



City of Truth or Consequences  
505 Sims Street  
Truth or Consequences, New Mexico 87901  
City (575) 740-7323 ▪ Fax (575) 894-0363

**City of Truth or Consequences**

**REQUEST FOR PROPOSALS (RFP)**

**ANNUAL LEGAL SERVICES**

**RFP#**  
21-22-002

RFP Release Date: 8/13/2021

Proposal Due Date: 9/3/2021

<b>I. INTRODUCTION.....</b>	<b>1</b>
A.    PURPOSE OF THIS REQUEST FOR PROPOSALS .....	1
B.    BACKGROUND INFORMATION.....	1
C.    SCOPE OF PROCUREMENT.....	1
D.    PROCUREMENT OFFICER/MANAGER.....	1
E.    PROPOSAL DELIVERY .....	2
F.    DEFINITION OF TERMINOLOGY.....	2
G.    PROCUREMENT LIBRARY .....	5
<b>II. CONDITIONS GOVERNING THE PROCUREMENT .....</b>	<b>6</b>
A.    SEQUENCE OF EVENTS.....	6
B.    EXPLANATION OF EVENTS .....	6
1.    Issue Request for Proposal (RFP) .....	6
2.    Acknowledgement of Receipt Form.....	7
3.    Deadline to Submit Written Questions .....	7
4.    Response to Written Questions .....	7
5.    Organizational Reference Questionnaire.....	7
6.    Submission of Proposal.....	8
7.    Proposal Evaluation .....	8
8.    Selection of Finalists .....	8
9.    Finalize Contractual Agreements.....	9
10.   Award and Contract Recommendation to City Commission.....	9
11.   Notice of Award and Contract to Successful Offeror .....	9
12.   Protest Deadline .....	9
C.    GENERAL REQUIREMENTS.....	10
1.    Acceptance of Conditions Governing the Procurement .....	10
2.    Incurring Cost.....	10
3.    Prime Contractor Responsibility .....	10
4.    Subcontractors/Consent .....	10
5.    Amended Proposals .....	10
6.    Offeror’s Rights to Withdraw Proposal.....	11
7.    Proposal Offer Firm.....	11
8.    Disclosure of Proposal Contents .....	11
9.    No Obligation.....	11
10.   Termination .....	12
11.   Sufficient Appropriation.....	12
12.   Legal Review .....	12
13.   Governing Law.....	12
14.   Basis for Proposal .....	12
15.   Contract Terms and Conditions .....	12
16.   Offeror’s Terms and Conditions .....	13
17.   Contract Deviations .....	13
18.   Offeror Qualifications .....	13
19.   Right to Waive Minor Irregularities .....	13
20.   Change in Contractor Representatives .....	14
21.   Notice of Penalties.....	14
22.   Agency Rights .....	14
23.   Right to Publish.....	14
24.   Ownership of Proposals .....	14
25.   Confidentiality .....	14
26.   Electronic Mail Address Required .....	15
27.   Use of Electronic Versions of this RFP.....	15

28.	<i>Campaign Contribution Disclosure Form</i> .....	15
29.	<i>Letter of Transmittal</i> .....	15
30.	<i>Disclosure Regarding Responsibility</i> .....	16
31.	<i>New Mexico Preferences</i> .....	18
<b>III. RESPONSE FORMAT AND ORGANIZATION</b> .....		<b>19</b>
A.	NUMBER OF RESPONSES .....	19
B.	NUMBER OF COPIES .....	19
1.	<i>Hard Copy Responses</i> .....	19
C.	PROPOSAL FORMAT .....	20
1.	<i>Proposal Content and Organization</i> .....	20
a.	<i>Technical Proposal (Binder 1)</i> .....	20
b.	<i>Cost Proposal (Binder 2)</i> .....	20
<b>IV. SPECIFICATIONS</b> .....		<b>22</b>
A.	DETAILED SCOPE OF WORK .....	22
B.	TECHNICAL SPECIFICATIONS.....	24
1.	<i>Organizational Experience</i> .....	24
2.	<i>Organizational References</i> .....	24
3.	<i>Capability and Agreement to Perform</i> .....	25
C.	BUSINESS SPECIFICATIONS .....	25
1.	<i>Letter of Transmittal Form</i> .....	25
2.	<i>Campaign Contribution Disclosure Form</i> .....	25
3.	<i>State of NM Business License</i> .....	25
4.	<i>Proof of Liability Insurance</i> .....	25
5.	<i>Conflict of Interest-Debarment/Suspension Certification</i> .....	25
6.	<i>Cost</i> .....	26
7.	<i>Resident Business or Resident Veterans Preference</i> .....	26
<b>V. EVALUATION</b> .....		<b>27</b>
A.	EVALUATION POINT SUMMARY .....	27
B.	EVALUATION FACTORS .....	27
1.	<i>B.1 Organizational Experience</i> .....	27
2.	<i>B.2 Organizational References</i> .....	28
3.	<i>B.3 Capability and Agreement to Perform</i> .....	28
4.	<i>C.1 Letter of Transmittal</i> .....	28
5.	<i>C.2 Campaign Contribution Disclosure Form</i> .....	28
6.	<i>C.3 State of New Mexico Business License</i> .....	28
7.	<i>C.4 Proof of Liability Insurance</i> .....	28
8.	<i>C.5 Conflict of Interest-Debarment/Suspension Certification</i> .....	28
9.	<i>C.6 Cost</i> .....	29
10.	<i>C.7. New Mexico Preferences</i> .....	29
C.	EVALUATION PROCESS .....	29
<b>APPENDIX A</b> .....		<b>30</b>
<b>ACKNOWLEDGEMENT OF RECEIPT FORM</b> .....		<b>30</b>
<b>APPENDIX B</b> .....		<b>32</b>
<b>CAMPAIGN CONTRIBUTION DISCLOSURE FORM</b> .....		<b>32</b>
<b>APPENDIX C</b> .....		<b>35</b>
<b>LETTER OF TRANSMITTAL FORM</b> .....		<b>35</b>

<b>APPENDIX D.....</b>	<b>36</b>
<b>ORGANIZATIONAL REFERENCE QUESTIONNAIRE .....</b>	<b>37</b>
<b>APPENDIX D.....</b>	<b>38</b>
<b>ORGANIZATIONAL REFERENCE QUESTIONNAIRE .....</b>	<b>38</b>
<b>APPENDIX E .....</b>	<b>43</b>
<b>CAPABILITY AND AGREEMENT TO PERFORM .....</b>	<b>43</b>
<b>APPENDIX F .....</b>	<b>47</b>
<b>COST RESPONSE FORM .....</b>	<b>47</b>
<b>APPENDIX G.....</b>	<b>48</b>
<b>CONFLICT OF INTEREST-DEBARTMENT/SUSPENSION CERTIFICATION .....</b>	<b>48</b>
<b>APPENDIX H.....</b>	<b>521</b>
<b>DRAFT CONTRACT.....</b>	<b>521</b>

# **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 sealed proposals for the procurement of: **ANNUAL LEGAL SERVICES FOR THE CITY OF TRUTH OR CONSEQUENCES.**

The City of Truth or Consequences (T or C) is requesting sealed proposals to provide Professional Legal Services for the City of T or C for a set annual fee resulting in a multi-year contract. The successful firm shall enter into a non-exclusive contractual relationship with the City to provide legal counsel and representation described in the detailed scope of work. The Professional Services Contract will incorporate the selected firm's proposal, City T or C's terms and conditions, scope of services, and other pertinent requirements and details. The initial Contract is expected to commence upon the approval of the City Commission.

## **B. BACKGROUND INFORMATION**

The City of Truth or Consequences has approximately 110 employees. The City has the following services and departments: Airport, Animal Shelter, City Clerk, City Manager, Community Services, Community Development, Code Compliance, Electric, Facility Management, Finance, Golf Course, Library, Municipal Court, Parks and Recreation, Municipal Pool, Police, Sanitation & Recycling, Service Center, Streets, Utility Office, Water, and Waste Water. The City has a need for annual legal services for the City of Truth or Consequences, the City Commission, the City Manager, and other matters.

## **C. SCOPE OF PROCUREMENT**

This procurement will be conducted in accordance with the New Mexico State Procurement Code as required by 13-1-111 NMSA 1978. The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and misdemeanor criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities, and kickbacks.

The resulting contract will be a single award.

This procurement will result in a contractual agreement between two parties; the procurement may ONLY be used by those two parties exclusively.

## **D. PROCUREMENT OFFICER/MANAGER**

The City of Truth or Consequences has assigned a Chief Procurement Officer and a Procurement Manager who is responsible for the conduct of this procurement whose title, address, telephone number and e-mail address are listed below:

Name: Tammy Gardner, Interim Chief Procurement Officer  
Name: Carol Kirkpatrick, Finance Director and Procurement Manager (contact)  
Telephone: (575) 740-7323  
Fax: (575) 894-0363  
Email: [procurement@torcnm.org](mailto:procurement@torcnm.org)

1. **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 City employees or Evaluation Committee members do not have the authority to respond to questions.
2. **Protests of the solicitation or award must be submitted in writing to the Procurement Manager identified in Section II.B.12.** As a Procurement Manager has been named in this Request for Proposals, pursuant to §13-1-172, NMSA 1978 and 1.4.1.82 NMAC, **ONLY** protests delivered directly to the Procurement 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.

## E. PROPOSAL DELIVERY

All deliveries of proposals via express carrier, courier, or hand delivery, must be addressed and submitted as follows (including the hard-copy requirement):

Name: Chief Procurement Officer/Manager  
Reference RFP Name: RFP #21-22-002 Legal Services  
Address: 505 Sims Street  
Truth or Consequences, NM 87901

Electronic proposals will not be accepted.

