

City of Lovington



REQUEST FOR PROPOSALS

Lea Theatre Operation and Restoration

Due Date & Time

December 14, 2017
10:00 a.m. (MST)

SUBMIT PROPOSALS TO:

Gary L. Chapman
Finance Director
City of Lovington
214 S. Love St.
Lovington, NM 88260
gchapman@lovington.org

**LEGAL NOTICE OF REQUEST FOR PROPOSALS
LOVINGTON, NEW MEXICO**

**FOR LEA THEATRE OPERATION AND RESTORATION
DUE DATE: DECEMBER 14, 2017**

The City of Lovington, New Mexico will receive sealed proposals at City Hall, 214 S. Love St., Lovington, New Mexico, on December 14, 2017 at 10:00 a.m. (MST) for the operation and restoration of the Lea Theatre.

The Request for Proposals, any future addenda, and all related information may be obtained from the City of Lovington's website at www.lovington.org under "Procurement" or by contacting the Finance Department, 214 S. Love St., Lovington, New Mexico 88260, (575) 396-2884, gchapman@lovington.org.

James R. Williams, City Manager

Publish in: Lovington Leader: November 30, 2017
Hobbs New Sun: November 30, 2017

FACSIMILE AND ELECTRONIC PROPOSALS ARE NOT ACCEPTABLE

Pursuant to the provisions of the New Mexico State Purchasing Act, sealed bids and proposals, subject to the conditions herein, will be received at the Lovington City Hall, New Mexico until the date and time shown above, and thereafter immediately opened and read in public for furnishing the commodities and/or services listed in the attached specifications.

COMMODITY CODES:

Effective July 1, 2016, each state agency and local public body shall use the standardized classification codes developed by the state purchasing agent. (NMSA 1978 13-1-30.1)

Applicable classification codes for this proposal are:

5-DIGIT CODE	ITEM DESCRIPTION
97108	Building, Fabricated, Pre-Fabricated, or Pre-manufactured rental or lease

INSTRUCTION TO RESPONDENTS

1. **Envelopes containing proposals must be sealed and marked on the upper left hand corner with the name and address of the Respondent, the date and hour of opening, the name of proposal, and mailed or delivered to the before the time of opening.**
2. Samples of items, when required, must be furnished, free of expense, prior to the opening of proposals, and, if not destroyed, will upon request of Respondent, be returned to the Respondent at its expense. Copy of the warranty must be included with proposal and must be for the maximum amount the manufacturer provides, if goods are warrantable.
3. Proposals which are mailed, or otherwise delivered prior to the point of opening must contain the information detailed in Item 1 above and must be mailed or otherwise delivered to the **Finance Director, 214 South Love, Lovington, New Mexico, 88260**. This information shall be included on **ALL EXTERIOR PACKAGING**.
4. All prices should be stated in units or quantities specified, with packing and delivery charges included.
5. Time of proposed delivery must be stated in definite terms. If time varies for different items, the Respondent should so state.
6. Proposals must be made out and signed in the corporate or other name of Respondent and must be fully and properly executed by an authorized person.
7. Proposals must be submitted on the price submittal form attached (if included in packet). **Any prices pertaining to exceptions must be attached to the proposals** (stapled, bound or secured otherwise). If the Respondent provides any options other than requested, these will not be acceptable.
8. Proposals received later than the time and date specified will not be considered.
9. Amendments to or withdrawals of proposals received later than the time and date set for proposal opening will not be considered.
10. Respondents or their representative may be present at the proposal opening.
11. The Purchasing Agent reserves the right to amend and/or cancel the proposal invitation prior to the time and date of the proposal opening.
12. The Purchasing Agent reserves the right to correct any proposal awarded erroneously as a result of a clerical error on the part of the City of Lovington.
13. In the event the Respondent is unable to submit a proposal, the Purchasing Department would appreciate advising this office to that effect. Failure to submit proposals on three consecutive invitations to respond will result in the removal of the Respondents name from the mailing list.
14. Respondents and/or vendors doing business with the City of Lovington must be in compliance with

the Federal Civil Rights Act of 1964 and Title VII of the Act. Rev., 1979. The City of Lovington in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders and respondents that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids and proposals in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

