

REQUEST FOR PROPOSALS FOR

ANNUAL AGREEMENT FOR ARCHITECTURAL SERVICES

PROPOSAL NO. 427-10

City of Hobbs, New Mexico

General Services Department  
200 E Broadway St  
Hobbs, NM 88240

July 30, 2010

REQUEST FOR PROPOSAL

NO. 427-10

FURNISH ANNUAL AGREEMENT FOR ARCHITECTURAL SERVICES

City of Hobbs, New Mexico

The City of Hobbs, New Mexico is requesting proposals from qualified offerers interested in furnishing PROFESSIONAL ARCHITECTURE SERVICES as specified. Written proposals will be received by the City of Hobbs, New Mexico, at the office of the Finance Director in City Hall, 200 E Broadway St, Hobbs, NM 88240.

DEADLINE - 2:00 p.m. August 19, 2010

The proposal should be mailed or hand delivered to:

Toby Spears, Finance Director  
City of Hobbs  
200 E Broadway St  
Hobbs, NM 88240  
Phone: (575) 397-9235  
Fax: (575) 397-9450

All proposals must be received on or before the above date and time in the Conference Room of the Finance Department on the second floor of City Hall. Submitted proposals shall not be publicly opened. Any proposal received after the stated time will be returned unopened.

Copies of the specifications may be procured without charge from the office of the City Finance Director. All questions regarding this RFP should be referred to Ronny Choate, General Services Director, 575-397-9236. In case of ambiguity or lack of clarity, the City of Hobbs, New Mexico reserves the right to adopt the most advantageous thereof, or to reject any or all proposals and waive irregularities.

CITY OF HOBBS, NEW MEXICO

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Eric Honeyfield  
City Manager

Publication Date: July 30, 2010

The City of Hobbs is requesting proposals to furnish:

Professional Architectural Services

This is a Request for Proposals to provide Professional Architectural Services on an “as-needed” basis for the City of Hobbs, New Mexico under an annual agreement.

The City request that your proposal be made in conformance with the guidelines contained herein on the proposal from.

The City intends to award a Professional Architecture Services Agreement, hereinafter referred to as “Agreement”, to an Architect submitting a proposal deemed to be most qualified to provide Professional Architecture services as required by the City. The Agreement to be executed shall be in substantially the form attached hereto.

PROPOSAL EVALUATION AND SELECTION

A. Evaluation of Proposal

Proposals will be evaluated on the following basis (all topics are as presented in the text of the proposal):

Professional Architectural Firm Capabilities, Expertise, Related Experience, Work References, and Past Performance with Governmental Building facilities.	35%
Design Team, Experience, Qualifications, Expertise, and Past Performance with Governmental Building Facilities.	30%
Specialty knowledge of roofing, stucco and HVAC systems and any related requirements or concerns.	15%
Past Performance on City of Hobbs Building Design Projects.	10%
Present workload and ability to meet the Time Schedule Requirements.	10%

Interviews

Interviews may be held with any or all of the firms submitting proposals, as determined in the best interest of the City.

INSTRUCTIONS TO OFFERORS:

A. SUBMITTING PROPOSALS

1. Sealed proposals will be received in the Finance Department, 200 E Broadway St, Hobbs, New Mexico, in accordance with the Proposal Advertisement. Offerors shall use the proposal form included with the scope of work. Proposal forms must bear the signature of the Offeror to be considered. Pursuant to NMSA 1978, § 13-1-191.1 (2006), bidders shall complete the attached Campaign Contribution Disclosure form. Failure of offerors to complete attached documents in accordance with all instructions provided is cause for the City of Hobbs to reject proposals.

2. Proposals must be submitted in a sealed envelope with the outside marked: PROPOSAL NO 427-10 \_\_\_\_\_ .

3. Request for Proposal Amendments – All amendments to this Request for Proposal deemed necessary between issuance of the Request for Proposals and the proposal submission deadline will be distributed in writing to all recipients of the original RFP. If an amendment requires a time extension, the proposal submission date will be changed as part of the written amendment.

4. The offeror is solely responsible to deliver his/her proposal to the proper place and at the time designated. The fact that a proposal was dispatched will not be considered.

