VILLAGE OF RUIDOSO

REQUEST FOR PROPOSALS (RFP)

BANK DEPOSITORY SERVICES

NIGP #94625



RFP# 2021-001P

Issue Date
September 9, 2020

Proposal Due Date
September 25, 2020 @ 3:00pm MDT

Table of Contents

1 /	ARLE OF (CONTENTS	
ı.	INTROD	UCTION	4
	4	PURPOSE OF THIS REQUEST FOR PROPOSALS	
	A.	BACKGROUND INFORMATION	
	В.	SCOPE OF PROCUREMENT	
	С.	PROCUREMENT MANAGER	
	D. E.	DEFINITION OF TERMINOLOGY	
II.	CONDIT	IONS GOVERNING THE PROCUREMENT	8
	A. SE	EQUENCE OF EVENTS	8
	B. EX	(PLANATION OF EVENTS	8
	1.	Issuance of RFP	8
	2.	Acknowledgement of Receipt	8
	3.	Pre-Proposal Conference	9
	4.	Deadline to Submit Written Questions	9
	5.	Response to Written Questions	9
	6.	Submission of Proposal	9
	7.	Proposal Evaluation	9
	8.	Selection of Finalists	10
	9.	Best and Final Offers	10
	10.	Oral Presentations	10
	11.	Finalize Contractual Agreements	10
	12.	Contract Awards	10
	13.	Protest Deadline	10
	C. GI	ENERAL REQUIREMENTS	11
	1.	Acceptance of Conditions Governing the Procurement	11
	2.	Incurring Cost	11
	3.	Prime Contractor Responsibility	11
	4.	Subcontractors/Consent	11
	5.	Amended Proposals	11
	6.	Offeror's Rights to Withdraw Proposal	11
	7.	Proposal Offer Firm	12
	8.	Disclosure of Proposal Contents	12
	9.	No Obligation	12
	10.	Termination	12
	11.	Sufficient Appropriation	12
	12.	Legal Review	13
	13.	Governing Law	13
	14.	Basis for Proposal	13
	15.	Contract Terms and Conditions	13
	16.	Offeror's Terms and Conditions	13
	17.	Contract Deviations	14
	18.	Offeror Qualifications	14
	19.	Right to Waive Minor Irregularities	
	20.	Change in Contractor Representatives	
	21.	Notice of Penalties	14
	22.	Village Rights	
	23.	Right to Publish	

24	. Ownership of Proposals	14
25	. Confidentiality	15
26	. Electronic mail address required	15
27	. Use of Electronic Versions of this RFP	15
28	. New Mexico Employees Health Coverage	15
29	. Campaign Contribution Disclosure Form	15
30	. Letter of Transmittal	16
31	3 3 , , ,	
32	. New Mexico Preferences	17
III. RESP	ONSE FORMAT AND ORGANIZATION	19
A.	NUMBER OF RESPONSES	19
B.	NUMBER OF COPIES	19
1.	Hard Copy Responses	19
C.	PROPOSAL FORMAT	20
1.	Proposal Content and Organization	20
IV. SPEC	IFICATIONS	21
A.	DETAILED SCOPE OF WORK	21
B.	TECHNICAL SPECIFICATIONS	21
1.	Organizational Experience	21
2.	Mandatory Specification	
3.	Desirable Specification	
4.	Merchant Credit Card Processing	
C.	BUSINESS SPECIFICATIONS	24
1.	Financial Stability	24
2.	Letter of Transmittal Form	24
3.	Campaign Contribution Disclosure Form	24
4.	Cost	24
5.	Resident Business or Resident Veterans Preference	24
V. EVAL	UATION	25
A.	EVALUATION POINT SUMMARY	25
B.	EVALUATION PROCESS	25
APPEND	IX A - ACKNOWLEDGEMENT OF RECEIPT FORM	26
APPEND	IX B - CAMPAIGN CONTRIBUTION DISCLOSURE FORM	27
	IX C - SAMPLE CONTRACT	
APPEND	IX D - COST RESPONSE FORM	46
APPEND	IX E - LETTER OF TRANSMITTAL FORM	47
APPEND	IX F - ORGANIZATIONAL REFERENCE QUESTIONNAIRE	48
APPEND	IX G – SCOPE OF WORK	49

I. INTRODUCTION

A. PURPOSE OF THIS REQUEST FOR PROPOSALS

The purpose of the Request for Proposal (RFP) is to solicit sealed proposals to establish a contract through competitive negotiations for the procurement of Banking Depository Services.

B. BACKGROUND INFORMATION

The Village Finance Director's Office handles all banking, treasury, and investment activities for the Village of Ruidoso. The Village Finance Director is responsible for the department.

C. SCOPE OF PROCUREMENT

The Village intends to enter into a contract with the firm with the offer that is most advantageous to the Village to provide the above-mentioned services from date of award until June 30, 2021 with option to extend for period of seven (7) additional years, on a year-to-year basis, by mutual agreement of all parties. This price agreement shall not exceed eight (8) years from the date of award.

D. PROCUREMENT MANAGER

1. The Village has assigned a Procurement Manager who is responsible for the conduct of this procurement whose name, address, telephone number and e-mail address are listed below:

Name: John Commander, Purchasing Agent

Address: Village of Ruidoso

313 Cree Meadows Dr, Ruidoso, NM 88345

Telephone: (575) 258-4343, Ext. 1082

Fax: (575) 258-3017

Email: Purchasing@ruidoso-nm.gov

2. All deliveries of responses via express carrier must be addressed as follows:

Name: John Commander, Purchasing Agent

Reference RFP Name: RFP #2021-001P Banking Depository Services

Address: Village of Ruidoso

Purchasing Department 313 Cree Meadows Dr Ruidoso, NM 88345

3. **Any inquiries or requests** regarding this procurement should be submitted, in writing, to the Procurement Manager. Offerors may contact ONLY the Procurement Manager regarding this procurement. Other village employees or Evaluation Committee members do not have the authority to respond on behalf of the Procurement Manager. **Protests of the solicitation or award must be delivered by mail to the Protest Manager.** As A

Protest Manager has been named in this Request for Proposals, pursuant to NMSA 1978, § 13-1-172, ONLY protests delivered directly to the Protest Manager in writing and in a timely fashion will be considered to have been submitted properly and in accordance with statute, rule and this Request for Proposals. Emailed protests will not be considered as properly submitted.

The protest must be delivered to:

John Commander, Purchasing Agent Village of Ruidoso Purchasing Department 313 Cree Meadows Drive Ruidoso, NM 88345

Protests received after the deadline will not be accepted.

E. DEFINITION OF TERMINOLOGY

This section contains definitions of terms used throughout this procurement document, including appropriate abbreviations:

- "Authorized Purchaser" means an individual authorized by a Participating Entity to place orders against this contract.
- "Award" means the final execution of the contract document.
- "Business Hours" means 8:00 AM thru 5:00 PM Mountain Standard or Mountain Daylight Time, whichever is in effect on the date given.
- "Close of Business" means 5:00 PM Mountain Standard or Daylight Time, whichever is in use at that time.
- "Confidential" means confidential financial information concerning offeror's organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act NMSA 1978 57-3-A-1 to 57-3A-7. See NMAC 1.4.1.45. As one example, no information that could be obtained from a source outside this request for proposals can be considered confidential information.
- "Contract" means any agreement for the procurement of items of tangible personal property, services or construction.
- "Contractor" means any business having a contract with a state Village or local public body.
- "**Determination**" means the written documentation of a decision of a procurement officer including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains.
- "**Desirable**" the terms "may", "can", "should", "preferably", or "prefers" identify a desirable or discretionary item or factor.
- "Electronic Version/Copy" means a digital form consisting of text, images or both readable on computers or other electronic devices that includes all content that the Original and Hard Copy

proposals contain. The digital form may be submitted using a compact disc (cd) or USB flash drive. The electronic version/copy can NOT be emailed.

