

**Project Manual**  
Contract Documents and Specifications

**City of Raton**  
**Green Waste Grinding Professional**  
**Service Contract**



**October, 2022**

**Contracting Agency**

**The City of Raton**  
**224 Savage Avenue**  
**Post Office Box 910**  
**Raton, New Mexico 87740**  
**(575) 445-9551**

## NOTICE OF INVITATION FOR BID

Competitive sealed bids will be received by the City of Raton, New Mexico for the City of Raton Green Waste Grinding Professional Service Contract. The project will consist primarily of grinding of stockpiled green waste consisting of mostly trees, branches, and limbs into mulch. Work orders for grinding operations shall be issued by the Owner to the successful Contractor for one grinding event per year with annual renewal periods by mutual agreement of the owner and the contractor. Sealed bids will be received at the office of the City Manager, located at the Raton Municipal Building, 224 Savage Avenue, Raton, New Mexico 87740 until October 10, 2022, at 2:00 pm. Bids received after this date and time will be returned unopened. All interested parties are invited to attend. Bids will be opened and publicly read aloud immediately after the specified closing time. The City of Raton reserves the right to waive technicalities, accept or reject any or all bids as deemed to be in the best interest of the City of Raton.

Copies of the bid documents are available for download on the City's website [www.ratonNm.gov](http://www.ratonNm.gov) or by contacting City Clerk/Chief Procurement Officer, Michael Anne Antonucci at 575-445-9451 or by email at [mantonucci@cityofraton.com](mailto:mantonucci@cityofraton.com).

Raton City Clerk/Chief Procurement Officer: Michael Anne Antonucci  
Date: September 28, 2022

## INSTRUCTIONS TO BIDDERS

OWNER: The City of Raton

CONTRACT: City of Raton Green Waste Grinding Professional Services Contract

Procurement Manager: Michael Anne Antonucci  
Post Office Box 910  
Raton, New Mexico 87740  
(575) 445-1632  
Email: maantonucci@cityofraton.com

### DOCUMENTS

The Contract Documents may be examined as announced in the Advertisement for Bids. The Contract Documents contain the provisions required for the construction of the project. Information obtained from an officer, agent, or employee of the Owner or any other person shall not affect the risks or obligations assumed by the Contractor or relieve him from fulfilling any of the conditions of the Contract Documents.

### QUESTIONS

Submit all questions about the Drawings or Specifications to the Engineer in writing no later than two days prior to the time set for receipt of bids. Corrections or clarifications shall be made by Addendum. Oral clarifications will not be binding.

### SUBSTITUTIONS

Refer to General Conditions for requirements generally relating to substitutions of materials and equipment. If the Bid Form requires the Base Bid to be based on certain named products, the Bidder may quote on alternate products by listing them on the product data sheets provided, together with performance and cost data requested thereon.

The Owner may accept any proposed substitution by adjusting the bid by the by the amount of the difference between the named product and the proposed substitute. However, alternate quotations which are not required by the Contract Documents shall not be a factor in the selection of the successful bidder.

### PREPARATION OF BIDS

Bidders are expected to examine the specifications, drawings, all instructions and the project site in order to fully identify the conditions and requirements of the project. Failure to do so will be at the Bidder's risk.

All bids are to be made only on the Bid Form furnished with the Specifications. All blank spaces for bid prices on each Bid Schedule upon which the bidder is submitting a bid must be filled in, in ink or typewritten, or it will be presumed that any such omitted entry is intentional, and the corresponding item is at no cost. In case of discrepancy between unit prices and extended total, the unit prices shall govern unless a contrary interpretation is apparent from the information contained in the bid. If supplemental prices are requested for adjusting the Contract Price for more or less work than

specified, such prices shall be included with the bid. The Owner reserves the right to reject any of these supplemental prices, without invalidating the acceptance of the bid, should they appear excessive or unbalanced. Bidders shall furnish all information required by the solicitation. Bids must be signed and the Bidder's name typed or printed on the bid sheet and each continuation sheet which requires the entry of information by the bidder. Erasures or other changes must be initialed by the person signing the bid. Bids signed by an agent shall be accompanied by evidence of that agent's authority. (Bidders should retain a copy of their bid for their records.) Only one copy of the Bid Form is required.

