

City of Las Cruces®

PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 21 Ordinance/Resolution#: 10-11-310 Council District: 1
For Meeting of November 15, 2010
(Adoption Date)

TITLE: A RESOLUTION AWARDING A CONTRACT FOR THE MUSEUM OF NATURE AND SCIENCE EXHIBIT DESIGN, FABRICATION, AND INSTALLATION (BID NUMBER 10-11-310) TO HIGHLAND ENTERPRISES, INC. OF LAS CRUCES, NM FOR THE CONTRACT AMOUNT OF \$1,551,675 PLUS \$117,345 FOR NEW MEXICO GROSS RECEIPTS TAX. THE CITY MANAGER IS AUTHORIZED TO APPROVE CHANGE ORDERS IN AN AMOUNT NOT TO EXCEED \$77,584 FOR A TOTAL PROJECT AUTHORIZATION OF \$1,746,604.

PURPOSE(S) OF ACTION: Authorize a contract award to Highland Enterprises, Inc. of Las Cruces to design, fabricate, and install the exhibits for the future Museum of Nature and Science.

Drafting and Staff Contact: David Dollahon/Will Ticknor <i>[Signature]</i>		Department: Community Development		Phone: 528-3060/541-2295	
Department	Signature	Phone	Department	Signature	Phone
Community Development	<i>[Signature]</i>	528-3067	Budget	<i>[Signature]</i>	541-2107
			Assistant City Manager	<i>[Signature]</i>	541-2271
Legal	<i>[Signature]</i>	541-2128	City Manager	<i>[Signature]</i>	541-2076

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS: The City of Las Cruces has taken the necessary steps to secure funding for the creation of the Museum of Nature and Science at the former Bank of the Rio Grande Building at 411 N. Main Street. The funding sources include a Brownfield Economic Development Initiative (BEDI) Grant and a CDBG-backed Section 108 Loan from the U.S. Department of Housing and Urban Development (HUD), State of New Mexico Capital Outlay, and a grant from the Bureau of Land Management (BLM). With the exception of the BLM grant, the available funds are to design and construct the museum, including any necessary exhibits. The BLM grant is restricted to the design, fabrication, and installation for the Paleozoic Trackways Exhibits and any associated building construction to accommodate their installation.

The City of Las Cruces solicited request for proposals from qualified firms for the design, fabrication, and installation for the Museum of Nature and Science starting on June 30, 2010 and closing on August 20, 15, 2010. The Museum Systems received reference information on the five firms that submitted compliant proposals by the deadline. The five firms were evaluated by the Selection Advisory Committee (SAC). Interviews were conducted by the SAC for the top three (or at least 10%) on September 28, 2010. The SAC recommended and the user department has negotiated with Highland Enterprises, Inc. of Las Cruces for this project. The final project amount is \$1,551,675 with allowances for NM gross receipts tax in the amount of \$117,345 and contingency of \$77,584, for a total project cost of \$1,746,604.

Due to the use of federal funds, no local preference was allowed for this project's procurement. Additionally, the federal funds require that any change order must be approved through a detailed cost analysis and negotiation; therefore, the City Manager's authorization to allow for change orders on this project is subject to the applicable federal procurement requirements.

SUPPORT INFORMATION:

1. Resolution
2. Exhibit "A" - Purchasing Managers Request to Contract
3. Attachment "B" - Draft contract between the City and Highland Enterprises, Inc. – draft for information only, final terms, conditions, and format subject to change

SOURCE OF FUNDING:

Is this action already budgeted?	Yes	<input checked="" type="checkbox"/>	See fund summary below
	No	<input type="checkbox"/>	If No, then check one below:
	<i>Budget Adjustment Attached</i>	<input type="checkbox"/>	Expense reallocated from:
		<input type="checkbox"/>	Proposed funding is from a new revenue source (i.e. grant; see details below)
		<input type="checkbox"/>	Proposed funding is from fund balance in the _____ Fund.
Does this action create any revenue?	Yes	<input type="checkbox"/>	Funds will be deposited into this fund: _____ in the amount of \$ _____.
	No	<input checked="" type="checkbox"/>	There is no new revenue generated by this action.