- "Evaluation Committee" means a body appointed to perform the evaluation of Offerors' proposals.
- **"Evaluation Committee Report**" means a report prepared by the Procurement Manager and the Evaluation Committee for contract award. It will contain written determinations resulting from the procurement.
- "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.
- "Hourly Rate" means the proposed fully loaded maximum hourly rates that include travel, per diem, fringe benefits and any overhead costs for contractor personnel, as well as subcontractor personnel if appropriate.
- "IT" means Information Technology.
- "Mandatory" the terms "must", "shall", "will", "is required", or "are required", identify a mandatory item or factor. Failure to meet a mandatory item or factor will result in the rejection of the Offeror's proposal.
- "Minor Technical Irregularities" means anything in the proposal that does not affect the price quality and quantity or any other mandatory requirement.
- "Offeror" is any person, corporation, or partnership who chooses to submit a proposal.
- "Price Agreement" means a definite quantity contract or indefinite quantity contract which requires the contractor to furnish items of tangible personal property, services or construction to a state Village or a local public body which issues a purchase order, if the purchase order is within the quantity limitations of the contract, if any.
- "Procurement Manager" means any person or designee authorized by a state Village or local public body to enter into or administer contracts and make written determinations with respect thereto.
- "**Procuring Village**" means all Village of Ruidoso agencies, commissions, institutions, political subdivisions and local public bodies allowed by law to entertain procurements.
- "**Project**" means a temporary process undertaken to solve a well-defined goal or objective with clearly defined start and end times, a set of clearly defined tasks, and a budget. The project terminates once the project scope is achieved and project acceptance is given by the project executive sponsor.
- "Redacted" means a version/copy of the proposal with the information considered confidential as defined by NMAC 1.4.1.45 and defined herein and outlined in Section II.C.8 of this RFP blacked out BUT NOT omitted or removed.

- "Request for Proposals (RFP)" means all documents, including those attached or incorporated by reference, used for soliciting proposals.
- "Responsible Offeror" means an Offeror who submits a responsive proposal and who has furnished, when required, information and data to prove that 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.
- "Responsive Offer" or means an offer 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.
- "Sealed" means, in terms of a non-electronic submission, that the proposal is enclosed in a package which is completely fastened in such a way that nothing can be added or removed. Open packages submitted will not be accepted except for packages that may have been damaged by the delivery service itself. The Village reserves the right, however, to accept or reject packages where there may have been damage done by the delivery service itself. Whether a package has been damaged by the delivery service or left unfastened and should or should not be accepted is a determination to be made by the Procurement Manager. By submitting a proposal, the Offeror agrees to and concurs with this process and accepts the determination of the Procurement Manager in such cases.
- "Staff" means any individual who is a full-time, part-time, or an independently contracted employee with the Offerors' company.
- "Village" means any department, commission, council, board, committee, institution, legislative body, of the Village of Ruidoso. "Village" includes the purchasing division of the purchasing department but does not include local public bodies.
- "Statement of Concurrence" means an affirmative statement from the Offeror to the required specification agreeing to comply and concur with the stated requirement(s). This statement shall be included in Offerors proposal. (E.g. "We concur", "Understands and Complies", "Comply", "Will Comply if Applicable" etc.)
- "Unredacted" means a version/copy of the proposal containing all complete information including any that the Offeror would otherwise consider confidential, such copy for use only for the purposes of evaluation.
- "Village (the Village)" means the Village of Ruidoso.
- "Village Purchasing Agent" means the director of the purchasing division of the finance department.
- "VOR" means the Village of Ruidoso
- "VRPD" means the Village of Ruidoso purchasing division of the finance department.
- "Written" means typewritten on standard $8 \frac{1}{2} \times 11$ inch paper. Larger paper is permissible for charts, spreadsheets, etc.

II. CONDITIONS GOVERNING THE PROCUREMENT

This section of the RFP contains the schedule, description and conditions governing the procurement.

A. SEQUENCE OF EVENTS

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

Action	Responsible Party	Due Dates
1. Issue RFP	VRPD	September 9, 2020
2. Acknowledgement of	Offeror	September 16, 2020
Receipt Form		
3. Pre-Proposal Conference	Village	NA
4. Deadline to submit	Potential Offerors	September 18, 2020
Questions		
5. Response to Written	Procurement Manager	September 21, 2020
Questions		
6. Submission of Proposal	Potential Offerors	September 25, 2020 @
		3:00pm MDT
7. Proposal Evaluation	Evaluation Committee	September 28-29, 2020
8. Selection of Finalists	Evaluation Committee	September 30, 2020
9. Best and Final Offers	Finalist Offerors	September 30, 2020
10. Oral Presentation(s)	Finalist Offerors	NA
11. Finalize Contractual	Village/Finalist	September 30, 2020
Agreements	Offerors	
12. Contract Awards	Village/ Finalist	October 13, 2020
	Offerors	
13. Protest Deadline	SPD	October 28, 2020

B. EXPLANATION OF EVENTS

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

1. Issuance of RFP

This RFP is being issued on behalf of the Village of Ruidoso, Finance Department on September 9, 2020

2. Acknowledgement of Receipt

Potential Offerors should hand deliver, return by facsimile or registered or certified mail the "Acknowledgement of Receipt of Request for Proposals Form" that accompanies this document, 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 to the Procurement Manager by 3:00 pm MST or MDT on September 16, 2020.

The procurement distribution list will be used for the distribution of written responses to questions. Failure to return the Acknowledgement of Receipt 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.

3. Pre-Proposal Conference

No Pre-Proposal Conference will be held.

4. Deadline to Submit Written Questions

Potential Offerors may submit written questions to the Procurement Manager as to the intent or clarity of this RFP until September 18, 2020 Close of Business as indicated in the sequence of events. All written questions must be addressed to the Procurement Manager as declared in Section I, Paragraph D. Questions shall be clearly labeled and shall cite the Section(s) in the RFP or other document which form the basis of the question.

5. Response to Written Questions

Written responses to written questions will be distributed as indicated in the sequence of events to all potential Offerors whose organization name appears on the procurement distribution list. An e-mail copy will be sent to all Offeror's that provide Acknowledgement of Receipt Forms described in II.B.2 before the deadline. Additional copies will be posted to: https://www.ruidoso-nm.gov/purchasing

6. Submission of Proposal

ALL OFFEROR PROPOSALS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE PROCUREMENT MANAGER OR DESIGNEE NO LATER THAN 3:00 PM MOUNTAIN STANDARD TIME/DAYLIGHT TIME ON September 25, 2020. Proposals received after this deadline will not be accepted. The date and time of receipt will be recorded on each proposal.

Proposals must be addressed and delivered to the Procurement Manager at the address listed in Section I, Paragraph D2. Proposals must be sealed and labeled on the outside of the package to clearly indicate that they are in response to the RFP 2021-001P Bank Depository Services. Proposals submitted by facsimile or other electronic means will not be accepted.

A public log will be kept of the names of all Offeror organizations that submitted proposals. Pursuant to NMSA 1978, § 13-1-116, the contents of proposals shall not be disclosed to competing potential Offerors during the negotiation process. The negotiation process is deemed to be in effect until the contract is awarded pursuant to this Request for Proposals. Awarded in this context means the final required state Village signature on the contract(s) resulting from the procurement has been obtained.

7. 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 Manager may 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.

8. Selection of Finalists

The Evaluation Committee will select, and the Procurement Manager will notify the finalist Offerors as per schedule Section II. A., Sequence of Events or as soon as possible. A schedule for the oral presentation and demonstration will be determined at this time.

9. Best and Final Offers

Finalist Offerors may be asked to submit revisions to their proposals for the purpose of obtaining best and final offers by as per schedule Section II. A., Sequence of Events or as soon as possible. Best and final offers may also be clarified and amended at finalist Offeror's oral presentation and demonstration.

10. Oral Presentations

Finalist Offerors may be required to conduct an oral presentation at a location to be determined as per schedule Section II. A., Sequence of Events or as soon as possible. Whether or not oral presentations will be held is at the discretion of the Evaluation Committee.

11. Finalize Contractual Agreements

Any Contractual agreement(s) resulting from this RFP will be finalized with the most advantageous Offeror(s) as per schedule Section II. A., Sequence of Events or as soon thereafter as possible. This date is subject to change at the discretion of the Village of Ruidoso or the Finance Director. In the event mutually agreeable terms cannot be reached with the apparent most advantageous Offeror in the time specified, the Village reserves the right to finalize a contractual agreement with the next most advantageous Offeror(s) without undertaking a new procurement process.

12. Contract Awards

After review of the Evaluation Committee Report and the signed contractual agreement, the Village Procurement office will award as per the schedule in Section II. A., Sequence of Events or as soon as possible thereafter. This date is subject to change at the discretion of the Village of Ruidoso Purchasing Division or relevant Village of Ruidoso Procurement office.

The contract shall be awarded to the Offeror (or Offerors) whose proposals are most advantageous to the Village of Ruidoso and Finance Department, taking into consideration the evaluation factors set forth in this RFP. The most advantageous proposal may or may not have received the most points. The award is subject to appropriate Department and Village of Ruidoso approval.