## F. DEFINITION OF TERMINOLOGY

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

1. **“Agency”** means the City of Truth or Consequences.
2. **“Annual Rate”** means the total annual cost for providing the entire services as listed in the Detailed Scope of Work without consideration for hourly rates per service.
3. **“Business Hours”** means 8:00 AM thru 5:00 PM Mountain Standard or Mountain Daylight Time, whichever is in effect on the date given.
4. **“City”** means the City of Truth or Consequences, County of Sierra, State of New Mexico.

5. **“City Commission”** means the elected individuals whom are responsible for governing the City of Truth or Consequences.
6. **“Close of Business”** means 5:00 PM Mountain Standard or Daylight Time, whichever is in use at that time.
7. **"Chief Procurement Officer"** means the person or designee authorized by the City to manage or administer a procurement requiring the evaluation of competitive sealed proposals.
8. **“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 §§57-3-A-1 through 57-3A-7, NMSA 1978,. See also NMAC 1.4.1.45. The following items may not be labelled as confidential: Offeror’s submitted Cost response, Staff/Personnel Resumes/Bios (excluding personal information such as personal telephone numbers and/or home addresses), and other submitted data that is not confidential financial information or that qualifies under the Uniform Trade Secrets Act.
9. **"Contract"** means a written agreement for the procurement of items of tangible personal property, services, or professional services.
10. **"Contractor"** shall mean the successful Offeror who enters into an Agreement with the City.
11. **"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.
12. **"Desirable"** – the terms “may”, "can", "should", "preferably", or "prefers" identify a desirable or discretionary item or factor.
13. **"Evaluation Committee"** means a body appointed to perform the evaluation of Offeror proposals.
14. **"Evaluation Committee Report"** means a report prepared by the Procurement Officer or his or her designee and the Evaluation Committee for Contract award. It will contain written determinations resulting from the procurement.
15. **“Finalist”** means an Offeror and/or Offerors who meet 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.
16. **“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.

17. **"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.
18. **"Minor Irregularities"** means anything in the proposal that does not affect the price, quality and/or quantity, or any other mandatory requirement.
19. **"Multiple Source Award"** means an award of an indefinite quantity contract for one or more similar services, items of tangible personal property or construction to more than one Offeror.
20. **"Offeror"** is any person, corporation, or partnership who chooses to submit a proposal.
21. **"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 agency or a local public body which issues a purchase order, if the purchase order is within the quantity limitations of the contract, if any.
22. **"Procurement Manager"** means any person or designee authorized by a state agency or local public body to enter into or administer contracts and make written determinations with respect thereto.
23. **"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.
24. **"Purchase Order"** or "PO" means the document which directs a contractor to deliver items of tangible personal property or services pursuant to an existing, valid contract.
25. **"Request for Proposals"** or "RFP" means all documents, including those attached or incorporated by reference, used for soliciting proposals.
26. **"Responsible Offeror"** means an offeror who submits a responsive proposal and who has furnished required information and data to prove that their 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 called for in this proposal.
27. **"Responsive Offer"** or **"Responsive Proposal"** means an offer or proposal which conforms in all material respects to the requirements set forth in the request for proposals. Material respects of a request for proposals include, but are not limited to, price, quality, quantity, and delivery requirements.
28. **"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 City 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.

29. **“Services”** means delivering value to customers by facilitating outcomes customers want to achieve.
30. **“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.)
31. **“Successful Offeror”** means an Offeror submitting a responsive proposal and who has furnished, when required, information and data to prove that its financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services described in the proposal.
32. **“Solicited and Awarded”** means an Invitation to Bid or RFP was made available to the general public, through any means.
33. **“Staff”** means an individual who is full-time, part-time, or an independently Contracted employee with the Offeror company.
34. **“Successful Offeror”** means an Offeror who has met all qualifications

## **G. PROCUREMENT LIBRARY**

A procurement library has been established. Offerors are encouraged to review the material contained in the Procurement Library by selecting the link provided in the electronic version of this document through your own internet connection. The library contains information listed below:

Electronic version of RFP, Questions & Answers, RFP Amendments, etc.  
[http://www.torcnm.org/departments/finance/public\\_invitation\\_for\\_bidders.php](http://www.torcnm.org/departments/finance/public_invitation_for_bidders.php) .

## II. CONDITIONS GOVERNING THE PROCUREMENT

This section of the RFP contains the schedule of events, the descriptions of each event, and the conditions governing this procurement.

### A. SEQUENCE OF EVENTS

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

<b>Action</b>	<b>Responsible Party</b>	<b>Due Dates</b>
1. Issue RFP	City of T or C	08/13/21
2. Acknowledgement of Receipt Form	Potential Offerors	08/24/21 2:00 pm MST
3. Deadline to submit Written Questions	Potential Offerors	08/27/21 2:00 pm MST
4. Response to Written Questions	Procurement Manager	8/31/21 2:00 pm MST
5. Organizational Reference Questionnaire	Potential Offerors	9/2/21 2:00 pm MST
<b>6. <i>Submission of Proposal</i></b>	<b><i>Potential Offerors</i></b>	<b><i>9/3/21 2:00 pm MST</i></b>
7.* Proposal Evaluation	Evaluation Committee	09/07/21
8.* Selection of Finalists	Evaluation Committee	09/07/21
9.* Finalize Contractual Agreements	Agency/Finalist Offerors	09/10/21
10.* Award Recommendation and Contract Submitted to the City Commission	Agency/ Finalist Offerors	09/22/21 9:00 am MST
11. Notice of Award and Contract given to successful offeror	Procurement Manager	09/22/21
12.* Protest Deadline	Procurement Manager	10/07/21 5:00 pm MST

\* Dates indicated in Events 7 through 11 are estimates only, and may be subject to change without necessitating an amendment to the RFP.

### B. EXPLANATION OF EVENTS

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

#### 1. Issue Request for Proposal (RFP)

This RFP is being issued on behalf of the City of Truth or Consequences on August 13, 2021.

## **2. Acknowledgement of Receipt Form**

Potential Offerors may hand deliver, e-mail or send by registered or certified mail the Acknowledgement of Receipt Form (APPENDIX A), to the Procurement Manager identified in Section I.E, at [procurement@torcnm.org](mailto:procurement@torcnm.org) to have their organization placed on the procurement Distribution List. The form must be returned to the Procurement Manager as indicated in Section II.A, Sequence of Events.

The procurement distribution list will be used for the distribution of written responses to questions, and/or any amendments to the RFP. Failure to return the Acknowledgement of Receipt Form does not prohibit potential Offerors from submitting a response to this RFP. However, by not returning the Acknowledgement of Receipt Form, the potential Offeror's representative shall not be included on the distribution list, and will be solely responsible for obtaining from the Procurement Library (Section I.G.) responses to written questions and any amendments to the RFP.

## **3. Deadline to Submit Written Questions**

Potential Offerors may submit written questions to the Procurement Manager as to the intent or clarity of this RFP as indicated in Section II.A, Sequence of Events. All written questions must be addressed to the Procurement Manager as declared in Section I.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.

## **4. Response to Written Questions**

Written responses to the written questions will be provided via e-mail, on or before the date indicated in Section II.A, Sequence of Events, to all potential Offerors who timely submitted an Acknowledgement of Receipt Form (Section II.B.2 and APPENDIX A).

Written responses will also be posted to the Procurement Library:  
[http://www.torcnm.org/departments/finance/public\\_invitation\\_for\\_bidders.php](http://www.torcnm.org/departments/finance/public_invitation_for_bidders.php) .

## **5. Organizational Reference Questionnaire**

The City of Truth or Consequences, as a part of the RFP process, requires Offerors to list a minimum of three (3) organizational references in their proposals on APPENDIX D. The purpose of these references is to document Offeror's experience relevant to the Section IV.A, Detailed Scope of Work in an effort to evaluate Offeror's ability to provide goods and/or services, performance under similar contracts, and ability to provide knowledgeable and experienced staffing.

Offeror is required to send the Organizational Reference Questionnaire to each business reference listed in its proposal. The business reference, if it chooses to respond, is required to submit its response to the Organizational Reference Questionnaire directly to: the Chief Procurement Officer at [procurement@torcnm.org](mailto:procurement@torcnm.org) as indicated in Section II.A, Sequence of Events for inclusion in the evaluation process. The Questionnaire and information provided will become a part of the submitted proposal. Businesses/Organizations providing references may be contacted for validation of content provided therein.

## **6. Submission of Proposal**

ALL PROPOSALS MUST BE RECEIVED BY THE PROCUREMENT MANAGER OR DESIGNEE NO LATER THAN 2:00 PM MST/MDT ON 9/3/2021 as stated in SECTION II.A, SEQUENCE OF EVENTS. **NO LATE PROPOSAL WILL BE ACCEPTED.** Proposals will be date and time-stamped. This RFP requires hard copies be delivered. The date and time of receipt will be recorded on each proposal. If an Offeror decides to use a third-party delivery entity to submit its proposal, it is still the responsibility of the Offeror to ensure that the delivery is made on time. An Offeror should take into account all factors regarding the delivery by the third party entity and ensure that the delivery is made prior to the stated deadline. Weather delays, traffic jams, deliveries to the incorrect address nor any other reason for a delay will be accepted for failure to make the stated deadline.

*Hard copy proposals must be addressed and delivered to the Procurement Manager at the address identified in Section I.E.* Proposals must be sealed and labeled on the outside of the package to clearly indicate that they are in response to the RFP 21-22-002 Annual Legal Services.

