



**CITY OF RIO COMMUNITIES  
INVITATION TO BID  
No. 2023-0101**

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# **DHSEM Projects**

## Contents

|   |    |
|---|----|
| ADVERTISEMENT FOR BIDS .....                                  | 5  |
| I. INTRODUCTION .....   | 6  |
| A. Purpose of this Invitation to Bid .....                    | 6  |
| B. Scope of Work.....   | 6  |
| C. Scope of Procurement .....                                 | 11 |
| D. Procurement Manager .....                                  | 11 |
| E. Definition of Terminology .....                            | 12 |
| F. Resident/Veteran/Native American/ Business Preference..... | 13 |
| 1. Resident Business Preference.....                          | 13 |
| 2. Resident Veterans Preference.....                          | 14 |
| 3. Native American Resident Business Preference.....          | 14 |
| G. Procurement Library .....                                  | 14 |
| II. CONDITIONS GOVERNING THE PROCUREMENT.....                 | 16 |
| A. SEQUENCE OF EVENTS .....                                   | 16 |
| B. EXPLANATION OF EVENTS .....                                | 16 |
| 1. Issue ITB.....   | 16 |
| 2. Bid Intent .....   | 16 |
| 3. Pre-Bid Conference .....                                   | 17 |
| 4. Deadline to submit additional written questions. ....      | 17 |
| 5. Response to written questions/ITB Amendments .....         | 17 |
| 6. Submission of Bids.....                                    | 17 |
| 7. Public Opening .....                                       | 17 |
| 8. Bid Tabulation .....                                       | 18 |
| 9. Contract Award.....  | 18 |
| 10. Protest Deadline.....                                     | 19 |
| C. GENERAL REQUIREMENTS .....                                 | 19 |
| 1. Acceptance of Conditions Governing the Procurement .....   | 19 |
| 2. Incurring Cost.....  | 19 |
| 3. Prime Contractor Responsibility .....                      | 19 |
| 4. Subcontractors .....                                       | 20 |
| 5. Amended Bids .....   | 20 |
| 6. Bidders' Rights to Withdraw Bid .....                      | 20 |
| 7. Bid Offer Firm.....  | 20 |
| 8. No Obligation .....  | 20 |
| 9. Termination .....  | 20 |
| 10. Sufficient Appropriation.....                             | 20 |
| 11. Legal Review .....  | 21 |
| 12. Governing Law .....                                       | 21 |
| 13. Basis for Bid.....  | 21 |
| 14. Contract Terms and Conditions.....                        | 21 |
| 15. Bidder Qualifications.....                                | 21 |
| 16. Right to Waive Minor Irregularities .....                 | 22 |
| 17. Change in Contractor Representatives .....                | 22 |
| 18. Notice.....   | 22 |
| 19. City Rights.....  | 22 |
| 20. Ownership of Bids.....                                    | 22 |
| 21. Ambiguity, Inconsistency or Errors in ITB .....           | 22 |

|  |   |    |
|--|---|----|
| 22.  | Competition .....                                 | 22 |
| 23.  | Use by Other Government Entities.....             | 23 |
| 24.  | Confidentiality .....                             | 23 |
| 25.  | Delivery & Failure to Meet Order Provisions ..... | 23 |
| 26.  | Discounts .....                                   | 23 |
| 27.  | City Furnished Property.....                      | 23 |
| 28.  | Packing, Shipping, & Invoicing .....              | 24 |
| 29.  | Electronic mail address required .....            | 24 |
| 30.  | Use of Electronic Versions of this ITB .....      | 24 |
| 31.  | Award Rights.....                                 | 24 |
| 32.  | Deliver .....                                     | 24 |
| 33.  | Addenda.....                                      | 24 |
| III.   | RESPONSE FORMAT AND ORGANIZATION.....             | 26 |
| A.   | NUMBER OF RESPONSES .....                         | 26 |
| B.   | NUMBER OF COPIES .....                            | 26 |
| C.   | BID CONTENTS .....                                | 26 |
| D.   | BID FORMAT .....                                  | 26 |
| E.   | BID SUBMITTAL REQUIREMENTS .....                  | 27 |
| IV.  | SPECIFICATIONS AND REQUIREMENTS .....             | 27 |
| A.   | INFORMATION.....                                  | 27 |
| 1.   | Restrictive Specifications .....                  | 27 |
| 2.   | Use of Brand Names and Numbers .....              | 27 |
| 3.   | Equivalent Items Bid .....                        | 27 |
| 4.   | Special Conditions.....                           | 28 |
| 5.   | Response to Requirements.....                     | 28 |
| B.   | DESIGN SPECIFICATIONS .....                       | 28 |
| C.   | MANDATORY REQUIREMENTS.....                       | 28 |
| D.   | OTHER REQUIREMENTS.....                           | 29 |
| V.   | BID OPENING, PROCESSING AND AWARD.....            | 30 |
| A.   | BID RECEIPT.....                                  | 30 |
| B.   | BID OPENING .....                                 | 30 |
| C.   | EVALUATION PROCESS.....                           | 30 |
| D.   | AWARD AND ORDER PROCESS.....                      | 31 |
| 1.   | Contract Award.....                               | 31 |
| 2.   | Order(s).....                                     | 31 |
| APPENDIX A.....                                  |   | 33 |
| Section.....                                     |   | 34 |
| Description .....                                |   | 34 |
| SECTION 1.....                                   |   | 35 |
| APPENDIX B .....                                 |   | 37 |
| BID FORM .....                                   |   | 37 |
| DHSEM PROJECTS .....                             |   | 37 |
| APPENDIX C .....                                 |   | 43 |
| LETTER OF TRANSMITTAL FORM .....                 |   | 43 |
| APPENDIX D.....                                  |   | 44 |
| CAMPAIGN CONTRIBUTION DISCLOSURE FORM .....      |   | 44 |
| APPENDIX E .....                                 |   | 47 |
| RESIDENT VETERANS' PREFERENCE CERTIFICATION..... |   | 47 |
| APPENDIX F.....                                  |   | 48 |

BID SUBMITTAL CHECKLIST ..... 48  
APPENDIX G ..... 49  
DRAFT PURCHASE AGREEMENT CONTRACT ..... 49  
APPENDIX H ..... 63  
NOTICE TO CONTRACTOR ..... 63

**ADVERTISEMENT FOR BIDS**  
**INVITATION TO BID ITB #2023-0101**

DHSEM Projects

The City of Rio Communities is requesting sealed bids for the purpose of procuring repairs on Avenida del Fuego, Riley Avenue, Alame Loop, San Lucas Avenue and Chamartin Avenue. The proposed improvements include roadway shoulder pavement reconstruction, 2” mill and inlay and drainage repairs.

Bids may be held for ninety (90) days subject to all action by the City. City of Rio Communities reserves the right to reject any and all bids in part or in whole. A completed bid package shall be submitted in a sealed container indicating the ITB title and number along with the Offeror's name and address clearly marked on the outside of the container **All bids must be received by the deadline of 11:00 AM (Mountain Time) on Thursday, September 21st, 2023** at the City of Rio Communities Administrative Office, 360 Rio Communities Blvd., Rio Communities, New Mexico at which time and place the bid opening will start.

By submitting a bid for the requested services/items each Bidder is certifying that its bid complies with regulations and requirements stated within the Invitation to Bid.

**ANY BID PACKAGE RECEIVED BY THE PURCHASING DIVISION AFTER THE DATE AND TIME SPECIFIED ABOVE WILL NOT BE CONSIDERED AND WILL BE REJECTED BY CITY OF RIO COMMUNITIES.**

EQUAL OPPORTUNITY EMPLOYMENT: All qualified Bidders will receive consideration of contract(s) without regard to race, color, religion, sex or national origin.

Invitation for Bid packages will be available online at [www.bidnetdirect.com/cityofriocommunities](http://www.bidnetdirect.com/cityofriocommunities). Interested bidders will need to register to access the documents. For questions regarding this bid please contact the City of Rio Communities Chief Procurement Officer, Angela R. Valadez via email at [avaladez@riocommunities.net](mailto:avaladez@riocommunities.net).

# I. INTRODUCTION

## ***A. Purpose of this Invitation to Bid***

The City of Rio Communities (hereinafter the “City”) seeks sealed bids from qualified companies for the purpose of procuring repairs on Avenida del Fuego, Riley Avenue, Alame Loop, San Lucas Avenue and Chamartin Avenue. The proposed improvements include roadway shoulder pavement reconstruction, 2” mill and inlay and drainage repairs. The drainage repairs include the installation of a storm drain spillway run with riprap at the outlet and channel restoration.

## ***B. Scope of Work***

### **DESCRIPTION**

### **PARTICIPATING**

The project consists of removing 2 feet of the existing roadway and milling 2 inches of the adjacent 2 feet towards the crown of the road and placing 2 - 2 inch mats of HMA OR WMA SP-IV for the outside 2 feet pavement removal and 1 - 2 inch mat of HMA OR WMA SP-IV for the milled area. The proposed top mat shall match the existing profile. The project limits will be defined in Section 10 (10-1 thru 10-8) of the construction plan set in Appendix A.

| <b>Estimated Quantities for Contractor Information Only</b> |   |      |          |
|---|---|------|----------|
| NMDOT Item No.  | Item Description                                  | UNIT | QUANTITY |
| 201000  | CLEARING AND GRUBBING                             | L.S. | L.S.     |
| 203000  | UNCLASSIFIED EXCAVATION                           | C.Y. | 230      |
| 203100  | BORROW  | C.Y. | 40       |
| 207000  | SUBGRADE PREPARATION                              | S.Y. | 1,500    |
| 407000  | ASPHALT MATERIAL FOR TACK COAT                    | TON  | 1        |
| 408100  | PRIME COAT MATERIAL                               | TON  | 3        |
| 414000  | COLD MILLING (ASPHALT)                            | SYIN | 600      |
| 416104  | MINOR PAVING TYPE I, HMA SP-IV                    | TON  | 400      |
| 515000  | REINF. CONCRETE FOR MINOR STRUCTURES              | C.Y. | 4        |
| 570461  | 36” STORM DRAIN CULVERT PIPE                      | L.F. | 47       |
| 570465  | 36” STORM DRAIN CULVERT PIPE END SECTION          | EACH | 1        |
| 601000  | REMOVAL OF STRUCTURES AND OBSTRUCTIONS            | L.S. | L.S.     |
| 601110  | REMOVAL OF SURFACING                              | S.Y. | 1,150    |
| 602000  | RIP RAP CALSS A                                   | C.Y. | 17       |
| 602060  | RIP RAP CALSS G                                   | S.Y. | 17       |
| 609424  | CONCRETE VERTICAL CURB AND GUTTER TYPE B 6” X 24” | L.F. | 112      |
| 613000  | CLEANING CULVERTS AND DRAINAGE STRUCTURES         | L.S. | L.S.     |
| 618000  | TRAFFIC CONTROL MANAGEMENT                        | L.S. | L.S.     |

|        |  |      |      |
|--------|--|------|------|
| 618011 | PUBLIC AWARENESS                       | L.S. | L.S. |
| 621000 | MOBILIZATION                           | L.S. | L.S. |
| 801000 | CONSTRUCTION STAKING BY THE CONTRACTOR | L.S. | L.S. |
| 802000 | POST CONSTRUCTION PLANS                | L.S. | L.S. |