#### SUBMITTAL OF BIDS

Complete sets of Bidding Documents shall be used in preparing bids, and complete set shall be submitted as the bid. Each bid must be submitted in a sealed opaque envelope, addressed to the Owner, and plainly marked on the outside as a bid for the project as identified above, and marked with the name of the bidder, his address and his license number. If forwarded by mail, the sealed envelope containing the bid must be enclosed in another envelope addressed to the Owner at the address identified above.

**The following shall be submitted with and included as part of the bid forms provided or as otherwise described herein:**

Bid Proposal Form and Itemized Bid Form, signed, sealed and attested and signed campaign contribution form.

Qualifying bids will be publicly opened and read at 2:00 P.M. on October 10, 2022 at the Raton Municipal Building located at 224 Savage Avenue, Raton, New Mexico. The apparent low bidder will be announced at the bid opening. The successful bidder will be determined following a detailed evaluation of bids and required submittals.

#### WITHDRAWAL OF BIDS

Any bid may be withdrawn prior to the scheduled time for the opening for bids or authorized postponement thereof. Any bid received after the time and date specified shall not be considered. No bidder may withdraw a bid after the bid opening until the time below stipulated for award has expired. Should there be reasons why the contract cannot be awarded within the specified period; the time may be extended by mutual agreement between the Owner and the bidder.

#### OWNER'S INVESTIGATIONS

The Owner may make such investigations as he deems necessary to determine the ability of the bidder to perform the work. The bidder shall furnish to the Owner all such additional information and data for this purpose as the Owner may request. The Owner reserves the right to reject any bid if the evidence submitted by, or investigation of, such bidder fails to satisfy the Owner that such bidder is properly qualified to carry out the obligations of the Agreement and to complete the work contemplated therein, and such rejection shall not give rise to a cause of action against the Owner or Engineer, or impose a requirement upon the Owner or Engineer to divulge the information upon which such rejection is based.

## MAXIMUM ALLOWABLE COST

The maximum total cost of the project shall not exceed \$59,900. This is the total amount of funding available for the project. The project will be considered complete when this amount of funding is expended (inclusive of gross receipts tax) , or the all green waste has been processed..

## AWARD

The Owner shall award or reject the bids within sixty (60) days after the opening of bids. A conditional, qualified, or unbalanced bid may, at the discretion of the Owner, be rejected. The Owner may waive any informalities or minor defects or reject any and all bids. The basis of award for this project may not be the apparent low bidder.

## EXECUTION OF CONTRACT

The party to whom the Contract is awarded will be required to execute the contract and provide Certificates of Insurance within fifteen calendar days from the date when the Notice of Award is delivered to the Bidder. The Notice of Award shall be accompanied by the necessary Agreement forms. In case of failure of the bidder to execute the Agreement, the Owner may, at his option, consider the bidder in default, in which case the Bid Bond accompanying the proposal shall become the property of the Owner.

The Owner, within ten days of receipt of acceptable Certificates of Insurance and Agreement signed by the party to whom the Contract was awarded, shall sign the Agreement and return to such party an executed duplicate of the Agreement. Should the Owner not execute the Agreement within such period, the bidder may by written notice withdraw the bid. Withdrawal shall be effective upon receipt of the notice by the Owner.

# **BID PROPOSAL FORM**

**BID PROPOSAL FORM**

**Project:** Green Waste Grinding Project  
Project No. 2023 - 1  
October 10, 2022 at 2:00 PM

**Bid submitted to:** The City of Raton  
224 Savage Avenue  
Post Office Box 910  
Raton Municipal Building  
Raton, New Mexico 87740  
(505) 445-9551

Bidder is instructed to complete Bid Schedule, inclusive of all items.