A log will be kept of the names of all Offeror organizations that submitted proposals. Pursuant to §13-1-116, NMSA 1978, 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 approval by the City Commission and signature(s) 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 Section II.A, 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 thereafter.

Responsive proposals will be evaluated on the factors in Section IV, which have been assigned a point value in Section V. The responsible Offerors with the highest scores will be selected as finalist Offerors, based upon the proposals submitted. In accordance with 13-1-117 NMSA 1978, the responsible Offerors whose proposals are most advantageous to the City taking into consideration the Evaluation Factors in Section V will be recommended for award (as specified in Section II.B.10). Please note, however, that a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.

## **9. Finalize Contractual Agreements**

After approval of the Evaluation Committee Report, any contractual agreement(s) resulting from this RFP will be finalized with the most advantageous Offeror(s) to the City of T or C, taking into consideration the evaluation factors set forth in this RFP, as per Section II.A., Sequence of Events, or as soon as possible thereafter. The most advantageous proposal may or may not have received the most points. In the event mutually agreeable terms cannot be reached with the apparent most advantageous Offeror in the timeframe specified, the City reserves the right to finalize a contractual agreement with the next most advantageous Offeror(s) without undertaking a new procurement process. The award and contract is subject to appropriate City Commission approval and signature(s).

## **10. Award and Contract Recommendation to City Commission**

Award recommendation and Contract will be submitted to the City Commission for approval as indicated in Section II.A, Sequence of Events or as soon as possible thereafter.

## **11. Notice of Award and Contract Given to Successful Offeror**

Upon receipt of the signed contractual agreement, the City's Procurement office will submit award and contract as per Section II.A., Sequence of Events, or as soon as possible thereafter to successful offeror.

## **12. Protest Deadline**

Any protest by an Offeror must be timely submitted and in conformance with §13-1-172, NMSA 1978 and applicable procurement regulations. As a Protest Manager has been named in this Request for Proposals, pursuant to §13-1-172, NMSA 1978 and 1.4.1.82 NMAC, 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 notice of award of contract(s) and will end as indicated in Section II.A, Sequence of Events on the 15<sup>th</sup> day. Protests must be written (electronic protests will not be accepted) and must include the name, address, and phone number 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:

Procurement Manager  
505 Sims Street  
Truth or Consequences, NM 87901

**ELECTRONIC PROTESTS WILL NOT BE ALLOWED.  
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 these Conditions Governing the Procurement, Section II.C, by completing and signing the Letter of Transmittal form, pursuant to the requirements in Section II.C.30, located in APPENDIX C.

### **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 the State Agency or Local Public Body which may derive from this RFP. The State Agency or Local Public Body entering into a contractual agreement with a vendor will make payments to only the prime contractor.

### **4. Subcontractors/Consent**

The use of subcontractors is not allowed.

### **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. **Agency 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, 1.4.1.5 & 1.4.1.36 NMAC.

## 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

The contents of all submitted proposals will be kept confidential until the final award has been completed by the Agency. At that time, all proposals and documents pertaining to the proposals will be available for public inspection, *except* for proprietary or confidential material as follows:

- a. ***Proprietary and Confidential information is restricted to:***
  1. confidential financial information concerning the Offeror's organization; and
  2. information that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, §§57-3A-1 through 57-3A-7, NMSA 1978.
- b. An additional but separate redacted version of Offeror's proposal, as outlined and identified in Sections III.B.1.a.i, shall be submitted containing the blacked-out proprietary or confidential information, in order to facilitate eventual public inspection of the non-confidential version of Offeror's proposal.

**IMPORTANT:** 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 proprietary or confidential materials, the Agency shall examine the 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 proprietary or confidential information.

## 9. No Obligation

This RFP in no manner obligates the City of Truth or Consequences or any of its Agencies 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 Agency determines such action to be in the best interest of the City of Truth or Consequences.

## **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 Agency's decision as to whether sufficient appropriations and authorizations are available will be accepted by the contractor as final.

## **12. Legal Review**

The Agency 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 State of New Mexico.

## **14. Basis for Proposal**

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

## **15. Contract Terms and Conditions**

The contract between an agency and a contractor will follow the format specified by the Agency and contain the terms and conditions set forth in the Draft Contract APPENDIX G. However, the contracting agency reserves the right to negotiate provisions in addition to those contained in this RFP (Draft 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 Agency discourages exceptions from the contract terms and conditions as set forth in the RFP Draft Contract. Such exceptions may cause a proposal to be rejected as nonresponsive when, in the sole judgment of the Agency (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 Draft Contract (APPENDIX H) strongly enough to propose alternate terms and conditions in spite of the above, the Offeror must propose **specific** alternative language. The Agency may or may not accept the alternative language. General references to the Offeror's terms and conditions or attempts at complete substitutions of the Draft Contract are not acceptable to the Agency 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 Agency. See Section II.C.15 for requirements. The City of T or C will determine if the Offeror's Terms and Conditions are acceptable.

## **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 Agency 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 §13-1-83 and §13-1-85, NMSA 1978.

## **19. Right to Waive Minor Irregularities**

The Evaluation Committee reserves the right to waive minor irregularities, as defined in Section I.F. 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 Agency reserves the right to require a change in contractor representatives if the assigned representative(s) is (are) not, in the opinion of the Agency, adequately meeting the needs of the Agency.

## **21. Notice of Penalties**

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

## **22. Agency Rights**

The Agency 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 agency written approval prior to the release of any information that pertains to the potential work or activities covered by this procurement and/or agency 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 City of Truth or Consequences. If the RFP is cancelled, all responses received shall be destroyed by the Agency unless the Offeror either picks up, or arranges for pick-up, the materials within three (3) business days of notification of the cancellation. Offeror is responsible for all costs involved in return mailing/shipping of proposals.

## **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 Agency.

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 Agency'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.4, 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 agency, the Offeror acknowledges that the version maintained by the agency shall govern. For the most updated information, please refer to the procurement library located at: [http://www.torcnm.org/departments/finance/public\\_invitation\\_for\\_bidders.php](http://www.torcnm.org/departments/finance/public_invitation_for_bidders.php)

## **28. 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 Governor and Lieutenant Governor or other identified official. **Failure to complete and return the signed, unaltered form will result in Offeror's disqualification.**

## **29. Letter of Transmittal**

Offeror's proposal must be accompanied by an **unaltered** Letter of Transmittal Form (APPENDIX C), which must be **completed** and **signed** by the individual authorized to contractually obligate the company, identified in #2 below. **DO NOT LEAVE ANY OF THE ITEMS ON THE FORM BLANK** (N/A, None, Does not apply, etc. are acceptable responses).

The Letter of Transmittal MUST:

1. Identify the submitting business entity (its Name, Mailing Address and Phone Number);
2. Identify the Name, Title, Telephone, and E-mail address of the person authorized by the Offeror's organization to (A) contractually obligate the business entity providing the Offer, (B) negotiate a contract on behalf of the organization; and/or (C) provide

- clarifications or answer questions regarding the Offeror's proposal content (*A response to B and/or C is only required if the responses differs from the individual identified in A*);
3. Be signed and dated by the person identified in #2 above; attesting to the veracity of the information provided, and acknowledging (a) the organization's acceptance of the Conditions Governing the Procurement stated in Section II.C.1, (b) the organizations acceptance of the Section V Evaluation Factors, and (c) receipt of any and all amendments to the RFP.

**Failure to respond to ALL items as indicated above, will result in Offeror's disqualification.**

### **30. 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 any state agency or local public body 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 agency 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 agency 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 City's Chief Procurement Officer 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 City's Chief Procurement Officer 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 Government, the State Purchasing Agent or Central Purchasing Officer may terminate the involved contract for cause. Still further the City's Chief Procurement Officer or Central Purchasing Officer may suspend or debar the Contractor from eligibility for future solicitations until such time as the matter is resolved to the satisfaction of the City's Chief Procurement Officer or Central Purchasing Officer.

### **31. New Mexico Preferences**

To ensure adequate consideration and application of §13-1-21, NMSA 1978 (as amended), Offerors **must** include a copy of their current New Mexico Preference Certificate with their proposal. An expired Preference Certificate will not be considered. 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 current copy of the certification must accompany Offeror's proposal.

#### **B. New Mexico Resident Veterans Business Preference**

A current copy of the certification must accompany Offeror's proposal.

**An agency shall not award a business both a resident business preference and a resident veteran business preference.**

**The New Mexico Preferences shall not apply if/because the expenditures for this RFP include federal funds.**

### 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 proposals must be clearly labeled and numbered and indexed as outlined in **Section III.C. Proposal Format**. Proposals must be submitted in the manner outlined below, and sealed according to the definition provided in Section I.F. Each ORIGINAL binder (Technical and Cost) shall be clearly marked as "ORIGINAL" on the front of the binder. The additional HARD COPIES must each be submitted in separate binders, and must be clearly identified as "COPY" on the front cover.

Technical and Cost portions of Offerors proposal **must** be submitted in separate binders as indicated below in this section, and **must** be prominently identified as "Technical Binder," or "Cost Binder," on each 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 according to the information provided in Section I.E. It is not necessary to segregate Technical Binders from Cost Binders, if they are submitted within the same sealed envelope, package or box, as long as the Technical Binders and Cost Binders are each submitted in separate binders.