**NON-PARTICIPATING**

The project consists of adjusting one sanitary sewer manhole and one water valve to finished grade per construction plan set.

| <b>Estimated Quantities for Contractor Information Only</b> |                        |      |          |
|---|------------------------|------|----------|
| NMDOT<br>Item No.   | Item Description       | UNIT | QUANTITY |
| 662400  | MANHOLE ADJUSTMENT     | EACH | 1        |
| 663850  | WATER VALVE ADJUSTMENT | EACH | 1        |



## **INTENT OF CONTRACT**

The intent of the contract is to provide for the construction and completion in every detail of the work described herein. The Contractor shall furnish all labor, materials, equipment, tools, transportation, and supplies required to complete the work in accordance with the plans, specifications, and terms of the contract.

## **SIGNIFICANT CHANGES IN THE CHARACTER OF WORK**

The City reserves the right to make, in writing, at any time during the work, such modifications in quantities and such alterations to the work as are necessary to satisfactorily complete the project. Such modifications in quantities and alterations to the work shall not invalidate the contract nor release the surety, and the Contractor shall agree to perform the work as altered.

If the alterations to the work or modifications in quantities significantly change the character of the work under the contract whether such alterations or modifications are in themselves significant changes to the character of the work or because by affecting other work, they cause such other work to become significantly different in character an adjustment, excluding anticipated profit, shall be made to the contract. The basis for the adjustment shall be agreed upon prior to the performance of the work. If a basis cannot be agreed upon, then an adjustment shall be made either for or against the Contractor in such amount as the City may determine to be fair and equitable.

If the alterations to the work or changes in quantities do not significantly change the character of the work to be performed under the contract, the altered work will be paid for as provided elsewhere in the contract. The term "significant change" shall be construed to apply only to the following circumstances:

- A. When the character of the work as changed differs materially in kind or nature from that involved or included in the original proposed construction; or
- B. When a major item of work as defined elsewhere in the contract is increased in excess of 125% or decreased below 75% of the original contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 125% of original contract item quantity, or in the case of a decrease below 75%, to the actual amount of work performed.
- C. When the change affects work performed under a subcontract agreement approved by the City, adjustments will be made if prior to doing the work the prime Contractor can show the City that the initiated change adversely affected the subcontractor or the subcontractor's work or payment. No consideration will be given to customary increases/decreases in quantities necessary to complete the work that were changed by the Contractor's schedule of operations, by his or her planning of the work, or for unscheduled mobilizations. No consideration will be made after subcontractor work is completed and claims for additional compensation are received.

## **DIFFERING SITE CONDITIONS**

During the progress of work, if subsurface or latent physical conditions differing materially from those indicated in the contract are encountered at the site or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the contract, are encountered at the site the party discovering such conditions shall promptly notify the other party in the contract in writing of the specific differing conditions before they are disturbed, or as soon as practicable thereafter, and before the affected work continues.

A. Upon written notification, the City shall, within a reasonable time, investigate the conditions. If the City determines that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the contract, an adjustment that excludes anticipated profits but includes cost of delays will be made, and the contract will be modified in writing accordingly.

B. In the event the Contractor fails to provide the written notification in a timely fashion and the City's costs are increased as a result, the damage that could have been mitigated by timely notice will be calculated and the contract adjustment will be reduced accordingly.

## **MAINTENANCE OF TRAFFIC**

The Contractor shall furnish, erect, and maintain barricades, warning signs, flaggers, and pilot cars in accordance with the MUTCD, the Traffic Control Plan, and the requirements of Division 700, Traffic Control Devices. Flaggers shall be provided with equipment and training pursuant to requirements of the MUTCD. The equipment used by the flaggers shall be kept clean and in good repair by the Contractor at the Contractor's expense. The Contractor shall take all steps necessary to either keep the existing roadway open with a minimum of inconvenience to the traveling public or provide an approved alternate route.

The Contractor's equipment shall enter and leave the traveled way only in the direction of public traffic. All movements on or across the traveled way shall be performed in a manner that will not endanger the traveling public.

The City will be responsible for snow removal on all sections of roadway open to the traveling public. The Contractor shall be responsible for snow removal as required for the protection of the work on all sections of the project not open to the traveling public.

The Contractor shall be liable and agrees to pay the City for additional costs and expenses incurred by the City in correcting the defect(s).

The Contractor shall provide ingress and egress to local businesses and residences for the duration of the contract. The Contractor shall advise and schedule access modifications with local business owners, residences, and the Engineer at least twenty-four (24) hours in advance.

## FINAL CLEANUP

Before final acceptance, the roadway, all pit sites used by the Contractor, and all ground occupied or used by the Contractor in connection with the work shall be cleaned of all rubbish including but not limited to concrete and asphalt chunks, loose rock, excess materials, and temporary structures. All parts of the work shall be left in an acceptable condition. If appropriate arrangements have been made with private property owners, removal of equipment from private property shall not be required prior to final acceptance.

Borrow pits, surfacing pits, haul roads, and all ground occupied by the Contractor in connection with the work shall be revegetated in accordance with the requirements of NMDOT Standard Specifications for Highway and Bridge Construction Section 632. Haul roads or other areas may be excepted from these requirements when a letter of intent from the landowner for future use has been accepted by the City.

### ***C. Scope of Procurement***

This is an Invitation to Bid being conducted by the City of Rio Communities. The scope of the procurement consists of identifying one or more companies that can provide the products described herein. This procurement will result in the award of one definite quantity contract.

### ***D. Procurement Manager***

The City of Rio Communities has designated a Procurement Officer who is responsible for this procurement and whose name, address, and telephone number are listed below. Any inquiries or requests regarding this procurement should be submitted to the Chief Procurement Officer in writing. Bidders may contact **ONLY** the Chief Procurement Officer regarding the procurement. Other City employees do not have the authority to respond on behalf of the City of Rio Communities:

Angela R. Valadez  
Chief Procurement Officer

|   |   |  |
|---|---|--|
| <b>Delivery Address:</b><br>360 Rio Communities Blvd.<br>Rio Communities, NM<br>87002 | <b>Electronic Submittal of Bid:</b><br><a href="#">City of Rio Communities - Bid Opportunities and RFPs   BidNet Direct</a> | <b>Mailing Address:</b><br>360 Rio Communities Blvd.<br>Rio Communities, NM<br>87002 |
|---|---|--|

Phone : 505.861.6803

E-mail : [avaladez@riocommunities.net](mailto:avaladez@riocommunities.net)

## ***E. Definition of Terminology***

This section contains definitions that are used throughout this procurement document, including appropriate abbreviations.

“Governing Body” means the elected board in whom all powers of the City are vested and who are responsible for the proper and efficient administration of City government.

"Close of Business" means 5:00 P.M. Mountain Standard Time (MST) or Mountain Daylight Time (MDT), whichever is in effect on the date specified.

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

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

"City" means the City of Rio Communities, State of New Mexico.

"Determination" means the written documentation of a decision of the procurement manager including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains.

“Desirable” refers to the terms "may", "can", "should", "preferably" or "prefers" which identify a desirable or discretionary item or factor. (As opposed to a “mandatory” item or factor.)

"Finalist" is defined as a Bidder who meets all the mandatory specifications of this Invitation to Bid.

"Mandatory" refers to the terms "must", "shall", "will", "is required" or "are required" which identify a mandatory item or factor. (As opposed to a “desirable” item or factor.) Failure to meet a mandatory item or factor may result in the rejection of the Bidders bid.

"Local public body" means every political subdivision of the State of New Mexico and the agencies, instrumentalities and institutions thereof, including two-year post-secondary educational institutions, school districts and local school boards and municipalities.

"Bidder" is any person, corporation, or partnership who chooses to submit a bid.

"Procurement Manager" or “PM” means the person or designee authorized by the City to manage or administer a procurement.

"Procuring agency of the City" means the department or other subdivision of the City of Rio Communities that is requesting the procurement of services or items of tangible personal property.

"Purchase Order" or "PO" means the document which directs a contractor to deliver items of tangible personal property or services pursuant to an existing, valid contract.

"Purchasing" means the City of Rio Communities Purchasing Office or the City of Rio Communities Purchasing Agent.

"Purchasing Agent" or "PA" means the Purchasing Agent for the City of Rio Communities.

"Responsible Bidder" means a Bidder who submits a responsive bid and who has furnished required information and data to prove that their financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services or items of tangible personal property called for in this bid.

"Responsive Bid" means a bid which conforms in all material respects to the requirements set forth in the invitation to bid. Material respects of a request for bids include, but are not limited to, price, quality, quantity and delivery requirements.

"Statement of Compliance" and "Statement of Concurrence" mean an express statement, by the Bidder in their bid, that they agree with and agree to the stated requirement(s). Possible examples of acceptable responses include "The [NAME HERE Company] agrees to comply with this requirement." and "The [NAME HERE Company] concurs with this requirement."

## ***F. Resident/Veteran /Native /Business Preference***

### **1. Resident Business Preference**

The New Mexico Procurement Code provides for preference for resident businesses and Contractors under certain conditions. If applicable, the preference will be provided to those Bidders that have provided a valid resident business preference certificate with their bid, as required by 13-1-22 NMSA 1978.

In order for a Bidder to receive preference as a resident business, that Bidder must submit a copy of their resident business preference certificate with their bid. The preference certificate must have been issued by the New Mexico Taxation and Revenue Department. Providing only a preference number or a copy of the application is not acceptable.

