



Mid-Region Council of Governments

REQUEST FOR PROPOSALS

**Economic Development
Media & Public Relations
Services for SPDD#3**

Issued: August 2, 2013
Procurement No. 2013-08
www.mrcog-nm.gov

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REQUEST FOR PROPOSALS

PROFESSIONAL SERVICES for

Economic Development Media & Public Relations Services for SPDD#3

MRCOG Procurement No. 2013-08

Issue Date: August 2, 2013

Proposal Due Date/Time: **September 4, 2013 12:00 (Noon) MDT**

www.mrcog-nm.gov

Mid-Region Council of Governments

809 Copper Ave., NW, Albuquerque, New Mexico 87102

Phone: (505) 247-1750, Fax: (505) 247-1753

1. INTRODUCTION

1.1 Purpose of this Request for Proposals

The Mid-Region Council of Governments (MRCOG) invites individuals and firms (Offerors) to submit proposals for a contract for the work indicated in the title page in accordance with the specifications contained in this Request for Proposal (RFP). This RFP contains specific requests for information.

The purpose of this procurement is to select individual/firm that will design and execute a regional economic development media and public relations campaign for State Planning and Development District #3 (SPDD3). A map of the SPDD3 is provided in Exhibit A of this RFP. The successful contractor will be responsible for, economic development media and public relations opportunities. Services may include also, but are not limited to, account management/planning, creative design services and media relations.

The amount available under this RFP will not exceed One Hundred Ten Thousand Dollars (\$110,000) for marketing and public relations services. There will be a one year contract subject to available appropriated funds. The competitive selection process provided for under the RFP will focus on the qualifications and prior history of performance on similar projects of each proposer.

This project will be funded in part through federal funds. As such, applicable federal laws, regulations and guidelines shall be adhered to by the contractor as part of the contract.

1.2 Scope of Work

The SPDD3, through a Regional Economic Development Committee comprised of representatives from Bernalillo, Sandoval, Valencia and Tarrant counties ("ED Group"), seeks to identify a contractor to create and execute media & public relations initiatives and communications strategies. The media and public relations campaign should be a multi-faceted campaign which includes print, public relations and internet/digital marketing efforts

for the ED Group's diverse communities.

The selected contractor shall be expected to provide all of the services outlined in Appendix 1, Detailed Scope of Work.

1.3 Scope of Procurement

The scope of the procurement shall encompass the defined scope of work.

1.4 Procurement Manager

The MRCOG has designated a Procurement Manager who is responsible for the conduct of this procurement. The Procurement Manager is:

Thaddeus Lucero
Economic Development Program Manager
Mid-Region Council of Governments
809 Copper N.W.
Albuquerque, NM 87102
Phone: 505-247-1750, Fax: 505-247-1753
E-mail: tlucero@mrcog-nm.gov

Any inquiries or requests regarding this procurement should be submitted to the Procurement Manager in writing. Offerors may contact ONLY the Procurement Manager regarding the procurement. Other MRCOG employees do not have the authority to respond on behalf of the MRCOG.

1.5 Definitions

This section contains definitions and abbreviations that are used throughout this RFP.

"Noon" means 12:00 p.m. Mountain Daylight Time (MDT).

"Contract" means a written agreement for the procurement of items of tangible personal property or services.

"Contractor" means a successful Offeror who enters into a binding contract.

"Determination" means the written documentation of a decision by the Procurement Manager or Procurement Officer including findings of fact supporting a decision. A

determination becomes part of the procurement file.

"Desirable" The terms "may", "can", "should", "preferably", or "prefers" identifies a desirable or discretionary item or factor (as opposed to "mandatory").

"Evaluation Committee" means a body appointed by the Executive Director to evaluate Offerors proposals.

"Evaluation Committee Report" means a document prepared by the Procurement Manager and the Evaluation Committee for submission to the Executive Director for contract award. It contains all written determinations resulting from the procurement.

"Finalist" is defined as an Offeror whose offer complies with all the mandatory specifications of this RFP and whose score on evaluation factors is sufficiently high to merit further consideration by the Evaluation Committee.

"Mandatory" The terms "must", "shall", "will", "is required", or "are required", identify a mandatory item or factor (as opposed to "desirable"). Failure to comply with a mandatory item or factor will result in the rejection of the Offerors proposal.

"MRCOG" means the Mid-Region Council of Governments of New Mexico.

"Offeror" is any person, corporation, or partnership who submits a proposal.

"Procurement Manager" means the person or designee authorized by the Executive Director to manage and administer procurements and contracts.

"Procurement Officer" means the person or designee designated by the MRCOG to oversee procurements.

"Request for Proposals" or "RFP" means all documents, including those attached or incorporated by reference, used for soliciting proposals.

"Responsible Offeror" means an Offeror who

submits a responsive proposal and who has furnished, when required, information and data to prove that his financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services or items of tangible personal property described in the proposal.

"Responsive Offer" or "Responsive Proposal" means an offer or proposal that conforms in all material respects to the requirements set forth in the request for proposals. Material respects of a request for proposals include, but are not limited to, price, quality, quantity or delivery requirements.

1.6 Background Information

The Mid-Region Council of Governments ("MRCOG") is an association of local governments in central New Mexico. Members include county, municipal and special purpose units of government in the Counties of Bernalillo, Sandoval, Torrance and Valencia.

The MRCOG is designated as an Economic Development District, per the U.S. Department of Commerce, Economic Development Administration. As such, the MRCOG provides technical assistance to organizations and entities in the 4-County State Planning and Development District 3 for furthering economic development opportunities. In 2009, the MRCOG was awarded an Innovation Center grant from the USED A in part to work on a public-private marketing program for the MRCOG region. This Request for Proposals is in line with that marketing effort.

In 2009, the MRCOG was awarded a grant from the US Economic Development Administration to do regional innovation cluster planning (Award number 08-79-04463, CFDA 11.302); this proposal is part of the implementation of that grant.

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2. CONDITIONS GOVERNING THE PROCUREMENT

This section of the RFP contains the schedule for the procurement, describes the major procurement events and the conditions governing the procurement.

2.1 Sequence of Events

The Procurement Manager will make every effort to adhere to the procurement schedule shown in this RFP. The time frame shown, however, may be subject to change at the discretion of the MRCOG.

Issue RFP – August 2, 2013

Written Questions Due – August 28, 2013, 12:00 p.m.

Proposals Due – September 4, 2013, 12:00 p.m. MDT

Evaluation Committee – Week of September 9, 2013

Orals/Best and Final Offers ("BAFOs") (if necessary)

– Week of September 16, 2013

Selection of Finalist – Week of September 23, 2013

2.2 Explanation of Events

2.2.1 Pre-Proposal Conference

There will not be a pre-proposal conference for this RFP.

2.2.2 Distribution List Response

Potential Offerors should hand-deliver, electronically mail, return by facsimile or by registered or certified mail the "Acknowledgement of RFP Receipt Form" that accompanies this document as Appendix 2 to have their organization placed on the procurement distribution list. Offerors **must include an email address** on the Acknowledgement of Receipt Form. The distribution of written responses and any RFP amendments will be **emailed** to the email address submitted on the Acknowledgment of RFP Receipt Form.

The procurement distribution list will be used for responding to any written questions and distributing written responses to questions and any RFP amendments. If Offerors do not complete and submit the "Acknowledgement of

RFP Receipt Form" they will not receive responses to RFP questions or RFP amendments.

2.2.3 Deadline to Submit Additional Questions

Potential Offerors may submit additional written questions as to the intent or clarity of this solicitation to the Procurement Manager. All written questions must be **emailed** to the Procurement Manager at the address specified in this solicitation. The Procurement Manager will provide a written response only to written requests that are received at least five (5) working days prior to the submittal due date, which is August 28, 2013, 12:00 p.m. (MDT).

2.2.4 Response to Written Questions/RFP Amendments

Written responses to written questions and any RFP amendments will be distributed to all potential Offerors whose organization name appears on the procurement distribution list.

2.2.5 Submission of Proposal

All proposals must be received by the Procurement Manager or designee no later than the time on the date shown on the cover page of this Request for Proposals. Proposals received after this deadline will not be accepted. The date and time will be recorded on each proposal as it is received. Proposals must be addressed and delivered to the Procurement Manager at the address listed in Section 1.4. Proposals must be sealed and labeled on the outside of the package to clearly indicate that they are in response to the name of the procurement on the cover sheet. Proposals submitted by facsimile or electronic mail will not be accepted.

A public log will be kept of the names of all Offeror organizations that submitted proposals. Pursuant to Section 13-1-116 NMSA 1978, the contents of any proposal shall not be disclosed to competing Offerors prior to contract award.

2.2.6 Proposal Evaluation

An Evaluation Committee will evaluate proposals. 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, but proposals may be accepted and evaluated without such discussion. The Offerors SHALL NOT initiate discussions. Potentially responsive proposals are proposals that are reasonably susceptible of being made responsive.

2.2.7 Selection of Finalists

The Procurement Manager will provide the list of finalists to the Executive Director. The Procurement Manager will notify the Finalist Offerors of their selections. Only Finalists will be invited to participate in the subsequent steps of the procurement. The final schedule for the oral presentations (if necessary) will be determined at this time.

2.2.8 Oral Presentation by Finalists (Optional)

Finalist Offerors may be required to present their proposals to the Evaluation Committee. The Procurement Manager will schedule the time for each Offeror presentation. All Offeror presentations will be held at the MRCOG address noted herein. Each presentation will be limited to one hour with an additional fifteen minutes for questions and answers.

2.2.9 Best and Final Offers from Finalists

Finalist Offerors may be asked to submit revisions to their proposals for the purpose of obtaining best and final offers.

2.2.10 Contract Negotiations

A draft Contract is made a part of this solicitation as evidenced in Exhibit B and is available for viewing on the MRCOG website specified herein. The Contract is subject to change and shall be negotiated with the Finalist Offerors selected for award by the Executive Director. In the event that mutually agreeable terms cannot be reached within a reasonable time, defined herein as within fifteen (15) calendar days from the date that the Finalist Offeror is notified of the award, the MRCOG reserves the right to negotiate a Contract with another Finalist Offeror without undertaking a new procurement process.

