allowed to lapse without ten (10) days' notice thereof first being given to the County.

2. Coverage Required: The kinds and amounts of insurance required are as follows:

a. Professional Liability **WILL**  **WILL NOT**  be required: If required, the Minimum shall be \$1,000,000 aggregate

b. Commercial General Liability Insurance: A Commercial General Liability insurance policy with combined limits of liability for bodily injury or property damage as follows:

\$1,000,000	Per Occurrence and
\$2,000,000	Aggregate
\$1,000,000	Vehicle & Automotive
\$1,000,000	Policy Aggregate
\$1,000,000	Products liability/Completed Operations
\$1,000,000	Personal and Advertising Injury
\$ 50,000	Fire Legal
\$ 5,000	Medical Payments

Said Policy of insurance must include coverage for all operations performed for the County by the Contractor and contractual liability coverage shall specifically insure the hold harmless provisions of this contract (agreement).

c. Automobile Liability Insurance: A comprehensive automobile liability insurance policy with liability limits in amounts not less than \$1,000,000 combined single limit of liability

for bodily injury, including death, and property damage in any one occurrence. The policy must include coverage for the use of all owned, non-owned, hired automobiles, vehicles and any and all other equipment owned and non-owned, both on and off the work.

e. Certificates, renewals, and notice of cancellation shall be sent to:

Lincoln County Purchasing Office  
Attn: Toni T. Foligno, CPO  
P. O. Box 711  
Carrizozo, NM 88301

### 1.3 SILENCE OF SPECIFICATIONS

The apparent silence of the foregoing specifications as to any detail or omission for it as a detailed description, concerning any specific shall be regarded as meaning that only the best commercial practices are to prevail and that only materials and workmanship of first quality are to be used. All interpretations of these specifications shall be made upon the basis of this statement.

## SECTION 2 INSTRUCTIONS TO PROPOSERS

### ***NOTICE TO PROPOSER FOR PROPOSAL SUBMITTAL FORMAT SEE SECTION 4***

#### 2.1 DEFINITIONS AND TERMINOLOGY

- 2.1.1 Addendum:** a written or graphic instrument issued prior to the opening of Proposals, which clarifies, corrects, or changes the Request for Proposals. Plural: addenda.
- 2.1.2 “Board of County Commissioners” (also “BOCC”)** means the elected board in whom all powers of the County are vested and who are responsible for the proper and efficient administration of the County government.
- 2.1.3 “Close of Business”** means 5:00 P.M. Mountain Standard Time (MST) or Mountain Daylight Time (MDT), whichever is in effect on the date specified.
- 2.1.4 Consultant:** means the Successful Proposer awarded the Agreement/Contract.
- 2.1.5 “Contract” or “Agreement”** means a written agreement for the procurement of items of tangible personal property of services.
- 2.1.6 “Contractor”** means a successful offeror who enters into a binding contract.
- 2.1.7 “County”** means the County of Lincoln, State of New Mexico.

- 2.1.8 “Desirable”** the terms "may", "can", "should", "preferably", or "prefers" to identify a desirable or discretionary item or factor.
- 2.1.9 Determination:** means the written documentation of a decision of the 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).
- 2.1.10 “Evaluation Committee”** means a body appointed by County management to perform the evaluation of Offerors’ proposals.
- 2.1.11 “Evaluation Committee Report”** means a report prepared by the Procurement Officer, Procurement Manager, or County Manager and the Evaluation Committee for submission to appropriate approval authorities for contract award that contains all written determinations resulting from the conduct of a procurement requiring the evaluation of competitive sealed proposals.
- 2.1.12 “Finalist”** means an Offeror who meets all the mandatory specifications of this Request for Proposals and whose score on evaluation factors is sufficiently high to merit further consideration by the Evaluation Committee.
- 2.1.13 “Mandatory”** – the terms "must", "shall", "will", "is required", or "are required", which identify a required item or factor. (As opposed to a “desirable” item or factor.) Failure to meet a mandatory item or factor will result in the rejection of the Offeror’s proposal.
- 2.1.14 “Offeror”** is any person, or entity who chooses to submit a proposal.
- 2.1.15 “Page”** means one (1) side of and 8 ½ X 11-inch sheet of paper. One (1) 8 ½ 11-inch sheet of paper printed on both sides constitutes two (2) pages.
- 2.1.16 “Procuring Agency of the County”** means the department or other subdivision of the County of Lincoln that is requesting the procurement of services or items of tangible personal property.
- 2.1.17 “Purchase Order”** or “PO” means the document that directs a contractor to deliver items of tangible personal property or services pursuant to an existing, valid contract.
- 2.1.18 “Purchasing”** means the County of Lincoln Purchasing Department or the Lincoln County Purchasing Officer or Procurement Officer, Purchasing Agent or Purchasing Manager’s office.
- 2.1.19 “Procurement Manager; Procurement Officer or Procurement Agent”** [“PM” or “P”] means the person for the County of Lincoln to Manage the procurement or offers.



**2.1.20 Proposer or Offeror:** any person, corporation, or partnership legally licensed to provide professional services in this state, which chooses to submit a proposal in response to this Request for Proposals.

**2.1.21 Request For Proposals:** or “RFP” means all documents, including those attached or incorporated by reference, used for soliciting proposals (13-1-81 NMSA 1978).

**2.1.22 Responsible Offeror:** means an Offeror who submits a responsive proposal and who has furnished 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, or items of tangible personal property described in the proposal.

**2.1.23 Responsible Proposer or Proposer:** means a proposer 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).

**2.1.24 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).

**2.1.25** 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 proposer’s proposal.

**2.1.26** The terms **can, may, should, preferably, or prefers**, identify a desirable or discretionary item or factor.

## **2.2 GENERAL REQUIREMENTS**

### **2.2.0 COPIES OF REQUEST FOR PROPOSALS**

**2.2.0.1** A complete set of the Request for Proposals may be obtained from the County of Lincoln as stated in the RFP Notice and/or by downloading from the County’s web site <https://www.lincolncountynm.gov/purchasing>.

**2.2.0.2** 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.

**2.2.0.3** 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.

## **2.2.1 SUBMITTAL OF PROPOSALS**

**2.2.1.1** Proposals shall be submitted at the time and place indicated in the Notice of Request for Proposals and shall be enclosed in a sealed envelope.

**2.2.1.2** The envelope shall be addressed to the County of Lincoln Procurement Officer and delivered by means outlined in Section 2 General Instructions and Section 4 Response Format of this RFP. Delivery of the Proposal sent by mail; or hand delivered by courier or Express delivery must have the Request for Proposal title and RFP Number appear on the face of the shipping package or envelope and be visible. Failure to do so shall not constitute a liability on the part of Lincoln County if the proposal is subsequently misplaced or lost. The Proposal submitted by e-mailed **must** have the RFP Number and Title appearing in the subject line, failure to do so, could result in disqualification of the offer.

**2.2.1.3** Proposals received after the date and time for receipt of Proposals will be returned unopened.

**2.2.1.4** The Proposer shall assume full responsibility for timely delivery of proposals at the County Purchasing Department or County Manager's office, including those proposals submitted by mail. Hand-delivered proposals shall be addressed or submitted to the Purchasing Officer or his designee and will be stamped with the date in/and the time received, which must be prior to the time specified.

**VIA U.S. MAIL:**

**COUNTY OF LINCOLN  
PURCHASING DEPT.  
ATTN: PROCUREMENT OFFICER  
P.O. BOX 711  
CARRIZOZO, NM 88301**

**HAND DELIVERY or COURIER**

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

**2.2.1.5** After the date established for receipt of proposals, a register of proposals will be prepared which includes the name of each Proposer, a description sufficient to identify the service, and such other information as may be specified by the Purchasing Officer. Proposals shall not be publicly opened so as to maintain the confidentiality of all proposals.

**2.2.1.6** Offeror agrees that the proposal shall remain in effect for sixty (60) days from the due date for proposals and subject to acceptance by the County within that period. No proposal may be withdrawn or modified by the Offeror during this period unless prior written permission is granted by the County. Acceptance period may be extended with the mutual agreement of the County and the Offeror.

**2.2.1.6** Oral, telephonic, electronically transmitted (fax or email), or telegraphic **proposals** are invalid and will not receive consideration.

## **2.2.2 INTERPRETATIONS**

**2.2.2.1** All questions about the meaning or intent of the Request for Proposals shall be submitted in writing. Replies will be issued by Addenda and sent to all offerors of record; Addenda will also be posted on the Lincoln County website at **<https://www.lincolncountynm.gov/purchasing>**.

For questions or clarification regarding any aspect of this proposal, submit the questions in writing to Toni Foligno, Procurement Officer; County of Lincoln Purchasing Department; P.O. Box 711 Carrizozo, NM 88301; or via e-mail at [Purchasing@lincolncountynm.gov](mailto:Purchasing@lincolncountynm.gov), **who shall be the sole point of contact for this RFP.**

When presenting questions, all questions regardless of how it is submitted must include or contain:

a) the RFP #21-22-03 and Title of the RFP;

b) Proponent's name, contact person, phone number, and e-mail address. Inquiries requiring clarification/modification to the RFP will be compiled and responded to via written addendum issued before the due date/time. Questions must be submitted no later than 7 days prior to the date set for opening of proposals. Questions submitted after **September 23, 2021** may not be addressed.

In the event addendum is received by a proponent after its proposal is submitted, the proponent must acknowledge receipt of the addendum by notice to the Purchasing Department via e-mail, courier, or U.S. mail.

