



**INVITATION TO BID (ITB)**

ITB Name: **RIVER CHANNEL STABILIZATION IN TWO RIVERS PARK**

ITB Number: **2024-004B** NIGP Commodity Code: **92642**  
**Revised 10-6-23 Addendum #1**

**Return Bid To:**  
**Village of Ruidoso**  
**Purchasing Department**  
**313 Cree Meadows Drive**  
**Ruidoso, NM 88345**

**Bids Due No Later Than:**

Date: **October 25, 2023** Time: **2:00 pm local time**

**Formal Sealed Bid Opening:**

Place: **Village of Ruidoso Council Chambers, 313 Cree Meadows Drive, Ruidoso, NM 88345**  
**To occur immediately following due date/time**

If you have questions regarding this ITB please contact:

Procurement Manager

Telephone No.: 575-258-4343 x1081

Email: [purchasing@ruidoso-nm.gov](mailto:purchasing@ruidoso-nm.gov)

**Bidder MUST complete as applicable and sign the following for Bid to be valid (type or print clearly):**

Company Name: \_\_\_\_\_ Address: \_\_\_\_\_

DBA (if applicable): \_\_\_\_\_

Co. Email: \_\_\_\_\_ Co. Phone No. \_\_\_\_\_

NM Gross Receipts Tax # (CRS): \_\_\_\_\_ Federal Tax ID #: \_\_\_\_\_

Payment terms: \_\_\_\_\_ (Discount will not be considered in computing the low bid, see "Terms and Conditions")

F.O.B. Point must be Destination, unless otherwise indicated by the Village of Ruidoso Purchasing Agent

Authorized Signature: \_\_\_\_\_ Print or Type Name: \_\_\_\_\_

Signatory Email: \_\_\_\_\_ Phone No.: \_\_\_\_\_

**IMPORTANT – All bids must be submitted in a sealed envelope or package and must be clearly labeled with the bidder’s name and address, the bid number, title, and opening date and time on the front of the envelope, bottom left-hand side.** Sealed bids will be received at the above address until specified due date and time. Late submission of bids will not be accepted. Sealed bids will be publicly opened in the Village of Ruidoso Council Chambers. Bids are subject to the specifications set forth in this document, and any additional bidding instructions or requirements issued by the Village of Ruidoso.

**NOTE: If you decide not to bid, do not return this document.**

It is your responsibility as a Bidder to ensure your bid is correct and accurate.

**CERTIFICATION PAGE**

The technical material and data contained in this Project Manual were prepared under the supervision and direction of the undersigned, whose seal as a Professional Engineer in the State of New Mexico, is affixed below.



September 22, 2023

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Table of Contents

**BIDDER INSTRUCTIONS FOR INVITATION TO BID (ITB) ..... 6**

**I. SPECIFICATIONS, TERMS AND CONDITIONS ..... 7**

A. *PURPOSE OF THIS INVITATION TO BID* ..... 7

B. *SCOPE OF PROCUREMENT* ..... 7

C. *PROCUREMENT MANAGER* ..... 7

D. *DEFINITION OF TERMINOLOGY* ..... 8

E. *PROCUREMENT LIBRARY* ..... 10

**II. CONDITIONS GOVERNING THE PROCUREMENT ..... 11**

A. *SEQUENCE OF EVENTS* ..... 11

B. *EXPLANATION OF EVENTS* ..... 11

1. *Issuance of Invitation to Bid* ..... 11

2. *Acknowledgement of Receipt* ..... 11

3. *Pre-Bid Conference* ..... 12

4. *Deadline to Submit Written Questions* ..... 12

5. *Response to Written Questions* ..... 12

6. *Submission of Bid* ..... 12

7. *Bid Evaluation* ..... 12

8. *Finalize Contractual Agreements* ..... 12

9. *Contract Awards* ..... 13

10. *Protest Deadline* ..... 13

C. *GENERAL REQUIREMENTS* ..... 13

1. *Qualifications of Bidders* ..... 13

2. *Acceptance of Conditions Governing the Procurement* ..... 14

3. *Incurring Cost* ..... 14

4. *Prime Contractor Responsibility* ..... 14

5. *Subcontractors/Consent* ..... 14

6. *Amended Bids* ..... 14

7. *Bidder’s Rights to Withdraw Bid* ..... 15

8. *Bid Offer Firm* ..... 15

9. *Disclosure of Bid Contents* ..... 15

10. *No Obligation* ..... 15

11. *Termination* ..... 15

12. *Sufficient Appropriation* ..... 16

13. *Legal Review* ..... 16

14. *Governing Law* ..... 16

15. *Basis for Bid* ..... 16

16. *Contract Terms and Conditions* ..... 16

17. *Bidder’s Terms and Conditions* ..... 17

18. *Contract Deviations* ..... 17

19. *Right to Waive Minor Irregularities* ..... 17

20. *Change in Contractor Representatives* ..... 17

21. *Notice of Penalties* ..... 17

22. *Village Rights* ..... 17

23. *Right to Publish* ..... 17

24. *Ownership of Bids* ..... 17

25. *Confidentiality* ..... 17

26. *Warranties* ..... 18

27. *Inspection and Acceptance* ..... 18

28. *Wage Rates* ..... 18

29. *Labor and Material, and Performance Bond* ..... 18

30. *Licenses* ..... 18

31. *Business License* ..... 18

32. Commence Work .....	18
33. Due Diligence .....	19
34. Electronic Mail Address Required .....	19
35. Use of Electronic Versions of this ITB .....	19
D. ADDITIONAL INSTRUCTIONS TO BIDDERS .....	19
1. List of Construction Drawings: .....	19
E. SPECIAL CONDITIONS .....	20
SC-1 Modifications to General Conditions .....	20
SC-2 Additional Requirements for the Contract .....	20
SC-3 Contract Time .....	21
SC-4 Liquidated Damages .....	22
SC-5 Contract Precedence .....	22
<b>SC-7 Payments</b> .....	22
SC-8 Materials Testing .....	23
SC-9 Payment for Non-Established Contract Items .....	23
SC-10 Open Trenches/Driveway Access .....	24
SC-11 Signage .....	25
SC-12 Use of Brand Name or Equal Specifications .....	25
SC-14 Unforeseen or Anticipated Additional Work .....	25
SC-15 Landscaping and Native Vegetation .....	25
SC-16 Referenced Specifications .....	25
SC-17 Environmental Mitigation Measures .....	26
SC-18 Stormwater Pollution Prevention Plan Compliance .....	27
<b>III. RESPONSE CONTENT, FORMAT, AND ORGANIZATION .....</b>	<b>28</b>
A. NUMBER OF RESPONSES .....	28
B. NUMBER OF ORIGINALS/COPIES .....	28
C. BID FORMAT, CONTENT, AND ORGANIZATION .....	28
<b>IV. SPECIFICATIONS .....</b>	<b>29</b>
A. Signed Cover Page of ITB .....	29
B. Letter of Transmittal Form (Appendix B) .....	29
C. Cost Response Form (Appendix C) .....	29
D. Other Supporting Documents .....	29
E. Options, Exceptions, or Variations (Appendix D) .....	29
F. Affidavit of Non-Collusion (Appendix E) .....	30
G. New Mexico Preference Certificate (Appendix F) .....	30
H. Compliance with Regulatory Agencies (Appendix G) .....	30
I. Certification Regarding Debarment, Suspension, and Other Responsibility Matters (Appendix H) .....	30
J. Campaign Contribution Disclosure Form (Appendix I) .....	32
K. Bid Bond (Appendix K) .....	32
L. Request for Taxpayer Information and Certification, W-9, and Vendor Form (Appendix M) .....	32
M. Bidder Qualification (Appendix N) .....	32
N. List of Subcontractors (Appendix O) .....	32
<b>V. EVALUATION PROCESS AND AWARD .....</b>	<b>34</b>
<b>APPENDIX A - ACKNOWLEDGEMENT OF RECEIPT FORM .....</b>	<b>35</b>
<b>APPENDIX B - LETTER OF TRANSMITTAL FORM .....</b>	<b>36</b>
<b>APPENDIX C – BID SCHEDULE .....</b>	<b>38</b>
<b>APPENDIX D - OPTIONS, EXCEPTIONS, OR VARIATIONS .....</b>	<b>45</b>
<b>APPENDIX E - AFFIDAVIT OF NON-COLLUSION .....</b>	<b>46</b>
<b>APPENDIX F – NEW MEXICO PREFERENCE CERTIFICATION .....</b>	<b>47</b>
<b>APPENDIX G - COMPLIANCE WITH REGULATORY AGENCIES .....</b>	<b>48</b>

<b>APPENDIX H- CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS .</b>	<b>49</b>
<b>APPENDIX I- CAMPAIGN CONTRIBUTION DISCLOSURE FORM .....</b>	<b>50</b>
<b>APPENDIX J – SCOPE OF WORK .....</b>	<b>52</b>
SECTION 101—TECHNICAL SPECIFICATIONS .....	52
A. GENERAL NOTES .....	52
SECTION 104—SCOPE OF WORK .....	52
SECTION 105—CONTROL OF WORK .....	53
SECTION 108—PROSECUTION AND PROGRESS .....	60
SECTION 109—MEASUREMENT AND PAYMENT .....	63
SECTION 110—CONTRACT CLOSEOUT, CLEANUP AND DISPOSAL REQUIREMENTS .....	65
SECTION 204—GRADE CONTROL STRUCTURES .....	67
SECTION 602—SLOPE AND EROSION PROTECTION STRUCTURES .....	69
SECTION 603—TEMPORARY EROSION AND SEDIMENT CONTROL, TEMPORARY FACILITIES, AND HAZARDOUS MATERIALS HANDLING .....	69
SECTION 632--SEEDING AND REVEGETATION .....	70
<b>APPENDIX K – BID BOND.....</b>	<b>74</b>
<b>APPENDIX L – SAMPLE CONTRACT .....</b>	<b>75</b>
<b>APPENDIX M – REQUEST FOR TAXPAYER INFORMATION AND CERTIFICATION, W-9, AND VENDOR FORM.....</b>	<b>90</b>
<b>APPENDIX N – BIDDER QUALIFICATION FORM .....</b>	<b>92</b>
<b>APPENDIX O - LIST OF SUBCONTRACTORS .....</b>	<b>94</b>
<b>APPENDIX P – PERFORMANCE BOND .....</b>	<b>95</b>
<b>APPENDIX Q – LABOR AND MATERIAL PAYMENT BOND .....</b>	<b>97</b>
<b>ATTACHMENT A – WAGE RATES .....</b>	<b>100</b>

**ITB #2024-004B**  
**River Channel Stabilization in Two Rivers Park**

**Bidder Instructions for Invitation to Bid (ITB)**

**Viewing ITB:**

1. Bidders can access active procurements at the following site:  
<https://www.ruidoso-nm.gov/purchasing>
2. Complete bid documents as required by the ITB specifications and submit any required documentation, supporting materials, certificates, etc. in addition to bid documents.

**Submitting Bids:**

Hard copy submission delivered by US mail, courier, or in person to:

Village of Ruidoso, Purchasing Department  
313 Cree Meadows Drive  
Ruidoso, NM 88345

**All bids must be submitted in a sealed envelope or package and must be clearly labeled with the bid number and opening date and time on the front of the envelope on the bottom left-hand side.** Sealed bids will be received, and time stamped at the above address until specified due date and time.

**It is the responsibility of the bidder to see that the bid arrives on time.**

The Village of Ruidoso is a rural community. Be aware that some delivery services do not guarantee overnight priority delivery to the Village of Ruidoso. Overnight deliveries may not arrive by the submission deadline. Please plan accordingly.

**Late submission of Bids WILL NOT BE ACCEPTED.**

**Bid Opening:**

Sealed bids will be publicly opened in the Village of Ruidoso Council Chambers. Bids are subject to “Terms and Conditions” as shown on the attached pages of this document and any additional bidding instructions or requirements. If you decide not to bid, do not return this ITB document.

**Technical Questions Regarding the ITB:**

Contact the Village of Ruidoso Procurement Manager listed on the front page of this ITB.

**Technical Questions Regarding the Scope of Work**

If there is any clarification, problem, ambiguity, or questions regarding the technical specification or construction drawings contact:

Mr. Chris Philips, P.E.  
Project Engineer  
Riverbend Engineering, LLC  
5929 Pauline Ave NW  
Albuquerque, NM 87107  
505.344.3315 [cphilips@riverrestoration.com](mailto:cphilips@riverrestoration.com)

# **I. SPECIFICATIONS, TERMS AND CONDITIONS**

## **A. PURPOSE OF THIS INVITATION TO BID**

The purpose of the Invitation to Bid (ITB) is to solicit competitive sealed bids for the procurement of River Channel Stabilization in Two Rivers Park for the Village of Ruidoso (Village).

The Village is conducting a single-award ITB for River Channel Stabilization in Two Rivers Park for the Village of Ruidoso. The awards shall be made to the responsible offeror whose bid is the most advantageous to the Village.

## **B. SCOPE OF PROCUREMENT**

The Village is seeking bids for River Channel Stabilization in Two Rivers Park for the Village of Ruidoso as outlined in Appendix J, attached and/or incorporated herein.

### **Description and Scope of Work:**

The WORK is generally described as: excavation and backfill within the river to shape the channel, construction of grade control structures using large rocks & concrete grout, bank stabilization using large rocks and select backfill, trail construction, sewer line covering with riprap, willow plantings, and other related project work. All work shall conform to the project plans and specifications, and as directed by the project engineer.

## **C. PROCUREMENT MANAGER**

1. The Village of Ruidoso has assigned a Procurement Manager who is responsible for the conduct of this procurement whose name, address, telephone number and e-mail address are listed below:

Name: Procurement Manager  
Address: 313 Cree Meadows Drive, Ruidoso, NM 88345  
Telephone: (575) 258-4343, Ext. 1081  
Email: purchasing@ruidoso-nm.gov

2. All deliveries of responses via express carrier must be addressed as follows:

Name: Procurement Manager  
ITB Name: ITB #2024-004B River Channel Stabilization in Two Rivers Park for the Village of Ruidoso  
Address: Village of Ruidoso, Purchasing Department,  
313 Cree Meadows Dr, Ruidoso, NM 88345

3. **Any inquiries or requests** regarding this procurement should be submitted, in writing, to the Procurement Manager. Bidders may contact **ONLY** the Procurement Manager regarding this procurement. Other village employees do not have the authority to respond on behalf of the Village. **Protests of the solicitation or award must be delivered by mail to the Procurement Manager.** The Procurement Manager shall act as a Protest Manager as pursuant to NMSA 1978, § 13-1-172. **ONLY** protests delivered directly to the

Procurement Manager in writing by the protest deadline indicated in Section II., A. Sequence of Events. Protest Deadline will be considered to have been submitted properly and in accordance with statute, rule, and this Invitation to Bid. Emailed protests will not be considered as properly submitted.

#### **D. DEFINITION OF TERMINOLOGY**

This section contains definitions of terms used throughout this procurement document, including appropriate abbreviations:

“**Authorized Purchaser**” means an individual authorized by a Participating Entity to place orders against this contract.

“**Award**” means the final execution of the contract document.

“**Business Hours**” means 8:00 AM thru 5:00 PM Mountain Standard or Mountain Daylight Time, whichever is in effect on the date given.

“**Close of Business**” means 5:00 PM Mountain Standard or Daylight Time, whichever is in use at that time.

“**Confidential**” means confidential financial information concerning Bidder’s organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act NMSA 1978 57-3-A-1 to 57-3A-7. See NMAC 1.4.1.45. As one example, no information that could be obtained from a source outside this Invitation to Bid can be considered confidential information.

“**Contract**” means any agreement for the procurement of items of tangible personal property, services, or construction.

“**Contractor**” means any business having a contract with the Village of Ruidoso.

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

“**Desirable**” the terms "may", "can", "should", "preferably", or "prefers" identify a desirable or discretionary item or factor.

“**Electronic Version/Copy**” means a digital form consisting of text, images, or both readable on computers or other electronic devices that includes all content that the Original and Hard Copy Bids contain. The digital form may be submitted using a USB flash drive. The electronic version/copy can NOT be emailed.

“**Hourly Rate**” means the proposed fully loaded maximum hourly rates that include travel, per diem, fringe benefits and any overhead costs for contractor personnel, as well as subcontractor personnel if appropriate.

“**Mandatory**” – the terms "must", "shall", "will", "is required", or "are required," identify a mandatory item or factor. Failure to meet a mandatory item or factor will result in the rejection of the Bid.



**“Minor Technical Irregularities”** means anything in the Bid that does not affect the price, quality, and quantity or any other mandatory requirement.

**“Multiple Source Award”** means an award of an indefinite quantity contract for one or more similar services, items of tangible personal property, or construction to more than one Bidder.

**“Bidder”** is any person, corporation, or partnership who chooses to submit a Bid.

**“Procurement Manager”** means any person or designee authorized by the Village of Ruidoso to administer procurements and make written determinations with respect thereto.

**“Procuring Agency”** means all Village of Ruidoso agencies, commissions, institutions, political subdivisions, and local public bodies allowed by law to entertain procurements.

**“Project”** means a temporary process undertaken to solve a well-defined goal or objective with clearly defined start and end times, a set of clearly defined tasks, and a budget. The project terminates once the project scope is achieved and project acceptance is given by the project executive sponsor.

**“Redacted”** means a version/copy of the Bid with the information considered confidential as defined by NMAC 1.4.1.45 and defined herein and outlined in Section II.C.8 of this ITB blacked out BUT NOT omitted or removed.

**“Invitation to Bid (ITB)”** means all documents, including those attached or incorporated by reference, used for soliciting Bids.

**“Responsible Bidder”** means a Bidder who submits a responsive Bid and who has furnished, when 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 described in the Invitation to 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 an Invitation to Bid include, but are not limited to price, quality, quantity, or delivery requirements.

**“Sealed”** means, in terms of a non-electronic submission, that the Bid is enclosed in a package which is completely fastened in such a way that nothing can be added or removed. Open packages submitted will not be accepted except for packages that may have been damaged by the delivery service itself. The Village reserves the right, however, to accept or reject packages where there may have been damage done by the delivery service itself. Whether a package has been damaged by the delivery service or left unfastened and should or should not be accepted is a determination to be made by the Procurement Manager. By submitting a Bid, the Bidder agrees to and concurs with this process and accepts the determination of the Procurement Manager in such cases.

**“Staff”** means any individual who is a full-time, part-time, or an independently contracted employee with the Bidders’ company.

**“Statement of Concurrence”** means an affirmative statement from the Bidder to the required specification agreeing to comply and concur with the stated requirement(s). This statement shall be included in Bidders Bid. (E.g. “We concur”, “Understands and Complies”, “Comply”, “Will Comply if Applicable” etc.)

**“Unredacted”** means a version/copy of the Bid containing all complete information including any that the Bidder would otherwise consider confidential, such copy for use only for the purposes of evaluation.

**“Village” or “VOR”** means the Village of Ruidoso

**“Written”** means typewritten on standard 8 ½ x 11-inch paper. Larger paper is permissible for charts, spreadsheets, etc.

## **E. PROCUREMENT LIBRARY**

A listing of all documents, addendums, drawings, and specifications can be found on the Village of Ruidoso’s website at <https://www.ruidoso-nm.gov/purchasing> under Open Invitations to Bid (ITB) under ITB #2024-004B River Channel Stabilization in Two Rivers Park.

## II. CONDITIONS GOVERNING THE PROCUREMENT

This section of the Invitation to Bid (ITB) #2024-004B River Channel Stabilization in Two Rivers Park for the Village of Ruidoso contains the schedule, description and conditions governing the procurement.

### A. SEQUENCE OF EVENTS

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

Action	Responsible Party	Due Dates - Time Frames
1. Issue ITB	VOR	September 29, 2023
2. Acknowledgement Receipt Form (Appendix A)	Potential Bidders	October 11, 2023 5:00 PM Local Time
3. Pre-Bid Conference	VOR	October 11, 2023 1:00 PM Local Time (On Site)
4. Deadline to Submit Questions	Potential Offerors	October 16, 2023 5:00 PM
5. Response to Written Questions	Procurement Manager	October 18, 2023
<b>6. Submission of Bid</b>	<b>Potential Offerors</b>	<b>October 25, 2023 @ 2:00 PM Local Time</b>
7. Bid Evaluation	VOR	October 25, 2023 – October 27, 2023
8. Finalize Contractual Agreement	VOR/Bidder	October 30, 2023
9. Contract Awards	VOR/ Bidder	November 14, 2023
10. Protest Deadline	VOR	Close of Business, 15 Days after award date

\*Dates indicated in Events 7 through 10 are estimates only, and may be subject to change without necessitating an amendment to the ITB

### B. EXPLANATION OF EVENTS

The following paragraphs describe the activities listed in the sequence of events shown in Section II. A., above.

#### 1. Issuance of Invitation to Bid

This ITB is being issued on behalf of the Village of Ruidoso.