Gentlemen:

The undersigned bidder, having examined the requirements of the project, documents relating to the project (including Invitation to Bid, Form of Contract, Specifications, Scope of Work and Addenda, if applicable) and conditions and characteristics of the work, and having familiarized himself/ themselves with project locations, hereby proposes to furnish all materials, tools, equipment and to perform all labor, supervision, work and appurtenances necessary for the complete construction of the work described and in accordance with attached project documents, applicable specifications and codes and to contract for the unit prices itemized as follows:

**Base Bid Schedule:**

Item No.	Description	Units	Estimated Quantity	Unit Bid Price	Amount Bid
<b><u>General</u></b>					
1.	Mobilization/ Demobilization	Lump Sum	1	_____	_____
2.	Green Waste Grinding Operations	Operating Hour	50	_____	_____
<b>Subtotal of all Base Bid Items 1 to 2, Excluding New Mexico Gross Receipts Tax</b>				_____	_____
<b>New Mexico Gross Receipts Tax @ 8.3833% Of Subtotal Above</b>				_____	_____
<b>Total Bid Amount – All Base Bid Items 1-2 plus NMGRT</b>				_____	_____

Note – The basis for award of the Construction Contract shall be the lowest responsive Base Bid Amount without New Mexico Gross Receipts Tax.

**As further consideration** for the award of the contract, the undersigned agrees to the following terms, conditions and acknowledgements:

- A. The City of Raton reserves the right to reject any or all bids, to waive any informalities, or to accept any portion of the bid as is in the best interest of the City of Raton.
- B. The City of Raton reserves the right to increase or decrease any or all quantities as in the best interest of the City of Raton.
- C. To commence work within 120 calendar days following execution of the contract, or such additional time as may be allowed in writing by the City of Raton, and to complete the contract as awarded by June 1, 2023 Liquidated Damages in the amount of two hundred dollars (\$100.00) per consecutive calendar day shall be paid by the Contractor to the Owner for each calendar day in excess of June 1, 2023.
- D. The Bidder has examined the site, the project documents, drawings, details, bid quantities, terms and conditions of the proposed Agreement and is satisfied to conditions, regulations and requirements that may affect cost, progress and performance of the Work. The Contractor does not consider additional examination, investigation, tests, studies or data necessary for performance of the Work at contract unit prices, in accordance with terms and conditions of the Contract Documents, and within stated contract times. Contractor agrees that Contract Documents are generally sufficient to indicate and convey understanding of all terms, conditions and requirements for performance and furnishing of the Work.
- E. The City of Raton has set a maximum budget amount for this project of \$59,900. This shall be the maximum amount paid for the total of mobilization, grinding operations, and New Mexico Gross Receipts Tax.
- F. In accordance with NMSA 13-4-13.1.1., the contractor or subcontractor(s) for a public works project that is subject to the Public Works Minimum Wage Act [13-4-10 NMSA 1978], serving as a prime contractor or not, shall be registered with the Labor and Industrial Division of the Labor Department in order to submit a bid valued at more than sixty thousand dollars (\$60,000). Sealed bids received that are not compliant with this provision shall be subject to rejection by the Owner.
- G. The City of Raton shall consider and apply provisions of NMSA 13-4-2 regarding Certified New Mexico Resident Contractor and NMSA 13-1-21/ 13-1-22 regarding Certified Veterans Preference Certified Native American Resident Contractor and Certified Native American Veteran Contractor Preference in this procurement.

Bidder acknowledges receipt of the addenda: \_\_\_\_\_

\_\_\_\_\_

Respectfully Submitted:

\_\_\_\_\_

Firm Name: \_\_\_\_\_

By (Signature and Print Name): \_\_\_\_\_

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

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

\_\_\_\_\_

Business Telephone: \_\_\_\_\_

New Mexico Department of Labor  
Labor Enforcement Registration Number \_\_\_\_\_

New Mexico Resident Contractor  
Certification Number  
(If Applicable; NMSA 13-4-2) \_\_\_\_\_

New Mexico Certified Native American Contractor  
Certification Number  
(If Applicable; NMSA 13-4-2) \_\_\_\_\_

New Mexico Veterans Preference  
Certification Number  
(If Applicable; NMSA 13-1-21/ 13-1-22) \_\_\_\_\_

New Mexico Certified Native American Veterans Preference  
Certification Number  
(If Applicable; NMSA 13-1-21/ 13-1-22) \_\_\_\_\_

Contractor's Federal I.D. Number: \_\_\_\_\_

ATTEST: \_\_\_\_\_

Secretary  
(If Applicable)

## CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to the Procurement Code, Sections 13-1-28, *et seq.*, NMSA 1978 and NMSA 1978, § 13-1-191.1 (2006), as amended by Laws of 2007, Chapter 234, any prospective contractor seeking to enter into a contract with any state agency or local public body **for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources** must file this form with that state agency or local public body. This form must be filed even if the contract qualifies as a small purchase or a sole source contract. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars (\$250) over the two year period.