Except for communications during any informational meeting conducted by the County for this RFP and to ensure information is consistent to all prospective respondents, any direct or indirect contact with County elected officials or staff other than the Purchasing Agent/Purchasing Manager relating to this RFP is strictly prohibited throughout the duration of the RFP process, and, upon such finding, may render a respondent and/or related proposal non-responsive.

**2.2.2.2 BRAND NAMES:** Where a product or brand name is indicated in the specifications, it shall mean "minimum acceptable level or minimum quality required" by the County unless the specifications state that no substitutions or equivalents are allowed. If the bidder is offering, as an equal or equivalent, an item other than the one specified then the manufacturer's name and model number of that item must be specified in the offer and sufficient specification and

descriptive data provided to permit a thorough evaluation. Failure to provide appropriate information may result in disqualification of the offer.

**2.2.2.3** Proposers should promptly notify the County of Lincoln of any ambiguity, inconsistency, or error, which they may discover upon examination of the Request for Proposals.

## **2.2.3 PROPOSAL INFORMATION**

**2.2.3.1 ADDENDA:** If any questions or responses require revision to the solicitation as originally published, such revisions will be by formal written Addenda only. Offerors are cautioned that any oral or written representations made by any person that appear to change materially any portion of the solicitation shall not be relied upon unless subsequently ratified by a written Addendum to the solicitation issued by the Purchasing Office. Addenda will be sent to all offerors of record. Addenda will also be posted on the Lincoln County website at **<https://www.lincolncountynm.gov/purchasing>**.

**2.2.3.2** Copies of Addenda will be made available for inspection wherever Request for Proposals are on file for that purpose.

**2.2.3.3** Each Proposer shall ascertain, prior to submitting the Proposal, that the Proposer has received all Addenda issued, and shall acknowledge their receipt in the Proposal.

**2.2.3.4 CONFIDENTIAL DATA:** Proposals will be open to public inspection only after award of a contract. Proposer 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 is kept confidential will not be acceptable. Only matters which clearly are of a confidential nature will be considered. Offerors are cautioned that materials designated as confidential may nevertheless be subject to disclosure under the New Mexico Inspection of Public Records Act (Section 14-2-1 et seq. NMSA 1978). Confidential data are normally restricted to confidential financial information concerning the Offeror's organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, §57-3A-1 to §57-3A-7 NMSA, 1978. Prices, make and models, or catalogue numbers of items offered shall be publicly available regardless of designation to the contrary.

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

**2.2.3.6 PRE-PROPOSAL CONFERENCE:**

A pre-proposal conference **WILL**  **WILL NOT**  be held.

**2.2.4 PREQUALIFICATION PROCESS**

**2.2.4.1** A business may be pre-qualified by the Purchasing Officer as a Proposer for particular types of service. Mailing lists of potential Proposers shall include but shall not be limited to such pre-qualified businesses (13-1-134 NMSA 1978). For purposes of this RFP, if pre-qualification is utilized, special instructions will be attached as an exhibit to this RFP.

**2.2.5 DEBARRED OR SUSPENDED CONTRACTORS**

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

**2.2.6 CORRECTION OR WITHDRAWAL OF PROPOSALS**

**2.2.6.1** A Proposal containing a mistake discovered before proposal opening may be modified or withdrawn by an Proposer prior to the time set for proposal opening by delivering written or telegraphic notice to the location designated in the Request for Proposals as the place where Proposals are to be received.

**2.2.6.2** 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.

**2.2.7 NOTICE OF CONTRACT REQUIREMENTS BINDING ON PROPOSER**

**2.2.7.1** In submitting this proposal, the Proposer represents that the Proposer 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 these Request for Proposals.

**2.2.7.2** Laws and Regulations: The Proposer'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.

**2.2.8 REJECTION OR CANCELLATION OF PROPOSALS**

**2.2.8.1** This Request for Proposals may be canceled, or any or all proposals may be rejected in whole or in part, when it is in the best interest of the County of Lincoln.

A determination containing the reasons therefore shall be made part of the RFP file (13-1-131 NMSA 1978).

## **2.2.9 RECEIPT, OPENING AND RECORDING**

**2.2.9.1** Proposals received on time will be recorded and the name of each Proposer and address will be read aloud. The opening of proposals shall be conducted in private to maintain the confidentiality of the contents of all proposals.

**2.2.9.2** 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, 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 Proposers during the negotiation process (13-1-116 NMSA 1978).

## **2.2.10 PROPOSAL EVALUATION**

**2.2.10.1** 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 criteria factors set forth in this RFP in Section 5. For the purpose of conducting discussions, proposals may initially be classified as:

- 1) acceptable
- 2) potentially acceptable, that is, reasonably assured of being made acceptable, or
- 3) unacceptable (Proposers whose proposals are unacceptable shall be notified promptly).

The review committee will evaluate all proposals, determine the need for, and conduct any negotiations. Negotiations may be conducted to:

1. Promote understanding of the County's requirements and the Offerors' proposal.
2. Obtaining best and final offers.
3. Facilitate arrival at a contract that will be most advantageous to Lincoln County taking into consideration the factors set forth in the proposal.

The County is under no obligation to conduct any negotiations or discussions with an Offeror.

**2.2.10.2** The County of Lincoln shall have the right to waive **minor** or **technical irregularities** in the form of the Proposal of the Proposer, which do not alter the quantity or quality of the goods or services (13-1-132 NMSA 1978).

**2.2.10.3 MANDATORY REQUIREMENTS:** Mandatory requirements may be waived by the evaluation committee if all of the otherwise responsive offerors failed to comply with the same mandatory requirement and the failure to do so does not otherwise materially affect the procurement. The evaluation committee shall have the right to request subsequent information from the otherwise responsive offerors.

If, in the opinion of the evaluation committee a specification is poorly worded or confusing the evaluation committee may waive the specification for all offerors, and if points were assigned reduce the total points by the number of points assigned to the specification.

All offeror proposals will be reviewed for compliance with the mandatory requirements stated within the RFP. Proposals deemed non-responsive will be eliminated from further consideration. Mandatory General Conditions or specifications contain the terms “must”, “shall”, “will”, “is required” or “are required”.

**2.2.10.4** If a Proposer who otherwise would have been awarded a contract is found not to be a responsible Proposer, a determination that the Proposer is not a responsible Offeror, setting forth the basis of the finding, shall be prepared by the Procurement Officer. The unreasonable failure of the Proposer to promptly supply information in connection with an inquiry with respect to responsibility is grounds for a determination that the Proposer is not a responsible Proposer (13-1-133 NMSA 1978). Businesses, which have not been selected, shall be so notified in promptly after an award is made (13-1-120 NMSA 1978).

## **2.2.11 CONTRACT NEGOTIATIONS (13-1-122 NMSA 1978)**

**2.2.11.1** 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 consider the estimated value of the services to be rendered and the scope, complexity, and professional nature of the services.

**2.2.11.2** 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 may then undertake negotiations with the second most qualified business or terminate the procurement process. Failing accord with the second most qualified business, the designee shall formally terminate negotiations with that business.

**2.2.11.3** The designee may then undertake negotiations with the third most qualified business or terminate the procurement process.

**2.2.11.4** Should the designee be unable to negotiate a contract with any of the businesses selected by the committee, additional businesses may be ranked in order of their qualifications and the designee may 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.

**2.2.11.5** The County of Lincoln will publicly announce the business selected for award.

**2.2.11.6** The contract between the County and Offeror will follow substantially the format specified by the County and contain the terms and conditions set forth in this RFP and Appendix E of this RFP. The contents of this RFP, as revised and/or supplemented, and the successful offeror's proposal will be incorporated into the contract. Should an offeror object to any of the County's terms and conditions, that offeror must propose specific alternative language that would be acceptable to the County. Offeror's must provide a brief discussion of the purpose and impact, if any, of each proposed change followed by the specific proposed alternate wording. 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.

## **2.2.12 NOTICE OF AWARD**

**2.2.12.1** Award, if made, shall be made to the responsible and responsive Offeror or Offerors whose proposal is most advantageous to the County, taking into consideration the evaluation factors set forth in the Request for Proposals. Lincoln County will be the sole judge in determining if the product proposed and delivery time meets our requirements. The County reserves the right to cancel the RFP, or accept or reject any or all proposals in whole or in part, to waive informalities or technicalities at its option and to accept the proposal it deems to be in the best interests of the County.

**2.2.12.2** 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 13-1-108 NMSA 1978).

## **2.2.13 CONTRACT TERM**

**2.2.13.1** The contract period will begin **on date of award for one calendar year** and will **auto-renew** for up to Three (3) additional years based on the same terms, conditions, specifications, unless terminated, and both parties agree to the extension. 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.

## **2.2.14 INVOICES/PAYMENT**

**2.2.14.1 Invoices:** Submitted to the Lincoln County Finance Department for approval and forwarded to Lincoln County Finance for Payment. Each invoice shall be accompanied by records fully detailing the amounts stated on the invoice. All goods or services must be billed to the County and at prices not exceeding those stated on the Purchase Order or contract. If prices or terms do not agree with your quotation, notify the Purchasing Department immediately. Invoices shall be paid completely by the County within thirty (30) days of receipt of the invoice, except for items questioned. The Lincoln County Finance Department shall notify the Contractor within ten (10) days of receipt of invoice of any items questioned. The Contractor shall prepare verification data for the amount claimed and provide complete cooperation during such investigation of any areas in the invoice subject to question.