#### 2. Acknowledgement of Receipt

Potential Bidders should hand deliver, mail, or email the Procurement Manager the "Acknowledgement of Receipt of Invitation to Bid Form" that accompanies this document, Appendix A, to have their organization placed on the procurement distribution list. The form should be signed by an authorized representative of the organization, dated, and returned to the Procurement Manager as referenced in Section II. A. Sequence of Events.

The procurement distribution list will be used for the distribution of written responses to questions or any other communication. Failure to return the Acknowledgement of Receipt

form shall constitute a presumption of receipt of the ITB, and the potential Bidder's organization name shall not appear on the distribution list.

### **3. Pre-Bid Conference**

A pre-bid conference will be held on October 11, 2023 at 1:00 PM Local Time at the Council Chambers, Village of Ruidoso, 313 Cree Meadows Ruidoso, NM 88345. A tour of the site visit will follow. Attendance is not a prerequisite for submission of a bid but is highly encouraged. Potential Bidders are encouraged to submit written questions in advance of the conference to the designated Procurement Manager

### **4. Deadline to Submit Written Questions**

Potential Bidders may submit written questions to the Procurement Manager as to the intent or clarity of this ITB until Close of Business referenced in II., A. Sequence of Events. All written questions must be addressed to the Procurement Manager as declared in Section I., C. Questions shall be clearly labeled and shall cite the Section(s) in the ITB or other document which form the basis of the question.

### **5. Response to Written Questions**

Written responses to written questions will be distributed as indicated in the sequence of events to all potential Bidders whose organization name appears on the procurement distribution list. An e-mail copy will be sent to all Bidder's that provide Acknowledgement of Receipt Forms before the deadline. Additional copies will be posted to: [www.ruidoso-nm.gov/purchasing](http://www.ruidoso-nm.gov/purchasing)

### **6. Submission of Bid**

ALL BIDS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE PROCUREMENT MANAGER OR DESIGNEE NO LATER THAN THE DATE AND TIME PROPOSED IN SECTION II., A. Sequence of Events. Bids received after this deadline will not be accepted. The date and time of receipt will be recorded on each Bid.

Bids must be addressed and delivered to the Procurement Manager at the address listed in Section I., C. Bids must be sealed and labeled on the outside of the package to clearly indicate that they are in response to ITB 2024-004B – River Channel Stabilization in Two Rivers Park. Bids submitted by facsimile, or other electronic means will not be accepted.

Bids will be opened publicly in the presence of one or more witnesses at the time and place designated in the Invitation for Bids. The amount of each bid and each bid item, if appropriate, and such other relevant information as may be specified, together with the name of each bidder, will be recorded, and the record and each bid will be considered public record upon opening, pursuant to §13-1-107 NMAC 1978.

### **7. Bid Evaluation**

The Village will perform the evaluation of Bids in regard to bidder responsibility and bid responsiveness to specifications. This process will take place as indicated in the sequence of events, depending upon the number of bids received.

## **8. Finalize Contractual Agreements**

Any contractual agreement(s) resulting from this ITB will be finalized with the most advantageous Bidder(s) as per the schedule in Section II. A., Sequence of Events or as soon thereafter as possible. This date is subject to change at the discretion of the Village of Ruidoso Purchasing Department. In the event the successful bidder fails to deliver required bonds or other documents prior to award or a Notice to Proceed being issued, the Village reserves the right to finalize a contractual agreement with the next lowest responsible/responsive bidder(s) without undertaking a new procurement process.

## **9. Contract Awards**

If applicable, the Village Procurement office will award as per the schedule in Section II. A., Sequence of Events or as soon as possible thereafter. This date is subject to change at the discretion of the Village of Ruidoso Purchasing Department. The contract(s) shall be awarded to the lowest responsible Bidder(s) submitting a responsive bid.

## **10. Protest Deadline**

Any protest by a Bidder must be timely and in conformance with NMSA 1978, § 13-1-172 and applicable procurement regulations. As a Protest Manager has been named in this Invitation to Bid, pursuant to NMSA 1978, § 13-1-172, ONLY protests delivered directly to the Protest Manager in writing and in a timely fashion will be considered to have been submitted properly and in accordance with statute, rule, and this Invitation to Bid. The 15 calendar day protest period shall begin on the day following the award of contracts and will end at 5:00 pm Mountain Standard Time/Daylight Time on the 15<sup>th</sup> day. Protests must be written and must include the name and address of the protestor and the request for Bid number. It must also contain a statement of the grounds for protest including appropriate supporting exhibits and it must specify the ruling requested from the party listed below.

The protest must be delivered to: Procurement Manager  
Village of Ruidoso Purchasing Department  
313 Cree Meadows Drive, Ruidoso, NM 88345

Protests received after the deadline will not be accepted.

# **C. GENERAL REQUIREMENTS**

## **1. Qualifications of Bidders**

- a) The bidder's qualification form (Appendix N ) will be used by the Village of Ruidoso to evaluate the responsiveness of the bidders in making a determination for awarding the contract. If in the sole discretion of the Village of Ruidoso, the lowest bidder is deemed unqualified, the Village of Ruidoso reserves the right to award the contract to the next lowest responsive bidder.
- b) The Village may make such investigations as necessary to determine the ability of the potential Bidder to adhere to the requirements specified within this ITB and reserves the right to reject the Bid of any potential Bidder who is determined not to be a Responsible Bidder or fails to submit a responsive bid as defined in NMSA 1978, § 13-1-82 and 13-

1-84. Bidders must have required licensing and/or permitting from the United States Government, the State of New Mexico, and local jurisdictions.

- c) Any Contractor bidding on a public works project shall be registered with the New Mexico Department of Workforce Solutions and shall provide proof of current registration. Except as otherwise provided in this subsection, in order to submit a bid valued at more than Sixty thousand dollars (\$60,000) in order to respond to a request for proposals or to be considered for award of any portion of a public works project greater than sixty thousand dollars (\$60,000) for a public works project that is subject to the Public Works Minimum Wage Act [13-4-10 NMSA 1978], the contractor, serving as a prime contractor or not, shall be registered with the labor and industrial division of the labor department. Bidding documents issued or released by a state agency or political subdivision of the state shall include a clear notification that each contractor, prime contractor or subcontractor is required to be registered pursuant to this subsection. The provisions of this section do not apply to vocational classes in public schools or public post-secondary educational institutions.
- d) The state or any political subdivision of the state shall not accept a bid on a public works project subject to the Public Works Minimum Wage Act from a prime contractor that does not provide proof of required registration for itself.

**2. Acceptance of Conditions Governing the Procurement**

Potential Bidders must indicate their acceptance of the Conditions Governing the Procurement section in the Letter of Transmittal Form (Appendix B).

**3. Incurring Cost**

Any cost incurred by the potential Bidder in preparation, transmittal, and/or presentation of any Bid or material submitted in response to this ITB shall be borne solely by the Bidder. Any cost incurred by the Bidder for set up and demonstration of the proposed equipment and/or system shall be borne solely by the Bidder.

**4. Prime Contractor Responsibility**

Any contractual agreement that may result from this ITB shall specify that the prime contractor is solely responsible for fulfillment of all requirements of the contractual agreement with the Village which may derive from this ITB. The Village will make payments to only the prime contractor.

**5. Subcontractors/Consent**

The use of subcontractors is allowed. The prime contractor shall be wholly responsible for the entire performance of the contractual agreement whether or not subcontractors are used. Additionally, the prime contractor must receive approval, in writing, from the Village awarding any resultant contract, before any subcontractor is used during the term of this agreement.

## 6. 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. The Village personnel will not merge, collate, or assemble Bid materials. Bid materials and all bids submitted shall be in a sealed envelope or package.

## 7. Bidder's Rights to Withdraw Bid

Bidders will be allowed to withdraw their bid at any time prior to the deadline for receipt of Bids. The Bidder must submit a written withdrawal request addressed to the Procurement Manager and signed by the Bidder's duly authorized representative.

The approval or denial of withdrawal requests received after the deadline for receipt of the Bids is governed by the applicable procurement regulations.

## 8. Bid Offer Firm

Responses to this ITB, including Bid prices for services, will be considered firm for sixty (60) days after the due date for receipt of Bids.

## 9. Disclosure of Bid Contents

A. Bids documents become public information at the time of opening. At that time, all Bids and documents pertaining to the Bids will be open to the public, except for any material that is clearly marked "proprietary" or "confidential". The Procurement Manager will not disclose or make public any pages of a Bid on which the potential Bidder has stamped or imprinted "proprietary" or "confidential" subject to the following requirements:

B. Proprietary or confidential data shall be readily separable from the Bid in order to facilitate public inspection of the non-confidential portion of the Bid.

C. Confidential data is restricted to:

1. confidential financial information concerning the Bidder's organization;
2. data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, NMSA 1978 § 57-3A-1 to 57-3A-7.
3. PLEASE NOTE: The price of products offered, or the cost of services proposed **shall not be designated** as proprietary or confidential information.

If a request is received for disclosure of data for which a Bidder has made a written request for confidentiality, the Village Purchasing Division or the Village shall examine the Bidder's request and make a written determination that specifies which portions of the Bid should be disclosed. Unless the Bidder takes legal action to prevent the disclosure, the Bid will be so disclosed. The Bid shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential data.

## **10. No Obligation**

This ITB in no manner obligates the Village or any of its departments to the use of any Bidder's services until a valid written contract is awarded and approved by appropriate authorities.

## **11. Termination**

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

## **12. Sufficient Appropriation**

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

## **13. Legal Review**

The Village requires that all Bidders agree to be bound by the General Requirements contained in this ITB. Any Bidder's concerns must be promptly submitted in writing to the attention of the Procurement Manager.

## **14. Governing Law**

This ITB and any agreement with a Bidder which may result from this procurement shall be governed by the laws of the State of New Mexico.

## **15. Basis for Bid**

Only information supplied, in writing, by the Village through the Procurement Manager or in this ITB should be used as the basis for the preparation of a bid.

## **16. Contract Terms and Conditions**

The contract between the Village and a contractor will follow the format specified by the Village and contain the terms and conditions set forth in the Sample Contract (Appendix L). The contents of this ITB, as revised and/or supplemented, and the successful Bid, will be incorporated into and become part of any resultant contract.

The Village discourages exceptions from the contract terms and conditions as set forth in the ITB Sample Contract. Such exceptions may cause a Bid to be rejected as nonresponsive when, in the sole judgment of the Village, the Bid appears to be conditioned on the exception, or correction of what is deemed to be a deficiency.

Should a Bidder object to any of the terms and conditions as set forth in the ITB Sample Contract (Appendix L) strongly enough to propose alternate terms and conditions in spite of the above, the Bidder must propose specific alternative language. The Village may or may not accept the alternative language. General references to the Bidder's terms and conditions or attempts at complete substitutions of the Sample Contract are not acceptable to the Village and will result in disqualification of the Bid.



Bidders must provide a brief discussion of the purpose and impact, if any, of each proposed change followed by the specific proposed alternate wording.

If a Bidder fails to propose any alternate terms and conditions during the procurement process (the ITB process prior to selection as successful Bidder), no proposed alternate terms and conditions will be considered later. Failure to propose alternate terms and conditions during the procurement process (the ITB process prior to selection as successful Bidder) is an explicit agreement by the Bidder that the contractual terms and conditions contained herein are accepted by the Bidder.

**17. Bidder’s Terms and Conditions**

Bidders must submit with the Bid a complete set of any additional terms and conditions they expect to have included in a contract negotiated with the Village.

**18. Contract Deviations**

Any additional terms and conditions, which may be the subject of negotiation (such terms and conditions having been proposed during the procurement process, that is, the ITB process prior to selection as a successful Bidder), will be discussed only between the Village and the Bidder selected and shall not be deemed an opportunity to amend the Bid.

**19. Right to Waive Minor Irregularities**

The Village reserves the right to waive minor irregularities. The Village also reserves the right to waive mandatory requirements provided that all of the otherwise responsive Bids failed to meet the same mandatory requirements and the failure to do so does not otherwise materially affect the procurement. This right is at the sole discretion of the Village.

**20. Change in Contractor Representatives**

The Village reserves the right to require a change in contractor representatives if the assigned representative(s) is (are) not, in the opinion of the Village, adequately meeting the needs of the Village.

**21. Notice of Penalties**

The Procurement Code, NMSA 1978, § 13-1-28 through 13-1-199, imposes civil, misdemeanor and felony criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kickbacks.

**22. Village Rights**

The Village reserves the right to accept or reject all bids, to award or reject any portion of a bid, and to determine the responsiveness of any bid and the responsibility of any bidder.

**23. Right to Publish**

Throughout the duration of this procurement process and contract term, Bidders and contractors must secure from the Village written approval prior to the release of any information that pertains to the potential work or activities covered by this procurement

and/or Village contracts deriving from this procurement. Failure to adhere to this requirement may result in disqualification of the Bid or removal from the contract.

**24. Ownership of Bids**

All documents submitted in response to the ITB shall become property of the Village of Ruidoso.

**25. Confidentiality**

Any confidential information provided to, or developed by, the contractor in the performance of the contract 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 Village.

The Contractor(s) agrees to protect the confidentiality of all confidential information and not to publish or disclose such information to any third party without the procuring Village's written permission.

**26. Warranties**

Materials, supplies or services furnished under this order shall be covered by the most favorable commercial warranties the Seller gives to any customer for the same or substantially similar materials, supplies or services. The rights and remedies provided herein shall extend to the Owner and are in addition to and do not limit any rights afforded to the Owner by any other clause of this order. Seller agrees not to disclaim warranties of fitness for a particular purpose or merchantability. Contractor shall warranty all parts and labor for a period of 12 months. The 12 month period shall start upon the Owner's acceptance of the work.

**27. Inspection and Acceptance**

The Owner will have final inspection and acceptance at destination. Work rejected due to nonconformance with bid specifications will be removed at vendor's expense and risk in a timely manner after notice of rejection.

**28. Wage Rates**

The successful Bidder will be required to abide by the New Mexico Department of Workforce Solutions wage decision. Attachment A.

**29. Labor and Material, and Performance Bond**

The successful Bidder, simultaneously with the execution of the contract, will be required to furnish a Labor and Material Bond and a Performance Bond in an amount of 100% each; said bonds shall be secured from a surety company satisfactory to the Village, and duly authorized to do business in the State of New Mexico and approved in Federal circular 570, as published by the United States Treasury. The forms of the Bonds the successful Bidder will be required to execute are include in the Contract documents.

**30. Licenses**

Bidder shall maintain in current status all Federal, State and Local Licenses and permits required. Offerors must have current (GF-98 or classifications acceptable to the Village)

New Mexico Contractor's Licenses (14.6.6.9 NMAC). Copies of Contractor's license must be included with bidding documents.

**31. Business License**

Successful Offeror(s) will comply and obtain a Village of Ruidoso business license within ten (10) days of successful BID Award.

**32. Commence Work**

The successful Offeror shall commence work only after the transmittal of a fully executed contract and/or after receiving other written notification to proceed from the Village of Ruidoso. The successful offeror will perform all services indicated in the Bid in compliance with the negotiated contract. The successful offeror must, in performance of work on this contract, agree to fully comply with all applicable federal, state and local laws, rules and regulations.

**33. Due Diligence**

Offerors shall have no claim against the Village for failure to obtain information made available by the Village which the Offeror could have remedied through the exercise of due diligence.

**34. 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.

**35. Use of Electronic Versions of this ITB**

This ITB is being made available by electronic means. In the event of conflict between a version of the ITB in the Bidder's possession and the version maintained by the Village, the Bidder acknowledges that the version maintained by the Village shall govern. Please refer to: <https://www.ruidoso-nm.gov/purchasing>

**D. ADDITIONAL INSTRUCTIONS TO BIDDERS**

**1. List of Construction Drawings:**

The construction drawings provide a general description and layout of the work that is required to be performed. These drawings are not intended to describe the means and methods of construction for the project. Various items of equipment needed for the project have been shown schematically and the contractor should refer to manufacturer's shop drawings for the installation details of respective equipment.

The plans, which are made a part of the Contract Documents, are described as follows:

**Civil Drawings by Riverbend Engineering, LLC, dated September 22, 2023**

1. Cover sheet, Location Map, & Index of Drawings
2. Staging & Access Plan

3. Site Plan
4. River Profile
5. Construction Details
6. Construction Details
7. Construction Details

Plan documents can be downloaded from the Village of Ruidoso's website at <https://www.ruidoso-nm.gov/purchasing> under Open Invitations to Bid (ITB) under ITB #2024-004B River Channel Stabilization in Two Rivers Park.

**Description and Scope of Work:**

The WORK is generally described as: excavation and backfill within the river to shape the channel, construction of grade control structures using large rocks & concrete grout, bank stabilization using large rocks and select backfill, trail construction, sewer line covering with riprap, willow plantings, and other related project work. All work shall conform to the project plans and specifications, and as directed by the project engineer.

**E. SPECIAL CONDITIONS**

**SC-1 Modifications to General Conditions**

The following modifications to the Instruction to Bidders and General Conditions of the Contract for Construction are hereby incorporated by this reference:

- 1.1 **General: Wherever the** word Architect appears in the contract documents it should be replaced by the word Engineer.
- 1.2 **Section 5 of General Conditions:** Any Subcontractor providing services on this project in an amount exceeding Ten Thousand Dollars (\$10,000) shall be identified on the prescribed form with the bid.
- 1.3 **Section 9 of General Conditions:** Progress payment requests shall be submitted to the Engineer on the 25<sup>th</sup> day of each month except weekends and holidays. The progress pay request shall be submitted on the prescribed form and shall cover the period from 25<sup>th</sup> day of the preceding month to the 24<sup>th</sup> day of the current month. The Engineer will review and recommend payment by the Village of Ruidoso within five (5) business days. The Village of Ruidoso will make payment by the 25<sup>th</sup> day of following month.

**SC-2 Additional Requirements for the Contract**

There are certain additional requirements specific to this contract described below:

- 2.1 **Employees to be Legal Residents of the USA:** The Immigration Reform and Control Act of 1986, Pub L 99-603 (8 USC 1324a) requires the employers to verify the eligibility of individuals for employment to preclude the unlawful hiring, or recruiting or referring for a fee, of aliens who are not authorized to work in the United States. This information will be used by employers as a record of their basis for determining eligibility of an employee to

work in the United States. The form will be kept by the employer and made available for inspection by authorized officials of the Department of Homeland Security, Department of Labor, and Office of Special Counsel for Immigration-Related Unfair Employment Practices. Submission of the information required is voluntary. However, an individual may not begin employment unless this form is completed, since employers are subject to civil or criminal penalties if they do not comply with the Immigration Reform and Control Act of 1986. More information regarding the employment requirements can be found at the following website: <http://www.uscis.gov/files/form/i-9.pdf>

**2.2 Technical Inquiries:** All technical inquiries on this project will be directed to:

**Mr. Chris Philips, P.E.**

Project Engineer  
Riverbend Engineering, LLC  
5929 Pauline Ave NW  
Albuquerque, NM 87107  
505.344.3315  
[cphilips@riverrestoration.com](mailto:cphilips@riverrestoration.com)

**2.3 Owner's Representative:** All administrative, account receivable and contractual inquiries will be directed to:

**Christella Armijo**

Water Resource Director  
Village of Ruidoso  
313 Cree Meadows Drive  
Ruidoso, New Mexico 88345  
Ph: 575-258-4343 x 2063  
[Christellaarmijo@ruidoso-nm.gov](mailto:Christellaarmijo@ruidoso-nm.gov)

### **SC-3 Contract Time**

The Work to be performed under this Contract shall commence not later than ten (10) consecutive calendar days after the date of written Notice to Proceed. The time allowed for construction shall commence on November 1<sup>st</sup>, 2023, or as soon thereafter that Notice to Proceed is issued and shall continue until April 30<sup>th</sup>, 2024. Substantial Completion shall be accomplished no later than April 20<sup>th</sup>, 2024. All work specified in the contract documents and construction drawings shall be completed within the contract time.

The Contractor acknowledges that this time period includes the months of winter, during which access to the work site may be blocked by snow and the work limited by frozen ground conditions. The Contractor agrees to work continuously on this project when Access Control Fencing has been erected. Should the Contractor stop work for more than 2 weeks, or temporarily shut down due to winter conditions, the Access Control Fencing shall be temporarily curtailed, the project site shall be tidied up from a public safety perspective, such that the wandering public shall not be needlessly endangered.

A working day is defined as any day when, in the judgment of the project manager, soil and weather conditions are such as would permit work to be performed on the project for six (6) hours or over, unless other conditions beyond Contractor's control prevent such operations. If conditions are such as to stop work in less than six (6) hours, the day will not be counted as a working day. Saturdays, Sundays, and official holidays as established by the Village of Ruidoso will not be charged as working days.

The contract time shall begin on the date noted on the "Notice to Proceed". The project manager will be the judge of the number of working days to be charged under the contract. No allowance will be made for delay or suspension of work due to fault of the Contractor.