For more information and application forms, go to:

<https://www.tax.newmexico.gov/businesses/in-state-veteran-preference-certification/>

## 2. Resident Veterans Preference

Effective July 1, 2012, certain preferences are available to Resident Veteran Businesses. [Please see Section V.C.4 for more information and especially note Appendix E.] In order for a Bidder to receive preference as a resident veteran business, that Bidder must submit a copy of their resident veteran business preference certificate with their bid. The preference certificate must have been issued by the New Mexico Taxation and Revenue Department. Providing only a preference number or a copy of the application is not acceptable.

For more information and application forms, go to:

<https://www.tax.newmexico.gov/businesses/in-state-veteran-preference-certification/>

## 3. Native American Resident Business Preference

The New Mexico Procurement Code provides for Native American resident businesses and Contractors under certain conditions. If applicable, the preference will be provided to those Bidders that have provided a valid Native American resident business preference certificate with their bid, as required by 13-1-22 NMSA 1978.

In order for a Bidder to receive preference as a Native American resident business, that Bidder must submit a copy of their Native American resident business preference certificate with their bid. The preference certificate must have been issued by the New Mexico Taxation and Revenue Department. Providing only a preference number or a copy of the application is not acceptable.

For more information and application forms, go to:

<https://www.tax.newmexico.gov/businesses/business-preference-certification/>

## ***G. Procurement Library***

The Procurement Library consists of the following documents which may be accessed by their associated Internet links:

**- New Mexico Procurement Code**

<https://nmonesource.com/nmos/en/nav.do>

**- City of Rio Communities Procurement Policy: 2023-20**

[https://www.riocommunities.net/sites/default/files/fileattachments/finance/page/1391/resolution\\_2023-20\\_procurement\\_policy.pdf](https://www.riocommunities.net/sites/default/files/fileattachments/finance/page/1391/resolution_2023-20_procurement_policy.pdf)

**- New Mexico Veterans/In-State/Native American Resident/Preference**

<https://www.tax.newmexico.gov/businesses/in-state-veteran-preference-certification/>

**- City of Rio Communities Procurement Forms**

[www.bidnetdirect.com//cityofriocommunities](http://www.bidnetdirect.com//cityofriocommunities)

**- City of Rio Communities Bid Documents**

[www.bidnetdirect.com//cityofriocommunities](http://www.bidnetdirect.com//cityofriocommunities)

## II. CONDITIONS GOVERNING THE PROCUREMENT

This section of the ITB contains the schedule for the procurement, describes the major procurement events and contains the general requirements governing the procurement.

### A. SEQUENCE OF EVENTS

The Procurement Manager will make every effort to adhere to the following schedule:

| <b>ACTION</b>                                | <b>RESPONSIBILITY</b>               | <b>DATE</b>                  |
|--|-------------------------------------|------------------------------|
| 1. Issue ITB                                 | Procurement Manager (PM)            | 09/07/2023                   |
| 2. Bid Intent                                | PM, Potential Bidders (PB)          | 09/11/2023                   |
| 3. Pre-Bid Conference (Virtual)              | PM, PB                              | 09/13/2023 @ 11:00 AM        |
| 4. Deadline to Submit Additional Questions   | PB                                  | 09/15/2023                   |
| 5. Response to Written Questions/ Amendments | PM                                  | 09/18/2023                   |
| <b>6. Submission of Sealed Bids</b>          | <b>Bidders</b>                      | <b>09/21/2023 @ 11:00 AM</b> |
| 7. Public Opening (Virtual)                  | Purchasing, Bidders, General Public | 09/21/2023@11:00 AM          |
| 8. Bid Tabulation                            | Purchasing                          | 09/22/2023                   |
| 9. Contract Award                            | Purchasing Officer, Governing Body  | 09/25/2023                   |
| 10. Protest Deadline                         | Bidders                             | 10/10/2023                   |

\*Contract award is subject to approval of the Governing Body.

### B. EXPLANATION OF EVENTS

The following paragraphs further detail the activities listed in the sequence of events shown in Section II, Paragraph A.

#### 1. Issue ITB

This ITB is being issued by the Procurement Manager on behalf of the City of Rio Communities and the City of Rio Communities Governing Body. The bid can be accessed online at [www.bidnetdirect.com//cityofriocommunities](http://www.bidnetdirect.com//cityofriocommunities). Bidders must register to view bidding documents.

#### 2. Bid Intent

**Potential Bidders must register on [www.bidnetdirect.com//cityofriocommunities](http://www.bidnetdirect.com//cityofriocommunities) to view bidding documents and must submit a Bid Intent on said website.**



### 3. Pre-Bid Conference

A Pre-Bid Conference will be held for this bid on the date and time indicated in Section II.A (Sequence of Events), above. The Pre-Bid Conference will be conducted via GoToMeeting, due to covid restrictions. The link to the meeting is listed below.

Pre-Bid Conference - ITB #2023-0101 - DHSEM Projects  
Wed., September 13, 2023, 11:00 AM - 11:30 AM (MDT)

**Join on your computer, mobile app or room device**

[Click here to join the meeting](#)

Meeting ID: 291 956 136 783

Passcode: vk6vD3

[Download Teams](#) | [Join on the web](#)

[Learn More](#) | [Meeting options](#)

### 4. Deadline to submit additional written questions.

Potential Bidders may submit additional written questions as to the intent or clarity of this ITB until close of business on the date indicated in Section II.A (Sequence of Events), above. All written questions must be asked through [www.bidnetdirect.com/cityofriocommunities](http://www.bidnetdirect.com/cityofriocommunities) (See Section I, Paragraph D.)

### 5. Response to written questions/ITB Amendments

Written responses to written questions and any ITB amendments will be posted to the procurement website at [www.bidnetdirect.com/cityofriocommunities](http://www.bidnetdirect.com/cityofriocommunities).

### 6. Public Opening

All bids timely received will be opened and read aloud in a public forum online in a GoToMeeting or in person on the date and time indicated in Section II.A (Sequence of Events), per NMSA 1978, Section 13-1-107 (1984). Bidders are encouraged to attend via GoToMeeting. The GoToMeeting link is listed below.

At the bid opening, the amount of each bid and each bid item, if appropriate, and such other relevant information as may be specified by the Purchasing Agent, together with the name of each bidder, will be recorded, and the record and each bid will be open to public inspection.

If you are an individual with a disability and you require accommodations such as a hearing interpreter to attend our Public Bid Opening, please contact the Procurement Manager (see Section I.D., above.) at least seven (7) days prior to the scheduled bid opening.

Bid Opening - ITB #2023-0101 - DHSEM Projects  
Thur., Sept. 21, 2023, 11:00 AM - 11:30 AM (MDT)

**Join on your computer, mobile app or room device**

[Click here to join the meeting](#)

Meeting ID: 254 199 800 415

Passcode: LVRoyP

[Download Teams](#) | [Join on the web](#)

[Learn More](#) | [Meeting options](#)

## 7. Submission of Bids

**BIDS MUST BE SUBMITTED ELECTRONICALLY NO LATER THAN 11:00 AM MDT ON THE DATE INDICATED IN SECTION II.A (SEQUENCE OF EVENTS), ABOVE. BIDS RECEIVED AFTER THIS DEADLINE FOR ANY REASON WILL NOT BE ACCEPTED OR CONSIDERED.**

Bids must be uploaded to [www.bidnetdirect.com//cityofriocommunities](http://www.bidnetdirect.com//cityofriocommunities)

## 8. Bid Tabulation

After the public opening, the bids will be assessed for responsiveness. Responsive bids will be tabulated (price compared) to identify the lowest price(s) submitted. During this time, the Procurement Manager may, at his or her option, initiate discussions with Bidders for the purpose of clarifying aspects of the bids, but bids may be accepted and considered without such discussion. Discussions SHALL NOT be initiated by the Bidders.

## 9. Contract Award

The Purchasing Agent anticipates contract award on the date indicated in Section II.A (Sequence of Events), above. This date is subject to change at the discretion of the Purchasing Agent or the Governing Body.

## 10. Protest Deadline

Any protest by a Bidder must be timely, in conformance with, and will be governed by Sections 13-1-172 through 13-1-176 NMSA 1978. The fifteen (15) day protest period for timely Bidders shall begin on the day following contract award and will end at 5:00 PM MDT on the date indicated in Section II.A (Sequence of Events), above. Any and all protests shall be made in accordance with the State Protest Policy 13-1-172 through 13-1-176 NMSA. Protests must be written and must include the name and address of the protestor and the Invitation to Bid number. It must also contain a statement of grounds for protest including appropriate supporting exhibits, and it must specify the ruling requested from the Purchasing Agent. The protest must be delivered to the Purchasing Agent.

City of Rio Communities Purchasing  
Attn. Angela R. Valadez, City Purchasing Agent  
360 Rio Communities Blvd.  
Rio Communities, NM 87002

NOTE: Protests received after the deadline will not be accepted.

### ***C. GENERAL REQUIREMENTS***

This procurement will be conducted in accordance with the New Mexico Procurement Code (13-1-28 NMSA 1978) and City of Rio Communities Procurement Policy #2023-20.

#### **1. Acceptance of Conditions Governing the Procurement**

Bidders must indicate their acceptance of the Conditions Governing the Procurement in the letter of transmittal form (see Appendix C). Submission of a bid constitutes acceptance of the Terms and Conditions contained herein.

#### **2. Incurring Cost**

Any cost incurred by the Bidder in preparation, transmittal, presentation of any bid or material or negotiation associated with their response to this ITB shall be borne solely by the bidder.

#### **3. Prime Contractor Responsibility**

Any contract that may result from this ITB shall specify that the prime contractor is solely responsible for fulfillment of the contract with the City. The City will only make contract payments to the prime contractor.

#### **4. Subcontractors**

Not applicable

#### **5. Amended Bids**

A Bidder may submit an amended bid before the deadline for receipt of bids. Such amended bids must be complete replacements for a previously submitted bid and must be clearly identified as such in the transmittal letter. City personnel will not merge, collate, or assemble bid materials.

#### **6. Bidders' Rights to Withdraw Bid**

Bidders will be allowed to withdraw their bids at any time prior to the deadline for receipt of bids. The Bidder must submit a written withdrawal request signed by the Bidder's duly authorized representative addressed to the Procurement Manager. The approval or denial of withdrawal requests received after the deadline for receipt of the bids is governed by the applicable procurement regulations. A low Bidder alleging a material mistake of fact after bids have been opened may be permitted to withdraw the bid upon written request prior to award at the discretion of the City.