5. Proposal Evaluation - The Selection Committee will review each proposal. Points will be allocated as outlined in the evaluation criteria of this RFP to determine the best responsible proposal. Negotiations may be conducted with responsible offerors who submit proposals found to be reasonably likely to be selected for award. The City of Hobbs will forward recommendations to the City Commission which will make the final award(s). The city reserves the right to accept proposals in their entirety, or portions thereof, and to reject any or all proposals and to waive formalities.

6. It is agreed that proposals accepted by the City shall be valid for a period of sixty (60) days following the date of proposal opening.

7. Any questions or clarifications regarding this proposal must be submitted to the Finance Department in writing no later than five (5) days prior to the proposed submittal date. All clarifications will be issued in written format. No verbal changes shall take place during any conversations. No proposal conference is scheduled for this project. All questions regarding this RFP should be referred to Ronny Choate, General Services Director, 575-397-9236.

B. TERM OF AGREEMENT

1. The term of the Agreement shall be for one (1) year from the date of written notification of award of proposal, with an option to extend an additional three (3) years on a one (1) year extension each time.

C. AWARD OF CONTRACT

1. The City Commission of the City of Hobbs, New Mexico, reserves the right to waive irregularities in proposals, and to reject any or all proposals or portions thereof; and may award to the offeror(s) whose proposal is deemed to be in the best interest of the City of Hobbs.

2. Proposals may be withdrawn upon receipt of written request, prior to scheduled deadline for the purpose of making any corrections and/or changes. Such corrections must be properly identified and signed or initialed by offeror. Resubmitting must be prior to scheduled deadline for consideration.

D. PAYMENT

1. The City of Hobbs requests that invoices are not to be submitted more frequently than on a monthly basis. Payment will be made within fifteen (15) days upon City certification that all contract terms have been met.

E. INSURANCE

1. The successful offeror(s) shall obtain, and provide proof thereof, to the City the following insurance coverage:

General Liability as follows: Premises, operations, explosions and collapse hazard, underground hazard, contractual insurance, products with completed operations, broad form property damage, independent contractors and personal injury. The limits of liability shall be no less than \$1,000,000 combined single limits for bodily injury and property damage.

Automobile Liability as follows: Owned, hired and non-owned vehicles. The limits of liability shall be no less than \$1,000,000 combined single limit bodily injury and property damage.

Errors and Omissions Insurance may be required on specific design projects with the amount of insurance commensurate with the size and nature of the Project. However, these insurance requirements will be negotiated with approved Architecture contractors at the time a work order is made.

The City of Hobbs shall be named as an additional insured on all of the above.

Workers' Compensation is required along with New Mexico statutory employer's liability limits regardless of number of employees.

## SCOPE OF WORK

The City of Hobbs needs to periodically retain professional Architecture services for a variety of City projects. The types of projects could include: metal buildings, existing structure remodels, roofs, HVAC, sight grading plans, electrical, plumbing, new construction and similar other projects.

The Offeror(s) shall furnish all expertise, labor and resources, in accordance with the requirements of the Contract, to provide complete services necessary for carrying out the work as detailed in Project Order(s) issued during the term of the Agreement. The following generally summarizes the services that the contracted offeror may be required to deliver, depending on the individual Project Orders.

A. Architect's Basic Services:

1. Schematic Design

Review with the Owner the Project's requirements;

Prepare conceptual Schematic Design drawings that illustrate the scale and relationship of the Project components and prepare a construction cost estimate.

2. Design Development

Prepare Design Development documents (plans and outline specifications) based on the approved Schematic Design drawings to further describe the Project's size and character and update the construction cost.

3. Construction Documents

Prepare Construction Documents (bidding documents, technical specifications and drawings) that detail the Project's construction requirements. Assist the Owner in filing the Construction Documents for approval by authorities having jurisdiction over the Project.

4. Construction Contract Procurement

Assist the Owner to obtain and evaluate construction bids and to negotiate with a prospective contract awardee on the Owner's behalf should the occasion arise.

5. Construction Contract Administration

Participate in Project Site visits to conduct inspections of the construction with the Project's contractor; Review required contractor submittals, such as shop drawings and samples; Review contractor's payment requests and applications and make recommendations to the Owner.

6. Sub-Consultants

Provide other sub consultants as necessary in the delivery of the above services.