In case of dispute the Contractor shall, within ten (10) calendar days of the day(s) in questions, request in writing a judgment of the current working day count and the day(s) in questions. The project manager shall respond with a written notice within ten (10) calendar days as to whether or not the day(s) in question will be counted as working days. Any objection by the Contractor to the number of working days charged shall be made in writing and shall set forth his objections and reasons therefore.

#### **SC-4 Liquidated Damages**

The completion of the work covered by this contract within the time specified is essential in order to minimize the impact to the public. Therefore, liquidated damages in the amount of One Thousand (\$1,000.00) per day will be withheld from payments due to the Contractor for each working day necessary to physically complete the contract after the expiration of the specified contract time, plus any authorized time extensions. If the project is unduly due to lack of vigorous prosecution of the part of the Contractor, such lack shall be considered grounds for termination of the contract with the Village of Ruidoso completing the work, under provisions of the General Conditions.

#### **SC-5 Contract Precedence**

The following order of precedence (highest to lowest) shall be followed for this project in case of conflict between the documents:

1. Contract and Bidding Documents
  - a. Bid Item Descriptions
  - b. Bid Lot
  - c. Special Conditions
  - d. Referenced Specifications
  - e. Construction Drawings
2. General Conditions

#### **SC-6 Retainage**

Due to changes in New Mexico State Law (2001, Chapter 68, House Bill 320, as amended, otherwise known as the Retainage Act), The Village of Ruidoso will not retain any portion of pay estimates for this project. The Village of Ruidoso will pay for completed work only as determined by the Engineer.

## **SC-7 Payments**

The following provisions are included in this contract:

1. Within seven (7) days from the date of the pre-construction conference the contractor will provide a schedule of values and a tentative pay request schedule based on the agreed upon construction schedule notwithstanding circumstances beyond the reasonable control of the contractor.
2. Contractor shall submit monthly pay requests on the form provided in these documents. If the pay request is complete and complies with the requirements of this contract, as verified by the engineer, the Village of Ruidoso shall process the payment request within ten (10) working days from the date of receipt of an acceptable pay request. Contractor will be paid within thirty (30) calendar days from the date of approval of the pay estimate by the Village of Ruidoso.
3. If the Village of Ruidoso receives an improperly completed pay request, the contractor shall be notified within seven (7) working days from the date of receipt of the pay request specifying the deficiencies in the pay request. The contractor may submit a revised pay request with all the deficiencies appropriately addressed. If the revised pay request is acceptable, the Village of Ruidoso will process the payment as specified hereinbefore.
4. All stored materials for which the contractor has received payments become the property of the Village of Ruidoso. But, the contractor and subcontractor(s) continue to have sole responsibility for the care and protection of the materials.
5. Upon receipt of payment from the Village of Ruidoso, contractor shall make payment to its subcontractors, suppliers and material men within seven (7) working days of receiving such payment.

Ten (10) days after certification of completion, any amount remaining due the contractor under the terms of the contract shall be paid upon the presentation of the following:

1. A properly executed final pay request
2. A release, if required, of all claims and claims of lien against the Village of Ruidoso arising under and by virtue of the contract other than such claims of the contractor, if any, as may be specifically excepted by the contractor or subcontractor from the operation of the release in stated amount to be set forth in the release.

## **SC-8 Materials Testing**

The CONTRACTOR shall pay for all QC testing of materials. No separate measurement and payment for material testing has been included in the bid proposal, the cost for such testing if required shall be included in the contractors bid price for the related item of work. The number, type, and location of tests shall be determined by the Engineer. The Village of Ruidoso reserves the right to supplement tests by the approved testing laboratory with their own test for QA checking of compliance, in which case the Contractor shall furnish a laborer, if required, for assistance.

Retests: Any required retesting due to failed tests shall be at the expense of the Contractor. These costs will be deducted by the Village of Ruidoso, from invoices submitted by the contractor for work completed under this contract. The Contractor is required to use the Village of Ruidoso TRD Location Code 26112 for GRT payment.

## **SC-9 Payment for Non-Established Contract Items**

Payment for non-established contract items and changes that become necessary during construction will be made to the Contractor in accordance with one of the following methods:

- Contract Unit Prices
- Mutually agreed upon unit and lump sum prices
- Force Account Basis

Work to be done by Force Account shall be compensated as follows:

**1. Labor:** For all labor and foremen (not including superintendents, office personnel, etc.) in direct charge of the specific operations, the contractor will be paid in accordance with the wage rate decision as outlined in the contract OR the actual hourly rate as delineated in the certified payrolls, whichever is higher. All wage rates shall be determined and mutually agreed upon prior to the commencement of the work. Labor cost computations shall include the actual reasonable costs for labor burden. In addition allowance for subsistence and travel will be included as appropriate. Labor burden shall include such items as portion of health insurance premiums, other customary employee benefits, and employment taxes under FICA and FUTA for the force account work. Force account work will also include the costs associated with insurances and bonds paid by the contractor.

In lieu of providing actual costs and calculations of labor burden the Contractor may use a rate that includes 35% mark-up for labor burden, bonds and insurance over actual hourly raw labor rates.

**2. Materials:** For materials accepted by the Engineer and incorporated into the work, the Contractor shall be paid the actual cost of such materials delivered to the site, including transportation charges (if not already included in original cost).

**3. Equipment:** For machinery/heavy duty vehicles (dump trucks, excavators, tractors, rollers etc.), special equipment or tools (other than hand tools such as mechanics/carpenters/electrician tools, both manual and power) that will be required for the work and the use of which has been approved by the Engineer, the Contractor shall be paid the rental rates prevalent in the areas. Any transportation costs for drop off, or pick-up of the rental equipment may be included in addition to the rental costs.

**4. Light Duty Vehicles (Pickup Trucks, Vans, SUVs):** For light duty vehicles (other than those used by superintendents, office personnel, etc.) that will be required for the work and the use of which has been approved by the Engineer, the Contractor shall be paid at the rate of \$0.75 per mile.

**5. The “Not to Exceed” allowance for General Administration, overhead, and profit combined shall be based on the following schedule:**



	\$1000 & Less	Over \$1000
Contractor for work performed by own forces	25%	20%
Contractor for work performed by subcontractor	16%	12%

The above percent will be added to the sum of the project labor cost, materials cost, and equipment costs to determine the total cost of the change.

### **SC-10 Open Trenches/Driveway Access**

No trenches longer than ten (10) feet, except bore pits, will be left open overnight. In these situations, proper flashing lights, barricades, channelization devices, signs, and all other necessary nighttime and daytime traffic and pedestrian control devices will be utilized at all times from before dusk to after dawn, (flashing lights and barricades on a maximum of ten (10) feet centers shall be placed around the entire perimeter of the trench or excavation, and the entire perimeter shall be completely and securely roped off). Access shall always be provided to all driveways, etc., at night and on weekends and holidays. In addition, if work is to be suspended for three (3) or more days, absolutely no trenches or bore pits will be left open and all construction areas shall be completely cleaned up and set up for smooth and complete traffic and pedestrian flows. Proper traffic and pedestrian control devices shall be utilized continuously during construction, overnight, on weekends, and during holidays.

### **SC-11 Signage**

The Contractor shall minimize the removal or damage to any existing signage within or adjacent to existing public roads and sidewalks. The contractor shall submit a traffic control signage plan to the Village for review and approval. Any removed/damaged signage shall be replaced to existing condition with like material. All replacement items shall be approved by the engineer prior to installation. The installation of replacement items shall be to the engineer's satisfaction. Any replacement of damaged or removed items will be at the Contractor's expense.

### **SC-12 Use of Brand Name or Equal Specifications**

Where the "brand name or equal" is included in the specifications, the use of the brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition. Alternative brands or products may be accepted provided detailed drawings, specifications and performance records are submitted for approval prior to incorporating it into the project.

### **SC-14 Unforeseen or Anticipated Additional Work**

The scope of work for this project shall be as provided within the contract documents and plans, plus, unforeseen or anticipated additional work incorporating the same specifications that may be identified by the Village during the contract period. The successful contractor may extend the

awarded unit prices to other such additional work, which may be incorporated into the project scope as change order. The total amount of all change orders issued under the terms of the contract shall not exceed 50% of the initial contract amount.

### **SC-15 Landscaping and Native Vegetation**

The Contractor shall minimize the removal or damage to any existing native vegetation within or adjacent to the project work areas. Any removal of landscaping or native vegetation will have to be approved by the Project Manager prior to removal. Any removed/ damaged landscaping or improvements shall be replaced to existing condition with like material. The Village Project Manager shall approve all replacement items prior to installation. The installation of replacement items shall be to the Project Manager's satisfaction. Any replacement of damaged or removed items will be at the Contractor's expense.

### **SC-16 Referenced Specifications**

The following documents, as applicable, are hereby incorporated into these Contract Documents by reference. If any referenced specification is in conflict with the New Mexico State Highway and Transportation Department Standard Specifications for Highway and Bridge Construction – 2014 Edition, the NMDOT specification shall govern.

- New Mexico State Highway and Transportation Department Standard Specifications for Highway and Bridge Construction – 2014 Edition and Supplemental Specifications. These specification can be download at:  
[http://dot.state.nm.us/content/dam/nmdot/Plans\\_Specs\\_Estimates/2014\\_Specs\\_For\\_Highway\\_And\\_Bridge\\_Construction.pdf](http://dot.state.nm.us/content/dam/nmdot/Plans_Specs_Estimates/2014_Specs_For_Highway_And_Bridge_Construction.pdf)
- New Mexico Standard Specifications for Public Works Construction – 2007 Edition or latest edition
- Environment Protection Agency National Pollutant Discharge Elimination Act – Latest Edition
- Manual on Uniform Traffic Control Devices – 2007 Edition or latest edition
- American Society for Testing and Materials – Latest edition
- AASHTO Standard Test Methods – Latest edition
- International Building Code – 2003 Edition or latest edition
- OSHA Construction Industry Standards and Safety Requirements – Latest edition
- New Mexico Underground Property Damage Law
- Unified Facilities Guide Specifications – Latest Edition
- Subcontractors Fair Practices Act

## **SC-17 Environmental Mitigation Measures**

The Village of Ruidoso has obtained authorization for this project from the Army Corp of Engineers (ACOE) and the New Mexico Environment Department (NMED). Copies of these permits are available from the Village of Ruidoso. All contractors, subcontractors and sub-subcontractors shall receive copies of these permits and become familiar with their contents. The Contractor is advised that representatives from the ACOE and NMED may perform periodic inspections during construction. In addition to the requirements of these permits, the Contractor is also required to implement the following environmental mitigation measures during construction:

- i. Every effort shall be made by the contractor and subcontractors to minimize the potential for increasing river water turbidity upstream and downstream of the project site. This shall include but is not limited to phasing of construction activities and timely implementation of temporary and permanent stabilization practices as outlined in the Project SWPPP.
- ii. Construction equipment stored on-site shall be properly maintained and stored to protect against oil and fuel spills that may contaminate soil, surface and groundwater.
- iii. Should soils or groundwater contaminated with any hazardous materials be encountered during excavations, proper procedures will be followed with respect to worker health and safety and the soils or groundwater will be properly handled and disposed in accordance with local and state regulations.
- iv. Construction shall take place during normal business hours and will not occur between 6:00 PM and 7:00 AM, so as not to disturb residents. No work will be allowed on Sundays.
- v. Machine noise must not exceed 50 dB(A), or 10 dB(A) above the ambient noise level whichever is higher, when measured at the residential property line.
- vi. In the event that archeological deposits, including any Native American pottery, stone tools, bones, or human remains, are uncovered, the contractor shall stop all work immediately in the vicinity of the discovery and take reasonable measures to avoid or minimize harm to the finds. All archeological findings will be secured and access to the sensitive area restricted. The contractor shall inform the Village of Ruidoso project manager immediately regarding the discovery of such culturally significant find.

## **SC-18 Stormwater Pollution Prevention Plan Compliance**

- A. The contractor staging area identified on the construction drawings is smaller than 0.50 acres. If the contractor stays within that limit of disturbance, no SWPP Plan will be required. If the contractor exceeds the 0.50 acre threshold of upland area of disturbance at any location, a SWPP Plan will need to be developed, approved by the Village, submitted to the USEPA, and implemented & maintained at the project site. Compensation for preparation and implementation of a SWPP Plan will be paid for as part of the General Conditions bid item.



### **III. RESPONSE CONTENT, FORMAT, AND ORGANIZATION**

#### **A. NUMBER OF RESPONSES**

Bidders shall submit only one Bid in response to this ITB.

#### **B. NUMBER OF ORIGINALS/COPIES**

Bidder shall submit the following:

1. One (1) ORIGINAL, HARD COPY, and one (1) USB electronic copy of the Bid. ORIGINAL and any COPIES required shall be in separate binders or otherwise bound or secured separately. **The electronic version/copy can NOT be emailed.**

Bids containing confidential information **must** be submitted as two separate documents plainly marked as “unredacted” and “redacted”:

- **Unredacted** version for evaluation purposes
  - **Redacted** version (information blacked out and not omitted or removed) for the public file
2. The original, hard copy and electronic copy information **must** be identical. In the event of a conflict between versions of the submitted Bid, the Original hard copy shall govern.
  3. Bid must be clearly labeled and numbered and indexed as outlined in **Section III. C. Bid Format**. All bids must be clearly labeled and submitted in a sealed envelope, package, or box bearing the following information:
    - a) Bidder’s name and address
    - b) Bid number and title
    - c) Date and time of Bid opening

Any Bid that does not adhere to the requirements of this Section and **Section III Response Format, Content, and Organization**, may be deemed non-responsive and rejected on that basis.

#### **C. BID FORMAT, CONTENT, AND ORGANIZATION**

All Bids must be submitted as follows:

1. Hard copies must be typewritten on standard 8 ½ x 11-inch paper (larger paper is permissible for charts, spreadsheets, etc.) and placed within binders or otherwise bound or secured on the left hand side, with tabs delineating each section.
2. Direct reference to pre-prepared or promotional material may be used if referenced and clearly marked. Promotional material should be minimal.

3. The Bid must be organized and indexed in the following format and must contain, at a minimum, all listed items in the sequence indicated: (See Exhibit A)
  - a) Signed Cover Page of this ITB
  - b) Signed Letter of Transmittal Form (Appendix B)
  - c) Completed Bid Schedule Form (Appendix C)
  - d) Other Supporting Material (if applicable)
  - e) Options, Exceptions, or Variations (Appendix D)
  - f) Affidavit of Non-Collusion (Appendix E)
  - g) New Mexico Preference Certificate (Appendix F)
  - h) Compliance with Regulatory Agencies (Appendix G)
  - i) Certification Regarding Debarment, Suspension, and Other Responsibility Matters (Appendix H)
  - j) Campaign Contribution Disclosure Form (Appendix I)
  - k) Executed Bid Bond (Appendix K)
  - l) Request for Taxpayer Information and Certification (Appendix M)
  - m) Bidder Qualification Statement (Appendix N)
  - n) List of Subcontractors (Appendix O)

Within each section of the Bid, Bidders should address the items in the order indicated above. All Bid Forms provided in this ITB must be thoroughly completed and included in the appropriate section of the Bid. Failure to include all required forms may result in the bid being deemed non-responsive.

The Bid Summary may be included to provide an overview of the Bid; however, this material will not be used in the evaluation process unless specifically referenced from other portions of the Bid.

#### **IV. SPECIFICATIONS**

##### **A. Signed Cover Page of ITB**

Bidder must complete and sign the Cover Page for Bid to be valid

##### **B. Letter of Transmittal Form (Appendix B)**

Bid must be accompanied by the Letter of Transmittal Form (Appendix B) which must be completed and signed by an individual person authorized to obligate the company.

##### **C. Cost Response Form (Appendix C)**

Bidders must complete the Cost Response Form. Cost will be measured by the total of the unit costs on the Cost Response Form plus any additional charges. Additional charges listed must be justified and evidence of need documented in the Bid.

##### **D. Other Supporting Documents**

Bidders may submit any other supporting documents that they feel are necessary as part of their bid.

**E. Options, Exceptions, or Variations (Appendix D)**

Bidder must complete and sign the Options, Exceptions, or Variations Form. Select the applicable option and provide details indicated on form if necessary.

**F. Affidavit of Non-Collusion (Appendix E)**

Bid must be accompanied by the Affidavit of Non-Collusion (Appendix E) which must be completed and signed to certify the Contractor has not, either directly or indirectly entered into an action in restraint of free competitive bidding in connection with this offer.

**G. New Mexico Preference Certificate (Appendix F)**

To ensure adequate consideration and application of NMSA 1978, § 13-1-21 (as amended), Bidders must include a copy of their current preference certificate with their Bid. Certificates for preferences must be obtained through the New Mexico Department of Taxation & Revenue.

<http://www.tax.newmexico.gov/Businesses/in-state-veteran-preference-certification.aspx>.

**A. New Mexico Resident Business or Native American Resident Business Preference**

A copy of the current certification must accompany your Bid.

**B. New Mexico Resident Veterans Business or Native American Resident Veteran Business Preference**

A copy of the current certification must accompany your Bid.

**The Village shall not award a business both a resident business preference a resident veteran business preference.**

**The New Mexico Preferences shall not apply when the expenditures for this ITB includes federal funds.**

If the Bidder has provided a copy of their current, valid NM Resident Business or Resident Veteran Business Certificate preference will be given as follows:

1. For a Resident Business or Native American Resident Business, bid will be considered at 8% less than the bid price.
2. For a Resident Veteran Business or Native American Resident Veteran Business, bid will be considered at 10% less than bid price.

**H. Compliance with Regulatory Agencies (Appendix G)**

Bid must be accompanied by the Compliance with Regulatory Agencies Form which must be completed and signed to certify the Contractor is in compliance.

**I. Certification Regarding Debarment, Suspension, and Other Responsibility Matters (Appendix H)**

1. Any prospective Contractor and any of its principals who enter into a contract greater than sixty thousand dollars (\$60,000.00) with the Village for professional services, tangible personal property, services or construction agrees to disclose in their bid whether the Contractor, or any principal of the Contractor's company:

- a. is presently debarred, suspended, proposed for debarment, or declared ineligible for award of contract by any federal entity, state New Mexico or local public body;
  - b. has within a three-year period preceding this offer, been convicted in a criminal matter or had a civil judgment rendered against them for:
    - i. the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) contract or subcontract;
    - ii. violation of Federal or state antitrust statutes related to the submission of offers; or the commission in any federal or state jurisdiction of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violation of Federal criminal tax law, or receiving stolen property;
  - c. is presently indicted for, or otherwise criminally or civilly charged by any (federal, state or local) government entity with the commission of any of the offenses enumerated in paragraph A of this disclosure;
  - d. has, preceding this offer, been notified of any delinquent Federal or state taxes in an amount that exceeds \$3,000.00 of which the liability remains unsatisfied. Taxes are considered delinquent if the following criteria apply:
    - i. The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge of the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.
    - ii. The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.
  - e. have within a three-year period preceding this offer, had one or more contracts terminated for default by any federal or state of New Mexico or local public body.)
2. Principal, for the purpose of this disclosure, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity or related entities.
  3. The Contractor shall provide immediate written notice to the Village Purchasing Agent or other party to this Agreement if, at any time during the term of this Agreement, the Contractor learns that the Contractor's disclosure was at any time erroneous or became erroneous by reason of changed circumstances.
  4. A disclosure that any of the items in this requirement exist will not necessarily result in termination of this Agreement. However, the disclosure will be considered in the determination of the Contractor's responsibility and ability to perform under this Agreement. Failure of the Contractor to furnish a disclosure or provide additional information as requested will render the Bidder nonresponsive.
  5. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the disclosure required by this document. The knowledge and information of a Contractor is not required to exceed that which is the normally possessed by a prudent person in the ordinary course of business dealings.



6. The disclosure requirement provided is a material representation of fact upon which reliance was placed when making an award and is a continuing material representation of the facts during the term of this Agreement. If during the performance of the contract, the Contractor is indicted for or otherwise criminally or civilly charged by any government entity (federal, state or local) with commission of any offenses named in this document the Contractor must provide immediate written notice to the Village Purchasing Agent or other party to this Agreement. If it is later determined that the Contractor knowingly rendered an erroneous disclosure, in addition to other remedies available to the Governing Body, the Village Manager may terminate the involved contract for cause. Still further the Village Purchasing Agent or the Village Finance Director may suspend or debar the Contractor from eligibility for future solicitations until such time as the matter is resolved to the satisfaction of the Village Purchasing Agent or Village Finance Director.

**J. Campaign Contribution Disclosure Form (Appendix I)**

Bidder must complete, sign, and return the Campaign Contribution Disclosure Form as part of their Bid. This requirement applies regardless of whether a covered contribution was made or not made for the positions of Mayor and Village Councilors or other identified official. Failure to complete and return the signed unaltered form **will** result in disqualification.

