





# Agenda

DATE: May 9, 2014  
TO: Finance Committee/City Council  
VIA: Matt O'Reilly, Land Use Director *MO*  
FROM: David Rasch, Planner Supervisor *DR*  
Historic Preservation Division  
RE: CLG Contract

The City of Santa Fe is recognized by the State of New Mexico as a certified local government this allows the Historic Preservation Division to apply for grants to fund preservation projects and training each year.

The amount of this year's contract for 2013-2014 is \$56,991.00. The two projects are:

1. Project #1 – Phase III Survey of Building Heights within Historic Districts. Contractor will hire a consultant to update the City of Santa Fe's Official Map of Building Heights within the historic districts.
2. Project #2: Historic Downtown Archaeological Review District Cultural Resource Database. Contractor will hire a consultant to design, populate, and implement a geodatabase and related GIS interface to manage archaeological resources within the Historic Downtown Archaeological Review District (HDARD).

Funds are available in these business unit and line items numbers:

21706.420400  
22720.510300  
12072.510300



Susana Martinez  
Governor

STATE OF NEW MEXICO  
**DEPARTMENT OF CULTURAL AFFAIRS**  
**HISTORIC PRESERVATION DIVISION**

BATAAN MEMORIAL BUILDING  
407 GALISTEO STREET, SUITE 236  
SANTA FE, NEW MEXICO 87501  
PHONE (505) 827-6320 FAX (505) 827-6338

**City of Santa Fe – CLG GRANT**  
**Project 1: Survey of Building Heights, Phase 3**  
**Project 2: Historic Downtown Archaeological Review District – Cultural Resources Database**  
**Grant #35-13-51938.016**

This AGREEMENT is made and entered into by, and between, the STATE OF NEW MEXICO, HISTORIC PRESERVATION DIVISION (hereinafter referred to as HPD), a division of the NEW MEXICO DEPARTMENT OF CULTURAL AFFAIRS and the CITY OF SANTA FE, NEW MEXICO (hereinafter referred to as CONTRACTOR).

HPD and CONTRACTOR, are also referred to as “parties.”

Through this CONTRACT, HPD and CONTRACTOR agree to the following terms:

This Contract’s funds derive in whole, or in part, from the Historic Preservation Fund, which is administered by the National Park Service, a Department of the Interior and HPD.

The *Supplement to Historic Preservation Fund Contracts/Subgrants* (hereinafter referred to as SUPPLEMENT) is attached to and made a part of this CONTRACT. CONTRACTOR REPRESENTS THAT IT HAS RECEIVED A COPY OF THIS SUPPLEMENT, UNDERSTANDS THAT THE SUPPLEMENT IS PART OF THIS CONTRACT AND THAT IT WILL BE BOUND BY THE TERMS OF THE SUPPLEMENT.

Reference is made throughout this CONTRACT to NPS and *HISTORIC PRESERVATION FUND GRANTS MANUAL*. NPS refers to the National Park Service. *HISTORIC PRESERVATION FUND GRANTS MANUAL* is the NPS grants administration manual. Parts of *HISTORIC PRESERVATION FUND GRANTS MANUAL* referred to in this CONTRACT are incorporated by reference into this CONTRACT. The *HISTORIC PRESERVATION FUND, GRANTS MANUAL* is available online at [http://www.nps.gov/hps/HPG/downloads/HPF\\_Manual.pdf](http://www.nps.gov/hps/HPG/downloads/HPF_Manual.pdf).

In addition to this CONTRACT, CONTRACTOR must sign originals of the following assurances that are attached to, and made part of, this CONTRACT as APPENDIX A:

- Certifications Regarding Debarment, Suspension and Other Responsibility Matters, Drug-Free Workplace Requirements and Lobbying.
- Assurance – Non-Construction Programs.

1. **SCOPE OF WORK:** In consideration of this award, CONTRACTOR will:

- a. Comply with 4.10.10 NMAC, the New Mexico regulations for the Certified Local Government Program.
- b. Conduct through a historic preservation review commission (the Historic Design Review Board; hereafter referred to as HDRB), meeting the qualifications set forth in 4.10.10 NMAC (minimum requirements and duties of local review commissions, effective January 1, 2008; from 4.10.10 NMAC, New Mexico’s Certified Local Government Programs regulations, available on request from HPD), a program of design review of proposed alterations to structures and sites within the historic districts listed in the National Register of Historic Places and/or the State Register of Cultural Properties, and review of archaeological research reports on sites in the City of Santa Fe, New Mexico.

- c. Conduct two (2) projects as described:
  - 1. Project #1: Phase III Survey of Building Heights within Historic Districts. CONTRACTOR will hire a consultant to continue a phased project to update the City of Santa Fe's Official Map of Building Heights within historic districts.
  - 2. Project #2: Historic Downtown Archaeological Review District Cultural Resource Database. CONTRACTOR will hire a consultant to design, populate, and implement a geodatabase and related GIS interface to manage archaeological resources within the Historic Downtown Archaeological Review District (HDARD).
- d. Provide deliverables listed in paragraph 2, "DELIVERABLES" of this CONTRACT.

The SCOPE OF WORK must be commenced within sixty (60) days of the CONTRACT commencement date unless a longer period is approved in writing by HPD.

- 2. DELIVERABLES: All deliverable items submitted as products of this CONTRACT must meet all applicable Secretary of the Interior's Standards as set forth in paragraph 10, "STANDARDS" below. ALL DELIVERABLES WILL DISPLAY THE NAME OF THE PROJECT AND THE PROJECT NUMBER IN A PROMINENT AREA OF THE DELIVERABLE. The Deliverables are:
  - a. PROGRESS REPORT. CONTRACTOR will deliver a progress report at least every 60 days after the execution date of this CONTRACT (see *Supplement* page 25, Progress Report). If CONTRACTOR wishes to be reimbursed, the appropriate reimbursement procedures must be followed (see *Supplement*, Reimbursement, pages 13-17.)
  - b. CONTRACT/SUBGRANT COMPLETION REPORT. CONTRACTOR will deliver on or before the termination date of the TERM of this CONTRACT, a CONTRACT/SUBGRANT COMPLETION AND CLOSEOUT CERTIFICATION. See form "Contract/Subgrant Completion and Closeout Certification," *Supplement*, page 57. The report will include 1) CONTRACT number, 2) CONTRACT title, 3) List of all deliverables presented, and a 4) Certification to the effect that the deliverables as delivered are all of those required by this CONTRACT and the deliverables comply with applicable standards as noted in this CONTRACT.
  - c. FINAL PROJECT REPORT. On or before the termination date of this CONTRACT, CONTRACTOR will submit a properly completed "Final Project Report," (see *Supplement*, Final Project Report, page 58).
  - d. The final DELIVERABLES for each project are as follows:
    - 1. Project #1: Phase III Survey of Building Heights within Historic Districts. CONTRACTOR will provide HPD with 1 hard copy and 1 digital copy of a final report including property addresses and heights measured.
    - 2. Project #2: Historic Downtown Archaeological Review District Cultural Resource Database. CONTRACTOR will provide HPD with a working demonstration of the geodatabase and GIS interface, and provide HPD with one (1) digital copy of the geodatabase and the data contained within.
    - 3. Standard Certified Local Government deliverables:
      - a. One copy of minutes of all HDRB meetings held within the term of this CONTRACT will be delivered to HPD, and will be delivered to HPD least every two months (or more often, at the discretion of CONTRACTOR), such deliverables to commence within two months of beginning date of this CONTRACT.
      - b. One copy of comment on any National Register of Historic Places nominations submitted to CONTRACTOR for review will be delivered to HPD within 60 days of receipt by CONTRACTOR (see 4.10.10 NMAC, Certified Local Government Program regulation).