2.2.11 Contract Award

The Offeror ranking the highest, taking into consideration the evaluation factors in Section 5, will be recommended for contract award.

Contracts are not valid until signed by the Executive Director of the MRCOG.

2.2.12 Protest of Award

An Offeror who has submitted a responsive Offer on this RFP may protest the award of a contract resulting from the RFP. The protest must be timely and in conformance with Section 13-1-172 NMSA 1978 and applicable procurement regulations. The protest period will begin on the day following the contract award and will end at close of business on the following fifteenth calendar day. Protests must be written and must include the name and address of the protestor and the request for proposal number. It must also contain a statement of grounds for protest including appropriate supporting exhibits and it must specify the ruling requested from the Procurement Officer. The protest must be delivered to the following Procurement Officer:

Marla Segura
Procurement Officer
Mid-Region Council of Governments
809 Copper Avenue NW
Albuquerque, New Mexico 87102
Phone: 505-247-1750, Fax: 505-247-1753
Email: msegura@mrcog-nm.gov

Protests received after the deadline will not be accepted.

2.3 General Requirements

This procurement will be conducted in accordance with the MRCOG procurement policy, the New Mexico Procurement Code and any applicable Federal regulations.

The MRCOG requires that all Offerors agree to be bound by the "General Requirements" contained in this RFP. Any Offeror concerns must be promptly brought to the attention of the Procurement Manager.

2.3.1 Acceptance of Conditions Governing the Procurement

Offerors must indicate their acceptance of the "Conditions Governing the Procurement" section in the letter of transmittal.

Submission of a proposal constitutes acceptance of the evaluation factors contained in this RFP.

2.3.2 Incurring Cost

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

2.3.3 Prime Contractor Responsibility

Any Offeror awarded a contract as a result of this RFP will be solely responsible for fulfillment of the contract with MRCOG. The MRCOG will make contract payments to only the prime contractor.

2.3.4 Subcontractors

Intended use of subcontractors must be clearly explained in the proposal, and major subcontractors must be identified by name. The prime contractor shall be solely responsible for the entire performance of the contract whether or not subcontractors are identified in the proposal or used in the performance of the contract.

2.3.5 Amended Proposals

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

2.3.6 Offerors 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 signed by the Offeror's duly authorized representative

addressed to the Procurement Manager.

2.3.7 Proposal Offer Firm

Responses to this RFP will be considered firm for ninety calendar days after the due date for receipt of proposals.

2.3.8 Disclosure of Proposal Contents

The proposals will be kept confidential until a contract is awarded. At that time, all proposals and documents pertaining to the proposals will be open to the public, except for the material that is proprietary or confidential. The Procurement Manager will not disclose or make public any pages of a proposal on which the Offeror has stamped or imprinted "proprietary" or "confidential" subject to the following requirements.

Proprietary or confidential data shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal.

Confidential data is normally restricted to confidential financial information concerning the Offerors organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, 57-3A-1 to 57-3A-7 NMSA 1978. The price of products offered or the cost of services proposed shall not be designated as proprietary or confidential information.

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

2.3.9 No Obligation

This procurement in no manner obligates the MRCOG to the use of any proposed professional services until a valid written contract is awarded and approved by the appropriate authorities.

2.3.10 Termination of RFP

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

2.3.11 Sufficient Appropriation

Any contract awarded as a result of this RFP process may be terminated if sufficient appropriations or authorizations do not exist. Sending written notice to the contractor will affect such termination. The contractor will accept the MRCOG's decision as to whether sufficient appropriations and authorizations are available as final.

2.3.12 Governing Law

The laws of the state of New Mexico shall govern this procurement and any agreement with Offerors that may result.

2.3.13 Basis for Proposal

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

2.3.14 Contract Terms and Conditions

The contract to be executed between the MRCOG and Contractor will include language similar to that put forth in Exhibit B of this RFP. The contract between the MRCOG and a contractor will follow the format specified by the MRCOG. An Offeror may review the form of contract at the office of the Procurement Manager. However, the MRCOG reserves the right to negotiate with a successful Offeror provisions in addition to those contained in this RFP.

If an Offeror objects to any of the terms and conditions as contained in this Section, that Offeror must propose in writing specific alternative terms and conditions. The MRCOG may or may not accept the alternative language. General references to the Offerors terms and conditions or attempts at substantive or

complete substitutions are not acceptable to the MRCOG and will result in disqualification of the Offerors 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.

2.3.15 Approval of Contractor Personnel

Personnel proposed in the contractor's written proposal to the procuring agency are considered material to any work performed under this RFP and subsequent contract.

During the course of this procurement and after the contract has been awarded, no changes of personnel will be made by the contractor without prior written consent of the Procurement Manager. Replacement of any contractor personnel, if approved, shall be with personnel of equal ability, experience and qualifications. The contractor will be responsible for any expenses incurred in familiarizing the replacement personnel to insure their being productive immediately upon receiving assignments. Approval of the replacement personnel shall not be unreasonably withheld.

The MRCOG shall retain the right to request the removal of any of the contractor's personnel at any time.

2.3.16 Contract Deviations

Any additional terms and conditions, which may be the subject of negotiation, will be discussed only between the MRCOG and the selected Offeror and shall not be deemed an opportunity to amend the Offerors proposal.

2.3.17 Offeror Qualifications

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

2.3.18 Right to Waive Technical Irregularities

The Procurement Manager reserves the right to waive technical irregularities. The Procurement Manager also reserves the right to waive mandatory requirements provided that all of the otherwise responsive proposals failed to meet the mandatory requirements and/or doing so does not otherwise materially affect the procurement. This right is at the sole discretion of the MRCOG.

2.3.19 Project Team Prohibited Activities

MRCOG employees or MRCOG committee or board members or volunteers are prohibited from participating directly or indirectly in the preparation of this procurement when the employee knows that the individual or any member of the individual's family has a financial interest in the business seeking or obtaining a contract.

2.3.20 Notice – Civil and Criminal Penalties

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.

2.3.21 MRCOG Rights

The MRCOG reserves the right to accept all or a portion of the proposal of an Offeror selected for award.

2.3.22 Right to Publish

Throughout the duration of this procurement process and contract term, potential Offerors, and contractors must secure from the MRCOG written approval prior to the release of any information that pertains to the potential work or activities covered by this procurement or the subsequent contract. Failure to adhere to this requirement may result in disqualification of the Offerors proposal or termination of the contract.

2.3.23 Ownership of Proposals

All documents submitted in response to this RFP

shall become the property of the MRCOG. However, any technical or user documentation submitted with the proposals of non-selected Offerors shall be returned after the expiration of the protest period. Offerors not selected for award of a contract may pick up the documentation at the MRCOG office within a fifteen-day period following the protest period.

2.3.24 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.

2.3.25 Use of Electronic Versions of this RFP

This RFP is being made available by electronic means at www.mrcog-nm.gov. If accepted by such means, the Offeror acknowledges and accepts full responsibility to insure that no changes are made to the RFP. In the event of conflict between a version of the RFP in the Offerors possession and the version maintained by the MRCOG, the version maintained by the MRCOG shall govern.

2.4 Special Requirements

This procurement is supported by federal and state funds. Therefore the following certifications are required for this solicitation:

2.4.1 Campaign Contribution Disclosure

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, 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. Certification is required as provided in Appendix 4 of this solicitation.

2.4.2 Affirmative Action/Equal Employment Opportunity

All proposals must include a certification for Affirmative Action / Equal Employment Opportunity as provided in Appendix 5 of this solicitation.

2.4.3 Debarment and Suspension

The Contractor agrees to comply and assures the compliance of each third-party contractor and subrecipient at any tier with Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, and USDOT regulations, "Governmentwide Debarment and Suspension Nonprocurement)," 49 C.F.R. Part 29. The Contractor agrees to and assures that its third party contractors and subrecipients will review the Excluded Parties Listing System (EPLS) at <https://www.sam.gov/> before entering into any contracts. Certification for Debarment and Suspension is provided in Appendix 6 of this RFP.

2.4.4 Prohibition Against Use of Federal Funds for Lobbying

Neither the Contractor nor any subcontractor may use Federal assistance funds for publicity or propaganda purposes designed to support or defeat legislation pending before Congress. Certification of Restrictions on Lobbying is required as provided in Appendix 7 of this solicitation.

2.4.5 Breaches and Dispute Resolutions

A. Disputes. Disputes arising in the performance of the resulting Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the MRCOG, herein defined as the MRCOG Procurement Manager. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the MRCOG Procurement Manager. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the MRCOG Procurement Manager shall be binding upon the Contractor and the Contractor shall abide by the decision.

B. Performance During Dispute. Unless otherwise directed by MRCOG, the Contractor shall continue performance under this Contract while matters in dispute are being resolved.

C. Remedies. If any controversy or claim arising out of this Contract cannot be settled by the Parties directly, the Parties will submit the controversy or claim to mediation using a mediator mutually acceptable to the Parties or, if the Parties cannot agree on a mediator, a mediator chosen by mediators chosen by each Party. If the Parties are unable, after a reasonable period of time, to produce through such mediation a mutually satisfactory resolution on the matter, the dispute will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the MRCOG is located.

D. Right and Remedies. The duties and obligations imposed by this Contract and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the MRCOG or the Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

2.4.6 Disadvantaged Business Enterprise

A. The MRCOG encourages minority and women-owned firms and enterprises.

B. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract.

C. Upon written request from MRCOG, the Contractor will provide a report of DBE participation obtained through race-neutral means throughout the period of the Contract.

2.4.7 Civil Rights Compliance

Compliance with Regulations: The Contractor shall comply with federal regulation relative to

nondiscrimination. Title 23 CFR Part 200 as they may be amended from time to time ("Regulations"), which are herein incorporated by reference and made a part of this Contract.

A. Nondiscrimination – The Contractor, with regard to the work performed by it during the Contract, shall not discriminate on the grounds of race, color, or national origin, sex, age, and disability/handicap and low income in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination.