Furthermore, the state agency or local public body may cancel a solicitation or proposed award for a proposed contract pursuant to Section 13-1-181 NMSA 1978 or a contract that is executed may be ratified or terminated pursuant to Section 13-1-182 NMSA 1978 of the Procurement Code if: 1) a prospective contractor, a family member of the prospective contractor, or a representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or 2) a prospective contractor fails to submit a fully completed disclosure statement pursuant to the law.

The state agency or local public body that procures the services or items of tangible personal property shall indicate on the form the name or names of every applicable public official, if any, for which disclosure is required by a prospective contractor.

**THIS FORM MUST BE INCLUDED IN THE REQUEST FOR PROPOSALS AND MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.**

The following definitions apply:

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

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

**“Family member”** means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law of (a) a prospective contractor, if the prospective contractor is a natural person; or (b) an owner of a prospective contractor.

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

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

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

Name(s) of Applicable Public Official(s) if any:

Mayor – James Neil Segotta  
Mayor Pro Tem – Linde’ Schuster  
Commissioner - Ronald Chavez  
Commissioner – Donald Giacomo  
Commissioner – Lori Chatterley  
Municipal Judge – Roy Manfredi

DISCLOSURE OF CONTRIBUTIONS BY PROSPECTIVE CONTRACTOR:

Contribution Made By: \_\_\_\_\_

Relation to Prospective Contractor: \_\_\_\_\_

Date Contribution(s) Made: \_\_\_\_\_

Amount(s) of Contribution(s) \_\_\_\_\_

Nature of Contribution(s) \_\_\_\_\_

Purpose of Contribution(s) \_\_\_\_\_

(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)



**EXHIBIT A**  
**SCOPE OF WORK/ SPECIFICATIONS**

**1. GENERAL**

This contract consists of grinding tree limbs and green waste for use in the City of Raton's mulch production

- 1.1. Locations - The location of the work is at the City of Raton Transfer Station, located at 1982 Armstrong Lane, Raton, NM 87740.
- 1.2. Work Performed - The work covered within this contract will consist of:
  - (a) Grinding tree trunks and limbs at the City Tree Dump, located at 1982, Armstrong Lane, Raton, NM, until the stockpile of trunks and limbs is depleted, or the billable grinding and applicable taxes reaches \$59,990, whichever comes first. Contractor will furnish their own equipment which requires a tub grinder or horizontal grinder in good working order and capable of processing large tree trunks and limbs, and an experienced operator. Size of screened material will be 4 square inches with a maximum thickness of one-half of an inch. Contractor shall be required to provide any wheel loaders or forestry equipment necessary to feed the grinder. These pieces of equipment will be considered incidental but necessary to the grinding operation.

**2. CONTRACTORS RESPONSIBILITIES**

- 2.1. Supervision - The CONTRACTOR will supervise and direct the work. Contractor will be solely responsible for the means and methods, techniques, and procedures of construction. The CONTRACTOR will employ and maintain on the work a qualified Supervisor or Superintendent who shall have been designated in writing by the CONTRACTOR as the CONTRACTOR's representative at the site. The Supervisor shall have full authority to act on behalf of the CONTRACTOR, and all communications given to the Supervisor shall be as binding as if given to the CONTRACTOR. The Supervisor shall be present on the site at all times as required to perform adequate supervision and coordination of the work. The Supervisor shall not be changed except with the consent of the ENGINEER, unless the Supervisor has proven to be unsatisfactory to the CONTRACTOR and ceases to be in his employ.
- 2.2. Safety and Protection - CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work. CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to the General Public and all employees on the jobsite and other persons who may be affected thereby. CONTRACTOR shall comply with all applicable laws, ordinances, rules, regulations, and orders of any public body having jurisdiction for the safety of persons or property.