15. It will be the sole responsibility to the Respondents requesting consideration for Resident Preference at proposal openings to submit to the State Purchasing Agent, the questionnaire for Resident Business or Contractor's Certification and to receive approval and a certification form prior to the proposal opening. Requests for consideration for Resident Business or Contractor's Preference after proposal opening will not be considered.
16. All contracts solicited by competitive sealed proposals for the City of Lovington require that the proposal amount exclude the applicable state gross receipts tax. As the City of Lovington is required to pay the applicable state gross receipts tax, all requests for payment shall include a separate amount on each billing reflecting the applicable tax. (13-1-108)
17. **All applicable state gross receipts tax charged to the City of Lovington shall be at the current rate at the time of the project. Respondents and/or vendors agree to report the gross receipts tax charged to the City of Lovington on New Mexico Taxation & Revenue Department form CRS-1 and use Lovington as the municipality name in column A and 04-101 as the location code in column C.**
18. Any equipment supplied to the City of Lovington must comply with all requirements and standards as specified by the federal government's Occupational Safety and Health Act of 1971. All guards and protectors as well as appropriate markings must be in place before delivery. Items not meeting OSHA specifications will be refused. The supplier may be required, at its expense to provide training to municipal employees in the operation of this item and its maintenance, at the convenience of the City of Lovington.
19. **All respondents and/or vendors doing business with the City of Lovington must also provide IRS FORM W-9 (REV. JANUARY 2011 or DECEMBER 2011). Failure to do so may cause the proposal to be rejected by the City of Lovington.**
20. The City reserves the right to render payment of any invoices using the City's Procurement Card without incurring any penalty.

CONDITIONS AND PROPOSAL OPENING PROCEDURES

1. The City of Lovington reserves the right to reject any and all proposals, to waive an informality in proposals, and unless otherwise specified by the Respondent, to accept any item on the proposal.
2. In case of error in the extension of prices in the proposal, the unit price will govern.
3. Any discount offered will be computed from the date of delivery or from the date a correct bill rendered on a proper voucher form and certified by the contractor is received, whichever date is latest.
4. The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.
5. It is the intent of these specifications to describe the minimum requirements. All portions not specifically mentioned which are required for a completion of the project, shall conform in design, strength, quality of material and workmanship to the highest standards of engineering practice.
6. All proposals must be clearly marked on the outside of the envelope with the project name and opening date. Should a proposal be opened prior to the official opening date due to the lack of a proper marking, it will be rejected.
7. All interested parties are invited to attend proposal openings of the City of Lovington.
8. Proposals will be opened at precisely the time, the date and the place stipulated in the Request for Proposal and in the legal notice published in the newspaper.
9. Each proposal will be evaluated by the Finance Director and the appropriate department or committee. The Respondent is to provide complete specifications. Acceptable exceptions to specifications will be determined by the Director of Purchasing with the aid of the appropriate department head.
10. The Finance Director and the department or committee will rule on any point needing clarification.
11. The apparent low Respondent, meeting specifications, will be determined by the Finance Director and the department or committee.
12. Respondents are advised to bear in mind that the low response obtained at the opening of the proposals may not be the proposal ultimately selected for the award. The successful respondent will be the one whose product is judged to best serve the interests of the City when price, product, safety, and delivery are considered.
13. A Respondents request for Resident Preference will be honored only when the provisions of Sections 13-1-21 and 13-1-22 of the State Purchasing Act have been met.