FUND EXPENDITURE SUMMARY:

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
HUD Special Projects (Fund2010)	20184310-722190-12008	\$1,000,000	\$1,000,000	\$0	N/A
Federal Facilities Grants (Fund 4011)	40803190-852100-63405	\$532,564	\$1,000,000	\$467,436	Building Construction
	40803190-722190-63407	\$200,000	\$200,000	\$0	N/A
Federal Stimulus	49205010-	\$14,040	\$733,125	\$719,085	DOE Improvements

Capital Grants (Fund 4900)	852100- 63404				to the Building
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OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the Resolution; thereby awarding the contract to Highland Enterprises, Inc. of Las Cruces, NM to design, fabricate, and install the exhibits for the Museum of Nature and Science at 411 N. Main Street.
2. Vote "No"; this will not approve the Resolution; thereby not awarding the contract to Highland Enterprises, Inc. of Las Cruces, NM to design, fabricate, and install the exhibits for the Museum of Nature and Science at 411 N. Main Street. This will delay the overall project and could jeopardize the use of available grant funds committed to the museum's creation.
3. Vote "Yes" with modifications to approve the Resolution. Modifications would be based on the direction provided by the City Council.
4. Vote to "Table" and direct staff accordingly. This could delay the overall project and could jeopardize the use of available grant funds committed to the museum's creation.

REFERENCE INFORMATION

The resolution(s) and/or ordinance(s) listed below are only for reference and are not included as attachments or exhibits.

1. N/A

RESOLUTION NO. 10-11-310

A RESOLUTION AWARDING A CONTRACT FOR THE MUSEUM OF NATURE AND SCIENCE EXHIBIT DESIGN, FABRICATION, AND INSTALLATION (BID NUMBER 10-11-310) TO HIGHLAND ENTERPRISES, INC. OF LAS CRUCES, NM FOR THE CONTRACT AMOUNT OF \$1,551,675 PLUS \$117,345 FOR NEW MEXICO GROSS RECEIPTS TAX. THE CITY MANAGER IS AUTHORIZED TO APPROVE CHANGE ORDERS IN AN AMOUNT NOT TO EXCEED \$77,584 FOR A TOTAL PROJECT AUTHORIZATION OF \$1,746,604.

The City Council is hereby informed that:

WHEREAS, the City of Las Cruces has secured funding from the U.S. Department of Housing and Urban Development (HUD) and other federal and state sources, to create the Museum of Nature and Science; and

WHEREAS, the Museum of Nature and Science (or MoNaS) will be located in the rehabilitated former Bank of the Rio Grande Building at 411 N. Main Street (formerly 411 N. Downtown Mall); and

WHEREAS, City staff has selected and the City Council has authorized the award of the MoNaS Building's design contract to create the museum to ASA Architects of Las Cruces, NM; and

WHEREAS, part of the MoNaS project's overall funding includes the design, fabrication, and installation of various permanent and semi-permanent exhibits throughout the entire future museum; and

WHEREAS, the City staff, through the Purchasing Section within the Finance Division solicited Request for Proposals from qualified firms that could design, fabricate, and install the MoNaS exhibits; and

WHEREAS, five (5) firms submitted compliant proposals within the prescribed deadline, and the Selection Advisory Committee (SAC) evaluated all five and

interviewed the top three most qualified firms for creating the MoNaS exhibits; and

WHEREAS, the SAC has recommended and City staff have negotiated with the highest ranking firm to undertake this effort; and

NOW, THEREFORE, Be it resolved by the governing body of the City of Las Cruces:

(I)

THAT the contract for the Museum of Nature and Science Exhibit Design, Fabrication and Installation project is hereby awarded to Highland Enterprises, Inc. of Las Cruces, NM in the amount of \$1,746,604 (total project authorization).

(II)

THAT the total project authorization of \$1,746,604 includes an allowance of \$117,345 for New Mexico Gross Receipts Tax and a Project Contingency of \$77,584.