13. Protest Deadline

Any protest by an Offeror must be timely and in conformance with NMSA 1978, § 13-1-172 and applicable procurement regulations. As a Protest Manager has been named in this Request for Proposals, pursuant to NMSA 1978, § 13-1-172, ONLY protests delivered directly to the Protest Manager in writing and in a timely fashion will be considered to have been submitted properly and in accordance with statute, rule and this Request for Proposals. The 15-calendar day protest period shall begin on the day following the award of contracts and will end at 5:00 pm Mountain Standard Time/Daylight Time on the 15th day. Protests must be written and must include the name and address of the protestor and the request for proposal number. It must also contain a

statement of the grounds for protest including appropriate supporting exhibits and it must specify the ruling requested from the party listed below. The protest must be delivered to:

John Commander, Purchasing Agent Village of Ruidoso 313 Cree Meadows Dr Ruidoso, NM 88345

Protests received after the deadline will not be accepted.

C. GENERAL REQUIREMENTS

1. Acceptance of Conditions Governing the Procurement

Potential Offerors must indicate their acceptance of the Conditions Governing the Procurement section in the letter of transmittal. Submission of a proposal constitutes acceptance of the Evaluation Factors contained in Section V of this RFP.

2. Incurring Cost

Any cost incurred by the potential Offeror in preparation, transmittal, and/or presentation of any proposal or material submitted in response to this RFP shall be borne solely by the Offeror. Any cost incurred by the Offeror for set up and demonstration of the proposed equipment and/or system shall be borne solely by the Offeror.

3. Prime Contractor Responsibility

Any contractual agreement that may result from this RFP shall specify that the prime contractor is solely responsible for fulfillment of all requirements of the contractual agreement with a state Village which may derive from this RFP. The state Village entering into a contractual agreement with a vendor will make payments to only the prime contractor.

4. Subcontractors/Consent

The use of subcontractors is allowed. The prime contractor shall be wholly responsible for the entire performance of the contractual agreement whether or not subcontractors are used. Additionally, the prime contractor must receive approval, in writing, from the Village awarding any resultant contract, before any subcontractor is used during the term of this agreement.

5. Amended Proposals

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

6. Offeror's Rights to Withdraw Proposal

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

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

7. Proposal Offer Firm

Responses to this RFP, including proposal prices for services, will be considered firm for one hundred twenty (120) days after the due date for receipt of proposals or ninety (90) days after the due date for the receipt of a best and final offer, if the Offeror is invited or required to submit one.

8. Disclosure of Proposal Contents

- A. Proposals will be kept confidential until negotiations and the award are completed by the Village. At that time, all proposals and documents pertaining to the proposals will be open to the public, except for material that is clearly marked proprietary or confidential. The Procurement Manager will not disclose or make public any pages of a proposal on which the potential Offeror has stamped or imprinted "proprietary" or "confidential" subject to the following requirements:
- B. Proprietary or confidential data shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal.
- C. Confidential data is restricted to:
 - 1. confidential financial information concerning the Offeror's organization;
 - 2. and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, NMSA 1978 § 57-3A-1 to 57-3A-7.
 - 3. PLEASE NOTE: The price of products offered or the cost of services proposed **shall not be designated** as proprietary or confidential information.

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

9. No Obligation

This RFP in no manner obligates the Village of Ruidoso or any of its Departments to the use of any Offeror's services until a valid written contract is awarded and approved by appropriate authorities.

10. Termination

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

11. Sufficient Appropriation

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

12. Legal Review

The Village requires that all Offerors agree to be bound by the General Requirements contained in this RFP. Any Offeror's concerns must be promptly submitted in writing to the attention of the Procurement Manager.

13. Governing Law

This RFP and any agreement with an Offeror which may result from this procurement shall be governed by the laws of the Village of Ruidoso.

14. Basis for Proposal

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

15. Contract Terms and Conditions

The contract between the Village and a contractor will follow the format specified by the Village and contain the terms and conditions set forth in the Sample Contract Appendix C. However, the contracting Village reserves the right to negotiate provisions in addition to those contained in this RFP (Sample Contract) with any Offeror. The contents of this RFP, as revised and/or supplemented, and the successful Offeror's proposal will be incorporated into and become part of any resultant contract.

The Village discourages exceptions from the contract terms and conditions as set forth in the RFP Sample Contract. Such exceptions may cause a proposal to be rejected as nonresponsive when, in the sole judgment of the Village (and its evaluation team), the proposal appears to be conditioned on the exception, or correction of what is deemed to be a deficiency, or an unacceptable exception is proposed which would require a substantial proposal rewrite to correct.

Should an Offeror object to any of the terms and conditions as set forth in the RFP Sample Contract (APPENDIX C) strongly enough to propose alternate terms and conditions in spite of the above, the Offeror must propose **specific** alternative language. The Village may or may not accept the alternative language. General references to the Offeror's terms and conditions or attempts at complete substitutions of the Sample Contract are not acceptable to the Village and will result in disqualification of the Offeror's proposal.

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

If an Offeror fails to propose any alternate terms and conditions during the procurement process (the RFP process prior to selection as successful Offeror), no proposed alternate terms and conditions will be considered later during the negotiation process. Failure to propose alternate terms and conditions during the procurement process (the RFP process prior to selection as successful Offeror) is an **explicit agreement** by the Offeror that the contractual terms and conditions contained herein are **accepted** by the Offeror.

16. Offeror's Terms and Conditions

Offerors must submit with the proposal a complete set of any additional terms and conditions they expect to have included in a contract negotiated with the Village. Please see Section II.C.15 for requirements.

17. Contract Deviations

Any additional terms and conditions, which may be the subject of negotiation (such terms and conditions having been proposed during the procurement process, that is, the RFP process prior to selection as successful Offeror), will be discussed only between the Village and the Offeror selected and shall not be deemed an opportunity to amend the Offeror's proposal.

18. Offeror Qualifications

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

19. Right to Waive Minor Irregularities

The Evaluation Committee reserves the right to waive minor irregularities. The Evaluation Committee also reserves the right to waive mandatory requirements provided that all of the otherwise responsive proposals failed to meet the same mandatory requirements and the failure to do so does not otherwise materially affect the procurement. This right is at the sole discretion of the Evaluation Committee.

20. Change in Contractor Representatives

The Village reserves the right to require a change in contractor representatives if the assigned representative(s) is (are) not, in the opinion of the Village, adequately meeting the needs of the Village.

21. Notice of Penalties

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

22. Village Rights

The Village in agreement with the Evaluation Committee reserves the right to accept all or a portion of a potential Offeror's proposal.

23. Right to Publish

Throughout the duration of this procurement process and contract term, Offerors and contractors must secure from the Village written approval prior to the release of any information that pertains to the potential work or activities covered by this procurement and/or Village contracts deriving from this procurement. Failure to adhere to this requirement may result in disqualification of the Offeror's proposal or removal from the contract.

24. Ownership of Proposals

All documents submitted in response to the RFP shall become property of the Village of Ruidoso.

25. Confidentiality

Any confidential information provided to, or developed by, the contractor in the performance of the contract resulting from this RFP shall be kept confidential and shall not be made available to any individual or organization by the contractor without the prior written approval of the Village.

The Contractor(s) agrees to protect the confidentiality of all confidential information and not to publish or disclose such information to any third party without the procuring Village's written permission.

26. Electronic mail address required

A large part of the communication regarding this procurement will be conducted by electronic mail (e-mail). Offeror must have a valid e-mail address to receive this correspondence. (See also Section II.B.5, Response to Written Questions).

27. Use of Electronic Versions of this RFP

This RFP is being made available by electronic means. In the event of conflict between a version of the RFP in the Offeror's possession and the version maintained by the Village, the Offeror acknowledges that the version maintained by the Village shall govern. Please refer to: https://www.ruidoso-nm.gov/purchasing.

28. New Mexico Employees Health Coverage

- A. If the Offeror has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Offeror must agree to have in place, and agree to maintain for the term of the contract, health insurance for those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.
- B. Offeror must agree to maintain a record of the number of employees who have (a) accepted health insurance; (b) decline health insurance due to other health insurance coverage already in place; or (c) decline health insurance for other reasons. These records are subject to review and audit by a representative of the state.
- C. Offeror must agree to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information https://www.bewellnm.com.
- D. For Indefinite Quantity, Indefinite Delivery contracts (price agreements without specific limitations on quantity and providing for an indeterminate number of orders to be placed against it); these requirements shall apply the first day of the second month after the Offeror reports combined sales (from state and, if applicable, from local public bodies if from a state price agreement) of \$250,000.

29. Campaign Contribution Disclosure Form

Offeror must complete, sign, and return the Campaign Contribution Disclosure Form, APPENDIX B, as a part of their proposal. This requirement applies regardless whether a covered contribution was made or not made for the positions of Mayor and Village Councilors or other identified official. Failure to complete and return the signed unaltered form will result in disqualification.