14. Do not submit alternate proposals unless instructed to do so, as they will not be considered.
15. Notice is hereby given that the City Commission reserves the right to reject any and all proposals received. In the case of ambiguity or lack of clarity, the right to determine the best proposal or to reject same or to waive irregularities and technicalities.
16. Any requested literature and one complete copy of the proposal, unless stated otherwise in the Request for Proposal, must be submitted with the proposal.
17. All proposals must be valid for a minimum of 90 days after opening, unless otherwise stated in the proposal sheet by the individual respondent or the City of Lovington.
18. All Respondents who are engaged in business within the municipal limits of the City, shall be licensed to do business by the City of Lovington.
19. This procurement is being done on behalf of the City of Lovington, its departments as well as other entities and agencies in general as provided for by law, at the discretion of the contracted vendor(s).
20. Pursuant to 13-4-11 (A) NMSA Annotated, state wage rates shall apply to any bid or proposal on construction or public works projects in excess of \$60,000.00. In addition all bidders and proposers shall comply with Federal wage rates on applicable projects.
21. Pursuant to 13-1-146 NMSA Annotated, a bid security or bond shall be required of bidders or offerors for construction contracts in excess of twenty-five thousand dollars (\$25,000). Bid security or bond in an amount equal to at least five percent (5%) of the amount bid shall be a bond provided by a surety company authorized to do business in the state of New Mexico, or the equivalent in cash.
22. Pursuant to 13-4-13.1 NMSA Annotated, in order to submit a proposal valued at more than fifty thousand dollars (\$50,000) in order to respond to a request for proposals or to be considered for award of any portion of a public works project greater than fifty thousand dollars (\$50,000) for a public works project that is subject to the Public Works Minimum Wage Act [13-4-10 NMSA 1978], the contractor, serving as a prime contractor or not, shall be registered with the labor and industrial division of the labor department.
23. Pursuant to 13-4-34 NMSA Annotated, (A) Any person submitting a proposal shall in his/her bid set forth: (1) the name and the city or county of the place of business of each subcontractor under subcontract to the contractor who will perform work or labor or render service to the contractor in or about the construction of the public works construction project in an amount in excess of the listing threshold; and (2) the category of the work that will be done by each subcontractor. The contractor shall list only one subcontractor for each category as defined by the contractor in his bid. (B) A bid submitted by a contractor who fails to comply with the provisions of Subsection A of this section is a non-responsive bid which shall not be accepted by a using agency.

24. Pursuant to 13-4-38 NMSA Annotated, Failure to specify subcontractor: If a contractor fails to list a subcontractor in excess of the listing threshold and he does not state that no bid was received or that only one bid was received, he represents that he is fully qualified to perform that portion of the work himself and that he shall perform that portion of the work himself. If after the award of the contract the contractor subcontracts any portion of the work, except as provided in the Subcontractors Fair Practices Act [13-4- 31NMSA 1978], the contractor shall be guilty of violation of the Subcontractors Fair Practices Act and subject to the penalties provided in Section 13-4-41 NMSA 1978.

HOLD HARMLESS/INDEMNITY AGREEMENT

To the full extent permitted by law, Contractor shall defend, indemnify and hold harmless City, its employees, agents and officials, from any liability, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses expenses or costs of any kind, whether actual, alleged or threatened, actual attorney fees incurred by City, court costs, interest, defense costs including expert witness fees and any other costs or expenses of any kind whatsoever incurred in relation to, as a consequence of or arising out of or in any way attributable in whole or in part to the performance of this agreement. All obligations under this provision are to be paid by Contractor as the City incurs them.

Without affecting the rights of City under any provision of this agreement or this section, Contractor shall not be required to indemnify and hold harmless City as set forth above for liability attributable to the sole fault of City, provided such sole fault is determined by agreement between the parties or the findings of a court of competent jurisdiction. This exception will apply only in instances where the City is shown to have been solely at fault and not in instances where Contractor is solely or partially at fault or in instances where City's fault accounts for only a percentage of the liability involved. In those instances, the obligation of Contractor will be all-inclusive and City will be indemnified for all liability incurred, even though a percentage of the liability is attributable to conduct of the City.

Contractor acknowledges that its obligation pursuant to this section extends to liability attributable to City, if that liability is less than the Sole fault of City. Contractor agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this section from each and every subcontractor, sub-tier contractor or any other person or entity involved by, for, with or on behalf of contractor in the performance of this agreement. In the event Contractor fails to obtain such indemnity obligations from others as required here, Contractor agrees to be fully responsible according to the terms of this section. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend City as set forth herein is binding on the successors, assigns, or heirs of Contractor and shall survive the termination of this agreement or this section.

Any dispute leading to litigation must be settled in the jurisdiction of the Lea County, New Mexico Court system.

1.0 PURPOSE

The purpose of this Request for Proposals is to solicit sealed responses to establish a contract through competitive responses for the lease of the historic Lea Theatre in Lovington, New Mexico. The lease agreement will require the regular operation movie theatre. The lease agreement will also require the operator to be responsible for the restoration and renovation of the Lea Theatre, to include all engineering and architectural services, improvements, inspections and testing, insurance, repairs, maintenance, operating costs, and all utilities.