B. Solicitations for Subcontractors, Including Procurements of Materials and Equipment – In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin, sex, age, and disability/handicap and low income.

C. Information and Reports – The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, or other sources of information, and its facilities.

D. Sanctions for Noncompliance – In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Contract, MRCOG shall impose such Contract sanctions as it may determine to be appropriate, including, but not limited to:

1. Withholding of payments to the Contractor under the Contract until the Contractor complies
2. Cancellation, termination or suspension of the Contract, in whole or in part.

E. Incorporation of Provisions – The Contractor shall include the provisions of this Section in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued

pursuant thereto.

The Contractor shall take such action with respect to any subcontract or procurement as MRCOG may direct as a means of enforcing such provisions including sanctions for noncompliance.; Provided, however, that, in event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request MRCOG to enter into such litigation to protect the interests of MRCOG, and in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

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3. RESPONSE FORMAT AND ORGANIZATION

3.1 Number of Responses

Offerors shall submit only **one** proposal for this RFP.

3.2 Number of Copies

Offerors shall deliver to the location specified in Section 1.4 on or before the closing date and time for receipt of proposals the following: **one (1) original, seven (7) identical copies, and two (2) digital copies.** Digital copies shall include one electronic complete copy and one electronic copy without "Proprietary" information in PDF format.

3.3 Proposal Format

All proposals must be typewritten on standard 8 1/2 x 11 paper (larger paper is permissible for charts, spreadsheets, etc.). Pages shall be single spaced with a font of no less than number 10. Proposals shall be no longer than 50 pages (single sided) including front and back covers, transmittal letter, tabs or section dividers, and resumes. The 50 page limitation also applies to Tabs 1 through 8 as detailed below; however, Tab 8 Certifications is not included the page limitation.

3.3.1 Proposal Contents

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

Tab 1: Appendix 3 Proposal Form

Tab 2: Organizational Capabilities

Tab 3: Personnel/Resources

Tab 4: Process and Performance

Tab 5: Vision and Strategy

Tab 6: References

Tab 7: Budget Proposal

Tab 8: Certifications

Appendix 4 Campaign Disclosure
Appendix 5 Affirmative Action/EEOC
Appendix 6 Debarment, Suspension
Appendix 7 Restrictions on Lobbying

Certifications are required to ensure that an Offeror has completed a responsive proposal.

Any proposal that does not adhere to these requirements may be deemed non-responsive and rejected on that basis.

3.3.2 Proposal Form

Each proposal must contain - as the first item in the organized and indexed sequence – the fully executed Proposal Form as presented in Appendix 3. Failure to provide the form with all the information indicated will result in rejection of the proposal as non-responsive.

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4. SPECIFICATIONS

Offerors should respond in the form of a thorough narrative to each mandatory specification. The narratives along with required supporting materials will be evaluated and awarded points accordingly. Additional details regarding the scope can be found in Appendix 1 and should also be considered in the Offeror's response.

4.1 Organizational Capabilities

As specified in **Tab 2** of Section 3.3.1, Offerors must demonstrate the company's organizational capability to provide the Scope of Work and Deliverables described in Appendix 1.

Offerors must provide background information on the company, including history, years in business, experience in the past 3 years, company size, number of employees, types of services provided, locations, parent company, and/or affiliate information, type of company, etc. This description should also include experience in working on regional economic development marketing with demonstrated knowledge of the economic development process and experience working with government.

Offerors must specify accreditations acquired since its inception, give details of any company membership of professional or trade organization affiliations, and list any awards or accomplishments.

4.2 Personnel/Resources

As specified in **Tab 3** of Section 3.3.1, Offerors shall provide information about the individuals assigned to perform the work and the resources it will dedicate. This section must include the number of people by level that will be assigned to this contract, the amount of time each staff person will devote to this account and the name of the principal or project manager who will have direct and continued responsibility for the services provided. This person will serve as the firm's first point-of-contact on all matters dealing with services and the handling of day-to-day activities through the duration of the project.

The assigned personnel list should include:

- Name
- Job title/responsibilities
- Number of years in current position
- Economic development/relevant account experience
- Brief summary of work and education history
- Resources available to conduct work
- Ability to build on current marketing efforts

4.3 Process and Performance

As specified in **Tab 4** of Section 3.3.1, Offeror must provide demonstrable record for creating focused creative executions that included public relations and media relations activities. Offeror must also demonstrate the ability to successfully build brand and to reflect the attributes of that brand strategy.

Offerors shall provide examples of two (2) national economic development media campaigns the company has executed for a client in the past 3 years.

With each campaign the Offerors shall include:

- The objectives of the campaign
- The research and methodology that went into the development of the campaign
- The resulting creative concept, including advertising, marketing, branding and/or other related efforts
- Media strategy
- The results of the campaign
- How impact was measured

4.4 Vision and Strategy

As specified in **Tab 5** of Section 3.3.1, Offerors shall provide their approach to positioning the campaigns. Approach must include Offeror's perspective on a strategic national public relations and media relations campaign to promote Central New Mexico as a premier business location for out-of-state prospects in SPDD3.

Given the breadth of activities included in the

scope of work and a fixed budget, priority must be placed on activities that will result in the highest return on investment of time and money. Offerors shall provide an experienced-based perspective on which activities should result in the highest return on investment. This section must also include suggested metrics, tracking methodology and a process for regular, ongoing reporting that demonstrates clear return on investment for MRCOG and SPDD 3's investment.

Offerors shall provide sample creative branding, messaging and marketing strategies that includes methodology for brand development and creative execution.

Offerors shall explain how they will overcome the challenges faced by a region with diverse communities, both urban and rural, large and small, and what local resources and partnerships they will utilize in the process.

Offerors shall provide a narrative on their customer relationship management approach.

4.5 References

As specified in **Tab 6** of Section 3.3.1, Offerors must attach a listing of at least three (3) relevant business references that can substantiate that the company has successfully conducted similar projects in the past. Reference list must include the name of the reference entity, a brief statement describing the relationship between the proposer and the reference entity, and the name, title and telephone number and email address of a contact person at the reference entity.

Offerors shall provide a current client list and a contact list of clients that the proposing company has worked with for three or more years; include the company name, contact, email address, and phone number for each.

4.6 Budget Proposal

As specified in **Tab 7** of Section 3.3.1, Offerors shall provide a fully burdened hourly rate, including direct labor and overhead, for each of the key individuals or principals in the proposal, and a description of any other potential

expenses that the Offeror expects payment for under the Contract that are not covered by burdened hourly rate. Proposals should itemize the proposed fee for each element separately. A full and complete proposal stating how many hours of work and the full Contract price is not required for this solicitation; full Contract price will be negotiated at the time of Contract award with Proposal finalist(s).

The agency must have deep experience in media relations. The agency must have experience with on-line and "new media" marketing strategies and tactics.

Contractor must have the economic resources to pay expenses in advance of reimbursement from the MRCOG and SPDD3, for the services described in Section 2.1 and 2.2 of this RFP, as well as the staff and administrative expense itemized in the proposal budget.

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5. EVALUATION

5.1 Evaluation Point Summary

The following is a summary of evaluation factors with point value assigned to each. These factors, along with the general requirements, will be used in the evaluation of Offeror proposals.

<u>Evaluation Factor</u>	<u>Points</u>
1. Organizational Capabilities	15
2. Personnel/Resources	20
3. Process and Performance	15
4. Vision and Strategy	20
5. References	10
6. Budget Proposal	20
SUBTOTAL	100
5. Oral Interview (If Necessary) to include a proposed project budget	30
6. Best & Final Offers (if Necessary)	20
TOTAL AVAILABLE	250

5.2 Evaluation Process

The evaluation process will follow the steps listed below:

5.2.1 Proposal Compliance

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

5.2.2 Contacting Offerors

The Procurement Manager may contact the Offeror for clarification of the response as specified in Section 2.2.6.

5.2.3 Finalist Selection

Responsive proposals will be evaluated on the factors in this section that have been assigned a point value. The responsible Offerors with the highest scores will be selected as Finalist Offerors based upon the proposals submitted. The Evaluation Committee may then make a recommendation to the Executive Director for award or solicit Oral Interviews from the Finalists. Finalist Offerors may then be asked to participate in Oral Interviews. At the conclusion of the Oral Interviews additional points may be awarded in accordance with this section. The Evaluation Committee may then make a recommendation to the Executive Director for award or solicit Best and Final Offers from any or all of the finalists. If Best and Final Offers are solicited, the Evaluation Committee will award additional points in accordance with this section and then make a final recommendation for award to the Director. A Finalist Offeror will be recommended for Contract award. Please note, however, that a serious deficiency in the response of any one factor may be grounds for rejection regardless of overall score.

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APPENDIX 1
REQUESTS FOR PROPOSALS
RFP#: 2013-08

DETAILED SCOPE OF WORK

The Mid-Region Council of Governments (MRCOG) is seeking proposals from qualified firms for regional marketing services in accordance with the Scope of Work in Section 1.2 specified in this Request for Proposal (RFP).

The purpose of this procurement is to select individual/firm that will design and execute a national economic development public relations and media relations campaign for State Planning and Development District No. 3 (SPDD 3). A map of SPDD 3 is provided in Exhibit A of this RFP. The successful Offeror will be responsible for economic development marketing, including account management/planning, brand development, creative design services and media relations.

Offeror will work closely with the MRCOG and key SPDD3 Economic Development Partners to market the region on its attractiveness to business prospects.

A qualified firm will have demonstrated experience and expertise in forming strategic partnerships with public and private-sector organizations and communicating to national media. It will have proven success in conceiving and executing large-scale national public relation and media relations projects. A qualified firm will be viable, professionally organized, well-versed in communicating in a variety of creative media, skilled at telling the SPDD 3's story clearly and persuasively, and, above all, results oriented.

Goals

- Develop and project the image of the Central New Mexico region (Bernalillo, Sandoval, Torrance and Valencia Counties) as a great place for business.
- Increase national awareness of the economic development opportunities in Central New Mexico.

