

**NEW MEXICO HIGHLANDS UNIVERSITY**

**REQUEST FOR PROPOSAL # 18-001-4**

**LEGAL SERVICES**

**NIGP Commodity Code 961-49**

<b>This Request for Proposal is to establish a contract for legal services to be provided on an on-call basis as required by New Mexico Highlands University.</b>			
<b>Date Request For Proposal Issued:</b> <b>Wednesday, July 5, 2017</b>		<b>Date and Time Request for Proposal Is Due:</b> <b>Prior to 3:00 pm local time on Thursday July 20, 2017</b>	
<b>NMHU Point-of-Contact:</b> <b>Adam Bustos</b> <b>Director of Purchasing</b>	<b>Email:</b> adambustos@nmhu.edu	<b>Phone Number:</b> (505) 454-3053	<b>Fax Number:</b> (505) 454-3109

**RFP CONDITIONS**

New Mexico Highlands University (hereinafter called “NMHU”) is seeking responses (hereinafter called “Proposal”) for the performance of legal services (hereinafter called “Services”) requested in this Request for Proposal Number 18-001-4, its attachments and subsequent addendums (hereinafter called “RFP”). You/your firm’s (hereinafter called “Proposer”) Proposal is to provide responses to all of the requirements set forth within the RFP.

NMHU may accept Proposals, in whole or in part that most closely meets all the criteria described herein. NMHU reserves the right to cancel this RFP in whole or in part at any time if it is in its best interests. An award will not be based solely on the lowest fee; instead it will be based on several weighted criteria, as provided herein.

The successful Proposer (hereinafter called “Contractor”) will enter into a binding agreement (hereinafter “Contract”) with NMHU. A draft of the Contract is included as Attachment 6. Proposer may recommend changes, deletions or additions to the Contract, however NMHU will determine if they will be in its best interest to accept any of those recommendations.

For definitions or clarifications to terms refer to Section VII of this document.

**ACCEPTANCE OF TERMS AND CONDITIONS OF RFP FORM**

**During the period of the bidding, your point of contact (hereinafter called “POC”) will be limited to Adam Bustos, Director of the Purchasing Department. He has been designated as the contact person for this RFP. No Proposer may contact any NMHU employee, officer or member of the Board of Regents other than Mr. Bustos regarding this RFP through the date of the execution and award of the Contract. Any Proposer who makes such unauthorized contact shall be deemed to have violated the terms and conditions of this RFP and Proposer’s offer may be rejected as a result. Questions regarding the RFP should be submitted in writing via email to the POC. Any question, statement or response from the POC or other individual from NMHU that is not submitted and responded to in writing will not be incorporated into the Contract, RFP & attachments and addendums. NMHU will not be responsible for any misinterpretations, discrepancies or contradictory information that Proposer may claim if correspondences for clarification are not submitted to and received in writing. Every effort will be made to respond to your questions within a timely manner. The question and response will be shared with all Proposers, with personal information removed to ensure anonymity.**

**By signing below Proposer signifies that he understands all of the terms and conditions of this RFP, its Attachments and all subsequent addendums and agrees to cause himself or his firm to be bound by them. Only an authorized agent of the Proposer’s company may sign this document.**

\_\_\_\_\_  
Name of Firm

\_\_\_\_\_  
Authorized Representative Name Title

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

**Provide point of contact of Proposer:**

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

\_\_\_\_\_  
Mailing Address

\_\_\_\_\_  
Telephone Number(s) Fax Number

\_\_\_\_\_  
Email Address

## SECTION I GENERAL INFORMATION

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### PROPOSAL SCHEDULE

#### ALL DATES AND TIMES ARE SUBJECT TO CHANGE

Issuance of RFP	Wednesday July 5, 2017
Last Day to Submit Requests for Clarification	to be received by 5:00 pm on July 12, 2017
Proposal Submittal Deadline	prior to 3:00 pm on July 20, 2017
Evaluations of Proposals	approximately one week
Presentations (if necessary)	following evaluation
Notice to Proceed with Negotiations	approximately one week following completion of evaluations or presentations
Award of RFP and Execution of Contract	following successful negotiations
Commencement of Services	July 28, 2017 or date of execution of Contract, whichever is later
Protest Deadline	15 days after award or knowledge of facts pertaining to protest.

## **SECTION II BACKGROUND AND SCOPE OF WORK**

### **1. BACKGROUND**

NMHU is a state-funded institution of higher education primarily serving northeastern New Mexico, but has a diverse student population from throughout the U.S. and from foreign nations. NMHU is in its 124<sup>th</sup> year with its main campus located in Las Vegas, New Mexico. It currently serves other communities within the state via distance education technologies and satellite campuses.

NMHU offers bachelors and masters degrees in programs such as social work, the sciences, education, business, the arts and many other fields of study. NMHU is an open enrollment university with students from diverse backgrounds.

### **2. PURPOSE**

To provide legal Services to NMHU upon request; including representation of NMHU in selected matters.

### **3. SCOPE OF SERVICES**

Proposer must be capable of delivering Services in at least the following areas of law:

- A.) General Litigation;
- B.) Education Policies and Procedures;
- C.) Employment Law, including Public Employee Law;
- D.) Procurement Law;
- E.) Civil Rights;
- F.) Governing Board Representation;
- G.) Student Financial Aid;
- H.) Real Estate – capable of handling all aspects of real estate transactions for governmental entities;
- I.) Business Law, including corporate, commercial, contract (including construction contracting), tax (particularly issues involving tax-exempt entities), insurance;
- J.) Administrative Law, including public agency work, procurement and issues related to higher education;
- K.) Collective Bargaining/Labor Union (public employees); and
- L.) Government Grant and Contract Law.
- M.) Firm is to provide a Single Point of Contact throughout the term of the agreement. The single point of contact will be the representative to we will initially contact to discuss our legal needs and determine who is best suited to assist us.

### **4. SUBMITTALS**

- A.) Size of the office with job categories of employees;
- B.) Statement of ability to perform work for NMHU on an on-call basis;
- C.) Relevant experience – This portion of your Proposal should demonstrate the extent to which you are qualified to perform the scope of Services as outlined within this RFP;

- D.) Personnel – please identify and highlight the Single Point of Contact for the firm who the University can contact can talk with to discuss our needs and then determine which individual in the firm is the most suited to assist us. Also, identify the primary individuals who will be assigned by the Single Point of Contact to provide services and the nature of the services each would perform. Provide resumes or other background information for each of the individuals identified, which pertains to the scope of Services outlined above;
- E.) Three (3) or more client references – The organization’s name, a contact, telephone number and a brief description of the services provided are required for each reference. Proposer, by furnishing these references, agrees to allow NMHU to contact any persons and/or organizations listed, and to utilize information obtained in the evaluation of the offer; and
- F.) Hourly rates schedule for principals and employees. Also indicate the type and amount of any additional expenses, such as travel, per diem, copying charges, etc. Rates quoted shall not include gross receipts tax.