(III)

THAT the City Manager is authorized to approve change orders in an amount not to exceed \$77,584. The change order authorization is conditioned on compliance with all applicable city and federal procurement requirements related to change orders.

(IV)

THAT the Purchasing Manager is authorized to contract with Highland Enterprises, Inc. of Las Cruces, New Mexico as outlined within the Purchasing Manager's Recommendation to Contract, as shown in draft form and in keeping with Exhibit "A," attached hereto and made part of this Resolution.

(V)

THAT City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE and APPROVED this _____ day of _____, 2010.

APPROVED:

(SEAL)

Mayor

ATTEST:

City Clerk

Moved by: _____

Seconded by: _____

VOTE:

Mayor Miyagishima: _____

Councillor Silva: _____

Councillor Connor: _____

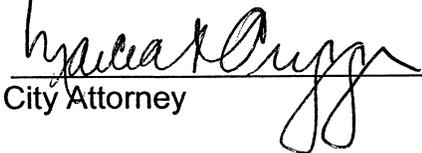
Councillor Pedroza: _____

Councillor Small: _____

Councillor Sorg: _____

Councillor Thomas: _____

APPROVED AS TO FORM:

ASST 

City Attorney

CITY OF LAS CRUCES

PURCHASING MANAGER'S REQUEST TO CONTRACT

For Meeting of: November 15, 2010

Resolution No.: 10-11-310

**Contract Purchase For
Museum of Nature and Science (MoNaS) Exhibit Design, Fabrication, and Installation**

The Las Cruces City Council is provided the following information concerning this request:

RFP SOLICITATION INFORMATION:

- 1. RFP No./ Due Date: **RFP No. 10-11-310/August 16, 2010**
- 2. Description: **MoNaS Exhibit Design, Fabrication, and Installation**
- 3. Using Department: **Community Development**
- 4. Number of Responses Accepted: **Five (5)**
- 5. Award Recommendation To: **Highland Enterprises OF Las Cruces, NM**
- 6. Total Award Amount (including any tax and contingency): **\$1,746,604.00**
- 7. Contract Duration: **755 Days**

LOCAL PREFERENCE FACTOR

Local Preference Factor Applied Per LCMC §24-100	No	X	LCMC §24-100 not applicable to this solicitation
	Yes		Made A Difference To Awards(s)
			Made No Difference To Bid Award(s)

PROCUREMENT CODE COMPLIANCE:

The City of Las Cruces Procurement Code was administered in the conduct of this procurement and approval to purchase is hereby requested pursuant to **Section 24-92**.



Purchasing Manager

11/9/2010

Date

CONFIRMATION OF FUND ENCUMBRANCE:

REQUISITION or PURCHASE ORDER NUMBER:	11101915
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PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, made and entered into on this date, _____ 2010, by and between the City of Las Cruces, New Mexico, hereinafter called "CITY" and Highland Enterprises Inc, of 645 S. Compress Rd. Las Cruces, NM 88005 hereinafter called "CONTRACTOR".

1. DESIGN, FABRICATE, & INSTALLATION OF EXHIBIT COMPONENTS FOR THE LAS CRUCES MUSEUM OF NATURE & SCIENCE (MoNaS) for services, terms, and conditions per the CONTRACTOR'S response to the CITY'S Request for Proposal 10-11-310.

- 1) **Design:** Using the Museum of Nature & Science Master Plan as a guide; design, fabricate and install exhibits and exhibit components for approximately 5,600 sq. ft. of floor space in a rehabilitation/conversion project. The selected firm must plan for coordination with the Architectural/Engineering/Mechanical and General Contractor team for the base building to ensure that every element of building infrastructure and associated services are installed in the required sites to support the exhibits. These services will include:
 - A) All exhibit components including media and integrated A/V (to ADA Standards.)
 - B) Development of detailed interpretive planning including script, text writing & editing.
 - C) Wiring/conduit for exhibit IT, A/V and exhibits electrical needs.
 - D) Interior exhibit utilities servicing power and climate control.
 - E) Integrated exhibit lighting and overhead track lighting plan.
 - F) Discovery Center/classroom A/V, power and lighting plan.
 - G) Plumbing location plan for exhibit and animal habitat and support needs.
 - H) All exhibit related way finding signage.
 - I) Appropriate museum directional sound-scaping plan and location identification.
 - J) Ensure exhibits meet LEED standards in coordination with the A/E & M team and the General Contractor.