#### **7. Bid Offer Firm**

Responses to this ITB, including bid prices, will be considered firm for ninety (90) days after the due date for receipt of bids. With the submission of the bid, bidders agree to the contract contained in this ITB.

#### **8. No Obligation**

This procurement in no manner obligates City of Rio Communities or any of its departments or other subdivisions to the eventual lease, purchase, etc., of any tangible personal property offered or services proposed until a valid written contract is approved by the Purchasing Agent and other required approval authorities and one or more valid Purchase Orders are issued.

#### **9. Termination**

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

#### **10. Sufficient Appropriation**

Any contract awarded as a result of this ITB process may be terminated if sufficient appropriations or authorizations do not exist. Such termination will be affected by sending written notice to the contractor. The City's decision as to whether sufficient appropriations and authorizations are available will be accepted by the contractor as final.

## **11. Legal Review**

The City requires that all bidders agree to be bound by the General Requirements contained in this ITB. Any bidder's concerns must be promptly brought to the attention of the Procurement Manager.

## **12. Governing Law**

This procurement and any agreement with bidders that may result shall be governed by the laws of the State of New Mexico.

## **13. Basis for Bid**

Only information supplied by the City in writing through the Procurement Manager or in this ITB should be used as the basis for the preparation of bids.

## **14. Contract Terms and Conditions**

The contract between the City the contractor will follow the format specified by the City and contain the terms and conditions set forth in Appendix I, Purchase Agreement.

## **15. Bidder Qualifications**

The City may make such investigations as necessary to determine the ability of the Bidder to adhere to the requirements specified within this ITB. The City will reject the bid of any Bidder who is not a responsible Bidder or fails to submit a responsive bid as defined in Sections 13-1-82 and 13-1-84 NMSA 1978.

Bidders must, upon request of the City, provide information and data to prove that the financial resources, production or service facilities, service reputation and experience are adequate to make satisfactory delivery of the materials and/or services. The City reserves the right to require a Bidder to furnish a Performance Bond prior to award, where the Bidder is unable to furnish the required information or data, or for other reasons which would insure proper performance by the Bidder.

## **16. Right to Waive Minor Irregularities**

The City reserves the right to waive minor irregularities. The City also reserves the right to waive mandatory requirement(s) provided that all of the otherwise responsive bids failed to meet the same mandatory requirement(s) or doing so does not otherwise materially affect the procurement.

## **17. Change in Contractor Representatives**

The City reserves the right to require a change in Contractor representatives if the assigned representatives are not, in the opinion of the City, meeting its needs adequately.

## **18. Notice**

The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and misdemeanor criminal penalties for its violation. The State of New Mexico criminal statutes also impose felony penalties for bribes, gratuities, and kickbacks.

## **19. City Rights**

The City reserves the right to accept all or a portion of a Bidder's bid and to award to the Bidder whose bid is deemed to be in the best interest of the City. In the alternative, the City Reserves the right to deny any and all bids if necessary.

## **20. Ownership of Bids**

All documents submitted in response to the ITB shall become the property of the City. However, any technical or user documentation submitted with the bids of non-selected Bidders may be returned after the expiration of the protest period, by request, at the expense of the Bidder.

## **21. Ambiguity, Inconsistency or Errors in ITB**

Bidders shall promptly notify the Procurement Manager, in writing, of any ambiguity, inconsistency or error which they discover upon examination of the ITB.

## **22. Competition**

By submitting a bid, Bidder certifies that they have not, either directly or indirectly, entered into any action in restraint of full competition in connection with the bid submitted to the City.

### **23. Use by Other Government Entities**

Not applicable.

### **24. Confidentiality**

Any confidential information provided to, or developed by, the contractor in the performance of any Agreement resulting from this ITB shall be kept confidential and shall not be made available to any individual or organization by the contractor without the prior written approval of the City of Rio Communities.

### **25. Delivery & Failure to Meet Order Provisions**

- a. No Delivery before Purchase Order is Issued: No Bidder, including a Bidder to whom an award is made, shall deliver any item of tangible personal property, commence services or start construction prior to the issuance of a Purchase Order or Notice to Proceed issued by the City of Rio Communities Purchasing Department.
- b. Failure to Meet Order Provisions: The City reserves the right to cancel all or any part of an order without cost to the City, if the Contractor fails to meet the provisions of that order and, except as otherwise provided herein, to hold the Contractor liable for any excess cost occasioned by the City due to the Contractor's default.

### **26. Discounts**

The Bid Form provides a space for the Bidder to identify prompt payment terms the Bidder is offering, if any. Prompt payment discounts will not be considered in computing the low bid. Discounts for payment within twenty (20) days will be considered after the award of the Contract. Discounted time will be computed from the date of receipt of the merchandise, invoice or billing for services, whichever is later.

### **27. City Furnished Property**

City furnished property shall be returned to the City upon request in the same condition as received except for ordinary wear, tear and modifications ordered hereunder.

## 28. Packing, Shipping, & Invoicing

- a. The City's Purchasing Order number and the Contractor's name, user's name and location shall be shown on each packing and delivery ticket, package, bill of lading and other correspondence in connection with the shipments. The user's count will be accepted by the Contractor as final and conclusive on all shipments not accompanied by a packing ticket.
- b. The Contractor's invoice shall be submitted and shall contain the following information: order number, description of supplies or services, quantities, unit price and extended totals. Separate invoices shall be rendered for each and every complete shipment.
- c. Invoices must be submitted to the City of Rio Communities Accounts Payable Office and NOT to the using agency.

## 29. Electronic mail address required

A large part of the communication regarding this procurement will be conducted by electronic mail (e-mail). Bidder must have a valid e-mail address to receive this correspondence.

## 30. Use of Electronic Versions of this ITB

This ITB is being made available by electronic means. If accepted by such means, the Bidder acknowledges and accepts full responsibility to ensure that no changes are made to the ITB. In the event of conflict between a version of the ITB in the Bidder's possession and the version maintained by the City, the version maintained by the City shall govern.

## 31. Award Rights

The City reserves the right to award this Invitation to Bid to the lowest overall cost (including option items) on an all or none basis.

## 32. Deliver

All deliveries must be F.O.B. Destination – Freight Pre-Paid, unless otherwise indicated by the Procurement Officer.

## 33. Addenda

Changes or amendments to specifications, conditions or provisions herein may be initiated ONLY through the Purchasing Department in the form of a written addendum. Any addenda shall become a part of this bid.



It is the responsibility of all persons or businesses considering submitting a bid in response to this solicitation to ensure that they have received all addenda prior to making a bid. Addenda will be posted to the City's Procurement website at [www.bidnetdirect.com//cityofriocommunities](http://www.bidnetdirect.com//cityofriocommunities) prior to the due date for the receipt of bids.

### III. RESPONSE FORMAT AND ORGANIZATION

#### A. NUMBER OF RESPONSES

Bidder's may submit only one (1) response to this ITB.

#### B. NUMBER OF COPIES

Bidders shall deliver one (1) signed and sealed bid to the location specified in Section I.D. on or before the closing date and time for receipt of bids. Or, the bidder may submit an electronic bid at [www.bidnetdirect.com/cityofriocommunities](http://www.bidnetdirect.com/cityofriocommunities).

#### C. BID CONTENTS

All bids **MUST** contain the following four (4) items (*failure to do so may result in your bid being deemed non-responsive*):

1. **COMPLETED AND SIGNED** Bid Form (Appendix B)
2. **COMPLETED AND SIGNED** Letter of Transmittal Form (Appendix C)
3. **COMPLETED AND SIGNED** Campaign Disclosure Form (Appendix D)
4. **COPY OF** Contractors License

Bids **MAY** contain the following **OPTIONAL** items:

5. Resident Business Preference State of New Mexico Certificate (See Section I.F.1.)
6. Resident Veterans Preference State of New Mexico Certificate (See Section I.F.2.)
7. Native American Resident Business Preference State of New Mexico (See section I.F.3)

Failure of Bidder to complete & submit required bidding documents, in accordance with all instruction provided, is cause for rejection of their bid (A Bid Submittal Checklist is provided at Appendix F to assist Bidders in insuring they are submitting a complete and proper bid).

#### D. BID FORMAT

1. To preclude any possible errors or misrepresentations, bid prices must be affixed legibly in ink or typewritten. Corrections or changes must be signed or initialed by Bidder prior to the scheduled bid opening. Failure to comply

will be just cause for rejection of the bid.

2. The unit price(s) shall exclude all state and local taxes.

### ***E. BID SUBMITTAL REQUIREMENTS***

BID must be submitted electronically at:  
[www.bidnetdirect.com/cityofriocommunities](http://www.bidnetdirect.com/cityofriocommunities).

## **IV. SPECIFICATIONS AND REQUIREMENTS**

This section details the minimum requirements and specifications for products or services sought by the City. It also provides information on the City's use and intent in providing the specifications, as well as instructions for potential Bidders that may not feel the specifications are fair, achievable or are otherwise unacceptable.

### ***A. INFORMATION***

#### **1. Restrictive Specifications**

Specifications stated in this request are not intended to exclude any Bidder. If any Bidder is of the opinion that the specifications as written preclude them from submitting a proposal on this bid, it is requested that their opinion be made known to the Chief Procurement Officer, in writing, at least seven (7) days prior to the bid opening date.

#### **2. Use of Brand Names and Numbers**

Brand names and numbers are for reference only; equivalents will be considered. Where a brand name or equal is indicated, it is for the purpose of describing the standard of quality, performance and characteristics desired and is not intended to limit or restrict competition. "No substitute" specifications may be authorized ONLY if required to match existing equipment.

#### **3. Equivalent Items Bid**

If the Bidder offers an item other than the one specified, which the Bidder considers comparable, the manufacturer's name and model number of that item must be specified in the bid and sufficient performance specifications and descriptive data provided to permit a thorough evaluation. Failure to provide the appropriate information may result in disqualification of the bid.

#### 4. Special Conditions

Attention is particularly called to those parts of the Contract Documents and Specifications which deal with the following:

- a. Specifications & requirements;
- b. Inspections & testing;
- c. Insurance requirements; and

#### 5. Response to Requirements

Each mandatory requirement in Sections IV.D.1 through IV.D.5, below, requires a vendor response, as indicated. Failure to respond to, or properly comply with, a mandatory requirement may result in the disqualification of the bidder's bid.