## **SECTION III GENERAL TERMS AND CONDITIONS**

### **1. LENGTH OF PROPOSAL**

The Proposal is not to exceed twenty (20) pages. Double –sided printed pages will count for two (2) pages. The following will not count towards the limit of twenty (20) pages:

- A.) Acceptance of Terms and Conditions of RFP Form (page 2 of this RFP);
- B.) Completed RFP attachment forms number 1 through 4; and
- C.) Cover Letter of Proposal

### **2. PERIOD OF PERFORMANCE**

The resultant Contract shall be for a one (1) year term starting on the date of the execution of the Contract or July 28<sup>th</sup>, 2017, whichever is later. The Contract may be extended for an additional three (3) years and are to be made in a minimum of one (1) year increments. Extensions must be made in writing and must be signed by authorized representatives of both parties.

### **3. PRICING**

- A.) Proposer may choose to provide their own Fee Proposal in their format; and
- B.) Any revision in rates must be justified and made available for NMHU’s review and potential negotiation at a minimum of ninety (90) days prior to the beginning of each new contract year. Any such approval must be mutually agreed upon by both parties and in writing by authorized representatives of both parties. If both parties cannot come to agreement as of sixty (60) days prior to the end of the existing term the Contract will not be extended for any further terms.

### **4. PRESENTATIONS**

NMHU may choose to invite Proposers to make a presentation and answer questions asked by the evaluation committee and/or the Board of Regents. NMHU reserves the right to invite as many Proposers that are in its best interest. Prior to the presentations NMHU may, with adequate time, specify requirements for the presentation and anything that is allowable and unallowable to present and discuss.

### **5. AWARD**

- A. In accordance with the State of New Mexico “Procurement Code”, §13-1-28 through §13-1-199 N.M.S.A., NMHU reserves the right to make an Award to the Proposer or Proposers that provides the Services in its best interest and will not make the Award to the Proposers with simply the highest ranking score. The RFP will be evaluated based on all criteria listed in this RFP, its attachments and its addendums. Failure to meet criteria in any one category is grounds to determine a proposal non-responsive; and
- B. NMHU reserves the right to negotiate with Proposers. Issuance of an Intent to Negotiate with a Proposer does not guarantee an Award. An Award will be made only after NMHU and Proposer complete successful negotiations and execution of a Contract.
- C. NMHU reserves the right to award to multiple proposers.

**6. CONTRACT DOCUMENT**

- A.) The Contract between the Contractor and NMHU shall contain substantially the terms and conditions found in Attachment 6, which is hereby incorporated by reference. Additionally, this RFP, its Attachments, Addendums and subsequent changes shall be incorporated in the Contract with the successful Contractor;
- B.) Proposer may offer changes to the terms and conditions of the attached Contract and shall do so in writing and provided within its Proposal. NMHU is not obligated to accept any of the proposed changes, however it reserves the right to accept and negotiate some or all of the changes if it is determined that it is in its best interest;
- C.) The Contractor's signature on the “**ACCEPTANCE OF TERMS AND CONDITIONS OF RFP FORM**” (page 2 of this document) signifies a full understanding of all the terms and conditions of the RFP, its attachments and subsequent addendums; and
- D.) Services may commence when the NMHU Purchasing Department issues a purchase order to the Contractor.

**7. REQUIRED AND INFORMATIONAL FORMS**

- A.) The following are to be **completed and submitted** with your Proposal:
  - 1.) Acceptance of Terms and Conditions of RFP Form (page 2 of this document);
  - 2.) Addendum(s) Acknowledgement Form (Attachment 1);
  - 3.) Supplier Conflict of Interest and Debarment/Suspension Certification Form (Attachment 2);
  - 4.) Campaign Contribution Disclosure Form (Attachment 3); and
  - 5.) Resident Veterans Preference Form (Attachment 4), if applicable.
- B.) Informational Documents
  - 1.) Advertisement (Attachment 5); and
  - 2.) Draft Sample Contract (Attachment 6).

**SECTION IV EVALUATION COMPONENTS**

This section of the RFP contains specifications and other relevant information to be used by Proposers in preparation of their Proposal. Award of a Contract will not be based solely on cost and may not be awarded to a Proposer or Proposers with the highest ranking score.

Proposers shall ensure that all the information required herein be submitted with their Proposal. All information provided should be verifiable by documentation requested by NMHU. Failure to provide all information, inaccuracy or misstatement may be sufficient cause for rejection of the Proposal or rescission of a Contract. Proposers are encouraged to provide any additional information describing any additional abilities.

All responsive Proposals will be reviewed independently by each member of the evaluation committee. Their evaluations will be based on the Proposal as a whole and will be scored solely on the requirements, data, information and related responses to the RFP. Upon evaluation off all proposals, the ranked list of Proposers will be provided to NMHU Administration and the NMHU Board of Regents. The NMHU Board of Regents are the governing body that will have the final determination of award(s).

**SELECTION CRITERIA**

All Proposals shall be reviewed for compliance with the mandatory requirements as stipulated within this RFP and procurement statutes. Proposals found not to be in compliance will be rejected from further consideration. Proposals which are not rejected will then be evaluated based upon the following weighted criteria. There is a maximum number of one-hundred (100) points that may be awarded, not including Resident or Veteran Resident Preference.

	<b><u>Description</u></b>	<b><u>Weight</u></b>
1.	Capability of providing legal services as stated in this RFP.	30 points
2.	Experience with and representation of institutions of higher education and educational law, including any special training, higher education related seminars, or other specialized experience.	30 points
3.	Experience with public agencies and administrative bodies in the State of New Mexico.	30 points
4.	Cost of Services including cost saving Proposals such as staff training at no charge and reduced charges for board meetings, etc.	<u>10 points</u>



**TOTAL**

**100 points**

**SECTION V. NEW MEXICO BUSINESS PREFERENCE FORM (if applicable)**

Points will be awarded based on Proposers/Proposers ability to provide a copy of a current Resident Business Certificate or Resident Veterans Certificate.

In addition, the attached certification form must accompany any RFP and any business wishing to receive a resident veteran's preference must complete and sign the form.

RFP's are to be evaluated on preference as follows:

In addition, to the total points on an RFP, a percentage of additional points must be added for preference award. For example; an RFP has a total value of 100 points. Five proposals are received; one from a resident business (five percent [5%] preference), one from a resident veterans business with an eight percent (8%) preference and three non-resident (no preference) businesses.

The two resident business preference businesses would receive five (5) points for a maximum of one-hundred and five (105) points and the resident veterans business preference would receive eight (8) points to their already evaluated score, making it possible for the highest score total of one-hundred and eight (108).