2.3. Use of Premises - The CONTRACTOR shall not enter upon private property, outside of the established easements or work limits for this project, for any purpose without first obtaining written permission from the owner. A copy of the document giving CONTRACTOR permission to enter private property along with all terms of the agreement shall be transmitted to the OWNER prior to entering property.

### **3. QUALITY ASSURANCE AND QUALITY CONTROL**

Quality control will be the responsibility of the contractor to ensure compliance with the plans and specifications. CONTRACTOR will identify in writing individuals who will carry out these duties and have the experience managing quality control on similar types of projects. OWNER may at any time enter work sites to inspect, test, and/or verify work and materials for the project as part of quality assurance to verify quality control is adhered to. Any testing, sampling, or inspection by the OWNER does not relieve the CONTRACTOR of their quality control responsibilities.

### **4. CONTRACT PERFORMANCE TIME**

The contractor will observe working hours of 7:00 a.m. – 7:00 p.m. only. Work shall not be performed on Sundays or legal holidays.

This project will be completed no later than June 1, 2023. Failure to complete contract on time will result in \$100 per day liquidated damages. If weather or other conditions prevent completion, the parties may negotiate a new date for completion, reflected in a change order. Please notify Jason Phillips at [jphillips@cityofraton.com](mailto:jphillips@cityofraton.com) of start date at least 48 hours and/or 2 working days prior to commencing work.

Contractor will submit a daily log of hours worked to Jason Phillips.

### **5. Measurement and Payment**

The contractor be paid for the operational hours that the green waste grinding is in full operation and material is actively being processed. Maintenance time and other down time will be incidental to the work performed and will not be counted as billable hours. Contractor is expected to provide loaders and other machinery as needed to feed the grinder. This equipment will not be billed separately but will be necessary and incidental to the grinding operations.

## INSTRUCTIONS TO BIDDERS

OWNER: The City of Raton

CONTRACT: City of Raton Green Waste Grinding Professional Services Contract

Procurement Manager: Michael Anne Antonucci  
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Raton, New Mexico 87740  
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The Owner, within ten days of receipt of acceptable Certificates of Insurance and Agreement signed by the party to whom the Contract was awarded, shall sign the Agreement and return to such party an executed duplicate of the Agreement. Should the Owner not execute the Agreement within such period, the bidder may by written notice withdraw the bid. Withdrawal shall be effective upon receipt of the notice by the Owner.

## Supplementary General Conditions

If any discrepancy or conflict exists between the Supplementary General Conditions and the Standard General Conditions of the Construction Contract or other Project Documents, the provisions of the Supplementary General Conditions shall govern and shall supersede conflicting provisions.

1. Project Owner:

The Project Owner is the City of Raton, whose address is 224 Savage Avenue, Post Office Box 910, Raton, New Mexico 87740.

2. Insurance

A. The Contractor shall maintain coverages for not less than the following amounts or greater as required by law or regulations:

- |   |             |
|---|-------------|
| a. Workman's Compensation:  | Statutory   |
| b. Employer's Liability   | \$ 500,000  |
| c. Comprehensive General Liability under Paragraphs 5.04.A.3 through 5.04.A.5 of the Standard General Conditions: |             |
| Bodily Injury – Each Occurrence   | \$1,000,000 |
| Property Damage – Each Occurrence   | \$500,000   |
| Combined Single Limit   | \$1,000,000 |
| d. Comprehensive Automobile Liability under Paragraph 5.04.A.6 of the Standard General Conditions:                |             |
| Bodily Injury – Each Occurrence   | \$1,000,000 |
| Property Damage – Each Occurrence   | \$500,000   |
| Combined Single Limit   | \$1,000,000 |
| e. Contractual Liability under Paragraph 5.04 of the Standard General Conditions:                                 |             |
| Bodily Injury – Each Occurrence   | \$1,000,000 |
| Property Damage – Each Occurrence   | \$1,000,000 |

# Sample Contract

**EJCDC  
STANDARD FORM OF AGREEMENT  
BETWEEN OWNER AND CONTRACTOR  
ON THE BASIS OF A STIPULATED PRICE**

**THIS AGREEMENT** is by and between           ***The City of Raton***          

(hereinafter called OWNER) and \_\_\_\_\_

(hereinafter called CONTRACTOR).