Offerors **must** deliver:

##### Binder 1:

- a) **Technical Proposals** – One (1) ORIGINAL, three (3) HARD COPIES, and one (1) ELECTRONIC copy of the proposal containing **ONLY** the Technical Proposal; ORIGINAL and all HARD COPIES of the Technical Proposal shall be in separate labeled binders. **The electronic copy MUST be submitted as a CD/USB Jump drive and CANNOT be emailed.** The Technical Proposals **SHALL NOT** contain any cost information.
- i. **Confidential Information:** If Offeror's proposal contains confidential information, as defined in Section I.F. and detailed in Section II.C.8, Offeror **must** submit:
  - all of the requisite proposals identified in Section III.B.1.a above as **unredacted** (def. Section I.F.) versions for evaluation purposes; **AND**
  - ONE (1) additional **redacted** (def. Section I.F.) HARD COPY version and ONE (1) additional **redacted** electronic version for the public file, in order to facilitate eventual public inspection of the non-confidential version of Offeror's proposal.

Redacted versions **must** be clearly marked as “REDACTED” or “CONFIDENTIAL” on the front cover of the hard-copy binder and on the first page of the electronic file.;

**Binder 2:**

- b) **Cost Proposals** – One (1) ORIGINAL, one (1) HARD COPY, and one (1) ELECTRONIC copy of the proposal containing **ONLY** the Cost Proposal; ORIGINAL and all HARD COPIES of the Cost Proposal shall be in separate labeled binders from the Technical Proposals. **The electronic copy MUST be submitted as a CD/USB Jump Drive and CANNOT be emailed.**

The electronic version/copy of the proposal **must** mirror the physical binders submitted (i.e. One (1) **unredacted CD/USB Jump Drive**, one (1) **redacted CD/USB Jump Drive**). **The electronic version can NOT be emailed.**

The ORIGINAL, HARD COPIES and ELECTRONIC copy information **must** be identical. In the event of a conflict between versions of the submitted proposal, the ORIGINAL shall govern.

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

**Both the ELECTRONIC submission AND the ORIGINAL HARD COPY proposals must be received no later than the time and date indicated in Section II.B.6, Sequence of Events, Submission of Proposals.**

The ELECTRONIC and ORIGINAL hard 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 Proposal Content 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 must 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.



Within each section of the proposal, Offerors should address the items in the order indicated below. All forms provided in this RFP must be thoroughly completed and included in the appropriate section of the proposal. **Any and all discussion of proposed costs, rates or expenses must occur ONLY in Binder 2.**

**a. Technical Proposal (Binder 1) :**

**DO NOT INCLUDE ANY COST INFORMATION IN THE TECHNICAL PROPOSAL**

**It is preferable, in the Binder #1 to have a tab separating each of the following sections:**

- A. Signed Letter of Transmittal
- B. Signed Campaign Contribution Form
- C. Table of Contents
- D. Proposal Summary (Optional-see below)
- E. Response to Contract Terms and Conditions (from Section II.C.15)
- F. Offeror's Additional Terms and Conditions (from Section II.C.16 )
- G. Response to Specifications (**except Cost information which shall be included ONLY in Cost Proposal/Binder 2**)
  1. Organizational Experience
  2. Organizational References
  3. Proof of Liability Insurance
  4. Conflict of Interest-Debarment/Suspension Certification Form (Appendix G)
  5. Capability and Agreement to Perform (Appendix E)
  6. New Mexico Business Preference Certificate (If applicable)
  7. New Mexico Resident Veterans Business Preference Certificate (if applicable)
  8. State of New Mexico Business License

A Proposal Summary may be included in Offeror's Technical Proposal (Binder 1), 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.

**b. Cost Proposal (Binder 2):**

- i. Completed Cost Response Form (APPENDIX F)
- ii. Delivery: Cost Proposal must be in a binder or envelope completely separate from the Technical Proposal Binder in #2. Binder or envelope must be clearly labeled as follows: Cost Proposal RFP #21-22-002 Annual Legal Services.

## **IV. SPECIFICATIONS**

### **A. DETAILED SCOPE OF WORK**

#### **Day to Day and Routine**

- Provision of legal opinion and guidance- but will ultimately leave final decisions to the City Commission and Administration- and continue to provide legal support based on those decisions.
- Advise the City Commission and the City Manager on all matters including Policies and Procedures, Open Meetings, Inspection of Public Records, Elections, Procurement, Administrative Proceedings and Hearings, Meetings Rules, Personnel Matters, Tort, and Criminal Litigations matters that may arise.
- Provide general legal services to the City Commission, City Manager, and Authorized City Staff as needed.
- Research and submission of legal counsel on municipal or other legal matters as requested by the City Manager.
- Shall notify appropriate staff of new laws, legislative mandatory requirements or other when knowledge of such changes are incurred
- Draft and send basic correspondence to individual(s) upon request.
- Perform necessary legal research and prepare briefs when required.
- Review of matters relating to municipal utility operations.
- Advise Elected officials.
- Experience with New Mexico Local Government
- Employment Laws
- Timely response to inquiries

#### **Meeting Attendance**

- Participate in authorized Meetings and/or telephone conversations with Mayor, Commission Members, or City Manager for legal consultation.
- Attend, as requested, Commission Meetings to include, but not limited to, executive sessions, planning sessions, conferences, and department meetings and advise Mayor, City Commission, or City Manager on legal matters.

#### **Resolutions, Codes, Ordinances, Policies**

- Development and drafting of municipal codes, resolutions, ordinances, and rules and regulations relating to all facets of City operations as directed by the City Manager or the City Commission.
- Provision of legal review of policy recommendations, rules and regulations relating to all facets of City operations as directed by the City Manager or the City Commission.
- Render written opinions on law when requested, including interpretation of statutes, ordinances, rules and regulations.
- Provision of legal advice regarding land use and planning and zoning issues.
- Prepare and/or evaluate developer agreements and contracts, subdivision agreements.

- Subdivision, property and road experience.
- Prepare and/or evaluate documents necessary for routine land purchases and/or sales.
- Provision of legal advice on code enforcement and related issues.
- Representation of the City on economic development related issues as may be requested.
- Represent the City, when required, in matters related to the enforcement of City buildings, subdivisions, easements maintenance and zoning codes.
- Review ordinances, resolutions, bonds, deeds, securities, and insurance requirements required by or for the City as needed.

### **Contracts and Procurement**

- Review Procurement documents as needed.
- Draft and review of municipal contracts, including contracts for lease agreements, Memorandums of Understanding, Memorandums of Agreement, Joint Powers Agreements, public improvements, developments, subdivisions, construction, and the approval of content, form, legality, and execution as requested.

### **Litigation**

- Representation of the City before Courts of competent jurisdiction in any pending legal actions against the City or those initiated by the City.
- Prosecution of criminal matters in City Municipal Court.
- Representation of the City before administrative agencies when requested by the City Manager.
- Represent the City at all pre-trial motions when necessary.
- Draft and review Notices of Contemplated Actions.
- Provide written legal opinions and advise City on methods to avoid civil litigation.
- Examine and advise regarding the legality of all proceedings and actions of the City Commission as may be requested.
- Prepare criminal complaints where facts warrant.
- Receive and evaluate assessment appeals as deemed necessary.
- Preparation of trial.
- Negotiate and enter plea bargains where deemed advisable.
- Investigate and evaluate claims by the City against others and recommend appropriate course of action.
- Handle disputes between the City and other governmental units, including litigation as deemed necessary.
- Examine, evaluate, and provide representation for appeals to Appellate Courts.
- Prosecution of criminal matters in the City Municipal Courts.
- Defend in court litigation where insurance coverage is unavailable. This includes but is not limited to: human rights claims, condemnation, zoning and land use regulation matters, permits and administrative actions, administrative citations, code enforcement issues, labor and employment matters.
- Handle various legal matters under construction contracts and any resulting litigation.

## **Employee Issues**

- Provision of legal advice or opinion in respect to personnel matters of the City.
- Attend grievance hearings if requested by the City Manager.

## **Other Services**

- Perform other legal services as necessary to protect the city.

## **Invoicing and Fees**

- Submit a monthly invoice to the City Manager that includes the service performed, the requester, the time involved, and the specific question or matter addressed.
- Provide all of the services listed above for a monthly flat fee based on an annual fee.

## **B. TECHNICAL SPECIFICATIONS**

### **1. Organizational Experience**

Offeror **must**:

- a) provide a detailed description of relevant corporate experience with state and municipal governments and the private sector. The experience of all proposed subcontractors must be described. The narrative **must** thoroughly describe how the Offeror has supplied expertise for similar contracts and must include the extent of their experience, expertise and knowledge as a provider of Legal Services for a municipality and governmental entity. All Legal Services provided to private sector will also be considered;
- b) provide a brief resume/bio of all key personnel Offeror proposes to use in performance of the resulting contract, should Offeror be awarded. Key personnel are identified as anyone who will provide legal services or to the agency. Offeror must include key personnel education, work experience, and relevant/applicable certifications/licenses.
- c) describe at least two project successes and failures of a Legal Services engagement. Include how each experience improved the Offeror's services.

### **2. Organizational References**

Offeror must provide a list of a minimum of three (3) references from similar projects/programs performed for private, state or large, small or local government clients within the last three (3) years.

Offeror shall include the following Business Reference information as part of its proposals:

- a) Client name;
- b) Project description;
- c) Project dates (starting and ending);
- d) Staff assigned to reference engagement that will be designated for work per this RFP; and
- e) Client project manager name, telephone number, fax number and e-mail address.

Offeror is required to submit APPENDIX D, Organizational Reference Questionnaire (“Questionnaire”), to the business references it lists from above. **The business references must submit the Questionnaire directly to the designee identified in APPENDIX D. The business references must not return the completed Questionnaire to the Offeror.** It is the Offeror’s responsibility to ensure the completed forms are submitted on or before the date indicated in Section II.A, Sequence of Events, for inclusion in the evaluation process.

