

City of Truth or Consequences
STATE OF NEW MEXICO



INVITATION FOR BIDS (ITB)

Road Materials and Equipment Rental
REVISION #1 8/18/2021

ITB#21-22-003

CITY OF TRUTH OR CONSEQUENCES PURCHASING
505 SIMS STREET
TRUTH OR CONSEQUENCES, NM 87901

ORIGINAL ISSUED: 8/16/2021
REVISION #1 ISSUED: 8/18/2021
REVISION #1 REPLACES ENTIRE ORIGINAL ITB ISSUED 8/16/2021

BID OPENING: 09/14/2021 2:00 pm MST

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I. INTRODUCTION

The City of Truth or Consequences is requesting bids to establish an indefinite quantity multi-year pricing agreement for Road Materials and Equipment Rental. An Indefinite Quantity Pricing Agreement will be issued resulting from this Invitation to Bid (ITB). The City of Truth or Consequences shall issue individual purchase orders for the materials contained in the Pricing Agreement on an “as needed” basis.

A. PURPOSE OF THIS INVITATION FOR BIDS

The City of Truth or Consequences is currently requesting sealed bids for the establishment of a multi-year pricing agreement for Road Materials and Equipment Rental required on an “as needed” basis. The City administers a variety of activities, which require the procurement of road materials and equipment rentals.

A Pricing Agreement (Contract) will be issued for a one (1) year period with three (3) one-year options for renewal. Purchase Orders will be issued within the applicable fiscal year subject to availability of funding. A Purchase Order is required prior to the delivery of any material under this agreement. No material shall be accepted or delivered without a Purchase Order and prior receipt of written certifications by an approved testing laboratory.

Material requirements and related specifications are contained in the Section IV of this ITB.

B. SUMMARY OF CRITICAL INFORMATION

1. Deadline for receipt of sealed bids: **SEPTEMBER 14, 2021, 2 PM MST**
2. Address for Delivery of sealed bids: 505 Sims, Truth or Consequences, NM 87901
3. Bid Opening Time and Date: **SEPTEMBER 14, 2021 2:00 PM MST**
4. Bid Opening Location: 505 Sims, Truth or Consequences, NM 87901

Potential Bidders are highly encouraged to read this entire solicitation as important information, including mandatory requirements, is contained in other places within this ITB.

C. SUMMARY SCOPE OF WORK

This procurement will be conducted in accordance with the New Mexico State Procurement Code as required by 13-1-111 NMSA 1978. The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and misdemeanor criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities, and kickbacks.

The scope of work consists of providing the products or services specified herein. The City performs the maintenance and repair of all streets within Sierra County and is requesting bids to provide the materials needed for that maintenance and repairs along with equipment rental.

D. PROCUREMENT OFFICER/MANAGER

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

Name: Carol Kirkpatrick, Finance Director and Procurement Manager (Contact)
Name: Tammy Gardner, Interim Chief Procurement Officer
Address: 505 Sims Street, Truth or Consequences, NM 87901
Telephone: 575-740-7323
Fax: 575-894-0363
Email: procurement@torcnm.org

1. **Any inquiries or requests** regarding this procurement should be submitted, in writing, to the Procurement Manager. Offerors may contact **ONLY** the Procurement Manager regarding this procurement. Other City employees do not have the authority to respond to questions.
2. **Protests of the solicitation or award must be submitted in writing to the Procurement Manager identified in Section II.B.12.** As a Procurement Manager has been named in this Invitation for Bids, pursuant to §13-1-172, NMSA 1978 and 1.4.1.82 NMAC, **ONLY protests delivered directly to the Procurement Manager in writing and in a timely fashion will be considered to have been submitted properly and in accordance with statute, rule, and this Request for Proposals.**

E. PROPOSAL DELIVERY

All deliveries of proposals via express carrier, courier, or hand delivery, must be addressed and submitted as follows (including the hard-copy requirement):

Name: Chief Procurement Officer/Manager
Reference RFP Name: ITB #21-22-003 Road Materials and Rental Equipment
Address: 505 Sims Street
Truth or Consequences, NM 87901

Electronic proposals will not be accepted.

F. DEFINITION OF TERMINOLOGY

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

"Bidder" is any person, corporation, or partnership who chooses to submit a sealed bid.
"Board of City Commissioners" (also "BCC") means the elected board in whom all powers of the City are vested and who are responsible for the proper and efficient administration of the City government.

"Chief Procurement Officer" means the person or designee authorized by the City to manage or administer a competitive procurement.

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

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

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

"City" means the City of Truth or Consequences, State of New Mexico.

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

"F.O.B. Destination" means goods are to be delivered to the destination designated by the user which is the point at which the user accepts ownership or title of the goods. Laws of New Mexico specifically prohibit acceptance of ownership of goods in transit. Any exception to F.O.B. Destination may cause a bid to be declared nonresponsive.

"Heavy road equipment" means any motor-driven vehicle or apparatus capable of use for earth moving or mixing components which has an aggregate value or price of over one thousand dollars (\$1,000).

"Invitation for Bids" or "ITB" means all documents, including those attached or incorporated by reference, used for soliciting sealed bids.

"Local public body" means every political subdivision of the state and the agencies, instrumentalities and institutions thereof, including two-year post-secondary educational institutions, school districts and local school boards and municipalities, except as exempted pursuant to the Procurement Code.

"Mandatory" refers to the terms "must", "shall", "will", "is required" or "are required" which identify a mandatory item. Failure to meet a mandatory item or factor may result in the rejection of the submitted bid.

"MDT" & "MST" mean Mountain Daylight Time (MDT) and Mountain Standard Time (MST). Usage is dependent on which is in effect on the date specified.

“Pricing Agreement” means an indefinite quantity contract which requires the contractor to furnish items of tangible personal property, services or construction to a state agency or a local public body which issues a purchase order, if the purchase order is within the quantity limitations of the contract, if any.

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

“Product” means an item of tangible personal property which is defined in the New Mexico Procurement Code as tangible property other than real property having a physical existence, including but not limited to supplies, equipment, materials and printed materials.

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

"Purchasing" means City of Truth or Consequences Purchasing Office or the City of Truth or Consequences Chief Procurement Officer.

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

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

“Services” means the furnishing of labor, time or effort by a Contractor not involving the delivery of a specific end product other than reports and other materials which are merely incidental to the required performance. "Services" does not include construction.

"State agency" means any department, commission, council, board, committee, institution, legislative body, agency, government corporation, educational institution or official of the executive, legislative or judicial branch of the government of the State of New Mexico.

“Successful Bidder” means the lowest priced Responsible Bidder to whom City of Truth or Consequences, on the basis of the City’s evaluation, makes an award. A Successful Bidder does not become a Contractor until the City signs the Contract signed and submitted by the Bidder. **Successful Bidders should not provide products prior to their receipt of an approved Purchase Order.**

G. RESIDENT BUSINESS PREFERENCE

The New Mexico Procurement Code provides for preference for resident businesses and Contractors under certain conditions. If applicable, the preference will be provided to those

bidders that have provided a valid resident business preference certificate with their bid, as required by 13-1-22 NMSA 1978.

To ensure adequate consideration and application of NMSA 1978, § 13-1-21 (as amended), Offerors **MUST** include a copy, in this section, of its current New Mexico Resident preference certificate, as issued by the New Mexico Taxation and Revenue Department. Points will be added for one or the other, but not both.

For more information, reference Sections 13-1-21 and 13-1-22 of the New Mexico Procurement Code. Preference applications are available for download at:

Resident Business:

<http://www.tax.newmexico.gov/SiteCollectionDocuments/acd-bp0001.pdf>

H. RESIDENT VETERAN BUSINESS PREFERENCE

Effective July 1, 2012, certain preferences are available to Resident Veteran Businesses. In order for a Bidder to receive preference as a Resident Veteran Business, that Bidder must submit a copy of their Resident Veteran Business Preference Certificate with their bid. The preference certificate must have been issued by the New Mexico Taxation and Revenue Department. Providing only a preference number or a copy of the application is not acceptable.