- c. One copy of any proposed changes to preservation-related ordinances, rules, or regulations of the CONTRACTOR. Such copies will be provided to HPD along with the dates, times, and places of public hearings of such proposed changes not fewer than five business days before any such hearing.
- d. One copy of notice of all demolition permit applications for demolition of structures within any historic district or other historic property individually designated by CONTRACTOR, State or United States of America, according to 4.10.10 NMAC (Mandatory review of alterations, demolitions or new construction to listed landmarks and properties within listed historic districts, effective date January 1, 2008, Certified Local Government Program regulation). Copy(s) of notices will be delivered to HPD within three business days prior to any hearings of City of Santa Fe HDRB. Deliverables may be hand-delivered or mailed to:

Karla K. McWilliams, CLG & Grants Coordinator  
 New Mexico Historic Preservation Division  
 407 Galisteo Street, Suite 236  
 Santa Fe, NM 87501  
 505/827.4451  
 505/827.6338 fax  
 karla.mcwilliams@state.nm.us

3. **SCHEDULE:** CONTRACTOR will perform such duties as listed in "SCOPE OF WORK" above according to the following schedule:

- a. CONTRACTOR will deliver to HPD narrative progress and expenditure reports beginning 60 days after project start date and every 60 days thereafter until the termination date of this CONTRACT.
- b. CONTRACTOR/HPD will complete the following tasks on the following dates:

**SCHEDULE & MILESTONES**

DATE	PROJECT MILESTONES	
	<b>Project #1: Phase II: Survey of Building Heights</b>	<b>Project #2: Cultural Resources Database</b>
On or before May 30, 2014		
	CONTRACTOR accepts grant & approves contract.	
On or before June 15, 2014		
Milestones	CONTRACTOR will: 1) Arrange for contract services to continue the update of the City of Santa Fe's Official Map of Building Heights.	CONTRACTOR will: 1) Arrange for contract services to design, populate, and implement a geodatabase and related GIS interface to manage archaeological resources within the Historic Downtown Archaeological Review District (HDARD). 2) Submit Progress Report #1
Deliverables	CONTRACTOR will submit: 1) Progress Report #1 2) Invoice #1 in the amount of \$1,300.00	CONTRACTOR will submit: 1) Progress Report #1 2) Invoice # 1 in the amount of \$3,300.00
On or before July 31, 2014		
Milestones	CONTRACTOR will: 1) Prepare Progress Report 2	CONTRACTOR will: 1) Prepare Progress Report 2 and Invoice
Deliverables	CONTRACTOR will submit: 1) Progress Report #2.	CONTRACTOR will submit: 1) Report #2 2) Invoice #2 in the amount of \$3,300.00

On or before September 30, 2014		
Milestones	CONTRACTOR will: 1) Provide a final report detailing the survey results, including building addresses and heights, as measured.	CONTRACTOR will: 1) Provide HPD with a demonstration of the working geodatabase and GIS interface.
Deliverables	CONTRACTOR will submit: 1) Final Report on Survey Results 2) Subgrant Completion Report 3) Final Project Report 4) Final Invoice in Remaining Grant Amount.	CONTRACTOR will submit: 1) One digital copy of the geodatabase and the data contained within. 3) Subgrant Completion Report 2 4) Final Project Report 5) Final Invoice in Remaining Grant Amount

**4. COMPENSATION.**

- a. HPD and CONTRACTOR estimate the total cost for completing this project is **fifty-six thousand nine hundred ninety-one dollars and no cents (\$56,991.00)**. HPD/State of New Mexico will grant to CONTRACTOR an amount not to exceed **twenty-four thousand nine hundred ninety-nine dollars and no cents (\$24,999)**, a partial amount of the actual total costs, unless the project is amended by a written amendment to increase or decrease the total project cost. The CONTRACTOR is required to provide a match of forty percent (40%) in-kind or cash.
- b. HPD shall pay the CONTRACTOR in full payment for services satisfactorily performed based on deliverable; such compensation not to exceed **twenty-four thousand nine hundred ninety-nine dollars and no cents (\$24,999)**.
- c. The total amount payable to the CONTRACTOR under this Agreement, including gross receipts tax and expenses, shall not exceed **twenty-four thousand nine hundred ninety-nine dollars and no cents (\$24,999)**. This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The Contractor shall provide evidence of 40% in-kind and/or cash match of the total project costs of **fifty-six thousand nine hundred ninety-one dollars and no cents (\$56,991.00)**. CONTRACTOR must submit evidence of this forty percent (40%) match is required with each invoice.
- d. Payment is subject to availability of funds pursuant to the Appropriations Paragraph set forth below. All invoices MUST BE received by the HPD no later than fifteen (15) days after the termination of the Federal Fiscal Year in which the services were delivered. Invoices received after October 15, 2014 will NOT BE PAID.
- e. Contractor must submit a detailed statement accounting for all services performed and expenses incurred. If the HPD finds that the services are not acceptable, it shall provide the CONTRACTOR a letter of exception explaining the defect or objection to the services and outlining steps the CONTRACTOR may take to provide remedial action with thirty (30) days after the date of receipt of written notice from the CONTRACTOR that payment is request. Upon certification by HPD that the services have been received and accepted, HPD shall tender payment to the CONTRACTOR within thirty (30) days. If HPD makes payment by mail, the payment shall be deemed tendered on the date it is postmarked. However, HPD shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.
- f. All payments on this CONTRACT are subject to satisfactory completion of all terms and conditions of this CONTRACT, including completion of the work within budget and on schedule and delivery of billing documents (including necessary source documents) according to the HPD reimbursement rules and procedures. (See *Supplement, "Reimbursement,"* page 16-20).