- 2) **Fabricate & Install:** The Exhibition Contractor will supply and install all exhibits, cases, aquaria and insect tanks, graphics including artwork, photography and illustration, digital content, finishes including floor coverings as appropriate, glass, millwork for exhibits and prefabricated exhibits. Specific elements to include:
 - A) Sustainable Energy Dashboard (museum facility energy tracking display gauges) for the West exterior porch.
 - B) All illustration, artwork, and photography. The Exhibition Contractor will obtain and pay for all copyrights, intellectual rights, or use permissions for any

protected materials used in the exhibits and on the MoNaS website. These rights must extend to MoNaS.

- C) A Trackways exhibit including Trackways slabs to be provided by the New Mexico Museum of Natural History & Science in Albuquerque. The Trackways exhibit component will require direct coordination with the New Mexico Museum of Natural History & Science in Albuquerque, their Foundation, and the Federal Bureau of Land Management. That Museum is the custodian of the Trackways pieces and will provide curation of the objects, curatorial expertise in the development of a variety of media including interactive touch screens, text editing and review, some mountings, castings, and assistance with installation. A budget allowance for these services from Albuquerque should be calculated by the Exhibition Contractor.
- D) Props and habitat scenic elements are included in this Scope of Work. The Exhibition Contractor will produce, in coordination with appropriate animal experts, interior habitats and/or environmental backgrounds for as many animals as appropriate. (Not all animals require this.) Some existing animal tanks and habitats will be reused in the Chihuahuan Desert section

3) Procure and Install: Prefabricated or new exhibits must include:

- A) A 4'0" to 5'0" diameter internally projected globe as manufactured by "Magic Planet" or "OmniGlobe," or equal. To include computer interface, base or hanger, HD projector, touch-screen and software programs (from the manufacturer) including at minimum topics of: Tectonic Drift, Climatology, Worldwide Deserts, Seismic Activity, the Solar System, and Global Weather Tracking.
- B) At minimum, 6 pure science exhibits (topics TBD MoNaS) as available at Exploratorium or equal.
- C) All A/V equipment except the NASA "Viewspace" A/V monitor and PC which are provided by MoNaS, but are installed by the Exhibition Contractor. Other A/V will include a sound system and ceiling mounted projector and retractable screen in the Discovery Center and Classroom; a minimum 50" digital information system with screen and programmable interface near the W. Lobby (Water St.), Touchscreens and support equipment, etc.
- D) The Exhibition Contractor will supply and install taxidermy. Endangered or restricted skins will be provided by MoNaS. The taxidermist must have a minimum 10 years experience. Their credentials and portfolio will be approved by MoNaS, who reserve the right to substitute the individual.
- E) The Exhibition Contractor will install exhibit lighting fixtures to General Contractor installed tracks; (fixtures provided by the City of Las Cruces through the base building contract.) The Exhibition Contractor will recommend specific lighting fixtures to the General Contractor to meet exhibit lighting needs. The Exhibition Contractor will provide lighting accessories such as scrims and filters, and will clean and aim the lights for final presentation.

Note: The exterior electronic signage for the Main St. (E) side only, was provided for within the City's original request for proposal, as was the Water St. (W) side exterior building signage as supplied by MoNaS, but is installed by the Exhibition Contractor. This item is removed from this proposal and will be conducted by the general contractor for the construction/rehabilitation of the building.