30. Letter of Transmittal

Offeror's proposal must be accompanied by the Letter of Transmittal Form located in APPENDIX E which must be completed and signed by an individual person authorized to obligate the company. The letter of transmittal MUST:

- 1. Identify the submitting business entity.
- 2. Identify the name, title, telephone, and e-mail address of the person authorized by the Offeror organization to contractually obligate the business entity providing the Offer.
- 3. Identify the name, title, telephone, and e-mail address of the person authorized to negotiate the contract on behalf of the organization (if different than (2) above).
- 4. Identify the names, titles, telephone, and e-mail addresses of persons to be contacted for clarification/questions regarding proposal content.
- 5. Identify sub-contractors (if any) anticipated to be utilized in the performance of any resultant contract award.
- 6. Describe the relationship with any other entity which will be used in the performance of this awarded contract.
- 7. Identify the following with a check mark and signature where required:
 - a. <u>Explicitly</u> indicate acceptance of the Conditions Governing the Procurement stated in Section II. C.1;
 - b. Explicitly indicate acceptance of Section V of this RFP; and
 - c. Acknowledge receipt of any and all amendments to this RFP.
- 8. Be signed by the person identified in para 2 above.

31. Disclosure Regarding Responsibility

- A. Any prospective Contractor and any of its Principals who enter into a contract greater than sixty thousand dollars (\$60,000.00) with the Village for professional services, tangible personal property, services or construction agrees to disclose whether the Contractor, or any principal of the Contractor's company:
 - 1. is presently debarred, suspended, proposed for debarment, or declared ineligible for award of contract by any federal entity, state New Mexico or local public body;
 - 2. has within a three-year period preceding this offer, been convicted in a criminal matter or had a civil judgment rendered against them for:
 - a. the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) contract or subcontract:
 - b. violation of Federal or state antitrust statutes related to the submission of offers; or
 - c. the commission in any federal or state jurisdiction of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violation of Federal criminal tax law, or receiving stolen property;
 - 3. is presently indicted for, or otherwise criminally or civilly charged by any (federal state or local) government entity with the commission of any of the offenses enumerated in paragraph A of this disclosure;
 - 4. has, preceding this offer, been notified of any delinquent Federal or state taxes in an amount that exceeds \$3,000.00 of which the liability remains unsatisfied. Taxes are considered delinquent if the following criteria apply.

- a. The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge of the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.
- b. The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.
- c. Have within a three-year period preceding this offer, had one or more contracts terminated for default by any federal or state of New Mexico or local public body.)
- B. Principal, for the purpose of this disclosure, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity or related entities.
- C. The Contractor shall provide immediate written notice to the Village Purchasing Agent or other party to this Agreement if, at any time during the term of this Agreement, the Contractor learns that the Contractor's disclosure was at any time erroneous or became erroneous by reason of changed circumstances.
- D. A disclosure that any of the items in this requirement exist will not necessarily result in termination of this Agreement. However, the disclosure will be considered in the determination of the Contractor's responsibility and ability to perform under this Agreement. Failure of the Contractor to furnish a disclosure or provide additional information as requested will render the Offeror nonresponsive.
- E. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the disclosure required by this document. The knowledge and information of a Contractor is not required to exceed that which is the normally possessed by a prudent person in the ordinary course of business dealings.
- F. The disclosure requirement provided is a material representation of fact upon which reliance was placed when making an award and is a continuing material representation of the facts during the term of this Agreement. If during the performance of the contract, the Contractor is indicted for or otherwise criminally or civilly charged by any government entity (federal, state or local) with commission of any offenses named in this document the Contractor must provide immediate written notice to the Village Purchasing Agent or other party to this Agreement. If it is later determined that the Contractor knowingly rendered an erroneous disclosure, in addition to other remedies available to the Governing Body, the Village Purchasing Agent or Finance Director may terminate the involved contract for cause. Still further the Village Purchasing Agent or Finance Director may suspend or debar the Contractor from eligibility for future solicitations until such time as the matter is resolved to the satisfaction of the Village Purchasing Agent or Finance Director.

32. New Mexico Preferences

To ensure adequate consideration and application of NMSA 1978, § 13-1-21 (as amended), Offerors must include a copy of their preference certificate with their

proposal. Certificates for preferences must be obtained through the New Mexico Department of Taxation & Revenue http://www.tax.newmexico.gov/Businesses/in-state-veteran-preference-certification.aspx.

A. New Mexico Business Preference

A copy of the certification must accompany your proposal.

B. New Mexico Resident Veterans Business Preference

A copy of the certification must accompany your proposal.

The Village shall not award a business both a resident business preference and a resident veteran business preference.

The New Mexico Preferences shall not apply when the expenditures for this RFP includes federal funds.

18

III. RESPONSE FORMAT AND ORGANIZATION

A. NUMBER OF RESPONSES

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

B. NUMBER OF COPIES

1. Hard Copy Responses

Offeror's proposal must be clearly labeled and numbered and indexed as outlined in **Section III.C. Proposal Format**. Proposals must be submitted as outlined below. The original copy shall be clearly marked as such on the front of the binder. Each portion of the proposal (technical/cost) must be submitted in separate binders and must be prominently displayed on the front cover. Envelopes, packages or boxes containing the original and the copies must be clearly labeled and submitted in a sealed envelope, package, or box bearing the following information:

Offerors should deliver:

- 1. **Technical Proposals** One (1) ORIGINAL, three (3) HARD COPIES, and one (1) electronic copy of the proposal containing ONLY the Technical Proposal; ORIGINAL and COPY shall be in separate labeled binders. **The electronic version/copy can NOT be emailed.**
 - Proposals containing confidential information <u>must</u> be submitted as two separate binders:
 - **Unredacted** version for evaluation purposes
 - **Redacted** version (information blacked out and not omitted or removed) for the public file
- 2. **Cost Proposals** One (1) ORIGINAL, three (3) HARD COPIES, and one (1) electronic copy of the proposal containing ONLY the Cost Proposal; ORIGINAL and COPY of Cost Proposal shall be in separate labeled binders from the Technical Proposals. **The electronic copy can NOT be emailed.**

The electronic version/copy of the proposal <u>must</u> mirror the physical binders submitted (i.e. One (1) unredacted cd/usb, one (1) redacted cd/usb). The electronic version can **NOT** be emailed.

3. The original, hard copy and electronic copy information **must** be identical. In the event of a conflict between versions of the submitted proposal, the Original hard copy shall govern.

Any proposal that does not adhere to the requirements of this Section and Section III.C.1 Response Format and Organization, may be deemed non-responsive and rejected on that basis.

C. PROPOSAL FORMAT

All proposals must be submitted as follows:

Hard copies must be typewritten on standard 8 ½ x 11-inch paper (larger paper is permissible for charts, spreadsheets, etc.) and placed within binders with tabs delineating each section.

Organization of folders/envelopes for hard copy proposals and electronic copy proposals:

1. Proposal Content and Organization

Direct reference to pre-prepared or promotional material may be used if referenced and clearly marked. Promotional material should be minimal. The proposal must be organized and indexed in the following format and must contain, at a minimum, all listed items in the sequence indicated.

Technical Proposal (Binder 1):

- A. Signed Letter of Transmittal
- B. Table of Contents
- C. Proposal Summary (Optional)
- D. Response to Contract Terms and Conditions
- E. Offeror's Additional Terms and Conditions
- F. Response to Specifications (except cost information which shall be included in Cost Proposal/Binder 2 only)
 - 1. Organizational Experience
 - 2. Organizational References
 - 3. Oral Presentation (if required, will be scheduled at a later date)
 - 4. Mandatory Specification
 - 5. Desirable Specification
 - 6. Financial Stability Financial information considered confidential should be placed in the **Confidential Information** binder.
 - 7. Signed Campaign Contribution Form
 - 8. New Mexico Preferences (If applicable)
- G. Other Supporting Material (If applicable)

Cost Proposal (Binder 2):

1. Completed Cost Response Form (see Appendix D)

Within each section of the proposal, Offerors should address the items in the order indicated above. All forms provided in this RFP must be thoroughly completed and included in the appropriate section of the proposal. All discussion of proposed costs, rates or expenses must occur only in Binder #2 on the cost response form.

The proposal summary may be included by potential Offerors to provide the Evaluation Committee with an overview 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.

IV. SPECIFICATIONS

Offerors should respond in the form of a thorough narrative to each specification, unless otherwise instructed. The narratives, including required supporting materials will be evaluated and awarded points accordingly.