5. **BUDGET:** The budget for this project is found in APPENDIX B: Budget, which is attached to and made part of this CONTRACT. Contractor shall incur all expenses incurred through the [insert project title here] by September 30, 2014 and deliver all billings to HPD by October 15, 2014.
6. **TERM:** This CONTRACT will commence on the date of execution of this CONTRACT by both parties. The termination date of this CONTRACT is September 30, 2014.
7. **OMB DESIGNATION FOR CONTRACTOR:** CONTRACTOR represents that it is the following type of entity for this CONTRACT:  
 Government  
 Institution of Higher Education  
 Non-Profit Organization  
 For-Profit Organization (or individual)
8. **REPRESENTATIVES:** For the purpose of this CONTRACT, the individuals identified below are hereby designated representatives of the respective parties. These parties are authorized to sign on behalf of the respective parties. Either party may from time to time designate in writing new or substitute representatives:
- |   |  |
|---|--|
| <p><i>For the State of New Mexico, Historic Preservation Division:</i><br/>         Jeff Pappas, SHPO<br/>         NM Historic Preservation Division<br/>         Bataan Memorial Building<br/>         407 Galisteo Street, Suite 236<br/>         Santa Fe, New Mexico 87501<br/>         Tel: (505) 827-4222<br/>         Fax: (505) 827-6338<br/>         E:mail: jeff.pappas@state.nm.us</p> | <p><i>For CONTRACTOR:</i><br/>         Brian K. Snyder<br/>         City Manager<br/>         City of Santa Fe<br/>         200 Lincoln Avenue<br/>         Santa Fe, NM 87504<br/>         Tel: (505) 955-6848<br/>         Email: bksnyder@santafenm.gov</p> |
|---|--|
9. **HPD MANAGER ON CONTRACT:** The following person at HPD will manage the technical (i.e., non-financial, non-administrative) aspects of this CONTRACT:
- Karla K. McWilliams, CLG Grants Coordinator  
 NM Historic Preservation Division  
 Bataan Memorial Building  
 407 Galisteo Street, Suite 236  
 Santa Fe, NM 87501  
 Tel: (505) 827-4451  
 Fax: (505) 827-6338  
 Email: karla.mcwilliams@state.nm.us
10. **STANDARDS:** All work and DELIVERABLES will be in compliance with pertinent sections of the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation. CONTRACTOR will also conform to reasonable and pertinent guidelines or suggestions set forth by HPD during the course of the CONTRACT.
11. **PROFESSIONAL OVERSIGHT:** HPD must arrange that all archaeological or architectural services provided through this CONTRACT be conducted by or supervised or reviewed by a professional who meets the qualification requirements of 36 CFR 61, Appendix A. The person who will provide the professional oversight for this CONTRACT is [enter HPD Manager on Contract's name from #9].

12. **HPD APPROVAL OF PRINCIPAL INVESTIGATOR AND PROFESSIONAL STAFF:** If CONTRACT personnel are not specified in this CONTRACT, CONTRACTOR must hire a principal investigator and other professional staff with the assistance and concurrence/approval of HPD. In the hiring process, CONTRACTOR shall present HPD with the request for proposals or other evidence of the procurement process(es), the resumes of the top three candidates and the CONTRACT for review and approval. HPD hiring assistance and approval is required whether the principal investigators and professionals are or become employees or contractors of CONTRACTOR.

No substitution of professional CONTRACT personnel may be made during the course of this CONTRACT, except by the procedure detailed above and the written prior approval of HPD.

Professionals chosen will comply with the professional qualifications of 36 CFR 61, Appendix A, UNLESS SUCH REQUIREMENT IS WAIVED BY HPD. CONTRACTOR agrees to comply with federal requirement for competitive procurement of professional services in obtaining subcontractors (see *Supplement*, "Procurement", page 7 and in the HPF Manual "Chapter 17-Procurement Standards").

13. **PERMITS, LICENSES, OR PERMISSION:** CONTRACTOR is responsible for securing all appropriate and necessary state, federal, tribal and local permits and/or individual or landowner consents required to execute the terms and conditions of this CONTRACT award. Costs of permits are eligible for reimbursement under conditions applicable to all other reimbursement requests. CONTRACTOR will obtain all releases necessary for the development of this project, including but not limited to, those required to videotape or photograph or use images of individuals and properties.
14. **ADMINISTRATIVE REQUIREMENTS:** Federal assistance awarded under the Historic Preservation Fund grant program is subject to the provisions of the National Historic Preservation Act, and other federal laws affecting grant programs. All federal programs must follow the same general set of administrative rules, designed to ensure fair competition for federally-assisted grant contracts, proper accounting and management practices and conformance with government-wide regulations. These documents are available upon request.

All CONTRACTS must be administered in accordance with all applicable regulations and procedures governing federal grants, including Office of Management and Budget (OMB) Circulars (see *Supplement*, "Reimbursement", pages 16-20)

15. **PROOF OF COMPLIANCE WITH FEDERAL REQUIREMENTS:** CONTRACTOR will be required to submit proof of compliance with certain federal regulations to HPD. All contracts between CONTRACTOR and its subcontractors, including consultants, must contain the provisions detailed in "CONTRACT WITH THIRD PARTIES" (see *Supplement*, "Contracts with Third Parties", pages 10-11)
16. **PROCUREMENT REQUIREMENTS:** CONTRACTOR must comply with the procurement standards found in *Supplement*, Procurement. The federal procurement code imposes civil and criminal penalties for its violation. In addition, New Mexico criminal statutes and federal criminal statutes impose felony penalties for illegal bribes, kickbacks, gratuities and misappropriation of funds.
17. **FALSE STATEMENTS, MISREPRESENTATION AND CONCEALMENT:** CONTRACTOR has not made false statements, misrepresentation or concealed as part of CONTRACTOR application process, nor will it do so as the CONTRACT progresses, including during the signing of certifications.
18. **NOTICE OF CIVIL AND CRIMINAL PENALTIES FOR MISAPPROPRIATION OF FUNDS:** The federal procurement code imposes civil and criminal penalties for its violation. In addition, New Mexico criminal statutes and federal criminal statutes impose felony penalties for illegal bribes, kickbacks, gratuities and misappropriation of funds.
19. **PUBLIC ACKNOWLEDGEMENT:** CONTRACTOR will provide public acknowledgement to NPS and HPD for receipt of funds, etc., according to the requirements as set forth in *Supplement*, Publication Requirements.
20. **ASSIGNMENT:** CONTRACTOR will not assign or transfer any interest in this CONTRACT or assign any claims for money due or to become due under this CONTRACT without the prior written approval of the HPD.

21. **SUBCONTRACTING:** CONTRACTOR will not subcontract any portion of the services performed under this CONTRACT without the prior written approval of the HPD.

22. **STATUS OF CONTRACTOR:** CONTRACTOR, and CONTRACTOR'S agents and employees are independent CONTRACTORS performing professional services for the Historic Preservation Division and are not employees, and will not as a result of this CONTRACT accrue leave, retirement, insurance, bonding, use of State vehicles, or any other benefits afforded to employees of the State of New Mexico.