### ***B. DESIGN SPECIFICATIONS***

See Appendix A for design specifications.

### ***C. MANDATORY REQUIREMENTS***

#### 1. Letter of Transmittal Form

Bidder must complete and submit the "Letter of Transmittal Form", found at Appendix C, with their bid. The form must be signed and dated by an individual authorized to contractually bind the firm.

#### 2. Bid Form

Bidder must complete and submit the "Bid Form", found at Appendix B, with their bid. The form must be signed and dated by an individual authorized to contractually bind the firm.

#### 3. Campaign Contribution Disclosure Form

Offeror must complete and sign the Appendix D, Campaign Contribution Disclosure Form – whether any applicable contribution has been made or not. Note that there are two (2) different signature sections within the form. (For purposes of this requirement, the applicable elected public officials within the City of Rio Communities are; Mayor Joshua Ramsell, Mayor Pro-Tem Margaret "Peggy" Gutjahr; Councilors Arthur Apodaca, Lawrence R.Gordon and Jim Winters; Municipal Judge Noelle Holly Chavez.

4. Contractors License

Bidder must submit a copy of their Contractor's License with the bid.

***D. OTHER REQUIREMENTS***

Bidder shall be required to submit any and all proposed/alternative bid terms and conditions with their bid submittal.

## **V. BID OPENING, PROCESSING AND AWARD**

This section describes how bids received are handled and assessed. It also describes how the award process works as well as the role of the Contract provided in Appendix I and the role of Purchase Orders that may follow Contract award.

### ***A. BID RECEIPT***

Bids shall be accepted unconditionally per NMSA 1978, Section 13-1-105 (2005). Only those bids received before the deadline for the receipt of bids will be considered. Bids received after the deadline (“late bids”) will be retained in the procurement file, unopened, and shall not be considered for award.

### ***B. BID OPENING***

Bids will be opened and read in public in accordance with Section 13-1-107 of the New Mexico Procurement Code. See Section II.B.7, above, for specific information.

### ***C. EVALUATION PROCESS***

#### **1. Compliance Review**

After the required public opening and reading, all timely received bids will be reviewed for compliance with the requirements and specifications stated within the ITB. Bids deemed non-responsive to any mandatory requirement or specification may be disqualified.

#### **2. Clarifications**

The Chief Procurement Officer may contact the Bidder for clarification of the response as specified in Section II.B.8.

#### **3. Other Information Sources**

The City may use other sources of information to confirm the validity of bids submitted and the ability of the Bidder to perform as specified in Section II.C.15.

#### **4. Bid Tabulation**

The bid price(s) on the Bid Form from timely received and responsive bids will be tabulated (price compared) to identify the lowest price(s) bid. Each tier will be evaluated separately. If applicable, the price(s) bid will be adjusted (for

comparison and award purposes only) for those Bidders that have submitted a valid Preference Certificate with their bid.

5. Discrepancies in Price(s)

In case of an error in the Lump Sum Base Price, the written price shall govern.

6. Determination of Lowest Responsive Bid

After completion of the bid tabulation, the Procurement Manager will examine the results to determine which Bidder offers the lowest responsive bid to the City in accordance with the specifications and terms and conditions set forth in the Invitation for Bids.

7. Public Notification of Bid Tabulations and Contract Awards

Bid tabulations and awarded Contracts will be posted to Bidnet Direct within approximately two (2) weeks after the bid opening date. To access go to [www.bidnetdirect.com//cityofriocommunities](http://www.bidnetdirect.com//cityofriocommunities).

## ***D. AWARD AND ORDER PROCESS***

### **1. Contract Award**

- a. Contracts awarded as a result of this solicitation shall be awarded to the responsible Bidder whose Base Bid and any accepted bid option represents the best value and is in the City's best interest.
- b. Upon selection for possible Contract award, the City will add the Contractor's name and signatory information to the signed Contract (Appendix G) submitted by the Bidder and it will be submitted to the Governing Body with a recommendation for award. \* Once approved and signed by the Governing Body the Contract is officially awarded.

\*Bidders may place their company name and signatory information in the highlighted areas of the signed Contract they submit, if desired.

### **2. Order(s)**

A successful Bidder SHOULD NOT begin to deliver products or begin performance based solely on Contract award as detailed above. A successful Bidder may only deliver products or begin performance AFTER the receipt of an approved Purchase Order issued by the City of Rio Communities Purchasing Department. Failure to comply is AT THE CONTRACTOR'S RISK and the City shall not be liable to pay for any

products delivered or services performed prior to the issuance of an approved Purchase Order.



## **APPENDIX A**

### **STANDARD SPECIFICATIONS FOR DHSEM PROJECTS**

The "New Mexico Department of Transportation 2019 Standard Specifications for Highway and Bridge Construction" is incorporated by reference, the same as if fully rewritten herein, in the contract, proposal, bond, and other contract documents for work to be performed under this contract for the CITY OF RIO COMMUNITIES. Said "New Mexico Department of Transportation Standard Specifications for Highway and Bridge Construction," Current Edition, are for the purpose of the contract, proposal, bond, and other contract documents, supplemented, modified, and amended as follows, and as may be hereinbefore and hereinafter provided.

Whenever, in the Supplemental General Provisions, Special Conditions and Technical Specifications the word "Section" is followed by a number and a caption (such as "Section 102.4 - Rejection of Proposals") reference is made to that specific section of the "New Mexico Department of Transportation Standard Specifications for Highway and Bridge Construction," Current Edition. The Supplemental General Provisions, Special Conditions, Supplemental Technical Specifications, Special Provisions and Supplemental Specifications shall govern over the Standard Specifications and are hereby made a part of the Contract Documents.

# SPECIAL PROVISIONS TO BE USED

## TABLE OF CONTENTS

| <i>Section</i> | <i>Description</i> |
|----------------|--------------------|
| 1              | TRAFFIC CONTROL    |

## **SECTION 1**

### **TRAFFIC CONTROL**

#### **1. SCOPE**

The work shall consist of establishing traffic control and maintaining safe, convenient use of public roads and rights-of-way. A traffic control plan signed and sealed by a professional engineer registered in the State of New Mexico shall be approved by the City Manager before any work commences.

#### **2. TRAFFIC AND ACCESS**

The contractor's operations shall cause no unnecessary inconvenience to the public. The public rights-of-way shall be maintained at all times unless interruption is authorized by the proper local authority.

Contractor's authorized closing or detour plans shall be provided to the engineer for approval 5 business days prior to implementation.

Safe and adequate access shall be provided and maintained to all public protection devices and to all critical utility control locations. Facility access shall be continuous and unobstructed unless otherwise approved.

#### **3. STORAGE OF EQUIPMENT AND MATERIAL IN PUBLIC STREETS**

Construction materials and equipment shall not be stored or parked on public streets, roads, highways or within the traffic clear zone. During any material or equipment loading or unloading activities that may temporarily interfere with traffic, an acceptable detour shall be provided for the duration of the activity. Any associated expense for this activity is the responsibility of the contractor.

Excavated material, including suitable material that is intended for adjacent trench backfill or other earth backfill as specified in section 5 of this specification, shall not be stored on public streets, roads, or highways that remain in service for the public. Any waiver of this requirement must be obtained from the proper local authority and approved by the engineer. All excess and unsuitable material shall be removed from the site as soon as possible. Any spillage shall be removed from roadways before they are used by the public.

#### **4. STREET CLOSURES, DETOURS, AND BARRICADES**

The contractor shall comply with the requirements of all applicable responsible units of government for closure of any street, road, or highway. The contractor shall provide the required barriers, guards, lights, signs, temporary bridges, and flaggers together with informing the public of any detours and construction hazards by the most suitable means available, such as local newspapers or radio stations. The contractor is also responsible for compliance with additional public safety requirements that may arise during construction. The contractor shall furnish, install, and, upon completion of the work, promptly remove all signs, warning devices, and other materials used in the performance of this work.

Unless otherwise specified, the contractor shall notify, in writing, the fire chief, police chief, county sheriff, state patrol, schools that operate school buses, or any other government official as may be appropriate no less than 7 business days before closing, partly closing, or reopening any street, road, or highway.

Unless otherwise specified, the contractor shall furnish to the engineer a written plan showing the proposed method of signing, barricading for traffic control, and safety for street detours and closures.

All temporary detours will be maintained to ensure use of public rights-of-way is provided in a safe manner. This may include dust control, grading, and graveling as required in section 7 of this specification.

5. GENERAL AND SPECIFIC REFERENCES

All signs, signals, barricades, use of flaggers, and other traffic control and public safety devices shall conform to the general requirements set forth in the Manual of Uniform Traffic Control Devices (MUTCD) and the latest edition of The New Mexico Department of Transportation Standard Drawings and Specifications unless otherwise specified in the contract.

6. MEASUREMENT AND PAYMENT

Payment will constitute full compensation for all flaggers, labor, materials, equipment, and all other items necessary and incidental to completion of the work. Progress payments will be made based upon the percentage of estimated total time that traffic control will be required.

7. PAY ITEM

Traffic Control Management

PAY UNIT

Lump Sum

**APPENDIX B**  
***BID FORM***  
***DHSEM PROJECTS***

TO: Angela R. Valadez  
360 Rio Communities  
Rio Communities, NM 87002

The undersigned hereby proposes to perform all work for the DHSEM Projects in accordance with the following:

1. Advertisement for Bids dated \_\_\_\_\_
2. All work required for the **DHSEM PROJECTS** described in the Contract Documents shall be done in accordance with the New Mexico Department of Transportation Standard Specifications for Highway and Bridge Construction, current edition.
3. The Contract Documents, including Special Provisions, Supplementary Technical Specifications, and modifications as indicated.