"I agree to submit a report, or reports, to the State Purchasing Division of the General Services Department declaring under penalty or perjury that during the last calendar year starting January 1, and ending on December 31, the following to be true and accurate:

"In conjunction with this procurement and the requirements of this business' application for a Resident Veteran Business Preference/Resident Veteran Contractor Preference under Sections §13-1-21 or §13-1-22 N.M.S.A. 1978, when awarded a contract which was on the basis of having such veterans preference, I agree to report to the State Purchasing Division of the General Services Department the awarded amount involved. I will indicate in the report the award amount as a purchase from a public body or as a public works contract from a public body as the case may be.

"I understand that knowingly giving false or misleading information on this report constitutes a crime."

I declare under penalty of perjury that this statement is true to the best of my knowledge. I understand that giving false or misleading statements about material fact regarding this matter constitutes a crime.

**NM RESIDENT PREFERENCE NUMBER OR RESIDENT VETERANS PREFERENCE NUMBER:**

**Provide a copy of the Certificate with your Proposal**

## **SECTION VI SUBMITTAL PROCEDURES**

### **1. NUMBER OF PROPOSALS**

Proposer is to submit **one (1)** original and **five (5)** complete copies of their Proposal, as well as a digital file of proposal in the form of a USB flash drive.

### **2. COSTS INCURRED**

Any cost incurred by the Proposer in preparation, delivery and presentation of any Proposal or material submitted in response to this RFP shall be borne solely by the Proposer.

### **3. INSTRUCTIONS**

#### **A.) Instructions**

- 1.) Proposals must be received in the NMHU main campus' Purchasing Department office (903 University Avenue, Las Vegas, NM) by the due date and time as listed on page one (1) of this RFP. If a Proposal is late NMHU will not accept it. Postmarked or estimated delivery dates issued by carriers will not be accepted as received by NMHU;
- 2.) All Proposals must be submitted in a SEALED envelope. Please write on the outer sealed envelope the following:

**"SEALED PROPOSAL #18-001-4 TO BE RECEIVED  
PRIOR TO 3:00 PM on July 20<sup>th</sup>, 2017"**

Failure to mark the sealed envelope may result in the Proposal being opened early or later and/or the Proposal may be declared non-responsive;

- 3.) NMHU is not responsible for Proposals lost during delivery regardless of means of delivery. Proposals may be accepted if received by NMHU staff and not delivered to the Purchasing Department office only when the error was made by NMHU staff. NMHU will make this determination; and
- 4.) Faxed and emailed Proposals will not be accepted.

#### **B.) DELIVERY CAN BE MADE AS FOLLOWS**

- 1.) **If via delivery in person:**  
New Mexico Highlands University  
Attn: Purchasing Department-RFP #18-001-4  
903 University Avenue  
Las Vegas, NM 87701
- 2.) **If via United States Postal Service:**  
New Mexico Highlands University  
Attn: Purchasing Department-RFP #18-001-4  
P.O. Box 9000  
Las Vegas, NM 87701
- 3.) **If via FedEx, United Parcel Service, or other carrier:**  
New Mexico Highlands University  
Attn: Purchasing Department-RFP #18-001-4  
1005 Diamond Avenue  
Las Vegas, NM 87701

## SECTION VII INSTRUCTIONS TO PROPOSERS

### 1. DEFINITIONS AND TERMS

- A.) **Addendum:** a written or graphic instrument issued prior to the opening of Proposals which clarifies, corrects, or changes the RFP. Plural: addenda.
- B.) **Determination:** means the written documentation of a decision of the Purchasing Agent including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains.
- C.) **Proposer:** any person, corporation, or partnership legally licensed to provide professional services in this state who chooses to submit a Proposal in response to this RFP.
- D.) **Purchasing Agent:** means the person or designee authorized by NMHU to manage or administer a procurement requiring the evaluation of proposals.
- E.) **RFP:** means all documents, including attachments, addendums or other documents incorporated by reference which are used for soliciting Proposals.
- F.) **Responsible Proposer:** means a Proposer who submits a responsive Proposal and who has furnished, when required, information and data to prove that his financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the Services described in the RFP.
- G.) **Responsive Proposal:** means a Proposal which conforms in all material respects to the requirements set forth in the RFP. Material respects of a RFP include, but are not limited to; price, quality, quantity or delivery requirements.
- H.) The terms **must, shall, will, is required, or are required,** identify a mandatory item or factor. Failure to comply with a mandatory item or factor may result in the rejection of the Proposer's Proposal.
- I.) The terms **can, may, should, preferably, or prefers** identify a desirable or discretionary item or factor.

### 2. RFP DOCUMENTS

- A.) COPIES OF RFPS
  - 1.) A complete set of the RFP shall be used in preparing Proposals; NMHU assumes no responsibility for errors or misinterpretations resulting from the use of an incomplete set of the RFP.
  - 2.) A copy of the RFP shall be made available for public inspection at the Purchasing Office of NMHU.
- B.) INTERPRETATIONS
  - 1.) All requests of clarification about the meaning or intent of the RFP shall be submitted in writing and to the POC. The date listed as the deadline for submitting questions is the date of receipt. Only questions answered by formal written addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

- 2.) Proposers should promptly notify NMHU of any ambiguity, inconsistency, or error, which they may discover upon examination of the RFP.
- C.) ADDENDA
- 1.) Addenda will be mailed, by facsimile or emailed to all whom are known by NMHU to have received a complete set of RFPs.
  - 2.) Each Proposer shall ascertain, prior to submitting the Proposal, that the Proposer has received all Addenda issued, and shall acknowledge their receipt in the Proposal transmittal letter (Attachment 1).

### **3. PROPOSAL SUBMITTAL PROCEDURES**

#### **A.) CORRECTION OR WITHDRAWAL OF PROPOSALS**

- 1.) A Proposal containing a mistake discovered before Proposal opening may be modified or withdrawn by a Proposer prior to the time set for Proposal opening by delivering written, telegraphic, or electronic notice to the location designated in the RFP as the place where Proposals are to be received.
- 2.) Withdrawn Proposals may be resubmitted up to the time and date designated for the receipt of Proposals, provided they are then fully in conformance with the RFP.

#### **B.) REJECTION OR CANCELLATION OF PROPOSALS**

A rejection or cancellation of this RFP may be made in accordance with §13-1-131 N.M.S.A. 1978. NMHU reserves the right to waive irregularities, reject any or all Proposals, cancel this RFP for any reason and at any time, and/or award a Contract that is in its best interests.

### **4. CONSIDERATION OF PROPOSALS**

#### **A.) RECEIPT, OPENING AND RECORDING**

- 1.) Proposals received on time will be opened in the presence of two (2) or more witnesses (NMHU employees), but will not be opened publicly.
- 2.) The contents of all Proposals shall not be disclosed so as to be available to competing Proposers during the negotiation process.