4) Other:

- A) A high level of coordination between the General Contractor/Architect Team and the Exhibition Contractor is critical and required during the project, beginning as soon as possible in the planning process. The Exhibition Contractor is expected to present a strategy to make this process efficient and effective.
- B) The Exhibition Contractor will present a fully detailed work plan including deliverables and milestone dates. Exhibition Contractor – Client - A/E Team, & General Contractor meetings and approval dates shall be included. Schedule should include dates when MoNaS must travel to production sites to approve progress (City expense). An outline of Exhibition team trips to Las Cruces and time to be spent in Las Cruces should be indicated. (Museums Administration has video conferencing capability – PolyCom - for regular communication with the Exhibition team as scheduled or as needed.)
- C) The Exhibition Contractor's team shall include access to a zoologist/animal care professional specializing in desert wildlife, particularly reptiles, amphibians and arthropods. Chihuahuan Desert expertise is preferred.
- D) The Exhibition Contractor will provide information regarding their consultants and team members, and once submitted, will not substitute participants without the agreement of MoNaS.
- E) Installation of exhibit elements shall occur in coordination with the General Contractor and MoNaS. It is intended that the MoNaS interior spaces will be fully conditioned to meet the exhibition needs with appropriate reinforcements, conduits, power, outlets, plumbing and lighting track in place by the General Contractor.
- F) The Café shown on the plan will initially be presented as lobby space and there will be no fixtures or signage for Café or Shop in the Scope of Work. The Gift Shop will be established except for interior fixtures by the General Contractor.
- G) The Exhibition Contractor is responsible for the dimensional accuracy of all exhibit components; exhibit warranties will begin at the date the exhibits are handed over to MoNaS.
- H) Press announcements, releases and other publicity, award submissions and receipt relating to this project will be coordinated with MoNaS.
- I) HUD Federal Certification – Construction Contracts (as included herewith). All submitted bids shall include, as an attachment, the HUD Federal Certifications-Construction Contracts; signed by a person legally authorized to bind the Contractor

2. SCOPE OF SERVICES

In a satisfactory and proper manner, the CONTRACTOR shall perform SERVICES as proposed in response to the CITY'S RFP No.10-11-310 incorporated herein by reference and as set forth in Exhibit A, attached hereto and made a part of this Agreement.

3. APPROPRIATIONS

The terms of this Agreement are contingent on sufficient appropriations and authorization being made by the City Council for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the City Council, this Agreement shall terminate upon written notice given by the CITY to CONTRACTOR. The CITY'S decision as to whether sufficient appropriations and authorizations exist shall be accepted by CONTRACTOR and shall be final.

4. COMPENSATION

The CITY shall compensate CONTRACTOR for the performance of SERVICES under this Agreement an amount \$1,551,675,00 plus applicable taxes. CONTRACTOR shall perform the SERVICES, in accordance with the services, terms, and conditions per the CONTRACTOR'S response to City of Las Cruces Request For Proposal 10-11-310 upon receipt of a written Notice to Proceed for the *Design, Fabrication & Installation of Exhibit Components for the Las Cruces Museum of Nature & Science* from the CITY. The CITY cannot authorize costs to be incurred prior to such written Notice to Proceed.

CONTRACTOR is responsible for payment of State of New Mexico Gross Receipts Tax levied on the amounts payable under this Agreement. CONTRACTOR agrees to comply with all federal and state tax payments and report all items of gross receipts as income from the operations of its business.

5. DEVOTION OF ADEQUATE TIME

CONTRACTOR will devote the necessary hours each week to the performance of the project that is required by the CITY and it will serve the CITY diligently and faithfully, and according to its best ability in all respects and will promote the best interests of the CITY.

6. TERM AND SCHEDULE

This Agreement shall become effective on _____ (date of award) for a term of 755 days through December 31, 2012. CONTRACTOR shall perform the SERVICES in accordance with the time set forth as agreed upon by the CITY and CONTRACTOR in Exhibit B (and as agreed to for each project assigned under the terms of this Agreement).

7. EXTENSIONS, CHANGES, AND AMENDMENTS

This Agreement shall not be extended, changed, or amended except by instrument in writing executed by the parties. The CITY shall not be liable for payment of any extra services nor shall CONTRACTOR be obligated to perform any extra services except upon such written agreement. Such written approval shall indicate the date said extension, change, or amendment is effective and shall be signed by the parties to this Agreement. In the event that the parties cannot reach agreement as to a particular change, the issue shall be resolved pursuant to Article 21.