CONTRACTOR represents that it has, or will secure at its own expense, all personnel required under this CONTRACT. CONTRACTOR is responsible for providing Worker's Compensation Coverage and Unemployment Compensation Coverage for all of its employees to the extent required by law, and for ensuring that all subcontractors maintain such insurance where required by law. All of the services required under the term of this CONTRACT will be performed by CONTRACTOR or employees under CONTRACTOR's supervision or by approved subcontractor. **PAYING ALL APPLICABLE TAXES IS THE CONTRACTOR'S RESPONSIBILITY. CONTRACTOR WILL PAY WHEN DUE ALL REQUIRED FEDERAL, STATE, LOCAL OR OTHER INCOME-RELATED TAXES.**

23. **APPROPRIATIONS:** The terms of this CONTRACT are contingent upon receipt by HPD of sufficient grant money and authorization being made by the National Park Service for the performance of this CONTRACT, where necessary. Should the National Park Service fail or refuse to make sufficient grant money available and authorize to the State of New Mexico as contemplated, then this CONTRACT may be terminated by HPD. HPD's determination, in its sole discretion, as to whether sufficient monies, grants and authorization exist for the purpose of carrying out this CONTRACT will be accepted by CONTRACTOR and will be final.

24. **RELEASE:** CONTRACTOR, upon final payment of the amount due under this CONTRACT, releases the HPD, its officers and employees, and the State of New Mexico from all liabilities, claims, and obligations whatsoever arising from or under this CONTRACT. CONTRACTOR has no authority, express or implied, to bind the State of New Mexico (including HPD) to any agreements or understandings without the express written consent of the State.

CONTRACTOR agrees NOT to purport to bind the State of New Mexico, unless CONTRACTOR has express written authority to do so, and then only within the strict limits of that authority.

25. **CONFIDENTIALITY OF RECORDS AND INFORMATION; INSPECTION OF PUBLIC RECORDS ACT:** Any confidential information provided to or developed by CONTRACTOR in the performance of this CONTRACT will be kept confidential and will not be made available to any entity including individual(s) without the prior written approval of the HPD, which will not be withheld if the information is required to be disclosed by law. CONTRACTOR agrees to immediately notify HPD of CONTRACTOR'S receipt of any oral or written request for a public record made pursuant to the inspection of Public Records Act, Section 14-2-1 NMSA 1978 that may result in CONTRACTOR making available for inspection any information provided to or developed by the CONTRACTOR in its performance of this CONTRACT. HPD and CONTRACTOR agree that this provision shall not be deemed to have been breached or violated if confidential records or information, or public records that are excepted from the Inspection of Public Records Act as provided in Section 14-2-1(a)-(f)\_ NMSA 1978, are made available for inspection pursuant to a court order issued by a court of competent jurisdiction.

26. **CONTINGENT FEES:** With regard to contract/subgrants, no person, agency, or other organization may be employed or retained to solicit or secure a grant, subgrant of contract upon agreement or understanding for commission, percentage, brokerage, or contingent fee. For breach or violation of this prohibition the federal government and/or HPD will have the right to annul this CONTRACT without liability or, at its discretion, to deduct from this CONTRACT or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee, or to seek such other remedies as may be legally available.

27. **DISCLOSURE OF INFORMATION:** Financial records, supporting documents, statistical records, and all other records pertinent to this CONTRACT provided to and by HPD/NPS are subject to disclosure to others under the Freedom of Information Act, 5 USC 552 (see *HISTORIC PRESERVATION FUND, GRANTS MANUAL*, Chapter 3, Section D.)

28. **OWNERSHIP OF COPYRIGHT - WORK FOR HIRE:** All original materials and works of authorship developed by CONTRACTOR under this CONTRACT will become the property of the State of New Mexico, Historic Preservation Division (HPD), and will be delivered to HPD no later than the termination date of this CONTRACT. CONTRACTOR, CONTRACTOR'S employees, agents or independent CONTRACTORS will not apply for a copyright of the materials without the prior written consent of HPD.

Any copyrighted materials developed under this CONTRACT are subject to a royalty-free, nonexclusive, and irrevocable license to the federal government to reproduce, publish, or otherwise use, and to authorize others to use, the copyrighted work for government purposes. CONTRACTOR agrees that any copyrightable publications, film, or similar materials developed directly or indirectly from a program, project, or activity supported by funds from the National Park Service and not expressly assigned to HPD, shall contain an acknowledgment of NPS grant assistance and any other statements required by the NPS Grants Manual.

29. **PROGRAM INCOME:** No program income will be generated by this project.

30. **RECORDS AND AUDITS:** CONTRACTOR will submit financial, program, and other reports as required by HPD, and will maintain for three years such property, personnel, financial, and other records and accounts for all CONTRACT funds. CONTRACTOR will maintain detailed time records that indicate the date, time, and nature of services rendered and detailed records of other expenses incurred.

CONTRACTOR shall allow NPS, the Comptroller General of the United States, HPD, the Department of Finance and Administration, the New Mexico State Auditor, and any of their duly authorized representatives to have access to any pertinent books, documents, papers, and records of CONTRACTOR to make audits (with right to hire an independent Certified Public Accountant of HPD's choosing and at its expense), examination, excerpts and transcripts and copies of such documents. This right also includes timely and reasonable access to the CONTRACTOR'S personnel for the purpose of interview(s) and discussion(s) related to such documents. The rights of access mentioned in this paragraph are not limited to the required retention period, but will last as long as records are retained. If an audit, litigation, or other action involving the records is started before the end of the three-year retention period, CONTRACTOR shall retain the records until the action is resolved or the end of the three-year period, whichever is longer.

In the event a final audit has not been performed prior to the termination date of this CONTRACT, HPD and its authorized representatives shall retain the right to recover an appropriate amount after fully considering the recommendations or disallowed costs resulting from such final audit. This does not preclude the right of HPD to recover excessive or illegal payments.

HPD may make site visits as frequently as practicable to provide such technical assistance as may be required at HPD's sole discretion.

31. **AMENDMENT:** CONTRACT may be amended in writing during the term and course of this CONTRACT for such reasons as 1) CONTRACT term extension, 2) changes in scope-of-work, 3) changes in deliverable items or 4) reductions or increases in project costs. If any performance review conducted by the HPD discloses the need for change in the budget estimates, CONTRACTOR will submit a request for a budget revision.