For more information and application forms, go to:

<http://www.tax.newmexico.gov/Businesses/Pages/In-StatePreferenceCertification.aspx>

I. PROCUREMENT LIBRARY

A procurement library has been established. Offerors are encouraged to review the material contained in the Procurement Library by selecting the link provided in the electronic version of this document through your own internet connection. The library contains information listed below:

Electronic version of RFP, Questions & Answers, ITB Amendments, etc.

http://www.torcnm.org/departments/finance/public_invitation_for_bidders.php.

II. CONDITIONS GOVERNING THE PROCUREMENT

This section contains the schedule for the procurement, describes the major procurement events, and contains the general conditions and requirements that the Bidder agrees to by submitting a bid in response to this ITB.

A. SEQUENCE OF EVENTS

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

ACTION	RESPONSIBILITY	DATE
1. Issue ITB	City of T or C	8/16/21
2. Return of “Acknowledgment of Receipt” Form	Potential Bidders	8/26/21
3. Deadline to Submit Written Questions	Potential Bidders	9/1/21
4. Response to Written Questions	Procurement Manager	9/7/21
5. Deadline for Submission of Sealed Bids	Potential Bidders	9/14/21 2:00 pm MST
6. Public Opening	Purchasing, Bidders, General Public	9/14/21 2:30 pm MST
7. Bid Tabulation*	Purchasing	9/14/21
8. Finalize Contractual Agreements*	Agency/Finalist Offeror	9/15/21
9. Award Recommendation and Contract Submitted to the City Commission(*) (**)	Procurement Manager	9/22/21 9:00 am MST
10. Notice of Award and Contract give to successful offeror*	Procurement Manager	9/22/21
11. Protest Deadline*	Bidders	15 calendar days after knowledge of facts giving rise to protest.

*Dates indicated in Events 8 through 11 are estimates only, and may be subject to change without necessitating an amendment to the RFP.

**Pricing Agreement award shall be subject to approval of the City Commissioner.

B. EXPLANATION OF SEQUENCE OF EVENTS

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

1. Issue Invitation to Bid (ITB)

This ITB is being issued by the City of Truth or Consequences Procurement Manager on behalf of the City of Truth or Consequences.

2. Acknowledgement of Receipt Form

Potential Offerors may hand deliver, e-mail or sent by registered or certified mail the Acknowledgement of Receipt Form (APPENDIX A), to the Procurement Manager identified in Section I.D. at procurement@torcnm.org to have their organization placed on the procurement Distribution List. The form must be returned to the Procurement Manager as indicated in Section II.A, Sequence of Events.

The procurement distribution list will be used for the distribution of written responses to questions, and/or any amendments to the ITB. Failure to return the Acknowledgement of Receipt Form does not prohibit potential Offerors from submitting a response to this ITB. However, by not returning the Acknowledgement of Receipt Form, the potential Offeror's representative shall not be included on the distribution list, and will be solely responsible for obtaining from the Procurement Library (Section I.H.). Responses to written questions and any amendments to the ITB can be found in the procurement library Section I.H.

3. Deadline to Submit Written Questions

Potential bidders may submit written questions as to the intent or clarity of this ITB until the close of business on the date indicated in Section II.A (Sequence of Events), above. All written questions must be sent by e-mail to the Procurement Manager (See Section I. D.)

4. Response to Written Questions/ITB Amendments

Written responses to written questions and any ITB amendments will be posted to the City of Truth or Consequences Purchasing Office web site:

http://www.torcnm.org/departments/finance/public_invitation_for_bidders.php

5. Submission of Bids

BIDS MUST BE RECEIVED BY THE PROCUREMENT MANAGER OR DESIGNEE NO LATER THAN 2:00 PM MST ON THE DATE INDICATED IN SECTION II.A (SEQUENCE OF EVENTS), ABOVE. BIDS RECEIVED AFTER THIS DEADLINE FOR ANY REASON WILL BE RETAINED UNOPENED AND NOT CONSIDERED.

The date and time of receipt will be recorded on each bid. Bids must be addressed and delivered to the Procurement Manager at the delivery address listed in Section I. D. Bids must be sealed and should be labeled on the outside bottom left-hand corner of the package to clearly indicate that they are in response to the "ROAD MATERIALS AND

EQUIPMENT RENTAL.” and should reference “ITB#21-22-003” and should show the opening date and time. Bids submitted by facsimile or other electronic means **WILL NOT BE ACCEPTED**. A public log will be kept of the names of all persons or companies submitting bids.

6. Public Opening

All bids timely received will be opened and read aloud in a public forum at the City of Truth or Consequences, 505 Sims, Truth or Consequences, NM 87901 on the date and time indicated in Section II.A (Sequence of Events), per NMSA 1978, Section 13-1-107 (1984).

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

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

7. Bid Tabulation

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

8. Finalize Contractual Agreements

After the bid tabulation in #7, a contract will be negotiated with the apparent and most advantageous Offeror. In the event mutually agreeable terms cannot be reached with the apparent most advantageous Offeror in the timeframe specified, the City reserves the right to finalize a contractual agreement with the next most advantageous Offeror(s) without undertaking a new procurement process. The award and contract is subject to appropriate City Commission approval and signature(s).

All terms and conditions of the ITB will remain unchanged for the duration of any resulting agreement(s) and will supersede and take precedence over any bidder agreement forms.

9. Award Recommendation and Contract Submitted to the City Commission

Award recommendation and Contract will be submitted to the City Commission for approval as indicated in Section II.A, Sequence of Events or as soon as possible thereafter.

10. Notice of Award and Contract Given to Successful Offeror

Upon receipt of the signed contractual agreement, the City's Procurement office will submit award and contract as per Section II.A., Sequence of Events, or as soon as possible thereafter to successful offeror.

11. Protest Deadline

Any protest by a Bidder must be timely, in conformance with, and will be governed by Sections 13-1-172 through 13-1-176 NMSA. The fifteen (15) day protest period for the protest of an award shall begin on the day following the Contract award and will end at 5:00 PM MST on the date indicated in Section II.A (Sequence of Events), above. The Protest period concerning this solicitation shall begin on the day following the initial advertisement and posting of the solicitation. Please be advised that all Protests must be written and must include the name and address of the protestor and the Invitation for Bids number. It must also contain a statement of grounds for protest including appropriate supporting exhibits, and it must specify the ruling requested from the Procurement Manager. The protest must be delivered to the Procurement Manager at:

City of Truth or Consequences
Procurement Manager
505 Sims, Truth or Consequences, NM 87901

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

C. GENERAL REQUIREMENTS

This procurement will be conducted in accordance with the New Mexico Procurement Code (13-1-28 NMSA 1978).

1. Acceptance of Conditions Governing the Procurement

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

2. Incurring Cost

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

3. Prime Contractor Responsibility

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

4. Subcontractors

Not Applicable.

5. Amended Bids

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

6. Bidders' Rights to Withdraw Bid

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

7. Bid Offer Firm

Responses to this ITB will be considered firm for ninety (90) days after the due date for receipt of bids.

8. No Obligation

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

9. Termination

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

10. Sufficient Appropriation

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

11. Legal Review

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

12. Governing Law

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

13. Basis for Bid

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

14. Contract Terms and Conditions

The contract terms and conditions can be found in Appendix F.

15. Bidder Qualifications

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

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

16. Right to Waive Minor Irregularities

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

17. Change in Contractor Representatives

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

18. Notice

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

19. City Rights

The City reserves the right to accept all or a portion of a Bidder's bid and to award to the Bidder whose bid is deemed to be in the best interest of the City.

20. Ownership of Bids

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

21. Ambiguity, Inconsistency or Errors in ITB

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

22. Competition

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

23. Use by Other Government Agencies

By submitting a bid, Bidder indicates that they understand and agree that other local public bodies and state agencies within the State of New Mexico, if allowed by their governing directives, may contract for the goods or services included in this procurement document with the awarded Contractor(s). Contractual engagements accomplished under this provision shall be solely between the awarded Contractor and the contracting government entity with no obligation or liability by the City of Truth or Consequences.