#### **B.) PROPOSAL EVALUATION**

- 1.) Proposals shall be evaluated on the basis of demonstrated competence and qualification for the type of Service required, and shall be based on the evaluation factors set forth in this RFP. For the purpose of conducting discussions, proposals may initially be classified as:
  - a.) acceptable, or
  - b.) potentially acceptable, that is, reasonably assured of being made acceptable, or
  - c.) unacceptable (Proposer whose Proposal is unacceptable shall be notified promptly).
- 2.) NMHU shall have the right to waive technical irregularities in the form of the Proposal of the Proposer, which do not alter the price, quality or quantity of the Services.
- 3.) If a Proposer who otherwise would have been issued an Award and Contract, is found not to be a responsible Proposer, a determination that

the Proposer is not a responsible Proposer, setting forth the basis of the finding, shall be prepared by the Purchasing Agent. The unreasonable failure of the Proposer to promptly supply information in connection with an inquiry with respect to responsibility is grounds for a determination that the Proposer is not a responsible Proposer.

4.) Selection Process

a.) The evaluation of Proposals will be performed by an evaluation committee composed of representatives selected by the NMHU. The committee shall evaluate statements of qualifications and performance data submitted by Proposers in regard to the particular request.

b.) The committee will select, rank in order of their qualifications which are most qualified to perform the required services: and may choose to have the finalist(s) make an oral presentation to the committee and/or Board of Regents. The committee will determine the schedule for the oral presentations. All costs incurred by Proposer for the oral presentations will be borne on Proposer.

C.) NEGOTIATIONS

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

D.) NOTICE OF AWARD

After Award by NMHU, with reasonable promptness, a written Notice of Award shall be issued by NMHU to the awarded Contractor(s) and a letter of non-Award to the unsuccessful Proposers.

**5. USE OF CONTRACT**

All State of New Mexico agencies, commissions, institutions, political subdivisions, and local public bodies allowed by law will be authorized to purchase from this agreement, pursuant to section §13-1-129 N.M.S.A. 1978. Use will be subject to approval by the successful Contractor. Any such contracts will be solely between those two entities. NMHU will have no interest or involvement with such contract.

**ATTACHMENT 1**

**ADDENDUM ACKNOWLEDGEMENT FORM**

**ADDENDUM ACKNOWLEDGEMENT**

In submitting this Proposal, Proposer represents that he has examined copies of all addenda listed below and has incorporated them into his Proposal:

<b>Addendum Number</b>	<b>Date</b>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

**ATTACHMENT 2**

**SUPPLIER CONFLICT OF INTEREST AND  
DEBARMENT/SUSPENSION CERTIFICATION FORM**

**Conflict of Interest**

- 1.) No employee or Regent of New Mexico Highlands University has a direct or indirect interest in the Contractor or in the proposed transaction (unless Contractor is a publicly traded company and the employee or Regent's interest is less than one percent (1%) of the Contractor);
- 2.) Contractor neither employs nor is negotiating to employ any NMHU employee or member of the NMHU Board of Regents;
- 3.) Contractor did not participate directly or indirectly in the preparation of specifications upon which the Proposal is made;
- 4.) If the Contractor is a New Mexico State Legislator or if a New Mexico State Legislator holds a controlling interest in Contractor, please identify Legislator(s):  
\_\_\_\_\_;
- 5.) List below the name and social security number of any employee of the Contractor or person assisting in the proposed transaction in any way who was a NMHU employee within the preceding twelve (12) month period; and
- 6.) In accordance with NMHU policy, an award cannot be made to a firm in which current or recent (last twelve [12]) NMHU employees have a controlling interest.

**Debarment/Suspension Status**

- 1.) The Contractor 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; and
- 2.) The Contractor agrees to provide immediate notice to New Mexico Highlands University Purchasing Department Buyer 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 Proposal but prior to the award of the purchase order 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 Contractor named below.

Signature: \_\_\_\_\_ Title: \_\_\_\_\_

Name Typed: \_\_\_\_\_ Date: \_\_\_\_\_

Company: \_\_\_\_\_ City: \_\_\_\_\_

Address: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

**ATTACHMENT 3**

**CAMPAIGN CONTRIBUTION DISCLOSURE FORM**

Pursuant to the Procurement Code, Sections §13-1-28, et seq., N.M.S.A. 1978 and N.M.S.A. 1978, § 13-1-191.1 (2006), as amended by Laws of 2007, Chapter 234, any prospective contractor seeking to enter into a contract with any state agency or local public body **for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources** must file this form with that state agency or local public body. This form must be filed even if the contract qualifies as a small purchase or a sole source contract. The prospective Contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two (2) years prior to the date on which the Contractor submits a Proposal or, in the case of a sole source or small purchase contract, the two (2) years prior to the date the Contractor signs the Contract, if the aggregate total of contributions given by the prospective Contractor, a family member or a representative of the prospective Contractor to the public official exceeds two hundred and fifty dollars (\$250) over the two (2) year period.

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

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

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

The following definitions apply:

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



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

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

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

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

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

Name(s) of Applicable Public Official(s) if any:

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(Completed by State Agency or Local Public Body)

**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)

**ATTACHMENT 4**

**RESIDENT VETERANS PREFERENCE CERTIFICATION FORM**

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

**Please check one only**

\_\_\_\_\_ I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is less than \$1M allowing me the 10% preference discount on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

\_\_\_\_\_ I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than \$1M but less than \$5M allowing me the 8% preference discount on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

\_\_\_\_\_ I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than \$5M allowing me the 7% preference discount on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

“I agree to submit a report, or reports, to the State Purchasing Division of the General Services Department declaring under penalty or perjury that during the last calendar year starting January 1, and ending on December 31, the following to be true and accurate:

“In conjunction with this procurement and the requirements of this business' application for a Resident Veteran Business Preference/Resident Veteran Contractor Preference under Sections §13-1-21 or §13-1-22 N.M.S.A. 1978, when awarded a contract which was on the basis of having such veterans preference, I agree to report to the State Purchasing Division of the General Services Department the awarded amount involved. I will indicate in the report the award amount as a purchase from a public body or as a public works contract from a public body as the case may be.

“I understand that knowingly giving false or misleading information on this report constitutes a crime.”

I declare under penalty of perjury that this statement is true to the best of my knowledge. I understand that giving false or misleading statements about material fact regarding this matter constitutes a crime.

\_\_\_\_\_  
(Signature of Business Representative)\*

\_\_\_\_\_  
(Date)

\*Must be an authorized signatory for the business.

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

**ATTACHMENT 5**

**NEW MEXICO HIGHLANDS UNIVERSITY  
REQUEST FOR PROPOSAL #18-001-4  
NIGP Commodity Code 96149**

New Mexico Highlands University (NMHU) will accept proposals for its ON CALL LEGAL SERVICES Request for Proposal Number 18-001-4 (RFP). This RFP is intended to enter into contract for legal services on an on-call basis as required by NMHU. The contract is for a one year period and contains options for renewal. NMHU reserves the right to award to multiple firms.