## **2.2.15 TAXES AND PERMITS**

**2.2.15.1** The State, any county, municipality, or political subdivision of this State is exempt from the sales tax, except this exemption shall not include sales of tangible personal property made to contractors employed either directly or as agents of any such government or political subdivision thereof when such tangible personal property goes into or becomes a part of public works owned by such government or political subdivision thereof. The bidder shall take these factors into consideration in preparing his proposal, including therein the cost of the State and Use Tax on materials, but excluding the cost of those taxes and permits not applicable.

## **2.2.16 PREFERENCES**

**2.2.16.1** A 5% preference of the total possible points used in evaluating the Request for Proposal shall be awarded to a business that has registered with the State of New Mexico Department of Taxation and Revenue as a resident New Mexico business. A Resident New Mexico Veteran's business may be awarded up to a 10% preference of the total possible points, and in any case shall be applied in accordance with the provisions of New Mexico Statute 13-1-21 and 13-1-22 NMSA 1978.

For information on State of New Mexico resident business or Veteran's Resident Business bidder's certification call 505-827-0951 or to download applications, go to: [www.tax.newmexico.gov](http://www.tax.newmexico.gov), select "Forms and Publications" and click on "Recently Updated".

**You must submit a copy of your NM Resident Business or Resident Veteran's Business Certificate with your proposal in order to qualify for the New Mexico Resident Procurement preferences.**

**2.2.17 PROTESTS**

**2.2.17.1** Any Proposer who is aggrieved in connection with a solicitation or award may protest to the County of Lincoln Procurement Officer 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 15 calendar days after knowledge of the facts or occurrences giving rise thereto (13-1-172 NMSA 1978).

**2.2.17.3** In the event of a timely protest under this section, the Purchasing Officer and the County of Lincoln shall not proceed further with the procurement unless the Purchasing Officer makes a determination that the award is necessary to protect substantial interests of the County of Lincoln (13-1-173 NMSA 1978).

**2.2.17.4** The Purchasing Officer or his designee shall have the authority to take any action reasonably necessary to resolve a protest of an aggrieved Proposer concerning 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).

**2.2.17.5** The Purchasing Officer or his designee shall promptly issue a determination relating to the protest. The determination shall:

- 1) state the reasons for the action taken; and
- 2) inform the Protestant of the right to judicial review of the determination (13-1-183 NMSA 1978).

**2.2.17.6** A copy of the determination issued under 13-1-175 NMSA 1978 shall immediately be sent to the Protestant and other Proposers involved in the procurement (13-1-176 NMSA 1978).

**2.3 POST-PROPOSAL INFORMATION**

**2.3.1 EXECUTION AND APPROVAL OF AGREEMENT**

**2.3.1.1** The Agreement shall be signed by the Successful Proposer 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.

### **2.3.3 PROPOSER'S QUALIFICATION STATEMENT**

**2.3.3.1** Proposer 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)

### **2.3.4 EQUAL OPPORTUNITY COMPLIANCE/WORKERS' COMPENSATION**

**2.3.4.1** Lincoln County does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in the employment or the provisions of services. The Contractor agrees to comply strictly with the policies of County, as well as all Federal and State Laws pertaining to Equal Employment Opportunity, including the Americans with Disabilities Act, and will not discriminate against any person or deny any person participation or benefit from the performance of this Agreement as a result of any discriminatory action. The Contractor agrees to comply with State Laws and rules applicable to workers' compensation benefits for its employees. If the Contractor fails to comply with the Workers' Compensation Act and applicable rules when required to do so, the County may terminate this agreement.

### **2.3.5 APPROPRIATIONS:**

The terms of this agreement are contingent upon sufficient monies being made available by the Lincoln County for the performance of this agreement. If sufficient appropriations and authorizations are not made by the County, this agreement shall terminate upon written notice being given by the County to the contractor. The County's decision as to whether sufficient appropriations are available shall be accepted by the contractor and shall be final.

### **2.3.6 COOPERATIVE PROCUREMENT AGREEMENT:**

#### **2.3.6.1 EXISTING AGREEMENT:**

Under the terms and conditions of this proposal all public bodies allowed by law may procure the supplies or services under this proposal as described herein. The terms and conditions of this proposal shall form a part of each order issued herein. Each public body shall be responsible for their own orders and Lincoln County accepts no responsibility for other entities.

LINCOLN COUNTY does not in any way guarantee the proposer any services other than for the county needs; other cooperative agencies only have an option to participate off this bid and will be liable for their own requirements.

### **2.3.7 PROCUREMENT CODE VIOLATIONS:**

**2.3.7.1** The Procurement Code imposes civil and criminal penalties for its violation. In addition, the New Mexico State Statutes impose felony penalties for illegal bribes, gratuities, and kick-backs.

## **SECTION 3 SUPPLEMENTAL CONDITIONS**

THESE SUPPLEMENTAL TERMS AND CONDITIONS ARE IN ADDITION TO THE GENERAL INSTRUCTIONS, TERMS AND CONDITIONS AND, IN THE EVENT OF A CONFLICT BETWEEN THE PROVISIONS OF THE GENERAL INSTRUCTIONS, TERMS AND CONDITIONS AND THESE SUPPLEMENTAL TERMS AND CONDITIONS, THE PROVISIONS OF THESE SUPPLEMENTAL TERMS AND CONDITIONS SHALL CONTROL.

### **3.1 SUPPLEMENTAL TERMS AND CONDITIONS**

**3.1.1 ELECTRONIC COMMUNICATIONS:** Communications regarding this procurement, including issuance of addendums, may be conducted by electronic means of e-mail, we do not accept faxed communications. However, electronic submittals of the proposal, are not acceptable as noted in the General Conditions. The RFP number and Title must be in the subject line of all e-mail or communications. **NOTE: USE OF THE MAIL SERVICE IS AT YOUR OWN RISK FOR PROPER DELIVERY.**

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

**3.1.3 ACKNOWLEDGE RECEIPT OF AMENDMENTS: Return Acknowledgement of Receipt form as soon as possible but no later than September 23, 2021 by 5:00 pm.** Only potential offerors who return this form are guaranteed to receive copies of addendums and correspondence. Offerors will acknowledge receipt of **amendments by returning one signed copy of the amendment with their proposal. Failure to acknowledge receipt of addenda may render your proposal as non-compliant.**

**3.1.4 PROHIBITED CONTACT:** Except for communications during any informational meeting conducted by the County for this RFP and to ensure information is consistent to all prospective respondents, any direct or indirect contact with County elected officials or staff other than the Purchasing Section staff relating to this RFP is strictly prohibited throughout the duration of the RFP process, and, upon such finding, will render a respondent and/or related proposal non-compliant. Any and all inquiries must be

submitted by the prospective respondent to the Purchasing Department no later than one week before the proposal due date/time unless otherwise specified in the request for proposal. Inquiries received after the deadline may not be considered.

**3.1.5 CONTACT:** For questions or clarification regarding any aspect of this proposal, submit the questions in writing to sole point of contact for this RFP:

**Lincoln County Purchasing Office**  
**Attn: Toni Foligno, CPO**  
**P.O. Box 711**  
**Carrizozo, NM 88301**  
**(575) 648-2385 x 105**  
**Purchasing@lincolncountynm.gov**

All questions must include the following:

- a) The RFP number and RFP Title in the subject or reference line:
- b) Proponent's company name, contact person, phone number and e-mail address must appear within the document or e-mail.

Inquiries requiring clarification/modification to the RFP will be compiled and responded to via written addendum issued before the due date/time. Questions must be submitted no later than seven (7) days prior to the date set for opening of proposals. Questions submitted after **September 23, 2021** may not be addressed.

In the event addendum is received by a proponent after its proposal is submitted, the proponent must acknowledge receipt of the addendum by notice to the Purchasing Section via e-mail or U.S. Mail.

**3.1.6 CONFLICT OF INTEREST:** Offeror warrants that it presently has no interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of service under this contract. Offeror must notify the County's Purchasing Officer if any employee(s) of the requesting department or the Central Purchasing Division have a financial interest in the Offeror.

**3.1.7 TAXES:** The cost/fee proposal total shall exclude all applicable taxes. The County will pay any taxes due on the contract based upon billing submitted by the contractor, at the applicable tax rate. Taxes shall be shown as a separate amount on any billing or request for payment. Lincoln County is non-taxable on tangible goods.

**3.1.8 APPLICABLE LAW:** This proposal and Agreement shall be governed by the ordinances of the County of Lincoln and the laws of the State of New Mexico.

**3.1.9 CONTRACT TERMS AND CONDITIONS:** The contract between the County and Offeror will follow substantially the format specified by the County and contain the terms and conditions set forth in Appendix E. The contents of this RFP, as revised and/or supplemented, and the successful offeror's proposal will be incorporated into

the contract. Should an offeror object to any of the County's terms and conditions, that offeror must propose specific alternative language that would be acceptable to the County. Offeror's must provide a brief discussion of the purpose and impact, if any, of each proposed change followed by the specific proposed alternate wording. 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.

**3.1.10 PROPOSAL DOCUMENTS:** Bid documents may be retrieved by accessing the Purchasing page of the County website, <https://www.lincolncountynm.gov/county-offices/purchasing>; by request via e-mail at [Purchasing@lincolncountynm.gov](mailto:Purchasing@lincolncountynm.gov); by calling (575) 648-2385 x 105 or in person at the Purchasing Office at 300 Central Avenue, Carrizozo, MM 88301.