24. Confidentiality

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

25. Delivery and Failure to Meet Order Provisions

a. No Delivery Before Purchase Order is Issued: No Bidder, including a Bidder to whom an award is made, shall deliver any item of tangible personal property prior to the issuance of a Purchase Order issued by the City of Truth or Consequences Purchasing Department.

b. Failure to Meet Order Provisions: The City reserves the right to cancel all or any part of an order without cost to the City, if the Contractor fails to meet the provisions of that order and, except as otherwise provided herein, to hold the Contractor liable for any excess cost occasioned by the City due to the Contractor's default.

26. City Furnished Property

Not Applicable

27. Discounts

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

28. Packing, Shipping and Invoicing

a. The City's Purchasing Order number and the Contractor's name, user's name and location shall be shown on each packing and delivery ticket, package, bill of lading and other correspondence in connection with the shipments. The user's count will be accepted by the Contractor as final and conclusive on all shipments not accompanied by a packing ticket.

b. The Contractor's invoice shall be submitted and shall contain the following information: order number, description of supplies or services, quantities, unit price and extended totals. Separate invoices shall be rendered for each and every complete shipment.

c. Invoices must be submitted to the City of Truth or Consequences Finance Department, Attn. Accounts Payable, 505 Sims Street, Truth or Consequences, NM 87901 and NOT to the using agency.

29. Electronic Mail Address Required

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

30. Use of Electronic Versions of this ITB

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

31. Samples

Unless otherwise indicated in the bid specifications, samples of the items, when required, shall be free of expense to the City. Samples not destroyed or mutilated in testing will be returned upon request, at Bidder's expense. Each sample must be labeled to clearly show the bid number and item number to which it pertains. Unsolicited bid samples or descriptive literature, which is submitted at the Bidder's risk, will not be returned.

32. Award Rights

Bids will be evaluated on the base of the lowest cost for each item listed in the cost table. Bids will be evaluated on the base bid without gross receipts tax or any optional local tax. However, if the bid is a Unit Price Bid and there is a discrepancy between the amount shown as the Base Bid and the actual total amount of the Bid Items determined by multiplying the Unit Price shown for each Bid Item by the Estimated Quantity shown for that Bid Item and adding each such amount, it will be awarded to the lowest responsive and responsible Bidder on the actual total amount of the Bid Items excluding gross receipts tax or any optional local tax.

33. Addenda

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

It is the responsibility of all persons or businesses considering submitting a bid in response to this solicitation to ensure that they have received all addenda prior to making a bid. Addenda will be posted to the Purchasing Department web site at http://www.torcnm.org/departments/finance/public_invitation_for_bidders.php prior to the due date for the receipt of bids.

III. RESPONSE REQUIREMENTS

This section tells prospective Bidders how to prepare and submit their bid in response to this ITB.

A. NUMBER OF RESPONSES

Bidders are required to bid on all items to this ITB provided that meet or exceed product specifications. In the event exceptions are taken, the Bidder must state any exception to the specifications and/or scope of work. It is the responsibility of the Bidder to certify that the materials provided under any resulting purchase order shall meet the specification requirements of this ITB. **Each Bidder must provide with their return bid the written certification and/or exceptions as provided for on Appendix B of this ITB. Failure to provide this certification with your return bid shall serve as a basis for rejecting your bid without further consideration.**

B. NUMBER OF COPIES

Bidders shall deliver one (1) signed and sealed original bid and one (1) copy to the location specified in Section I.D on or before the closing date and time for receipt of bids.

C. BID CONTENTS AND PROPOSAL FORMAT/SUBMITTAL

All bids shall contain the following (failure to do so may result in your bid being deemed non-responsive):

1. Signed Letter of Transmittal (Appendix B)
2. List of references, a minimum of three (3) customers that have purchased similar materials and rental equipment through your company. Include company name, mailing address, phone number, email address, and contact name.
3. Statement of qualifications, including a description of your experience in the sale and delivery of road materials as listed in the Scope of Work.
4. Signed Campaign Contribution Form (Appendix C)
5. Conflict of Interest-Debarment/Suspension Certification Form (Appendix D)
6. Proof of Liability Insurance
7. State of New Mexico Business License
8. New Mexico Business Preference Certificate (If applicable) *
9. New Mexico Resident Veterans Business Preference Certificate (if applicable)*
10. Bid Form (Appendix E)
11. Delivery schedule. Provide a written guaranteed delivery after receipt of order (ARO).

*Note: In order to receive a New Mexico Preference, bids MUST contain one of the following items:

1. Completed and signed New Mexico Resident Preference Certificate (if applicable).

2. Completed and signed New Mexico Resident Veteran Preference (if applicable).

Failure of Bidder to complete and submit required bidding documents, in accordance with all instructions provided, is cause for rejection of their bid.

D. BID SUBMITTAL REQUIREMENTS

Bids must be submitted in a sealed envelope. The bid title, the bid number and the opening date and time should be clearly indicated on the bottom left hand side of the front of the envelope. The Bidder's name shall also appear on the envelope. Failure to properly label the bid envelope may necessitate the premature opening of the bid in order to identify the bid number.

IV. SPECIFICATIONS AND REQUIREMENTS

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

	<u>MIN ORDER</u>	<u>PIGGYBACK MIN</u>	<u>TOTAL ESTIMATED QUANTITY</u>
MATERIALS:			
ASHPALT HOT MIX	200 TONS	300 TONS	1000 TONS
SUPER PAVE	200 TONS	300 TONS	500 TONS
COLD MIX	15 TONS	50 TONS	2000 TONS
BASE COURSE 1"	15 TONS	50 TONS	35000 TONS
CHIPS "1/2"	15 TONS	50 TONS	2000 TONS
CHIPS "3.8"	15 TONS	50 TONS	2000 TONS
REDI MIX CONCRETE CLASS E 2500 Psi 3000 Psi 3500 Psi 4000 Psi	4 YDS	10 YDS	700 YDS
FILLABLE FILL CRUSHER FINES	Unknown 15 TONS	Unknown 50 TONS	Unknown 2000 TONS
PEA GRAVE	15 TONS	50 TONS	700 TONS
SCREENED ROCK SECTION	15 TONS		
PLASTER SAND	20 TONS	55 TONS	500 TONS
CONCRETE ROCK SECTION	15 TONS	50 TONS	500 TONS
CONCRETE SAND	15 TONS	50 TONS	200 TONS
FILL DIRT	10 TONS	45 TONS	4500 TONS

SCREENED SAND 3/16"	20 TONS	55 TONS	200 TONS
RIP RAP	10 TONS	45 TONS	500 TONS

ASPHALT HOT MIX

SECTION 1 --ASPHALT HOT MIX

1. Plant mix asphalt concrete shall be in accordance with Section 401 of the New Mexico State Highway Standard Specifications for Road and Bridge Construction, Current Edition, except for special provisions inserted below:

2. **COMPOSITION OF MIXED MATERIALS:** The bituminous plant mix shall be composed of a mixture of aggregate and bituminous material. The several aggregate fractions shall be sized, combined, and mixed with asphalt in such proportions that a uniformly graded mixture will result, which is in substantial conformance with the specifications herein provide:

SIEVE DESIGNATION	PASSING SQUARE MESH SIEVES
1/2"	100
3/8"	70-98
NO.4	45-70
NO.10	30-50
NO.40	15-25
NO.200	4-8

The type and grade bituminous material shall be asphalt cement, type AC-10 as per attached special provisions. The amount of bituminous material to be within the range of from 5.5% to 9% asphalt, by weight of total mix, and shall be maintained within plus or minus 0.5 percent, Type 85-100 penetration grade asphalt may be substitute for AC-10 grade asphalt.

3. **MIXING EQUIPMENT:** The mixing plant shall dry, size, blend, and mix the mineral aggregate and the bituminous material uniformly. Mixing time shall be sufficient to thoroughly and satisfactorily coat all aggregate.

4. **MATERIALS:** Under Section 402.2 of the NMSHD Standard Specifications for Road and Bridge Construction, Current Edition, delete the second sentence of Subsection 402.28 "Anti-Stripping Agents" in its entirety and substitute the following:

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"Unless otherwise provided, the required amount of anti-stripping agent shall be added at the Hot Mix Plant through an in-line blending system, as directed by the City or its designee."