Professional Services

Prepare a strategic national public relations and media relations campaign that consists of branding and strategy development, online marketing, , public relations, and media relations within a total budget of One Hundred and Ten Thousand Dollars (\$110,000). Marketing efforts may include but are not limited to the following, all are which subject to negotiation:

Task 1: Branding, Messaging and Marketing Strategy Development

- Conduct facilitated discussions to identify and develop regional brand.
- Develop brand positioning and overall brand campaigns and direction.
- Work with local partners to develop and implement consistent messaging across the region.

Task 2: Develop Story Lines for the Unique Features of the Region

- Develop targeted messages for national business publications and targeted industry publications both on-line and print.
- Monitor article publication success.

Task 3: Contact National Media

- Pitch stories to national media and targeted industry media regarding this campaign

Task 4: Develop Infographics that Portray the Region's Business Opportunities, Strengths

Task 5: Develop Press Releases for National Media, Replicable to Local Media and on Local Websites.

Task 6: Develop and Manage Electronic Messaging, such as E-Newsletters, E-Post cards, etc.

Task 7: Develop a Strategy for possible in-bound Press-Trip

The successful bidder will:

- Report to the Mid-Region Council of Governments and SPDD 3 Partners;
- Attend other meetings, make presentations and participate in teleconferences as requested by SPDD 3 Partners.
- Provide a monthly written status report to the MRCOG and SPDD 3 Partners on activities and measurements to appropriately adjust strategy.

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APPENDIX 2



REQUESTS FOR PROPOSALS RFP#: 2013-08

ACKNOWLEDGEMENT OF RFP FORM

In acknowledgement of receipt of this Request for Proposal the undersigned agrees that he/she has received a complete copy, beginning with the title page and table of contents, and ending with Appendix 7.

The acknowledgement of receipt should be signed and returned to the Procurement Manager. Only potential Offerors who elect to return this form completed with the indicated intention of submitting a proposal for the procurement checked below, will receive copies of all Offeror written questions and the MRCOG's written responses to those questions as well as RFP amendments, if any are issued.

Firm / Individual	_____	
Represented by	_____	Title _____
Phone No.	_____	Fax No. _____
E-mail Address	_____	
Address	_____	
City/State/Zip Code	_____	
Signature *	_____	Date _____

* For e-mail transmittal only type name if different from "Represented by" above. All others must provide a formal signature.

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

Firm ☐ does ☐ does not (**check one**) intend to respond to this Request for Proposals.

Return to: Thaddeus Lucero
Procurement Manager
809 Copper Ave. N.W., Albuquerque, NM 87102
Phone: 505-247-1750; Fax: 505-247-1753
E-mail: tlucero@mrcog-nm.gov

APPENDIX 3

To: Mid-Region Council of Governments
809 Copper N.W.
Albuquerque, NM 87102

REQUESTS FOR PROPOSALS RFP#: 2013-08 PROPOSAL FORM

Proposing Organization

Mailing Address

City/State/Zip Code

Head of Organization

Title

Telephone Number

Fax Number

Proposal Contact Person

Title

Telephone Number

E-Mail Address

Contract Signatory Authority

Title

Telephone Number

Tax/Legal Status

[] Corporation [] For Profit [] Not-for-Profit [] Government
[] Individual

Federal ID Number

State ID Number

1. I (We) am submitting on the procurement titled: _____

2. I (We) accept the Conditions Governing the Procurement stated in Section 2.3.1.

3. I (We) acknowledge receipt of any and all amendments to this RFP, Nos. _____ to _____.

Signature of Officer _____ Date _____

APPENDIX 4

REQUEST FOR PROPOSALS RFP#: 2013-08

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, 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 years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars (\$250) over the two year period.

Furthermore, the state agency or local public body may cancel a solicitation or proposed award for a proposed contract 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 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 any 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 Official(s) if any: _____
(Completed by State Agency or Local Public Body)

Larry Abraham	Christina Ainsworth	Wayne Ake	M. Steven Anaya	Mary Anderson
Janice Arnold-Jones	Theodore Barela	Isaac Benton	Richard Berry	Richard Bruce
Vandora Casados	Gloria Chavez	Robert Chavez	Karen Dunning	Tim Eichenberg
Lonnie Freyburger	Phillip Gasteyer	Tamara Gutierrez	Don Harris	Ted Hart
Brad Hill	Rudy Jaramillo	Wayne Johnson	Robert Knowlton	Kathy Korte
Wilbur Lockwood	Roxanna Meyers	Jack Torres	Adrian Oglesby	Debbie O'Malley
Leon Otero	Lawrence Romero	Donald Rudy	Emily Sanchez	Ken Sanchez
Nora M. Scherzinger	Thomas Swisstack	Edmond Temple	Rick Valarde	Robert Vialpando
Glenn Walters	Ron Williams			

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) _____

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 5
REQUEST FOR PROPOSALS
RFP#: 2013-08
CERTIFICATION REGARDING
AFFIRMATIVE ACTION/EQUAL EMPLOYMENT OPPORTUNITY
AND NONDISCRIMINATION
AHRO Form CC 2

The contractor hereby acknowledges and agrees to abide by the Special Provisions for Affirmative Action/Equal Employment Opportunity and Nondiscrimination and all other provisions, regulations and/or requirements of the Owner for Affirmative Action/Equal Employment Opportunity and Nondiscrimination.

The contractor has participated with any agency in a previous contract or subcontract subject to any Equal Employment Opportunity and Nondiscrimination in Employment requirements.	Yes <input type="checkbox"/> No <input type="checkbox"/>
Compliance reports were required to be filed in connection with such contract or subcontract.	Yes <input type="checkbox"/> No <input type="checkbox"/>
The contractor has filed all compliance reports due under applicable instructions. If answer to this statement is "No", explain in detail on reverse side of this certification.	Yes <input type="checkbox"/> No <input type="checkbox"/>

The contractor has submitted a copy of this Certification to MRCOG, 809 Copper NW, Albuquerque, NM 87102.

Company Name of Bidder Telephone Number

Signature FAX Number

Printed Name E-Mail Address

Title Date

Address:

APPENDIX 6

REQUEST FOR PROPOSALS RFP#: 2013-08

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS – PRIMARY COVERED TRANSACTIONS

(To be submitted with each bid or offer exceeding \$25,000)

The contractor, _____, certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and

(4) Have not within a three-year period preceding this agreement had one or more public transactions (Federal, State, or local) terminated for cause or default.

Where the contractor is unable to certify to any of the statements in this certification, such contractor shall attach an explanation to this proposal.

THE CONTRACTOR, _____, CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. sub-section 3801 ET SEQ. ARE APPLICABLE THERETO.

Executed this _____ day of _____, 20____.

By

(Signature of authorized official)

(Title of authorized official)

APPENDIX 7

REQUEST FOR PROPOSALS RFP#: 2013-08

CERTIFICATION REGARDING RESTRICTIONS ON LOBBYING

(To be submitted with each bid or offer exceeding \$100,000)

I, _____, hereby certify on
(name and title of official)

behalf of _____ that;
(name of Contractor)

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or any employee or a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontract, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

For purposes of this Certification, this Agreement shall be considered a federal contract. This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Executed this _____ day of _____, 20____.

By _____
(Signature of authorized official)

(Title of authorized official)