Amendment to Budget. 10% Rule. CONTRACTOR may adjust budgeted line item expenditure amounts up to ten percent (10%) within said Budget without approval of HPD and then must document this change in the next financial report, by noting the specific change and by submitting a complete revised budget. Adjustments of budget expenditure amounts in excess of ten percent (10%) must be authorized by HPD in an amendment to this CONTRACT properly executed and approved pursuant to the state fiscal rules. In no event shall HPD's total consideration exceed the amount shown as the total to be granted by the State (see paragraph four [4]). Any interest earned on funds advanced by HPD will be applied to eligible project expenditures and documented in financial reports. If a change of over 10% per line item is desired, CONTRACTOR must obtain prior written approval according to terms in "AMENDMENT" (preceding paragraph).

Indirect Costs: Notwithstanding the above, NO revision shall be made to the indirect cost rate as established in the budget without prior written approval by HPD.

If any performance review conducted by the HPD discloses the need for change in the budget estimates, CONTRACTOR will submit a request for a budget revision.

32. **TERMINATION FOR CAUSE:** Failure by CONTRACTOR, as determined by HPD, to carry out the terms or conditions of this CONTRACT (either by failing to comply or by having deficiencies in compliance), including the CONTRACT scope, will be cause for HPD to (a) wholly or partly terminate this CONTRACT, and/or (b) reduce the work items and the total cost of this CONTRACT, and/or (c) demand and obtain refund of all or part of the monies paid to CONTRACTOR, and/or (d) refuse payment for unsatisfactory work performed, and/or (e) temporarily withhold cash payments pending correction of the deficiency by CONTRACTOR, and/or (f) disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance, and/or (g) withhold further CONTRACTS, subgrants and any other types of award that might have been awarded by HPD; and/or (h) take other remedial action that may be legally available, whichever is appropriate in the judgment of the state. HPD will not reimburse costs associated with final products that do not meet the applicable Secretary of the Interior's Standards cited in paragraph two (2), "Deliverables" of this CONTRACT.

HPD will promptly notify CONTRACTOR in writing of the determination of termination and the reasons for the termination, together with the effective date. Payments made to CONTRACTOR or recovered by HPD under contracts terminated for cause will be in accord with the legal rights and liabilities of the parties.

**RIGHT TO TERMINATE ON SHORT NOTICE.** HPD has the right at all times to terminate this CONTRACT on short notice 1) for failure to submit deliverables, and reports and documents (including but not limited to fiscal and scope-of-work reports and documents) or 2) when such deliverables and reports and documents show insufficient progress. In the case of Section #2 above, CONTRACTOR has the right to correct and bring into compliance all such deliverables and reports and documents within a reasonable time after notice to CONTRACTOR of any insufficiencies.

33. **TERMINATION FOR CONVENIENCE:** CONTRACT may be terminated by either of the parties to this CONTRACT upon written notice delivered to the other party at least thirty days prior to the intended date of termination. By such termination, neither party may nullify obligations already incurred for performance or failure to perform prior to the date of termination.
34. **ACCOUNTING:** At all times from the effective date of this CONTRACT until completion of this CONTRACT, CONTRACTOR will maintain properly segregated books of state funds, matching funds, and other funds associated with this CONTRACT. All receipts and expenditures associated with this CONTRACT will be documented in a detailed and specific manner, and will accord with the "BUDGET," as set forth in section 5, above.
35. **NON-LIABILITY OF HPD:** CONTRACTOR agrees and recognizes that the HPD assumes no responsibility with respect to accidents, illnesses, or claims arising out of work performed under a grant supported project. CONTRACTOR is expected to take necessary steps to insure or protect itself and its personnel and to comply with the applicable local, State, or federal safety standards, including those issued pursuant to the National Occupational Safety and Health Act of 1970.
36. **CONFLICT OF INTEREST; GOVERNMENTAL CONDUCT ACT:**
- a. CONTRACTOR warrants that it is fully knowledgeable of and agrees to be bound by the conflict of interest requirements (see *Supplement*, "Conflict of Interest Requirements", pages 2-4)
  - b. The CONTRACTOR represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.
  - b. The CONTRACTOR further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, NMSA 1978, Chapter 10, Article 16. Without in anyway limiting the generality of the foregoing, the CONTRACTOR specifically represents and warrants that:
    1. in accordance with NMSA 1978, Section 10-16-4.3 (2011), the CONTRACTOR does not employ, has not employed, and will not employ during the term of this Agreement any State employee while such employee was or is employed by the State and participating directly or indirectly in HPD's contracting process;

2. this Agreement complies with Section NMSA 1978, 10-16-7(A) because (i) the CONTRACTOR is not a public officer or employee of the State; (ii) the CONTRACTOR is not a member of the family of a public officer or employee of the State; (iii) the CONTRACTOR is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the CONTRACTOR is a public officer or employee of the State, a member of the family of a public officer or employee of the State, or a business in which a public officer or employee of the State or the family of a public officer or employee of the State has a substantial interest, public notice was given as required by NMSA 1978, Section 10-16-7(A) (2011) and this Agreement was awarded pursuant to a competitive process;
  3. in accordance with Section NMSA 1978, 10-16-8(A) (2011), (i) the CONTRACTOR is not, and has not been represented by, a person who has been a public officer or employee of the State within the preceding year and whose official act directly resulted in this Agreement and (ii) the CONTRACTOR is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the State whose official act, while in State employment, directly resulted in HPD's making this Agreement;
  4. this Agreement complies with NMSA 1978, Section 10-16-9(A) (2007) because (i) the CONTRACTOR is not a legislator; (ii) the CONTRACTOR is not a member of a legislator's family; (iii) the CONTRACTOR is not a business in which a legislator or a legislator's family has a substantial interest; or (iv) if the CONTRACTOR is a legislator, a member of a legislator's family, or a business in which a legislator or a legislator's family has a substantial interest, disclosure has been made as required by NMSA 1978, Section 10-16-9(A) (2007), this Agreement is not a sole source or small purchase contract, and this Agreement was awarded in accordance with the provisions of the Procurement Code;
  5. in accordance with NMSA 1978, Section 10-16-13 (2011), the CONTRACTOR has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and
  6. in accordance with NMSA 1978, Section 10-16-3 (2011) and NMSA 1978, Section 10-16-13.3 (2011), the CONTRACTOR has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of HPD.
- c. CONTRACTOR'S representations and warranties in Paragraphs A and B of this Article 12 are material representations of fact upon which HPD relied when this Agreement was entered into by the parties. CONTRACTOR shall provide immediate written notice to HPD if, at any time during the term of this Agreement, CONTRACTOR learns that CONTRACTOR'S representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that CONTRACTOR'S representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to HPD and notwithstanding anything in the Agreement to the contrary, HPD may immediately terminate the Agreement.
- d. All terms defined in the Governmental Conduct Act have the same meaning in part b of this Section.

37. **APPLICABLE LAW:** This CONTRACT will be governed by the laws of the State of New Mexico.