5. **QUANTITIES:** The City will place the order in advance for at-plant asphalt and will verify need within 48 hours prior to pick up time. Vendor will not mix out materials until a

City truck is at plant site. Material to be picked up at vendor's plant. No minimum order requirement when plant is in operation. Minimum order for plant start-up will be 200 tons.

6. **PRICES:** The price for plant hot mix asphalt shall be stated on a per-ton basis. The price for the anti-stripping agent shall be stated separately on a per unit basis. Prices shall be given for pick-up at vendor's plant, as well as for delivered price to site, and finally for delivered at site and in place.

7. **PLANT LOCATION:** The distance of the main plant from the City Road Section of the City of Truth or Consequences, New Mexico, shall NOT exceed 10 miles. Plant must be a fixed plant in year round operation. Main plant must be accessible by safe, wide roadways capable of supporting large equipment and through traffic in a safe manner.

***END OF SECTION 1 ***

SECTION 2 -SUPER PAVE

1. Plant mix asphalt concrete shall be in accordance with Section 401 and Sub-Sections 420, 421 and 422 of the New Mexico Standard Specifications for Road and Bridge Construction, Current Edition, except for special provision inserted below:

2. **COMPOSITION OF MIXED MATERIALS:** The bituminous plant mix shall be composed of a mixture of aggregate and bituminous material. The several aggregate fractions shall be sized, combined, and mixed with asphalt in such proportions that a uniformly graded mixture will result, which is in substantial conformance with the specifications herein provided:

3. **MIXING EQUIPMENT:** The mixing plant shall dry, size, blend, and mix the mineral aggregate and the bituminous material uniformly. Mixing time shall be sufficient to thoroughly and satisfactorily coat all aggregate.

4. **MATERIALS:** Under Section 402.2 of the NMSHD Standard Specifications for Road and Bridge Construction, Current Edition, delete the second sentence of Subsection 402.28 "Anti-Stripping Agents" in its entirety and substitute the following:

"Unless otherwise provided, the required amount of anti-stripping agent shall be added at the Hot Mix Plant through an in-line blending system, as directed by the City or its designee."

5. **QUANTITIES:** The City will place the order in advance for at-plant asphalt and will verify need within 48 hours prior to pick up time. Vendor will not mix out materials until a City truck is at plant site. Material to be picked up at vendor's plant. No minimum order requirement when plant is in operation. Minimum order for plant start-up will be 200 tons.

C. **PRICES:** The price for plant hot mix asphalt shall be stated on a per-ton basis. The

price for the anti-stripping agent shall be stated separately on a per unit basis. Prices shall be given for pick-up at vendor's plant, as well as for delivered price to site, and finally for delivered at site and in place.

D. PLANT LOCATION: The distance of the main plant from the City Limits proper of the City of Truth or Consequences, New Mexico, shall NOT exceed 10 miles. Plant must be a fixed plant in year round operation. Main plant must be accessible by safe, wide roadways capable of supporting large equipment and through traffic in a safe manner.

***END OF SECTION 2 ***

SECTION 3--COLD MIX

1. Plant mix asphalt concrete shall be in accordance with Section 310 of the New Mexico Standard Specifications for Road and Bridge Construction, Current Edition, except for special provisions inserted below:

2. COMPOSITION OF MIXED MATERIALS: The aggregate and bituminous materials shall be mixed in a central plant or mixed in place. Aggregate and bituminous material shall be thoroughly mixed so that the bituminous material is uniformly distributed throughout the mixture and all aggregate particles are completely coated. If moisture is added to the mixture, the percentage shall be established by the Project Manager/Road Supervisor.

Bituminous treated base shall be constructed in conformity with the requirements of Section 304- Base Course & Subbase, for either method of mixing. The surface upon which bituminous treated base is to be placed shall be cleaned of all loose and deleterious materials, shall be free from frozen material, and shall meet the applicable density requirements of Section 207- Subgrade Preparation and Section 304-Base Course & Subbase.

3. MIXING EQUIPMENT: The aggregate, water when required, and bituminous material, shall be mixed in a stationary pugmill capable of producing a uniformly mixed product. Mixing time shall be sufficient to thoroughly and satisfactorily coat all aggregate.

4. MATERIALS: Under Section 310.2 of the NMSHD Standard Specifications for Road and Bridge Construction, Current Edition, delete the second sentence of subsection 402.28, "Anti- Stripping Agents" in its entirety and substitute the following:

"Unless otherwise provided, the required amount of anti-stripping agent shall be added at the Cold Mix Plant through an in-line blending system, as directed by the City or its designee."

5. QUANTITIES: Material to be picked up at vendor's plant. No minimum order requirement when plant is in operation. Minimum order for plant start-up will be 300 tons.

6. PRICES: The price for plant cold mix asphalt shall be stated on a per-ton basis. The price for the anti-stripping agent shall be stated separately on a per unit basis. Prices shall be given for pick-up at vendor's plant, as well as for delivered price to site, and finally for delivered at site and in place.

7. PLANT LOCATION: The distance of the main plant from the City Limits proper of the City of Truth or Consequences, New Mexico, shall NOT exceed 10 miles. Plant must be a fixed plant in year round operation. Main plant must be accessible by safe, wide roadways capable of supporting large equipment and through traffic in a safe manner.

END OF SECTION 3

SECTION 4 --BASE COURSE

1. BASE COURSE: Vendor to provide 1" base course in accordance with Section 304 of the New Mexico State Highway Department Standard Specification for Road and Bridge Construction, Current Edition. Material to be sized in accordance with Table 304, "Base Course and Subbase Gradation" meeting gradation under Class No. "II-8".

SIEVE SIZE	% PASSING
1"	100
3/4"	85-100
No.4	40-70
No.10	30-55
No.200	4-12
Two Fractured Faces	50 or More
(Plus 4 Material)	
Liquid Limit	25 or less

2. PRICES: Prices shall be stated on a per-ton basis. Prices shall be given for pick-up at vendor's plant, as well as for delivered price to site.

3. QUANTITIES: Material to be picked up at vendor's plant. No minimum order requirement when plant is in operation. Minimum order for plant start-up will be 15 tons.

4. PLANT LOCATION: The distance of the main plant from the City Limits proper of the City of Truth or Consequences, New Mexico, and shall NOT exceed 10 miles. Plant must be a fixed plant in year round operation. Main plant must be accessible by safe, wide roadways capable of supporting large equipment and through traffic in a safe manner.

*** END OF SECTION 4 ***

SECTION 5 --- CHIPS

1. CHIPS: Vendor to provide chips in accordance with Section 410--"Bituminous

Surface Treatment" of the New Mexico State Highway Department Standard Specifications for Road and Bridge Construction, Current Edition. Gradations shall be ½” and 3/8". Variation from specified gradation shall only be made with the written approval of the City or it designee.

2. QUANTITIES: Material to be picked up at vendor's plant. No minimum order requirement when plant is in operation. Minimum order for plant start-up will be 15 tons.

3. PRICES: The price for each size of chips shall be stated on a per-ton basis. Prices shall be given for pick-up at vendor's plant, as well as for delivered price to site.

4. PLANT LOCATION: The distance of the main plant from the City Limits proper the City of Truth or Consequences, New Mexico, shall NOT exceed 10 miles. Plant must be a fixed plant in year round operation. Main plant must be accessible by safe, wide roadways capable of supporting large equipment and through traffic in a safe manor.