**K. Bid Bond (Appendix K)**

A bid bond in the amount of five percent (5%) of the total bid price is required to be submitted with the bid. Such bond shall be provided by a surety company authorized to do business in New Mexico, or otherwise supplied in a form satisfactory to the Village of Ruidoso (shall be approved by the Village prior to bid opening if to be provided by other than an authorized surety company).

**L. Request for Taxpayer Information and Certification, W-9, and Vendor Form (Appendix M)**

Bidder shall submit a W-9 Request for Taxpayer Information form and a completed vendor form along with bid.

**M. Bidder Qualification (Appendix N)**

The bidder's qualification form will be used by the Village of Ruidoso to evaluate the responsiveness of the bidders in making a determination for awarding the contract. If in the sole discretion of the Village of Ruidoso, the lowest bidder is deemed unqualified, the Village of Ruidoso reserves the right to award the contract to the next lowest responsive bidder.

**N. List of Subcontractors (Appendix O)**

1. The Bidder is required to submit a Subcontractor listing at the time of bid, in which the Subcontractors are required to be registered with NMDWS (per state statute 13-4-13.1). The Bidder shall list the Subcontractors he proposes to use for all trades or items on the Subcontractors Listing Form attached to the Bid Documents. The listing of subcontractors shall include name and location of business and shall be in accordance with the State of New Mexico, "Subcontractors Fair Practices Act". The bidder shall

list all subcontractors for trades listed on the form that fall above the listing threshold for this project. The bidder shall use the firm listed, or themselves if "General Contractor" has been listed, unless a request for a change or substitution is approved by the Village for any reason as outline herein.

2. The Village shall consider any request for a change in the listed firms if the Bidder can furnish evidence of being able to perform the work in a manner more satisfactory and beneficial to both the Village of Ruidoso and the Bidder by not using the listed firm, in accordance with the "Subcontractors Fair Practices Act". Satisfactory reasons for a substitution may include the inability to bond, or lack of evidence of being able to furnish acceptable materials on schedule. Also, if the Bidder has made a legitimate error in listing a low Subcontractor, a request for substitution, made after the Bid Opening will be considered with the Village's approval. The proof of error must be conclusive based upon the approval of said evidence by the listed subcontractor or material supplier, and/or any other confirmation satisfactory to the Village.
3. The Bidder shall not list itself as the supplier or the Subcontractor for any trade unless he has previously performed work of this type or can prove to the Village's satisfaction that he actually has or will obtain fully adequate facilities and plans to perform the work with his own forces.
4. Omission or non-compliance with the intent of the Subcontractor Listing Form will be grounds for considering a Bid as non-responsive.
5. In addition to the firm listed for a trade or item, the Bidder may list it as "Non-Competitive", if less than three (3) submissions were received by the Bidder prior to the Bid Opening.
6. Subcontractors or other Bidders who feel that the apparent low Bidder has not complied with the intent of these listing requirements must notify the Village within twenty-four (24) hours after the Bid Opening, of their intent to file an appeal and submit their reasons in writing forty-eight (48) hours after Bid Opening. All decisions of the Village will be final.
7. The apparent low Bidder's Subcontractors Listing Form will be read following the Bid Opening.
8. The listing threshold amount is: Ten thousand Dollars (\$10,000.00).
9. The Bidder will, upon request, be required to establish to the satisfaction of the Engineer and the Village of Ruidoso the reliability and responsibility of the proposed Subcontractors to furnish and perform the Work described in the Sections of the Specifications pertaining to the proposed Subcontractors respective trades.
10. Prior to the award of the Contract, the Village will notify the Bidder in writing if either the Village of Ruidoso or the Engineer, after due investigation, has reasonable and substantial objection to any person or organization on such list, and refuses in writing to accept such person or organization, the Bidder may, at his option:
  - a. Withdraw his bid.
  - b. Submit an acceptable substitute Subcontractor with no increase in his bid price. In the event of withdrawal under this Subparagraph, Bid Security will not be forfeited.

## **V. EVALUATION PROCESS AND AWARD**

1. No bid may be amended after opening.
2. Bids will be reviewed for compliance with, and responsiveness to, all requirements and specifications stated within this ITB. Bids deemed non-responsive will be eliminated from further consideration.
3. The Procurement Manager may contact the Bidder for clarification of the response if necessary. The Village reserves the right to waive technical irregularities in the form of the bid of the low bidder which do not alter the price, quality or quantity of the services offered pursuant to §13-1-132, NMSA 1978.
4. The Village may use other sources to determine bidder responsibility as specified in this ITB, section II. C. 18.
5. Award will be made to the responsible bidder submitting the lowest responsive bid.

**ITB #2024-004B**  
**River Channel Stabilization in Two Rivers Park**

**APPENDIX A - ACKNOWLEDGEMENT OF RECEIPT FORM**

In acknowledgement of receipt of this Invitation to Bid the undersigned agrees that s/he has received a complete copy, beginning with the title page and table of contents, and ending with Appendix L.

The acknowledgement of receipt should be signed and returned to the Procurement Manager by the date listed in Section II. A. Sequence of Events. Only potential Bidders who elect to return this form completed with the indicated intention of submitting a Bid will receive copies of all Bidder written questions and the written responses to those questions as well as ITB addenda, if any are issued.

FIRM: \_\_\_\_\_

REPRESENTED BY: \_\_\_\_\_

TITLE: \_\_\_\_\_ PHONE NO.: \_\_\_\_\_

E-MAIL: \_\_\_\_\_ FAX NO.: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP CODE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

This name and address will be used for all correspondence related to the Request for Bid.

**Firm does/does not (circle one) intend to respond to this Request for Bid.**

**Return completed form to:**

Procurement Manager  
313 Cree Meadows Drive, Ruidoso, NM 88345  
Email: [purchasing@ruidoso-nm.gov](mailto:purchasing@ruidoso-nm.gov)  
Phone: (575) 258-4343, Ext. 1081

**ITB #2024-004B**  
**River Channel Stabilization in Two Rivers Park**

**APPENDIX B - LETTER OF TRANSMITTAL FORM**

**ITB#: 2024-004B River Channel Stabilization in Two Rivers Park**

**Bidder Name:** \_\_\_\_\_ **FED ID#:** \_\_\_\_\_

Items #1 to #6 EACH MUST BE COMPLETED IN FULL Failure to respond to all seven items may result in the disqualification of the bid.

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

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

2. For the person authorized by the organization to contractually obligate on behalf of this Bid:

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

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

E-Mail Address: \_\_\_\_\_ Telephone Number: \_\_\_\_\_

3. For the person authorized by the organization to negotiate on behalf of this Bid:

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

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

E-Mail Address: \_\_\_\_\_ Telephone Number: \_\_\_\_\_

4. For the person authorized by the organization to clarify/respond to queries regarding this Bid:

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

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

E-Mail Address: \_\_\_\_\_ Telephone Number: \_\_\_\_\_

5. Please describe any relationship with any entity which will be used in the performance of any resultant contract (if any.)

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

**ITB #2024-004B**  
**River Channel Stabilization in Two Rivers Park**

6. \_\_\_ On behalf of the submitting organization named in item #1, above, I accept the Conditions Governing the Procurement.

\_\_\_\_\_  
Authorized Signature

(Must be signed by the person identified in item #2, above.)

\_\_\_\_\_  
Date

**APPENDIX C – BID SCHEDULE**

Bidder shall compete and return this form.

---

Bidder's Name: _____
Address: _____
City: _____
State _____ Zip Code _____
Email: _____
Telephone: _____
Federal Tax ID #: _____
New Mexico Tax ID #: _____
CID License # _____

**BID NUMBER: ITB-2024-004B**

**PROJECT NAME:**  
River Channel Stabilization in Two Rivers Park

**LOCATION:**  
Ruidoso, New Mexico

**This Bid is submitted to the Owner:**  
Village of Ruidoso  
313 Cree Meadows Drive  
Ruidoso, New Mexico 88345

- A. The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an agreement with the Owner in the form included in the Bidding Documents to perform and furnish all Work as specified or indicated in the Bidding Documents for the Contract Price and within the Contract Time indicated in this Bid and in accordance with the other terms and conditions of the Contract Documents.
  
- B. The Bidder accepts all of the terms and conditions of the Invitation for Bid and Instructions to Bidders, including without limitation those dealing with the disposition of bid security and other Bidding Documents. This Bid will remain valid for a period of sixty (60) days from the date of the Bid opening. The Bidder shall sign and submit the Agreement between Owner and Contractor (hereinafter called Agreement) with the Bonds and other documents required by the Bidding Requirements within ten (10) days after the date of the Contract Award.
  
- C. In submitting this Bid, the Bidder represents, as more fully set forth in the Agreement, that:
  - 1. Bidder has examined copies of all the Bidding Documents and of the following Addenda, if applicable (receipt of all of which is hereby acknowledged):

**ITB #2024-004B**  
**River Channel Stabilization in Two Rivers Park**

Addendum # \_\_\_\_\_ Dated: \_\_\_\_\_ Addendum # \_\_\_\_\_ Dated: \_\_\_\_\_

Addendum # \_\_\_\_\_ Dated: \_\_\_\_\_ Addendum # \_\_\_\_\_ Dated: \_\_\_\_\_

2. Bidder has familiarized himself with the nature and extent of the Bidding Documents, Work, site, locality, and all local conditions, laws, and regulations that in any manner may affect cost, progress, performance, or furnishing of the Work;
3. Bidder has carefully studied all reports and drawings of subsurface conditions which are identified in the Additional Information to Bidders (Section II D) and accepts the determination set forth in the Additional Information to Bidders (Section II D) of the extent of the technical data contained in such reports and drawings upon which the Bidder is entitled to rely;
4. Bidder has correlated the results of all such observations, examinations, investigations, explorations, tests, reports, and studies with the terms and conditions of the Bidding Documents;
5. Bidder has given the Engineer written notice of all conflicts, errors, and discrepancies that he has discovered in the Bidding Documents, and the written resolution thereof by the Design Professional is acceptable to the Bidder;
6. This Bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm, or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization, or corporation; the Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid; the Bidder has not solicited or induced any person, firm, or corporation to refrain from bidding; and the Bidder has not sought by collusion to obtain for himself any advantage over any other Bidder or over the Owner;
7. Bidder acknowledges that he has attended any mandatory pre-bid conference scheduled by the Owner pertaining to this project;
8. Bidder agrees to show clearly on the envelope in which the Bid is submitted the Project Name and Number and,
9. Bidder will complete the Work for the following price(s) excluding applicable New Mexico Gross Receipts Taxes
10. Bids shall be presented by the bidder and evaluated by the Owner, on the basis of a sum of all bid lots. Unit prices used in computation of the amount of the respective bid item shall be included in the bid tabulation form provided herein. A bid must be submitted on all bid items and alternates. For a description of each item refer to the Additional Instruction to Bidders.



**ITB #2024-004B**  
**River Channel Stabilization in Two Rivers Park**

**SUM OF ALL BID LOTS** (typewritten or legibly printed in ink – Write in the space below the sum of all bid lots, in words and in numerals within parenthesis). This amount shall be considered the lump sum base bid. Do not include gross receipts tax.

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---

---

( \$ \_\_\_\_\_ )

**BID SCHEDULE** – Complete the bid schedule form below. The total of all bid lots must match the lump sum base bid above.

**ITB #2024-004B**  
**River Channel Stabilization in Two Rivers Park**

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

**BID SCHEDULE**

	<b>Item Description</b>	<b>Qty</b>	<b>Units</b>	<b>Unit Price</b>	<b>Total Cost</b>
1	Contractor mobilization: traffic control & work area exclusion fencing, bonds & insurance, porta-potty, postings	1	LS		
2	Construction signage, traffic control plan, access control fencing, etc.	1	LS		
3	Construction layout staking, materials testing, as built drawings, etc.	1	LS		
4	Minor demolition, relocate large rocks per Engineer's direction, remove woody debris and several small diameter trees, rough channel shaping	1	LS		
5	Water management during construction, including grouting operations	1	LS		
6	3-4 ft boulders, furnish & deliver	220	EA		
7	3-4 ft large flat rocks, furnish & deliver	48	EA		
8	Class C riprap, furnish & install	60	CY		
9	Gravel base course, Type 1, infill for riprap, furnish & install	25	CY		
10	Construct curved rock weir, grouted type	3	LS		
11	Construct rock deflector	2	LS		
12	Boulder placements: stacked rock walls, bank protection, floodplain sills, etc.	100	EA		
13	Concrete grout for curved rock weirs and riverside rocks where indicated, furnish & install	18	CY		
14	Construct rock sill, ungrouted	1	LS		
15	Construct small trail: grading, cuts & fills, subgrade prep, gravel base course: furnish, placement & compaction, rock steps, etc.	820	SF		
16	Coarse gravel & sand fill behind riverside rock walls and trail, furnish & install, compact	60	CY		
17	Willow transplant bundles: cut, soak, prep, install, including browse guard	35	EA		
18	Seed & mulch all disturbed soil areas, including crimped straw mulch & native grass seed mix	0.8	AC		
19	Site cleanup, demobilization	1	LS		
	Subtotal				
	NMGRT (8.1825%)				
	Total				

**ITB #2024-004B**  
**River Channel Stabilization in Two Rivers Park**

1. The Bidder agrees that:

- A. The Work to be performed under this Contract shall be commenced not later than ten (10) consecutive calendar days after the date of written Notice to Proceed. The time allowed for construction shall commence on November 1<sup>st</sup>, 2023, or as soon thereafter that Notice to Proceed is issued and shall continue until April 30<sup>th</sup>, 2024. Substantial Completion shall be accomplished no later than April 20<sup>th</sup>, 2024.
- B. The above prices shall include all labor, materials, removal, overhead, profit, insurance, taxes (not including gross receipts tax), etc., to cover the finished work. Changes shall be processed in accordance with the Contract Documents.
- C. It is understood that the Owner reserves the right to reject any or all Bids and to waive any technical irregularities in the bidding.

8. The Bidder is: (Complete the appropriate section below)

A. **INDIVIDUAL:**

By: \_\_\_\_\_  
*(Individual's Signature)*

Doing business as: \_\_\_\_\_

Business address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone: (    ) \_\_\_\_\_

FAX: (    ) \_\_\_\_\_

Email: \_\_\_\_\_

**ITB #2024-004B  
River Channel Stabilization in Two Rivers Park**

**B. PARTNERSHIP:**

By: \_\_\_\_\_  
(First Name)

\_\_\_\_\_  
(General Partner's Signature)

**Business address:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Telephone:** (    ) \_\_\_\_\_

**FAX:** (    ) \_\_\_\_\_

**Email:** \_\_\_\_\_

**C. CORPORATION:**

**Corporation Name:** \_\_\_\_\_

**State of** \_\_\_\_\_

**By** \_\_\_\_\_ **Title** \_\_\_\_\_  
(Print name of person authorized to sign)

\_\_\_\_\_  
(Signature of authorized person))

**If a New Mexico Corporation** \_\_\_\_\_  
NM Certificate of Incorporation Number

**If a Foreign Corporation** \_\_\_\_\_  
NM Certificate of Authority Number

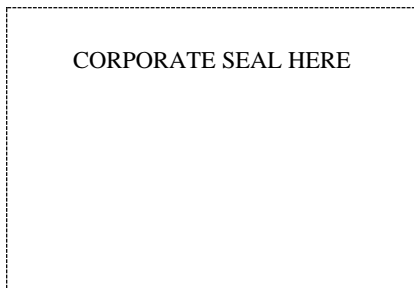
**Attest (Secretary):** \_\_\_\_\_

**Business address:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Telephone:** (    ) \_\_\_\_\_

**FAX:** (    ) \_\_\_\_\_

**Email:** \_\_\_\_\_



**ITB #2024-004B  
River Channel Stabilization in Two Rivers Park**

**D. JOINT VENTURE:**

**By:** \_\_\_\_\_  
*(Name)*

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

**Telephone:** ( ) \_\_\_\_\_  
**FAX:** ( ) \_\_\_\_\_

**By:** \_\_\_\_\_  
*(Name)*

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

**Telephone:** ( ) \_\_\_\_\_  
**FAX:** ( ) \_\_\_\_\_

**By:** \_\_\_\_\_  
*(Name)*

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

**Telephone:** ( ) \_\_\_\_\_  
**FAX:** ( ) \_\_\_\_\_

Each Joint Venturer must sign. The manner of signing for each individual, partnership, and corporation that is a party to the joint venture should be in the manner indicated in the appropriate category.

**BIDDER MUST FILL IN THE FOLLOWING** (if none, write none)

**NM License** **License**  
**Number:** \_\_\_\_\_ **Classification:** \_\_\_\_\_

**Dept. of Workforce Solutions Minimum**  
**Wage Act Registration Number** (DWS#) \_\_\_\_\_

**Resident Contractor's Preference**  
**Number:** \_\_\_\_\_

## **APPENDIX D - OPTIONS, EXCEPTIONS, OR VARIATIONS**

Please state each and every option, exception, or variation to the specifications (if any) for the products or services offered. **Please check one option, sign below and return with your bid.**

\_\_\_\_\_ THERE **ARE** OPTIONS, EXCEPTIONS, OR VARIATIONS. State in detail below. If necessary, utilize additional sheet(s) labeled "OPTIONS, EXCEPTIONS OR VARIATIONS TO ITB 2024-004B" and include with bid.

\_\_\_\_\_ THERE **ARE NO** OPTIONS, EXCEPTIONS, OR VARIATIONS. The products and/or services offered on this Invitation to Bid meet or exceed all Specifications, Terms, and Conditions set forth without exceptions. I understand products or services not meeting all Specifications, Terms, and Conditions may be cause for rejection of the item or service, of a bid in its entirety, or may result in cancelation of any awarded contract, project or task.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name and Title

**APPENDIX E - AFFIDAVIT OF NON-COLLUSION**

I state that I am the \_\_\_\_\_ (title) of \_\_\_\_\_ (name of firm) and that I am authorized to make this affidavit on behalf of my firm, and its owners, directors, and officers. I am the person responsible in my firm for the price(s) and the amount of this Bid.

I further state that:

- 1) The price(s) and amount of this Offer have been arrived at independently and without consultation communication or agreement with any other Bidder or potential Bidder.
- 2) That neither the price(s) nor the amount of this bid, have been disclosed to any other firm or person who is a Bidder or potential Bidder, and they will not be disclosed before bid opening.
- 3) No attempt has been made or will be made to induce any firm or person to refrain from bidding on this contract, or to submit a bid higher than this bid, or to submit any intentionally high or noncompetitive bid or other form of complementary bid.
- 4) This bid is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive bid.
- 5) This firm, its affiliates, subsidiaries, officers, directors and employees are not currently under investigation by any governmental agency and have not in the last four years been convicted of or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to proposing on any public contract, except as described herein.
- 6) I state that this firm understands and acknowledges that the above representations are material and important and will be relied on by the Village of Ruidoso in awarding. I understand and my firm understands that any misstatement in this affidavit is and shall be treated as fraudulent concealment from Village of Ruidoso of the true facts relating to the submission of Bidders for this contract.

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

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

**ITB #2024-004B**  
**River Channel Stabilization in Two Rivers Park**

**APPENDIX F – NEW MEXICO PREFERENCE CERTIFICATION**

\_\_\_\_\_ (Name of Business) hereby certifies the following in regard to application of the resident preference or resident veteran’s preference to this formal request for bids process:

Please check one box only:

- This business does not have a qualifying New Mexico Preference Certification.
  
- This business does have a qualifying New Mexico Resident or Native American Resident Business Preference or Resident Veteran Preference or Native American Resident Veterans Business Preference Certification (**Bidder must include a current copy of the certificate with bid**)

If claiming a Resident Veterans Preference Certification, please state annual gross revenue for preceding calendar year:

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

“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 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 representation made in checking the boxes constitutes a material representation by the business that is subject to inspection and/or protest. A denial of award or recension of award may be made if the statement is proven incorrect.



**ITB #2024-004B**  
**River Channel Stabilization in Two Rivers Park**

**APPENDIX G - COMPLIANCE WITH REGULATORY AGENCIES**

*Please fill out this form to document and submit your response to the Invitation to Bid.*

Has your firm during the past five (5) years been free of any determination by a court or administrative agency of laws and/or regulations pertaining to the payment of prevailing wages or employment of apprentices on public works projects?    Yes    No

If "no" please explain: \_\_\_\_\_

Has your firm during the past five (5) years been free of any determinations by a court or administrative agency of violations or notice of violation pertaining to the Occupational Safety and Health Administration (OSHA), Department of Transportation (DOT), or Environmental Protection Agency (EPA) requirement on a job site?    Yes    No

If "no" please explain: \_\_\_\_\_

Has your firm during the past five (5) years been free of any determinations by a court or administrative agency of violations pertaining to Construction Industry Division requirements pertaining to projects?  
Yes    No

If "no" please explain: \_\_\_\_\_

Is your firm free of any Subcontractor Fair Practices Act violations for the past five (5) years?  
Yes    No

If "no" please explain: \_\_\_\_\_

Has your firm been free of violation of any Federal, State or Local Agency requirement on a jobsite that has resulted in a fine because violations?    Yes    No

If "no" please explain: \_\_\_\_\_

The undersigned hereby state under penalty of perjury that the above statements are true and accurate.