Organizational References that are not received or are not complete, may adversely affect the Offeror’s score in the evaluation process. Offerors are encouraged to specifically request that their Organizational References provide detailed comments.

### **3. Capability and Agreement to Perform**

Offeror must identify on **APPENDIX E** which services they will or will not be capable and willing to provide as written in the Detailed Scope of Work. Offeror will mark on **APPENDIX E** a “Y” for Yes, indicating that the Offeror is capable and willing to perform the service or an “N” for No, if Offeror is not capable or willing to perform the service.

**APPENDIX E** will be part of the evaluation and must be returned in the proposal.

## **C. BUSINESS SPECIFICATIONS**

### **1. Letter of Transmittal Form**

The Offeror’s proposal **must** be accompanied by the Letter of Transmittal Form located in **APPENDIX C**. The form **must** be completed and must be signed by the person authorized to obligate the company. **Failure to respond to ALL items, as indicated in Section II.C.30 and APPENDIX C, and to return a signed, unaltered form will result in Offeror’s disqualification.**

### **2. 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**). **Failure to complete and return the signed, unaltered form will result in Offeror’s disqualification.**

### **3. State of New Mexico Business License**

Offeror must provide a copy of a valid and current State of New Mexico Business License with their proposal. The license shall indicate firm is licensed and is able to provide professional legal services in the State of New Mexico. The license must be signed and dated by an individual authorized to contractually bind the firm. Including the State of New Mexico Seal and must be current.

### **4. Proof of Liability Insurance**

Offeror must provide proof of current liability insurance.

### **5. Conflict of Interest-Debarment/Suspension Certification Form (Appendix G)**

Offeror must represent and warrant 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.

Offeror must certify that it is not suspended, debarred or ineligible from entering into contracts with the Executive Branch of the Federal Government, or in receipt of a notice or proposed debarment from any Agency.

### **6. Cost**

Offerors must complete the Cost Response Form in APPENDIX F. Cost will be measured by the total cost of a monthly fee for services as required in the Detail Scope of Work.

### **7. 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, in this section, of its current New Mexico Resident preference certificate, as issued by the New Mexico Taxation and Revenue Department. Points will be added for one or the other, but not both.

## 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.

<b>Evaluation Factors</b> <i>(Correspond to section IV.B and IV C)</i>	<b>Points Available</b>
<b>B. Technical Specifications</b>	
B. 1. Organizational Experience	10
B. 2. Organizational References	10
B. 3. Capability and Agreement to Perform	40
<b>C. Business Specifications</b>	
C.1. Letter Of Transmittal	Pass/Fail
C.2. Campaign Contribution Disclosure Form	Pass/Fail
C.3. State of NM Business License	Pass/Fail
C.4. Proof of Liability Insurance	Pass/Fail
C.5. Conflict of Interest-Debarment/Suspension Certification	Pass/Fail
C.6. Cost	40
<b>TOTAL POINTS AVAILABLE</b>	<b>100</b>
C.7. New Mexico Preference - Resident Vendor Points per Section IV C.7 - OR-	<b>5</b>
C.7. New Mexico Preference - Resident Veterans Points per Section IV C.7	<b>10</b>

Table 1: Evaluation Point Summary

### B. EVALUATION FACTORS

#### 1. B.1 Organizational Experience (See Table 1)

Points will be awarded based on the thoroughness and clarity of Offeror's response in this Section. The Evaluation Committee will also weigh the relevancy and extent of Offeror's experience, expertise and knowledge; and of personnel education, experience and certifications/licenses. In addition, points will be awarded based on Offeror's candid and well-thought-out response to successes and failures, as well as the ability of the Offeror to learn from its failures and grow from its successes.

## **2. B.2 Organizational References (See Table 1)**

Points will be awarded based upon an evaluation of the responses to a series of questions on the Organizational Reference Questionnaire (Appendix D). Offeror will be evaluated on references that show positive service history, successful execution of services and evidence of satisfaction by each reference. References indicating significantly similar services/scopes of work and comments provided by a submitted reference will add weight and value to a recommendation during the evaluation process. Points will be awarded for each individual response up to 1/3 of the total points for this category. Lack of a response will receive zero (0) points.

The Evaluation Committee may contact any or all business references for validation of information submitted. If this step is taken, the Procurement Manager and the Evaluation Committee must all be together on a conference call with the submitted reference so that the Procurement Manager and all members of the Evaluation Committee receive the same information. Additionally, the Agency reserves the right to consider any and all information available to it (outside of the Organizational Reference information required herein), in its evaluation of Offeror responsibility per Section II.C.18.

## **3. B.3 Capability and Agreement to Perform (See Table 1)**

Points will be awarded based upon the services that the Offeror is capable and willing to perform by an indication of a Yes or “Y” answer by each service listed on Appendix E. Each service will have a point value. Services that the Offeror is not capable or willing to perform by an indication of a No or “N” answer will receive 0 points.

## **4. C.1 Letter of Transmittal (See Table 1)**

Pass/Fail only. No points assigned.

## **5. C.2 Campaign Contribution Disclosure Form (See Table 1)**

Pass/Fail only. No points assigned.

## **6. C.3 State of New Mexico Business License (See Table 1)**

Pass/Fail only. No points assigned.

## **7. C.4 Proof of Liability Insurance (See Table 1)**

Pass/Fail only. No points assigned.

## **8. C.5 Conflict of Interest-Debarment/Suspension Certification Form (See Table 1)**

Pass/Fail only. No points assigned.



**9. C.6 Cost (See Table 1)**

The evaluation of each Offeror’s cost proposal will be conducted using the following formula:

The total of all four years will be used to calculate the Cost score.

$$\frac{\text{Lowest Responsive Offeror's Total Cost}}{\text{Each Offeror's Total Cost}} \times \text{Available Award Points}$$

**10. C.7 New Mexico Preferences**

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

**A. New Mexico Resident Business Preference**

If the Offeror has provided a copy of their Preference Certificate the Preference Points for a New Mexico Resident Business is 5% of the total points available in this RFP.

**B. New Mexico Resident Veterans Business Preference**

If the Offeror has provided a copy of their Preference Certificate the Preference Points for a New Mexico Resident Veteran Business is 10% of the total points available in this RFP.

**C. 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. Responsive proposals will be evaluated on the factors in Section IV, which have been assigned a point value in Section V. The responsible Offerors with the highest scores will be selected as finalist Offerors, based upon the proposals submitted. In accordance with 13-1-117 NMSA 1978, the responsible Offerors whose proposals are most advantageous to the City taking into consideration the Evaluation Factors in Section V will be recommended for award (as specified in Section II.B.10). 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**

**APPENDIX A**  
**REQUEST FOR PROPOSAL**  
**LEGAL SERVICES**  
**RFP #21-22-002**

**ACKNOWLEDGEMENT OF RECEIPT FORM**

This Acknowledgement of Receipt Form should be signed and submitted no later than **2:00 PM MST on 8/24/21**. Only potential Offerors who elect to return this form will receive copies of all submitted questions and the written responses to those questions, as well as any RFP amendments, if any are issued.

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

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

ORGANIZATION: \_\_\_\_\_

CONTACT NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_ PHONE NO.: \_\_\_\_\_

E-MAIL: \_\_\_\_\_(please print)

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

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP CODE: \_\_\_\_\_

**Submit Acknowledgement of Receipt Form to:**

To: Chief Procurement Officer/Manager

505 Sims Street

Truth or Consequences, NM 87901

E-mail: [procurement@torcnm.org](mailto:procurement@torcnm.org)

Subject Line: RFP 21-22-002 Legal Services, Acknowledgement of Receipt Form

## APPENDIX B

### CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to the Procurement Code, Sections 13-1-28, et seq., NMSA 1978 and NMSA 1978, § 13-1-191.1 (2006), as amended by Laws of 2007, Chapter 234, a prospective contractor subject to this section shall disclose all campaign contributions given by the prospective contractor or a family member or representative of the prospective contractor to an applicable public official of the state or a local public body during the two years prior to the date on which a proposal is submitted or, in the case of a sole source or small purchase contract, the two years prior to the date on which the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor or a family member or representative of the prospective contractor to the public official exceeds two hundred fifty dollars (\$250) over the two-year period. A prospective contractor submitting a disclosure statement pursuant to this section who has not contributed to an applicable public official, whose family members have not contributed to an applicable public official or whose representatives have not contributed to an applicable public official shall make a statement that no contribution was made.

A prospective contractor or a family member or representative of the prospective contractor shall not give 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 during the pendency of negotiations for a sole source or small purchase contract.

Furthermore, a solicitation or proposed award for a proposed contract may be canceled pursuant to Section [13-1-181](#) NMSA 1978 or a contract that is executed may be ratified or terminated pursuant to Section [13-1-182](#) NMSA 1978 if a prospective contractor fails to submit a fully completed disclosure statement pursuant to this section; or a prospective contractor or family member or 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.

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

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

The following definitions apply:

**“Applicable public official”** means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the

authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

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

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

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

**“Prospective contractor”** means a person or business that is subject to the competitive sealed proposal process set forth in the Procurement Code [Sections [13-1-28](#) through [13-1-199](#) NMSA 1978] or is not required to submit a competitive sealed proposal because that person or business qualifies for a sole source or small purchase contract.