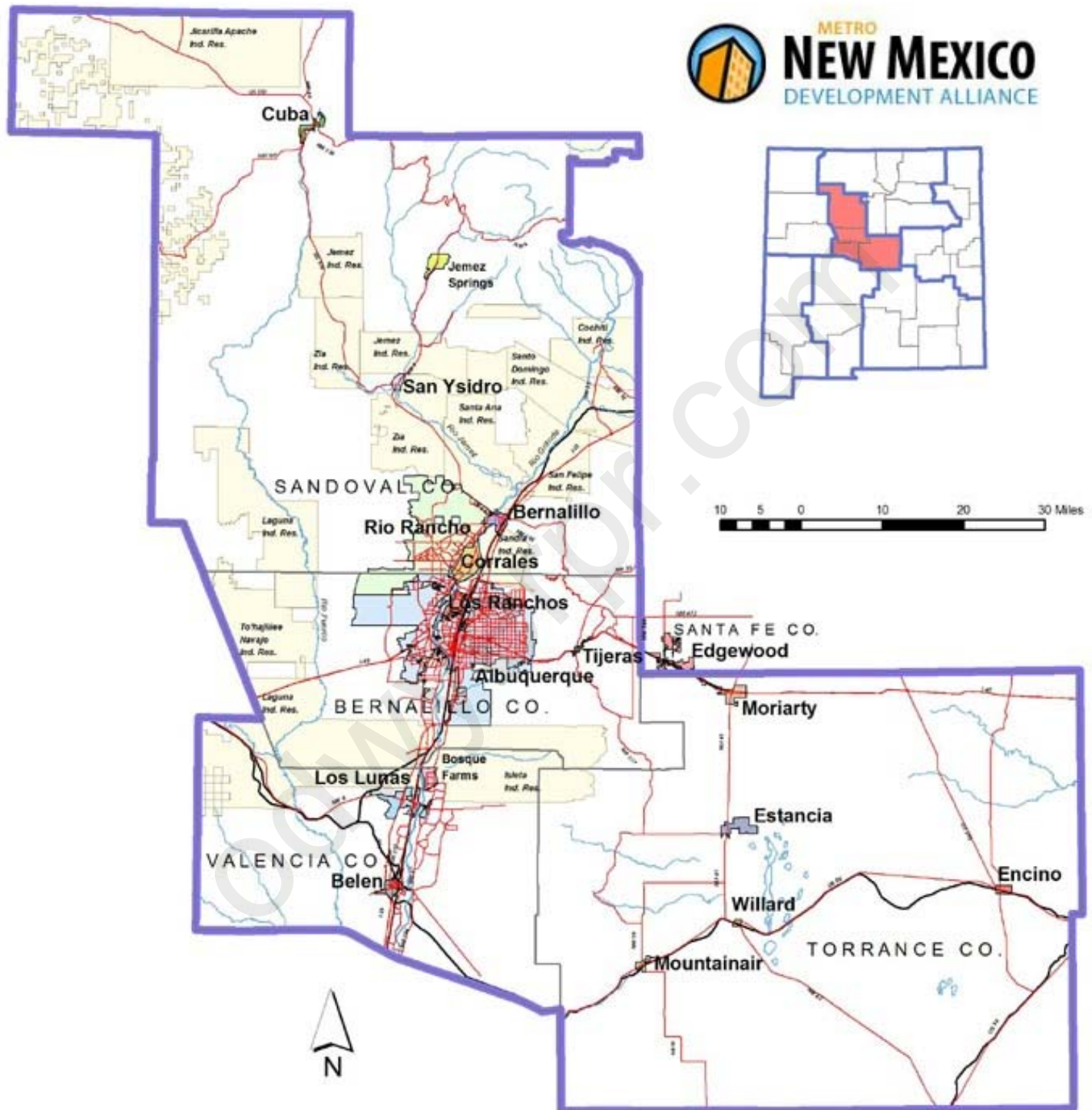
Mid-Region Council of Governments

RFP 2013-08

**Economic Development
Media & Public Relations
Services for SPDD#3**

EXHIBIT A

**Map of the
State Planning and Development
District #3 (SPDD#3)**





Mid-Region Council of Governments

RFP 2013-08

**Economic Development
Media & Public Relations
Services for SPDD#3**

EXHIBIT B

Draft Contract Terms and Conditions

PROFESSIONAL SERVICES AGREEMENT

This Agreement ("Agreement") is made and entered into on the date last entered below, by and between _____ ("MRCOG") and _____, ("Contractor") herein referred to as "Parties."

RECITALS

WHEREAS, the Mid-Region Council of Governments (MRCOG) issued a Request for Proposals RFP 2013-08 entitled *Economic Development Media & Public Relations Services for SPDD#3*, issued August 2, 2013, which is by this reference made a part of this agreement; and

WHEREAS, the Contractor submitted its proposal in response to RFP 2013-08, which is by this reference made a part of this agreement; and

WHEREAS, the MRCOG desires to engage the Contractor to render certain services in connection therewith, and the Contractor is willing to provide such services.

NOW, THEREFORE, in consideration of the premises and mutual obligations herein, the parties hereto do mutually agree as follows:

Section 1. Miscellaneous Representations

A. The Contractor is licensed or otherwise authorized to conduct the business activities described in this Agreement by all governmental agencies having jurisdiction over Contractor, and Contractor has the experience and expertise to perform the work or services required in this Agreement.

B. The MRCOG has the right and power to enter into this Agreement.

Section 2. Scope of Services

A. The Contractor shall provide the services (hereinafter referred to as "Services") specified in Appendix A in a satisfactory and proper manner, and shall provide all necessary personnel, material, and facilities and perform all matters necessary or incidental to the Services as determined by MRCOG.

B. Staffing. MRCOG designates _____ as MRCOG Project Manager. The Contractor shall keep the Project Manager fully informed on all aspects of its performance of the Services. The Project Manager will review and approve Contractor's invoices prior to payment. In the absence of the Project Manager, the MRCOG's Executive Director shall serve as Project Manager.

C. Contractor designates _____ as Contractor's Project Manager. Contractor's Project Manager shall transmit all work product and invoices to the MRCOG Project Manager. The Contractor Project Manager shall direct the technical aspects of the Services; however, the Contractor may provide additional qualified personnel to meet its obligations under this Agreement. Contractor shall provide to MRCOG a statement of qualifications for each individual performing work under this Agreement when requested to do so by MRCOG. Any change in Contractor's appointment of its Project Manager shall not be allowed until approved in writing by MRCOG.

Section 3. Compensation

For performing the Services and related tasks specified in Appendix A hereof, the MRCOG agrees to pay the Contractor a negotiated lump sum per each task on a percentage of progress completed basis up to a total amount of _____ (\$_____), which amount shall include any gross receipts tax and which shall constitute full and complete compensation for the Services under this Agreement, including all expenditures made and expenses incurred by the Contractor in performing such services.

Section 4. Method of Payment.

A. Payment to Contractor. Amounts due to Contractor shall be paid to the Contractor upon receipt by MRCOG of properly documented invoices for payment as determined by the budgetary and fiscal guidelines of the MRCOG and upon receipt of payment by the MRCOG from the funding MRCOG. Payments to the Contractor shall be paid within the time periods prescribed by statute.

B. Reports Required. Contractor shall attach to the invoice a detailed work effort and progress report upon completion or partial completion of specific tasks described in Appendix A, Detailed Scope of Work, in a format mutually agreed upon by the MRCOG Project Manager and the Contractor. Payments shall be made only after verification and acceptance of the progress reports by the MRCOG Project Manager.

C. Verification of Invoices. The MRCOG shall be entitled to verify the personnel time and other costs charged to MRCOG pursuant to the provisions of this Agreement.

Section 5. Time of Performance

The Services described herein shall commence on the date this Agreement is executed and shall be completed within one (1) year, unless the time for completion is extended pursuant to Option to Extend Term contract clause

contained herein.

Section 6. Option to Extend Term

A. The MRCOG may extend the term of this Agreement for up to two (2) years by written notice to the Contractor. If feasible, MRCOG shall give Contractor a preliminary written notice of its intent to extend at least sixty (60) days before the Agreement expires. The preliminary notice does not commit MRCOG to an extension, and any absence of notice shall not affect the validity of any exercise of the option to extend the term of this Agreement.

B. If the MRCOG exercises this option to extend the term of the Agreement, the extended Agreement shall be considered to include this option provision.

C. The total duration of this Agreement, including the exercise of any options under this clause, shall not exceed three (3) years.

Section 7. Independent Contractor

Neither the Contractor nor its employees are considered to be employees of the MRCOG for any purpose whatsoever. The Contractor is considered an independent contractor at all times in the performance of the Services described herein. The Contractor further agrees that neither it nor its employees are entitled to any benefits from MRCOG under the provisions of the Workers' Compensation Act of the State of New Mexico, or to any of the benefits granted to employees of the MRCOG.

Section 8. Personnel

A. The Contractor represents that it has, or will secure at its own expense, all personnel required in performing all of the Services required under this Agreement. Such personnel shall not be employees of nor have any contractual relationship with the MRCOG.

B. All the Services required hereunder will be performed by the Contractor or under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state and local law to perform such Services.

C. None of the work or the Services covered by this Agreement shall be subcontracted without the prior approval of the MRCOG. Any work or Services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this Agreement.

Section 9. Insurance

A. General Requirements.

1) The Contractor shall, at its own cost and expense, procure and maintain in full force and effect during the term of this Agreement, such insurance as is required in this Agreement. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico, and policies of insurance shall be on forms properly filed and approved by the Superintendent of Insurance, State of New Mexico. Policies of insurance shall be procured for all required coverage limits of such policies of insurance and shall not be reduced or replaced in part or in whole by self-insurance, including self-insurance retention amounts, except as provided hereinafter.

2) If the Contractor subcontracts, or assigns or otherwise transfers any interest in any part of this Agreement, the Contractor shall include any or all transferees in the Contractor's insurance policies or require such transferees to secure insurance if required by law to cover all hazards associated with Services provided hereunder that are not covered by the Contractor's insurance policies.

3) The Contractor shall not violate the terms or prohibitions of insurance policies required to be furnished by the Contractor. The Contractor shall promptly notify the MRCOG of any claim or loss exceeding the amount of the deductible under such insurance policies, and certify that proper notice has been given the appropriate insurance carrier.

4) The Contractor shall furnish the MRCOG with certificates of insurance, substantially the same as Exhibit B, and shall deliver said certificates to the Project Manager, MRCOG, 809 Copper Ave., N.W., Albuquerque, New Mexico 87102. All insurance certificates shall provide that thirty (30) days written notice be given to the Project Manager before a policy is canceled or not renewed. Various types of required insurance may be written in one or more policies. A certificate or policy which states that the failure to give MRCOG notice imposes no liability or obligation on the insurer shall not be in compliance with this Section. For instance, certificates or policies stating that the insurance company shall "endeavor to notify" and that "failure to give such notice imposes no obligation" on the insurance company are unacceptable to MRCOG. Documents establishing the continuation or replacement of insurance shall be received by the MRCOG no less than 30 days prior to the expiration of the insurance coverage.

B. Approval of Insurance. Even though a "Notice to Proceed" may have been given, neither the Contractor nor any contractors, assignees or other transferees of the Contractor shall begin any operations pursuant to this Agreement until the required insurance has been obtained and proper certificates of insurance delivered to the Project Manager. Neither approval nor failure to disapprove insurance certificates of insurance by the MRCOG shall relieve the Contractor or any transferees of full responsibility to maintain the required

insurance in full force and effect.

C. Commercial General Liability Including Automobile. The Contractor shall procure and maintain policies of insurance for commercial general liability insurance and vehicle liability insurance for all vehicles used in its operation, as further described below. All such policies of insurance shall have liability limits in amounts of One Million Dollars (\$1,000,000) single limit liability for bodily injury, including death, and property damage in any one occurrence. Said policies of insurance shall include coverage for premises (if applicable), operations, the Contractor's contractual liability to the MRCOG hereunder, and claims arising out of or from the Contractor's performance of this Agreement. Contractual liability coverage shall specifically insure the indemnification provision of this Agreement. The insurance policies shall contain "products" and "completed operations" coverage (if applicable) and shall not be written on a "claims made" form. The insurance policies shall include coverage for all use of, activities on, or operations with respect to MRCOG premises, coverage for the use of all owned, non-owned, hired automobiles, vehicles, and other equipment, both on and off work. MRCOG reserves the right to review and modify the limits stated above at one-year intervals to give effect to the changing risk management environment and inflationary trends.

D. Increased Limits. If, during the term of this contract, the legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act (Sections 41-4-1 through 41-4-27, NMSA 1978) to an amount greater than that required for commercial general liability including auto above, the MRCOG may require Contractor to increase the limits of any insurance required herein to an amount equal to such increased Tort Claim Act maximum limits of liability.

E. Additional Insured. The MRCOG shall be named as an additional insured on each insurance policy required for commercial general liability including auto above.