All proposals must be in NMHU's Purchasing Department prior to 3:00 pm local time on Thursday, July 20, 2017. Proposals received after that time will not be accepted. Proposals will not be opened publicly.

All proposals shall comply with the New Mexico Procurement Code, and applicable federal, State and local laws.

NMHU reserves the right to waive irregularities, reject any or all proposals, cancel this RFP for any reason and at any time, and/or award a contract or contracts that are in its best interest. No proposer may withdraw his proposal for ninety (90) calendar days after the actual date of the opening.

RFP documents can be obtained by contacting Adam Bustos at [adambustos@nmhu.edu](mailto:adambustos@nmhu.edu) or 505-454-3053.

**Draft Contract**

**ATTACHMENT 6**

***CONTRACT NUMBER 18-001-4***  
**On Call Legal Services**

**ARTICLE 1 INTRODUCTION**

**THIS AGREEMENT** (hereinafter called “Contract”) is effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2017 hereinafter called “Effective Date”), hereto by and between:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Federal Identification Number (FIN): \_\_\_\_\_

hereinafter called "Contractor";

and

a State educational institution created in accordance with Article XII, Section 11 of the Constitution of the State of New Mexico:

New Mexico Highlands University  
800 National  
P.O. Box 9000  
Las Vegas, NM 87701

Federal Identification Number: 85-6000406

hereinafter called "NMHU".

**NMHU and Contractor hereinafter agree:**

**RECITALS:** Pursuant to NMHU Request for Proposals 18-001-4, its attachments and addenda (hereinafter called “RFP”) for On Call Legal Services (hereinafter called “Services” or “Work”), NMHU has determined that Contractor’s proposal is in the best interest of NMHU and Contractor is willing to accept assignment under the terms of this Contract.

**1.1 PREVAILING DOCUMENTS**

- A. To the extent that any provisions of Contractor’s proposal are inconsistent with this Contract and/or the RFP prepared by NMHU, the following order of precedence shall prevail:
1. This Contract;
  2. The RFP number 18-001-4 its attachments, and Addendum Number \_\_\_\_\_;
  3. Contractor’s Proposal dated \_\_\_\_\_.

**1.2 SCOPE OF SERVICES**

Legal Services in Accordance with RFP 18-001-4.

**1.3 PERFORMANCE OF SERVICES**

This RFP is not an award to perform all of the Services within the first year of award. This Contract establishes an Agreement for the term of this Contract (refer to Section 1.5 for the term of this Contract). NMHU will request from Contractor to perform Services as funds become available, whether during the first or subsequent years of this Contract.

**1.4 PERIOD OF PERFORMANCE**

The initial term for this Contract will be for one (1) year. This Contract may be extended if such renewal is mutually agreed to and found to be in the best interest of NMHU. These renewals would be in one (1) year increments and are not to exceed three (3) renewal years. This Contract shall not exceed four (4) years including all renewals. Renewals must be mutually agreed upon and made in writing.

## **ARTICLE 2 FINANCIAL AGREEMENTS**

### **2.1 FINANCIAL ARRANGEMENTS**

Fees for Services to be performed in accordance with this Contract will be in accordance with the attached

### **2.2 TAXES**

#### **A. Gross Receipts Taxes**

NMHU is required to pay gross receipts taxes for Services received. Gross receipts taxes are to be billed to NMHU on invoices and are to be listed as a separate line-item from the Services rendered; and

#### **B. Other taxes**

Contractor shall be solely responsible to pay any and all Federal, State and local taxes which may be assessed against Contractor in its operation.

### **2.3. INVOICING AND PAYMENTS**

A. Invoices may be presented following the completion of the Services. NMHU personnel will inspect the locations Serviced by Contractor to ensure compliance with the terms and conditions of this Contract;

B. On all invoices, Contractor shall certify in writing to NMHU under penalty of perjury that all subcontractors working for Contractor and who comprise a portion of the prior application were paid in full within ten (10) days after Contractor received payment from NMHU for such prior Work;

C. Should the Services be abandoned, postponed, or canceled, Contractor shall be paid for the amount of Work performed through the last day of termination, less any costs incurred by NMHU to correct any deficiencies and any other costs associated with the non-performance. Notice of abandonment, postponement, or cancellation shall be made orally, but shall be confirmed in writing within five (5) days by NMHU; at which time, Contractor shall immediately file with NMHU the final date of Services performed, and issue a final progress report. All payments made in excess of the proportion of Work completed, shall be refunded to NMHU. Costs for additional Work performed by Contractor following the date of the termination will be the sole responsibility of the Contractor;

D. Upon certification and acceptance of Services NMHU will issue payment no later than thirty (30) days following the date of certification. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. After the thirtieth (30<sup>th</sup>) day from the date that written certification of acceptance is issued, late payment charges may be paid to Contractor on the unpaid balance due at the rate of one and one-half (1½%) per month;

E. If NMHU finds that any of the Services performed are not acceptable payment will be held on the portion of Work that is unacceptable. If NMHU determines that any portion of the Services are not acceptable it is to submit to Contractor, within thirty (30) days of receipt of written notice from Contractor that payment is

requested for Services, provide Contractor a letter of exception explaining the objection to the Services along with details of how Contractor may proceed to provide remedial action; and

F. Invoices are to include the purchase order number on it and are to be sent to:

New Mexico Highlands University

Attn: Accounts Payable

P.O. Box 9000

Las Vegas, NM 87701



## **ARTICLE 3 GENERAL TERMS AND CONDITIONS**

### **3.1 AMENDMENT TO CONTRACT**

This Contract shall not be altered, changed, or amended except by an instrument in writing executed by both parties.

### **3.2 AUTHORIZED AGENT**

- A. Contractor agrees that the performance of all Services required under the terms and conditions of the RFP, addendums, Proposal, and subsequent changes to the Contract are to be subject to the direction of NMHU or the person designated by NMHU. Such person designated by NMHU shall be the Authorized Agent representative of NMHU;
- B. The Authorized Agent may temporarily or permanently delegate his authority if it is in the best interest of NMHU. The Authorized Agent will inform Contractor of any delegation of authority;
- C. As of the date this Contract has been signed by both parties, the Authorized Agent is Greg Martinez, Project Manager of Facilities Services; and
- D. All Services are to be performed only after the Authorized Agent has given approval to perform the Services. All information or direction desired or required by Contractor for the performance of his Services hereunder shall be obtained from said Authorized Agent.