8. CHANGES AND EXTRA SERVICES BY THE CITY

The CITY may make changes within the general scope of the SERVICES plus may also request CONTRACTOR to perform other extra services not incorporated within the Services set forth in this Agreement. If the CONTRACTOR is of the opinion that such change causes an increase or decrease in the cost and/or the time required for performing the changes or other services required by the City, CONTRACTOR shall so notify the CITY of that fact within five (5) business work days from the date of receipt of change by the CITY. The CITY shall provide written response to the CONTRACTOR within five (5) business work days from the date of receipt of CONTRACTOR'S written notification.

9. CHANGES AND EXTRA SERVICES BY THE CONTRACTOR

In the event a condition is identified by the CONTRACTOR which, in the opinion of the CONTRACTOR, changes the services, costs, and/or time required for performance under this Agreement, the CONTRACTOR shall provide written notification to the CITY within five (5) business work days of such identification. The CITY shall respond in writing to such notification within five (5) business work days from the date of receipt of CONTRACTOR'S notification.

10. DELAYS

In the event that performance of SERVICES is delayed by causes beyond reasonable control of CONTRACTOR, and without the fault or negligence of CONTRACTOR, the time and total compensation for the performance of the SERVICES may be equitably adjusted by written agreement to reflect the extent of such delay. CONTRACTOR shall provide the CITY with written notice of delay pursuant to Article 9 including therein a description of the delay and the steps contemplated or actually taken by CONTRACTOR to mitigate the effect of such delay. The CITY will make the final determination as to reasonableness of delays.

11. TERMINATION

This Agreement may be terminated by either party hereto upon fifteen (15) calendar days written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement through no fault of the terminating party. This Agreement may also be terminated by the CITY for its convenience or because the PROJECT has been permanently abandoned, but only upon fifteen (15) calendar days written notice to CONTRACTOR.

In the event of termination, CONTRACTOR shall be compensated for all services performed and costs incurred up to the effective date of termination for which CONTRACTOR has not been previously compensated.

Upon receipt of notice of termination from the CITY, CONTRACTOR shall discontinue the SERVICES unless otherwise directed and upon final payment from the CITY deliver to the CITY the required number of copies of all data, drawings, reports, estimates, summaries, and such other information and materials as may have been accumulated by CONTRACTOR in the performance of this Agreement, whether completed or in process.

12. RECORDS AND AUDITS

CONTRACTOR will maintain records indicating dates, length of time, and services rendered. The CITY has the right to audit billings both before and after payment, and contest any billing or portion thereof. Payment under this Agreement does not foreclose the CITY'S right to recover excessive or illegal payments.

13. DISCLOSURE AND OWNERSHIP OF DOCUMENTS, PRODUCTS, DESIGN, ELECTRONIC FILES

All technical data, electronic files, and other written and oral information not in the public domain or not previously known, and all information, electronic files, and data obtained, developed, or supplied by the CITY will be kept confidential and CONTRACTOR will not disclose to any other party, directly or indirectly, without the CITY'S prior written consent unless required by lawful order.

All technical data, electronic files, products developed, operational parameters, blueprints, and other information and work of the CONTRACTOR shall be the sole property of the CITY and shall be delivered to the CITY when requested and at the end of the Agreement.

14. INDEPENDENT CONTRACTOR

CONTRACTOR represents that it has, or will secure, at its own expense, all personnel required in performing the SERVICES under this Agreement. Such personnel shall not be employees of, nor have any contractual relationship with the CITY. CONTRACTOR, consistent with its status as an independent contractor, further agrees that its personnel will not hold themselves out as, nor claim to be officers or employees of the CITY by reason of this Agreement.

To the extent that CONTRACTOR employs any employees, CONTRACTOR shall be solely responsible for providing its own form of insurance for its employees and in no event shall CONTRACTOR'S employees be covered under any policy of the CITY.