F. Workers' Compensation Insurance. The Contractor shall comply with the provisions of the New Mexico Workers' Compensation Act, the Subsequent Injury Act, and the New Mexico Occupational Disease Disablement Law. The Contractor shall procure and maintain during the term of this Agreement complete Workers' and Employer's Liability Insurance in accordance with New Mexico laws and regulations. Such insurance shall include coverage permitted under Section 52-1-10, NMSA 1978, for safety devices. With respect to Worker's Compensation Insurance, if the Contractor elects to be self-insured, the Contractor shall comply with the applicable requirements of law. If any portion of the work is to be sublet, the Contractor shall require the subtenants similarly to provide such coverage (or qualify as a self-insured) for all the latter's employees to be engaged in such work. The Contractor hereby covenants and agrees that the MRCOG, its officers, or employees will not be liable or responsible for any

claims or actions occasioned by the Contractor's failure to comply with the provisions of this subparagraph and that the indemnification provision of this Agreement shall apply to this paragraph. It is expressly agreed that the employees of Contractor are not MRCOG employees for any purpose.

G. Self-Insurance Retention/Deductibles. In the event any of the insurance policies required in this Section 7 (except as allowed by New Mexico law regarding Workers' Compensation) contain a self-insurance retention provision (whether or not in the form of a deductible) for each such amount, the Contractor shall post a bond or an irrevocable letter of credit made exclusively for the benefit of the MRCOG and held by a bank authorized to do business in New Mexico which is acceptable to MRCOG.

H. Contents Insurance. Contractor shall be solely responsible for obtaining insurance policies that provide coverage for losses of Contractor owned property. MRCOG shall not be required to provide such insurance coverage or be responsible for payment of Contractor's cost for such insurance.

Section 10. Reports, Information and Ownership of Documents

A. Reports and Information. During the performance of this Agreement and upon the completion or earlier termination of the services required under this Agreement, Contractor shall furnish to the MRCOG such statements, records, reports, data and information as requested by the MRCOG pertaining to matters covered by this Agreement.

B. Release of Information. Contractor shall not release any data, reports or other information of any nature whatsoever to any entity or person other than to the MRCOG unless specifically authorized to do so in writing in advance by the MRCOG.

C. Ownership and Use of Documents. The Contractor's work product produced pursuant to this Agreement shall become the sole property of the MRCOG. Such work product shall include but not be limited to reports, background data, drawings, calculations, technical data, data related specifically to this Agreement, specifications, manuals and/or related documents. Contractor does not represent that the Documents prepared under this Agreement are suitable for reuse under different conditions or on projects other than the Project provided for in this Agreement.

D. Computer Program Licensing Agreements. The MRCOG shall have the option to require (at MRCOG's cost) that the Contractor provide any and all computer licensing agreements necessary to permit the MRCOG to use computer programs and data related to the services performed by Contractor under this Agreement.

E. Future Use. The MRCOG's use of computer programs and computer stored data developed under the requirements of this Agreement for purposes other than the services required of the Contractor as specified in this Agreement shall be at the MRCOG's risk, and the Contractor shall be held harmless for such use. The Contractor does not represent that the computer programs and computer data developed under this Agreement are suitable for reuse under different conditions. This paragraph shall not apply to the performance of this Agreement nor in instances where the Contractor is retained to perform subsequent services using the work product developed pursuant to this Agreement.

F. Publication, Reproduction and Use of Materials. No materials or documents produced in whole or in part under this Agreement shall be subject to copyright in the United States or in any other country. The MRCOG shall have the unrestricted authority and right to copyright, publish, disclose, distribute and otherwise use, in whole or in part, any reports, data, or other materials (hereafter "Materials") prepared under this Agreement. The Contractor may use Materials created under this Agreement as reference and research materials and as representations of the services performed under this agreement only after the Materials are completed and accepted by the MRCOG, provided that such Materials shall not include the MRCOG's confidential or proprietary information, to the extent the MRCOG provides Contractor with notice that such materials are considered confidential or proprietary by the MRCOG. The MRCOG shall provide professional credit for Contractor in promotional materials for services rendered pursuant to this Agreement, if so requested in writing by Contractor.

Section 11. Establishment and Maintenance of Records

Records shall be maintained by Contractor in accordance with applicable law and requirements prescribed by MRCOG with respect to all matters covered by this Agreement. Except as otherwise authorized by MRCOG, such records shall be maintained for a period of three (3) years after receipt of final payment under this Agreement.

Section 12. Audits and Inspections

At any time during normal business hours and as often as the MRCOG may deem necessary, there shall be made available to the MRCOG, the funding agent of MRCOG and the State Auditor for examination all of the Contractor's records with respect to all matters covered by this Agreement. The Contractor shall permit the MRCOG, or its authorized representatives, to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement. Contractor shall maintain such records at its office and provide them to the MRCOG at the MRCOG offices in Albuquerque, New Mexico, within fifteen (15)

days after receiving a written request for such records by the MRCOG. In the event Contractor does not wish to make its books and records available at the MRCOG offices, then Contractor shall pay reasonable travel and accommodation expenses for the MRCOG staff or its duly authorized representatives to travel to Contractor's offices to conduct the audit.

Section 13. Changes

The MRCOG may, from time to time, request changes in the Services to be performed hereunder. Such changes, including any increase or decrease in the amount of the Contractor's compensation, that are mutually agreed upon by and between the MRCOG and the Contractor shall be incorporated in written amendments to this Agreement.

Section 14. Suspension

A. Suspension of Work. The MRCOG shall be entitled at any time to suspend, delay, or interrupt all or any part of the Services required of the Contractor by this Agreement up to 120 days. After 120 days, the Contractor shall have the right to terminate its Services without penalty. Such order shall be in writing and identified as a "Suspension of Work Order". The Contractor shall incur no further costs allocable to the Services during the period of suspension, delay, or interruption. The Contractor shall be reimbursed for all services performed up to the time of its receipt of the Suspension of Work Order; to the extent such services are accepted pursuant to Section 4 of this Agreement. If the facts and circumstances surrounding the Suspension of Work permit, the MRCOG shall provide thirty (30) days advance written notice prior to suspension of work pursuant to this section. Failure to provide thirty (30) days' notice shall not constitute a default of this Agreement or a breach of this section.

B. Resumption of Work. In the event that the MRCOG cancels a Suspension of Work Order, the Contractor shall resume performing the Services in a timely manner and shall be entitled to an equitable adjustment in compensation but only if the MRCOG determines that the Suspension of Work Order resulted in additional costs to the Contractor in its performance of the Services and the Contractor asserts a claim for such additional costs within thirty (30) days after the cancellation of the Suspension of Work Order.

Section 15. Termination

A. Termination by the MRCOG for Cause, ten (10) day notice. If through any cause the Contractor shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the Contractor shall violate any of the covenants, agreements or stipulations of this Agreement, the MRCOG shall thereupon have the right to terminate this Agreement by giving written notice to the Contractor of such termination and specifying the effective date thereof at least ten (10) days before the effective date of such termination unless the faulting condition is cured within the ten (10) day period

Notwithstanding the above, the Contractor shall not be relieved of liability to the MRCOG for damages sustained by the MRCOG by virtue of any breach of this Agreement by the Contractor, and the MRCOG may withhold reasonable payment to the Contractor for the purposes of set-off until such time as the exact amount of damages due to the MRCOG from Contractor is determined

B. Termination by MRCOG: twenty (20) day notice. The MRCOG may terminate this Agreement at any time by giving at least twenty (20) day notice in writing to the Contractor. Said twenty (20) days shall run from the day on which the Contractor received said notice of termination. In the event this Agreement is terminated by the MRCOG as provided herein, the Contractor shall be paid an amount that bears the same ratio to the total compensation as the Services actually performed bear to the total Services of Contractor covered by this Agreement, less payments of compensation previously made. If this Agreement is terminated due to the fault of the Contractor, Paragraph A of this section hereof, relative to termination, shall apply.

C. Work Product. In the event of termination under the provisions of this section, all finished or unfinished documents, data, maps, studies, surveys, drawings, models, photographs and reports prepared by Contractor under this Agreement shall, at the option of the MRCOG, become the property of the MRCOG, and Contractor shall deliver such work product to the MRCOG within thirty (30) days of receipt of the request of the MRCOG.

D. Termination by Contractor: thirty (30) Day notice. The Contractor shall be entitled to terminate this Agreement in the event of a default by the MRCOG in the performance of any covenant or agreement herein required to be performed by the MRCOG and the failure of the MRCOG to remedy such default for a period of thirty (30) days after receipt from the Contractor of written notice to remedy the same; provided, however, that no notice of termination, as above provided, shall be of any force or effect if the MRCOG shall have remedied the default prior to receipt of the Contractor's notice of termination.

E. Non-Funding. The performance of this Agreement is contingent upon the necessary appropriations and authorizations forthcoming for the performance of

this Agreement. If sufficient appropriations and authorizations are not made, this Agreement may be terminated by the MRCOG by giving notice to Contractor. Such event shall not constitute an event default by the MRCOG. All payment obligations of the MRCOG shall cease upon the date of termination. The MRCOG's decision as to whether sufficient appropriations are available or sufficient shall be binding on the Contractor and shall be final. The date of termination issued pursuant to this paragraph shall be the date a notice of termination is received by the Contractor.

Section 16. Special Provisions

This procurement may be supported in part or in whole from time to time with federal and state funds. Therefore the following certifications are required for this solicitation:

A. Campaign Contribution Disclosure. 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, 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. Certification is required as provided in Appendix 4 of the solicitation.

B. Affirmative Action / Equal Employment Opportunity. Certification for Affirmative Action/Civil Rights Compliance is required as provided in Appendix 5 of the solicitation.

C. Debarment and Suspension. The Contractor agrees to comply and assures the compliance of each third-party contractor and subrecipient at any tier with Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, and USDOT regulations, "Governmentwide Debarment and Suspension Nonprocurement)," 49 C.F.R. Part 29. The Contractor agrees to and assures that its third party contractors and subrecipients will review the Excluded Parties Listing System (EPLS) at <https://www.sam.gov/> before entering into any contracts. Certification for Debarment and Suspension is required as provided for in Appendix 6 of the RFP.