A. DETAILED SCOPE OF WORK

The Village of Ruidoso, New Mexico is requesting qualifications-based proposal to provide Bank Depository Services. Through this contract the Village intends to minimize banking costs, improve operational efficiency, and maximize its investment capabilities. This Request for Proposal (RFP) which represents the Village's cash management goals specifies all required qualifications for proposing institutions, the banking services required, the method and terms of compensation, submission instructions and contract award provisions. All qualified institutions, as defined below, are invited to submit a proposal.

Institutions responding to this Request for Proposal (RFP) must be able to demonstrate a capacity to meet the Village's requirements as stated in the RFP. Since the Village makes daily deposits, responding institutions must be geographically located to provide convenient physical access to the Village or provide for that access as part of the proposal. Offeror must also belong to a National or New Mexico State Banking Association, be organized under the Laws of the United States and/or New Mexico and be authorized to do banking business in the State of New Mexico.

See Detailed Scope of Work in Appendix G.

B. TECHNICAL SPECIFICATIONS

1. Organizational Experience

Offerors must:

- a) Provide a description of relevant corporate experience with state government and private sector. Provide Offeror's current total market value of all trust/custody accounts of public portfolios, the distribution of trust/custody accounts and public portfolio (by size and years with your organization). If using a subcontractor, please provide this information for that firm as well.
- b) Provide resumes and short biographies for personnel who will provide services under the scope of work of this RFP, including a specified Account Executive who will be assigned as the lead on the Village's trust/custodial relationship. Resumes should include years' relevant experience, degrees attained, and role that will be served on for the Village.
- c) Provide details if the Offeror has ever been subject to a regulatory or state or Federal agency investigation for alleged improper, fraudulent, disreputable, or unfair activity related to government securities or money market instruments.

2. Mandatory Specification

Failure to comply with a mandatory specification will result in disqualification of an offeror's proposal.

- a. Agreement to Perform Scope of Work: The scope of work shall consist of providing the services defined Appendix G of this RFP. The Offeror shall agree to perform the scope of work by providing a statement of concurrence to perform the scope of work. The Offeror may propose modifications to the scope of work. Any proposed modifications to the scope of work must include a discussion of the purpose and impact of each proposed change and the specific alternate wording to the scope of work.
- b. Remain a member of, or have access to the Federal Reserve System with full wire transfer capabilities to send requests to the United States Government, receive portfolio, transfer portfolio to other banks as directed by the Village Finance Director, and process the receipt, transfer and payment of book entry securities and to verify and remit portfolio immediately.
- c. Remain a member of, or have access to, the Depository Trust & Clearing Corporation to provide clearance, settlement and information services for equities, corporate and municipal bonds, government and mortgage-backed securities, and money market instruments. In conjunction with the receipt, transfer and payment of book entry securities, the Custodian must have the capability to verify and remit portfolio immediately.
- d. Not operate under any consent decree or other type of restrictive contract with any state or federal regulatory agency without providing immediate notification to the Village Finance Director. The contract may be immediately terminated upon notification of any such restrictive covenant of a regulatory agency.
- e. Maintain Federal Deposit Insurance Corporation (FDIC) capital adequacy requirements.

3. Desirable Specification

- a. Describe the Offeror's capability of providing downloaded data and client reports electronically and the compatibility with commercial software programs. Please provide applicable methods and time frames.
- b. Illustrate the Offeror's ability to back-load historical client account and transaction data into your system to provide reports for a complete year (even if you were not the custodian for the full year).
- c. Indicate the frequency internal audits are performed as well as the scope of external audits.
- d. Describe your fiduciary insurance coverage. Do you have errors and omissions and/or other insurance to protect your clients?
- e. Offerors Software: Please describe your current software system and its capabilities and limitations including security measures in place to protect

customer information as well as average downtime and explain temporary back up procedures.

- i. Specify any Village hardware and software requirements for access.
- ii. Describe descriptive and image detail available online for all transactions.
- f. Disaster Plan: Describe your total trust/custody computer system disaster contingency back-up procedures including how often they are tested.
 - i. Please describe your contingency plans in the event of a natural disaster, fire, or act of terrorism.
 - ii. Do you have a physically separate back-up system? If yes, what is the location?
 - iii. How do you minimize system down time? Indicate how many hours has the system been down in the last 12 months.
- g. Online Capabilities: Thoroughly explain what services you provide to customers online (how current is the information, how many months of holdings and transactions are available, are previous day information on transactions and holdings available, are investable cash balances available each morning, what reports are available online, etc.
 - i. Indicate whether the Offeror's online service capabilities are direct link or web based.
 - ii. Submit samples of major screens and reports available. Provide a website (and sign-on information if required) for an online demonstration of the system, if available.
 - iii. Describe the Offeror's training plan for Village employees.

h. Transition Plan.

- i. Transition Process: Please describe in detail the process you would follow to transition a relationship the size of Village of Ruidoso to your system and processes, including time frames for completion of each process and resources that you will commit.
- ii. Asset Transfer: Indicate in detail, including personnel involved and timetable, the procedures you will follow to provide an orderly and timely transfer of assets from the County's present Custody Bank
- iii. Logistics Resources: Clearly outline the resources the Offeror will provide (technical and human resources) and what resources the Village should plan to provide you for the transition.

4. Merchant Credit Card Processing

Offeror should indicate their ability to provide all hardware and software necessary to process merchant credit cards. This service will be required at a minimum of five (5) Village locations.

C. BUSINESS SPECIFICATIONS

1. Financial Stability

Offerors must submit copies of the most recent years independently audited financial statements and the most current 10K, as well as financial statements for the preceding three years, if they exist. The submission must include the audit opinion, the balance sheet, and statements of income, retained earnings, cash flows, and the notes to the financial statements. If independently audited financial statements do not exist, Offeror must state the reason and, instead, submit sufficient information (e.g. D & B report) to enable the Evaluation Committee to assess the financial stability of the Offeror.

2. Letter of Transmittal Form

The Offeror's proposal **must** be accompanied by the Letter of Transmittal Form located in APPENDIX E. The form **must** be completed and must be signed by the person authorized to obligate the company.

3. Campaign Contribution Disclosure Form

The Offeror must complete an unaltered Campaign Contribution Disclosure Form and submit a signed copy with the Offeror's proposal. This must be accomplished whether or not an applicable contribution has been made. (See APPENDIX B)

4. Cost

Offerors must complete the Cost Response Form in APPENDIX D. All charges listed on APPENDIX D must be justified and evidence of need documented in the proposal.

5. Resident Business or Resident Veterans Preference

To ensure adequate consideration and application of NMSA 1978, § 13-1-21 (as amended), Offerors must include a copy of their preference certificate in this section.

Percentages will be determined based upon the point-based system outlined in NMSA 1978, § 13-1-21 (as amended).

A. New Mexico Business Preference

If the Offeror has provided a copy of their Preference Certificate the Preference Points for a New Mexico Business is 5%.

B. New Mexico Resident Veterans Business Preference

If the Offeror has provided a copy of their Preference Certificate the Preference Point is 10%.

V. EVALUATION

A. EVALUATION POINT SUMMARY

The following is a summary of evaluation factors with point values assigned to each. These weighted factors will be used in the evaluation of individual potential Offeror proposals by sub-category.

Factors – correspond to section IV.B and IV C		Points Available
B.	Technical Specifications	
B. 1.	Organizational Experience	50
B. 2.	Mandatory Specification	50
B. 3.	Desirable Specification	40
B. 4.	Merchant Credit Card Processing	10
C.	Business Specifications	
C.1.	Financial Stability	Pass/Fail
C.2.	Letter of Transmittal	Pass/Fail
C.3.	Signed Campaign Contribution Disclosure Form	Pass/Fail
C.4.	Cost	50
TOTAL		200 points
C.5.A. New Mexico Preference - Resident Business		10
C.5.B. New Mexico Preference - Resident Veterans		20
Business		

Table 1: Evaluation Point Summary

B. EVALUATION PROCESS

- 1. All Offeror proposals will be reviewed for compliance with the requirements and specifications stated within the RFP. Proposals deemed non-responsive will be eliminated from further consideration.
- 2. The Procurement Manager may contact the Offeror for clarification of the response as specified in Section II. B.7.
- 3. The Evaluation Committee may use other sources of to perform the evaluation as specified in Section II. C.18.
- 4. Responsive proposals will be evaluated on the factors in Section IV, which have been assigned a point value. The responsible Offerors with the highest scores will be selected as finalist Offerors, based upon the proposals submitted. The responsible Offerors whose proposals are most advantageous to the Village taking into consideration the evaluation factors in Section IV will be recommended for award (as specified in Section II. B.8). Please note, however, that a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.