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

**Name(s) of Applicable Public Official(s) if any:** \_\_\_\_\_

**DISCLOSURE OF CONTRIBUTIONS BY PROSPECTIVE CONTRACTOR:**

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

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

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

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

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

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

(Attach extra pages if necessary)

\_\_\_\_\_  
Signature Date

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

**--OR--**

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

\_\_\_\_\_  
Signature Date

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

## **APPENDIX C**

### **LETTER OF TRANSMITTAL FORM**

## APPENDIX C

### Letter of Transmittal Form

**ITEMS #1 to #4 EACH MUST BE COMPLETED IN FULL (pursuant to Section II.C.30).  
FAILURE TO RESPOND TO ALL FOUR (4) ITEMS WILL RESULT IN THE  
DISQUALIFICATION OF OFFEROR'S PROPOSAL! DO NOT LEAVE ANY ITEM BLANK!**  
(N/A, None, Does not apply, etc. are acceptable responses.)

**RFP#: 21-22-002 Legal Services**

**1. Identify the following information for the submitting organization:**

<b>Offeror Name</b>	
<b>Mailing Address</b>	
<b>Telephone</b>	
<b>FED ID#</b>	
<b>NM CRS#</b>	

**2. Identify the individual(s) authorized by the organization to (A) contractually obligate, (B) negotiate, and/or (C) clarify/respond to queries on behalf of this Offeror:**

	A Contractually Obligate	B Negotiate*	C Clarify/Respond to Queries*
<b>Name</b>			
<b>Title</b>			
<b>E-mail</b>			
<b>Telephone</b>			

\* If the individual identified in Column A also performs the functions identified in Columns B & C, then no response is required for those Columns. If separate individuals perform the functions in Columns B and/or C, they must be identified.

**3. Describe any relationship with any entity (such as a State Agency, reseller, etc. that is not a subcontractors listed in #3 above), if any, which will be used in the performance of any resultant contract. (N/A, None, Does not apply, etc. are acceptable responses to this item.)**

\_\_\_\_\_  
(Attach extra sheets, as needed)

**By signing the form below, the Authorized Signatory attests to the accuracy and veracity of the information provided on this form, and explicitly acknowledges the following:**

- On behalf of the submitting-organization identified in item #1, above, I accept the Conditions Governing the Procurement, as required in Section II.C.1. of this RFP;
- I concur that submission of our proposal constitutes acceptance of the Evaluation Factors contained in Section V of this RFP; and
- I acknowledge receipt of any and all amendments to this RFP, if any.

\_\_\_\_\_, 20\_\_\_\_\_  
Authorized Signature and Date (*Must be signed by the individual identified in item #2.A, above.*)

## APPENDIX D



# **ORGANIZATIONAL REFERENCE QUESTIONNAIRE**

## APPENDIX D

### ORGANIZATIONAL REFERENCE QUESTIONNAIRE

The City of Truth or Consequences, as a part of the RFP process, requires Offerors to list a minimum and maximum of three (3) organizational references in their proposals. The purpose of these references is to document Offeror's experience relevant to the Section IV.A, Detailed Scope of Work in an effort to evaluate Offeror's ability to provide goods and/or services, performance under similar contracts, and ability to provide knowledgeable and experienced staffing.

Offeror is required to send the following Organizational Reference Questionnaire to each business reference listed in its proposal Section IV. B.2. The business reference, if it chooses to respond, is required to submit its response to the Organizational Reference Questionnaire (Appendix D) directly to: the Chief Procurement Officer at [procurement@torcnm.org](mailto:procurement@torcnm.org) by 2:00 PM, MST 9/2/2021 as per Section II. A.5. Sequence of Events for inclusion in the evaluation process. The Questionnaire and information provided will become a part of the submitted proposal. Businesses/Organizations providing references may be contacted for validation of content provided therein.

**RFP # 21-22-002 LEGAL SERVICES  
ORGANIZATIONAL REFERENCE QUESTIONNAIRE  
FOR:**

\_\_\_\_\_  
(Name of Offeror)

This form is being submitted to your company for completion as a reference for the organization listed above. This Questionnaire is to be submitted to the Chief Procurement Officer, City of Truth or Consequences, via e-mail at:

Name: Chief Procurement Officer  
 Email: [procurement@torcnm.org](mailto:procurement@torcnm.org)  
 Mail: 505 Sims Street, Truth or Consequences, NM 87901

**Forms must be submitted no later than 2:00 pm MST on 9/2/2021, and must not be returned to the organization requesting the reference. References are strongly encouraged to provide comments in response to organizational ratings.**

**For questions or concerns regarding this form**, please contact the City of Truth or Consequences' **Procurement Manager** at 575-740-7323 or at [procurement@torcnm.org](mailto:procurement@torcnm.org). When contacting the Procurement Manager, include the Request for Proposal number provided at the top of this page.

<b>Organization providing reference</b>	
<b>Contact name and title/position</b>	
<b>Contact telephone number(s)</b>	
<b>Contact e-mail address</b>	
<b>Project description</b>	
<b>Project dates (start and end dates)</b>	
<b>Service: Legal Services</b>	

QUESTIONS:

1. In what capacity have you worked with this vendor in the past?

COMMENTS:

2. How would you rate this firm's knowledge and expertise?

\_\_\_\_ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

COMMENTS:

3. How would you rate the vendor's flexibility relative to changes in the project scope and timelines?

\_\_\_\_ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

COMMENTS:

4. What is your level of satisfaction with hard-copy materials produced by the vendor?

\_\_\_\_ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable, N/A = Not applicable)

COMMENTS:

5. How would you rate the dynamics/interaction between vendor personnel and your staff?  
\_\_\_\_\_ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

COMMENTS:

6. Who are/were the vendor's principal representatives involved in your project and how would you rate them individually? Would you, please, comment on the skills, knowledge, behaviors or other factors on which you based the rating?

\_\_\_\_\_ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

Name: \_\_\_\_\_ Rating: \_\_\_\_\_

Name: \_\_\_\_\_ Rating: \_\_\_\_\_

Name: \_\_\_\_\_ Rating: \_\_\_\_\_

Name: \_\_\_\_\_ Rating: \_\_\_\_\_

COMMENTS:

7. How satisfied are/were you with the services and documents provided by the vendor?

\_\_\_\_\_ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable, N/A = Not applicable)

COMMENTS:

8. With which aspect(s) of this vendor's services are/were you most satisfied?

COMMENTS:

9. With which aspect(s) of this vendor's services are/were you least satisfied?

COMMENTS:

10. Would you recommend this vendor's services to your organization again?

COMMENTS:

## **APPENDIX E**

### **CAPABILITY AND AGREEMENT TO PERFORM**

**APPENDIX E**  
**CAPABILITY AND AGREEMENT TO PERFORM**

**Note: The answers on this form are part of the evaluation factors. Each services must be answered as per the sentence below and the form must be signed and submitted in the Technical Proposal section of Binder 1.**

Please indicate by each service listed below a “**Y**” for **Yes** indicating that the Offeror is capable and willing to perform the service(s) or an “**N**” for **No**, if Offeror is not capable or willing to perform the service(s). Each service must be marked. Points: **Y** = 1 point unless otherwise indicated **N** = 0 points

**Day to Day and Routine (Total 12 points)**

**Y or N**

- Provision of legal opinion and guidance- but will ultimately leave final decisions to the City Commission and Administration- and continue to provide legal support based on those decisions.
- Advise the City Commission and the City Manager on all matters including Policies and Procedures, Open Meetings, Inspection of Public Records, Elections, Procurement, Administrative Proceedings and Hearings, Meetings Rules, Personnel Matters, Tort, and Criminal Litigations matters that may arise.
- Provide general legal services to the City Commission, City Manager, and Authorized City Staff as needed.
- Research and submission of legal counsel on municipal or other legal matters as requested by the City Manager.
- Shall notify appropriate staff of new laws, legislative mandatory requirements or other when knowledge of such changes are incurred
- Draft and send basic correspondence to individual(s) upon request.
- Perform necessary legal research and prepare briefs when required.
- Review of matters relating to municipal utility operations.
- Advise Elected officials.
- Experience with New Mexico Local Government
- Employment Laws
- Timely response to inquiries

**Meeting Attendance (Total 2 points)**

**Y or N**

- Participate in authorized Meetings and/or telephone conversations with Mayor, Commission Members, or City Manager for legal consultation.
- Attend, as requested, Commission Meetings to include, but not limited to, executive sessions, planning sessions, conferences, and department meetings and advise Mayor, City Commission, or City Manager on legal matters.



**Resolutions, Codes, Ordinances, Policies (Total 11 points)**

**Y or N**

- \_\_\_\_\_ Development and drafting of municipal codes, resolutions, ordinances, and rules and regulations relating to all facets of City operations as directed by the City Manager or the City Commission.
- \_\_\_\_\_ Provision of legal review of policy recommendations, rules and regulations relating to all facets of City operations as directed by the City Manager or the City Commission.
- \_\_\_\_\_ Render written opinions on law when requested, including interpretation of statutes, ordinances, rules and regulations.
- \_\_\_\_\_ Provision of legal advise regarding land use and planning and zoning issues.
- \_\_\_\_\_ Prepare and/or evaluate developer agreements and contracts, subdivision agreements.
- \_\_\_\_\_ Subdivision, property and road experience.
- \_\_\_\_\_ Prepare and/or evaluate documents necessary for routine land purchases and/or sales.
- \_\_\_\_\_ Provision of legal advice on code enforcement and related issues.
- \_\_\_\_\_ Representation of the City on economic development related issues as may be requested.
- \_\_\_\_\_ Represent the City, when required, in matters related to the enforcement of City buildings, subdivisions, easements maintenance and zoning codes.
- \_\_\_\_\_ Review ordinances, resolutions, bonds, deeds, securities, and insurance requirements required by or for the City as needed.