CONTRACTOR'S retention hereunder is not exclusive. Subject to the terms and provisions of this Agreement: (i) CONTRACTOR is able, during the Term hereof, to perform services for other parties; and (ii) CONTRACTOR may perform for its own account other professional services outside the scope of this Agreement.

CONTRACTOR is and shall be an Independent Contractor and shall be responsible for the management of its business affairs. In the performance of the work under this Agreement, CONTRACTOR will at all times be acting and performing as an Independent Contractor, as that term is understood for federal and state law purposes, and not as an employee of the CITY. Without limitation upon the foregoing, CONTRACTOR shall not accrue sick leave, jury duty pay, retirement, insurance, bonding, welfare benefits, or any other benefits, which may or may not be afforded employees of the CITY. CONTRACTOR will not be treated as an employee for purposes of: Workers' Compensation benefits; the Federal Unemployment Tax Act; Social Security; other payroll taxes, federal or any state income tax withholding; or the employee benefit provisions described in the Internal Revenue Code of 1986, as amended. Neither the CITY, nor its agents or representatives, shall have the right to control or direct the manner, details or means by which CONTRACTOR accomplishes and performs its services. Nevertheless, CONTRACTOR shall be bound to fulfill the duties and responsibilities contained in the Agreement.

15. NO JOINT VENTURE OR PARTNERSHIP

Nothing contained in this Agreement shall create any partnership, association, joint venture, fiduciary or agency relationship between CONTRACTOR and CITY. Except as otherwise specifically set forth herein, neither CONTRACTOR nor CITY shall be authorized or empowered to make any representation or commitment or to perform any act which shall be binding on the other unless expressly authorized or empowered in writing.

16. ASSIGNMENT.

CONTRACTOR shall perform all the services under this Agreement and shall not assign any interest in this Agreement or transfer any interest in same or assign any claims for money due or to become due under this Agreement without the prior written consent of the CITY.

17. INSURANCE

CONTRACTOR shall obtain and maintain insurance at its own cost and expense during the life of this Agreement, and shall require Subcontractors, if any, to maintain during the life of his subcontract:

- a. Professional Liability: \$1,000,000 per claim

CONTRACTOR shall furnish the CITY with a certificate(s) of insurance showing CONTRACTOR and Subcontractors, if any, have complied with this Article. The CONTRACTOR shall provide insurance certificates before work is to start on the project and shall provide the CITY thirty (30) days written notification of cancellation of such policies.

18. INDEMNITY AND LIMITATION

CONTRACTOR shall indemnify, defend, and hold harmless the CITY from and against any and all claims, suits, actions, judgments, demands, losses, costs, expenses,

ATTENTION: Will Ticknor, Museums Administration

With Copies to: City Attorney
Purchasing Manager

TO CONTRACTOR: Highland Enterprises Inc.
645 S. Compress Rd.
Las Cruces, NM 88005
Attn: Mark Hettinga

23. SCOPE OF AGREEMENT

This Agreement incorporates all of the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof and that all such covenants, agreements, and understandings have been merged into this written agreement. No prior agreement or understanding verbal or otherwise of the parties or their agents shall be valid or enforceable unless embodied in this agreement.

CONTRACTOR

THE CITY OF LAS CRUCES

BY: _____
PRINCIPAL

BY: _____
PURCHASING MANAGER

DATE: _____

DATE: _____

APPROVED AS TO FORM:

CITY ATTORNEY

EXHIBIT A

*(Contractor Proposal & Cost) – to be attached as
part of award*

SERVICES

EXHIBIT B

Revised SCHEDULE

Las Cruces Museum of Nature & Science
RFP No. 10-11-310

EXHIBIT WORKPLAN / SCHEDULE - REVISED NOVEMBER 8 2010

LEGEND

- EXHIBITS
- Workshop
- Reviews
- Meeting
- Deliverable
- Approvals
- Permittation
- Building complete for exhibit/artifact installation
- *Note: Workshops will take place at Museums