### **3.3 ASSIGNMENT AND SUBCONTRACTING**

- A. Contractor shall not assign or transfer any interest in this Contract to subcontractors, other firms or other service providers in order to fulfill its responsibilities to NMHU, unless it is preapproved by NMHU and in writing;
- B. Any such agreement or contract will be between Contractor and his subcontractors. NMHU will have no contractual obligations with any of Contractor's subcontractors;
- C. Contractor will be responsible for directing and overseeing all Work performed by its Subcontractors; and
- D. All Subcontractors of Contractor will be held to the same terms, conditions, and standards as Contractor. If Contractor's subcontractors do not perform as required, Contractor will be responsible for successful completion of the Work and will be held liable for any of subcontractor's actions.

### **3.4 HOURS OF OPERATION**

- A. NMHU's standard operating hours are 8 am to 5 pm local time Monday through Friday.
- B. NMHU is closed on the following recognized holidays:
  - Dr. Martin Luther King Day; spring break; Memorial Day;
  - Independence Day; Labor Day; Thanksgiving Day; day after

Thanksgiving Day; fall break (usually the last week of December); and New Year's Day. All holidays are subject to change.

**3.5 WARRANTY**

Contractor shall provide a warranty for the Services performed if such a warranty is standard and applicable to services provided.

**3.6 TIMELY PERFORMANCE**

- A. Time may be of the essence for the performance of the Services requested of Contractor. Therefore, if Contractor is unable or unwilling to start or complete the Services within a timely manner the NMHU Authorized Agent may notify you or your staff that Work is to halt until further notice, if NMHU determines it is in its best interest to allow Contractor to continue providing its Services. Upon non-performance, NMHU reserves the right to cancel the Contract with Contractor. An exception may be made for situations that are beyond your control. NMHU will determine if such an exception is granted; and
- B. NMHU reserves the right, if it is in its best interest, to cancel the purchase order, work order or your Services at any time.

**3.7 RESPONSE TIME REQUIREMENTS**

Contractor and NMHU personnel must work together and mutually agree upon a schedule for the start of, anticipated completion of, and performance of any important phases of the rendering of Services.

**3.8 CORRECTION OF ERRORS, DEFICIENCIES AND DEFECTS**

- A. Contractor agrees to perform its Services in accordance with best practices of its industry;
- B. Performance by Contractor, not meeting NMHU's standards and/or the industry best practices, are to be completed in an acceptable manner and are to be performed without undue delays and without cost to NMHU;
- C. The acceptance of the Services set forth herein by NMHU shall not relieve Contractor of the responsibility of subsequent correction of such errors, deficiencies or defects;
- D. All corrections shall be made at or by a date and time agreed upon by the NMHU Authorized Agent;
- E. Contractor shall promptly correct all apparent and latent deficiencies and/or defects in Work, and/or any Work that fails to conform to the Contract documents regardless of project completion status;
- F. The Contractor shall bear all costs of correcting such rejected Work; and
- G. If Contractor is unable or unwilling to correct the deficiencies, NMHU may contract the Work out to another vendor or perform the Work with its own staff. In such a case, if NMHU has paid to Contractor for Services it has not rendered, the Contractor will be responsible for reimbursing NMHU for the entire amount required to correct the deficiencies.

**3.9 INDEPENDENT CONTRACTOR**

- A. It is expressly understood that Contractor is an independent contractor and not the agent, partner or employee of NMHU. Contractor shall have complete charge and responsibility for persons employed by Contractor and engaged in the performance of the specified Work. Neither Contractor nor any of its agents shall be treated as an employee of NMHU for any purpose whatsoever. Contractor declares that Contractor has complied with all Federal, State and local laws regarding business permits and licenses of any kind that may be required to carry out the said business and Services to be performed under this Contract;
- B. Contractor further declares that it is engaged in the same or similar activities for other clients and that NMHU is not Contractor's sole or only client or customer; and
- C. No Federal, State, or local income, payroll or employment taxes of any kind shall be withheld or paid by NMHU with respect to payments to or on behalf of Contractor, its agents, its employees or its subcontractors. Contractor shall withhold and pay any taxes on behalf of its employees as required by law. The payroll or employment taxes that are the subject of this paragraph include but are not limited to FICA, FUTA, Federal personal income tax, State personal income tax, State disability insurance tax, and State unemployment insurance tax. If Contractor is not a corporation, Contractor further understands that Contractor may be liable for self-employment (social security) tax, to be paid by Contractor according to law.

**3.15 NON-DISCRIMINATION**

Contractor, its employees, and any subcontractors engaged to provide Services shall not discriminate on the basis of race, color, religion, gender, age, national origin, disability, sexual preference, veteran's status, or any other basis prohibited by law in the performance of Services, including, but not limited to service, communication, or conduct, toward NMHU students, staff, visitors, invitees, or guests.

**3.16 INSURANCE REQUIREMENTS**

- A. Without limiting any liabilities or any other obligation of the Contractor, the Contractor shall purchase and maintain (and cause its subcontractors to purchase and maintain), in a company or companies lawfully authorized to do business in the State of New Mexico, and rated at least A- VII in the current A.M. Best's, the minimum insurance coverage as follows:
  - 1. Commercial General Liability Insurance with not less than \$1,000,000 combined single limit of liability for bodily injury and property damage for each occurrence. The policy shall include coverage for:
    - a. Bodily Injury;
    - b. Broad Form Property Damage;
    - c. Independent Contractors Coverage;
    - d. Personal Injury;
    - e. Blanket Contractual Liability;

2. Workers' Compensation and Employer's Liability Insurance covering each employee engaged in the performance of the Work under this Contract, with a limit of liability in accordance with applicable law in the case of Workers' Compensation Insurance, and with the following limits of liability in the case of Employer's Liability Insurance:

Bodily injury by accident	\$500,000 each accident
Bodily injury by disease	\$1,000,000 policy limit
Bodily injury by disease	\$500,000 each employee
  3. Comprehensive Motor Vehicle Liability Insurance (if Contractor plans to utilize motorized automobiles for providing its food services) covering all owned, non-owned, and hired vehicles used in connection with the activities undertaken under this Contract, with a combined single limit of liability for bodily injury and property damage of not less than \$500,000 per occurrence.
  4. Umbrella liability coverage of \$2,000,000 per occurrence.
  5. Any other insurance normally covered by Proposer in course of profession.
- B. The Contractor shall furnish the NMHU one (1) copy each of Certificates of Insurance herein required for each copy of the Contract, showing coverage, limits of liability, covered operations, effective dates of expiration of policies of insurance carried by the Contractor. The Contractor shall furnish to the NMHU copies of limits. The Certificate of Insurance shall be in a format acceptable to the NMHU. Such certificates shall be filed with NMHU and shall also contain the following statements in the description section of the Certificate of Insurance:
- “The Regents of New Mexico Highlands University, New Mexico Highlands University, its agents, servants and employees are held as additional named insured.”**
- and
- “The insurance coverage certified herein shall not be cancelled or materially changed except after the insurer endeavors to provide forty-five (45) days written notice to the Owner.”**
- C. The Certificate of Insurance shall be forwarded to:
- New Mexico Highlands University  
Attn: Purchasing Department  
P.O. Box 9000  
Las Vegas, NM 87701
- D. The State of New Mexico, its departments, agencies, boards and commissions reserve the right to request and receive certificates of insurance evidencing the required policies and endorsements within ten (10) calendar days of Contract signature.
- E. Failure on the part of the Contractor to meet these requirements shall constitute a material breach of contract, upon which the State of New Mexico, its departments, agencies, boards and commissions may terminate this Contract in accordance with the provisions of this RFP and the resultant Contract, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, and all monies so paid by the State of New Mexico, its departments, agencies, boards and commissions shall be repaid by the Contractor upon demand, or the State of New Mexico, its departments, agencies, boards and commissions may offset the