APPENDIX A - ACKNOWLEDGEMENT OF RECEIPT FORM

REQUEST FOR PROPOSAL

BANK DEPOSITORY SERVICES RFP #2021-001P

In acknowledgement of receipt of this Request for Proposal the undersigned agrees that s/he has received a complete copy, beginning with the title page and table of contents, and ending with APPENDIX G.

The acknowledgement of receipt should be signed and returned to the Procurement Manager no later than September 16, 2020. Only potential Offerors who elect to return this form completed with the indicated intention of submitting a proposal will receive copies of all Offeror written questions and the written responses to those questions as well as RFP amendments, if any are issued.

FIRM:	
REPRESENTED BY:	
TITLE:	PHONE NO.:
E-MAIL:	FAX NO.:
ADDRESS:	
CITY:	_ STATE: ZIP CODE:
SIGNATURE:	DATE:

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

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

John Commander, Procurement Manager RFP #2021-001P Bank Depository Services Village of Ruidoso 313 Cree Meadows Dr Ruidoso, NM 99345

Fax: <575-258-5361> E-mail: <u>Purchasing@ruidoso-nm.gov</u>

APPENDIX B - CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Campaign Contribution Disclosure Form

Pursuant to NMSA 1978, § 13-1-191.1 (2006), any person seeking to enter into a contract with any state Village 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 Village 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 Village 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)		

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

APPENDIX C - SAMPLE CONTRACT



CONTRACT FOR GOODS AND SERVICES

THIS Agreement ("Agreement") is made by and between the Village of Ruidoso, hereinafter referred to as the "Procuring Agency", and XXXXXXXXX, hereinafter referred to as the "Contractor" and collectively the "Parties".

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:

Village of Ruidoso Contractor Department: Purchasing ATTN:

ATTN: John Commander, Purchasing Agent Title: President

Street: 313 Cree Meadows Drive Street: 123 Main Street

City, State, Zip: Ruidoso, NM 88345 City, State, Zip: Any Town, XX 99999

Phone: 575-258-4343 Ext. 1082 Phone: XXX-XXXX
Fax: Fax: XXX-XXXX
Cell: Cell: XXX-XXXX

Email: Purchasing@ruidoso-nm.gov Email:

WHEREAS, pursuant to the Procurement Code, NMSA 1978 13-1-28 et. seq. and Procurement Code Regulations, NMAC 1.4.1 et. seq. the Contractor has held itself out as an entity with the ability to provide the required services to implement the Scope of Work as contained herein and the Procuring Agency has selected the Contractor as the offeror most advantageous to the State of New Mexico; and

WHEREAS, all terms and conditions of the RFP #2021-001P and the Contractor's response to such document(s) are incorporated herein by reference; and

NOW, THEREFORE, THE FOLLOWING TERMS AND CONDITIONS ARE MUTUALLY AGREED BETWEEN THE PARTIES:

1. **Definitions.**

- A. "Business Hours" means 8:00 a.m. to 5:00 p.m. Mountain Time.
- B. "Procuring Agency" means any state agency or local public body that enters into an Agreement to procure products or services.
- C. "Products and Services schedule" refers to the complete list of products and services offered under this Agreement and the price for each. Product and service descriptions may be amended only through a written amendment signed by all required signatories and with the prior approval of the Agreement Administrator, if any. New products and services beyond those in the original procurement (whether RFP or ITB) shall not be added to the Products and Services Schedule.
- D. "RFP" means Request for Proposals as defined in statute and rule.
- E. "You" and "Your" refers to (Contractor Name). "We," "us" or "our" refers to the Village of Ruidoso.

2. Scope of Work.

The Contractor shall perform the work as outlined in Appendix G of IFB 2021-001P, attached hereto and incorporated herein by reference.

3. Compensation.

A. Compensation Schedule. The Procuring Agency shall pay to the Contractor based upon fixed prices for each Deliverable, per the schedule outlined in Appendix D, less retainage, if any, as identified in paragraph D of this Clause.

C. Taxes.

The Contractor shall be reimbursed by the Procuring Agency for applicable New Mexico gross receipts taxes, excluding interest or penalties assessed on the Contractor by any authority. **PLEASE NOTE NO PROPERTY TAX WILL BE PAID TO THE CONTRACTOR BY THE STATE.** The payment of taxes for any money received under this Agreement shall be the Contractor's sole responsibility and should be reported under the Contractor's Federal and State tax identification number(s).

Contractor and any and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall require all subcontractors to hold the Procuring Agency harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal and/or state and local laws and regulations and any other costs, including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

- D. Retainage. Not Applicable The Parties agree there is no retainage.
- E. <u>Performance Bond</u>. Not Applicable. The Parties agree there is no Performance Bond.

4. **Term.**

This agreement shall be effective XXXXXX XX, 2020 through October 31, 2021, unless terminated pursuant to this Agreement's Termination Clause or Appropriations Clause, with the option to extend for period of seven (7) additional years on a year-to-year basis, by mutual agreement of all parties. This price agreement shall not exceed eight (8) years from the date of award. The Procuring Agency reserves the right to renew the Agreement through a written amendment signed by all required signatories, but in any case, the Agreement shall not exceed the total number of years allowed pursuant to NMSA 1978, § 13-1-150.

5. Termination.

- A. Grounds. The Procuring Agency may terminate this Agreement for convenience or cause. The Contractor may only terminate this Agreement based upon the Procuring Agency's uncured, material breach of this Agreement.
- B. Notice; Procuring Agency Opportunity to Cure.
 - 1. Except as otherwise provided in sub-paragraph A of this Clause and the Appropriations Clause of this Agreement, the Procuring Agency shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.
 - 2. Contractor shall give Procuring Agency written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the Procuring Agency's material breaches of this Agreement upon which the termination is based and (ii) state what the Procuring Agency must do to cure such material breaches. Contractor's notice of termination shall only be effective (i) if the Procuring Agency does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the Procuring Agency does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach.
 - 3. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by the Procuring Agency; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the Village of Ruidoso; or (iii) the Agreement is terminated pursuant to the Appropriations Clause of this Agreement.
- C. Liability. Except as otherwise expressly allowed or provided under this Agreement, the Procuring Agency's sole liability upon termination shall be to pay for acceptable work performed prior to the Contractor's receipt or issuance of a notice of termination; 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. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE PROCURING AGENCY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.

6. Appropriations.

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Village Council of Ruidoso for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Council, this Agreement shall terminate immediately upon written notice being given by the Procuring Agency to the Contractor. The Procuring Agency's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the Procuring Agency proposes an amendment to the Agreement to unilaterally reduce funding, the 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.

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

8. Conflict of Interest; Governmental Conduct Act.

- A. The 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. The 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, Article 16 NMSA 1978. Without in any way limiting the generality of the foregoing, the Contractor specifically represents and warrants that:
 - 1) in accordance with NMSA 1978, § 10-16-4.3, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any Procuring Agency employee while such employee was or is employed by the Procuring Agency and participating directly or indirectly in the Procuring Agency's contracting process;
 - 2) this Agreement complies with NMSA 1978, § 10-16-7(A) because (i) the Contractor is not a public officer or employee of the Village; (ii) the Contractor is not a member of the family of a public officer or employee of the Village; (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 Village, a member of the family of a public officer or employee of the Village, or a business in which

- a public officer or employee of the Village or the family of a public officer or employee of the Village has a substantial interest, public notice was given as required by NMSA 1978, § 10-16-7(A) and this Agreement was awarded pursuant to a competitive process;
- 3) in accordance with NMSA 1978, § 10-16-8(A), (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the Village 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 Village whose official act, while in Village employment, directly resulted in the Procuring Agency's making this Agreement;
- 4) this Agreement complies with NMSA 1978, § 10-16-9(A)because (i) the Contractor is not a councilor; (ii) the Contractor is not a member of a councilor's family; (iii) the Contractor is not a business in which a councilor or a councilor's family has a substantial interest; or (iv) if the Contractor is a councilor, a member of a councilor's family, or a business in which a councilor or a councilor's family has a substantial interest, disclosure has been made as required by NMSA 1978, § 10-16-7(A), this Agreement is not a sole source or small purchase contract, and this Agreement was awarded in accordance with the provisions of the Procurement Code:
- 5) in accordance with NMSA 1978, § 10-16-13, 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
- 6) in accordance with NMSA 1978, § 10-16-3 and § 10-16-13.3, 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 Procuring Agency.
- C. Contractor's representations and warranties in paragraphs A and B of this Clause are material representations of fact upon which the Procuring Agency relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the Procuring Agency if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in paragraphs A and B of this Clause 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 paragraphs A and B of this Clause 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 Procuring Agency and notwithstanding anything in the Agreement to the contrary, the Procuring Agency may immediately terminate the Agreement.
- D. All terms defined in the Governmental Conduct Act have the same meaning in this Agreement.