2.0 PROJECT DESCRIPTION

A. Background

The historic Lea Theatre, located at the corner of Main and Central Streets in Lovington, New Mexico was built in 1948. This facility is listed on the National Register of Historic Places. The theatre was owned and independently operated until 2013 when the owners sold the building and contents to the City of Lovington. After acquisition, the theatre was operated by a non-profit organization through a lease agreement with the City of Lovington. It was also the intention of the lease agreement that the organization would undertake the renovation and restoration of the theatre.

B. Community Benefit

The City of Lovington views this facility and its operation as improving the quality of life of its citizens. Although the lease agreement requires the primary purpose of the facility as a regularly operating movie theatre, the facility has the additional potential to have an impact on the quality of life of the citizens of Lovington and the surrounding area.

C. Existing Conditions

This facility was built in a fashion that is a blend of Art Deco and Modern architectural styles that were popular in the late 1940's. The theatre is constructed of brick masonry on a concrete foundation and a building inspection 4 years ago revealed no indication of instability. The original façade remains intact and features a neon canopy and central tower mast. Repair of the neon components of the canopy and sign are necessary. The original poster boxes as well as box office are preserved. The lobby and concession stand have been altered and updated with equipment and cabinetry. Redesign of this area is necessary in order to improve customer service. The original restrooms are intact but will require renovation to conform to ADA standards.

The auditorium space contains a sloped concrete floor that descends from the auditorium entrance to a point forty feet from the stage. A small stage in front of the movie screen is present, however, no backstage area exists. Lighting within the auditorium area will require an improvement/upgrade. The current organization did secure updated, but used, auditorium seating. Replacement of the seating is ongoing and upon completion the auditorium will seat approximately 200 people. The floor and walls have been painted. The evaporative cooling system in the auditorium is in need of replacement. The gas forced air heating system is functional but will require upgrading. The auditorium will require minimal alterations to meet handicap access requirements.

A second level does exist and contains a small balcony seating area, the projection booth, as well as generous office space. Updating of the décor as well as space use on the second level is required. The digital projection system and sound system was replaced in July of 2015. The details of these systems are as follows:

- Projection Booth: Christie digital cinema projector with the ability to display films in 2D/3D HFR. Alternative input/output methods area available for display including wireless projection and projection via USB/HDMI.
- Screen: A Harkness Spectral silver screen measuring 31 feet by 15.9 feet is installed. The screen includes a side motorized moveable masking.
- Digital Sound System: Equipment includes (1) audio processor, (4) XLS 1000 amplifiers, (1) XLS 1500 amplifier, (3) XLS 2000 amplifiers, (2) XLS 2500 amplifiers, (2) JBL subwoofers, (16) JBL surround sound speakers with wall mounts, and (3) JBL stage speakers. Acoustic paneling is installed in the auditorium.

D. Goals of Project

The City has issued this request for proposals to find a company or organization to lease the Lea Theatre from the City of Lovington in order to meet the following objectives:

1. Regular operation of the facility as a movie theatre. Regular operation means that a set schedule of movies and times is established. Additional activities may be conducted at the facility so long as the operator does not violate any ordinances or other regulations of the City of Lovington, County of Lea, or any state or federal rule, regulation or law, now in force or hereinafter adopted, which in any manner shall affect the use of the premises. Additional activities must be approved by the City of Lovington in addition to not interfering with the regular operation of the movie theatre.
2. Restoration and renovation of the Lea Theatre: The operator will be responsible for funding and conducting the restoration and renovation of the Lea Theatre. These modifications must preserve the historic nature of the facility. In addition, the modifications must be approved by the City prior to conducting the work.
3. The City will enter into a minimum of a ten year lease agreement with the operator that will provide an option to purchase the theatre upon approval of the Lovington City Commission. A sample of the proposed basic lease agreement has been included in "ATTACHMENT A". The final format and requirements of the lease agreement will be agreed upon by the successful respondent and the City of Lovington.