All of which are incorporated herein and made a part hereof; and to perform said work in accordance with and at the rates and prices or lump sum bid shown in the following bid schedule. (Each item must be bid. The cost of any work added or deducted from the following estimated quantities shall be computed at the unit prices bid.) **Bids shall not include New Mexico gross receipts tax.**

**DHSEM PROJECTS  
 BID PROPOSAL  
 BASE BID**

| <b>BID<br/>ITEM</b> | <b>NMDOT<br/>ITEM NO.</b> | <b>ITEM<br/>DESCRIPTION</b>                    | <b>UNIT</b> | <b>ESTIMATED<br/>QTY</b> | <b>UNIT<br/>PRICE</b> | <b>AMOUNT</b> |
|---------------------|---------------------------|--|-------------|--------------------------|-----------------------|---------------|
| <b>BASE BID LOT</b> |                           |  |             |                          |                       |               |
| 1                   | 201000                    | CLEARING AND GRUBBING                          | LS          | LS                       |                       |               |
| 2                   | 203000                    | UNCLASSIFIED<br>EXCAVATION                     | C.Y.        | 230                      |                       |               |
| 3                   | 203100                    | BORROW   | C.Y.        | 40                       |                       |               |
| 4                   | 207000                    | SUBGRADE PREPARATION                           | S.Y.        | 1,500                    |                       |               |
| 5                   | 407000                    | ASPHALT MATERIAL FOR<br>TACKCOAT               | TON         | 1                        |                       |               |
| 6                   | 408100                    | PRIME COAT MATERIAL                            | TON         | 3                        |                       |               |
| 7                   | 414000                    | COLD MILLING (ASPHALT)                         | SYIN        | 600                      |                       |               |
| 8                   | 416104                    | MINOR PAVING TYPE I,<br>HMA SP-IV              | TON         | 400                      |                       |               |
| 9                   | 515000                    | REINFORCED CONCRETE<br>FOR MINOR STRUCTURES    | C.Y.        | 4                        |                       |               |
| 10                  | 570461                    | 36" STORM DRAIN<br>CULVERT PIPE                | L.F.        | 47                       |                       |               |
| 11                  | 570465                    | 36" STORM DRAIN<br>CULVERT PIPE END<br>SECTION | EACH        | 1                        |                       |               |
| 12                  | 601000                    | REMOVAL OF<br>STRUCTURES AND<br>OBSTRUCTIONS   | LS          | LS                       |                       |               |
| 13                  | 601110                    | REMOVAL OF SURFACING                           | S.Y.        | 1,150                    |                       |               |
| 14                  | 602000                    | RIPRAP CLASS A                                 | C.Y.        | 17                       |                       |               |
| 15                  | 602060                    | RIPRAP CLASS G                                 | S.Y.        | 17                       |                       |               |
| 16                  | 609424                    | CONCRETE VERTICAL<br>CURB AND GUTTER 6" X 24"  | L.F.        | 112                      |                       |               |
| 17                  | 613000                    | CLEANING CULVERTS AND<br>DRAINAGE STRUCTURES   | LS          | LS                       |                       |               |
| 18                  | 618000                    | TRAFFIC CONTROL<br>MANAGEMENT                  | LS          | LS                       |                       |               |
| 19                  | 618011                    | PUBLIC AWARENESS                               | LS          | LS                       |                       |               |
| 20                  | 621000                    | MOBILIZATION                                   | LS          | LS                       |                       |               |
| 21                  | 801000                    | CONSTRUCTION STAKING<br>BY CONTRACTOR          | LS          | LS                       |                       |               |
| 22                  | 802000                    | POST CONSTRUCTION<br>PLANS                     | LS          | LS                       |                       |               |

Write out Base Bid Amount:

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**a) Base Bid** – Subtotal of Bid Items No. 1 through 22 \$ \_\_\_\_\_

**b) Allowances:** \$ 10,000.00

**Total Allowances:** \$ 10,000.00

**c) Subtotal** –Base Bid subtotal plus Allowances: \$ \_\_\_\_\_

**d) New Mexico Gross Receipts Tax (NMGRT)**  
on amount online c) Subtotal at 8.3000%: \$ \_\_\_\_\_

**e) BASE BID TOTAL** – Line c) Subtotal plus Line d) NMGRT: \$ \_\_\_\_\_

---

\_\_\_\_\_ Dollars  
(Total amount written in words)

**DHSEM PROJECTS  
 BID PROPOSAL  
 NON-PARTICIPATING BID**

| BID<br>ITEM | NMDOT<br>ITEM NO. | ITEM<br>DESCRIPTION | UNIT | <u>ESTIMATED</u><br>QTY | UNIT<br>PRICE | AMOUNT |
|-------------|-------------------|---------------------|------|-------------------------|---------------|--------|
|-------------|-------------------|---------------------|------|-------------------------|---------------|--------|

**BASE BID LOT**

|   |        |                           |      |   |  |  |
|---|--------|---------------------------|------|---|--|--|
| 1 | 662400 | MANHOLE ADJUSTMENT        | EACH | 1 |  |  |
| 2 | 663850 | WATER VALVE<br>ADJUSTMENT | EACH | 1 |  |  |

Write out Base Bid Amount:

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**a) Non-Participating Bid** – Subtotal of Bid Items No. 1 through 2 \$ \_\_\_\_\_

**b) Allowances:**

\$ \_\_\_\_\_ 0.00

**Total Allowances:**

\$ \_\_\_\_\_ 0.00

**c) Subtotal** –Base Bid subtotal plus Allowances:

\$ \_\_\_\_\_

**d) New Mexico Gross Receipts Tax (NMGRT)**

on amount online c) Subtotal at 8.3000%:

\$ \_\_\_\_\_

**e) BASE BID TOTAL** – Line c) Subtotal plus Line d) NMGRT:

\$ \_\_\_\_\_

---

\_\_\_\_\_ Dollars

(Total amount written in words)



The undersigned, as Bidder, hereby declares that the only persons or firms interested in the proposal as principals are named herein; that no other persons or firms have any interest in this proposal or in the contract to be entered into; that this proposal is made without collusion with any other person, company, or parties making a bid; and that it is in all respects fair and in good faith, without collusion or fraud.

The Contractor agrees that should he fail to complete the project in 60 calendar days, he agrees to pay as liquidated damages the amount of three hundred dollars (\$300.00) per calendar day for each day exceeding the contract substantial completion date, representing monetary damage and risk to property or life. The Contractor further agrees that any extensions in the contract time shall apply only to the date of completion for the entire contract.

Attached hereto is the required proposal guarantee described as follows:

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

The proposal guarantee shall be 5% of the total amount bid. The receipt of Addenda is acknowledged below:

Addendum No. \_\_\_\_\_ Date \_\_\_\_\_

Addendum No. \_\_\_\_\_ Date \_\_\_\_\_

Addendum No. \_\_\_\_\_ Date \_\_\_\_\_

Dated: \_\_\_\_\_, 20 \_\_\_\_\_.

SIGNATURE OF BIDDER

(SEAL) if Bid is by a  
Corporation

\_\_\_\_\_

By: \_\_\_\_\_

(Print Name)

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

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

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

Address: \_\_\_\_\_

\_\_\_\_\_

New Mexico Contractor's Classification and  
License No. \_\_\_\_\_

Resident Bidder Preference Certification  
No. \_\_\_\_\_  
(if applicable)

# APPENDIX C

## LETTER OF TRANSMITTAL FORM

Items #1 to 4 MUST EACH BE RESPONDED TO. Failure to respond to all four items WILL RESULT IN THE DISQUALIFICATION OF THE BID!

1. Identity (Name) and Mailing Address of the submitting organization:

---

---

---

2. For the person submitting the bid:

|                  |  |
|------------------|--|
| Name             |  |
| Title            |  |
| E-Mail Address   |  |
| Telephone Number |  |

3. Bidder must identify any employee(s) or elected official(s) of City of Rio Communities that have a financial interest in the Bidder (one of the two **must** be selected):

Interest\*                      \_\_\_\_\_ No Financial Interest                      \_\_\_\_\_ Yes, Financial

\*Specify by name(s): \_\_\_\_\_

4. Declarations:

- I certify that I am authorized to contractually bind my company.
- On behalf of the submitting organization named in item #1, above, I accept the Conditions Governing the Procurement as required in Section II, Paragraph C.1. and agree to the Terms and Conditions of the Contract provided in Appendix G.
- I acknowledge receipt of any and all amendments to this ITB.
- I certify that my company/entity/organization commits to comply and act in accordance with (1) Federal Executive Orders and New Mexico State Statutes relating to the enforcement of civil rights, (2) Federal Code 5 USCA 7201 et. seq., Anti-Discrimination in Employment; (3) Executive Order No. 11246, Equal Opportunity in Federal Employment; (4) Title 6, Civil Rights Act of 1964; and (5) Requirements of the American with Disabilities Act of 1990 for work performed as a result of this ITB.

\_\_\_\_\_, 2023

Authorized Signature and Date (**Must be signed by the person identified in item #2, above.**)

## APPENDIX D

### ***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 either 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)

**-OR-**

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title (Position)

## APPENDIX E

### ***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**

I declare under penalty of perjury that my business is registered with the NM Taxation & revenue Department and classified as a resident business or Native American resident business allowing me the 8% preference discount on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is no more than \$6M allowing me the 8% preference discount on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than \$5M allowing me the 7% preference discount on this 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 veteran's preference, I agree to report to the State Purchasing Division of the General Services Department the awarded amount involved. I will indicate in the report the award amount as a purchase from a public body or as a public works contract from a public body as the case may be.  
"I understand that knowingly giving false or misleading information on this report constitutes a crime."

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

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

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

\*Must be an authorized signatory for the Business.

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

## APPENDIX F

### ***BID SUBMITTAL CHECKLIST***

ITB #2023-0101  
DHSEM PROJECTS

This checklist is provided as a courtesy to assist Bidders in insuring they submit a properly completed bid. **It should NOT be returned with the bid.** It is for information purposes only. This checklist is not guaranteed to be all inclusive. Bidders should carefully review the requirements of the ITB and their response before submitting their bid to the City.

| ITEM  | REFERENCE                                      | YES | NO |
|---|--|-----|----|
| Correct delivery address for bid?   | I.D.   |     |    |
| Received all Addenda for bid?   | II.C.33.                                       |     |    |
| Preference certificate included? (If bidder is qualified and desires preference eligibility for State and/or Local) | I.F. and III.C                                 |     |    |
| Letter of Transmittal Form complete, <b>SIGNED</b> and included?  | II.C.26, III.C.1., IV C. 2., and Appendix C    |     |    |
| Bid Form complete, <b>SIGNED</b> and included?  | III.C.26., III. C. 1., IV.C.2., and Appendix B |     |    |
| Campaign Contribution Disclosure Form complete, <b>SIGNED</b> and included?   | IV.C.3., and Appendix D                        |     |    |
| Resident Veterans Preference Certification Form complete, <b>SIGNED</b> and included?                               | I.F.2., III.C.4., IV.C.4., and Appendix E      |     |    |
| Is the bid sealed and clearly marked?   | II.B.6. and III.E.                             |     |    |



## APPENDIX G

### *DRAFT PURCHASE AGREEMENT CONTRACT*

#### CITY OF RIO COMMUNITIES

THIS AGREEMENT is made and entered into by and between the Governing Body of the City of Rio Communities, State of New Mexico, hereinafter referred to as the "City" and \_\_\_\_\_, hereinafter referred to as the "Contractor", and is effective as of the date set forth below upon which it is executed by the Purchasing Agent and the Governing Body.