**ARTICLE 1 – WORK**

1.01 CONTRACTOR shall complete all work as specified or indicated in the Contract Documents.

The work is generally described as follows:           ***City of Raton Green Waste Grinding  
Professional Services Contract***          

**ARTICLE 2 – THE PROJECT**

2.01 The Project for which the work under the Contract Documents may be the whole or only a part is generally described as follows:

***The work shall consist primarily of tasks related to grinding stockpiled green waste at the Raton Transfer Station into mulch. pavement and appurtenant tasks.***

**ARTICLE 3 – ENGINEER**

3.01 The Project has been designed by:

***Kenneth Scott Berry, New Mexico Professional Engineer Registration No. 12848  
City Manager – City of Raton  
224 Savage Avenue  
Raton, New Mexico 87740***

who is hereinafter called ENGINEER and who is to act as OWNER'S representative, assume all duties and responsibilities, and have the rights and authority to ENGINEER in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

## ARTICLE 4 – CONTRACT TIMES

### 4.01 *Time is of the Essence*

- A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

### 4.02 *Days to Achieve Substantial Completion and Final Payment*

- A. The work will shall commence within 120 days of the issuance of a Notice to Proceed and Be completed no Later than June 1, 2023

### 4.03 *Liquidated Damages*

- A. CONTRACTOR and OWNER recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified in paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by OWNER if the Works is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as penalty), CONTRACTOR shall pay OWNER \$ 100.00 for each day that expires after the time specified in the contract documents for failure to begin an assigned task within 30 calendar days of a task order being issued with the exception of hot mix asphalt application during winter months as described in the project manual.

## ARTICLE 5 – CONTRACT PRICE

- 5.01 OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to paragraphs 5.01.A, 5.01.B, and 5.01.C below:
- A. For all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of that item as indicated in this paragraph 5.01.B:

TOTAL OF ALL UNIT PRICES: See Attachment A

As provided in paragraph 11.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are made by the ENGINEER as provided in paragraph 9.08 of the General Conditions. Unit prices have been computed as provided in paragraph 11.03 of the General Conditions.

- B. For all Work, at the prices stated in CONTRACTOR's Bid, attached hereto as an exhibit.

## ARTICLE 6 – PAYMENT PROCEDURES

### 6.01 *Submittal and Processing of Payments*

- A. CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by the ENGINEER as provided in the General Conditions.

### 6.02 *Progress Payments; Retainage*

- A. OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment on or about the 10th day of each month during the performance of the Work as provided in paragraphs 6.02.A.1 and 6.02.A.2 below. All such payments shall be measured by the schedule of values established in paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements:
1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as ENGINEER may determine or OWNER may withhold, in accordance with paragraph 14.02 of the General Conditions:
    - a. 100% of Work completed (with the balance being retainage). If the Work has been 50% completed as determined by the ENGINEER, and if the character and progress of the WORK have been satisfactory to OWNER and ENGINEER, OWNER, on recommendation of ENGINEER, may determine that as long as the character and progress of Work remain satisfactory to them, there will be no retainage on account of Work subsequently completed,

in which case the remaining progress payments prior to Substantial Completion will be in the amount equal to 100% of the Work completed less the aggregate of payments previously made; and

- b. 100% of cost of stored materials and equipment not incorporated in the Work (with the balance being retainage).
2. Upon Substantial Completion, OWNER shall pay an amount sufficient to increase total payments to CONTRACTOR to 100% of the Work completed, less such amounts as ENGINEER shall determine in accordance with paragraph 14.02.B.5 of General Conditions and less 100% of ENGINEER's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

#### 6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work in accordance with paragraph 14.07 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said paragraph 14.07.

### **ARTICLE 7 – INTEREST**

- 7.01 All monies not paid when due as provided in Article 14 of the General Conditions shall bear interest at the rate of 0% per annum.