Name \_\_\_\_\_ Title \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

**ITB #2024-004B**  
**River Channel Stabilization in Two Rivers Park**

**APPENDIX H- CERTIFICATION REGARDING DEBARMENT,  
SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**

The prospective participant certifies to the best of its knowledge and belief that it and its principals:

Are not presently debarred, suspended, proposed for debarment, and declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency.

Have not within a three year period preceding this bid been convicted of all has a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal of State Antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property,

Are not presently indicted for otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses in enumerated in paragraph (2) of this certification and

Have not within a three-year period preceding this bid had one or more public transaction (Federal, State, or local) terminated for cause or default.

I understand that a false statement of this certification may be ground for rejection of this bid or termination of the award. Under 18USC Sec. 101, a false statement may result in a fine up to \$10,000 or imprisonment for up to 5 years, or both.

---

Typed Name and Title of Authorized Representative

---

Signature of Authorized Representative

---

Date

## **APPENDIX I- CAMPAIGN CONTRIBUTION DISCLOSURE FORM**

Pursuant to NMSA 1978, § 13-1-191.1 (2006), any person seeking to enter into a contract with any state Village 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 Village 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 Bid 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 Village 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 Bid or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive Bid.

"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.

**ITB #2024-004B**  
**River Channel Stabilization in Two Rivers Park**

“Pendency of the procurement process” means the time period commencing with the public notice of the Invitation to Bid and ending with the award of the contract or the cancellation of the Invitation to Bid.

“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 Bid process set forth in the Procurement Code or is not required to submit a competitive sealed Bid 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 J – SCOPE OF WORK

### Description and Scope of Work:

The WORK is generally described as: excavation and backfill within the river to shape the channel, construction of grade control structures using large rocks & concrete grout, bank stabilization using large rocks and select backfill, trail construction, sewer line covering with riprap, willow plantings, and other related project work. All work shall conform to the project plans and specifications, and as directed by the project engineer.

### SECTION 101—TECHNICAL SPECIFICATIONS

#### A. GENERAL NOTES

The base specification document for this project is the New Mexico Department of Transportation's "Standard Specifications for Highway and Bridge Construction", 2014 edition. The specifications in this document are intended to compliment and make project specific changes to the base specification document. As such, the specifications in this document shall supersede the NMDOT base specification document. Should a discrepancy between the two documents be discovered, the Engineer shall resolve the conflict based on the intent of the design, bid documents and this specifications document.

All sections in the base specification document that refer to the Method of Measurement and the Basis of Payment shall be disregarded. Measurement and Payment under this contract shall be based on the Bid Form, which defines a Lump Sum contract.

### SECTION 104—SCOPE OF WORK

The requirements of Section 104 shall remain in effect except as modified below:

#### PART 1—GENERAL

##### 1.01 SCOPE

- A. The Contractor shall furnish all labor and provide all materials and equipment required to satisfactorily carry out the complete construction of the “River Channel Stabilization in Two Rivers Park” project, in accordance with these specifications and related construction drawings.

The WORK is generally described as: excavation and backfill within the river to shape the channel, construction of grade control structures using large rocks & concrete grout, bank stabilization using large rocks and select backfill, trail construction, sewer line covering with riprap, willow plantings, and other related project work. All work shall conform to the project plans and specifications, and as directed by the project engineer.

##### 1.02 LOCATION OF WORK

- A. The project is located on public land owned by the Village of Ruidoso, within Two Rivers Park. See the Invitation to Bid for directions to the project site.

#### PART 2 – PRODUCTS

(NOT USED)

#### PART 3 – EXECUTION

(NOT USED)

**PART 4 – MEASUREMENT AND PAYMENT**  
(NOT USED)

**END OF SECTION**

**SECTION 105—CONTROL OF WORK**

The requirements of Section 105 shall remain in effect except as modified below:

**PART 1 – GENERAL**

**1.01 CONTRACTOR’S USE OF PROJECT SITE**

- A. The Contractor’s use of the Project Site shall be limited to its construction operations that are necessary for conducting the Work, storage of materials and equipment in Owner designated locations, and field offices. No onsite camping of personnel shall be allowed.

**1.02 GENERAL CONDITIONS**

General Conditions shall include but not be limited to the following items, as required for proper performance and completion of the Work:

- A. Mobilization of the Contractor’s equipment onto the site, and demobilization of the same equipment at the end of the job; establishing a sheltered location (notification board or enclosed office space) for the posting of all required documents; furnishing and erecting a field office if desired by the Contractor; the designation of a secure location for retaining project documentation (plans, specifications, 404 Permit, SWPP Plan, material test reports, etc.) and hazardous materials during construction.
- B. Installing temporary construction power, wiring, and lighting facilities, if required.
- C. Establishing hazardous materials spill containment facilities, as needed.
- D. Setting in place equipment for firefighting within the construction area.
- E. Providing all on-site communication facilities, including telephones, and cellular phones or radio pagers; coordinating with Owner’s communications system; and providing proof of payment of licensing fee as required by the Owner.
- F. Providing on-site sanitary facilities and potable water facilities.
- G. Arranging for and erection of Contractor’s work and storage yard.
- H. Posting all OSHA required notices and establishment of safety programs.
- I. Having the Contractor’s superintendent at the job site full time.
- J. Daily cleanup of trash and debris from the construction site, and final cleanup of the site after completion of construction.

**PART 2 – PRODUCTS**

- A. All temporary construction signs shall be rectangular, 36” tall X 48” wide, black lettering on an orange background, conforming to the sign standards in the MUTCD.

### 3.1.02 TEMPORARY UTILITIES

The Contractor is responsible for providing temporary utilities as necessary and as described in the Construction Documents in order to adequately perform the Work under this Contract.

- A. The Contractor will completely remove temporary materials and equipment when the project has been accepted or removal is acceptable to the Owner. The Contractor will restore existing facilities including paved areas used for temporary services to specified or original condition.
- B. If the Contractor causes damage to the existing utilities or relocates existing utilities, the contractor will restore damaged or temporarily relocated utilities and improvements to a condition equal to or better than they were prior to such damage or temporary relocation.
- C. The Contractor is responsible for utility service costs until the Work is substantially complete. Included are fuel, power, light, heat, and other utility services necessary for execution, completion, testing, and initial operation of the Work.
- D. The Contractor will provide power required for its operations under the Contract, and will provide and maintain all temporary power lines required to perform the Work in a safe and satisfactory manner which also meets applicable regulatory requirements.
- E. WORK conducted at night or under conditions of deficient daylight will be suitably lighted to insure proper Work and to afford adequate facilities for inspection and safe working conditions.
- F. The Contractor is responsible for obtaining, distribution and handling of water suitable for all domestic and construction purposes.
  1. Water for Construction. The Owner does not have a specific water right to withdraw water from the river for construction, compaction or dust suppression. The Contractor shall make arrangements to obtain water at an off-site location.
  2. Fire Protection: The Contractor shall maintain adequate equipment and trained manpower on-site to be able to fight a fire at the project site that is caused by construction equipment and/or construction operations. Potential fire scenarios include fueling equipment and storage locations, wildfire in brushy areas, malfunctioning heavy equipment, etc.
- G. Prior to placing temporary utility services into use, the Contractor will inspect and test each service and arrange for governing authorities' required inspection and tests, and obtain required certifications and permits for use thereof.
- H. The Contractor will maintain distinct markers for underground lines, and protect them from damage during excavating operations.
- I. Termination and Removal: When need for a temporary utility service or a substantial portion thereof has ended, or when its service has been replaced by use of permanent services, or not later than time of substantial completion, the Contractor will promptly remove installation unless requested by Engineer to retain it for a longer period. The Contractor will complete and restore Work which may have been delayed or affected by installation and use of temporary utility, including repairs to construction and grades and restoration and cleaning of exposed surfaces.

### 3.1.03 TEMPORARY ENVIRONMENTAL CONTROLS

The Contractor is responsible for the following items.

- A. Provide and maintain methods, equipment, and temporary construction as necessary for controls over environmental conditions at the construction site and adjacent areas.
- B. Comply with statutes, regulations, and ordinances which relate to the proposed Work for the prevention of environmental pollution and preservation of natural resources.

- C. Adopt construction procedures that do not cause unnecessary excavation and filling of the terrain, indiscriminate destruction of vegetation, air or stream pollution, nor the harassment or destruction of wildlife. Limit the locations where heavy equipment is allowed to drive on the site, so that existing vegetation is left intact in-so-far as possible.
- D. Recognize and adhere to the environmental requirements of the Project. Disturbed areas will be strictly limited to boundaries established by the Construction Documents. Particularly avoid pollution of on-site streams, sewers, wells, or other water sources.

#### 3.1.04 PROTECTION OF EXISTING FACILITIES

- A. The Contractor will protect all existing utilities, structures and improvements not designated for removal. If the Contractor damages utilities, structures or improvements the Owner has identified or are clearly visually evident on site, he will restore damaged or temporarily relocated utilities and improvements to a condition equal to or better than prior to such damage or temporary relocation.
- B. The Contractor is not responsible for damage to utilities, structures or improvements not clearly visually evident or otherwise identified. The Contractor will not destroy, remove, or otherwise disturb any existing survey markers or other existing street or roadway markers without proper authorization. No earthwork shall be started until all survey or other permanent marker points that will be disturbed by the construction operations have been properly referenced. Survey markers or points disturbed by the Contractor will be accurately restored after the project has been completed.
- C. The Contractor is responsible for contacting NM One Call (dial 811) prior to any excavation work at the site, and for avoiding any utilities located by NM One Call.

#### 3.1.05 SITE ACCESS, DELIVERING, HANDLING AND STORAGE

- A. The Contractor will deliver, handle, and store products in accordance with manufacturer's written recommendations and by methods and means which will prevent damage, deterioration, and loss including theft.
- B. The Contractor will provide equipment and personnel to handle products, materials, and equipment for proper moving and handling of products.
- C. The Contractor will make its own arrangements for any other off-Site storage or shop areas necessary for the proper execution of the Work.
- D. Lands to be furnished by the Owner for trailer sites, stockpiles, construction operation, roads and other purposes will be indicated by the Owner.
- E. Products will be stored in accordance with manufacturers or applicable procedure written instructions, with seals and labels intact and legible. Sensitive products will be stored in weather tight enclosures and temperature and humidity ranges will be maintained within those required by manufacturer's written instructions.
- F. Hazardous Material
  - 1. The Contractor will construct and use a separate storage area for hazardous materials used in constructing the WORK. For the purpose of this paragraph, hazardous materials to be stored in the separate area are all products labeled with any of the following terms: Warning, Caution, Poisonous, Toxic, Flammable, Corrosive, Reactive, or Explosive. In addition, whether or not so labeled, the following materials will be stored in the separate area: diesel fuel, gasoline, new and used motor oil, hydraulic fluid, cement, paints and paint thinners, two-part epoxy coatings, sealants, asphaltic products, glues, solvents, wood preservatives, sand blast materials, and spill absorbent.



2. Hazardous materials will be stored in groupings according to the Material Safety Data Sheets.
  3. The separate storage area will meet all the requirements of all authorities having jurisdiction over the storage of hazardous materials.
  4. If required, the separate storage area will be inspected by the proper authorities prior to construction of the area, upon completion of construction of the area, and upon cleanup and removal of the area.
  5. All hazardous materials which are delivered in containers will be stored in the original containers until use. Hazardous materials which are delivered in bulk will be stored in containers which meet the requirements of authorities having jurisdiction.
- G. Project/Site Conditions: The Contractor will conduct its own investigation of the condition of available public and private roads and of clearances, restrictions, bridge load limits, and other limitations affecting transportation of materials and ingress and egress to the Site of the Work. Within the construction limits, it will be the Contractor's responsibility to construct and maintain any haul roads required for its construction operations. The Contractor must restore all pavement, trails, parking areas, etc. to a condition equal to or better than the pre-project condition. The Village and the Contractor will walk all areas that may be impacted by construction before the work commences and shall jointly document the pre-construction condition.
- H. Security Measures: The Contractor will maintain the following.
1. Protect the Work and Site from theft, vandalism, and unauthorized entry throughout the construction period until demobilization is complete.
  2. The Contractor is not responsible for protecting the Owner's existing facility or operations.
- I. Site Control: The Contractor will:
1. Coordinate access of Owner's personnel to Site.
  2. Coordinate with other contractors, access of personnel and vehicles to Site.
  3. Provide temporary barricades & signage as required.

### 3.1.06 SURVEYS

- A. The Engineer will provide the Contractor with a 3D AutoCAD file, showing the locations and elevations of all survey control monuments, and the locations of all grade control and wall structures within the project limits. The Contractor will hire a licensed NM Land Surveyor to perform the construction surveys or ensure that those surveys are being performed under the supervision of a NM Licensed Land Surveyor. The Surveyor will perform all layout surveys, quantity surveys, and intermediate surveys required for the control and completion of the Work, or changes and modifications to the Work. The Engineer may, at his discretion, utilize his own survey equipment to check grades and stakeout locations to ensure the proper completion of the approved construction plans & specifications. For grade control structures within the Rio Ruidoso, the Contractor shall provide the initial stakeout of each structure or fill location. The Engineer and the Owner may change the stake locations to achieve the "best fit" horizontally and vertically at each location. For grading work in areas outside of the river channel, finish grade vertical tolerance shall be  $\pm 0.2$  ft for general cut & fill areas and for depressional wetland areas, and  $\pm 0.1$  ft for finish grading of water control structures and sills.
- B. The Surveyor shall provide the Owner with as-built drawings and an AutoCAD file of the same at the completion of the project. The Surveyor shall provide written certification that the lines and grades shown on the as-built drawings are true and correct.
- C. The Contractor will provide a five (5) working days minimum advance notice of all survey activities to the Owner.
- D. All record drawings will be submitted in accordance with the submittal requirements of Section 108.

- E. All surveying and related services performed by the Contractor may be subject to review by the Engineer.
- F. Surveying discrepancies discovered by the Contractor will be immediately reported to the Engineer. The Contractor will perform additional surveys as required to determine the cause of the discrepancy and the corrective action required. Corrective action will not be taken until authorized by the Owner.
- G. CONTROL POINTS
  - 1. The Surveyor will check and verify, before beginning the Work, all primary control points established by the Owner. The Contractor will advise the Owner in writing that the points are acceptable or the reasons the points are not acceptable.
  - 2. Other existing survey markers and points may be found in the field. The Contractor will not use any survey markers or points that are not identified as primary control. However, the Contractor may establish new temporary bench marks as needed to complete the construction Work, including the setting of new permanent control points if an existing control point will be removed by the construction Work.
  - 3. The Contractor will maintain and preserve all control points established by the Owner or the Engineer until authorized to remove them. If the Contractor destroys any control points prior to authorization to remove, the control points may require replacement at the Contractor's expense.
- H. The Contractor will complete surveys for each bid lot of construction, and for final quantities. As each area is completed, the Contractor will confer with the Engineer and discuss those quantities, so that both parties can have a clear understanding of the quantities involved in each area.
- I. The Contractor will perform "as-built" surveys as required for all phases of the Work to maintain and update the record drawings.
- J. The Contractor will furnish all equipment and materials and other accessories as may be required to perform the survey Work to complete the project. Instruments will be accurate and inspected for defects or adjustment and will be promptly repaired or replaced as needed.

### 3.1.07 PROJECT MEETINGS

- A. A preconstruction conference will be scheduled by the Owner and held at a mutually agreed time and place which shall be attended by the Contractor, the Engineer, and Subcontractor's, as appropriate. Other attendees will be:
  - 1. Representatives of Owner.
  - 2. Government representatives as appropriate.
  - 3. Others as requested by the Contractor, Owner or Engineer.
- B. The purpose of the preconstruction conference is to designate responsible personnel, to establish a working relationship between parties and to be acquainted with the project site. Matters requiring coordination will be discussed and procedures for handling such matters established. The complete agenda will be furnished to the Contractor by the Owner prior to the meeting dates.
- C. The Owner will schedule and host regular on-site progress meetings at least weekly and at other times as requested by the Owner or as required by progress of the Work. The Contractor and all subcontractors active on the site shall be represented at each meeting. The Contractor may, at its discretion, request attendance by representatives of suppliers, Vendors and other subcontractors.
- D. The Owner or Engineer will preside at the progress meetings and arrange for recording and distribution of copies of the detailed minutes within five (5) working days after the meeting. The purpose of the meetings will be to review the progress of the Work, maintain coordination of efforts, discuss changes in scheduling, and resolve other problems which may develop.

### 3.1.08 DEFINITIONS

Wherever the terms defined herein are used in the Construction Documents, they have the following definitions:

Construction Documents:	The Drawings for this project are titled "River Channel Stabilization in Two Rivers Park" dated September 22, 2023, as signed by the Engineer of record.
OWNER:	Village of Ruidoso, NM.
CONTRACTOR:	To Be Determined.
ENGINEER:	Riverbend Engineering, LLC, and their representatives.
SITE:	Public lands owned by the Village of Ruidoso.

### 3.1.09 ADDITIONAL REFERENCE SPECIFICATIONS

#### A. Applicable Publications

Whenever in these specifications references are made to published specifications, codes, standards, or other requirements, it will be understood that wherever no date is specified, only the latest specifications, standards, or requirements of the respective issuing agencies which have been published as of the date that the Work is advertised for bids, will apply; except to the extent that said standards or requirements may be in conflict with applicable laws, ordinances, or governing codes. No requirements set forth herein or shown on the Drawings will be waived because of any provision of, or omission from, said standards or requirements. Referenced specifications, codes, standards, or other requirements will be considered part of these Construction Documents.

#### B. Specialists' Assignments

In certain instances, specification text requires (or implies) that specific work is to be assigned to specialists or expert entities, who must be engaged for the performance of that Work. Such assignments will be recognized as special requirements over which the Contractor has no choice or option. These requirements will not be interpreted so as to conflict with the enforcement of building codes and similar regulations governing the Work; also, they are not intended to interfere with local union jurisdiction settlements and similar conventions. Such assignments are intended to establish which party or entity involved in a specific unit of Work is recognized as "expert" for the indicated construction processes or operations. Nevertheless, the final responsibility for fulfillment of the entire set of requirements in the Construction Documents remains with the Contractor.

#### C. Reference Specifications, Codes, and Standards

In case of conflict between codes, reference standards, drawings and the other Construction Documents, this document and the construction plans will govern unless, by law, another referenced document must govern. All conflicts will be brought to the attention of the Engineer for clarification and directions prior to ordering or providing any materials or labor.

Applicable Standard Specifications: The Contractor will construct the Work specified herein in accordance with the requirements of the Construction Documents and the referenced portions of those referenced codes, standards, and specifications listed herein; except that wherever references to "Standard Specifications" are made, the provisions therein for measurement and payment will not apply. References herein to "OSHA Regulations for Construction" will mean Title 29, Part 1926, Construction Safety and Health Regulations, Code of Federal Regulations (OSHA), including all changes and amendments thereto.

References herein to "OSHA Standards" will mean Title 29, Part 1910, Occupational Safety and Health Standards, Code of Federal Regulations (OSHA), including all changes and amendments thereto.

#### D. Trade Names and Alternatives

1. For convenience in designation in the Construction Documents, materials to be incorporated in the Work may be designated under a trade name or the name of a manufacturer and its catalog information. The use of alternative material, which is equal in quality and of the

required characteristics for the purpose intended, will be permitted, subject to the following requirements:

- a. The burden of proof as to the quality and suitability of such alternative equipment, products, or other materials will be upon the Contractor.
  - b. The Engineer will be the sole judge as to the comparative quality and suitability of such alternative equipment, products, or other materials and its decision will be final.
2. Wherever in the Construction Documents the name or the name and address of a manufacturer or distributor is given for a product or other material, or if any other source of a product or material is indicated, such information is given for the convenience of the Contractor only, and no limit, restriction, or direction is indicated or intended thereby, nor is the accuracy or reliability of such information guaranteed. It will be the responsibility of the Contractor to determine the accurate identity and location of any such manufacturer, distributor, or other source of any product or material called for in the Construction Documents.