E. RFP Process

1. Submission Requirements: The following information and/or documents must be included in order for the City evaluation team to determine which submitted proposal is in the best interests of the City and meet the project goals.
 - Cover letter
 - City of Lovington Response Form
 - City of Lovington Offers, Exceptions, and Variations Form
 - Campaign Contribution Disclosure Form
 - Resident/Veterans Preference Certification Form

- Identification of development team. The respondent should include the key consultants that will be used as well as proposed operators of the theatre.
 - Development team qualifications.
 - Proposed development program. This will include a detailed description of the regular operation (schedule or frequency of performances, content, etc.) of the theatre in addition to a description and schedule for renovation and restoration of the theatre.
 - Description of prior projects that the respondent has participated in of similar type and magnitude.
 - Budget for operations, including pro forma showing development cost budget, sources and uses, and 10 year cash flow projections for all project components.
 - Identify additional uses of the theatre that the respondent would like to implement.
 - References
2. Selection Process: All proposals submitted in response to this RFP will be reviewed for their relative strengths and weaknesses based on the submission requirements and evaluation criteria described herein, including consistency with the goals and objectives of this RFP. In addition, proposals will be reviewed for completeness, developer and team experience, the proposed development plan, as well as the ability of the respondent to finance, undertake, and complete the proposed project and meet the expectation of the City. Upon receipt of on time proposals, City staff will review each proposal and provide a recommendation to the City Commission on award. The City reserves the right to reject all proposals.
3. Evaluation Criteria: Submissions will be evaluated based upon the following criteria: (1) Development Team Qualifications/Financing Capacity – XX points; (2) Development Program/Operations Concept – XX points; (3) Financial Analysis – XX points; Lease Amount – XX points; Prior experience – XX points. A copy of the Evaluation Form that will be used is included in “ATTACHMENT B”.



City of Lovington

Response Form

**LEA THEATRE OPERATION AND RESTORATION
DUE DATE: DECEMBER 14, 2017
10:00 A.M. (MST)**

NAME OF RESPONDENT: _____

RESPONDENT POINT OF CONTACT: _____

ADDRESS: _____

TELEPHONE NO.: _____

EMAIL: _____

PROPOSED ANNUAL LEASE AMOUNT: _____

The City of Lovington reserves the right to waive any irregularities an award, or not to award, in the best interests of the City. The City is held harmless and is indemnified for the loss and/or misplacement of proposal submittals. The respondent is required to utilize this form. Signature is required and reflects agreement, by the respondent, to the terms of this document.

SIGNATURE OF RESPONDENT: _____

Mail or deliver to City Hall at 214 S. Love St., Lovington, NM 88260
Deadline: December 14, 2017 by 10:00 a.m. (MST)

**OPTIONS, EXCEPTIONS, OR VARIATIONS
CITY OF LOVINGTON, NEW MEXICO**

LEA THEATRE OPERATION AND RESTORATION

DUE DATE: December 14, 2017 at 10:00 a.m. (MST)

Please state each and every option, exception, or variation to the specifications (if any) for the service(s) or item(s) offered. Please sign below and return with your offer.

1. THERE ARE OPTIONS, EXCEPTIONS OR VARIATIONS. _____
Signature

2. THERE ARE NO OPTIONS, ETC. LISTED. The services offered on the Request for Proposal meet or exceed all specifications, terms, and conditions as described in said Request for Sealed Proposal without exceptions. I understand services not meeting all specifications, terms, and conditions will be rejected and all costs will be borne by the respondent.

Signature

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

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

Furthermore, the state agency or local public body shall void an executed contract or cancel a solicitation or proposed award for a proposed contract if: 1) a prospective contractor, a family member of the prospective contractor, or a representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or 2) a prospective contractor fails to submit a fully completed disclosure statement pursuant to the law.

THIS FORM MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

The following definitions apply:

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

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

"Family member" means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law.

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

"Person" means any corporation, partnership, individual, joint venture, association or any other private legal entity.

"Prospective contractor" means a person who is subject to the competitive sealed proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person qualifies for a sole source or a small purchase contract.

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

DISCLOSURE OF CONTRIBUTIONS:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Name of Applicable Public Official: _____

Date Contribution(s) Made: _____

Amount(s) of Contribution(s): _____

Nature of Contribution(s): _____

Purpose of Contribution(s): _____

(Attach extra pages if necessary)

Signature

Date

Title (position)

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

Signature

Date

Title (position)

Resident / Veterans Preference Certification

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

Please check one box only

Veteran Resident Businesses:

- I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is less than \$1M allowing me the 10% preference discount on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.
- I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than \$1M but less than \$5M allowing me the 8% preference discount on this bid or proposal. I understand that knowingly giving false or misleading information about this fact constitutes a crime.
- I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than \$5M allowing me the 7% preference discount on this bid or proposal. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

Resident Businesses:

- I declare under penalty of perjury that my business is a New Mexico resident business allowing me the 5% preference discount on this bid or proposal. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

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

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

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

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

Resident Business/Veteran Business Certificate Number:

(Signature of Business Representative)*

(Date)

*Must be an authorized signatory for the Business.