The County will notify offerors of record of amendments/addenda that are issued. If you are not an offeror of record for the solicitation, or if you have downloaded a copy of a solicitation from our website it shall be your responsibility to check our website frequently for copies of any addenda/amendments or correspondence concerning the solicitation. Failure to acknowledge all addenda could result in rejection of your bid/proposal as non-responsive. In the case of an inconsistency between information on this site and the file document, the file document shall prevail.

## **SECTION 4 RESPONSE FORMAT & ORGANIZATION**

### **4. PROPOSAL SUBMITTAL PROCEDURES**

#### **4.1. NUMBER OF RESPONSES**

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

#### **4.2 NUMBER OF COPIES**

Offerors shall deliver FOUR (4) hard copies of their proposal to the location specified in Section 2 on or before the closing date and time for receipt of proposals. One hard copy should be clearly marked "ORIGINAL" and three hard copies clearly marked "COPY" on the front cover and shall contain original signatures.

**Submit one (1) original fee estimate in the same shipping container but under separate sealed cover and mark it "Fee Estimate". **RESPONDENTS WHO INCLUDE COST WITHIN THE TECHNICAL PROPOSAL WILL COMPROMISE THE EVALUATION PROCESS AND MAY SUBJECT ITS PROPOSAL TO IMMEDIATE DISQUALIFICATION.****

### 4.3 PROPOSAL FORMAT

All proposals must not exceed 25 pages of type written text no smaller than 10-point font and including graphics; are to be printed on standard 8 ½ x 11 paper and placed within a binder or bound on the left side with the tabs delineating each section.

Larger paper is permissible for charts, spreadsheets, etc. All foldout pages to a maximum of 11" X 17" shall be counted as two (2) pages and shall be numbered as such.

Points will be deducted for proposals that exceed the maximum page count.

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

- A. Submit a Table of Contents and Responses to the Evaluation Criteria and organized in the same order as the Evaluation Criteria.
- B. A separately tabbed Appendix or section shall be included at the end of offeror's proposal consisting of:
  1. Acknowledgement of Receipt of Amendment forms (if any issued)
  2. Letter of Transmittal – Each proposal must be accompanied by the Letter of Transmittal form. The Transmittal letter identifies the Offerors as follows:
    - a. The name and title of the person(s) authorized to contractually obligate the Offeror for the purpose of this RFP and the contract.
    - b. Be signed by a person authorized to contractually obligate the Offeror that explicitly indicates substantial acceptance of the Agreement between Owner and Contractor and compliance with all codes, regulations, facilities, County standards and requirements and laws that shall apply to this project.
  3. Campaign Contribution Disclosure Form, included with this RFP. Any prospective contractor must fill this form whether or not they, their family member, or their representative has made any contributions subject to disclosure.
  4. New Mexico Resident Business Bidder if applicable – Offeror MUST include a copy of their New Mexico Resident Business Certificate for purposes of receiving the New Mexico Resident Business.
  5. New Mexico Resident Veteran Business Preference, if applicable. Offeror MUST include a copy of their New Mexico Resident Veteran Business Certificate for purposes of receiving the New Mexico Resident Veteran Business Preference.
  6. NM Resident Veteran Business Preference Table, if applicable, Offer must include the completed New Mexico Resident Business Preference Table (Appendix D).

7. Current version of I.R.S. W-9 Form
8. Comments on Contract (if Any)
9. Certificate of Insurance- Copy of current insurance certificate indicating coverage's in the amount indicated in the proposal should be submitted if available. Insurance will be required prior to award, but not to submit a proposal.
10. Cost/Fee Proposal to be submitted within the same shipping container **under separate sealed cover.**

Any Proposal that does not adhere to this format, and which does not address each specification or requirement within the RFP MAY be deemed non-responsive and rejected on that basis.

Any forms provided in the RFP must be thoroughly completed and included in the appropriate section of the proposal. Unless otherwise specified in this RFP, all discussion of proposed costs, rates or expenses must occur only on the Cost Response Form.

A 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.

**4.3.1** Material **excluded** from the twenty-five (25) page maximum count is limited to:

- Front cover (photos with captions on inside cover allowed)
- Divider pages (blank except for title information)
- Back cover (photos with captions on inside of back cover allowed)
- Tables of Contents page (two page maximum)
- Acknowledge Receipt of Amendment form (Appendix A)
- Letter of Transmittal form (Appendix B)
- Campaign Contribution Disclosure Form (Appendix C)
- Copy of New Mexico Resident Bidder Certificate -if applicable or
- N.M. Resident Veteran Business Certificate -if applicable
- New Mexico Resident Business Preference Table (Appendix D ) if Applicable)
- Joint Bid or Proposal by both resident and nonresident businesses Disclosure Table (if applicable)
- Resumes
- Comments on Sample Contract, if any
- Certificate(s) of insurance
- Current I.R.S. W-9 Form (current version)

**Submit under separate sealed cover - Fee/Cost Proposal – (Appendix F)**



- 4.3.2 **Any Proposal that does not adhere to this format, and which does not address each specification or requirement within the RFP MAY be deemed non-responsive and rejected on that basis.**
- 4.3.3 Any forms provided in the RFP must be thoroughly completed and included in the appropriate section of the proposal. **Unless otherwise specified in this RFP, all discussion of proposed costs, rates or expenses must occur only on the Cost Response Form.**
- 4.3.4 A 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.

## SECTION 5 EVALUATION

### 5. EVALUATION PROCESS

Points will be awarded based on the evaluation factors above.

#### **Initial Review**

All offeror proposals will be reviewed for compliance with the mandatory requirements stated within the RFP. Proposals deemed non-responsive to any mandatory requirement will be eliminated from further consideration.

#### **Clarifications**

The Purchasing Officer may contact the offeror for clarification of the response.

#### **Other Information Sources**

The Evaluation Committee may use other sources of information to perform the evaluation.

#### **Scoring and Contract Award Recommendation**

Responsive proposals will be evaluated and assigned a point value based on the factors in Section 5. Finalist offerors who are asked and choose to submit revised proposals for the purpose of obtaining best and final offers will have their points recalculated accordingly. The responsible offeror whose proposal is most advantageous to the County, taking into consideration the evaluation factors in Section 5, will be recommended for contract award to the Purchasing Officer, and any other required approving authorities, as specified above. Please note, however, that a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.

## 5.1. CRITERIA AND POINT VALUES

Any person/business submitting a proposal must address each of the following criteria. Criteria will be ranked on an evaluation process as shown in the Evaluation Criteria below.

A brief explanation of each evaluation category is listed below. Information in one category may overlap information in other categories. Offerors are encouraged to fully address each category completely, as points are assigned for responses to each. Responses to the RFP shall include information and past project experiences specific to the team submitting the proposal.

### 5.1.1 **Specialized Experience: (20 points)**

Specialized experience and technical competence of the business, including a joint venture or association, regarding the type of services required.

- Provide a brief history of firm and firm's experience working with government entities to provide similar services
- Specialized design and technical competence, including a joint venture or association, regarding the type of services required for this proposal.

### 5.1.2 **Capacity and Capability (20 points)**

Capacity and capability of the business, including any consultants, their representatives, to perform the work, including any specialized services, within time limitations.

- Information regarding project teams' past capability to meet schedules, meet budgets and meet project administration requirements.
- Resumes indicating Qualifications/competence of key personnel assigned to the project including professional background, education, certifications, and experience, including known subcontractors if applicable. Provide resumes of key staff and subcontractors.

### 5.1.3. **Evidence of Understanding Scope of Work (20 points)**

- Understanding of County's needs and project elements/goals
- Technical Quality of the work plan approach and methodology
- Quality and Completeness of Proposal

### 5.1.4 **Past Record of Performance (20 points)**

Past record of performance on contracts with government agencies and private industry with respect to such factors as control of costs, quality of work, and ability to meet schedules. Ability to modify and update [our] ordinances to comply with Federal and State laws.

- Information on three (3) recent projects (within the past five years) preferably with public sector entities and similar or larger in size and scope to this project.

Include contact information. Information on these projects showing owner's schedule compared to actual project schedule. Include contact information

- Explain your approach to how any project difficulties/issues are handled.
- Explain your abilities, experience, and approach to update ordinances for an agency and to complying with Federal; State and or FCC laws and/or regulations

**5.1.5 Litigation History (5 points)**

Offeror must detail their litigation history (including dates) over the past five (5) years. At a minimum this must include:

(A) the total number of lawsuits they filed;

A.1. For lawsuits they filed, offeror must explain who they were filed against, why, and the outcome of each.

(B) the total number of lawsuits filed against them.

(C) how many judgments they have against them and

(D) how many lawsuits they have settled.

**5.1.6 Cost Fee Response (15 points)**

Offeror must complete and submit the Cost Response Form, as Appendix F, providing proposed cost for accomplishing the services called for herein. State gross receipts and local option taxes (if any) shall not be included in the proposed cost. Such taxes shall be separately reimbursed to the contractor by the County.

**Response to Mandatory Requirements: Pass/Fail only.**

The County reserves the right to contact any references whether listed or not; or make any investigation as deemed necessary.

**5.2.1 Letter of Transmittal Form (Pass/Fail Only)**

Offeror must complete and submit the "Letter of Transmittal Form", found at Appendix B, with their proposal. The form must be signed and dated by an individual authorized to contractually bind the firm.

**5.2.2 Insurance (Pass/Fail Only)**

Offeror must agree to provide standard professional liability insurance.

**5.2.3 Campaign Contribution Disclosure Form (Pass/Fail Only)**

Offeror must complete and sign the Appendix C, Campaign Contribution Disclosure Form – whether any applicable contribution has been made or not. This form must be submitted with your proposal whether an applicable contribution has been made or not.