#### 3.1.10 SAFETY AND HEALTH

- A. The Contractor shall comply with the requirements of this Section and the applicable requirements of OSHA 29 CFR 1926 "Safety and Health Requirements for Construction".
- B. The Contractor shall conduct its operations in a safe manner at all times, and shall strictly adhere to all OSHA regulations, and all other regulations pertaining to the safe operation and maintenance of construction equipment, workers, methods, and the job-site.
- C. The Contractor shall be solely and completely responsible for conditions of the jobsite, including safety of all persons and property during performance of the Work. This requirement will apply continuously and not be limited to working hours. The duty of the Owner to conduct construction observation of the Contractor's performance is not intended to include review of the adequacy of the Contractor's and Subcontractor's safety measures in, on, or near the construction site.
- D. The Contractor shall at all times, whether or not so specifically directed by the Owner, take necessary precautions to ensure the protection of the public. The Contractor shall furnish, erect, and maintain all necessary barricades, fences, suitable and sufficient construction signs, provide a sufficient number of watchmen and take all necessary precautions for the protection of the Work and safety of the public through or around its construction operations. Owner representatives will not enter an area that appears unsafe. It is the Contractor's responsibility to provide a safe construction area.
- E. The Contractor shall maintain a safe and clean job-site at all times. Construction debris on traveled road surfaces, temporary detours, access driveways, etc., shall be cleaned away daily. If the Contractor's operations cause there to be nuisance dust on the road surface, Contractor shall sweep away or water such dust when so ordered by the Owner. All costs for maintaining a clean and safe job-site will be considered incidental to the Contract and will not be paid for separately. No unprotected excavations will be allowed.
- F. The Contractor shall comply with the safety and health provisions of all federal, state and local governing agencies.

#### **PART 3 – EXECUTION** (NOT USED)

#### **PART 4 – MEASUREMENT AND PAYMENT**

- A. Payment for General Conditions will be made at the lump-sum price listed in the Schedule of Values. This pay item shall include all costs associated with project set-up, mobilization, temporary signage and environmental controls, and other project related items of work described in this specification section.

The total price bid for General Conditions shall not exceed ten (10) percent of the total bid price. Partial payment may be requested upon completion of initial mobilization.

- B. Construction surveys. Payment for construction and as-built surveys will be made at the lump sum price listed on the Schedule of Values.

**END OF SECTION**

## **SECTION 108—PROSECUTION AND PROGRESS**

The requirements of Section 108 shall remain in effect except as modified below:

### **PART 1 – GENERAL**

#### **1.01 SCOPE**

- A. The Contractor shall provide all submittals required by these Specifications in accordance with the requirements of this Section and the specific requirements of each technical specification section.
- B. Materials testing. The Contractor shall subcontract with a licensed materials test laboratory to provide materials testing and density testing during construction, if required.

#### **1.02 RELATED SECTIONS**

- A. All sections requiring Contractor submittals.

#### **1.03 CONTRACTOR SUBMITTALS**

- A. Wherever submittals are required hereunder, one (1) paper copy and one (1) digital copy of all such submittals shall be submitted by the Contractor to the Engineer.
- B. Items that are critical to the Contractor's schedule to continue working without delays shall be submitted in a timely manner to allow the Engineer adequate time as set forth in this Specification section to review them.
- C. The submittals shall be numbered to include the relevant specification section. In case more than one submittal is required for an item, alphabetic letters may be suffixed to the submittal numbers.
- D. The term "submittals" as used herein shall be understood to include detailed design calculations, shop drawings, plans, samples, fabrication and installation drawings, erection drawings, lists, graphs, operating instructions, catalog sheets, data sheets, and similar items.
- E. All submittals shall be accompanied by the Owner's standard submittal transmittal form or a form used by the Contractor that is acceptable to the Engineer. Any submittal not accompanied by such a form, or where all applicable items on the form are not completed, will be returned for resubmittal.
- F. Normally, a separate transmittal form shall be used for each specific item or class of material or equipment for which a submittal is required. Transmittal of a submittal of various items using a single transmittal form will be permitted only when the items taken together constitute a manufacturer's "package" or are so functionally related that expediency indicates review of the group or package as a whole. A multiple-page submittal shall be collated into sets, and each set shall be stapled or bound, as appropriate, prior to transmittal to the Engineer.
- G. Except as may otherwise be provided herein, the Engineer will return one (1) copy of each submittal to the Contractor with comments noted thereon, within five (5) work days following their receipt by the Engineer. It is considered reasonable that the Contractor shall make a complete and acceptable submittal to the Engineer by the second submission of a submittal item. The Owner reserves the right to

withhold monies due the Contractor to cover additional costs of the Engineer's review beyond the second submittal.

- H. If a submittal is returned to the Contractor marked "NO EXCEPTIONS TAKEN," formal revision and resubmission of said submittal will not be required.
- I. If a submittal is returned to the Contractor marked "MAKE CORRECTIONS NOTED," formal revision and resubmission of said submittal will not be required.
- J. If a submittal is returned to the Contractor marked "REVISE AND RESUBMIT," or marked "REJECTED," the Contractor shall revise said submittal and shall resubmit four (4) copies of said revised submittal to the Engineer.
- K. Fabrication or procurement of an item may be commenced only after the Engineer has reviewed the pertinent submittals and returned copies to the Contractor marked either "NO EXCEPTIONS TAKEN" or "MAKE CORRECTIONS NOTED." Corrections indicated on submittals shall be considered as changes necessary to meet the requirements of the Contract Documents and shall not be taken as the basis of claims for extra work.
- L. All Contractor shop drawing submittals shall be carefully reviewed by an authorized representative of the Contractor, prior to submission to the Engineer. The Contractor shall date, sign, and certify each submittal as being correct and in strict conformance with the Contract Documents. In the case of shop drawings, each sheet shall be so dated, signed, and certified. All non-certified submittals will be returned to the Contractor without action taken by the Engineer, and any delays caused thereby shall be the total responsibility of the Contractor.
- M. The Engineer's review of Contractor submittals shall not relieve the Contractor of the sole and entire responsibility for the correctness of details and dimensions. The Contractor shall assume all responsibility and risk for any misfits due to any errors in Contractor submittals. The Contractor shall be responsible for the dimensions and the design of adequate connections and details.

#### N. BASELINE CONSTRUCTION SCHEDULE

1. After receipt of the Notice of Award and prior to the Pre-Construction Conference, the Contractor shall submit the following items to the Engineer for review:
  - a. A preliminary project schedule for the Work that shows the major tasks, order in which they will be accomplished, calendar dates when tasks will begin and be completed, etc.
  - b. A Preliminary cash flow schedule indicating the estimated monthly progress payments for the duration of the Project.
  - c. A preliminary schedule of shop drawings and proposed substitutes or "Or Equal" submittals.
  - d. The schedule shall indicate a Project completion date on or before the Contract completion date. The schedule shall indicate the activity description, start dates, completion dates, and duration for each activity required to complete the Work.
2. The Contractor will revise the Baseline Construction Schedule as required, and resubmit to the Owner and the Engineer.
3. The revised Baseline Construction Schedule will be accepted or rejected by the Owner and the Engineer within five (5) calendar days after receipt.
  - a. Acceptance of the Contractor's schedules by the Engineer and Owner will be based solely upon compliance with the requirements. By way of the Contractor assigning

activity durations and proposing the sequence of the Work, the Contractor agrees to utilize sufficient and necessary management and other resources to perform the work in accordance with the schedule.

- b. Submission and acceptance of the Contractor's schedules to the Owner or Engineer will not relieve the Contractor of total responsibility for scheduling, sequencing, and pursuing the Work to comply with the requirements of the Construction Documents, including adverse effects such as delays resulting from ill-timed Work.
4. The Baseline Construction Schedule will be updated every two weeks to reflect delays, progress and the resulting completion schedule. Causes for delays or any other schedule changes will be identified and corrective or recovery action will be discussed at the weekly progress meeting immediately following the schedule submittal.
  5. Ongoing Work Schedule Revisions:
    - a. The Contractor shall provide a detailed schedule each week at the construction progress meeting showing the progress of the previous week and the planned work for the coming three (3) weeks.
    - b. The Contractor will monitor the progress of the Work and adjust the schedule each month to reflect actual progress and any changes in planned future activities in relation to the proposed Baseline Construction Schedule. Monthly, the Contractor will give the Owner and the Engineer a copy of the revised schedule. Each update will continue to show all work activities including those already completed. Completed activities will accurately reflect "as built" information by indicating when the work was actually started and completed.
    - c. These revised Work Schedules will be clearly labeled with the revision date. Necessary modifications will be made to any portions of the detailed Work schedule that becomes infeasible because of portions of the Work falling behind schedule, changes in sequencing of activities, or for any valid reason that is beyond the control of the Contractor such as dam discharges in excess of those anticipated.

The Contractor will be obliged to present updated schedules with any Change Order request that includes a request for time extension. These updated schedules will clearly demonstrate how the Change Order(s) affect the substantial completion of the project.

6. Any critical work activity that cannot be completed by its originally scheduled completion date will be deemed to be behind schedule.

#### 1.04 PROPOSED SUBSTITUTES OR "OR EQUAL" ITEM SUBMITTAL

- A. Whenever materials or equipment are specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the naming of the item is intended to establish the type, function, and quality required. If the name is followed by the words "or approved equal" indicating that a substitution is permitted, materials or equipment of other suppliers may be accepted by the Owner if sufficient information is submitted by the Contractor to allow the Owner and the Engineer to determine that the material or equipment proposed is equivalent or equal to that named.

#### 1.05 RECORD DRAWING SUBMITTAL

- A. The Contractor shall keep and maintain, at the job site, one record drawing set. On these drawings, the Contractor shall mark all project conditions, locations, configurations, and any other changes or deviations which may vary from the details represented on the original Contract Drawings. Special attention shall be given to recording the horizontal and vertical location of all buried utilities or other

construction features that differ from the locations indicated, or which were not indicated on the Contract Drawings. Said record drawings shall be supplemented by detailed sketches, as needed, to fully record the Work as actually constructed. The record drawing set shall indicate as-built conditions including all revisions by addenda, change orders, and the like and shall be maintained up-to-date by the Contractor during the progress of the Work.

- B. The Contractor's record drawing set shall be accessible to the Owner and Engineer at all times during the construction period and shall be delivered to the Owner upon completion of the Work.
- C. The Engineer will only accept requests for partial payment if the record drawing set is current and the Engineer has inspected the work to verify that the record drawing set accurately depicts all variations between the Work as actually constructed and as originally shown on the Contract Drawings or other Contract Documents.
- D. Final payment will not be acted upon until the Contractor-prepared record drawing set has been delivered to the Owner. Said up-to-date, record drawings may be in the form of a set of prints with carefully plotted information overlaid in red pencil.
- E. Upon substantial completion of the Work and prior to final acceptance, the Contractor shall complete and deliver a complete set of record drawings to the Owner, conforming to the construction records of the Contractor. This set of drawings shall consist of corrected drawings showing the reported location of the Work.

## **PART 2—REQUIRED SUBMITTALS**

1. Bonds and insurance certificates.
2. List of Subcontractors, and the scope of work for each subcontractor.
3. List of all key personnel, including the project superintendent, site foreman and subcontractor foremen, and contact information for each individual including cell phone numbers.
4. Overall project schedule, and detailed weekly work schedules.
5. SWPP Plan, materials, and schedule for implementation, if required.
6. Hazardous materials safety data sheets.
7. Large rock and large flat rock materials samples, photos, dimensions, test data documenting hardness and specific gravity.
8. Rip Rap supplier & certification.
9. Concrete grout supplier, mix design, compressive strength test results, etc.
10. Seed supplier, seed mix, mulch materials and certifications.
11. Source for willow transplant material, species identification.
12. Warranties and release of liens.
13. Material substitution requests.

## **PART 3 – EXECUTION**

3.01 Materials testing completed by a licensed and independent materials testing laboratory, if required.

## **PART 4 – MEASUREMENT AND PAYMENT**

(NOT USED).

**END OF SECTION**

## **SECTION 109—MEASUREMENT AND PAYMENT**

Section 109 of the NM DOT Standard Specifications shall be removed in its entirety and replaced with the following:



## **PART 1 – GENERAL**

### **1.01 SCOPE**

- A. Procedures for Measurement and Payment plus conditions for nonconformance assessment and nonpayment for rejected products.

### **1.02 RELATED SECTIONS**

- A. All sections

### **1.03 AUTHORITY**

- A. Measurement methods delineated in the Specification Sections are intended to compliment the criteria of this section. In the event of conflict, the requirements of the Specification Section will govern.
- B. Engineer or Owner’s representative to make all measurements and compute quantities accordingly.

### **1.04 UNIT QUANTITIES SPECIFIED**

- A. The Bid Schedule includes the Engineer’s estimate of quantity for each Bid Item. The Contractor is advised to independently verify those quantities, and to satisfy him/herself that the bid price submitted is adequate to cover that item of work. The Contractor should assume that the estimated quantities are a reasonable reflection of the total work required, and that no additional compensation should be expected for completing the work as shown on the plans and described in the specifications. In the event that the actual quantities vary significantly (more than 25%) from the estimated quantities in the bid form, when the actual quantities have been measured and documented, and when the Owner and the Contractor agree to modify the contract by change order to correct this deviation, then the as-constructed quantity will be adjusted as mutually agreed upon, and the unit prices listed on the bid form shall be retained unless changed by mutual agreement.
- B. Should any pay items contained in the Bid Schedule be found unnecessary for the proper completion of the work, the Engineer may, upon written order to the Contractor, eliminate such pay items from the Contract, and such action shall in no way invalidate the Contract. When the Contractor is notified of the elimination of pay items, the Contractor will be reimbursed for actual work done and all costs incurred, including mobilization of materials prior to said notification.

### **1.05 LUMP-SUM PRICING**

- A. Each Bid Item shall be considered as a lump sum, for full and satisfactory completion of that work item, irrespective of the actual quantity installed. The contractual requirement of full and satisfactory completion applies to all earthwork, cuts and fills of native soils, the hauling and placement of gravels and cobbles. Actual quantities will apply to large rocks and large tree parts, where the quantity stated in the bid form shall be fulfilled, and should there be an apparent shortfall or excess of materials as the work is installed, it will be the Engineer’s responsibility to determine which large rock or large tree part installations will be left out, or where any excess material will be placed within the project work area, or if a change order is required to increase the quantity of these materials. In preparing monthly estimates for progress payments, the Contractor will present documentation of the progress made on each Bid Item to the Owner. Consideration will be given to the percentage of work remaining on each Bid Item before approving each requested progress payment.

### **1.06 PAYMENT**

- A. Payment for the various priced items set forth in the Bid Schedule shall constitute full compensation to the Contractor for providing all plant, equipment, machinery, materials, tools, supplies, transportation, labor and all other property, services, incidentals and expenditures for performing all operations required to complete the work in conformity with the Specifications and Contract Documents.

- B. The costs of complying with the provisions of the Specifications and all costs for necessary work not specifically mentioned in the Bid Schedule shall be deemed to be included in the prices for the most applicable priced items.

**1.07 NONCONFORMANCE ASSESSMENT**

- A. Nonconformance assessment shall be done by the Engineer in accordance of these specification and reference standards specified in these specifications.
- B. If any Work, or portions of the Work, is found to be not in conformance with the Contract Documents by the Engineer, Contractor shall promptly, as directed, either correct all nonconforming Work, whether or not fabricated, installed or completed, or if the Work has been rejected by Engineer, remove it from the site and replace it with Work that conforms to the Contract Documents. If the Engineer finds that the corrected Work is less suitable than specified, the Owner shall be entitled to an appropriate decrease in the Contract Price.
- C. If, instead of requiring correction or removal and replacement of nonconforming Work, Owner prefers to accept it, Owner may do so. Contractor shall pay all claims, cost, losses, and damages attributable to Owner's evaluation of, and determination to, accept such nonconforming Work (such as costs to be approved by Engineer as to reasonableness). If any such acceptance occurs prior to Engineer's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Owner shall be entitled to an appropriate decrease in the Contract Price.

**1.08 NONPAYMENT FOR REJECTED PRODUCTS**

- A. Payment will not be made for any of the following:
- Products wasted or disposed of in an unacceptable manner.
  - Products determined to be nonconforming before or after replacement and not accepted by Owner.
  - Products not completely unloaded from transporting vehicles.
  - Products placed beyond lines and levels of required Work.
  - Products remaining on hand after completion of the Work, unless specified otherwise.
  - Loading, hauling, and disposing of rejected products.

**PART 2 – PRODUCTS**

(NOT USED)

**PART 3 – EXECUTION**

(NOT USED)

**PART 4 – MEASUREMENT AND PAYMENT**

(NOT USED)

**END OF SECTION**

**SECTION 110—CONTRACT CLOSEOUT, CLEANUP AND DISPOSAL REQUIREMENTS**

**PART 1 – GENERAL**

**1.01 SCOPE**

- A. Contractor shall comply with the requirements specified herein for closeout procedures, including final submittals such as as-built drawings, survey notes, test reports and other project documentation.

#### 1.02 CLOSEOUT PROCEDURES

- A. Comply with requirements of the Contract Documents regarding Final Completion and Final Payment when Work is complete and ready for Owner's final inspection.
- B. Provide Project Record Documents.
- C. Complete or correct items on punch list, with no new items added. Any new items will be addressed during warranty period.
- D. The Owner will occupy portions of the Work as specified in other Sections.

#### 1.03 FINAL CLEANING

- A. Execute final cleaning prior to final inspection.
- B. For facilities, clean interior and exterior glass and surfaces exposed to view; remove temporary labels, stains, and foreign substances; polish transparent and glossy surfaces; vacuum carpeted and soft surfaces.
- C. Clean equipment and fixtures to a sanitary condition.
- D. Clean or replace filters of operating equipment.
- E. Clean debris from drainage swales, pipes and other drainage systems.
- F. Clean site; sweep paved areas; rake clean landscaped surfaces.
- G. Remove waste and surplus materials, rubbish, and temporary construction facilities from the site following the final test of utilities and completion of the work.

#### 1.04 ADJUSTING

- A. Adjust operating equipment to ensure smooth and unhindered operation.

#### 1.05 WARRANTIES

- A. Provide a written warranty that the work completed was done in substantial compliance with the project's Contract Documents. If a defect in workmanship or materials is discovered within one year of the project's completion, the Contractor agrees to return and make the necessary repairs or replacements at no additional cost the Owner.

#### 1.06 SPARE PARTS AND MAINTENANCE MATERIALS

- A. Provide products, special accessories, spare parts, maintenance, and extra materials in quantities specified.
- B. Deliver to location as directed by Owner, any materials covered by the Bid Form but not installed for habitat enhancement features.

#### 1.07 GUARANTEES, BOND AND AFFIDAVITS

- A. No application for final payment will be accepted until all guarantees, bonds, certificates, licenses, and affidavits required for the work or equipment, as specified, are satisfactorily filed with the Owner.

#### 1.08 RELEASE OF LIENS OR CLAIMS

- A. No application for final payment will be accepted until satisfactory evidence of release of liens has been submitted to the Owner.

#### 1.09 CONTRACTOR CLEANUP RESPONSIBILITIES

- A. The Contractor shall be responsible for cleanup and for disposal of waste materials or rubbish. The disposal of waste materials and rubbish shall be in accordance with this Section and all applicable national, state, and local laws, regulations, standards, and codes. Wherein there are inconsistencies in the laws and regulations, the more stringent shall apply.

- B. If required by the Owner, the Contractor shall maintain records of all the types and amounts of waste materials produced and the disposal locations of these materials, on or off the site. These records shall be made available for the Owner's review when requested.
- C. The Contractor shall at all times keep the construction area, including storage areas used by the Contractor, free from accumulations of waste materials and rubbish. Prior to completion of the Work, the Contractor shall remove from the vicinity of the Work all temporary construction facilities, buildings, rubbish, unused materials, concrete forms, and other like materials, belonging to the Contractor, or used under the Contractor's direction during the performance of the work. All excess Owner-furnished materials in the Contractor's possession shall be returned to the Owner. All work areas shall be graded and left in a neat manner conforming to the natural appearance of the landscape. Bare soil areas shall be seeded and mulched in accordance with the specifications.
- D. Hazardous materials, as defined by applicable national, state, and local regulations, codes, and standards, used by the Contractor or discovered on the site, shall be disposed of in accordance with the applicable national, state, and local regulations, codes, and standards. Waste materials that may be hazardous shall be tested by the Contractor, and test results submitted to the Owner prior to disposal.
- E. Other waste materials, including but not limited to, refuse, garbage, sanitary waste, industrial waste, oils and other petroleum products, shall be removed from the site and disposed of by the Contractor at appropriate and approved disposal sites, except as otherwise approved by the appropriate agencies or entities having jurisdiction. It shall be the responsibility of the Contractor to make any and all necessary arrangements with private parties and local officials pertinent to locations and regulations for such disposal.
- F. Any fees required or charged shall be the responsibility of the Contractor. Any disposal, burying, or burning on site shall be approved by the Owner after documentation indicating authorization and requirements from the appropriate agencies or entities has been obtained by the Contractor.

## **PART 2 – PRODUCTS**

(NOT USED)

## **PART 3 – EXECUTION**

(NOT USED)

## **PART 4 – MEASUREMENT AND PAYMENT**

Measurement and payment for contract closeout work shall be included in the lump sum price listed in the Schedule of Values for general conditions.