END OF SECTION 5

SECTION 6 -REDI-MIX CONCRETE

I. REDI-MIX CONCRETE: Vendor to provide Redi-mix Concrete in accordance with Section 510--"Portland Cement Concrete" of the New Mexico State Highway Department Standard Specifications for Road and Bridge Construction, Current Edition. Concrete should be of a five (5) bag per cubic yard mixture. Class "E" in accordance with 510.12. Redi-mix Concrete shall meet gradation in accordance with ASTM Design Specification C-67. Fly Ash shall be utilized in accordance with 510.28 "fly Ash" of the New Mexico State Highway Department Standard Specification for Road and Bridge Construction, Current Edition. The Fly Ash shall meet the chemical and physical requirements of ASTM C-618 for the class of Fly Ash specified with the following exceptions:

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PHYSICAL REQUIREMENTS	MINERAL ADMIXTURE CLASS	
	F	C
Fineness:		
Amount retained when wet-sieved on No. 325 sieve	34	34 max

Pozzolan Activity Index:

with portland cement, at 28 days min., percent of control	75	75 max
With lime, at 7 days min., psi.	800	800
Water requirements, max., % of control	105	105
Soundness:		
Autoclave expansion or contraction	0.8	0.8 max
Uniformity Requirements:		
The specific gravity and fineness of individual samples shall not vary from the average established by the ten preceding test; or by all preceding tests if the number is less than ten, by more than;		
Specific Gravity; max variation from average %	5	5 max
Percent Retained on No. 325, max. Variation, percentage points from average	5	5
Reactivity with Cement Alkalies:		
Reduction of mortar expansion at 14 days in accordance with ASTM Method C441, min. percent	60	60

CHEMICAL REQUIREMENTS

Silicon Dioxide, plus Aluminum Oxide, plus Iron oxide	70%	50% min.
Sulfur Trioxide	5%	5% max.
Moisture Content	3%	3% max
Loss on Ignition	12%	6% max
Magnesium Oxide	5%	5% max
Available Alkalies, as NaO	1.5%	1.5% max

2. QUANTITY: Estimated quantity to be provided under this agreement is 700 cubic yards.

3. PRICE: The price for plant redimix concrete (Class E) 2500, 3000, 3500 and 4000 Psi shall be stated on a per-cubic yard basis. These prices should include all costs of delivery.

PLANT LOCATION: The distance of the main plant from the City Limits proper of the City of Truth or Consequences, New Mexico shall NOT exceed 10 miles. Plant must be a fixed plant in year round operation. Main plant must be accessible by safe, wide roadways capable of supporting large equipment and through traffic in a safe manner.

***" END OF SECTION 6 ***

SECTION 7 - FLOWABLE FILL

1. FLOWABLE FILL: Shall be a flowable mixture of Portland Cement, aggregates, admixtures, and water. Cement to be used or furnished under this specification shall be portland cement conforming to be the requirements of ASTM C 150. The type of cement shall be either Type I or Type II, "low alkali" (LA) cement. Aggregates shall comply with the requirements of ASTM C 33 and as amended herein.

2. PROPORTIONING: The determination of the Flowable Fill design mix shall be solely the Contractor's responsibility and shall be established in accordance with the following limits.

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The materials shall be proportioned such that if placed at maximum slump, the maximum laboratory dry density, as determined from the molded specimens, at 20 (+/- 4 hours), is equal to or greater than 95 percent of the maximum dry density of the blended cement and aggregate, determined in accordance with ASTM 0558. The maximum dry density of the laboratory molded Flowable Fill specimens shall be computed on the average unit weight of the compressive strength specimens, corrected for the moisture content at the time of testing.

The portland cement content shall be one-half (1/2) sack, 47 lbs. per cubic yard in all Flowable Fill produced under this specification.

The aggregates shall be combined to provide a mixture of coarse and fine aggregate having a sand to total aggregate ratio of not less than 75 percent by weight. The combined aggregate gradation shall comply with the following limits:

SCREEN SIZE	% PASSING
1 in.	100
¾ in.	95-100

3/8 in.	82-100
No.4	70-100
No.8	55-85
No. 16	38-60
No. 50	6-30
No. 100	2-10

The design mix gradation; when plotted on a US Bureau of Public Roads 0.45 Power Gradation Chart, shall be similar to the plots of the specified gradation limits in the shape of the characteristic gradation curve.

Air entraining admixtures shall be proportioned to provide air entrainment of not less than 2 percent and not greater than 5 percent in the combined mixture.

Water shall be proportioned as required.

The design mix shall be proportioned to provide a slump of not less than 5 inches and not greater than 8 inches.

3. COMPRESSIVE STRENGTH: The compressive strength of the design mix shall not exceed 60 PSI at 20 days when sampled and tested in accordance with ASTM C 172 and D1633, and as specified in this specification.

4. QUANTITY: The City is unable to predict the quantities to be provided under this agreement.

5. PRICES: The price for Flowable Fill shall be stated on a per cubic yard basis. Price to include all costs of delivery.

6. PLANT LOCATION: The distance of the main plant from the City Limits proper of the City of Truth or Consequences, New Mexico shall NOT exceed 10 miles. Plant must be a fixed plant in year round operation. Main plant must be accessible by safe, wide roadways capable of supporting large equipment and through traffic in a safe manner.

*** END OF SECTION 7 ***

SECTIONS 8-16

SECTION 8-CRUSHER FINES

SECTION 9-PEA GRAVEL

SECTION 10-SCREENED ROCK

SECTION 11-PLASTER SAND

SECTION 12-CONCRETE ROCK

SECTION 13-CONCRETE SAND

SECTION 14-FILL DIRT

SECTION 15-SCREEN SAND #4 MINUS

SECTION 16 -RIP RAP

1. PRICES: The prices for Section 8 thru Section 16 shall be stated on a per-ton basis. Prices shall be given for pick-up at vendor's plant, as well as for delivered price to site.
2. PLANT LOCATION: The distance of the main plant from the City Limits proper of the City of Truth or Consequences, New Mexico, shall NOT exceed 10 miles. Plant must be a fixed plant in year round operation. Main plant must be accessible by safe, wide roadways capable of supporting large equipment and through traffic in a safe manor.

SECTION 17 -TRUCK SCALES

1. TRUCK SCALES: The Contractor shall furnish certified weighing facilities in accordance with Section 109, of the New Mexico State highway Standard Specifications for Road and Bridge Construction, Current Edition.
2. PRICE: The price bid will be on a per weigh basis at the scale site.
3. SCALE LOCATION: The distance of the scale from the City Limits proper of the City of Truth or Consequences, New Mexico, shall NOT exceed 10 miles. Plant must be a fixed plant in year round operation. Main plant must be accessible by safe, wide roadways capable of supporting large equipment and through traffic in a safe manner.

***END OF SECTION 17 ***

SECTION 18 – TRUCK RENTAL

1. TRUCK RENTAL
 - A. Trailer Dump
 - B. 10 Wheeler
 - C. Chip Spreader
 - D. Rollers
 - E. Sweepers
2. Price: The price bid is per hour with driver - indicate the minimum hours required.

***END OF SECTION 18 ***

SECTION 19 --- MISCELLANEOUS CHARGES

1. MISCELLANEOUS CHARGES
 - A. Fuel Surcharge

- B. Double Drop Charge
- C. Dump Truck - Minimum Load
- D. Wait Time Charge

END OF SECTION 19

V. BID OPENING, PROCESSING AND AWARD

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

A. BID RECEIPT

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

B. BID OPENING

Bids will be opened and read in public in accordance with Section 13-1-107 of the New Mexico Procurement Code. See Section II.A. (Sequence of Events), for specific information.

C. EVALUATION PROCESS

1. Compliance Review

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

2. Clarifications

The Procurement Manager may contact the Bidder for clarification of the response as specified in Section II.A.

3. Other Information Sources

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

4. Bid Evaluation

Bids will be evaluated on a total cost for all items including 3 years of extensions. Due to availability and delivery requirements, the City reserves the right to issue multiple awards by Section (Primary and Secondary) to the two lowest responsive and responsible bidder(s) meeting the minimum specification requirements under this ITB.

The bid price(s) on the Bid Form will be tabulated (price compared) to identify the lowest price(s) bid. If applicable, the price(s) bid will be adjusted (for comparison and award

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

The evaluation of each Offeror's cost proposal will be conducted using the following formula:

The total of all four years will be used to calculate the Cost score.

$$\frac{\text{Lowest Responsive Offeror's Total Cost}}{\text{Each Offeror's Total Cost}} \times \text{Available Award Points (100)}$$

New Mexico Resident Business Preference

If the Offeror has provided a copy of their Preference Certificate the Preference Points for a New Mexico Resident Business is 5% of the total points available in this ITB.