IT IS AGREED BETWEEN THE PARTIES:

**1. Scope of Work.**

The Contractor shall deliver products or perform the work outlined on the Scope of Work attached hereto as **Attachment 1** and incorporated herein by reference. Product(s) shall be delivered or work performed only upon receipt of a valid Purchase Order issued by the City that specifically identifies the products or services to be provided by the Contractor.

**2. Compensation.**

A. The City shall pay to the Contractor in full payment for product(s) accepted or services satisfactorily performed based on the price(s) found in the Bid Form at **Attachment 1**.

B. Payment is subject to availability of funds pursuant to the Appropriations Paragraph set forth below. All invoices MUST BE received by the City no later than fifteen (15) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date WILL NOT BE PAID.

C. The Contractor shall submit an accurate invoice for each purchase. Any reimbursement of taxes due to the Contractor shall be shown as a separate item. Invoices shall refer to the Purchase Order Number and shall be itemized unless otherwise specified by the City. Invoices are to be mailed to: City of Rio Communities Accounts Payable, 360 Rio Communities Blvd. Rio Communities, NM 87002

D. The payment of taxes due for any money received under this Agreement shall be the Contractor's sole responsibility and shall be reported under the Contractor's Federal and State tax identification number(s).

**3. Term.**

This Agreement shall terminate upon acceptance by the City and payment for the specified product(s) or services.

**4. Termination.**

A. Termination. This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. Except as otherwise allowed or provided under this Agreement, the City's sole liability upon such termination shall be to pay for product(s) delivered and accepted or work performed prior to the Contractor's receipt of the notice of termination, if the City is the terminating party, or the Contractor's sending of the notice of termination, if the Contractor is the terminating party; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for product(s) delivered or such work performed within thirty (30) days of receiving or sending the notice of termination. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor if the Contractor becomes unable to perform the services contracted for, as determined by the City or if, during the term of this Agreement, the Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of government funds or due to the Appropriations paragraph herein. **THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE CITY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.**

B Termination Management. Immediately upon receipt by either the City or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the City; 2) comply with all directives issued by the City in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the City shall direct for the protection, preservation, retention or transfer of all property titled to the City and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the Contractor with Contract funds shall become property of the City upon termination and shall be submitted to the City as soon as practicable.

**5. Appropriations.**

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Governing Body for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Governing Body, this Agreement shall terminate immediately upon written notice being given by the City to the Contractor. The City's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the City proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

**6. Insurance.**

The Contractor agrees to obtain and maintain, at the Contractor's expense, such insurance as will protect the Contractor from claims under the Workman's Compensation Act and such comprehensive general liability and automobile insurance as will protect the City and the Contractor from all claims for bodily injury, death, or property damage which may arise from the performance by the Contractor, or by the Contractor employees, for the Contractor's functions and services required under this Agreement. Such insurance shall be in an amount not less than **\$1,000,000.00** for injury to any one person and **\$1,000,000.00** on account of any one accident and in the amount of not less than **\$1,000,000.00** for property damage. The comprehensive liability insurance shall name the City an additional insured with specific endorsements so naming the City for any claims against the City arising from the work performed by the Contractor under this Agreement. The Contractor further agrees to procure and maintain professional liability (errors and omissions, or "E&O") insurance in an amount not less than \$2,000,000.00 per claim and in the aggregate. Prior to commencement of any work, the Contractor shall furnish to the City a certificate that complies with this paragraph. The certificate shall provide that the policy shall not be canceled until at least thirty (30) calendar days prior written notice shall have been given to the City. Contractor shall provide annual updates of the certificate to demonstrate the policy remains in effect for the duration of this Agreement. The failure to have valid policies of insurance in full force and effect at any time during the term of this agreements shall constitute a material breach of this agreement.

Employer's liability coverage will be required of the Contractor and any subcontractor for any class of employee engaged in work under this agreement that is not protected under the Workmen's Compensation Statute. All insurance will be by insurers acceptable to the City and authorized to do business in the state of New Mexico, and who are rated A,A- (A.M. Best Ratings) or AA+/- (S&P). Except as provided below, coverage shall be on an occurrence basis. All insurance policies shall contain a waiver of subrogation against the City. All insurance policies shall be primary. Coverage shall be on ISO coverage forms. Deductibles in excess of \$10,000 per claim may only be approved by the City. Coverage shall be as broad as that provided in ISO CG 20 01 04 13. Self-insured retentions must be declared and approved by the City. Automobile coverage shall be ISO Form CA 001 covering Code 1 (any auto) with the limits of **\$2,000,000** per accident for bodily injury a property damage. If an E&O policy is on a claim made basis, then the date of the policy must be shown and must be before the date of the Contract or the beginning of the scope of work under the Contract, be maintained and evidence for such coverage to be provided for at least five (5) years after completion of the work under the Contract. If such coverage is cancelled or not renewed, and not replaced with another claims made policy form with a retroactive date prior to the effective date of the Contract, then Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work under the Contract.

**7. Status of Contractor.**

The Contractor and its agents and employees are independent contractors providing product(s) or performing services for the City and are not employees of the City of Rio

Communities. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of City vehicles, or any other benefits afforded to employees of the City of Rio Communities as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment, and business income tax. The Contractor agrees not to purport to bind the City of Rio Communities unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

**8. Assignment.**

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the City. No such assignment or transfer shall relieve the Contractor from the obligations and liabilities under this Agreement.

**9. Subcontracting.**

Not applicable.

**10. Release.**

Final payment of the amounts due under this Agreement shall operate as a release of the procuring agency of the City, its officers and employees, and the City of Rio Communities from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

**11. Confidentiality.**

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the City.

**12. Product of Service -- Copyright.**

All materials developed or acquired by the Contractor under this Agreement shall become the property of the City of Rio Communities and shall be delivered to the City no later than the termination date of this Agreement. Nothing developed or produced, in whole or in part, by the Contractor under this Agreement shall be the subject of an application for copyright or other claim of ownership by or on behalf of the Contractor.

**13. Conflict of Interest; Governmental Conduct Act.**

A. 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,

Chapter 10, Article 16 NMSA 1978. Without in anyway limiting the generality of the foregoing, the Contractor specifically represents and warrants that:

1) in accordance with Section 10-16-4.3 NMSA 1978, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any City employee while such employee was or is employed by the City and participating directly or indirectly in the City's contracting process;

2) this Agreement complies with Section 10-16-7(B) NMSA 1978 because (i) the Contractor is not a public officer or employee of the City; (ii) the Contractor is not a member of the family of a public officer or employee of the City; (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 City, a member of the family of a public officer or employee of the City, or a business in which a public officer or employee of the City or the family of a public officer or employee of the City has a substantial interest, public notice was given as required by Section 10-16-7(B) NMSA 1978 and this Agreement was awarded pursuant to a competitive process;

3) in accordance with Section 10-16-8(C) NMSA 1978, (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the City 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 City whose official act, while in City employment, directly resulted in the City's making this Agreement;

4) in accordance with Section 10-16-13 NMSA 1978, 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

5) in accordance with Section 10-16-3 and Section 10-16-13.3 NMSA 1978, 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 the City.

C. Contractor's representations and warranties in Paragraphs A and B of this Article 12 are material representations of fact upon which the City relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the City 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 the City and notwithstanding anything in the Agreement to the contrary, the City may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this Article 12(B).

**14. Amendment.**

This Agreement shall not be altered, changed, or amended except by instrument in writing executed by the parties hereto and all other required signatories.

**15. 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 understandings 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.

**16. Penalties for violation of law.**

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.

**17. Equal Opportunity Compliance.**

The Contractor agrees to abide by all federal, state and City laws and rules and regulations, pertaining to equal employment opportunity. In accordance with all such laws, 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.

**18. Applicable Law.**

In any action, suit or legal dispute arising from this Agreement, the Contractor agrees that the laws of the State of New Mexico shall govern, and that venue will lie in the Seventh Judicial District Court in City of Rio Communities. By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

**19. 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 the City.

**20. Records and Financial Audit.**

The Contractor shall maintain detailed time and expenditure records that indicate the date; time, nature and cost of product(s) delivered, or services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the

City, the Department of Finance and Administration and the State Auditor. The City shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the City to recover excessive or illegal payments

**21. Disclaimer and Hold Harmless.**

City of Rio Communities shall not be liable to the Contractor, or the Contractor's successors, heirs, administrators, or assigns, for any loss, damage, or injury, whether to Contractor's person or property, occurring in connection with Contractor's performance of Contractor's duties according to this Agreement. Contractor shall hold City of Rio Communities harmless from all loss, damage, and injury, including court costs and attorney fees, incurred by City of Rio Communities in connection with the performance by Contractor of Contractor's duties according to this Agreement.

**22. Indemnification.**

The Contractor shall defend, indemnify and hold harmless the City of Rio Communities 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 no later than two (2) days after it receives notice thereof, notify the legal counsel of the City of Rio Communities and the New Mexico Association of Counties by certified mail.

**23. 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.

**24. 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.

**25. Authority.**

If Contractor is other than a natural person, the individual(s) signing this Agreement on behalf of Contractor represents and warrants that he or she has the power and authority to bind Contractor, and that no further action, resolution, or approval from Contractor is necessary to enter into a binding contract.

**26. Lobbying.**

No federal appropriated funds can be paid or will be paid, by or on behalf of the CONTRACTOR, or any person for influencing or attempting to influence an officer or employee of any City, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, or the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, or modification of any Federal contract, grant, loan, or cooperative agreement. If any funds other than federal appropriated funds have been paid or will be paid to any person influencing or attempting to influence an officer or employee of any City, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection of this federal contract, grant, loan, or cooperative agreement, the CONTRACTOR shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

**27. Non-Collusion.**

In signing this bid the Bidder certifies he/she has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with this offer submitted to the City.

**28. Survival.**

The Agreement paragraphs titled "Patent, Copyright, Trademark, and Trade Secret Indemnification" and "Indemnification" shall survive the expiration of this Agreement. Software licenses, leases, maintenance, and any other unexpired Agreements that were entered into under the terms and conditions of this Agreement shall survive this Agreement.