**END OF SECTION**

## **SECTION 204—GRADE CONTROL STRUCTURES**

### **PART 1 – GENERAL**

#### **1.01 SCOPE**

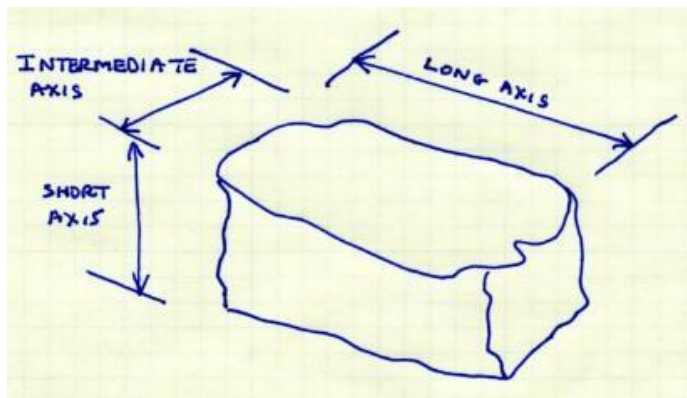
The Contractor shall furnish all labor, equipment, materials and services to:

- A. Construct all rock placements as directed by the engineer, in conformance with the project Drawings.

## PART 2 – PRODUCTS

### 2.01 LARGE ROCKS

- A. Large Rocks for this project will be furnished by the Village and stockpiled on site. Large rocks must be blocky in shape, not round, with at least two parallel sides. The project requires large rocks with a nominal size of 3 - 4 ft. and the typical weight per rock is 2-4 tons. Typical dimensions for the boulders are shown in the illustration below, with the "Long Axis" dimension ranging from 3 - 5 ft, the "Intermediate Axis" ranging from 2 - 4 ft, and the "Short Axis" ranging from 1.3 – 2.0 ft. The rock material must have a minimum specific gravity of 2.60. The rock material must be sufficiently durable to withstand freeze-thaw cycles and handling during construction. At least 60% of the large rocks must equal or exceed 2.0 ft in size when measured on the intermediate axis.



### 2.02 LARGE FLAT ROCKS

- A. Large Flat Rocks must have parallel top and bottom surfaces, and the top surface must be flat and smooth. The same material hardness & durability requirements listed above will apply. Large Flat Rocks shall be installed on the top surfaces of grade control structures in the river, to provide proper hydraulic function, increased aesthetics and improvement public safety for people wading in the river and climbing around on these grade control structures.

## PART 3 – EXECUTION

### 3.01 LARGE ROCK PLACEMENTS

- A. Large rock placements shall be as directed by the Engineer. When required, large rocks shall be set to fit tightly together and selected so that each rock sets solidly on the gravel substrate, footer rock or bedrock below. The orientation and elevation of each rock shall be determined by the Engineer during installation. Because the large rocks are irregular in shape, the Contractor must exercise some judgment to achieve the lines and grades shown in the Drawings. Final acceptance of rock structure work will be determined solely by the Engineer.

## PART 4 – MEASUREMENT AND PAYMENT

### 4.01 GENERAL

- A. Measurement and payment will be made for each grade control structure shown on the plans and approved by the Engineer. Payment for each structure shall include all excavation, backfill, compaction, placement of rocks and concrete grout, etc.
- B. Measurement and payment will be made for rock wall construction on a “per each” basis for placement, as directed by the Engineer.

**END OF SECTION**

## **SECTION 602—SLOPE AND EROSION PROTECTION STRUCTURES**

The requirements of Section 602 shall remain in effect except as modified below:

### **PART 1 – GENERAL**

The work covered under this specification section includes riprap installations for erosion control.

### **PART 2 – PRODUCTS**

#### 2.01 Materials

- A. Riprap rock material used for this project shall conform to the requirements of NM DOT specifications for Class B or Class C riprap, in conformance with the project drawings and bid schedule.

### **PART 3 – EXECUTION**

#### 3.01 CONSTRUCTION METHODS

- A. Excavate native soils to the proper grade. Compact the subgrade to 90% of ASTM D1557 density.
- B. Place riprap rock to the lines, grades and thickness shown on the Drawings. Transport and handle riprap rock so that a uniform gradation is achieved in the final placement and segregation of large and small rock pieces does not occur. Some handwork and machine placement will be necessary to achieve a relatively uniform surface with tightly nested rocks. Fill gaps in riprap surface with river gravels or gravel base course, if required. No specific compaction effort is required, however rocks in all riprap placements must be tightly nested with heavy equipment wheel compaction or other suitable method.

### **PART 4 – MEASUREMENT AND PAYMENT**

#### 4.01 GENERAL

- A. Measurement and payment for riprap rock will be made as described in the Schedule of Values.

**END OF SECTION**

## **SECTION 603—TEMPORARY EROSION AND SEDIMENT CONTROL, TEMPORARY FACILITIES, AND HAZARDOUS MATERIALS HANDLING**

The requirements of Section 603 shall remain in effect except as modified below:

### **PART 1 – GENERAL**

#### 1.01 SCOPE

- A. The Work shall include stormwater best management practices in accordance with an approved SWPP Plan. The work shall also include the handling, storage and management of hazardous materials at the site.

## 1.02 CONTRACTOR SUBMITTALS

- A. The Contractor shall submit a Stormwater Pollution Prevention (SWPPP) plan if the area of upland disturbance exceeds 0.5 acres at any location. The plan shall show the location and types of Best Management Practices proposed for the project during construction. The SWPP Plan and any Permit applications must be approved by the Owner and the Engineer, before applications are made and installations are begun.
- B. The Contractor shall submit a plan showing the location and types of fuels and other hazardous materials that may be stored on site, either temporarily or for the duration of the project. The Plan shall show the methods and materials that the contractor intends to use to contain and clean up any type of spill of these hazardous materials. Locations of materials to be used in spill prevention & cleanup must be clearly labeled and known to all of the Contractor's personnel on site. The Plan must be approved by the Owner and the Engineer before implementation.
- C. Prior to mobilization, the Contractor shall submit a Materials Safety Data Sheet (Department of Labor Form OSHA-20), as prescribed in Federal Standard No. 313B for all hazardous material, whether or not listed in Appendix A of the Standard. This obligation applies to all materials delivered under this contract which will involve exposure to hazardous materials or items containing these materials. "Hazardous Material," as used in this section is as defined in Federal Standard No. 313B, in effect on the date of this contract.

## 1.05 STORMWATER POLLUTION PREVENTION PLAN [Should be 1.03 carol]

- A. The Contractor shall develop, implement and maintain a plan for stormwater pollution prevention (SWPPP) to prevent to movement of soil away from the pond construction work area. SWPPP BMP's will only be required for upland areas disturbed by construction. The Contractor shall prepare and submit a US EPA Notice of Intent (NOI) for a Stormwater General Permit, if required. The Contractor will be responsible for maintaining a copy of the approved SWPPP Plan at the site, including updates to the Plan as required by changing field conditions. Any SWPPP related reporting and filing of the Notice of Termination (NOT) will be the Contractor's responsibility.

## **PART 2 – PRODUCTS**

(NOT USED)

## **PART 3 – EXECUTION**

(NOT USED)

## **PART 4 – MEASUREMENT AND PAYMENT**

### 4.01 GENERAL

- A. Payment for the Stormwater Pollution Prevention Plan (if required), both the development and implementation of the Plan, shall be made in accordance with the Schedule of Values.

**END OF SECTION**

## **SECTION 632--SEEDING AND REVEGETATION**

### **PART 1 – GENERAL**

The requirements of Section 632 shall remain in effect except as modified below:

1.01 SCOPE

- A. Soil preparation, seeding and mulching of soil areas disturbed by construction activities with the “upland” seed mix and mulch. Transplant live willow pole cuttings from off-site source areas approved by the Village.

1.02 SUBMITTALS

- A. The Contractor shall submit certificates showing the origin, age, composition and PLS composition of seed material proposed for use on this project.
- B. The Contractor shall submit documentation of the source of live plant materials supplied from a nursery.

**PART 2 – PRODUCTS**

2.01 MATERIALS

A. SEEDS

Conform to requirements of U.S. Department of Agriculture Rules and Regulations as set forth in Federal Seed Act and New Mexico Department of Agriculture regulations, including labeling requirements for showing purity, germination, name and type of seed.

Seed furnished shall be of the previous season’s crop for the date of the project.

Native grass seeds shall be delivered pre-mixed from the seed supplier. Tags from each bag of seed shall be collected and submitted to the Engineer for verification of compliance with the project specifications. Use seed which has been treated with an approved fungicide.

Native grass seed for “upland” areas shall be applied at a rate of 20 lbs PLS per acre. The seed mix shall equal or exceed the following volume by weight of each species:

Slender Wheatgrass -	3.0 lbs
Fowl Bluegrass -	3.0 lbs
Mountain Brome -	2.5 lbs switch grass, Indian grass
Western Wheatgrass -	4.0 lbs
Meadow Barley -	2.0 lbs blue gram, sideoats grama
Red Fescue -	1.5 lbs
Green Needlegrass -	3.0 lbs neo Mexicana....
Praire Junegrass -	<u>1.0 lbs</u>
Total	20.0 lbs PLS

B. WILLOWS

Willow pole cuttings shall be Coyote Willow (*salix exigua*) and shall be cut from off-site source areas, as approved by the Engineer. Cut stem diameters shall typically be ½” – ¾” , shall have strong green new growth, and shall have 2 – 4 growth rings evident. Pole cuttings shall be no longer than 8 ft in length.

**PART 3 – EXECUTION**

3.01 CONSTRUCTION METHODS

A. PREPARATION OF SOIL FOR SEEDING



1. Inspect subsoil for the presence of objectionable materials, such as rocks 2 inches in diameter and larger, concrete waste, building debris, weeds, grass, or other material that would be detrimental to the growth of grasses. Protect existing underground improvements from damage.
2. Cultivate to a depth of 3-inches. If there is compaction due to equipment, traffic or storage, cultivate to a depth of 6-inches. Remove any foreign or objectionable materials collected during cultivation.
3. Grade to eliminate rough spots and low areas where ponding may occur. Assure positive drainage away from all buildings. Maintain smooth, uniform grades.
4. Maintain a weed-free condition until completion of the project. If necessary, a licensed applicator shall apply a water-safe herbicide in accordance with the manufacturer's recommendations.

#### B. SEEDING

1. The Contractor shall notify the Owner not less than 48-hours in advance of any seeding operation and shall not begin the work until areas prepared or designated for seeding have been approved.
2. Cultivation shall be by disc, spring tooth harrow, roto-tiler or similar equipment and shall be done at right angles to the natural flow of water on the slopes.
3. Drill seed or broadcast seed and rake in, so that the required seed cover of ¼ inch is (on average) achieved.
4. Spread straw mulch over the entire seeded area. Crimp mulch into the soil by running the disk over the area a second time.

#### C. WILLOW POLE PLANTING

1. Use a power auger, stinger or pressurized water "hydrojet" type probe to excavate each willow pole planting hole. The typical hole depth is 4 – 5 ft, with at least 2 feet of hole depth below the invert grade of the river channel at its nearest location. The hole diameter must be sufficiently large to allow for the full-depth insertion of all five of the willow poles. Once the willow poles are in place, pressurized water shall be used to fill the hole and ensure continuous encasement of each pole with fine grained, saturated soil.
2. Willow pole cuttings should be planted five per hole, each with approximately sixty five (65%) of its length below the surface.
3. Pole cuttings shall be planted with butt-ends in the ground. Leaf bud scars or emerging buds should always point up. At least two (2) lateral buds and/or terminal bud scars must be above the ground on cuttings. Contractor shall take care not to damage the buds, strip the bark or split the cutting during installation. Split or damaged cuttings shall be removed and replaced.

#### D. GUARANTEE AND SEEDED AREA ESTABLISHED PERIOD

1. The guarantee and establishment period shall begin immediately after substantial completion of the project has been acknowledged by the Owner.
  - a. Guarantee Period: All plant materials shall be guaranteed a minimum survival rate of 80% by the Contractor for a period of one year from the date of Substantial Completion.
  - b. Replacement: The Contractor shall replace, without additional cost to the Owner, and as soon as weather conditions permit, all dead trees and shrubs that are not in a vigorous, thriving condition, as determined by the Engineer during and at the end of the guarantee period. Replacements shall be subject to all requirements stated in this specification.

**PART 4 – MEASUREMENT AND PAYMENT**

**4.01 GENERAL**

- A. Measurement for seeding shall be the area in acres or square feet of seeding and mulching completed in compliance with these specifications and according to the drawings. Measurement will be all disturbed areas within the project boundaries that were seeded, or as prescribed by the Engineer.
- B. Payment for Seeding work will be on a lump sum basis as listed in the Bid Form. This price shall be full compensation for all seed, mulch, equipment, materials and labor necessary for seeding and mulching.
- C. Payment for willow pole plantings, tree and shrub transplants will be in accordance with the bid form, for each location completed in accordance with the plans and specifications.

**END OF SECTION**

## APPENDIX K – BID BOND

KNOW ALL PERSONS BY THESE PRESENTS, that we, \_\_\_\_\_,  
hereinafter called the "Principal," as Principal, and \_\_\_\_\_,  
hereinafter called the "Surety," as Surety, are held and firmly bound unto the Village of Ruidoso,  
hereinafter called the "Village," in the sum of five percent (5%) of Lump Sum Base Bid amount  
for payment of which in lawful money of the United States, well and truly to be made, we bind  
ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly  
by these presents.

The CONDITION OF THE ABOVE OBLIGATED IS SUCH THAT, WHEREAS,  
Principal has submitted a Bid for:

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

NOW, THEREFORE, if the Village shall accept the bid of the Principal, and the Principal shall  
enter into a Contract with the Village in accordance with the terms of such bid, and give such bond  
or bonds as may be specified in the bidding or Contract Documents, with good and sufficient surety  
for the faithful performance of such Contract and for the prompt payment of labor and material  
furnished in the prosecution thereof, then this obligation shall be null and void, otherwise to remain  
in full force and effect.

IN WITNESS OF WHEREOF, we have hereunto set our hands this \_\_\_\_ day of \_\_\_\_\_, 2023.

PRINCIPAL:

SURETY:

\_\_\_\_\_  
Name of firm

\_\_\_\_\_  
Name of firm

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

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

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

Address For Notices:  
\_\_\_\_\_  
\_\_\_\_\_

NOTE: Notary acknowledgement for Surety and Surety's Power of Attorney must be attached.

## **APPENDIX L – SAMPLE CONTRACT**

(Blank to next page)



313 CREE MEADOWS DRIVE  
RUIDOSO, NM, 88345  
575-258-4343

WWW.RUIDOSO-NM.GOV

**DRAFT CONTRACT FOR GOODS AND SERVICES**  
**ITB # 2024-004B RIVER CHANNEL STABILIZATION IN TWO RIVERS PARK**

THIS Agreement ("Agreement") is made by and between the Village of Ruidoso, hereinafter referred to as the "Procuring Agency", and XXXXXXXXX, hereinafter referred to as the "Contractor" and collectively the "Parties".

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:

Village of Ruidoso  
Department: Purchasing  
ATTN: Procurement Manager  
313 Cree Meadows Drive  
Ruidoso, NM 88345  
Phone: 575-258-4343 ext. 1081  
Email: purchasing@ruidoso-nm.gov

Contractor Name  
ATTN: \_\_\_\_\_  
Title: \_\_\_\_\_  
Street: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

WHEREAS, pursuant to the Procurement Code, NMSA 1978 13-1-28 *et. seq.* and Procurement Code Regulations, NMAC 1.4.1 *et. seq.* the Contractor has held itself out as an entity with the ability to provide the required services to implement the Scope of Work as contained herein and the Procuring Agency has selected the Contractor as the offeror most advantageous to the State of New Mexico; and

WHEREAS, all terms and conditions of the **ITB #2024-004B – River Channel Stabilization in Two Rivers Park** and the Contractor’s response to such document(s) are incorporated herein by reference; and

NOW, THEREFORE, THE FOLLOWING TERMS AND CONDITIONS ARE MUTUALLY AGREED BETWEEN THE PARTIES:

1. **Definitions**

- A. "Business Hours" means 8:00 a.m. to 5:00 p.m. Mountain Time.

B. "Procuring Agency" means any state agency or local public body that enters into an Agreement to procure products or services. "Products and Services schedule" refers to the complete list of products and services offered under this Agreement and the price for each. Product and service descriptions may be amended only through a written amendment signed by all required signatories and with the prior approval of the Agreement Administrator, if any. New products and services beyond those in the original procurement shall not be added to the Products and Services Schedule.

C. "You" and "your" refers to [Contractor Name]. "We," "us" or "our" refers to the Village of Ruidoso.

## 2. Scope of Work.

The Contractor shall perform the work as outlined in Exhibit A and attached hereto and incorporated herein by reference. All tasks will be accomplished after issuance of an approved purchase order and notice to proceed.

## 3. Compensation.

A. Compensation Schedule. The Procuring Agency shall pay to the Contractor based upon fixed prices for each Deliverable, per the schedule outlined in Exhibit B, less retainage, if any, as identified in paragraph D of this Clause.

B. Payment. The total compensation under this Agreement shall not exceed \$\_\_\_\_\_ including New Mexico gross receipts tax. This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The Parties do not intend for the Contractor to continue to provide Services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the Procuring Agency when the Services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for Services provided in excess of the total compensation amount without this Agreement being amended in writing prior to services, in excess of the total compensation amount being provided.

Payment shall be made upon Acceptance of each Deliverable and upon the receipt and Acceptance of a detailed, certified Payment Invoice. Payment will be made to the Contractor's designated mailing address. In accordance with Section 13-1-158 NMSA 1978, payment shall be tendered to the Contractor within thirty (30) days of the date of written certification of Acceptance. All Payment Invoices MUST BE received by the Procuring Agency no later than fifteen (15) days after the termination of this Agreement. Payment Invoices received after such date WILL NOT BE PAID.

C. Taxes. The Contractor shall be reimbursed by the Procuring Agency for applicable New Mexico gross receipts taxes, excluding interest or penalties assessed on the Contractor by any authority. **PLEASE NOTE NO PROPERTY TAX WILL BE PAID TO THE**

**CONTRACTOR BY THE STATE.** The payment of taxes for any money received under this Agreement shall be the Contractor's sole responsibility and should be reported under the Contractor's Federal and State tax identification number(s).

Contractor and any and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall require all subcontractors to hold the Procuring Agency harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal and/or state and local laws and regulations and any other costs, including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

D. Retainage. Not Applicable – The Parties agree there is no retainage.

E. Performance Bond. Contractor shall furnish a Performance Bond in an amount of \$ \_\_\_\_\_ (100% of contract price).

F. Labor and Materials Bond. Contractor shall furnish a Labor and Materials Bond in an amount of \$ \_\_\_\_\_.

#### 4. **Term.**

This agreement shall be effective upon notice of award to the Contractor and until final project closeout, unless terminated pursuant to this Agreement's Termination Clause or Appropriations Clause. The time allowed for construction shall commence on November 1, 2023, or as soon thereafter the Notice to Proceed is issued and shall continue until **April 30, 2024**. **Substantial Completion shall be accomplished no later than April 20, 2024.**

#### 5. **Termination.**

A. Grounds. The Procuring Agency may terminate this Agreement for convenience or cause. The Contractor may only terminate this Agreement based upon the Procuring Agency's uncured, material breach of this Agreement.

B. Notice; Procuring Agency Opportunity to Cure.

1. Except as otherwise provided in sub-paragraph A of this Clause and the Appropriations Clause of this Agreement, the Procuring Agency shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.

2. Contractor shall give Procuring Agency written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the Procuring Agency's material breaches of this Agreement upon which the termination is based and (ii) state what the Procuring Agency must do to cure such material breaches. Contractor's notice of termination shall only be

effective (i) if the Procuring Agency does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the Procuring Agency does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach.

3. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by the Procuring Agency; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the Village of Ruidoso; or (iii) the Agreement is terminated pursuant to the Appropriations Clause of this Agreement.

C. Liability. Except as otherwise expressly allowed or provided under this Agreement, the Procuring Agency's sole liability upon termination shall be to pay for acceptable work performed prior to the Contractor's receipt or issuance of a notice of termination; 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 such work within thirty (30) days of receiving or sending the notice of termination.

*THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE PROCURING AGENCY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.*

#### 6. Appropriations.

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Village Council of Ruidoso for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Council, this Agreement shall terminate immediately upon written notice being given by the Procuring Agency to the Contractor. The Procuring Agency's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the Procuring Agency 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.

#### 7. Status of Contractor.

The Contractor and its agents and employees are independent contractors performing professional or general services for the Procuring Agency and are not employees of the Village of Ruidoso. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the Village of Ruidoso 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 Village of Ruidoso unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

**8. 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 any way limiting the generality of the foregoing, the Contractor specifically represents and warrants that:

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

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

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

4) this Agreement complies with NMSA 1978, § 10-16-9(A) because

- a. the Contractor is not a councilor;
- b. the Contractor is not a member of a councilor's family;
- c. the Contractor is not a business in which a councilor or a councilor's family has a substantial interest; or

d. if the Contractor is a councilor, a member of a councilor's family, or a business in which a councilor or a councilor's family has a substantial interest, disclosure has been made as required by NMSA 1978, § 10-16-7(A), this Agreement is not a sole source or small purchase contract, and this Agreement was awarded in accordance with the provisions of the Procurement Code;

5) in accordance with NMSA 1978, § 10-16-13, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement, or any procurement related to this Agreement; and

6) in accordance with NMSA 1978, § 10-16-3 and § 10-16-13.3, 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 Procuring Agency.