**5.2.4 Funding Changes (0 Points)**

Offeror must list and explain any requests for additional contract funding, other than that allowed at contract renewal time, during any contract they have held for which they are providing services in the past two (2) years.

### 5.3 PREFERENCES

The New Mexico Procurement Code provides for preference for resident or resident veteran businesses/contractors. If applicable, the preference must be provided to those Offerors that have provided the proper documentation with their bid;

1. Pursuant to Section 13-1-21(C) (2), NMSA 1978, when a public body makes a purchase using a formal request for proposals process.

a. If the contract is awarded based on a point-based system, a resident business shall be awarded the equivalent of (5) five percent of the total possible points to be awarded based on the resident business possessing a valid resident business certificate. A resident Veteran's business may be awarded up to a (10) ten percent preference of the total possible points.

#### 5.3.1 Resident Business Certificate Preference or Application of

New Mexico Resident Business/Contractor can receive 5% of total point score, if applicable, only one preference applies.

In order for an Offeror/Bidder to receive preference as a resident business, that Bidder **must** submit a copy of their resident business preference certificate with their bid. The preference certificate **must** have been issued by the New Mexico Taxation and Revenue Department. **Providing only a preference number or a copy of the application is not acceptable.**

*For more information and application forms, go to:  
<http://www.tax.newmexico.gov/Businesses/Pages/In-StatePreferenceCertification.aspx>*

#### 5.3.2 Resident Veteran's Business Preference Certification or Application of

Resident Veteran owned Business can receive from 7-10% of the total point score, if applicable, only one preference applies.

Effective July 1, 2012, certain preferences are available to Resident Veteran Businesses. In order for a Bidder to receive preference as a resident veteran business, that Offeror/Bidder **must** submit a copy of their resident veteran business preference certificate with their bid. The preference certificate **must** have been issued by the New Mexico Taxation and Revenue Department. Providing only a preference number or a copy of the application is **not** acceptable.

*For more information and application forms, go to:  
<http://www.tax.newmexico.gov/Businesses/Pages/In-StatePreferenceCertification.aspx>*

New Mexico Resident Veteran Business Preference Table is attached here to as Appendix D.

**5.3.3. Joint bid or joint proposal by both resident and nonresident businesses.**

Pursuant to Section 13-1-21 (D), NMSA 1978. *When a joint bid or joint proposal is submitted by both resident and nonresident businesses, the resident business preference provided pursuant to Subsection B or C of this section shall be reduced in proportion to the percentage of the contract, based on the dollar amount of the goods or services provided under the contract, that will be performed by a nonresident business as specified in the joint bid or proposal. If requesting resident preference consideration, joint proposal [both resident and nonresident businesses] must be disclosed as follows.*

*Points shall be distributed by the percent of work identified above calculated as follows:  
Example: 35% of work to be performed by the certified resident business: 35% of 5 points = 1.75 points.*

Offeror will complete the following or similar table if submitting a Joint Proposal:

Firm Name, Location Of Resident Business	Work to be Performed	Percentage (%) of Work Performed Compared to Total Contract Cost
Firm Name, Location Of Non-Resident Businesses	Work to be Performed	Percentage (%) of Work Performed Compared to Total Contract Cost

**5.4 EVALUATION POINT SUMMARY:**

REF.	EVALUATION POINT SUMMARY	POINTS AVAIL.
<b>5.1. Criteria Point Value:</b>		
5.1.1	Specialized Experience	20
5.1.2	Capacity and Capability	20
5.1.3	Evidence of Understanding Scope of Work	20
5.1.4	Past Record of Performance	20
5.1.5	Litigation History	5
5.1.6	Cost Fee Response <b>Under Separate Sealed Cover</b>	15
<b>5.2. Mandatory Response Requirements:</b>		
5.2.1	Letter of Transmittal Form	P/F
5.2.2	Insurance	P/F
5.2.3	Campaign Contribution Disclosure Form	P/F
5.2.4	Funding Changes	0

<b>5.3. Possible in State Preferences:</b>		
5.3.1	New Mexico Resident Business/Contractor (only one applies)	5% of total score
5.3.2	New Mexico Resident Veteran owned Business (only one applies)	7-10% of total score
5.3.3	Joint Bid or Joint Proposal by both resident and nonresident businesses, if applicable (deduction)	-
<b>TOTAL POSSIBLE POINTS WITH PREFERENCES</b>		110

**5.5 Best and Final Offers from Finalists**

Qualified Offerors may be asked to submit revisions to their proposals for the purpose of obtaining best and final offers. Best and Final offers may include an opportunity to revise prices or clarify their proposal.

**5.6 PROPOSAL EVALUATION**

Offerors submitting proposals may be afforded the opportunity for discussion and revision of proposals. Revisions may be permitted after submissions of proposals and prior to award for the purpose of obtaining best and final offers. Negotiations may be conducted with responsible Offerors who submit proposals found to be reasonably likely to be selected for award.

**5.6.1 Shortlisting** – In scoring this RFP, there is a possible of 100 points, or up to 110 with applicable State of New Mexico Resident Business or Resident Veterans Preferences. Offerors must include a copy of the New Mexico preference certificate in their proposal to receive consideration for the preferences. Resident preference percentage(s) can be reduced based on joint proposal [both resident and nonresident businesses] which must be disclosed if applying for resident preference consideration. The Selection Committee will evaluate the proposals and may develop a shortlist of the top ranked respondents.

**5.6.2 Scoring** - A selection committee will review and evaluate all replies and detailed proposals, may conduct oral presentations or a combination of both, unless otherwise indicated in this solicitation. The selection committee will have only the response to this solicitation to review and, therefore, it is important that Offerors emphasize specific information considered pertinent to the services to be provided.

At the Selection Committee meeting, the Purchasing Officer will poll members of the committee to provide any comments relative to the proposals that influenced their scores, and whether to seek clarification from Offerors.

Following discussion by the members, each member may review scores and may make any changes. Scoring may take place over several rounds. Based upon the results of scoring, the committee will determine whether oral presentations will be conducted, whether to solicit Best and Final Offers from the top respondents, or both.

**5.6.3 Oral Presentations** - Oral Presentations will be conducted if a majority of the members present at the Selection Committee meeting determine whether they are in the best interest of the County.

Should the committee elect to conduct oral presentations, the top Offerors may be interviewed. The Purchasing Officer will coordinate the presentations with each Offeror as to the time, date and place the committee will conduct presentations and the time allowed for each presentation. The Scoring Committee members may question each Offeror during or after his/her presentation. Interviews will be closed to any persons not representing the Offeror/Interviewee.

- (1) A maximum up to 100 additional points may be awarded a firm based on Oral presentation of each Offeror/Interviewee.
- (2) If Oral Presentations are not held, no additional points shall be awarded.
- (3) OR at the conclusion of all interviews, each member shall freshly rate each Offeror/Interviewee in accordance with the criteria and standards stated.

**The County is under no obligation to conduct oral presentations with any Offeror.**

Only the final combined summary committee score for each firm shall be available for public inspection after award of the contract. Any individual committee members score sheets and rankings shall remain confidential.

**SECTION 6 SEQUENCE AND EXPLANATION OF EVENTS**

**6. SEQUENCE OF EVENTS**

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

<b>Action</b>	<b>Responsible Party</b>	<b>Date</b>
1. Issue RFP	Procurement Officer	September 09, 2021
2. Return of "Acknowledgment of Receipt" Form for Distribution List	Potential Offerors	September 23, 2021
3. Deadline to submit Questions	Potential Offerors	September 23, 2021
4. Response to Written Questions/RFP Amendments	Procurement Officer	September 27, 2021
<b>5. Submission of Proposal</b>	<b>Potential Offerors</b>	<b>September 30, 2021 at 4:00 pm MST</b>

6. Proposal Evaluation	Evaluation Committee	Week of October 4-8, 2021 TBD
7. Selection of Finalists	Evaluation Committee/ Procurement Officer	As needed
8. Approval of BOCC	BOCC	October 19, 2021
9. Contract Award	Procurement Officer	October 20, 2021
10. Contract Negotiations	Tentative Winner/County	As needed
11. Protest Deadline	Offerors	November 3, 2021

**6.1 EXPLANATION OF EVENTS**

The following paragraphs describe the activities listed in the sequence of events shown in Section 5 above.

**6.1.1 Issuance of RFP**

This RFP is being issued by the Lincoln County Procurement Officer/Manager on behalf of the Lincoln County Board of Commissioners.

**6.1.2 Acknowledgement of Receipt**

Potential Offerors should hand deliver, return by e-mail or registered or certified mail the "Acknowledgement of Receipt" form that accompanies this document, (See Appendix A) to have their organization placed on the procurement distribution list. The form should be signed by an authorized representative of the organization, dated, and returned by the close of business on the date indicated in Section 6. A (Sequence of Events), above.

The procurement distribution list will be used to notify those that submitted the form of any written responses to questions and any RFP amendments for the distribution of written responses to questions. Failure to return this form shall constitute a presumption of receipt and rejection of the RFP, and the potential Offeror's organization name shall not appear on the distribution list.

**6.1.3 Deadline to Submit Written Questions**

Potential Offerors may submit written questions as to the intent or clarity of this RFP until 5:00 PM MDT on the date indicated in Section 6 (Sequence of Events), above. All written questions must be sent by delivery, mail, or e-mail to the Procurement Officer with "**RFP number 21-22-03 Questions**" in the subject or reference line.