**Contracts and Procurement (Total 2 points)**

**Y or N**

- \_\_\_\_\_ Review Procurement documents as needed.
- \_\_\_\_\_ Draft and review of municipal contracts, including contracts for lease agreements, Memorandums of Understanding, Memorandums of Agreement, Joint Powers Agreements, public improvements, developments, subdivisions, construction, and the approval of content, form, legality, and execution as requested.

**Litigation (Total 17 points)**

**Y or N**

- \_\_\_\_\_ Representation of the City before Courts of competent jurisdiction in any pending legal actions against the City or those initiated by the City.
- \_\_\_\_\_ Prosecution of criminal matters in City Municipal Court.
- \_\_\_\_\_ Representation of the City before administrative agencies when requested by the City Manager.
- \_\_\_\_\_ Represent the City at all pre-trial motions when necessary.
- \_\_\_\_\_ Draft and review Notices of Contemplated Actions.
- \_\_\_\_\_ Provide written legal opinions and advise City on methods to avoid civil litigation.
- \_\_\_\_\_ Examine and advise regarding the legality of all proceedings and actions of the City Commission as may be requested.
- \_\_\_\_\_ Prepare criminal complaints where facts warrant.
- \_\_\_\_\_ Receive and evaluate assessment appeals as deemed necessary.
- \_\_\_\_\_ Preparation of trial.

- Negotiate and enter plea bargains where deemed advisable.
- Investigate and evaluate claims by the City against others and recommend appropriate course of action.
- Handle disputes between the City and other governmental units, including litigation as deemed necessary.
- Examine, evaluate, and provide representation for appeals to Appellate Courts.
- Prosecution of criminal matters in the City Municipal Courts.
- Defend in court litigation where insurance coverage is unavailable. This includes but is not limited to: human rights claims, condemnation, zoning and land use regulation matters, permits and administrative actions, administrative citations, code enforcement issues, labor and employment matters.
- Handle various legal matters under construction contracts and any resulting litigation.

**Employee Issues (Total 2 points)**

**Y or N**

- Provision of legal advice or opinion in respect to personnel matters of the City.
- Attend grievance hearings if requested by the City Manager.

**Other Services (Total 1 point)**

**Y or N**

- Perform other legal services as necessary to protect the city.

**Invoicing and Fees (Total 3 points)**

**Y or N**

- Submit a monthly invoice to the City Manager that includes the service performed, the requester, the time involved, and the specific question or matter addressed. **(1 pt)**
- Provide all of the services listed above for a monthly flat fee based on an annual fee. **(2 pts)**

ORGANIZATION: \_\_\_\_\_

AUTHORIZED SIGNER: \_\_\_\_\_

By completing, signing, and submitting this document, I attest, on behalf of the Organization listed above, that said Organization will be able to provide the services listed above marked with a “Y” for Yes. The Organization will not be able to provide any of the services marked with an “N” for No.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## APPENDIX F

### COST RESPONSE FORM

The cost proposal listed below is for the services that we are capable and willing to provide/perform as indicated by a “Y” for Yes on Appendix E CAPABILITY AND AGREEMENT TO PERFORM.

All amounts provided must include all labor, materials, equipment, transportation, configuration, installation, training and profit to provide the goods and/or services described in Section IV.A, (as amended by any current RFP amendments for the period specified).

Flat Annual Fee (Do Not Include Taxes)

Option Year 1: (10/01/2021 thru 09/30/2022) Price: \$ \_\_\_\_\_

Option Year 2: (10/01/2022 thru 09/30/2023) Price: \$ \_\_\_\_\_

Option Year 3: (10/01/2023 thru 09/30/2024) Price: \$ \_\_\_\_\_

Option Year 4: (10/01/2024 thru 09/30/2025) Price: \$ \_\_\_\_\_

**APPENDIX G**

**CITY OF TRUTH OR CONSEQUENCES  
CONFLICT OF INTEREST-DEBARMENT/SUSPENSION  
CERTIFICATION FORM**

## APPENDIX G

### CITY OF TRUTH OR CONSEQUENCES CONFLICT OF INTEREST-DEBARMENT/SUSPENSION CERTIFICATION FORM

#### **CONFLICT OF INTEREST; GOVERNMENTAL CONDUCT ACT.**

HA. 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 anyway limiting the generality of the foregoing, the Contractor specifically represents and warrants that:

- 1) in accordance with Section 10-16-4.3 NMSA 1978, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any County employee while such employee was or is employed by the County and participating directly or indirectly in the City's contracting process;
- 2) this Agreement complies with Section 10-16-7(8) NMSA 1978 because
  - (i) the Contractor is not a public officer or employee of the City; (ii) the Contractor is not a member of the family of a public officer or employee of the City; (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 City, a member of the family of a public officer or employee of the City, or a business in which a public officer or employee of the City or the family of a public officer or employee of the City has a substantial interest, public notice was given as required by Section 10-16-7(B) NMSA 1978 and this Agreement was awarded pursuant to a competitive process;
- 3) in accordance with Section 10-16-8(C) NMSA 1978, (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the City 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 City whose official act, while in City employment, directly resulted in the City's making this Agreement;
- 4) in accordance with Section 10-16-13 NMSA 1978, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and
- 5) in accordance with Section 10-16-3 and Section 10-16-13.3 NMSA 1978, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the County.

C. Contractor's representations and warranties in Paragraphs A and B of this Article 13 are material representations of fact upon which the City relied when this Agreement was entered into

by the parties. Contractor shall provide immediate written notice to the City 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 Article 13 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 Article 13 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 City and notwithstanding anything in the Agreement to the contrary, the City may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this Article 13(B).

**DEBARMENT/SUSPENSION STATUS**

The Vendor certifies that it is not suspended, debarred or ineligible from entering into contracts with the Executive Branch of the Federal Government, or in receipt of a notice or proposed debarment from any Agency. The vendor agrees to provide immediate notice to the City's Chief Procurement Officer in the event of being suspended, debarred or declared ineligible by any department or federal agency, or upon receipt of a notice of proposed debarment that is received after the submission of the quote or Bid but prior to the award of the /Purchase Order/Agreement or contract.

**CERTIFICATION**

The undersigned hereby certifies that he/she has read the above CONFLICT OF INTEREST and DEBARMENT/SUSPENSION Status requirements and that he/she understands and will comply with these requirements. The undersigned further certifies that they have the authority to certify compliance for the vendor named and that the information contained in this document is true and accurate to the best of their knowledge.

ORGANIZATION: \_\_\_\_\_

NAME OF AUTHORIZED SIGNER: \_\_\_\_\_

TITLE: \_\_\_\_\_ PHONE NO.: \_\_\_\_\_

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

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP CODE: \_\_\_\_\_

\_\_\_\_\_  
AUTHORIZED SIGNATURE

\_\_\_\_\_  
DATE

**APPENDIX H**

**DRAFT CONTRACT**

# APPENDIX H

## DRAFT CONTRACT

**The Agreement included in this Appendix H represents the contract the Agency intends to use to make an award. The City of Truth or Consequences reserves the right to modify the Agreement prior to, or during, the award process, as necessary.**

THIS AGREEMENT is made and entered into by and between the City of Truth or Consequences New Mexico (the "City"), a municipal corporation and political subdivision of the State of New Mexico, and [REDACTED] (the "Contractor") and is effective as of the date set forth below upon which it is executed.

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 City of Truth or Consequences; and

WHEREAS, all terms and conditions of the Request For Proposal Number 21-22-002 Annual Legal Services and the Contractor's response to such document(s) are incorporated herein by reference (Attachment A).

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

**1. Scope of Work.**

- a. The Contractor shall perform the work as outlined in Exhibit A, attached hereto and incorporated herein by reference.

**2. Compensation.**

- a. The City shall pay to the Contractor a flat amount of \$\_\_\_\_\_ per month plus New Mexico Gross Receipts Tax not to exceed an annual flat amount of \$\_\_\_\_\_ plus New Mexico Gross Receipts Tax for services satisfactorily performed.
- b. Payment is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work. All invoices MUST BE received by the City no later than fifteen (15) days after the termination of the Fiscal Year (the



fiscal year is July 1 to June 30) in which the services were delivered.

- c. Contractor must submit a detailed statement accounting for all services performed and expenses incurred to the City Manager at 505 Sims Street, Truth or Consequences, NM 87901. If the City finds that the services are not acceptable, within thirty days after the date of receipt of written notice from the Contractor that payment is requested, it shall provide the Contractor a letter of exception explaining the defect or objection to the services, and outlining steps the Contractor may take to provide remedial action. Upon certification by the City that the services have been received and accepted, payment shall be tendered to the Contractor within thirty days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, the City shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

**3. Term.**

- a. This Agreement shall be in effect as of \_\_\_\_\_ and will expire on \_\_\_\_\_.

**4. Contract Renewal.**

- a. This contract may be renewed up to three (3) additional years after the original contract issue date.
- b. Renewal can only be initiated by the City after approval of the City Commission.