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

A valid New Mexico Resident Business or New Mexico Veterans' Resident Business Certificate number must be provided in order to receive preference.

“ATTACHMENT B”

EVALUATION FORM

LEA THEATRE OPERATION AND RESTORATION

OFFERORS:

Proposal must address each of the following criteria. Each proposal may be awarded points up to the amount listed.

RATING SHEET FOR:		
EVALUATOR:		
ITEM	POSSIBLE POINTS	SCORE
1. Development Team Qualifications/Financing Capacity	<i>30</i>	
2. Development Program/Operations Concept	<i>30</i>	
3. Financial Analysis	<i>30</i>	
4. Lease Amount	<i>20</i>	
5. Prior Experience	<i>20</i>	
TOTAL SCORE	<i>130</i>	

“ATTACHMENT A”
LEASE AGREEMENT

This Lease Agreement made this ____ day of _____, 2017 between the CITY OF LOVINGTON, a municipal corporation organized and existing under the law of the State of New Mexico, (hereinafter referred to as “Lessor”) and _____, a _____ permitted to conduct business in the State of New Mexico, (hereinafter referred to as “Lessee”).

WITNESSETH:

1. **Leased Premises:** Lessor does hereby lease unto Lessee certain real property located at 106 E. Central Avenue, Lovington, New Mexico, also known as the Lea Theatre (hereinafter referred to as “Theatre”)
2. **Rental:** The annual rental to be paid by the Lessee to Lessor shall be _____ per year during the primary term of this agreement which shall be ten (10) years, subject to the restrictions and limitations set forth herein. The Commencement Date of the Lease shall be _____, 2017 and the lease shall terminate on _____, 2027. Lessee may, at its own option, purchase the property from the Lessor at any time during the lease period at an amount that is approved by the City Commission.
3. **Use.** It is agreed and understood that the leased premises may be used for the operation of a movie theatre and in such manner by Lessee shall not violate any ordinances or other regulations of the City of Lovington or County of Lea, or any other state or federal rule, regulation or law, now in force or hereinafter adopted, which in any manner shall affect the use of the demised premises. Lessee must maintain the regular operation of the movie theatre at the premises. Any other uses must be approved by written permission of the Lessor.
4. **Prohibited Use of Premises:** Lessee will make no offensive use of the leased premises. Lessee will not use the lease premises, or any part thereof for permanent or temporary residence. Lessee shall not use the lease premises, or any part thereof for any use that is extra hazardous on account of fire, chemical waste or for any purpose that is a nuisance or that is offensive to other tenants or occupants of other buildings in the vicinity without written permission from Lessor. Said written permission shall not be unreasonably withheld but is subject to all applicable rules and regulations governing said use.
5. **Improvements and Removal; Termination.** It is agreed and understood by the parties that the Lessee may construct certain improvements upon the leased premises at Lessee’s own cost and conforming to the building code or regulations of the City of

“ATTACHMENT A”

Lovington. It is further agreed and understood by the parties that the Lessee shall obtain structure, building, electrical, plumbing, environmental, facility, or other permits. Lessee shall be responsible for all engineering and architectural services, improvements, inspections and testing, insurance, repairs, maintenance, operating costs, and all utilities unless otherwise specified in this agreement. Any construction, alteration, or repairing of building or other improvement on the demised premises by Lessee must be approved in writing by the Lessor.

All improvements permanently attached to the land upon the expiration of the lease or any extension thereof, which is not removed within thirty (30) days from and after the expiration of the term, shall become the property of the City of Lovington.

Lessor reserves the right to cancel or terminate this Lease by giving to Lessee not less than thirty (30) days written notice of cancellation and termination if the governing body determines that the property is needed for either municipal purposes, if operation is against public policy, or Lessee fails to conduct an efficient or cost-effective operation as deemed by the City Commission from information obtained from financial statements and reports provided by the Lessee. Lessee shall have the right to cancel and terminate this lease at the end of the 12th, 24th, 36th, 48th, 60th, 72nd, 84th, 96th, 108th, 120th, or 132nd month of the primary term by giving to Lessor not less than thirty (30) days written notice of cancellation and termination.