9. 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 the Procuring Agency proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the 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 the Terminations Clause of this Agreement, or to agree to the reduced funding.

10. **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.

11. Penalties for violation of law.

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

12. Equal Opportunity Compliance.

The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the 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.

13. Workers Compensation.

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, this Agreement may be terminated by the Procuring Agency.

14. **Applicable Law.**

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a Lincoln County court of competent jurisdiction in accordance with NMSA 1978, § 38-3-1 (G). 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.

15. Records and Financial Audit.

The 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 the Procuring Agency, the Department of Finance and Administration and the State Auditor. The Procuring Agency shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Procuring Agency to recover excessive or illegal payments

16. **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.

17. 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.

18. Non-Collusion.

In signing this Agreement, the Contractor certifies the Contractor has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with this offer submitted to the Purchasing Agency.

19. Succession.

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

20. Headings.

All headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement. Numbered or

lettered provisions, sections and subsections contained herein, refer only to provisions, sections and subsections of this Agreement unless otherwise expressly stated.

21. **Default/Breach.**

In case of Default and/or Breach by the Contractor, for any reason whatsoever, the Procuring Agency may procure the goods or Services from another source and hold the Contractor responsible for any resulting excess costs and/or damages, including but not limited to, direct damages, indirect damages, consequential damages, special damages and the Procuring Agency may also seek all other remedies under the terms of this Agreement and under law or equity.

22. Equitable Remedies.

Contractor acknowledges that its failure to comply with any provision of this Agreement will cause the Procuring Agency irrevocable harm and that a remedy at law for such a failure would be an inadequate remedy for the Procuring Agency, and the Contractor consents to the Procuring Agency's obtaining from a court of competent jurisdiction, specific performance, or injunction, or any other equitable relief in order to enforce such compliance. Procuring Agency's rights to obtain equitable relief pursuant to this Agreement shall be in addition to, and not in lieu of, any other remedy that Procuring Agency may have under applicable law, including, but not limited to, monetary damages.

23. New Mexico Employees Health Coverage.

- A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of this Agreement, Contractor certifies, by signing this agreement, to have in place, and agree to maintain for the term of the Agreement, health insurance for those employees and offer that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.
- B. Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.
- C. Contractor agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: http://insurenewmexico.state.nm.us/.

24. Employee Pay Equity Reporting.

Contractor agrees if it has ten (10) or more New Mexico employees OR eight (8) or more employees in the same job classification, at any time during the term of this Agreement, to complete and submit the PE10-249 form on the annual anniversary of the initial report submittal for agreements up to one (1) year in duration. If contractor has (250) or more employees contractor must complete and submit the PE250 form on the annual anniversary of the initial report submittal for agreements up to one (1)

year in duration. For agreements that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, contractor also agrees to complete and submit the PE10-249 or PE250 form, whichever is applicable, within thirty (30) days of the annual agreement anniversary date of the initial submittal date or, if more than 180 days has elapsed since submittal of the last report, at the completion of the Agreement, whichever comes first. Should contractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, contractor agrees to provide the required report within ninety (90 days) of meeting or exceeding the size requirement. That submittal date shall serve as the basis for Contractor also agrees to levy this requirement on any submittals required thereafter. subcontractor(s) performing more than 10% of the dollar value of this Agreement if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of the Agreement. Contractor further agrees that, should one or more subcontractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, Contractor will submit the required report, for each such subcontractor, within ninety (90 days) of that subcontractor meeting or exceeding the size requirement. Subsequent report submittals, on behalf of each such subcontractor, shall be due on the annual anniversary of the initial report submittal. Contractor shall submit the required form(s) to the Village of Ruidoso Purchasing Department, and other departments as may be determined, on behalf of the applicable subcontractor(s) in accordance with the schedule contained in this Clause. Contractor acknowledges that this subcontractor requirement applies even though Contractor itself may not meet the size requirement for reporting and be required to report itself.

Notwithstanding the foregoing, if this Agreement was procured pursuant to a solicitation, and if Contractor has already submitted the required report accompanying their response to such solicitation, the report does not need to be re-submitted with this Agreement.

25. Indemnification.

The Contractor shall defend, indemnify and hold harmless the Procuring Agency from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors, or agents resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has performed or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the Procuring Agency by certified mail.

26. Default and Force Majeure.

The Village reserves the right to cancel all or any part of any orders placed under this Agreement without cost to the Village, if the Contractor fails to meet the provisions of this Agreement and, except as otherwise provided herein, to hold the Contractor liable for any excess cost occasioned by the Village due to the Contractor's default. The Contractor shall not be liable for any excess costs if failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Contractor; such causes include, but are not restricted to, acts of God or the public enemy, acts of the State or Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of subcontractors due to any of the above, unless the Village shall determine that the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery scheduled. The rights and remedies of the Village provided in this Clause shall not be exclusive and are in addition to any other rights now being provided by law or under this Agreement.

27. Assignment.

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the Procuring Agency.

28. Subcontracting.

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the Procuring Agency. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the Procuring Agency.

29. Inspection of Plant.

The Procuring Agency that is a party to this Agreement may inspect, at any reasonable time during Contractor's regular business hours and upon prior written notice, the Contractor's plant or place of business, or any subcontractor's plant or place of business, which is related to the performance of this Agreement.

30. Commercial Warranty.

The Contractor agrees that the tangible personal property or services furnished under this Agreement shall be covered by the most favorable commercial warranties the Contractor gives to any customer for such tangible personal property or services, and that the rights and remedies provided herein shall extend to the Village and are in addition to and do not limit any rights afforded to the Village by any other Clause of this Agreement or order. Contractor agrees not to disclaim warranties of fitness for a particular purpose or merchantability.

31. **RESERVED**

32. Release.

Final payment of the amounts due under this Agreement shall operate as a release of the Procuring Agency, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

33. Confidentiality.

Any Confidential Information provided to the Contractor by the Procuring Agency or, developed by the Contractor based on information provided by the Procuring Agency in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the Procuring Agency. Upon termination of this Agreement, Contractor shall deliver all Confidential Information in its possession to the Procuring Agency within thirty (30) business days of such termination. Contractor acknowledges that failure to deliver such Confidential Information to the Procuring Agency will result in direct, special and incidental damages.

34. Contractor Personnel.

A. Key Personnel. Contractor's key personnel shall not be diverted from this Agreement without the prior written approval of the Procuring Agency. Key personnel are those individuals considered by the Procuring Agency to be mandatory to the work to be performed under this Agreement. Key personnel shall be:

[Insert Contractor Staff Name(s)]

B. Personnel Changes. Replacement of any personnel shall be made with personnel of equal ability, experience, and qualification and shall be approved by the Procuring Agency. For all personnel, the Procuring Agency reserves the right to require submission of their resumes prior to approval. If the number of Contractor's personnel assigned to the Project is reduced for any reason, Contractor shall, within ten (10) business days of the reduction, replace with the same or greater number of personnel with equal ability, experience, and qualifications, subject to Procuring Agency approval. The Procuring Agency, in its sole discretion, may approve additional time beyond the ten (10) business days for replacement of personnel. The Contractor shall include status reports of its efforts and progress in finding replacements and the effect of the absence of the personnel on the progress of the Project. The Contractor shall also make interim arrangements to assure that the Project progress is not affected by the loss of personnel. The Procuring Agency reserves the right to require a change in Contractor's personnel if the assigned personnel are not, in the sole opinion of the Procuring Agency, meeting the Procuring Agency's expectations.

35. Incorporation by Reference and Precedence.

If this Agreement has been procured pursuant to a request for proposals, this Agreement is derived from (1) the request for proposal, (including any written clarifications to the request for proposals

and any agency response to questions); (2) the Contractor's best and final offer; and (3) the Contractor's response to the request for proposals.

In the event of a dispute under this Agreement, applicable documents will be referred to for the purpose of clarification or for additional detail in the following order of precedence: (1) amendments to the Agreement in reverse chronological order; (2) the Agreement, including the scope of work and all terms and conditions thereof; (3) the request for proposals, including attachments thereto and written responses to questions and written clarifications; (4) the Contractor's best and final offer if such has been made and accepted by the SPA or Procuring Agency or entity; and (5) the Contractor's response to the request for proposals.

36. RESERVED

37. Inspection of Services.

If this Agreement is for the purchase of services, the following terms shall apply.