### **ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS**

- 8.01 In order to induce OWNER to enter into this Agreement CONTRACTOR makes the following representations:
  - A. CONTRACTOR has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
  - B. CONTRACTOR has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
  - C. CONTRACTOR is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
  - D. CONTRACTOR has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in paragraph 4.02 of the General Conditions and (2) reports and drawings of a Hazardous Environmental Condition, if any, at the Site which has been identified in the Supplementary Conditions as provided in paragraph 4.06 of the General Conditions.
  - E. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work

or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by CONTRACTOR, including applying the specific means, methods, techniques, sequences, and procedures of construction, if any, expressly required by the Contract Documents to be employed by CONTRACTOR, and safety precautions and programs incident thereto.

- F. CONTRACTOR does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- G. CONTRACTOR is aware of the general nature of work to be performed by OWNER and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents,
- I. CONTRACTOR has given ENGINEER written notice of all conflicts, errors, ambiguities, or discrepancies that CONTRACTOR has discovered in the Contract Documents, and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.
- J. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing the Work.

## ARTICLE 9 – CONTRACT DOCUMENTS

### 9.01 *Contents*

- A. The Contract Documents consist of the following:
  - 1. The Agreement (pages 1 to 8 , inclusive);
  - 2. Performance Bond (pages NA to NA , inclusive)
  - 3. Payment Bond (pages NA to NA , inclusive);
  - 4. Project Manual Including Scope of Work / Specification
  - 5. Supplementary Conditions (pages 1 to 2 , inclusive);
  - 5. Specifications Supplementary Specifications as listed in the table of contents of the Project Manual;
- 8. Drawings consisting of a cover sheet and sheets numbered NA through NA , inclusive, with each sheet bearing the following general title \_\_\_ ; and applicable detail drawings
  - 9. Addenda (number \_\_\_\_\_ , inclusive);
  - 10. Exhibits to this Agreement (enumerated as follows):
    - a. Notice to Proceed (pages \_\_\_\_\_ to \_\_\_\_\_ , inclusive);

- b. CONTRACTOR's Bid (pages   BPF- 1   to   BPF-5  , inclusive);
  - c. Documentation submitted by CONTRACTOR prior to Notice of Award (\_\_\_\_\_);
11. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
- a. Written Amendments;
  - b. Work Change Directives;
  - c. Change Order(s);
  - d. Task Orders
- B. The documents listed in paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in paragraph 3.05 of the General Conditions.

**ARTICLE 10 – MISCELLANEOUS**

10.01 *Terms*

- A. Terms used in this Agreement will have the meanings indicated in the General Conditions.
- B.

10.02 *Assignment of Contract*

- A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

10.03 *Successors and Assigns*

- A. OWNER and CONTRACTOR each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.04 *Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and CONTRACTOR, who agree that the

Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

10.05 *Other Provisions*

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement in duplicate. One counterpart each has been delivered to OWNER and CONTRACTOR. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR on their behalf.

This Agreement will be effective on \_\_\_\_\_  
(which is the Effective Date of The Agreement).

OWNER:

CONTRACTOR:

*The City of Raton*

\_\_\_\_\_

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

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

[CORPORATE SEAL]

[CORPORATE SEAL]

Attest \_\_\_\_\_

Attest \_\_\_\_\_

Address for giving notices:

Address for giving notices:

*Post Office Box 910*

\_\_\_\_\_

*224 Savage Avenue*

\_\_\_\_\_

*Raton, New Mexico 87740*

\_\_\_\_\_

(If OWNER is a corporation, attach evidence of authority to sign. If OWNER is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of OWNER-CONTRACTOR Agreement.)

License No. \_\_\_\_\_  
(Where Applicable)

Agent for service of process: \_\_\_\_\_

(If CONTRACTOR is a corporation or a partnership, attach evidence of authority to sign.)

Designated Representative:

Designated Representative:

Name: *Mr. Scott Berry*

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

Title: *City Manager*

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

Address: *224 Savage Avenue*

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

*Post Office Box 910*

\_\_\_\_\_

Phone: *(575) 445-9551*

Phone: \_\_\_\_\_

Facsimile: *(575) 445-3398*

Facsimile: \_\_\_\_\_