6. **Liens.** The Lessee shall not permit any liens or encumbrances to be filed against the property, which is subject to this Lease, or against the Lessee’s leasehold interest in the leased premises.

Lessee shall make no contract or agreement for the construction, alteration, or repairing of any building or other improvement on the demised premises without prior written approval by Lessor. Any such contract shall provide for ten (10) days notice to Lessor prior to the beginning of any work and such contract or agreement is in writing and contains an express waiver by such contractor of any claim for mechanic’s or materialmen’s liens against the demised premises or improvements thereon.

7. **Condition.** The Lessee agrees that it will surrender the property peaceably and in good condition at the termination of this Lease if the option to purchase is not exercised or approved by the City Commission, ordinary wear and tear excepted.
8. **Access.** The Lessee hereby grants to the City the right of access, ingress, and egress from the Lea Theatre by the City and its agents.
9. **Lessee’s Assumption of Liability.** The Lessee covenants and agrees that it will indemnify and save the Lessor harmless from any and all liability, damage, expense, cause of action, suits, claims or judgments arising from injury to person or death or damage to

“ATTACHMENT A”

property on or off the premises, arising or resulting from Lessee’s usage of the leased premises or the operations by the Lessee.

10. **Insurance.** Lessee and any agents or assigns shall procure and maintain in force, at its expense, during the term of this Lease and any extension thereof, public liability insurance with insurers approved by Lessor with a certificate of said insurance. Such coverage shall be adequate to protect against liability for damage claims through public use of or arising out of accidents occurring in or around the lease premises, in a minimum amount of \$1,000,000 combined single limit for property damage. Lessee shall obtain a written obligation from the insurers to notify Lessor in writing at least thirty (30) days prior to cancellation or refusal to renew any policy. The Lessee shall name the City of Lovington as an additional insured.

All insurance policies, agents, brokers and companies must be submitted to the City Manager of the City of Lovington, for review and approval by the City Manager. A Certificate of Insurance must be filed in the office of the City Manager each year of the Lease term.

11. **Default.** In the event of default on the part of Lessee, the Lessor shall notify Lessee of such default and in the event Lessee does not correct said default within ninety (90) days from the date notice is received, then the Lessor may, at its option, terminate this Lease.
12. **Assignment/Subletting.** The Lessee shall not assign or sublet any portion of the Theatre, whether it is for a set fee, amount, or free of charge.
13. **Review.** The Lessee shall provide to the Lessor current financial statements no later than the twentieth (20th) day of each month during the term of this agreement. Financial statements submitted to the Lessor shall follow standard accounting guidelines and procedures.
14. **Notices.** All notices to be given with respect to this Lease shall be given in writing. Each notice shall be sent either by certified mail, postage prepaid, and return receipt requested to the party to be notified, or by personal delivery at the address set forth herein or at such other address as either party may from time to time designate in writing.

Lessor: City Manager
 City of Lovington
 214 S. Love
 Lovington, NM 88260

Lessee:

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- 15. **Taxes and Assessments.** The Lessee shall pay such taxes or assessments as may be lawfully levied by any government agency for the improvements to be erected on the premises.

- 16. **Governing Law and Provisions.** This Agreement shall be governed by the laws of the State of New Mexico. Jurisdiction and venue relating to any litigation or dispute arising out of this Agreement shall be in the District Court of Lea County, New Mexico, only. If any part of this contract shall be deemed in violation of the laws or Constitution of New Mexico, only such part thereof shall be thereby invalidated, and all other parts hereof shall remain valid and enforceable.

- 17. **Successor’s Bound.** The covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of the Lessor and Lessee and their respective successors and assigns.

- 18. **Authority to Contract.** Lessor covenants and represents that it has met all of the legal requirements necessary to its entry into this Lease and further covenants that the officers are persons signing on behalf of the City of Lovington, a municipal corporation.

The foregoing constitutes the entire agreement between the parties and may be modified only in writing signed by both parties.

CITY OF LOVINGTON, NEW MEXICO

MAYOR

APPROVED AS TO FORM:

ATTEST

CITY CLERK

CITY ATTORNEY

LESSEE

TITLE