- A. Services, as used in this Clause, include services performed, workmanship, and material furnished or utilized in the performance of services.
- B. The Contractor shall provide and maintain an inspection system acceptable to the Procuring Agency covering the services under this Agreement. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Procuring Agency during the term of performance of this Agreement and for as long thereafter as the Agreement requires.
- C. The Procuring Agency has the right to inspect and test all services contemplated under this Agreement to the extent practicable at all times and places during the term of the Agreement. The Procuring Agency shall perform inspections and tests in a manner that will not unduly delay or interfere with Contractor's performance.
- D. If the Procuring Agency performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in Agreement price, all reasonable facilities and assistance for the safe and convenient performance of such inspections or tests.
- E. If any part of the services does not conform with the requirements of this Agreement, the Procuring Agency may require the Contractor to re-perform the services in conformity with the requirements of this Agreement at no increase in Agreement amount. When the defects in services cannot be corrected by re-performance, the Procuring Agency may:
 - (1) require the Contractor to take necessary action(s) to ensure that future performance conforms to the requirements of this Agreement; and
 - (2) reduce the Agreement price to reflect the reduced value of the services performed.

- F. If the Contractor fails to promptly re-perform the services or to take the necessary action(s) to ensure future performance in conformity with the requirements of this Agreement, the Procuring Agency may:
 - (1) by Agreement or otherwise, perform the services and charge to the Contractor any cost incurred by the Procuring Agency that is directly related to the performance of such service; or
 - (2) terminate the Agreement for default.

THE PROVISIONS OF THIS CLAUSE ARE NOT EXCLUSIVE AND DO NOT WAIVE THE VILLAGE PARTIES' OF THIS AGREEMENT OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.

39. Insurance.

If the services contemplated under this Agreement will be performed on or in Village facilities or property, Contractor shall maintain in force during the entire term of this Agreement, the following insurance coverage(s), naming the Village of Ruidoso as additional insured.

- A. Workers Compensation (including accident and disease coverage) at the statutory limit. Employers liability: \$100,000.
- B. Comprehensive general liability (including endorsements providing broad form property damage, personal injury coverage and contractual assumption of liability for all liability the Contractor has assumed under this Agreement). Limits shall not be less than the following:
 - a. Bodily injury: \$1,000,000 per person /\$1,000,000 per occurrence.
 - b. Property damage or combined single limit coverage: \$1,000,000.
 - c. Automobile liability (including non-owned automobile coverage): \$1,000,000.
 - d. Umbrella: \$1,000,000.
- C. Contractor shall maintain the above insurance for the term of this Agreement and name the Village of Ruidoso as an additional insured and provide for 30 days cancellation notice on any Certificate of Insurance form furnished by Contractor. Such certificate shall also specifically state the coverage provided under the policy is primary over any other valid and collectible insurance and provide a waiver of subrogation.

40. Arbitration.

Any controversy or claim arising between the parties shall be settled by arbitration pursuant to NMSA 1978 § 44-7A-1 *et seq*.

IN WITNESS WHEREOF, the parties have executed this Agreement. The effective date is the date of approval by the Village of Ruidoso out hereinafter.						
SIGNATURES:						
Village of Ruidoso:	CONTRACTOR:					
Lynn D. Crawford, Mayor	Contractor, Title					
Date:	Date:					
Attest:						

Irma Devine, Village Clerk

APPENDIX D - COST RESPONSE FORM

Village of Ruidoso

Banking Services Price Schedule

Name of Offeror or Contractor		RFP #2021-001P			
Item	Supplies/Services	Est Qty	Unit	Unit Price (Monthly)	Total
	Bank Accounts				
1	Master Account monthly maintenance	3	ACCTS		
2	Stand-alone DDA	3	ACCTS		
3	Overnight sweeps monthly fee for select accounts	1	ACCTS		
4	Additional Fees not covered above	1	LS		
	Check Disbursement/Full Reconciliation Services				
5	Controlled disbursement account	2	ACCTS		
6	Positive Pay account maintenance	1	ACCTS		
7	Checks Paid - Positive Pay / Controlled Disbursement	600	EA		
8	Check Image Capture - per item	600	EA		
9	Check Retrieval - per item	4	EA		
10	Stop Payments	2	EA		
11	Additional Fees not covered above	1	LS		
	ACH Services				
12	Workday Interface ACH and Maintenance Monthly Fee	3	ACCTS		
13	Workday Direct ACH Originated Credit Transaction	20	EA		
14	Workday Direct ACH Originated Debit Transaction	10	EA		
15	ACH Return Item	2	EA		
16	Credit Card Processing Monthly Charge (Approx. 550 Transactions per month / Approx. \$60,000 per month)	1	EA		
17	Credit Card Processing Equipment Monthly Charge	5	EA		
18	Additional Fees not covered above	1	LS		

APPENDIX E - LETTER OF TRANSMITTAL FORM

RFP#:2021-001P							
RFP#:2021-001P Offeror Name: FED ID#							
Items #1 to #7 EACH MUST BE COMPLETED IN FULL Failure to respond to all seven items WILL							
RESULT IN THE DISQUALIFICATION OF THE PROPOSAL!							
1. Identity (Name) and Mailing Address of the submitting organization:							
2. For the person authorized by the organization to contractually obligate on behalf of this Offer: Name							
Title							
E-Mail Address							
Telephone Number							
3. For the person authorized by the organization to negotiate on behalf of this Offer: Name							
Title							
E-Mail Address							
Telephone Number							
4. For the person authorized by the organization to clarify/respond to queries regarding this Offer: Name							
Title							
E-Mail Address							
Telephone Number							
5. Use of Sub-Contractors (Select one)							
No sub-contractors will be used in the performance of any resultant contract OR The following sub-contractors will be used in the performance of any resultant contract:							
(Attach extra sheets, as needed)							
6. Please describe any relationship with any entity (other than Subcontractors listed in (5) above) which will be used in the performance of any resultant contract.							
(Attach extra sheets, as needed)							
7 On behalf of the submitting organization named in item #1, above, I accept the Conditions Governing the Procurement as required in Section II. C.1.							
I concur that submission of our proposal constitutes acceptance of the Evaluation Factors containe in Section V of this RFP.							
I acknowledge receipt of any and all amendments to this RFP. , 2019							
Authorized Signature and Date (Must be signed by the person identified in item #2, above.)							

APPENDIX F - ORGANIZATIONAL REFERENCE QUESTIONNAIRE

RESERVED

APPENDIX G – SCOPE OF WORK

RFP #2021-001P Bank Depository Services

Minimum Services Required:

- 1. Funds deposited with Operational Bank must be collateralized at 102%. Overnight investments must be collateralized at 110%.
- 2. Bank bags must be provided for daily deposits (Plastic Sealed bags are acceptable). In the event there is not a branch office in Ruidoso, a courier service will be required for daily deposits. The cost of a courier service shall be paid by the Operational Bank.
- 3. Bank Statements to end on last day of each month and statement received by Finance Department no later than the 5th of the following month with on-line access.
- 4. Multiple accounts (normally 4-5 accounts) as needed for Village requirements.
- 5. On-Line Wire Transfers / ACH Debits and Credits with ability to save templates.
- 6. Notification of all corrections upon occurrence by email and hard copy by mail. This includes Direct Deposit and Auto-Pay Failures.
- 7. Internet access for Daily Balance and online banking for all services.
- 8. Access to Detailed Banking report showing prior day activity and current day posts.
- 9. Positive Pay send CSV file of checks with amounts processed through account, with ability to approve payment online.
- 10. ACH Report of Utility Bills paid through E-Bills.
- 11. Access to On-line Statements and Activity for previous 6 months (minimum).
- 12. Ability to deposit checks and convert checks to ACH Debit on-line.
- 13. Ability to search past transactions on-line and view front and back of checks.
- 14. Direct Deposit of Payroll with immediate email notification of failed deposits.
- 15. Ability to process Vendor payments through online applications.
- 16. Daily Transactions will involve one or more of the following:
 - A. Deposits estimated in the following Annual volumes:

•	Deposits	1-2 per day
•	ACH Deposits	10-30 per day
•	Currency Deposited	< \$50,000 per day
•	Returned Checks	1-2 per month

B. Checks Issued +/- 600 per month C. Average Monthly Balance +/- \$28 million

- 17. All Village issued checks are void one year from date issued or as indicated on face of check.
- 18. Ability to offset bank charges with earnings credits.
- 19. Ability for Auto Pay with email confirmation.
- 20. Fraud Manager Must have ability to authorize all ACH transactions.
- 21. Ability to issue Stop Payments on-line.
- 22. Ability to control online access to users to include a "Dual Custody"

Optional Services Requested:

1. System for Merchant Credit Card Processing for minimum of 5 Village locations.