New Mexico Resident Veterans Business Preference

If the Offeror has provided a copy of their Preference Certificate the Preference Points for a New Mexico Resident Veteran Business is 10% of the total points available in this ITB.

5. Discrepancies in Price(s)

In case of an error in the Extended Price and Unit Price, the Unit Price shall govern.

6. Determination of Lowest Responsive Bid

After completion of the bid tabulation, the City will examine the results to determine which Bidder is determined to be the lowest responsive/responsible bid to the City in accordance with the specifications and terms and conditions set forth in the Invitation for Bids.

7. Public Notification of Bid Tabulations and Contract Awards

Bid tabulations and awarded Contracts will be posted to our website after the approval of the award and contract by the City Commission Section II A. Schedule of Events.

8. Note, the City of Truth or Consequences reserves the right to issue multiple award(s) consistent with the terms of this bid by Section.

D. AWARD AND ORDER PROCESS

1. Contract(s) awarded as a result of this solicitation shall be awarded to the lowest responsible Bidder(s) who's Base Bid and any accepted bid option represents the best value and is in the City's best interest.
2. Line Item. The City of Truth or Consequences reserves the right to award this invitation to bid based upon line item response without discussion.
3. Signed Agreement. Upon selection for possible award, the City will add the Contractor's name and signatory information to the signed Pricing Agreement (Appendix F) submitted by the Bidder and it will be submitted to the City Commission with a recommendation for award. Once approved and signed the Pricing Agreement is officially awarded.
4. Order(s). A successful Bidder(s) SHOULD NOT begin to deliver products or begin performance based solely on Contract award as detailed above. A successful Bidder(s) may only deliver products or begin performance **AFTER** the receipt of an approved Purchase Order issued by the City of Truth or Consequences Purchasing Department. Failure to comply is AT THE CONTRACTOR'S RISK and the City shall not be liable to pay for any products delivered or services performed prior to the issuance of an approved Purchase Order.

APPENDIX A

ACKNOWLEDGEMENT OF RECEIPT FORM
REVISION #1 8/18/2021
INVITATION TO BID #21-22-003
ROAD MATERIALS AND EQUIPMENT RENTAL

This Acknowledgement of Receipt Form should be signed and submitted no later than **5:00 PM MST on 8/26/21**. Only potential Offerors who elect to return this form will receive copies of all submitted questions and the written responses to those questions, as well as any ITB amendments, if any are issued.

In acknowledgement of receipt of this Invitation to Bid, the undersigned agrees that he or she has received a complete copy of the ITB, beginning with the title page, and ending with APPENDIX F.

The name and address below will be used for all correspondence related to the Invitation for Bid:

ORGANIZATION: _____

CONTACT NAME: _____

TITLE: _____ PHONE NO.: _____

E-MAIL: _____ (please print)

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

Submit Acknowledgement of Receipt Form to:

To: Chief Procurement Officer/Manager

E-mail: procurement@torcnm.org

Subject Line: ITB 21-22-003 Road Materials and Equipment Rental, Acknowledgement of Receipt Form

APPENDIX B

LETTER OF TRANSMITTAL FORM ROAD MATERIALS AND RENTAL EQUIPMENT ITB#21-22-003

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

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

2. For the person submitting the bid:

Name	
Title	
E-Mail Address	
Telephone Number	

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

_____ No Financial Interest _____ Yes, Financial Interest*

*Specify by name(s): _____

4. Declarations:

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

Signature _____ Date _____,

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

APPENDIX C

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to the Procurement Code, Sections 13-1-28, et seq., NMSA 1978 and NMSA 1978, § 13-1-191.1 (2006), as amended by Laws of 2007, Chapter 234, a prospective contractor subject to this section shall disclose all campaign contributions given by the prospective contractor or a family member or representative of the prospective contractor to an applicable public official of the state or a local public body during the two years prior to the date on which a proposal is submitted or, in the case of a sole source or small purchase contract, the two years prior to the date on which the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor or a family member or representative of the prospective contractor to the public official exceeds two hundred fifty dollars (\$250) over the two-year period. A prospective contractor submitting a disclosure statement pursuant to this section who has not contributed to an applicable public official, whose family members have not contributed to an applicable public official or whose representatives have not contributed to an applicable public official shall make a statement that no contribution was made.

A prospective contractor or a family member or representative of the prospective contractor shall not give 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 during the pendency of negotiations for a sole source or small purchase contract.

Furthermore, a solicitation or proposed award for a proposed contract may be canceled pursuant to Section [13-1-181](#) NMSA 1978 or a contract that is executed may be ratified or terminated pursuant to Section [13-1-182](#) NMSA 1978 if a prospective contractor fails to submit a fully completed disclosure statement pursuant to this section; or a prospective contractor or family member or 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.

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

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

The following definitions apply:

“Applicable public official” means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or

who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

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

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

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

“Prospective contractor” means a person or business that is subject to the competitive sealed proposal process set forth in the Procurement Code [Sections [13-1-28](#) through [13-1-199](#) NMSA 1978] or is not required to submit a competitive sealed proposal because that person or business qualifies for a sole source or small purchase contract.

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

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

DISCLOSURE OF CONTRIBUTIONS BY PROSPECTIVE CONTRACTOR:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Date Contribution(s) Made: _____

Amount(s) of Contribution(s) _____

Nature of Contribution(s) _____

Purpose of Contribution(s) _____

(Attach extra pages if necessary)

Signature

Date

Title (position)

--OR--

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

Signature

Date

Title (Position)

APPENDIX D

CONFLICT OF INTEREST-DEBARMENT/SUSPENSION CERTIFICATION FORM

CONFLICT OF INTEREST; GOVERNMENTAL CONDUCT ACT.

A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978. Without in anyway limiting the generality of the foregoing, the Contractor specifically represents and warrants that:

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

2) this Agreement complies with Section 10-16-7(8) NMSA 1978 because

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

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

(ii) the Contractor is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the City whose official act, while in City employment, directly resulted in the City's making this Agreement;

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

5) in accordance with Section 10-16-3 and Section 10-16-13.3 NMSA 1978, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the County.

C. Contractor's representations and warranties in Paragraphs A and B of this Article 13 are material representations of fact upon which the City relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the City if, at any time during

the term of this Agreement, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Article 13 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in Paragraphs A and B of this Article 13 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the City and notwithstanding anything in the Agreement to the contrary, the City may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this Article 13(B).

DEBARMENT/SUSPENSION STATUS

The Vendor certifies that it is not suspended, debarred or ineligible from entering into contracts with the Executive Branch of the Federal Government, or in receipt of a notice or proposed debarment from any Agency. The vendor agrees to provide immediate notice to the City's Chief Procurement Officer in the event of being suspended, debarred or declared ineligible by any department or federal agency, or upon receipt of a notice of proposed debarment that is received after the submission of the quote or Bid but prior to the award of the /Purchase Order/Agreement or contract.

CERTIFICATION

The undersigned hereby certifies that he/she has read the above CONFLICT OF INTEREST and DEBARMENT/SUSPENSION Status requirements and that he/she understands and will comply with these requirements. The undersigned further certifies that they have the authority to certify compliance for the vendor named and that the information contained in this document is true and accurate to the best of their knowledge.

ORGANIZATION: _____

NAME OF AUTHORIZED SIGNER: _____

TITLE: _____ PHONE NO.: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

AUTHORIZED SIGNATURE

DATE

**APPENDIX E
BID FORM
ITB #21-22-003
ROAD MATERIALS AND EQUIPMENT RENTAL**

City of Truth or Consequences is currently requesting sealed bids for the establishment of a multi-year pricing agreement for Road Material and Equipment Rental required on an “as needed” basis.

From: _____
Name of Bidder

City, State & Zip

Phone Number

Email Address:

Responding to Invitation for Bid No. **ITB#21-22-003** due no later than **2:00 pm, September 14, 2021**, the undersigned Bidder agrees to furnish, deliver and install the following product(s) or service(s) bid per the specifications upon receipt of a valid Purchase Order. We have stated hereon the prices at which we will furnish and deliver the specified product or services and will accept as full payment therefore the amount shown below.