## GENERAL SCOPE OF WORK

Possible Future Projects for the City of Hobbs include:

Hobbs Express - Renovations

Hobbs Express – Re-Roof

Casa Building – Re-roof/HVAC

Ocotillo Park Clubhouse

### E. Proposal Request:

1. The City of Hobbs, hereinafter "City" is therefore requesting proposals from Architecture firms, hereinafter referred to as "Architect", for the purpose of entering into one-year renewable Agreement for professional Architecture services. The City desires these contracts for the purpose of having such persons or firm available to perform Architecture services related to City projects. All responses to this Request for Proposals must comply with the City of Hobbs Procurement Code.

2. The City intends to award a Professional Service Architecture Agreement, hereinafter referred to as "Agreement", to an Architect submitting a proposal which is deemed to be most qualified to provide PROFESSIONAL Architecture services as required by the City. The Agreement to be executed with the Architect selected by the City shall be in substantially the form attached hereto as Exhibit #1.

The agreement is included with these documents for information only. Any potential revisions to the agreement which are recommended shall be submitted with the proposal.

## IV. PROPOSAL CONTENT

### A. Technical Proposal Content.

Each Architect's technical proposal must contain the following as a minimum:

1. Name, address, telephone number, and New Mexico Professional Architect Registration Number of the responsible person in charge.

2. A complete list of the Architect team, including a description of experience, professional designations, areas of competence and areas of special expertise, renderings, etc. Drafting, clerical and property research personnel should all be identified, if proposed to be utilized on a project. Please provide registration information as necessary.

3. Descriptions of at least three recent Professional Architecture projects with dates, locations, and names and telephone numbers of contact persons.

4. Names and information on existing municipal or public clients where Architecture projects have been completed, with date of service, and names and telephone numbers of contact persons.
5. Location of office(s) where the work will be performed.
6. List of all sub-consultants (if any), including addresses, qualifications and areas of responsibility.
7. Include any exceptions or items the Architect will not be able to provide.
8. A narrative description of steps routinely taken and procedures routinely used to provide cost-effective Architecture services to a municipal client, with sufficient detail to evaluate the capability of the firm and project team. Please describe the steps and procedures that you would normally undertake to complete a typical project. Discuss normal time requirements for Schematic Design, Design Development, Construction Documents, Bidding and Construction Management.
9. A list of three references on the firm.
10. Normal travel time required to Hobbs, New Mexico, estimated mileage and travel time per trip, and normal response times to attend a client meeting after being requested.

B. Proposal Requirements

1. The maximum length for a response proposal should not exceed 14 pages, not including the cost proposal. The Fee Schedule, Covers, Index/Table of Contents, Transmittal Letter and Signature Sheet are exempted from the above requirements. Please limit all resumes to one page per resume.
2. Please submit five (5) copies of the proposal.

C. Fee Schedule Content

Cost will not be used as a factor of the evaluation procedures. Therefore, the Fee Schedule (Cost Proposal) should be submitted in a separate envelope at the end of the proposal. The Cost Proposal will be used as a basis for the Agreement. Cost Proposals (Fee Schedules) will be opened only for those firms recommended for award by the Selection Committee as specified in this RFP. Each Architect's Fee Schedule must contain the following information as a minimum:

1. Hourly rate for each person on the project team for the various types of services required by the City. If an individual will be assigned multiple tasks, (such as Architecture design and drafting, or clerical and property research), please specify the hourly rate for each task for those employees.
2. Charges for miscellaneous items such as copying, data discs, rental of special equipment, etc.
3. A statement of the billing procedures including minimum billing units of 0.1 hour.

Hourly Rates for various work activities are required to be specified in the Fee Schedule using the following chart. Hourly Rates should be specified for each employee/position of the firm, as appropriate with the proposed billing procedures. If the Architect does not provide all of these services, please specify those as not applicable for the hourly rate. Lump sum charges should also be specified for miscellaneous activities, but only if the charges are normally to be billed over and above the stated hourly rate.