D. Prohibition Against Use of Federal Funds for Lobbying. Neither the Contractor nor any subcontractor may use Federal assistance funds for publicity or propaganda purposes designed to support or defeat legislation pending before Congress. Certification of Restrictions on Lobbying is required as provided in Appendix 7 of the solicitation.

E. No Government Obligations to Third Parties. The Contractor acknowledges and agrees that, notwithstanding any concurrence by the Federal

Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Owner, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance from the U.S. Department of Transportation (USDOT). It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

F. Program Fraud and False or Fraudulent Statements and Related Acts. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 et seq . and USDOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Contract. Upon execution of the underlying Contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Contract or the USDOT assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by USDOT under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by USDOT. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

G. Breaches and Dispute Resolutions

1) Disputes. Disputes arising in the performance of the resulting Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the MRCOG, herein defined as the MRCOG Procurement Manager. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the MRCOG Procurement Manager. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the MRCOG Procurement Manager shall be binding upon the Contractor and the Contractor shall abide by the decision.

2) Performance During Dispute. Unless otherwise directed by MRCOG, the Contractor shall continue performance under this Contract while matters in dispute are being resolved.

3) Remedies. If any controversy or claim arising out of this Contract cannot be settled by the Parties directly, the Parties will submit the controversy or claim to mediation using a mediator mutually acceptable to the Parties or, if the Parties cannot agree on a mediator, a mediator chosen by mediators chosen by each Party. If the Parties are unable, after a reasonable period of time, to produce through such mediation a mutually satisfactory resolution on the matter, the dispute will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the MRCOG is located.

4) Right and Remedies. The duties and obligations imposed by this Contract and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the MRCOG or the Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

H. Disadvantaged Business Enterprise

1) This Contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. A list of certified Disadvantage Business Enterprises can be obtained from the New Mexico State Highway and Transportation Department, Office of Equal Employment Opportunity Programs' website: <https://nmdot.dbesystem.com>. A separate contract goal has not been established for this procurement.

2) The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of the Contract, which may result in the termination of the Contract or such other remedy as deemed appropriate. Each subcontract that the Contractor signs with must include the assurance in this paragraph (see 49 CFR 26.13(b)).

3) The Contractor agrees to pay each subcontractor under the Contract for satisfactory performance no later than thirty (30) days from the receipt of each payment the Contractor receives from the MRCOG. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the MRCOG. This clause applies to both DBE and

non-DBE subcontracts.

4) If applicable, the Contractor is required to pay all retainage owed to each subcontractor for satisfactory completion of accepted work within thirty (30) days from the receipt of each payment the contractor receives from the MRCOG. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the MRCOG. This clause applies to both DBE and non-DBE subcontracts.

5) Upon written request from MRCOG, the Contractor will provide a report of DBE participation obtained through race-neutral means throughout the period of the Contract.

I. Civil Rights Compliance. The Contractor shall comply with the regulation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation ("USDOT") including those regulated by the Federal Highway Administration (Hereinafter "FHWA") Title 23 CFR Part 200 as they may be amended from time to time ("Regulations"), which are herein incorporated by reference and made a part of this Contract.

1) Nondiscrimination – The Contractor, with regard to the work performed by it during the Contract, shall not discriminate on the grounds of race, color, or national origin, sex, age, and disability/handicap and low income in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR, section 21.5 of the Regulations, including employment practices when the Contract covers a program set forth in Appendix B of the Regulations.

2) Solicitations for Subcontractors, Including Procurements of Materials and Equipment – In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin, sex, age, and disability/handicap and low income.

3) Information and Reports – The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, or other sources of information, and its facilities as may be determined by MRCOG, NMDOT, or FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to MRCOG, NMDOT, or FHWA as appropriate, and shall set forth what efforts it has made to obtain the information.

- 4) Sanctions for Noncompliance – In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Contract, MRCOG shall impose such Contract sanctions as it, NMDOT, or FHWA may determine to be appropriate, including, but not limited to:
- 5) Withholding of payments to the Contractor under the Contract until the Contractor complies
- 6) Cancellation, termination or suspension of the Contract, in whole or in part.
- 7) Incorporation of Provisions – The Contractor shall include the provisions of this Section in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.
- 8) The Contractor shall take such action with respect to any subcontract or procurement as MRCOG, NMDOT, FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance; Provided, however, that, in event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request MRCOG to enter into such litigation to protect the interests of MRCOG, and in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

Section 18. General Conditions

A. Contract Interpretation.

- 1) Severability. In the event any covenant, condition or provision herein is held to be invalid, illegal, or unenforceable by any court of competent jurisdiction, such covenant, condition or provision shall be deemed amended to conform to applicable laws so as to be valid or enforceable or, if it cannot be so amended without materially altering the intention of the parties, it shall be stricken. If stricken, all other covenants, conditions and provisions of this Agreement shall remain in full force and effect provided that the striking of such covenants, conditions or provisions does not materially prejudice either the MRCOG or the Contractor in its respective rights and obligations contained in the valid covenants, conditions or provisions of this Agreement.
- 2) Waiver. No provision of this Agreement shall be deemed to have been waived by either party unless such waiver is in writing, signed by the party making the waiver and addressed to the other party, nor shall any custom or practice which may evolve between the parties in the administration of the terms of this Agreement be construed to waive or lessen the right of either party to insist upon the performance of the other party in strict accordance with the terms

of this Agreement. Further, the waiver by any party of a breach by the other party or any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition thereof.

3) Gender, Singular/Plural. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

4) Captions and Section Headings. The captions, section headings, and table of contents contained in this Agreement are for convenience of reference only, and in no way limit, define, or enlarge the terms, scope, and conditions of this Agreement.

5) Entire Agreement. This Agreement represents the entire Contract between the parties and, except as otherwise provided herein, may not be amended, changed, modified, or altered without the written consent of the parties hereto. This Agreement incorporates all of the conditions, agreements, and understandings between the parties concerning the subject matter of this contract, and all such conditions, understandings and agreements have been merged into this written Agreement. No prior condition, agreement, or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this written Agreement.

6) Relationship of Contract Documents. All documents attached to this Agreement or incorporated into this Agreement are complementary, and any requirement of one contract document shall be as binding as if required by all.

7) Exhibits Certificates, Documents Incorporated and Attachments. Incorporation by Reference: All certificates, documents, exhibits, attachments, riders, and addenda referred to in this Agreement are hereby incorporated into this Agreement by reference and made a part hereof as though set forth in full in this Agreement to the extent they are consistent with its conditions and terms.

8) Applicable Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New Mexico, and the laws, rules and regulations of the MRCOG.

9) Successors. All covenants, stipulations and agreements in this Agreement shall extend to and bind the legal representatives, successors, and assigns of the respective parties hereto.

10) Governmental Rights and Powers. Nothing in this Agreement shall be construed or interpreted as limiting, relinquishing, or waiving any rights of ownership enjoyed by MRCOG, or waiving or limiting the MRCOG's control over

the management, operations, or maintenance of its property, except as specifically provided in this Agreement, or impairing, exercising or defining governmental rights and the police powers of the MRCOG.

B. Discrimination Prohibited.

1) General. In the use and occupation of the MRCOG premises, the Contractor shall not discriminate against any person or class of persons by reason of race, color, religion, sex, national origin or ancestry, age, or physical or mental handicap.

2) Civil/Human Rights Laws. In the operation and use of the MRCOG premises, the Contractor shall not on the grounds of race, color, religion, sex, national origin or ancestry, age, or physical or mental handicap, discriminate or permit discrimination against any person or group of persons in any manner prohibited by Title 49 CFR Part 21, the Civil Rights Act of 1964, as amended, the Equal Pay Act of 1963, the Rehabilitation Act of 1973, and the New Mexico Human Rights Act. Without limiting the generality of the foregoing, the Contractor agrees to not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin or ancestry, age, or physical or mental handicap. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, national origin or ancestry, age, or physical or mental handicap. Such action shall include, but not be limited to: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; selection for training; and disciplinary actions and grievances. The Contractor agrees to post in conspicuous places available to employees, and applicants for employment, notice to be provided setting forth the provisions of this non-discrimination clause.

3) The Contractor, for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration of this Agreement, does hereby covenant and agree that: (1) no person on the grounds of race, color, religion, sex, national origin or ancestry, age, or physical or mental handicap shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, religion, sex, national origin or ancestry, age, or physical or mental handicap shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Contractor shall use the MRCOG facilities (when applicable) in compliance with all other requirements imposed by, or pursuant to, the New Mexico Human Rights Act, and 49 CFR Parts 21 and 23, and as said regulations may be amended.

4) Contractor's violation of this section shall be deemed a material breach of this Agreement.

5) The Contractor shall include the provisions of this section in every subcontract, including procurement of materials and leases of equipment (unless exempt by the above referenced regulations or orders of instructions issued pursuant thereto), in the performance of this Agreement.

C. Indemnification Agreement.

1) General Indemnification. The Contractor agrees to indemnify and hold harmless the MRCOG, including its officers, employees or agents, against all liability, claims, damages, losses or expenses, including attorney fees, only to the extent that the liability, claims, damages, losses or costs are caused by, or arise out of, the acts or omissions of the Contractor or its officers, employees or agents.

2) Insurance. The indemnity required herein shall not be limited by the specification of insurance coverages in this Agreement.

3) Survives the Term. This indemnification agreement shall survive the term of this Agreement.

4) Scope of Indemnification. With respect to any liability, claims, damages, losses or costs that are caused by, or arise out of, the acts or omissions of the Contractor or its officers, employees or agents, the Contractor shall: (a) investigate or cause the investigation of such liability, claims, damages, losses or costs, (b) negotiate or cause to be negotiated all claims made, even when Contractor considers such claims to be groundless, false or fraudulent in the name of the MRCOG and on behalf of the MRCOG, (c) and satisfy judgments finally establishing the liability of the MRCOG in all actions for which the Contractor is obligated to indemnify the MRCOG, including its officers, employees or agents, pursuant to this section, and (d) pay, or cause to be paid: (1) all costs assessed against the MRCOG in any such legal proceeding, (2) any interest accruing up to the date of payment by Contractor, (3) all premiums charged upon appeal bonds required in such proceedings, and (4) all expenses incurred by the MRCOG for investigation, negotiation, and defense, including but not limited to expert witnesses' and attorneys' fees incurred.