cost of the premiums against any monies due to the Contractor. Costs for coverage broader than those required or for limits in excess of those required shall not be charged to the State of New Mexico, its departments, agencies, boards and commissions. Contractor, NMHU, and their insurer(s) shall waive their rights of recovery against the one another and their employees and officers and, with respect to the Contractor, the State of New Mexico, its departments, agencies, boards, and commissions.

**3.17 AUDITING, ACCOUNTING AND REPORTING**

- A. All records must be retained by Contractor, and accessible to NMHU for a minimum of three (3) years from the date of final payment of the Contract. NMHU reserves the right to audit at any time any aspect of the Services performed by Contractor. Contractor shall keep full, timely and accurate records in accordance with generally accepted accounting practices for all necessary Federal, State, County, and local forms and claims regarding the auditing services, including any of Contractor’s Services that NMHU may choose to utilize in the future.
- B. The books, records, documents, and accounting procedures and practices of Contractor relevant to this Contract shall be subject to examination by NMHU. Contractor will:
  - 1. Provide NMHU and/or its auditors reasonable facilities for the examination, copying and audit of the books and records;
  - 2. Make such returns and reports available as required;
  - 3. Attend and answer under oath all lawful inquiries as required by a court of competent jurisdiction;
  - 4. Produce and exhibit such books and records as may be desired to be inspected; and
  - 5. In all things cooperate with NMHU and/or its auditors in the performance of its duties.
- C. NMHU will be informed by Contractor of any schedule of independent audits of Contractor’s records and operations. NMHU shall receive a copy of the report of any findings that affect NMHU.

**3.18 COMPLIANCE WITH LAWS**

Contractor shall be familiar with, have a working knowledge of, and comply with all Federal, State, and local regulations, ordinances, codes and laws having jurisdiction over all Services it provides to NMHU. In addition, Contractor must be familiar with and have experience preparing and filing all required forms, reports, and submittals. The Contractor hereby represents and warrants that:

- A. It is not in arrears with respect to the payment of any monies due and owing the State of New Mexico or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;

- B. It shall comply with all Federal, State and local laws, regulations and ordinances applicable to its activities and obligations under this Contract;
- C. It shall procure, at its expense, all licenses, permits, insurance and governmental approvals, if any, necessary to the performance of its obligations under this Contract; and
- D. Agrees to operate under and be controlled by the Civil Rights Act of 1964, Title VI, and Executive Order No. 11246.

### **3.19 DAMAGED OR DESTROYED MATERIALS**

#### **A. Replacement due to damage or loss**

If the Contractor loses or destroys any equipment, components, or NMHU property they will be responsible for the full replacement cost. Replacement by NMHU will include any and all service charges from vendors, staff time, and processing costs. If the Contractor does not make timely payment, or pays less than full replacement cost of the lost or destroyed item, then NMHU reserves the right to set off the full or remaining amount against any amount owed to the Contractor. If the amount owed to NMHU exceeds the amount owed to the Contractor, then the Contractor shall remain liable for the additional amount; and

#### **B. Irreplaceable materials**

When NMHU determines that an item that has been damaged or destroyed due to the Contractor's negligence is irreplaceable, it reserves the right to secure, at the Contractor's expense, a quote of the damage or loss sustained. The choice of vendor shall be made by NMHU. The Contractor shall reimburse NMHU in full for damage to, or fair market value of, the item, plus the cost of appraising/quoting, searching, order, and processing as determined by NMHU. If the Contractor does not make timely payment, or pays less than the full amount, then NMHU reserves the right to set off the full or remaining amount against any amount owed to the Contractor. If the amount owed to NMHU exceeds the amount owed to the Contractor, then the Contractor shall remain liable for the additional amount.

### **3.20 DISPUTES**

With respect to duties, terms, and conditions over which the parties are in dispute, except as otherwise provided herein, NMHU may elect to attempt to resolve the matter by mediation or arbitration. Resolution in this matter does not preclude NMHU from seeking any possible legal remedy.

### **3.21 TERMINATION OF CONTRACT**

#### **A. Cancellation Without Cause for Convenience**

1. Either party may cancel this Contract and/or the rendering of Services without cause by providing the other party written notice at least ninety (90) days prior to the non-renewal or expiration of the initial one (1) year term or during any subsequent one (1) year term. If cancellation is made by NMHU, it will be considered a cancellation for convenience;

2. Cancellation will be considered on the day the party mails or emails the cancellation notice. If emailed, an original must be mailed to the other party within two (2) business days;
3. Cancellation without cause does not grant the Contractor any financial compensation for future, anticipated or unearned profits;
4. The Contractor will be paid for Services rendered and accepted up to the last day of the cancellation. The Contractor is to continue to provide its Services until the last day of the cancellation and will be required to complete any and all remaining obligations; and
5. In the event of termination and/or expiration of this Contract, Contractor agrees to provide reasonable cooperation in ensuring a smooth transition to another provider of Services.

**B. Cancellation for Default**

1. Should the Contractor at any time violate any material conditions of the Contract or fail to comply with any of his contractual obligations, NMHU may, by written notice to the Contractor, demand that the Contractor remedy such violation or failure. Failure on the part of the Contractor to fulfill contractual obligations shall be considered just cause for termination of this Contract. NMHU will then no longer be bound to the Contract or further obligations;
2. If, after receipt of the notice from NMHU specifying each failure, the Contractor does not cure such failure within a period of twenty (20) business days, or by a different deadline specified by NMHU if, in its sole discretion, it feels a different period is acceptable, NMHU may terminate the whole or part of the Contract in question. An exception to this policy will occur in cases where the deficiency is deemed by NMHU to have the potential to result in direct endangerment to the health of any individual or individuals associated with Contractor or NMHU. In this case, NMHU may choose to intercede and take immediate corrective action, charging all costs of doing so to the Contractor;
3. If the Contractor does not correct a deficiency upon written notice by NMHU and within the time frame specified, NMHU may terminate the Contract by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. NMHU shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and NMHU can affirmatively collect damages;
4. In the event that NMHU terminates the Contract in whole or in part as provided herein, it may procure, in such a manner as it deems reasonable and appropriate, such Services as required by the Contract and the Contractor shall be liable for any cost for such Services. However, if the Contract is terminated in part, the Contractor shall be required to continue the performance of the Contract to the extent not terminated under the provisions of this clause, while remaining liable for any cost of Services

obtained by NMHU to cover Services canceled due to the Contractor's inability or unwillingness to cure such failure;

5. Upon entry of a judgment of bankruptcy or insolvency by or against the Contractor, NMHU may terminate this Contract; and
6. In the event of termination and/or expiration of this Contract, Contractor agrees to provide reasonable cooperation in ensuring a smooth transition to another provider of Services.