A. Hourly Rate Chart. - FEE SCHEDULE.  
 Type of Work Project: Hourly Rate

1.	Architect - Project Director	\$ _____
2.	Architect – P.A.	\$ _____
3.	Architect - Intern	\$ _____
4.	Architecture Technician	\$ _____
5.	2 Person Survey Crew	\$ _____
6.	Property Research Tech. (On-site)	\$ _____
7.	Drafter - CAD	\$ _____
8.	Clerical - Miscellaneous	\$ _____
9.	On-Site Research Work	\$ _____
10.	Report Typing (if applicable)	\$ _____
11.	Reports for State or Federal Projects	\$ _____
12.	Meetings	\$ _____
13.	Renderings & Models	\$ _____
14.	Research Reports.	\$ _____
15.	Expert Witness in Court – P.A.	\$ _____
16.	Travel Time	\$ _____
17.	Other _____	\$ _____
18.	Other _____	\$ _____
19.	Other _____	\$ _____

Miscellaneous Charges:  
 Item

Cost per unit

Blue Print Copy 24" X 36" \$ \_\_\_\_\_  
 Mileage – Cost per mile \$ \_\_\_\_\_

- \_\_\_\_\_ \$ \_\_\_\_\_
- \_\_\_\_\_ \$ \_\_\_\_\_
- \_\_\_\_\_ \$ \_\_\_\_\_
- \_\_\_\_\_ \$ \_\_\_\_\_
- \_\_\_\_\_ \$ \_\_\_\_\_
- \_\_\_\_\_ \$ \_\_\_\_\_

PROPOSAL

FURNISH PROFESSIONAL ARCHITECTURE SERVICES

TO: The City of Hobbs, New Mexico

\_\_\_\_\_, 2010

Proposal of \_\_\_\_\_:  
(Company Name)

A) A Corporation under the laws of the State of \_\_\_\_\_; or

B) A partnership consisting of \_\_\_\_\_; or

C) An individual trading as \_\_\_\_\_.

The undersigned offerer, pursuant to the foregoing "Request for Proposals", has carefully examined the instructions to Offerers, this proposal form and the Detailed Specifications.

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

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

\_\_\_\_\_  
Type or Print Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone Number                      City                      State                      Zip

NOTE: To be valid, bid must be signed. The signature of a corporation is its president, or an authorized representative. A signature of a partnership must be a valid partner or authorized representative.

Do Not Return Invitation to Bid Form in Case of a "NO BID"  
If applicable - bidder acknowledges receipt of the following AMENDMENT(S):  
Amendment No: \_\_\_\_\_ Date: \_\_\_\_\_ Amendment No.: \_\_\_\_\_ Date:

Amendment No: \_\_\_\_\_ Date: \_\_\_\_\_ Amendment No.: \_\_\_\_\_ Date:

## CAMPAIGN CONTRIBUTION DISCLOSURE FORM

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 for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources must file this form with that state agency or local public body. This form must be filed even if the contract qualifies as a small purchase or a sole source contract. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars (\$250) over the two year period.

Furthermore, the state agency or local public body shall void an executed contract or cancel a solicitation or proposed award for a proposed contract if: 1) a prospective contractor, a family member of the prospective contractor, or a representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or 2) a prospective contractor fails to submit a fully completed disclosure statement pursuant to the law.

**THIS FORM MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.**

The following definitions apply:

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

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

**DISCLOSURE OF CONTRIBUTIONS:**

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

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

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

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

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

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

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

(Attach extra pages if necessary)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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

--OR--

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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

ANNUAL ARCHITECTURE SERVICES AGREEMENT

THIS AGREEMENT is entered into on this \_\_\_\_\_ day of \_\_\_\_\_ 2010, by the City of Hobbs, New Mexico, (hereinafter "City"); and (hereinafter "Consultant") for the \_\_\_\_\_ (purpose of defining annual architecture services to be provided to the City.

RECITALS:

1. The City requires from time-to-time to contract with architecture firms to provide professional architecture services; and
2. The types of projects for which the City needs to periodically retain professional architecture services hereunder include the following: construction of metal buildings, remodels of existing structures, roofs, HVAC, sight grading plans, electrical, plumbing, and new construction generally.

NOW, THEREFORE, the parties hereto do mutually agree as follows:

1. Work To Be Performed. The Consultant shall furnish to the City its Professional Architecture Services for certain City Projects as may be requested by the City, using accepted Architecture principles and techniques. All work completed under this agreement shall be pursuant to the City's RFP # 427-10 which is attached hereto and made a part of this Agreement; and pursuant to Consultant's response proposal to that RFP dated \_\_\_\_\_, 2010, which is also attached hereto and made a part of this Agreement, to the extent that its provisions are not inconsistent with the RFP and applicable laws.