**6.1.4 Response to Written Questions**

Written responses to written questions and any RFP amendments will be e-mailed to all parties **recorded** by Lincoln County having received the Request for Proposals.



#### **6.1.5 Submission of Proposal**

OFFEROR PROPOSALS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE PROCUREMENT OFFICER/MANAGER OR DESIGNEE **NO LATER THAN 4:00 P.M. MDT ON THE DATE INDICATED IN SECTION 6 (SEQUENCE OF EVENTS) ABOVE. PROPOSALS RECEIVED AFTER THIS DEADLINE FOR ANY REASON WILL NOT BE ACCEPTED OR CONSIDERED.**

The date and time of receipt will be recorded on each proposal. Proposals must be addressed and delivered to the Procurement Officer/Manager at the delivery address listed in Section 2. Proposal must be sealed and labeled on the outside of the package to clearly indicate they are in response to the **“Telecommunications Facilities Consultant Services”** Request for Proposals and should reference **“RFP #21-22-03”** Proposals submitted by **facsimile will NOT be accepted.**

A public log will be kept of the names of all Offerors submitting proposals. Pursuant to NMSA 1978, § 13-1-116 NMSA 1978, the contents of proposals shall not be disclosed to competing offerors prior to contract award.

#### **6.1.6 Proposal Evaluation**

An Evaluation Committee will perform the evaluation of proposals. This process will take place as indicated in the sequence of events, depending upon the number of proposals received. During this time, the Procurement Officer/Manager may at his option initiate discussions with Offerors who submit responsive or potentially responsive proposals for the purpose of clarifying aspects of the proposals. However, proposals may be accepted and evaluated without such discussion. Discussions SHALL NOT be initiated by the Offerors.

#### **6.1.7 Notification of Finalists**

The Evaluation Committee may select, and the Procurement Officer may notify the finalist offerors on the date indicated in Section 6. (Sequence of Events), above. Only finalist will be invited to participate in the subsequent steps of the procurement. The evaluation committee reserves the right not to utilize the finalist process if the deem it in the best interest of the County.

#### **6.1.8 Approval by Board of County Commissioners**

The Lincoln County Board of Commissioners approve all contracts awarded.

#### **6.1.9 Contract Awards**

After review of the Evaluation Committee Report and the tentative contract, the Procurement Officer/Manager anticipates the Board of County Commissioners will award the contract on the date indicated in Section 6 (Sequence of Events), above. Any contract awarded shall be awarded to the offeror whose proposal is most

advantageous to the County, taking into consideration the evaluation factors set forth in this RFP.

#### **6.1.10 Contract Negotiations**

If necessary, contract negotiations shall commence with the most advantageous offeror no later the date indicated in Section 6. (Sequence of Events), above. 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.

#### **6.1.11 Protest Deadline**

Any protest by an offeror must be timely and in conformance with and will be governed by 13-1-172 through 13-1-176 NMSA 1978. The fifteen (15) day protest period for timely offerors shall begin on the day following the contract award and will end at close of business on the date indicated in SECTION 6 (Sequence of Events), above. Protest 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, and it must specify the ruling requested from the Procurement Officer/Manager.

The protest must be delivered to the Procurement Officer at:

#### **County of Lincoln Purchasing**

Attn: Toni Foligno, Procurement Officer  
300 Central Avenue ~ P.O. Box 711  
Carrizozo, New Mexico 88301 or  
via email [Purchasing@lincolncountynm.gov](mailto:Purchasing@lincolncountynm.gov).

**NOTE: Protests received after the deadline will not be accepted.**

///

**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 initial proposal consisting of 61 pages (including the cover and all attachments or appendices). The acknowledgment of receipt should be signed and returned to the Procurement Officer as soon as possible but no later than 5:00 p.m. MT (local time) on September 23, 2021, seven (7) days prior to the closing date of this RFP.

**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.**

**An acknowledgment of receipt of any and all addendums should be completed and returned by the undersigned that they have received any and all addendums.**

FIRM: DOES [ ] - DOES NOT [ ] (**Circle or check**) intend to respond to this Request for Proposals.

FIRM NAME: \_\_\_\_\_

REPRESENTED BY: \_\_\_\_\_

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

PHONE#: \_\_\_\_\_ CELL#: \_\_\_\_\_ FAX#: \_\_\_\_\_

MAILING ADDRESS: \_\_\_\_\_

COUNTY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP CODE : \_\_\_\_\_

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

E-MAIL: \_\_\_\_\_ 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: Lincoln County Purchasing Department  
Procurement Officer  
By U.S. Mail P.O. Box 711  
Carrizozo New Mexico 88301  
Or by E-mail: [Purchasing@lincolncountynm.gov](mailto:Purchasing@lincolncountynm.gov)

**Please return this form by September 23, 2021, by 5:00 pm**

**LETTER OF TRANSMITTAL APPENDIX B**

**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. Name of Entity that will contract with the County: \_\_\_\_\_

2. The person authorized by the organization to contractually obligate the organization:

Name: \_\_\_\_\_ Title: \_\_\_\_\_

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

Name: \_\_\_\_\_ Title: \_\_\_\_\_

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

Telephone Number: \_\_\_\_\_ Cell: \_\_\_\_\_

4. For the person to be contacted for clarifications of the Offer or Project/Services:

Name: \_\_\_\_\_ Title: \_\_\_\_\_

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

Telephone Number: \_\_\_\_\_ Cell: \_\_\_\_\_

I the undersigned on behalf of the entity list in item #1 above, accept the Conditions Governing the Procurement as required in this RFP and certify that they have read and understand the General Conditions and Proposal documents and in doing so accept these conditions. I/we submit the attached proposal in full compliance with these conditions, the applicable proposal specifications, and the Contract. I/we hereby propose to furnish the goods or services specified in the Request for Proposal. I/we agree that my/our proposal will remain firm for a period of up to 60 days in order to allow the County adequate time to evaluate the qualifications submitted. I concur that submission of our proposal constitutes acceptance of the Evaluation Factors contained in section 5 of this RFP.

In submitting this proposal, the offeror represents that the offeror has familiarized themselves with the nature and extent of the Request for Proposals dealing with federal, state, and local requirements which are a part of this proposal, and further that this proposal is made without prior understanding, agreement, connection, discussion or collusion with any other person, firm or corporation submitting a proposal for the same product or service. The offeror will comply with all applicable federal and state laws, local ordinances and the rules and regulations of all authorities having jurisdiction over the goods or services of the project.

The Offeror further warrants that are not currently debarred or suspended by any governmental entity, that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement. The Offeror certifies that the requirements of the Governmental Conduct Act, Sections 10-16-1 through 10-16-18, NMSA 1978, regarding Contracting with a public officer or County employee or former County employee have been followed.

I acknowledge receipt of any and all amendments to this RFP on this date: \_\_\_\_\_

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

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

**CAMPAIGN CONTRIBUTION DISCLOSURE FORM  
APPENDIX C**

Pursuant to NMSA 1978, § 13-1-191.1 (2006), any person 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 shall void an executed contract or cancel a solicitation or proposed award for a proposed contract if: 1) a prospective contractor, a family member of the prospective contractor, or a representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or 2) a prospective contractor fails to submit a fully completed disclosure statement pursuant to the law.

THIS FORM MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT 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, which has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

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

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

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

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

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

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

**NAME(S) OF APPLICABLE PUBLIC OFFICIAL(S): Commissioner Todd Proctor, Commissioner Lynn Willard; Commissioner Jon Crunk; Commissioner Tom Stewart; Commissioner Elaine Allen.**

**DISCLOSURE OF CONTRIBUTIONS:**

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

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

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

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

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

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

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

(Attach extra pages if necessary)

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title (position)

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

—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.

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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

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

**APPENDIX D**  
**This Form Must be submitted with your proposal,**  
**if you are certified as a New Mexico Resident Veterans business**

**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 E  
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.

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, Telecommunications Facilities Consultant Services. The selected candidate should be thoroughly familiar with current laws, regulations and standard procedures accepted by the FCC; local and state the Telecommunications Guidelines.

**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 Officer/Manager and Contractor agrees to report all subcontractors on the NM Workforce Solutions and notice to the Procurement Officer/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 10-16-12.3 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 10-16-12.3 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. Contractors' 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 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 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 of Lincoln  
Ira Pearson, County Manager  
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

**APPENDIX F**  
**COST/FEE RESPONSE FORM**  
**Submit under separate sealed cover.**

**Request for Proposals 21-22-03**

**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 \$** \_\_\_\_\_

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

## Appendix G

### Section 63-9I of the "Wireless Consumer Advanced Infrastructure Investment Act"

#### 63-9I-1. Short title. (Effective September 1, 2018.)

This act [63-9I-1 through 63-9I-9 NMSA 1978] may be cited as the "Wireless Consumer Advanced Infrastructure Investment Act".