BID AS FOLLOWS:

****NOTE**, Bid Amounts - Bidders are required to identify and include, within Base Bid amount bid, any and all costs associated with the purchase, delivery and installation (i.e., labor, materials, equipment, supplies, inspections, minimum warranty, freight, delivery, registration, licensing, testing, set up, etc.), *less applicable New Mexico Gross Receipts Tax*.

This bid will be awarded based upon the total amount bid as written in words. Where there are discrepancies between unit price and extended total, **UNIT PRICE WILL GOVERN**. Where there is a discrepancy between words and figures, **WORDS WILL GOVERN**.

Payment terms (OPTIONAL): Bidder offers a _____% discount for payments made within _____ days of acceptance of the goods or services shown on a correct and valid invoice. Terms of less than twenty (20) days will not be considered.

Signature below verifies that Bidder has read, understands, and agrees to the terms and conditions of this solicitation, attachments, and addenda.

**PRICING FOR ROAD CONSTRUCTION MATERIALS
SECTION 1 ASPHALT HOT MIX**

	COST PER TON
ASPHALT HOT MIX AT PLANT (PER TON)	\$
ASPHALT HOT MIX DELIVERED TO SITE (PER TON)	\$
ASPHALT HOT MIX DELIVERED AND PLACED (PER TON)	\$
ANTI-STRIPPING AGENT (PER TON)	\$

SECTION 2 SUPER PAVE MIX

	COST PER TON
SUPER PAVE MIX AT PLANT (PER TON)	\$
SUPER PAVE MIX DELIVERED TO SITE (PER TON)	\$
SUPER PAVE MIX DELIVERED AND PLACED (PER TON)	\$
ANTI-STRIPPING AGENT (PER TON)	\$

SECTION 3 ASPHALT COLD MIX

	COST PER TON
ASPHALT COLD MIX AT PLANT (PER TON)	\$
ASPHALT COLD MIX DELIVERED TO SITE (PER TON)	\$
ASPHALT COLD MIX DELIVERED AND PLACED (PER TON)	\$
ANTI-STRIPPING AGENT (PER TON)	\$

SECTION 4 BASE COARSE 1"

	COST PER TON
BASE COARSE AT PLANT (PER TON)	\$
BASE COARSE DELIVERED TO SITE (PER TON)	\$

SECTION 5 CHIPS

	COST PER TON
CHIPS ½" AT PLANT (PER TON)	\$
CHIPS ½" DELIVERED TO SITE (PER TON)	\$
CHIPS 3/8" AT PLANT (PER TON)	\$
CHIPS 3/8" DELIVERED TO SITE (PER TON)	\$

SECTION 6 REDI-MIX

	COST PER YARD
2500 PSI DELIVERED (PER YARD)	\$
3000 PSI DELIVERED (PER YARD)	\$
3500 PSI DELIVERED (PER YARD)	\$
4000 PSI DELIVERED (PER YARD)	\$
FIBER (PER YARD)	\$
AER (PER YARD)	\$
RETARDER (PER YARD)	\$
SUPER P (PER YARD)	\$
TEMP CONTROLS (PER YARD)	\$

SECTION 7 FLOWABLE FILL

	COST PER YARD
FLOWABLE FILL DELIVERED TO SITE (PER YARD)	\$

SECTION 8 – CRUSHER FINES

	COST PER TON
CRUSHER FINES DELIVERED TO SITE (PER TON)	\$

SECTION 9 PEA GRAVEL

	COST PER TON
PEA GRAVEL AT PLANT (PER TON)	\$
PEA GRAVEL DELIVERED TO SITE (PER TON)	\$

SECTION 10 SCREENED ROCK

	COST PER TON
SCREENED ROCK AT PLANT (PER TON)	\$
SCREENED ROCK DELIVERED TO SITE (PER TON)	\$

SECTION 11 PLASTER SAND

	COST PER TON
PLASTER SAND AT PLANT (PER TON)	\$
PLASTER SAND DELIVERED TO SITE (PER TON)	\$

SECTION 12 CONCRETE ROCK

	COST PER TON
CONCRETE ROCK AT PLANT (PER TON)	\$
CONCRETE ROCK DELIVERED TO SITE (PER TON)	\$

SECTION 13 CONCRETE SAND

	COST PER TON
CONCRETE SAND AT PLANT (PER TON)	\$
CONCRETE SAND DELIVERED TO SITE (PER TON)	\$

SECTION 14 FILL DIRT

	COST PER TON
FILL DIRT AT PLANT (PER TON)	\$
FILL DIRT DELIVERED TO SITE (PER TON)	\$

SECTION 15 3/16” SCREENED SAND #4 MINUS

	COST PER TON
SCREENED SAND AT PLANT (PER TON)	\$
SCREENED SAND DELIVERED TO SITE (PER TON)	\$

Option Year 3 _____ % Material Escalation (Sections 1-16)

_____ % Haul Escalation (Sections 17-19)

Option Year 4 _____ % Material Escalation (Sections 1-16)

_____ % Haul Escalation (Sections 17-19)

In the interest of fairness and sound business practices, it is mandatory that Bidder state any exceptions to the specifications and/or scope of work. It is not the responsibility of the City to seek out information concerning the goods to be furnished. In the event your materials do not meet or exceed all of the stated specifications, you must so state on the space provided below and submit the explanation with your bid.

I _____ do meet specifications (check line as appropriate)

I _____ do not meet specifications (check line as appropriate) for the following reasons:

In the space below (or on a separate sheet of paper), please list which product does not meet the specifications, why the product does not meet the specifications, and any alternative you may be suggesting:

The representations herein are made under penalty of perjury. We hereby offer to sell the Agency the above product(s) or services at the prices shown and under the terms and conditions herein, attached, or incorporated by referenced.

Bidder Name

Signature of Authorize Representative

Address

Name of Authorized Representative

City, State, Zip Code

Title of Authorized Representative

Telephone Number

Date

APPENDIX F

DRAFT PRICING AGREEMENT / CONTRACT ROAD MATERIALS AND EQUIPMENT RENTAL ITB #21-22-003

The Agreement included in this Appendix F represents the contract the Agency intends to use to make an award. The City of Truth or Consequences reserves the right to modify the Agreement prior to, or during, the award process, as necessary.

THIS AGREEMENT, made and entered into this _____ day of _____, 2021, by and between City of Truth or Consequences, in New Mexico, a political subdivision in the State of New Mexico, (hereinafter referred to as the "City"), and _____, (hereinafter referred to as the "Contractor").

WITNESSED:

WHEREAS, the City issued a Request for Bids for a Price Agreement for Road Materials and Equipment Rental, ITB No. 21-22-003; and

WHEREAS, the Contractor submitted its bid, dated _____, 2021, in response to ITB No. 21-22-003; and

WHEREAS, the City desires to engage the Contractor to render certain goods and services in connection therewith, and the Contractor is willing to provide such goods and services.

NOW, THEREFORE, in consideration of the premises and mutual obligations herein, the parties hereto do mutually agree as follows:

1. Scope

The Contractor shall be required to provide Road Material and Equipment Rental required on an as needed basis to the City in accordance with following specifications and minimum requirements for the required material. Procurement of the referenced material shall be on an as needed basis with no guarantee of any quantities implied. (See the attached scope of work and applicable specifications).

2. Term

This Agreement shall become effective upon the date of final execution of the Agreement and shall be for one (1) year base period with three (3) one-year options not to exceed four-(4) year period unless terminated by either party pursuant to the termination provisions contained in this Agreement. Agreement renewal is not automatic and can only be implemented upon action of the City.

3. Use of Agreement

With the consent of the contractor, other Central Purchasing Offices (NMSA 1978, §13-1-27) may purchase under this Agreement, provided that the service is under the same terms and conditions as stated herein, unless a lower price is agreed to between the City and the Contractor.

4. Termination for Cause

If, through any cause, the Contractor fails to fulfill the Contractor's obligations under this Agreement in a timely and proper manner, or if the Contractor violates any of the covenants, agreements or stipulations of any part of this Agreement, the City shall have the right to cancel the Agreement. The City reserves the right to recover any excess cost incurred by the City to have this Agreement performed by a third party, collection against a performance or labor and materials payment bond, a combination of these remedies, or any other remedy available to the City pursuant to the terms of this Agreement and law. Cancellation shall be done by giving written Notice of Cancellation to the Contractor. The Notice of Cancellation shall include the effective date of cancellation.