For each project contracted under this Agreement, the Consultant shall perform and/or furnish to the City those items which the City requests, including an estimated time schedule, completion date and estimated cost for each individual project when requested by the City, and for which the Consultant has agreed to provide as stated in his/her Technical Proposal. The City will furnish instructions and specifications for each project with the Work Order for that project.

2. Payment for Services.

The City shall pay for said services at the rates specified in the Fee Schedule of Consultant's Proposal except as specified herein. Payment will not be made by the City until the services for that project have been received and accepted by the City as being in compliance with the instructions and specifications, except that for long term projects (60 days or longer), monthly billings based on percent of work completed will be acceptable and negotiated per each specific long term project. Such payment shall include reimbursement for all expenses incurred in rendering such services unless otherwise specifically provided hereinafter.

3. Completion Dates.

The Consultant acknowledges that time is of the essence for the performance of all Architecture Services. The completion time for each project shall be negotiated as part of the Work Order for each project. In the event any of the Architecture Services contracted under this Agreement are not completed on or before the completion date or any negotiated extension of the completion date for that project, it is agreed that the City shall have the option to terminate this Agreement or to reduce the compensation due the Consultant. Said reduction in compensation due Consultant shall be one percent (1%) of the total cost for the Architecture Work Order for each calendar day or part thereof by which such Architecture Services are past due, with a maximum reduction of twenty percent (20%) of the total cost. Any delay by the City to provide information to the Consultant shall not be grounds for penalty to the Consultant.

4. City Responsibilities. The City will make available for the use of the Consultant all of its available information such as maps, plats, plans, legal descriptions, title checks, records, instructions, or other data pertinent to the work to be performed by the Consultant pursuant to this Agreement, and also any other maps, records, or other materials available to the City upon the City's request to any other public agency or body.

5. Term. The term of the Agreement shall be for one (1) year from the date of written notification of award of proposal, with an option to extend an additional three (3) years on a one (1) year extension each time.

6. Termination. This Agreement may be terminated by either party upon written notice delivered at least thirty (30) days before the intended date of termination, or in conformity with provision No. 3, herein. By such termination neither party may nullify obligations already incurred for performance or failure to perform before the date of termination.

7. Renewal of Agreement. This Agreement shall be automatically renewed for three (3) additional successive one (1) year periods at each termination date unless either party wishes to terminate, as long as the terms and conditions are the same. If any renewal of the Agreement is subject to further negotiations between the parties regarding fee schedules or other terms, then the renewal of the Agreement shall be presented to the Hobbs City Commission for review and approval. If this Agreement is not renewed or is terminated, the Consultant shall be required to complete any projects still in progress at the rates specified herein.

8. Work Assignments. This Agreement does not constitute a grant to the Consultant of any right to handle any specific work projects or any specific number of Architecture projects. The City may, at its sole discretion, assign or reassign projects as it deems expedient. The City, when giving work assignments, will take into account the type of work the Consultant is capable of providing to the City as stated in his/her technical proposal, the

jobs the Consultant has already performed or is currently performing for the City, and whether the Consultant can meet the project deadline. Work assignments hereunder will be given by Work Order(s) approved by either the City Manager or the City Commission, depending upon the size of the project.

9. Project Director. The Project Director on the Project and the primary Consultant staff persons to be assigned to the City under this Agreement are \_\_\_\_\_, who shall designate other Consultant staff as necessary to work on the Project. The Consultant staff shall work under the direction of the City staff person ordering the work project.

10. Compliance with Appropriate Laws. Consultant agrees to comply with Federal, State, and Local laws and ordinances applicable to this work, including the Civil Rights Act.

11. Status of Consultant. The Consultant, and its agents and employees, are independent contractors performing services for the City, and are not employees of the City of Hobbs. The Consultant and its agents and employees shall not, as a result of this Agreement, accrue any leave, retirement, insurance, bonding, use of City vehicles, or any other benefit, including Worker's Compensation, afforded to employees of the City.

12. Assignment of Agreement and Subcontracting. The Consultant shall not assign or transfer any interest in this Agreement. The Consultant shall not subcontract any portion of the services to be performed under this Agreement without the City's prior written consent, except for those approved sub-Consultants identified in Consultant's Proposal and approved in advance by the City.