38. **ENTIRE AGREEMENT:** This CONTRACT incorporates all the agreements, covenants and understandings between the parties to this CONTRACT concerning the subject matter of this CONTRACT, and all such covenants, agreements and understandings have been merged into this written CONTRACT. No prior CONTRACT or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this CONTRACT.

39. **SEVERABILITY:** To the extent that this CONTRACT may be executed and performance of the obligations of the parties may be accomplished with the intent of this CONTRACT, the terms of this CONTRACT are severable, and should any term or provision of this CONTRACT be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision. The waiver of any breach of a term will not be construed as waiver of any other term.

40. **SURVIVAL OF CERTAIN CONTRACT TERMS:** Notwithstanding anything in this CONTRACT to the contrary, the parties understand and agree that all terms and conditions of this CONTRACT (including appendixes and *Supplement*) and its attachments hereto which may require continued performance of compliance beyond the termination date of this CONTRACT will survive such termination date and will be enforceable by the HPD as provided in this CONTRACT in the event of such failure to perform or comply by CONTRACTOR or its subcontractors.
41. **BINDING ON SUCCESSORS:** Except as otherwise provided, this CONTRACT will inure to the benefit of and be binding upon the parties or any subcontractors hereto, and their respective successors and assigns.
42. **ASSURANCES:** CONTRACTOR agrees and gives assurances that:
- a. ONLY PERMITTED MATCH. No federal funds will be used to match National Park Service grants-in-aid funds unless specifically permitted or approved by federal law or regulation, in which case a copy of such document shall be appended to and be made a part of this CONTRACT.
  - b. COMPLIANCE WITH FEDERAL MANAGEMENT REQUIREMENTS. CONTRACTOR accepts the obligation to comply with all applicable laws, rules and regulations in effect at the time of the award including, but not limited to, 43 CFR 12, the Single Audit Act of 1984 for local governments, OMB Circulars A-87 (for State and local governments), A-110 (for institutions of higher education, hospitals, and other non-profit organizations), A-122 (for non-profit organizations with certain exclusions including, among others, colleges and universities), and 48 CFR 30 et seq. (for for-profit organizations) as appropriate, and to the further terms and conditions of *see Historic Preservation Fund Grants Manual*, the laws of the State of New Mexico, including rules and regulations (including HPD rules) and the terms and conditions of this CONTRACT in effect at the time of the award and as CONTRACT might be amended.
  - c. OWNERSHIP, USE AND DISPOSITION OF NON-EXPENDABLE EQUIPMENT. CONTRACTOR agrees to the provisions of 43 CFR 12.72 regarding ownership, use and disposition of non-expendable equipment that is purchased in whole or in part with federal funds.
  - d. BEGIN WORK WITHIN 60 DAYS OF EXECUTION OF CONTRACT. CONTRACTOR will begin work on this CONTRACT within sixty (60) days after all parties have signed the CONTRACT and will demonstrate progress according to schedule until completing the project within the approved CONTRACT term. Any deviation from this schedule must have written approval by the HPD.
  - e. SMALL BUSINESS. CONTRACTOR will use Small Business and Minority-owned Business Enterprises, whenever reasonable and feasible.
  - f. POLITICAL ACTIVITIES. CONTRACTOR agrees that no expenditure of CONTRACT funds will be made for the use of equipment or premises for political purposes, sponsoring or conducting candidate's meeting(s), engaging in voter registration activity or voter transportation activity, or other partisan political activities.
  - g. RELIGIOUS INSTITUTIONS. CONTRACTOR agrees that no expenses of any type will be incurred that will give direct financial assistance for church-owned property.
  - h. NON-LIABILITY OF HPD. CONTRACTOR agrees and recognizes that the HPD assumes no responsibility with respect to accidents, illnesses, or claims arising out of work performed under a grant supported project. CONTRACTOR is expected to take necessary steps to insure or protect itself and its personnel and to comply with the applicable local, State, or federal safety standards, including those issued pursuant to the National Occupational Safety and Health Act of 1970.
  - i. EMPLOYMENT CONSIDERATIONS. CONTRACTOR agrees, in the performance of all work under this CONTRACT, to abide by all applicable federal and state labor and employment laws affecting CONTRACTOR'S relationships with its employees. CONTRACTOR will comply with the provisions of the Contract Work Hours and Safety Standards Act. CONTRACTOR also agrees to provide the necessary assurances that it has complied with this Act during the course of this project. CONTRACTOR agrees to comply with all requirements of the Federal Fair Labor Standards Act (29 U.S.C. Sections 201 through 219) and the implementing regulations (including 29 Code of Federal Regulations Part 541) regarding any of its employees who perform any work on or related to this CONTRACT and specifically agrees, in order to comply with one set of requirements imposed by that Act and those regulations, not to permit any hourly paid

or other non-exempt employee to perform work for CONTRACTOR without paying that employee in compliance with the requirements of the Fair Labor Standards Act. In order to comply with this requirement, CONTRACTOR further specifically agrees not to use donated or volunteer services of any of its employees who are paid hourly, or who are otherwise non-exempt under the Fair Labor Standards Act, for the purpose of achieving any matching share requirement applicable to this CONTRACT.

- j.. PROPER AND SATISFACTORY PERFORMANCE. CONTRACTOR will do, perform, and carry out, in a manner determined by the HPD to be proper and satisfactory, the scope of services described in this CONTRACT.
- k. UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITIONS ACT OF 1970.: CONTRACTOR will comply with requirements Title II and Title III of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (P.O. 91-646) which provides for fair and equitable treatment of persons displaced as a result of federal and federally assisted programs.

**43. ANTI-KICKBACK ACT:** If this CONTRACT is for construction or repair work, CONTRACTOR shall comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). This Act provides that CONTRACTOR is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The CONTRACTOR shall report all suspected or reported violations to HPD to report to NPS.

**44. PUBLIC WORKS MINIMUM WAGE ACT:** If this CONTRACT funds is for an amount of sixty thousand dollars (\$60,000) or more, for "construction, alteration, demolition, or repair" or any combination of these, then the Public Works Minimum Wage Act applies and the CONTRACTOR and subcontractor must comply with the registration requirements pursuant to the Public Works Minimum Wage Act.

**45. INTELLECTUAL PROPERTY RIGHTS:** In addition to the Copyright section in this CONTRACT, CONTRACTOR shall comply with NPS requirements and regulations pertaining to reporting and patent rights under any CONTRACT involving research, developmental, experimental, or demonstration work with respect to any discovery or invention which arises or is developed in the course of or under this CONTRACT and pertaining to copyrights and rights in data. These requirements are detailed in Chapter 19 of the Manual.