**29. Succession.**

This Agreement shall extend to and be binding upon the successors and assigns of the parties.

**30. Force Majeure.**

A party shall be excused from performance under this Agreement for any period that the party is prevented from performing as a result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination.

**31. Mediation.**

In the event a dispute arises as to the rights and obligations among the parties hereto, the parties agree to attempt to resolve the dispute through mediation as a condition precedent to seeking legal and equitable remedies. The parties agree to evenly split the costs of any such mediation services. The parties shall mutually agree upon the choice of mediator. In the event the parties have not agreed upon a mediator within twenty (20) days of written notice to the other regarding the dispute, then a list of seven potential mediators will be obtained from the New Mexico Association of Counties and the parties shall utilize a striking process until a mediator is agreed upon.



**32. Notice to Proceed.**

It is expressly understood that this Agreement is not binding upon the City until it is executed by the Governing Body after voting on the Contract at a public meeting or unless it is executed by the City of Rio Communities City Manager, if the amount of the Contract is \$20,000.00 or less. Further, the Contractor is not to proceed with its obligations under the Agreement until the Contractor has received a fully executed copy of the Agreement and one or more valid Purchase Orders issued by the City.

**33. Attorney's Fees.**

In the event this Agreement results in dispute, mediation, litigation, or settlement between the parties to this Agreement, the prevailing party of such action shall NOT be entitled to an award of attorneys' fees and court costs.

**34. Cooperation.**

All parties hereto will fully cooperate with the other and their respective counsel, accountant, and agents in connection with any steps required to be taken under this Agreement.

**35. Incorporation and Order of Precedence.**

This Invitation for Bids and the Contractor's Bid Form are incorporated by reference into this Agreement and are made a part of this Agreement. In the event of any conflict among these documents, the following order of precedence shall apply:

1. Any Contract amendment(s), in reverse chronological order; then
2. this Contract itself; then
3. the Invitation for Bids; then
4. the Contractor's Bid Form; then
5. the Contractor's standard agreement terms and conditions (which may or may not have been submitted as part of the Contractor's bid).

**36. Patent, Copyright, Trademark and Trade Secret Indemnification.**

A. The Contractor shall defend, at its own expense, the City of Rio Communities against any claim that any product or service provided under this Agreement infringes any patent, copyright or trademark in the United States or Puerto Rico, and shall pay all costs, damages, and attorneys' fees that a court finally awards as a result of any such claim. In addition, if any third party obtains a judgment against the City of Rio Communities based upon the Contractor's trade secret infringement relating to any product or service provided under this Agreement, the Contractor agrees to reimburse the City of Rio Communities for all costs, attorneys' fees and the amount of the judgment. To qualify for such defense and/or payment, the City of Rio Communities shall:

- i. give the Contractor prompt written notice of any claim;

- ii. allow the Contractor to control the defense or settlement of the claim; and
  - iii. cooperate with the Contractor in a reasonable way to facilitate the defense or settlement of the claim.
- B. If any product or service becomes, or in the Contractor's opinion is likely to become the subject of a claim of infringement, the Contractor shall at its option and expense:
- i. provide a procuring agency of the City the right to continue using the product or service;
  - ii. replace or modify the product or service so that it becomes non-infringing;
- or
- iii. accept the return of the product or service and refund an amount equal to the depreciated value of the returned product or service, less the unpaid portion of the purchase price and any other amounts which are due to the Contractor. The Contractor's obligation will be void as to any product or service modified by the procuring agency of the City to the extent such modification is the cause of the claim.

**37. Escalation Clause.**

Price escalation due to increased cost to the Contractor is not allowed.

**38. Warranties.**

Contractor warrants the materials, supplies or services furnished to be exactly as specified, free from defects in Contractor's design, labor, materials and manufacture, and to be in compliance with any drawings or specifications incorporated herein and with any samples furnished by Contractor. Materials furnished by Contractor shall be accompanied by the manufacturer's written warranty against defects in quality, craftsmanship, and materials.

**39. Commercial Warranty.**

The Contractor agrees that the supplies or services furnished under this order shall be covered by the most favorable commercial warranties the Contractor gives for such to any customer for such supplies or services. The rights and remedies provided herein shall extend to the City and are in addition to and do not limit any rights afforded to the City by any other clause of this Agreement. Contractor agrees not to disclaim warranties of fitness for a particular purpose of merchantability. Warranties shall become effective at the time of acceptance.

**40. Inspection.**

Final inspection and acceptance will be made at the destination. Supplies rejected at the destination for nonconformance with specifications shall be removed at the Contractor's risk and expense, promptly after notice of rejection.

**41. Inspection of Plant.**

The City may inspect, at any reasonable time, the part of the Contractor's, or any subcontractor's plant or place of business, which is related to the performance of this Contract.

**42. Late Payment Charges.**

Except as otherwise agreed to: late payment charges may be assessed against the user agency in the amount and under the conditions set forth in Section 13-1-158 NMSA 1978.

**43. Overcharge Resulting from Antitrust Violations.**

Contractor agrees that any and all claims for overcharge resulting from antitrust violations which are borne by the City as to goods, services, and materials purchased in connection with this bid are hereby assigned to the City.

**44. Succession.**

This Agreement shall extend to and be binding upon the successors and assigns of the parties.

**45. Notices.**

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the City:                   Angela R. Valadez, City of Rio Communities Procurement Officer  
  360 Rio Communities Blvd.  
  Rio Communities, NM 87002

To the Contractor: \_\_\_\_\_  
  \_\_\_\_\_  
  \_\_\_\_\_

**IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of signature of all parties.**

**CONTRACTOR**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Contractor

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

Address: \_\_\_\_\_

**CITY OF RIO COMMUNITIES**

**APPROVED, ADOPTED, AND PASSED** on this \_\_\_\_ day of \_\_\_\_\_, 2023.

**GOVERNING BODY OF THE CITY OF RIO COMMUNITIES**

\_\_\_\_\_  
JOSHUA RAMSELL, MAYOR

\_\_\_\_\_  
MARGARET "PEGGY" GUTJAHR  
MAYOR PRO-TEM

\_\_\_\_\_  
ARTHUR APODACA  
COUNCILOR

\_\_\_\_\_  
JIM WINTERS  
COUNCILOR

\_\_\_\_\_  
LAWRENCE GORDON  
COUNCILOR

ATTEST BY:

\_\_\_\_\_  
ELIZABETH "LISA" ADAIR, CITY CLERK

By: \_\_\_\_\_  
City of Rio Communities Procurement Officer

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

## **Attachment 1**

### **Scope of Work**

The CONTRACTOR shall deliver products and services to a Procuring Agency which issues a valid Purchase Order at prices not to exceed those shown in the Contractor's Bid Form (ITB 2023-0101 Appendix A). Procuring Agencies reserve the right to negotiate lower pricing upon mutual agreement of the parties.

## **APPENDIX H**

### ***NOTICE TO CONTRACTOR***

#### **Cooperation with Utilities**

For construction purposes this Notice to Contractors (“NTC”) does not supersede or alter the obligations in the 2019 Edition of the New Mexico Department of Transportation (“NMDOT”) Standard Specifications for Highway and Bridge Construction, (“Standard Specifications”) Section 105.6, “Cooperation with Utilities”. This Project’s Work affects utilities. The City may or may not own the utilities that are within the Project limits. Therefore the Contractor shall coordinate with both the City and the respective utility identified in this NTC. Failure by the Contractor to comply with this NTC and the Contract may result in delays to the Project and may result in Non-Conformances. This coordination and associated Work shall be considered incidental to the completion of the Project and no separate measurement or payment will be made.

The Contractor shall preserve line location markings or provide an offset mark before obliterating a locate mark. Restrictions exist regarding the use of emergency line locates. An emergency is defined as an excavation that must be performed due to circumstances beyond the control of the Contractor and that affects public health, safety or welfare. Emergency locate request shall not be used to circumvent poor job planning or economic consequences.

#### **Non-City Owned Utility Infrastructure**

Utilities shown on the Plans, which will not be relocated, shall require the Contractor to take the necessary precautions to protect the utility from damage caused by the Work. If any such utility is damaged, the Contractor shall bear the cost of repair to the satisfaction of the utility owner. The Contractor shall be responsible for all associated repair costs and no additional Contract Time will be granted for repairs.

#### **Utility Relocation**

Utilities detailed below, shall require the Contractor to take the necessary precautions to protect the utility from damage caused by the Work. If any such utility is damaged, the Contractor shall bear the cost of repair to the satisfaction of the utility owner. The Contractor shall be responsible for all associated repair costs and no additional Contract Time will be granted for repairs.

All timeframes listed below are reflected in Days. Per Standard Specification Section 108.3 “Schedule” the Contractor shall include the timeframes listed below as an activity in the CPM Baseline Schedule or Bar Graph Baseline Schedule, as called for in the Contract, and all schedule updates so that the NMDOT can readily identify the Work and measure the progress of the same.

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Contractor shall perform the following relocations and adjustments:

UTILITY OWNER: New Mexico Water Service

Work Location  
Subsurface

WATER

- Northing: 1320104.209 ; Easting: 1495669.993  
Adjust existing water valve to finished grade

SANITARY SEWER

- Northing: 1320093.908 ; Easting: 1495677.323  
Adjust existing manhole to finished grade.

**Utility Owners**

| COMPANY                        | CONTACT     | PHONE        |              |                           |
|--------------------------------|-------------|--------------|--------------|---------------------------|
|                                |             | OFFICE       | CELL         |                           |
| NEW MEXICO<br>WATER<br>SERVICE | Bobby Towle | 505-864-2218 | 505-463-1395 | btowle@newmexicowater.com |





## NEW MEXICO WATER SERVICE

401 Horner St.  
Rio Communities, NM 87002-6322 Tel: (505) 864-2218

August 25, 2023

To whom it may concern,

New Mexico Water Service will be responsible for the utility adjustments at the DHSEM spillway Project on San Lucas Ave.  
That will include 1 manhole and 1 water valve to be adjusted.  
Any questions please don't hesitate to contact me.

Sincerely,

A handwritten signature in blue ink that reads "Bobby Towle".

Bobby Towle

Wastewater superintendent

New Mexico Water Service

(505) 864-2218

Quality. Service. Value.  
[newmexicowater.com](http://newmexicowater.com)