13. Insurance Requirements. The Consultant agrees to maintain appropriate insurance during the course of the work program with the City of Hobbs, as stated in the RFP. The Consultant shall provide the City with a Certificate of Insurance, designating City as additional insured, at the execution date of this Agreement.

14. Governing Law and Provisions. This Agreement shall be governed by the laws of the State of New Mexico. Jurisdiction and venue relating to any litigation or dispute arising out of this Agreement shall be in the District Court of Lea County, New Mexico, only. If any part of this Agreement shall be deemed in violation of the laws or Constitution of New Mexico, only such part thereof shall be thereby invalidated, and all other parts hereof shall remain valid and enforceable.

15. Amendments. This Agreement shall not be altered, changed, or amended except by written instrument executed by both parties. If the Consultant desires to request amendment to the Cost Proposal, then a revised rate schedule must be presented to the City Commission for review and approval before becoming effective.

16. Notice.All notices given pursuant to or in connection with this Agreement shall be made in writing and posted by regular mail, postage prepaid, to the City at City of Hobbs, ATTN: City Manager, 200 E Broadway Street, Hobbs, NM 88240, and to Consultant at \_\_\_\_\_ or to such other address as requested by either party. Notice shall be deemed to be received on the fifth day following posting.

17. Ownership of Work Products.All drawings, field notes, plans, studies, work products, electronic files, drawings, “as-Builts”, or the like, received, completed or maintained by Consultant under this Agreement, shall be the joint property of the City of Hobbs and Consultant.

18. Attorney's Fees and Costs. If either party is found by a court to have breached this Agreement, the other party may recover reasonable attorney's fees and cost of litigation. Prior to the institution of any litigation, the parties have the contractual duty to in good faith attempt to resolve any controversy hereunder at the least possible expense. In the event this matter is litigated the Court shall award reasonable attorney fees to the prevailing party, notwithstanding in-house counsel represents a party.

19. Indemnification. Consultant agrees to and shall indemnify, defend and hold the City, the City Commission of the City of Hobbs, its individual Commissioners, its officers, employees and agents harmless from any and all causes of action, suits, claims, judgments, losses, costs, expenses, and liens of every kind and nature, including but not limited to court costs and attorney's fees, arising or alleged to have arisen out of Consultant's performance of the Agreement or failure to render services.

20. Entire Agreement. The foregoing constitutes the entire agreement between the parties hereto and may be modified only in writing by the parties hereto.

21. Conflict of Interest. The Consultant warrants that he will not undertake any Architecture Services under this Agreement with regard to any real property as to which he will or might have an interest, direct or indirect, which would conflict in any manner or degree with the performance of services under this Agreement.

22. Budgetary Constraints. The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the City Commission for the performance of this Agreement. If sufficient appropriations and authorization are not made by the City Commission, this Agreement shall terminate upon written notice being given by the City to the Consultant. The City's decision as to whether sufficient appropriations and authorization exist shall be accepted by the Consultant and shall be final.

23. Miscellaneous Provisions.

A. The Consultant shall have all Plans, specification, reports, or other documents furnished by him/her prepared by individuals under his responsible charge endorsed by a Registered Professional Engineer.

B. Duly authorized representatives of the City shall have the right to inspect the work under this Agreement. Conferences shall be held at the request of either party.

C. Consultant shall not engage on a full time or part time basis anyone in the employ of the City of Hobbs during the period of the Agreement, except regularly retired employees.

D. The City shall have no liability for the payment of taxes other than Gross Receipts Taxes upon the total amount paid under this agreement.

E. In any dispute concerning a question of fact in connection with the work not disposed of by Agreement between the Consultant and the City, the final determination will be made by the City of Hobbs City Engineer or the City of Hobbs General Services Director, as appropriate.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year above mentioned.

ATTEST:

THE CITY OF HOBBS, NEW MEXICO

\_\_\_\_\_  
JAN FLETCHER, City Clerk

\_\_\_\_\_  
GARY DON REAGAN, Mayor

CONSULTANT

\_\_\_\_\_  
NAME  
Title

APPROVED AS TO FORM:

\_\_\_\_\_  
MICHAEL H STONE, City Attorney