**46. FEDERAL ENVIRONMENTAL ACTS:** If the compensation promised in this CONTRACT exceeds one hundred thousand dollars (\$100,000), CONTRACTOR must comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15), which prohibit the use under non-exempt federal contracts, grants, or loans of facilities included on the EPA List of Violating Facilities. CONTRACTOR shall report violations of these Acts to HPD and to the grantor agency (NPS) and to the EPA Assistant Administrator for Enforcement.

**47. ENERGY EFFICIENCY:** CONTRACTOR shall abide by standards and policies relating to energy efficiency that are contained in New Mexico's energy conservation plan issued in compliance with the federal Energy Policy and Conservation Act of 1975. NPS may require changes, remedies, changed conditions, access and record retention, and suspension of work clauses approved by the Office of Federal Procurement Policy.

**48. CONSTRUCTION BOND REQUIREMENTS:** This section applies if this CONTRACT is for construction services. As used in this CONTRACT, the following definitions apply: A bid guarantee is a firm commitment, such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified. A performance bond is a bond executed in connection with a contract to secure fulfillment of all the CONTRACTOR'S obligations under the CONTRACT. A payment bond is executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract.

- a. If CONTRACT is for twenty-five thousand or less (\$25,000), no performance or payment bonds are required unless otherwise agreed upon with HPD.
- b. If CONTRACT is for more than twenty five thousand (\$25,000), CONTRACTOR must provide:
  - 1. a performance bond satisfactory to HPD, executed by a surety company authorized to do business in this state and approved in federal circular 570 as published by the United States treasury department or

the state board of finance or the local governing authority, in an amount equal to one hundred percent of the price specified in the CONTRACT; and

2. a payment bond satisfactory to HPD, executed by a surety company authorized to do business in this state and said surety to be approved in federal circular 570 as published by the United States treasury department or the state board of finance or the local governing authority, in an amount equal to one hundred percent of the price specified in the CONTRACT, for the protection of all persons supplying labor and material to the CONTRACTOR or its subcontractors for the performance of the work provided for in the CONTRACT.
- c. If CONTRACT exceeds one hundred thousand dollars (\$100,000), CONTRACTOR shall consult with HPD to determine if NPS has determined that the federal government's interest will be adequately protected under New Mexico's bond standards. If this determination has not been made, the minimum requirements shall be as follows:
1. A bid guarantee from each bidder equivalent to five (5) percent of the bid price;
  2. A performance bond on the part of the CONTRACTOR for one hundred percent (100%) of the CONTRACT price; and
  3. A payment bond on the part of the CONTRACTOR for one hundred percent (100%) of the CONTRACT price.
- d. Sources of Bonds. Where bonds are required in the situations described above, CONTRACTOR shall obtain the bonds from companies holding certificates of authority as acceptable sureties (31 CFR 223). A list of these companies is published annually by the Department of the Treasury in its Circular 570 (the current list can be accessed at <http://ftp.fedworld.gov/pub/tel/sureties.txt>). The Department of the Treasury Circular 570 may also be obtained from the U.S. Department of the Treasury, Financial Management Service, Surety Bond Branch, 401 14th St., S.W., 2nd Floor--West Wing, Washington, DC 20227.

**49. MERGER:** This Agreement incorporates all the Agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, Agreements and understanding have been merged into this written Agreement. No prior Agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

**50. PENALTIES UNDER LAW:** The New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

**51. EQUAL OPPORTUNITY COMPLIANCE:** The CONTRACTOR agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the CONTRACTOR assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation, or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If CONTRACTOR is found not to be in compliance with these requirements during the life of this Agreement, CONTRACTOR agrees to take appropriate steps to correct these deficiencies.

**52. WORKERS' COMPENSATION:** The CONTRACTOR agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the CONTRACTOR fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by HPD.

**53. IDEMNIFICATION:** The CONTRACTOR shall defend, indemnify and hold harmless HPD and the State of New Mexico from all actions, proceeding, claims, demands, costs, damages attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the CONTRACTOR resulting in injury or damage to persons or property during the time when the CONTRACTOR or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the CONTRACTOR or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the CONTRACTOR, the CONTRACTOR shall, as soon as practicable but not later than two (2) days after it receives notice thereof, notify the legal counsel of HPD and the Risk Management Division of the New Mexico General Services Department by certified mail.

**54. NEW MEXICO EMPLOYEES HEALTH COVERAGE:**

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

**55. EMPLOYEE PAY EQUITY REPORTING:** CONTRACTOR agrees if it has ten (10) or more New Mexico employees OR eight (8) or more employees in the same job classification, at any time during the term of this CONTRACT, to complete and submit the PE10-249 form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. If CONTRACTOR has two hundred fifty (250) or more employees, CONTRACTOR must complete and submit the PE250 form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. For contracts that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, CONTRACTOR also agrees to complete and submit the PE10-249 or PE250 form, whichever is applicable, within thirty (30) days of the annual contract anniversary date of the initial submittal date or, if more than one hundred eighty (180) days has elapsed since submittal of the last report, at the completion of the CONTRACT, whichever comes first. Should CONTRACTOR not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, CONTRACTOR agrees to provide the required report within ninety (90) days of meeting or exceeding the size requirement. That submittal date shall serve as the basis for submittals required thereafter. CONTRACTOR also agrees to levy this requirement on any subcontractor(s) performing more than ten percent (10%) of the dollar value of this CONTRACT if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of the CONTRACT. CONTRACTOR further agrees that, should one or more subcontractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, CONTRACTOR will submit the required report, for each such subcontractor, within ninety (90) days of that subcontractor meeting or exceeding the size requirement. Subsequent report submittals, on behalf of each such subcontractor, shall be due on the annual anniversary of the initial report submittal. CONTRACTOR shall submit the required form(s) to the State Purchasing Division of the General Services Department, and other departments as may be determined, on behalf of the applicable subcontractor(s) in accordance with the schedule contained in this paragraph. CONTRACTOR acknowledges that this subcontractor requirement applies even though CONTRACTOR itself may not meet the size requirement for reporting and be required to report itself.

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

**56. INVALID TERM OR CONDITION:** If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

**57. ENFORCEMENT OF AGREEMENT:** A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

IN WITNESS WHEREOF, the parties have executed this CONTRACT as of the date(s) below.

By:

City of Santa Fe, New Mexico

\_\_\_\_\_  
Jeff Pappas  
State Historic Preservation Officer  
New Mexico Historic Preservation Division

\_\_\_\_\_  
JAVIER M. GONZALES,  
MAYOR

\_\_\_\_\_  
Date

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

Attest:

\_\_\_\_\_  
Yolanda Y. Vigil, City Clerk

Approved to form:

  
\_\_\_\_\_  
Kelley Brennan, Interim City Attorney

Approved:

\_\_\_\_\_  
Marcos Tapia, Finance Director

**APPENDIX A: ASSURANCES**

U.S. Department of the Interior

**Certifications Regarding Debarment, Suspension and  
Other Responsibility Matters, Drug-Free Workplace  
Requirements and Lobbying**

Persons signing this form should refer to the regulations referenced below for complete instructions:

Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions - The prospective primary participant further agrees by submitting this proposal that it will include the clause titled, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions. See below for language to be used or use this form certification and sign. (See Appendix A of Subpart D of 43 CFR Part 12.)