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

D. All terms defined in the Governmental Conduct Act have the same meaning in this Agreement.

9. **Amendment.**

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

B. If the Procuring Agency proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in the Terminations Clause of this Agreement, or to agree to the reduced funding.

10. **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.

**11. Penalties for Violation of Law.**

The Procurement Code, NMSA 1978 §§ 13-1-28 through 13-1-199, imposes civil and criminal penalties for violation of the statute. In addition, the New Mexico criminal statutes impose felony penalties for illegal acts, including bribes, gratuities, and kickbacks.

**12. Equal Opportunity Compliance.**

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

**13. 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 Procuring Agency.

**14. Applicable Law.**

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a Lincoln County court of competent jurisdiction in accordance with NMSA 1978, § 38-3-1 (G). 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.

**15. Records and Financial Audit.**

The Contractor shall maintain detailed time and expenditure records that indicate the date, time, nature, and cost of 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 Procuring Agency, the Department of Finance and

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

16. **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.

17. **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.

18. **Non-Collusion.**

In signing this Agreement, the Contractor certifies the Contractor has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with this offer submitted to the Purchasing Agency.

19. **Succession.**

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

20. **Headings.**

Any and all headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement. Numbered or lettered provisions, sections and subsections contained herein, refer only to provisions, sections and subsections of this Agreement unless otherwise expressly stated.

21. **Default/Breach.**

In case of Default and/or Breach by the Contractor, for any reason whatsoever, the Procuring Agency may procure the goods or Services from another source and hold the Contractor responsible for any resulting excess costs and/or damages, including but not limited to, direct damages, indirect damages, consequential damages, special damages and the Procuring Agency may also seek all other remedies under the terms of this Agreement and under law or equity.

22. **Equitable Remedies.**

Contractor acknowledges that its failure to comply with any provision of this Agreement will cause the Procuring Agency irrevocable harm and that a remedy at law for such a failure would

be an inadequate remedy for the Procuring Agency, and the Contractor consents to the Procuring Agency's obtaining from a court of competent jurisdiction, specific performance, or injunction, or any other equitable relief in order to enforce such compliance. Procuring Agency's rights to obtain equitable relief pursuant to this Agreement shall be in addition to, and not in lieu of, any other remedy that Procuring Agency may have under applicable law, including, but not limited to, monetary damages.

**23. Employee Pay Equity Reporting.**

Contractor agrees if it has ten (10) or more New Mexico employees OR eight (8) or more employees in the same job classification, at any time during the term of this Agreement, to complete and submit the PE10249 form on the annual anniversary of the initial report submittal for agreements up to one (1) year in duration. If contractor has (250) or more employees' contractor must complete and submit the PE250 form on the annual anniversary of the initial report submittal for agreements up to one (1) year in duration. For agreements that extend beyond one (1) calendar year or are extended beyond one (1) calendar year, contractor also agrees to complete and submit the PE10-249 or PE250 form, whichever is applicable, within thirty (30) days of the annual agreement anniversary date of the initial submittal date or, if more than 180 days has elapsed since submittal of the last report, at the completion of the Agreement, whichever comes first. Should contractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, contractor agrees to provide the required report within ninety (90 days) of meeting or exceeding the size requirement. That submittal date shall serve as the basis for submittals required thereafter. Contractor also agrees to levy this requirement on any subcontractor(s) performing more than 10% of the dollar value of this Agreement if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of the Agreement. Contractor further agrees that, should one or more subcontractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, Contractor will submit the required report, for each such subcontractor, within ninety (90 days) of that subcontractor meeting or exceeding the size requirement. Subsequent report submittals, on behalf of each such subcontractor, shall be due on the annual anniversary of the initial report submittal. Contractor shall submit the required form(s) to the Village of Ruidoso Purchasing Department, and other departments as may be determined, on behalf of the applicable subcontractor(s) in accordance with the schedule contained in this Clause. Contractor acknowledges that this subcontractor requirement applies even though Contractor itself may not meet the size requirement for reporting and be required to report itself.

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

**24. Indemnification.**

The Contractor shall defend, indemnify and hold harmless the Procuring Agency 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 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 performed 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 Procuring Agency by certified mail.

**25. Default and Force Majeure.**

The Village reserves the right to cancel all, or any part of any orders placed under this Agreement without cost to the Village, if the Contractor fails to meet the provisions of this Agreement and, except as otherwise provided herein, to hold the Contractor liable for any excess cost occasioned by the Village due to the Contractor's default. The Contractor shall not be liable for any excess costs if failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Contractor; such causes include, but are not restricted to, acts of God or the public enemy, acts of the State or Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of subcontractors due to any of the above, unless the Village shall determine that the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery scheduled. The rights and remedies of the Village provided in this Clause shall not be exclusive and are in addition to any other rights now being provided by law or under this Agreement.

**26. 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 Procuring Agency.

**27. Subcontracting.**

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the Procuring Agency. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the Procuring Agency.

**28. Inspection of Plant.**

The Procuring Agency that is a party to this Agreement may inspect, at any reasonable time during Contractor's regular business hours and upon prior written notice, the Contractor's plant or place of business, or any subcontractor's plant or place of business, which is related to the performance of this Agreement.

29. **Condition of Proposed Items.**

Where tangible personal property is a part of this Agreement, all proposed items are to be NEW and of most current production, unless otherwise specified.

30. **Release.**

Final payment of the amounts due under this Agreement shall operate as a release of the Procuring Agency, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

31. **Confidentiality.**

Any Confidential Information provided to the Contractor by the Procuring Agency or, developed by the Contractor based on information provided by the Procuring Agency 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 Procuring Agency. Upon termination of this Agreement, Contractor shall deliver all Confidential Information in its possession to the Procuring Agency within thirty (30) business days of such termination. Contractor acknowledges that failure to deliver such Confidential Information to the Procuring Agency will result in direct, special and incidental damages.

32. **Contractor Personnel.**

A. Key Personnel. Contractor's key personnel shall not be diverted from this Agreement without the prior written approval of the Procuring Agency. Key personnel are those individuals considered by the Procuring Agency to be mandatory to the work to be performed under this Agreement. Key personnel shall be:

(Insert Contractor Staff Name(s))

B. Personnel Changes. Replacement of any personnel shall be made with personnel of equal ability, experience, and qualification and shall be approved by the Procuring Agency. For all personnel, the Procuring Agency reserves the right to require submission of their resumes prior to approval. If the number of Contractor's personnel assigned to the Project is reduced for any reason, Contractor shall, within ten (10) business days of the reduction, replace with the same or greater number of personnel with equal ability, experience, and qualifications, subject to Procuring Agency approval. The Procuring Agency, in its sole discretion, may approve additional time beyond the ten (10) business days for replacement of personnel. The Contractor shall include status reports of its efforts and progress in finding replacements and the effect of the absence of the personnel on the progress of the Project. The Contractor shall also make interim arrangements to assure that the Project progress is not affected by the loss of personnel. The Procuring Agency reserves the right to require a change in Contractor's personnel if the assigned personnel are not, in the sole opinion of the Procuring Agency, meeting the Procuring Agency's expectations.

**33. Incorporation by Reference and Precedence.**

If this Agreement has been procured pursuant to a request for proposals, this Agreement is derived from (1) the request for proposal, (including any written clarifications to the invitation to bid (ITB) and any agency response to questions); (2) the Contractor's best and final offer; and (3) the Contractor's response to the invitation to bid (ITB).

In the event of a dispute under this Agreement, applicable documents will be referred to for the purpose of clarification or for additional detail in the following order of precedence: (1) amendments to the Agreement in reverse chronological order; (2) the Agreement, including the scope of work and all terms and conditions thereof; (3) the invitation to bid (ITB), including attachments thereto and written responses to questions and written clarifications; (4) the Contractor's best and final offer if such has been made and accepted by the SPA or Procuring Agency or entity; and (5) the Contractor's response to the request for proposals.

**34. Inspection.**

If this Agreement is for the purchase of tangible personal property (goods), final inspection and acceptance shall be made at Destination. Tangible personal property rejected at Destination for non-conformance to specifications shall be removed at Contractor's risk and expense promptly after notice of rejection and shall not be allowable as billable items for payment.

**35. Inspection of Services.**

If this Agreement is for the purchase of services, the following terms shall apply.

A. Services, as used in this Clause, include services performed, workmanship, and material furnished or utilized in the performance of services.

B. The Contractor shall provide and maintain an inspection system acceptable to the Procuring Agency covering the services under this Agreement. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Procuring Agency during the term of performance of this Agreement and for as long thereafter as the Agreement requires.

C. The Procuring Agency has the right to inspect and test all services contemplated under this Agreement to the extent practicable at all times and places during the term of the Agreement. The Procuring Agency shall perform inspections and tests in a manner that will not unduly delay or interfere with Contractor's performance.

D. If the Procuring Agency performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in Agreement price, all reasonable facilities and assistance for the safe and convenient performance of such inspections or tests.



E. If any part of the services does not conform with the requirements of this Agreement, the Procuring Agency may require the Contractor to re-perform the services in conformity with the requirements of this Agreement at no increase in Agreement amount. When the defects in services cannot be corrected by re-performance, the Procuring Agency may:

- (1) require the Contractor to take necessary action(s) to ensure that future performance conforms to the requirements of this Agreement; and
- (2) reduce the Agreement price to reflect the reduced value of the services performed.

F. If the Contractor fails to promptly re-perform the services or to take the necessary action(s) to ensure future performance in conformity with the requirements of this Agreement, the Procuring Agency may:

- (1) by Agreement or otherwise, perform the services and charge to the Contractor any cost incurred by the Procuring Agency that is directly related to the performance of such service; or
- (2) terminate the Agreement for default.

THE PROVISIONS OF THIS CLAUSE ARE NOT EXCLUSIVE AND DO NOT WAIVE THE VILLAGE PARTIES OF THIS AGREEMENT OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.

36. **Insurance.**

If the services contemplated under this Agreement will be performed on or in Village facilities or property, Contractor shall maintain in force during the entire term of this Agreement, the following insurance coverage(s), naming the Village of Ruidoso as additional insured.

- A. Workers Compensation (including accident and disease coverage) at the statutory limit. Employers' liability: \$100,000.
- B. Comprehensive general liability (including endorsements providing broad form property damage, personal injury coverage and contractual assumption of liability for all liability the Contractor has assumed under this Agreement). Limits shall not be less than the following:
  - a. Bodily injury: \$1,000,000 per person /\$1,000,000 per occurrence.
  - b. Property damage or combined single limit coverage: \$1,000,000.
  - c. Automobile liability (including non-owned automobile coverage): \$1,000,000.
  - d. Umbrella: \$1,000,000.
- C. Contractor shall maintain the above insurance for the term of this Agreement and name the Village of Ruidoso as an additional insured and provide for 30 days cancellation notice on any Certificate of Insurance form furnished by Contractor. Such certificate shall also specifically

state the coverage provided under the policy is primary over any other valid and collectible insurance and provide a waiver of subrogation.

37. **Arbitration.**

Any controversy or claim arising between the parties shall be settled by arbitration pursuant to NMSA 1978 § 44-7A-1 *et seq.*

IN WITNESS WHEREOF, the parties have executed this Agreement. The effective date is the date of approval by the Village of Ruidoso out hereinafter.

**SIGNATURES:**

**Village of Ruidoso:**

\_\_\_\_\_  
Lynn D. Crawford, Mayor

\_\_\_\_\_  
Date

**CONTRACTOR:**

Draft Only Do Not Sign

\_\_\_\_\_  
Contractor, Title

\_\_\_\_\_  
Date

**ATTEST:**

\_\_\_\_\_  
Jini S. Turri, Village Clerk

Exhibit A: Scope of Work

Exhibit B: Bid Price Submittal

Contractor's Submittal to ITB #2024-004

ITB #2024-004 River Channel Stabilization in Two Rivers Park

**ITB #2024-004B**  
**River Channel Stabilization in Two Rivers Park**

**APPENDIX M – REQUEST FOR TAXPAYER INFORMATION  
AND CERTIFICATION, W-9, and VENDOR FORM**

**ITB #2024-004B**  
**River Channel Stabilization in Two Rivers Park**

**ITB #2024-004B**  
**River Channel Stabilization in Two Rivers Park**  
**APPENDIX N – BIDDER QUALIFICATION FORM**

This form should be completed and submitted with the Bids  
(Attach a separate sheet if needed)

**NAME OF BIDDER:** \_\_\_\_\_

**ADDRESS OF BIDDER:** \_\_\_\_\_

\_\_\_\_\_  
**PHONE NUMBER(S):** \_\_\_\_\_

**EMAIL ADDRESSES:** \_\_\_\_\_

**NEW MEXICO**  
-----

**LIST OF River or river-related Projects) IN SOUTHWESTERN U.S. COMPLETED BY THE BIDDER DURING THE PAST FIVE (5) YEARS:**

1.

**Project Location:** \_\_\_\_\_

**Type of Project:** \_\_\_\_\_

**Total Contract Value:** \_\_\_\_\_

**Owner:** \_\_\_\_\_

2.

**Project Location:** \_\_\_\_\_

**Type of Project:** \_\_\_\_\_

**Total Contract Value:** \_\_\_\_\_

**Owner:** \_\_\_\_\_

3.

**Project Location:** \_\_\_\_\_

**Type of Project:** \_\_\_\_\_

**ITB #2024-004B**  
**River Channel Stabilization in Two Rivers Park**

**Total Contract  
Value:**

\_\_\_\_\_

**Owner:**

\_\_\_\_\_

**QUALIFICATIONS AND EXPERIENCE OF CONSTRUCTION SUPERINTENDENT/  
PROJECT MANAGER: *Attach resume'***

\_\_\_\_\_  
Name of Bidder

\_\_\_\_\_  
Signature of Bidder (Officer of Corporation)

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

\_\_\_\_\_  
Date

**ITB #2024-004B**  
**River Channel Stabilization in Two Rivers Park**  
**APPENDIX O - LIST OF SUBCONTRACTORS**

General Contractor

The following subcontractors will work on the construction of this project if my proposal is accepted. General Contractor is to be inserted for those trades for which no subcontract will be let and in which this contractor is experienced.

	<u>TRADE</u>	<u>NAME</u>	<u>ADDRESS</u>
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____
4.	_____	_____	_____
5.	_____	_____	_____
6.	_____	_____	_____
7.	_____	_____	_____
8.	_____	_____	_____
9.	_____	_____	_____
10.	_____	_____	_____
11.	_____	_____	_____
12.	_____	_____	_____
13.	_____	_____	_____
14.	_____	_____	_____
15.	_____	_____	_____

\_\_\_\_\_  
General Contractor

**ITB #2024-004B**  
**River Channel Stabilization in Two Rivers Park**

**APPENDIX P – PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENTS:

That (HERE INSERT THE NAME AND ADDRESS OR LEGAL TITLE OF CONTRACTOR.) as Principal, hereinafter called Contractor, and (HERE INSERT FULL NAME AND ADDRESS OR LEGAL TITLE OF SURETY.) as Surety, hereinafter called Surety, are held and firmly bound unto The Village of Ruidoso as Obligee, hereinafter called Owner, in the amount of Dollars (\$\_\_\_\_\_), for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Contractor has by written agreement dated \_\_\_\_\_, 2023 entered into a Contract with Owner for **(River Channel Stabilization in Two Rivers Park)** in accordance with drawings and specifications prepared by Riverbend Engineering, LLC which Contract is by reference made a part hereof, and is hereafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if Contractor shall promptly and faithfully perform said Contract, then this obligation shall be null and void; otherwise, it shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the Owner. Whenever Contractor shall be, and declared by Owner to be in default under the Contract, the Owner having performed Owner's obligations thereunder, the Surety may promptly remedy the default, or shall promptly:

1. Complete the Contract in accordance with its terms and conditions, or
2. Obtain a bid or bids for submission to Owner for completing the Contract in accordance with its terms and conditions, and upon determination by Owner and Surety of the lowest responsible bidder, arrange for a contract between such bidder and Owner, and make available as work progresses (even though there should be a default or a succession of defaults under the Contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof.

The Surety hereby guarantees any work performed under this bond against omission of material or defective materials and workmanship, for a period of one (1) year following its completion and acceptance, it being understood, however, that if any limitation embodied in this bond is prohibited by any law controlling the construction hereof, such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

Any suit under this bond must be instituted before the expiration of two (2) years from the date on which final payment under the Contract falls due.



**ITB #2024-004B**

**River Channel Stabilization in Two Rivers Park**

No right or action shall accrue on this bond to or for the use of any person or corporation other than the Owner named herein or the heirs, executors, administrators, or successors of Owner.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

(Seal)

\_\_\_\_\_  
(Principal)

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

\_\_\_\_\_  
(Surety)

(Seal)

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

\_\_\_\_\_  
(Witness)

\_\_\_\_\_  
(Witness)

**ITB #2024-004B**  
**River Channel Stabilization in Two Rivers Park**  
**APPENDIX Q – LABOR AND MATERIAL PAYMENT BOND**

NOTE: This bond is issued simultaneously with the Performance Bond in favor of the Owner conditioned for the full and faithful performance of the Contract.

KNOW ALL MEN BY THESE PRESENTS:

That \_\_\_\_\_ (HERE INSERT THE NAME AND ADDRESS OR LEGAL TITLE OF THE CONTRACTOR.)

\_\_\_\_\_ as Principal, hereinafter called Principal,

and \_\_\_\_\_ (HERE INSERT THE FULL NAME OR LEGAL TITLE OF SURETY.)

\_\_\_\_\_ as Surety, hereinafter called Surety,

are held and firmly bound unto the Village of Ruidoso, New Mexico, as Obligee, hereinafter called Owner, for the use and benefit of claimants as herein below defined, in the amount of (HERE INSERT A SUM EQUAL TO AT LEAST THE CONTRACT PRICE.) Dollars (\$), for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally firmly by these presents.

WHEREAS, Principal has by written agreement dated \_\_\_\_\_, 20\_\_\_\_, entered into a contract with Owner for River Channel Stabilization in Two Rivers Park, Ruidoso, NM in accordance with drawings and specifications prepared by Riverbend Engineering, LLC,

(HERE INSERT FULL NAME AND ADDRESS OR LEGAL TITLE OF OWNER.)

Village of Ruidoso

\_\_\_\_\_ which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if the Principal shall promptly make payment to all claimants as hereinafter defined, for all labor and material used or reasonably required for use in the performance of the Contract, then this obligation shall be void; otherwise, it shall remain in full force and effect, subject, however, to the following conditions:

1. A Claimant is defined as one having a direct contract with the Principal or with a subcontractor of the Principal for labor, material, or both, used or reasonably required for use in the performance of the Contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service, or rental of equipment directly applicable to the Contract.
2. The above named Principal and Surety hereby jointly and severally agree with the Owner that every Claimant as herein defined, who has not been paid in full before the

**ITB #2024-004B**

**River Channel Stabilization in Two Rivers Park**

expiration of a period of ninety (90) days after the date on which the last of such Claimant's work or labor was done or performed, or materials were furnished by such Claimant, may sue on this bond for the use of such Claimant, prosecute the suit to final judgment for such sum or sums as may be justly due Claimant and have execution thereon. The Owner shall not be liable for the payment of any costs or expenses of any such suit.

3. No suit or action shall be commenced hereunder by any Claimant:
  - a. Unless Claimant, other than one having a direct contract with the Principal shall have given written notice to any two (2) of the following: the Principal, the Owner, or the surety above named, within ninety (90) days after such Claimant performed the last of the work or labor or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Principal, Owner, or Surety, at any place where an office is regularly maintained for the transaction of business or served in any manner in which legal process may be served in the state in which the aforesaid project is located, save that such service need not be made by a public officer.
  - b. After the expiration of one (1) year following the date on which principal ceased work on said contract or after the expiration of one (1) year following the date of substantial completion of the project, whichever is later, it being understood, however, that if any limitation embodied in this bond is prohibited by any law controlling the construction hereof such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.
  - c. Other than in a State court of competent jurisdiction as established by law.
4. The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety of mechanics' liens, which may be filed of record against said improvement, whether or not claim for the amount of such lien be presented under and against this bond.

Signed and sealed this \_\_\_\_ day \_\_\_\_\_ of 2023.

---

(Signature of Principal)

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(Printed Name and Title)

**ITB #2024-004B**  
**River Channel Stabilization in Two Rivers Park**

---

(Seal)

---

(Witness)

---

(Surety)

---

(Witness)

**ITB #2024-004B**  
**River Channel Stabilization in Two Rivers Park**

**ATTACHMENT A – WAGE RATES**