**5. Termination.**

- a. Termination. This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. Except as otherwise allowed or provided under this Agreement, the City's sole liability upon such termination shall be to pay for acceptable work performed prior to the Contractor's receipt of the notice of termination along with contractors expenses to comply with City's termination notice, if the City is the terminating party, or the Contractor's sending of the notice of termination, if the Contractor is the terminating party; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor if the Contractor becomes unable to perform the services contracted for, as determined by the City, and fails to implement corrective action within ten (10) business days of the City's notice, or if, during the term of this Agreement, the Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to

misuse of state funds or due to the Appropriations paragraph herein and contractors failure to implement corrective actions for fault. *THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE CITY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.*

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

## **6. Appropriations.**

- a. The terms of this Agreement are contingent upon sufficient appropriations and authorization. If sufficient appropriations and authorization do not exist, this Agreement shall terminate immediately upon written notice being given by the City to the Contractor. The City's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the City 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**

- a. The Contractor and its agents and employees are independent contractors performing professional services for the City and are not employees of the City of Truth or Consequences. 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 City of Truth or Consequences 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 City of Truth or Consequences unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

## **8. Discrimination Prohibited**

- a. In performing the services required hereunder, the Contractor shall not discriminate against any person on the basis of race, color, religion, sex, national origin or ancestry, age, physical handicap or disability.

**9. ADA Requirement**

- a. In performing the Services required hereunder, the Contractor agrees to meet all the requirements of the regulations, (the “ADA”), which are imposed directly on the Contractor or which would be imposed on the City as a public entity. The Contractor agrees to be responsible for knowing all applicable rules and requirements of the ADA and to defend, indemnify and hold harmless the City, its officials, agents, and employees from and against any claims, actions, suits or proceedings of any kind brought against the Contractor as a result of any act or omissions of the Contractor or its agents in violation.

**10. Reports and Information**

- a. At such times and in such forms as the City may require, there shall be furnished to the City such statements, records, reports, data and information, as the City may request pertaining to matters covered in this Agreement. (additional requirements may be added)

**11. Establishment and Maintenance of Records**

- a. Records shall be maintained by the Contractor in accordance with applicable law and requirements prescribed by the City with respect to all matters covered by this Agreement. Except as otherwise authorized by City, such records shall be maintained for a period of three years after receipt of final payment under this Agreement. Copies and originals of pertinent documents shall be provided to the City as directed by the City Manager.

**12. Publication, Reproduction and Use of Materials**

- a. No material(s) produced in whole or in part under this Agreement shall be subject to copyright in the United States or in any other country. The City shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data or other materials prepared under this Agreement. The City and the Contractor acknowledge that the above is not meant to affect the attorney/client privilege unless waived by the City Commission.

**13. Construction and Severability**

- a. If any part of this Agreement is held to be invalid or unenforceable, such holding will not affect the validity or enforcement of any part of this Agreement, so long as the remainder of the Agreement is reasonably capable of completion.

#### **14. Claims**

- a. The Contractor shall defend, save and hold harmless the City from claims to the extent caused or allegedly caused by negligence on the part of the Contractor in performance of Contractor's scope of work under this Agreement.

#### **15. Subcontracting**

- a. The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the City. 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 City.

#### **16. Release**

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

#### **17. Confidentiality**

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

#### **18. Product of Service - Copyright.**

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

#### **19. 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.

**20. Merger.**

- a. 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.

**21. Penalties for Violation of Law.**

- a. The Procurement Code, Sections 13-1-28 through 13-1-199, NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.
- b. The parties hereto affirmatively state that no illegal bribes, gratuities or kickbacks of any sort have been or will be made or requested in connection with this Agreement.

**22. Equal Opportunity Compliance.**

- a. 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.

**23. Applicable Law.**

- a. 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 New Mexico court of competent jurisdiction in accordance with Section 38-3-1 (G) NMSA 1978. 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.

**24. Workers Compensation.**

- a. 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 City.

**25. Records and Audits**

- a. The Contractor shall maintain accounts and records, including personnel, property and financial records, adequate to identify and account for all costs pertaining to the Agreement and such other records as may be deemed necessary by the City and to assure proper accounting for all project funds, both federal and non-federal shares. These records will be made available for audit purposes to the City or any authorized representative, and will be retained for three (3) years after the payment for the work under this Agreement unless permission to destroy them is granted by the City and the funding City.

**26. Indemnification.**

- a. The Contractor shall defend, indemnify and hold harmless the City from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source to the extent caused by the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Contractor 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 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 or City the receiving party shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the other party by certified mail.

**27. Invalid Term or Condition.**

- a. 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.

**28. Enforcement of Agreement.**

- a. 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.

**29. Notices.**

- a. 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:
  
- b. To the City:
  - i. City Manager,  
505 Sims Street  
Truth or Consequences, NM 87901
  
- c. To the Contractor:
  - ii. \_\_\_\_\_

**30. Authority.**

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

**31. Insurance**

- a. Contractor shall maintain the types and amounts of insurance required by the New Mexico State Tort Claims Act for the term of this Agreement.

**32. Assignability**

- a. The Contractor shall not assign any interest on this Agreement, and shall not transfer any interest in the same (whether by assignment or notation), without the prior written consent of the City thereto: Provided, however, that claims for money by the Contractor from the City under the Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment or transfer shall be furnished promptly to the City.

**33. 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 City 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 Article 4 herein, or to agree to

the reduced funding.

**34. Entire Agreement:**

- a. This Agreement shall be governed and construed and enforced in accordance with the laws of the State of New Mexico and the ordinances of the City of Truth or Consequences.

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

By: \_\_\_\_\_  
City of Truth or Consequences

Date: \_\_\_\_\_

By: \_\_\_\_\_  
City’s Legal Counsel –Certifying legal sufficiency

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Contractor

Date: \_\_\_\_\_



**EXHIBIT A**  
**SCOPE OF WORK**  
**ANNUAL LEGAL SERVICES**

**Day to Day and Routine**

- Provision of legal opinion and guidance- but will ultimately leave final decisions to the City Commission and Administration- and continue to provide legal support based on those decisions.
- Advise the City Commission and the City Manager on all matters including Policies and Procedures, Open Meetings, Inspection of Public Records, Elections, Procurement, Administrative Proceedings and Hearings, Meetings Rules, Personnel Matters, Tort, and Criminal Litigations matters that may arise.
- Provide general legal services to the City Commission, City Manager, and Authorized City Staff as needed.
- Research and submission of legal counsel on municipal or other legal matters as requested by the City Manager.
- Shall notify appropriate staff of new laws, legislative mandatory requirements or other when knowledge of such changes are incurred
- Draft and send basic correspondence to individual(s) upon request.
- Perform necessary legal research and prepare briefs when required.
- Review of matters relating to municipal utility operations.
- Advise Elected officials.
- Experience with New Mexico Local Government
- Employment Laws
- Timely response to inquiries

**Meeting Attendance**

- Participate in authorized Meetings and/or telephone conversations with Mayor, Commission Members, or City Manager for legal consultation.
- Attend, as requested, Commission Meetings to include, but not limited to, executive sessions, planning sessions, conferences, and department meetings and advise Mayor, City Commission, or City Manager on legal matters.

**Resolutions, Codes, Ordinances, Policies**

- Development and drafting of municipal codes, resolutions, ordinances, and rules and regulations relating to all facets of City operations as directed by the City Manager or the City Commission.
- Provision of legal review of policy recommendations, rules and regulations relating to all facets of City operations as directed by the City Manager or the City Commission.
- Render written opinions on law when requested, including interpretation of statutes, ordinances, rules and regulations.
- Provision of legal advice regarding land use and planning and zoning issues.
- Prepare and/or evaluate developer agreements and contracts, subdivision agreements.
- Subdivision, property and road experience.

- Prepare and/or evaluate documents necessary for routine land purchases and/or sales.
- Provision of legal advice on code enforcement and related issues.
- Representation of the City on economic development related issues as may be requested.
- Represent the City, when required, in matters related to the enforcement of City buildings, subdivisions, easements maintenance and zoning codes.
- Review ordinances, resolutions, bonds, deeds, securities, and insurance requirements required by or for the City as needed.

### **Contracts and Procurement**

- Review Procurement documents as needed.
- Draft and review of municipal contracts, including contracts for lease agreements, Memorandums of Understanding, Memorandums of Agreement, Joint Powers Agreements, public improvements, developments, subdivisions, construction, and the approval of content, form, legality, and execution as requested.

### **Litigation**

- Representation of the City before Courts of competent jurisdiction in any pending legal actions against the City or those initiated by the City.
- Prosecution of criminal matters in City Municipal Court.
- Representation of the City before administrative agencies when requested by the City Manager.
- Represent the City at all pre-trial motions when necessary.
- Draft and review Notices of Contemplated Actions.
- Provide written legal opinions and advise City on methods to avoid civil litigation.
- Examine and advise regarding the legality of all proceedings and actions of the City Commission as may be requested.
- Prepare criminal complaints where facts warrant.
- Receive and evaluate assessment appeals as deemed necessary.
- Preparation of trial.
- Negotiate and enter plea bargains where deemed advisable.
- Investigate and evaluate claims by the City against others and recommend appropriate course of action.
- Handle disputes between the City and other governmental units, including litigation as deemed necessary.
- Examine, evaluate, and provide representation for appeals to Appellate Courts.
- Prosecution of criminal matters in the City Municipal Courts.
- Defend in court litigation where insurance coverage is unavailable. This includes but is not limited to: human rights claims, condemnation, zoning and land use regulation matters, permits and administrative actions, administrative citations, code enforcement issues, labor and employment matters.
- Handle various legal matters under construction contracts and any resulting litigation.

### **Employee Issues**

- Provision of legal advice or opinion in respect to personnel matters of the City.
- Attend grievance hearings if requested by the City Manager.

#### **Other Services**

- Perform other legal services as necessary to protect the city.

#### **Invoicing and Fees**

- Submit a monthly invoice to the City Manager that includes the service performed, the requester, the time involved, and the specific question or matter addressed.
- Provide all of the services listed above for a monthly flat fee based on an annual fee.