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions - (See Appendix B of Subpart D of 43 CFR Part 12.)

Certification Regarding Drug-Free Workplace Requirements - Alternate I. (Grantees Other Than Individuals) and Alternate II. (Grantees Who are Individuals) - (See Appendix C of Subpart D of 43 CFR Part 12)

Signature on this form provides for compliance with certification requirements under 43 CFR Parts 12 and 18. The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of the Interior determines to award the covered transaction, grant, cooperative agreement or loan.

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**PART A: Certification Regarding Debarment, Suspension, and Other Responsibility Matters-  
Primary Covered Transactions**

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CHECK  IF THIS CERTIFICATION IS FOR A PRIMARY COVERED TRANSACTION AND IS APPLICABLE.

- (1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
  - (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;
  - (b) Have not within a three-year period preceding this proposal been convicted of 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;
  - (c) 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 (1)(b) of this certification; and
  - (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- (2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

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**PART B: Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -  
Lower Tier Covered Transactions**

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CHECK  IF THIS CERTIFICATION IS FOR A LOWER TIER COVERED TRANSACTION AND IS APPLICABLE.

- (1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

This form was electronically produced by Elite Federal Forms, Inc.

DI-2010  
June 1995  
(This form replaces DI-1953, DI-1954,  
DI-1955, DI-1956 and DI-1963)

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**PART C: Certification Regarding Drug-Free Workplace Requirements**

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CHECK \_\_\_ IF THIS CERTIFICATION IS FOR AN APPLICANT WHO IS NOT AN INDIVIDUAL.

**Alternate I. (Grantees Other Than Individuals)**

A. The grantee certifies that it will or continue to provide a drug-free workplace by:

- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- (b) Establishing an ongoing drug-free awareness program to inform employees about--
  - (1) The dangers of drug abuse in the workplace;
  - (2) The grantee's policy of maintaining a drug-free workplace;
  - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
  - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- (c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
- (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will --
  - (1) Abide by the terms of the statement; and
  - (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
- (e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;
- (f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted --
  - (1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
  - (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
- (g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a) (b), (c), (d), (e) and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

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Check \_\_\_ if there are workplaces on files that are not identified here.

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**PART D: Certification Regarding Drug-Free Workplace Requirements**

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CHECK \_\_\_ IF THIS CERTIFICATION IS FOR AN APPLICANT WHO IS AN INDIVIDUAL.

**Alternate II. (Grantees Who Are Individuals)**

- (a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant;
- (b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to the grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

DI-2010  
June 1996  
(This form replaces DI-1953, DI-1954,  
DI-1955, DI-1956 and DI-1963)

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**PART E: Certification Regarding Lobbying**  
**Certification for Contracts, Grants, Loans, and Cooperative Agreements**

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CHECK  IF CERTIFICATION IS FOR THE AWARD OF ANY OF THE FOLLOWING AND THE AMOUNT EXCEEDS \$100,000: A FEDERAL GRANT OR COOPERATIVE AGREEMENT; SUBCONTRACT, OR SUBGRANT UNDER THE GRANT OR COOPERATIVE AGREEMENT.

CHECK  IF CERTIFICATION FOR THE AWARD OF A FEDERAL LOAN EXCEEDING THE AMOUNT OF \$150,000, OR A SUBGRANT OR SUBCONTRACT EXCEEDING \$100,000, UNDER THE LOAN.

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (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 an agency, a Member of Congress, and officer or employee of Congress, or an employee of 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 subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify accordingly.

This certification is a material representation of fact upon which reliance was 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.

As the authorized certifying official, I hereby certify that the above specified certifications are true.

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SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL

Brian K. Snyder, City Manager, City of Santa Fe, NM

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TYPED NAME AND TITLE

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DATE

DI-2010  
June 1995  
(This form replaces DI-1953, DI-1954,  
DI-1955, DI-1956 and DI-1963)

**ASSURANCES - NON-CONSTRUCTION PROGRAMS**

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET.  
SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**

**NOTE:** Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

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9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.
10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE Brian K. Snyder, City Manager
APPLICANT ORGANIZATION City of Santa Fe, NM	DATE SUBMITTED

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**APPENDIX B: PROJECT BUDGET**

**See excel spreadsheet for Budget.**

**APPENDIX B: PROJECT BUDGET**  
**City of Santa Fe, Certified Local Government (CLG) Grant**

Project 1: Phase III Survey of Building Heights Within Historic District  
 Project 2: Historic Downtown Archaeological Review District - Cultural Resources Database

			<b>TOTAL</b>	<b>HPD</b>	<b>MATCH</b>
<b>PROJECT 1: Phase III Survey of Building Heights - Historic District</b>					
<b>SALARIES</b>	<i>UNIT</i>	<i>RATE</i>			
Supervising Planner	35	\$47.37	\$1,657.95	\$0.00	\$1,657.95
GIS Project Coordinator	60	\$35.00	\$2,100.00	\$0.00	\$2,100.00
Contract Services			\$5,242.05	\$4,000.00	\$1,242.05
			<b>PROJECT 1 TOTAL</b>	\$4,000.00	\$5,000.00

**PROJECT 2: Historic Downtown Archaeological Review District - Cultural Resources Database**

<b>SALARIES</b>	<i>UNIT</i>	<i>RATE</i>			
Land Use Director	10	\$72.11	\$721.10	\$0.00	\$721.10
Supervising Planner	20	\$47.37	\$947.40	\$0.00	\$947.40
Senior Planner	20	\$36.74	\$734.80	\$0.00	\$734.80
Senior Planner, Technician	10	\$17.92	\$179.20	\$0.00	\$179.20
Senior Planner, Technician	10	\$17.92	\$179.20	\$0.00	\$179.20
GIS Analyst	60	\$28.73	\$1,723.80	\$0.00	\$1,723.80
Administrative Secretary	30	\$29.12	\$873.60	\$0.00	\$873.60
Contract Services			\$42,631.90	\$20,999.00	\$21,632.90
			<b>PROJECT 2 TOTAL</b>	\$20,999.00	\$26,992.00

<b>CITY OF SANTA FE - CLG PROJECTS TOTAL</b>			<b>HPD</b>	<b>MATCH</b>	
<b>PROJECT, GRANT &amp; MATCH TOTALS</b>			<b>\$56,991.00</b>	<b>\$24,999.00</b>	<b>\$31,992.00</b>

**APPENDIX C: RESUMES**

On file with HPD.