#### 63-9I-2. Definitions. (Effective September 1, 2018.)

As used in the Wireless Consumer Advanced Infrastructure Investment Act:

- A. "antenna" means communications equipment that transmits or receives electromagnetic radio frequency signals and that is used to provide wireless services;
- B. "applicable codes" means uniform building, fire, electrical, plumbing or mechanical codes adopted by a recognized national code organization and enacted by the authority, including the local amendments to those codes enacted by the authority solely to address imminent threats of destruction of property or injury to persons, to the extent that those amendments are consistent with the Wireless Consumer Advanced Infrastructure Investment Act;
- C. "applicant" means a wireless provider that submits an application;
- D. "application" means a request submitted by an applicant to an authority for a permit to collocate one or more small wireless facilities or to approve the installation, modification or replacement of a utility pole or wireless support structure;
- E. "authority" means a municipality or county;
- F. "authority utility pole" means a utility pole, owned or operated by an authority, in a right of way;
- G. "collocate" means to install, mount, maintain, modify, operate or replace one or more wireless facilities on, in or adjacent to a wireless support structure or utility pole;
- H. "communications service" means cable service as defined in 47 U.S.C. Section 522(6), information service as defined in 47 U.S.C. Section 153(24), mobile service as defined in 47 U.S.C. Section 153(33), telecommunications service as defined in 47 U.S.C. Section 153(53) or wireless service other than mobile service;
- I. "fee" means a one-time charge;
- J. "law" includes federal, state or local law;

K. "permit" means the written permission of an authority for a wireless provider to install, mount, maintain, modify, operate or replace a utility pole or to collocate a small wireless facility on a utility pole or wireless support structure;

L. "person":

(1) means an individual, corporation, limited liability company, partnership, association, trust or other entity or organization; and

(2) includes an authority;

M. "private easement" means an easement or other real property right given for the benefit of the grantee of the easement and the grantee's successors and assigns;

N. "rate" means a recurring charge;

O. "right of way":

(1) means the area on, below or above a public roadway, highway, street, sidewalk, alley or utility easement; and

(2) does not include the area on, below or above:

(a) a federal interstate highway;

(b) a state highway or route under the jurisdiction of the department of transportation;

(c) a private easement; or

(d) a utility easement that does not authorize the deployment sought by a wireless provider;

P. "small wireless facility" means a wireless facility whose:

(1) antennas are, or could fit, inside an enclosure with a volume of six or fewer cubic feet; and

(2) other ground- or pole-mounted wireless equipment, not including the following, is twenty-eight or fewer cubic feet in volume:

(a) electric meter;

(b) concealment elements;

(c) telecommunications demarcation box;

(d) grounding equipment;

(e) power transfer switch;

(f) cutoff switch;

(g) vertical cable runs for the connection of power and other services; and

(h) elements required by an authority in accordance with Subsection H of Section 3 of the Wireless Consumer Advanced Infrastructure Investment Act [63-9I-3 NMSA 1978];

Q. "utility pole":

(1) means a pole or similar structure used in whole or in part for communications services, electricity distribution, lighting or traffic signals; and

(2) does not include a wireless support structure or electric transmission structure;

R. "wireless facility":

(1) means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including:

(a) equipment associated with wireless communications; and

(b) radio transceivers, antennas, coaxial or fiber-optic cables, regular and backup power supplies and comparable equipment, regardless of technological configuration;

(2) includes a small wireless facility; and

(3) does not include:

(a) the structure or improvements on, under or within which the equipment is collocated;

(b) a wireline backhaul facility, coaxial cable or fiber-optic cable between wireless support structures or utility poles; or

(c) coaxial or fiber-optic cable otherwise not immediately adjacent to, or directly associated with, an antenna;

S. "wireless infrastructure provider" means a person, other than a wireless services provider, that may provide telecommunications service in New Mexico and that builds or installs wireless communications transmission equipment, wireless facilities' utility poles or wireless support structures;

T. "wireless provider" means a wireless infrastructure provider or wireless services provider;

U. "wireless services" means services provided to the public that use licensed or unlicensed spectrum, either mobile or at a fixed location, through wireless facilities;

V. "wireless services provider" means a person that provides wireless services;

W. "wireless support structure" means a freestanding structure, including a monopole or guyed or self-supporting tower, but not including a utility pole; and

X. "wireline backhaul facility" means a facility used to transport services by wire from a wireless facility to a network.

**63-9I-3. Wireless provider; use of right of way; rates, fees and terms; right to access; damage and repair. (Effective September 1, 2018.)**

A. This section applies to the activities of a wireless provider within a right of way.

B. An authority shall not enter into an exclusive agreement with a wireless provider for the use of a right of way in:

- (1) constructing, installing, maintaining, modifying, operating or replacing a utility pole; or
- (2) collocating a small wireless facility on a utility pole or wireless support structure.

C. An authority may charge a wireless provider a rate or fee for the provider's use of a right of way in constructing, installing, maintaining, modifying, operating or replacing a utility pole, or in collocating a small wireless facility, in the right of way only if:

- (1) the authority otherwise may, under law, charge the rate or fee;
- (2) the authority charges other communications service providers for their use, if any, of the right of way; and
- (3) the rate or fee:
  - (a) is competitively neutral as compared to other users, if any, of the right of way, unless the other users are exempt under law from paying a rate or fee for their use of the right of way;
  - (b) is not in the form of a franchise or other fee based on revenue or customer counts;
  - (c) is reasonable and nondiscriminatory; and
  - (d) annually, does not exceed an amount equal to two hundred fifty dollars (\$250) multiplied by the number of small wireless facilities placed by the wireless provider in the right of way and in the authority's jurisdiction.

D. An authority may adjust the rate it charges for the use of a right of way, but no more often than once a year and by no more than an amount equal to one-half the annual change, if any, in the most recent consumer price index for all urban consumers for New Mexico, as published by the United

States department of labor. An authority that adjusts that rate shall notify all wireless providers charged the pre-adjusted rate of the prospective adjustment and shall make the adjustment effective sixty days or more following that notice.

E. Except as otherwise provided in the Wireless Consumer Advanced Infrastructure Investment Act, and subject to the approval of an application as provided in Section 4 of that act [63-9I-4 NMSA 1978], a wireless provider may collocate small wireless facilities and construct, install, modify, mount, maintain, operate and replace utility poles associated with the collocation of a small wireless facility along, across, on or under the right of way.

F. If a wireless provider or the provider's contractor causes damage to the authority's property or right of way while the provider or contractor occupies, installs, repairs or maintains a small wireless facility, wireless support structure or utility pole in the right of way, the authority may require the provider to return the property to its pre-damage condition according to the authority's requirements and specifications if the requirements and specifications are competitively neutral and reasonable and upon written notice of the requirement to the provider. If the provider does not, within a reasonable period after receiving the notice, repair the property as required by the authority, the authority may make the repairs and charge the provider the reasonable, documented cost of the repairs.

G. A wireless provider that deploys a utility pole or small wireless facility in a right of way shall construct, maintain and locate it so as not to obstruct or hinder the usual travel on, or endanger the public in, the right of way, damage or interfere with another utility facility in the right of way or interfere with another utility's use of its facility in the right of way. In constructing and maintaining its utility pole or small wireless facility, the wireless provider shall comply with the national electrical safety code and all applicable laws for the protection of underground and overhead utility facilities. An authority shall treat a wireless provider's utility poles and small wireless facilities in a right of way as it does the facilities, if any, of other utilities in the right of way; however, the authority may adopt reasonable regulations concerning the separation of the wireless provider's utility poles and small wireless facilities from other utility facilities in the right of way to prevent damage to, or interference with, the facilities or to prevent interference with a utility's use of its facility or facilities in, or to be placed in, the right of way.

H. Subject to Subsection E of Section 4 of the Wireless Consumer Advanced Infrastructure Investment Act, an authority may require, as they pertain to small wireless facilities located in design districts or historic districts, reasonable, technically feasible, non-discriminatory and technologically neutral design or concealment measures and reasonable measures for conforming to the design aesthetics of design districts or historic districts, as long as the measures do not have the effect of prohibiting a wireless provider's technology. As used in this subsection:

(1) "design district" means an area zoned or otherwise designated by municipal ordinance and for which a municipality maintains and uniformly enforces unique design and aesthetic standards; and



(2) "historic district" means a group of buildings, properties or sites that fall within the category defined in 47 C.F.R. 1.1307(a)(4) and are:

(a) listed in the national register of historic places or formally determined eligible for listing in that register by the keeper of the register in accordance with the nationwide programmatic agreement found in 47 C.F.R. Part 1, Appendix C; or

(b) designated as a historic district in accordance with the Historic District and Landmark Act [Chapter 3, Article 22 NMSA 1978].

I. Without the authority's discretionary and written consent, which the authority shall give in a nondiscriminatory way, a wireless provider shall not install a new utility pole in a right of way adjacent to a street or thoroughfare that is:

(1) fifty feet wide or less; and

(2) adjacent to single-family residential lots or other multifamily residences or to undeveloped land designated for residential use by zoning or deed restrictions.

J. A wireless provider that installs a new utility pole or small wireless facility in a right of way as described in Subsection H of this section shall comply with applicable private deed restrictions and other private restrictions affecting the area.

K. A wireless provider shall notify an authority in writing of its intention to discontinue its use of a small wireless facility or utility pole. The notice shall inform the authority of the time and the way in which the wireless provider intends to remove the small wireless facility or utility pole. The wireless provider is responsible for the costs of the removal. The authority may require the wireless provider to return the property to its pre-installation condition according to the authority's reasonable and nondiscriminatory requirements and specifications. If the wireless provider does not complete the removal within forty-five days after the notice, the authority may complete the removal and assess the costs of removal against the wireless provider. The permit for the small wireless facility or utility pole expires upon removal.

**63-9I-4. Collocation of a small wireless facility; permits; application; fee. (Effective September 1, 2018.)**

A. This section applies to a wireless provider's collocation activities within a right of way.

B. An authority may prohibit, regulate, or charge for the collocation of a small wireless facility only as provided in this section and Sections 3 [63-9I-3 NMSA 1978], 6 [63-9I-6 NMSA 1978] and 7 [63-9I-7 NMSA 1978] of the Wireless Consumer Advanced Infrastructure Investment Act.