5) Miscellaneous. The MRCOG shall, promptly upon receipt, give Contractor every demand, notice, summons, or other process received in any claim or legal proceeding for which the Contractor is required to indemnify the MRCOG. In the event the MRCOG fails to give the Contractor notice of any such demand, notice, summons, or other process received by the MRCOG, and such failure to give said notice shall result in prejudice to the Contractor in its defense of any action or legal proceeding in which the Contractor is required to indemnify the MRCOG,

then such failure or delay shall release the Contractor of its liability as set forth in this Indemnification Agreement, but only insofar as the particular claim or legal proceeding is concerned, and only to the extent of such prejudice. Nothing in this subsection shall be deemed a change or modification in any manner whatsoever of the method or conditions of preserving, asserting, or enforcing any claim or legal liability against the MRCOG. This section shall not be construed as a waiver of the MRCOG's immunity. The provisions of this section shall not be construed to prohibit Contractor from seeking contribution or indemnity from any third party which may have caused or contributed to the event for which Contractor indemnifies the MRCOG.

D. Assignment and Subletting. The Contractor shall not assign or otherwise transfer, in whole or in part, any of the rights granted in this Agreement without the prior written approval of the MRCOG. The MRCOG shall not be required to approve any assignment or other transfer of this Agreement that would result in the Services required in this Agreement being performed by any other person or entity than the Contractor.

E. Ethics.

1) Conflict of Interest. As a condition of the solicitation for this Contract, the Contractor furnished the MRCOG with a Campaign Contribution Disclosure form and delivered said disclosure to the Project Manager, MRCOG, 809 Copper Ave., N.W., Albuquerque, New Mexico 87102. The Contractor disclosed whether any member of the MRCOG Board of Directors, officer or employee of the MRCOG has or hereafter acquires any direct, indirect, legal, or beneficial interest in the Contractor or in any contract, lease, or agreement between the MRCOG and the Contractor, or in any franchise, concession, right, or privilege of any nature granted by the MRCOG to the Contractor in this Agreement or otherwise.

2) Fair Dealing. The Contractor covenants and warrants that the only person or firm interested in this Agreement as principal (or principals) are named in this Agreement and that no other person or firm has any interest in this Agreement, and this Agreement is entered into by the Contractor without collusion on the part of the Contractor with any person or firm, without fraud and in good faith. The Contractor also covenants and warrants that no gratuities, in the form of entertainment, gifts or otherwise, were, or during the term of this Agreement, shall be, offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the MRCOG with a view toward securing this Agreement or for securing more favorable treatment with respect to making any determinations with respect to performing this Agreement.

F. Approvals, Consents and Notices.

1) All notices, consents, and approvals required by this Agreement shall be in writing and shall be given by registered or certified mail by depositing the same

in the U.S. mail in the continental United States, postage prepaid, return receipt requested, or by personal delivery, or by facsimile transmission to the "FAX" number given below, provided that the completed transmission is electronically verified. Either party shall have the right, by giving written notice to the other, to change the address at which its notices are to be received. Until any such change is made, notices shall be delivered as follows:

MRCOG: Executive Director
Certified Mail: 809 Copper Ave., N.W.
Albuquerque, New Mexico 87102
Personal Delivery: Same as above
Telephone: (505) 247-1750, FAX Transmission: (505) 247-1753

Contractor:
Contractor Official:
Title:
Certified Mail:

Personal Delivery:
Telephone: FAX Transmission:
E-Mail Address:

2) If notice, consent or approval is given in any other manner or at any other place, it shall also be given at the place and in the manner specified above.

3) The effective date of such notice, consent or approval shall be the date of the receipt as shown by the U.S. Postal Service Return Receipt, or the date personal delivery is certified, or the date of electronic verification of the facsimile transmission, unless provided otherwise in this Agreement.

G. Non-Liability of Agents and Employees. No member, officer, agent, director, or employee of MRCOG or Contractor shall be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement or because of any breach thereof or because of their execution or attempted execution of this Agreement.

H. No Partnership or MRCOG. Nothing contained in this Agreement is intended or shall be construed in any respect to create or establish any relationship other than that of owner and contractor, and nothing herein shall be construed to establish any partnership, joint venture or association or to make Contractor the general representative or agent of MRCOG for any purpose whatsoever.

I. Force Majeure. Except as expressly provided in this Agreement, neither MRCOG nor Contractor shall be deemed to be in default hereunder if either party is prevented from performing any of the obligations, other than payment of

rentals, fees and charges hereunder, by reason of strikes, boycotts, labor disputes, embargoes, shortages of energy or materials, acts of the public enemy, weather conditions and the results of acts of nature, riots, rebellion, sabotage, or any other similar circumstances for which it is not responsible or which are not within its control.

J. Forum Selection. Any cause of action, claim, suit, demand, or other case or controversy arising from or related to this Agreement shall only be brought in a state district court located in Bernalillo County, New Mexico or in a federal district court located in New Mexico. The parties irrevocably admit themselves to, and consent to, the jurisdiction of either or both of said courts. The provisions of this section shall survive the termination of this Agreement.

K. Compliance with Law. The Contractor shall comply with all applicable laws, ordinances, regulations and procedures of federal, state, and local governments, including, but not limited to MRCOG rules. The Contractor shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101) and federal regulations promulgated there under (28 C.F.R. Parts 35, 36, and 37).

L. Patents and Trademarks. Contractor represents that it is the owner or fully authorized to use any and all services, processes, machines, articles, marks, names or slogans used by it in its performance under this Agreement. Contractor agrees to defend, indemnify and hold harmless the MRCOG, pursuant to the Indemnification Agreement above, from any loss, liability, expense, suit or claim for damages in connection with any actual or alleged infringement of any patent, trademark, copyright, trade secret or proprietary right, or arising from any alleged or actual unfair competition or other similar claim arising out the performance of this Agreement by Contractor. In the event a claim is made that the use of materials is such an infringement, the Contractor shall either procure for MRCOG the right to continue using such materials, make modifications resulting in the elimination of the infringement (and continue to meet the requirements of this Agreement) or replace such material with non-infringing materials of a like functionality that meet the requirements of this Agreement.

M. Savings. MRCOG and Contractor acknowledge and agree that they have thoroughly read this Agreement, including all exhibits thereto, and have sought and received whatever competent advice and counsel was necessary for them to form a full and complete understanding of all rights and obligations herein. MRCOG and Contractor further acknowledge that the Agreement is the result of negotiations between them and that this Agreement shall not be construed against either party by reason of that party's preparation of all or part of this Agreement.

IN WITNESS WHEREOF, the Parties referenced herein have executed this Agreement on the dates specified below.

MID-REGION COUNCIL OF GOVERNMENTS

By: _____ Date: _____
Dewey V. Cave, Executive Director

CONTRACTOR

By: _____ Date: _____
Title: _____

New Mexico State Taxation and Revenue
Taxpayer I.D. Number: _____
Federal Taxation I.D. Number: _____

APPROVED AS TO FORM

By: _____ Date: _____
MRCOG Legal Counsel



Mid-Region Council of Governments

RFP 2013-08

**Economic Development
Media & Public Relations
Services for SPDD#3**

EXHIBIT C

Certificate of Insurance Form

CERTIFICATE OF INSURANCE					ISSUE DATE (MM/DD/YY)	
PRODUCER		THIS CERTIFICATE DOES NOT AMEND< EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW				
		COMPANIES AFFORDING COVERAGE				
		COMPANY				
		LETTER A				
		COMPANY				
INSURED		COMPANY				
		LETTER D				
		COMPANY				
		LETTER E				
COVERAGES: THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED FOR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.						
CO. LTR.	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE	POLICY EXPIRATION DATE	LIMITS	
	GENERAL LIABILITY* ____ COMMERCIAL GENERAL LIABILITY ____ CLAIMS MADE ____ OCCUR. ____ OWNER'S & CONTRACTOR'S PROTECT. ____ SELF INSURANCE RETENTION				GENERAL AGGREGATE	\$
					PRODUCTS- COMB OR A	\$
					PERSONAL & ADV. INJURY	\$
					EACH OCCURRENCE	\$
					FIRE DAMAGE (Any one fire)	\$
					MED. EXPENSE (Any one person)	\$
					SELF INSURANCE AMOUNT	\$
	AUTOMOBILE LIABILITY * ____ ANY AUTO ____ ALL OWNED AUTOS ____ HIRED AUTOS ____ NON-OWNED AUTOS ____ GARAGE LIABILITY				COMBINED SINGLE LIMIT	\$
					BODILY INJURY (Per Person)	\$
					BODILY INJURY (Per Accident)	\$
					PROPERTY DAMAGE	\$
					SELF INSURANCE AMOUNT	\$
	EXCESS LIABILITY * ____ UMBRELLA FORM ____ OTHER THAN UMBRELLA FORM				EACH OCCURRENCE	\$
					AGGREGATE	\$
	WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY				STATUTORY LIMITS	\$
					EACH ACCIDENT	\$
					DISEASE - POLICY LIMIT	\$
					DISEASE - EACH EMPLOYEE	\$
	OTHER					
DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS						
CERTIFICATE HOLDER Executive Director Mid-Region Council of Governments 809 Copper Ave., N.W. Copper Hill, NC 28626			MODIFICATION/CANCELLATION: THE ABOVE IDENTIFIED POLICY (POLICIES) OF INSURANCE SHALL NOT BE MATERIALLY CHANGED OR ALTERED, OR CANCELED WITHOUT FIRST GIVING THIRTY (30) DAYS ADVANCE WRITTEN NOTICE BY CERTIFIED MAIL RETURN RECEIPT REQUESTED TO THE MRCOG.			

DRAFT