**C. Cancellation for Non-Appropriation of Funds**

1. If NMHU funds are not appropriated or otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be cancelled automatically as of the beginning of the new fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either NMHU's rights or Contractor's rights under any termination clause in this Contract. NMHU's fiscal year begins on July 1<sup>st</sup> of each year and concludes on June 30<sup>th</sup> of the following year;
2. The effect of termination of the Contract hereunder will be to discharge both Contractor and NMHU from future performance of the Contract, but not from their rights and obligations existing at the time of termination;
3. NMHU shall notify Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract or any portion thereof for each succeeding fiscal period beyond the first;
4. NMHU's determination of funding under this section shall be final and accepted by Contractor; and
5. In the event of termination and/or expiration of this Contract, Contractor agrees to provide reasonable cooperation in ensuring a smooth transition to another provider of Services.

**D. Termination for Nonpayment**

Contractor may terminate this Contract or suspend services for nonpayment of properly submitted and accepted invoices within forty-five (45) days of receipt of the invoice by NMHU. If NMHU disputes an invoice or portions of it, Contractor cannot terminate this Contract for nonpayment of the disputed portions.

**3.22 NON-EXCLUSIVE WORK**

Contractor agrees that NMHU may employ other companies or individuals to perform similar Services or other services during the term of this Contract at the sole option of NMHU. Contractor may be directed by NMHU to work with these other companies or individuals to complete his and their Work.

**3.23 EQUIPMENT AND MATERIALS**

Contractor shall be responsible for supplying, maintaining, repairing, replacing, paying for, securing, and renting all equipment and materials necessary to complete the Services required by this Contract.

**3.24 SURVIVAL**



NMHU and the Contractor agree that those obligations of the parties which by their terms require performance after termination or expiration of the Contract, shall survive the termination or expiration of this Contract.

**3.25 CONFIDENTIALITY**

Any information and other data developed or acquired by or furnished to Contractor in the performance of this Contract shall be kept confidential and shall not be made available to any individual or organization without the prior written approval of NMHU. NMHU will comply with statute §14-2-1 et seq. N.M.S.A. 1978, also known as the “Inspection of Public Records Act”, for requests of any records by the public.

**3.26 CONFLICT OF INTEREST**

Contractor warrants that he has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of Services required under this Contract. Contractor shall comply with the provisions of Section §10-16-12 et seq. N.M.S.A. 1978, which requires disclosure to the Office of Secretary of State of amounts received under State contracts when and if such provisions become applicable.

**3.27 STATE PROCUREMENT CODES AND STATUTES**

Contractor is hereby put on notice that the State of New Mexico Procurement Code, §13-1-28 et seq. N.M.S.A. 1978, imposes civil and criminal penalties for its violation. In addition, the State of New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

**3.28 NEW MEXICO LAW PREVAILS**

The place of performance of this Contract shall be the State of New Mexico. This Contract shall be construed, interpreted and enforced according to the laws of the State of New Mexico, and all claims and disputes shall be brought in the State courts of the State of New Mexico.

**3.29 INDEMNIFICATION AND INSURANCE**

- A. The Contractor shall indemnify, and hold harmless NMHU, their respective employees, officers and agents from and against all liability, claims, suits or causes of action, losses, damages penalties, fines, fees, costs and demands, including reasonable legal expenses and reasonable attorneys’ fees connected therewith, but only to the extent arising out of or resulting from negligent acts of Contractor, its agents, employees, subcontractors in the performance of the Services under this Contract;
- B. Contractor agrees not to purport to bind NMHU or the State of New Mexico to any obligation not assumed in this Contract by NMHU or the State of New Mexico, unless Contractor has express written authority to do so, and then only within the strict limits of that authority; and
- C. Contractor agrees that it and its subcontractors will maintain general liability, product liability and property damage insurance in reasonable amounts (at least equal to the New Mexico Tort Claims Act limits) covering the above obligation and will maintain workers’ compensation coverage covering all employees

performing under this Contract on premises occupied by or under the control of NMHU. The liability of NMHU will be subject in all cases to the immunities and limitations of the New Mexico Tort Claims Act, Sections §41-4-1 et seq. N.M.S.A. 1978, as amended.

**3.30 OTHER APPLICABLE LAWS**

Any provision required to be included in a purchase order or contract of this type by any applicable and valid executive order, Federal, State or local law, ordinance, rule or regulation shall be deemed to be incorporated herein.

**3.31 SEVERABILITY**

In the event any term or provision of this Contract or any application to any person or circumstance shall be declared prohibited, invalid, or unenforceable to any extent in any jurisdiction, as determined by a court of competent jurisdiction, such term or provision shall, in that jurisdiction, be ineffective only to the extent of such prohibition, invalidity, or unenforceability, or as applied to such persons or circumstances, without invalidating or rendering unenforceable the remaining term or provision hereof or affecting the validity or enforceability of such term or provision in any other jurisdiction or as to other persons or circumstances in such jurisdiction, unless such would effect a substantial deviation from the general intent and purpose of the parties or make a significant change in the economic effect of the Contract on the party benefited by such term or provision.

**3.32 ASSIGNMENT**

Contractor shall have no right to assign or transfer any of its rights, duties or responsibilities contained in this RFP or subsequent amendments without the prior written approval of NMHU.

**3.33 ADDRESS FOR NOTICES**

All legal notices required to be given by one party to the other hereunder shall be in writing and shall be addressed as follows:

*If to NMHU:*

New Mexico Highlands University  
Attn: Purchasing Department  
P.O. Box 9000  
Las Vegas, NM 87701

and

New Mexico Highlands University  
Attn: Purchasing  
P.O. Box 9000  
Las Vegas, NM 87701

*If to Contractor:*

\_\_\_\_\_  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**[SIGNATURE PAGE FOLLOWS]**

**ARTICLE 4**

**IN WITNESS THEREOF** the parties signify that they understand and agree to all of the terms and conditions of this Contract and are duly authorized agents of their entity/company with the authority to bind their entity/company to this Contract. This Contract will be considered executed after both parties have completed and signed this page.

**NEW MEXICO HIGHLANDS UNIVERSITY**

**(CONTRACTOR NAME)**

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

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date