C. A small wireless facility collocated on a utility pole or wireless support structure that extends ten or fewer feet above the pole or structure in a right of way in any zone is classified as a permitted use and is not subject to zoning review or approval.

D. An authority may require an applicant to obtain one or more permits to collocate a small wireless facility in a right of way if the requirement is of general applicability to users of the right of way. An applicant seeking to collocate, within an authority's jurisdiction, up to twenty-five small wireless facilities, all of which are substantially the same type, on substantially the same types of structures may file a consolidated application for the collocation of the facilities. An applicant shall not file with an authority more than one consolidated application in any five-business-day period. The applicant shall include in a consolidated application an attestation that, unless a delay in collocation is caused by the lack of commercial power or fiber at the site, the collocation will begin within one hundred eighty days after the permit issuance date. The authority and the provider may subsequently agree to extend that period.

E. An authority shall:

- (1) without bias, accept and process applications and issue permits to collocate small wireless facilities;
- (2) within thirty days after receiving an application, determine and notify the applicant of whether the application is complete and:
  - (a) for an incomplete application, specifically identify the information missing from it; and
  - (b) deem the application complete if the applicant is not notified within the thirty-day period;
- (3) within ninety days after receiving a completed application, approve or deny it and deem the application approved if that approval or denial is not given within the ninety-day period. The authority may request an extension of the ninety-day period, and the authority and applicant may agree to extend that period. An applicant shall not unreasonably deny an authority's request to extend the period;
- (4) approve a completed application unless the application does not conform with:
  - (a) applicable codes or local laws concerning: 1) public safety; 2) design for utility poles, but only to the extent that the standards the codes or laws impose are objective; 3) stealth and concealment, but only to the extent that the restrictions the codes or laws impose are reasonable; and 4) the spacing of ground-mounted equipment in a right of way; and
  - (b) requirements imposed by the authority in accordance with Subsection H of Section 3 of the Wireless Consumer Advanced Infrastructure Investment Act; and

(5) if it denies an application, document the basis for the denial, including the specific code or law on which the denial was based, and send that documentation to the applicant on or before the date the application is denied.

F. In the ninety-day period after an authority receives an application to collocate a small wireless facility, the authority may:

- (1) provide public notice of the application and an opportunity for written public comment on the application; and
- (2) submit the written public comment to the applicant and request that the applicant respond to it.

G. If an authority determines that applicable codes or laws require that a utility pole or wireless support structure be replaced before an application for collocation is approved, the authority may condition approval of the application on that replacement. That replacement is subject to Section 3 of the Wireless Consumer Advanced Infrastructure Investment Act.

H. An applicant whose application is denied may cure the deficiencies identified by the authority and submit a revised application within thirty days after the denial for no additional fee. The authority shall base its review of the revised application only on the deficiencies cited in the denial and shall approve or deny the revised application within thirty days after receiving it.

I. If an application is for the collocation of multiple small wireless facilities, the authority may:

- (1) treat as separate those for which incomplete information has been provided, that do not qualify for consolidated treatment or that are denied; and
- (2) issue separate permits for the collocations that it approves.

J. An authority shall not:

- (1) directly or indirectly require an applicant to perform services unrelated to the collocation for which approval is sought, such as the making of in-kind contributions to the authority of reserving fiber, conduit or pole space on the wireless provider's utility pole;
- (2) require an applicant to provide more information to obtain a permit than the authority requires of a communications service provider that is not a wireless provider and that requests a permit to attach facilities to a structure; however, the authority may require the applicant to certify that the small wireless facilities to be collocated conform with the federal communications commission's regulations concerning radio frequency emissions;
- (3) institute, either expressly or de facto, a moratorium on the acceptance or processing of applications or on the issuance of permits or other approvals, if any, for the collocation of small wireless facilities; or

(4) except as otherwise provided in Subsection K of this section, require an application, approval or permit or impose a fee, rate or other charge for:

(a) the routine maintenance of a small wireless facility;

(b) the replacement of a small wireless facility with one that is substantially similar in size to, the same size as or smaller than it, as long as the wireless provider that owns the wireless facility notifies the authority of the replacement at least ten days before the replacement; or

(c) the installation, maintenance, operation, placement or replacement of a micro wireless facility that is, in accordance with applicable codes, suspended on cables strung between utility poles or wireless structures. As used in this subparagraph, "micro wireless facility" means a small wireless facility less than twenty-four inches long, fifteen inches wide and twelve inches high whose exterior antenna, if any, is less than eleven inches long.

K. An authority may require a permit to engage, within rights of way, in activities that are identified in Paragraph (4) of Subsection J of this section and that affect traffic patterns or require lane closures.

L. The collocation for which a permit is issued shall begin within one hundred eighty days after the permit issuance date, unless the authority and the wireless provider agree to extend that period or a delay in collocation is caused by the lack of commercial power or fiber at the site. The permit gives the wireless provider the right to:

(1) collocate the small wireless facility; and

(2) subject to applicable relocation requirements, the requirements imposed on the authority by Section 3 of the Wireless Consumer Advanced Infrastructure Investment Act and to the wireless provider's right to terminate collocation at any time:

(a) operate and maintain the small wireless facility for at least ten years; and

(b) renew the permit for the same period, unless the authority finds that the small wireless facility does not conform with the applicable codes and local laws set forth in Paragraph (4) of Subsection E of this section.

M. An authority may charge an applicant an application fee in the amount of one hundred dollars (\$100) or less for each of up to five small wireless facilities and fifty dollars (\$50.00) or less for each additional small wireless facility whose collocation is requested in a single application.

N. The approval of an application under the Wireless Consumer Advanced Infrastructure Investment Act does not authorize the provision of a service or authorize the installation, placement, maintenance or operation of a wireline backhaul facility in a right of way.

O. The Wireless Consumer Advanced Infrastructure Investment Act shall not be deemed to allow a person, without the consent of the property owner, to collocate a small wireless facility on a privately owned utility pole, a privately owned wireless support structure or private property.

**63-9I-5. Installation, replacement, or modification of a utility pole; permits; application; fee. (Effective September 1, 2018.)**

A. This section applies to the activities of a wireless provider in installing a new, replacement or modified utility pole associated with the collocation of a small wireless facility in a right of way.

B. A new, replacement or modified utility pole associated with the collocation of a small wireless facility and installed in a right of way is not subject to zoning review and approval, except for that which pertains to the under-grounding prohibitions described in Subparagraph (c) of Paragraph (1) of Subsection C of this section, unless the utility pole, as measured from the ground level, is higher than whichever of the following is greater:

(1) ten feet plus the height in feet of the tallest existing utility pole, other than a utility pole supporting only one or more wireless facilities, that is:

- (a) in place on the effective date of the Wireless Consumer Advanced Infrastructure Investment Act;
- (b) located within five hundred feet of the new, replacement or modified utility pole;
- (c) in the same right of way and within the jurisdictional boundary of the authority; and
- (d) fifty or fewer feet above ground level; or

(2) fifty feet.

C. An authority may require an application for the installation of a new, replacement or modified utility pole associated with the collocation of a small wireless facility in a right of way. An authority shall approve such an application unless the authority finds that the installation of the utility pole does not conform with:

(1) applicable codes or local laws concerning:

- (a) public safety;
- (b) design for utility poles, but only to the extent that the standards the codes or laws impose are objective; and

(c) under-grounding prohibitions on the installation of new, or the modification of existing, utility poles in a right of way without prior approval, if those regulations: 1) require that all cable and public utility facilities be placed underground by a date certain within one year after the application; 2)

include a waiver, zoning or other process that addresses requests to install such new utility poles or modify such existing utility poles; and 3) allow the replacement of utility poles;

(2) the federal Americans with Disabilities Act of 1990 or similar federal or state standards for pedestrian access or movement;

(3) requirements imposed by the authority in accordance with Subsection H of Section 3 of the Wireless Consumer Advanced Infrastructure Investment Act [63-9I-3 NMSA 1978];

(4) requirements imposed by contract between an authority and a private property owner concerning the design of utility poles in the right of way; or

(5) the authority's laws concerning public safety and imposing minimum spacing requirements, if reasonable, for new utility poles in rights of way.

D. An authority shall process an application for a permit to install a new, replacement or modified utility pole associated with the collocation of a small wireless facility within one hundred fifty days after receiving the application. If the authority fails to approve or deny the application within that period, the authority shall deem the application approved. The application fee, if any, imposed by the authority for such an application shall conform with the requirements of Subsection M of Section 4 of the Wireless Consumer Advanced Infrastructure Investment Act [63-9I-4 NMSA 1978] and shall not exceed seven hundred fifty dollars (\$750).

E. The installation, modification, or replacement for which a permit is issued under this section shall begin within one hundred eighty days after the permit issuance date, unless the authority and wireless provider agree to extend that period or a delay in the installation, modification or replacement is caused by the lack of commercial power or fiber at the site. The permit gives the wireless provider the right to:

(1) undertake the requested deployment; and

(2) subject to applicable relocation requirements, to the requirements imposed on the authority by this section and to the provider's right to terminate the installation at any time:

(a) operate and maintain the new, modified or replacement utility pole for a period of at least ten years; and

(b) renew the permit for that same period, unless the authority finds that the new or modified utility pole does not conform with the restrictions set forth in Subsection C of this section.

**63-9I-6. Access to authority utility poles; rates and fees; collocations for other commercial projects or uses. (Effective September 1, 2018.)**