5. Termination for Lack of Appropriations

The terms of this Agreement are contingent upon the City Commission making the appropriations and authorizations necessary for the performance of the Agreement. If sufficient appropriations and authorizations are not made by the City Commission, any agreement resulting from this Request for Bids may be terminated at the end of the City's then current fiscal year upon written notice given by the City to the Contractor. Such event shall not constitute an event of default. All payment obligations of the City and all of its interest this Agreement shall cease upon the date of termination. The City's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

6. Termination for Convenience of City

The City may terminate this Agreement at any time by giving at least thirty (30) calendar day notice in writing to the Contractor. If the Contract is terminated by the City as provided herein, the Contractor will be paid for materials and services rendered until the point of termination.

7. Termination by Contractor

The Contractor may terminate this Agreement on an annual basis at the expiration of each year of the term of this Agreement by giving written notice to the City at the address listed herein at least sixty (60) calendar days prior to the expiration of each year of the term of this Agreement. The expiration of each year for termination purposes shall be defined as 365 days from the date of execution of this Agreement and every 365 days thereafter for the term of this Agreement.

8. Compensation and Method of Payment

- A. For performing the scope specified in Scope of Work hereof the City agrees to pay the Contractor for work satisfactorily completed in the amount listed in Exhibit A of this Agreement, which amounts excludes any applicable gross receipts taxes and which amount shall constitute full and complete compensation excluding gross receipts tax for the Contractor's scope under this Agreement, including all expenditures made and expenses incurred by the Contractor in performing such scope;
- B. Method of Payment: Such amount shall be processed for payment by the City to the Contractor upon completion of work in a manner satisfactory to the City, and upon receipt by the City of a properly documented invoice for payment as determined by the budgetary and fiscal guidelines of the City and on the condition that the Contractor has accomplished the scope as outlined herein, to the satisfaction of the City. Invoices shall

be submitted on a monthly basis to the Road Department. Payment to the Contractor will be made within thirty (30) days from receipt of the invoice. Except as otherwise agreed to, late payment charges may be assessed against the user department in the amount and under the conditions set forth in NMSA 1978, §13-1-158.

9. Independent Contractor

Neither the Contractor nor its employees are considered to be employees of the City for any purpose whatsoever. The Contractor is considered to be an Independent Contractor at all times in the performance described herein. The Contractor further agrees that neither it nor its employees are entitled to any benefits from the City under the provisions of the Worker's Compensation Act of the State of New Mexico, or to any of the benefits granted to employees. The Contractor shall not accrue leave, retirement, workers' compensation benefits, insurance, bonding, use of City vehicles, or any other benefits afforded to employees of the City, as a result of this Agreement. The City shall provide no liability coverage to the Contractor. The Contractor acknowledges that all sums received hereunder are personally reportable by him for income tax purposes as self-employment or business income, and are reportable for self-employment tax and New Mexico Gross Receipts Tax.

10. Personnel

- A. Subject to the terms and conditions of this Agreement; the Contractor represents that it has, or will secure at its own expense, all personnel required in performing the scope as described under this Agreement. Such personnel shall not be employees of or have any contractual relationships with the City.
- B. All work required hereunder will be performed by the Contractor or under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under federal, state and local law to perform such work.
- C. None of the services covered by this Agreement shall be subcontracted without the prior written approval of the City. Any service subcontracted hereunder shall be specified by written Agreement and shall be subject to each provision of this Agreement.

11. Limitations on Subcontracting

The Contractor shall not subcontract more than forty-nine (49%) of the work to be performed under this Agreement or forty-nine (49%) of the total original bid amount under this Agreement, whichever is less, to any person, company, organization, corporation and/or entity of any nature not a party/signator to this Agreement. The Contractor shall perform, with his/her/its own organization, the work under this Agreement. The Contractor's own organization shall be construed to include only persons employed and paid directly by the Contractor and equipment owned and/or rented by the Contractor, with or without operators. The Contractor's organization does not include employees or equipment of the subcontractor, or assignees, or agents of any subcontractor. The Contractor shall submit a list of intended subcontractors and material suppliers prior to the commencement of any work under this Agreement. The Contractor shall update the list of subcontractors and material suppliers as the work progresses such that the City shall have at all times, a current and accurate list of subcontractors and the work which they will perform, or are performing,

and material suppliers along with material supplies, and the percentage of the work and/or percentage of the total original bid price each subcontractor is performing.

No work shall be subcontracted without the prior written consent of the City. The intent of this section shall not be circumvented by the Contractor placing a subcontractor's employees directly on the Contractor's payroll and/or by the use of a subcontractor's materials or equipment.

Nothing herein, including, but not limited to, approval by the City of any subcontractors and/or materials, shall be construed to waive the Contractor's liability of any nature under this Agreement or the privity of the Contracting Agency with the Contractor and no bond, insurance, or liability of nature shall be waived or in any way diminished by the subcontracting or assignment of any portion or interest under the Agreement.

12. Indemnity

The Contractor hereby agrees to hold harmless, indemnify and defend the City, its officers, agents, and employees from and against any and all liability, suits, actions, claims, damages, attorney's fees, and costs arising out of or resulting from the Contractor's and/or any of their Subcontractors' employees', agents', or officers' conduct, performance, act(s), error(s) or omission(s) relating in any manner whatsoever to this Contract. Provided, however, nothing in this Agreement shall be construed to require the Contractor to defend, indemnify and hold harmless the City, its officers, agents and employees from and against any liability, suits, actions, claims, damages and attorney's fees caused by or resulting from the negligence of the City, its officers, agents and employees.

Receipt by the City of the Contractor's services under this Agreement, review by the City of any Plans, Specifications and documents by the Contractor, and City authorizations for the Contractor to proceed with the various phases of services shall not be construed as approval of the Contractor's work product by the City or as the giving of instructions or directions by the City. This indemnification provision is subject to the limitations and provisions of Sec. 56-7-1, NMSA 1978.

The indemnity required hereunder shall not be limited by reason of the specification of any particular insurance coverage in this Agreement.

13. Insurance

Until final acceptance by the City of the work covered, the Contractor shall procure and maintain at the Contractor's expense, insurance of the kinds and in the amounts herein provided. This insurance shall be provided by insurance companies authorized to do business in the State of New Mexico and shall cover all operations under the Agreement, whether performed by the Contractor, the Contractor's agents or employees, or by subcontractors. All insurance provided shall remain in full force and effect for the entire period of the work, up to and including final acceptance, and the removal of all equipment and employees, agents and subcontractors therefrom, and shall name the City as an additional insured.

If part of the Agreement with the City is sublet or subcontracted, the vendor shall require the subcontractor to secure insurance to protect itself against all hazards enumerated herein, which are not covered by the vendor's insurance policies and to include the City as an additional insured thereon.

The Contractor shall procure and maintain, during the life of this Contract Workers Compensation, Commercial General Liability, Business Automobile Liability policies. The policies will be written with the City as additional insured as applicable, while acting within the scope of their duties against all claims arising out of, or in connection with, the work to be performed. All insurance documents must include a provision for 30 day written notification to the City if a policy has been materially changed or canceled. The City shall be an additional insured (Form B - CG2010 10/01 or equivalent) and will be written on an occurrence form, and shall provide limits as follows:

A. 1. Workers Compensation – Statutory

2. Employers Liability - \$1,000,000

Contractor shall comply with the provisions of the Workers Compensation Act of the State of New Mexico, (the "Act"). If the Contractor has determined that it is not subject to the Act, it will certify, in a signed statement, that it is not subject to the Act. The Contractor will notify the City and comply with the Act should it employ three or more persons during the term of any Agreement with the City. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, Agreement with the City may be terminated effective immediately.

B. Commercial General Liability with ISO CG0001 07/98

1. Bodily Injury/Property Damage: \$1,000,000 Each Occurrence
\$2,000,000 General Aggregate
2. Products/Completed Operations: \$1,000,000 Each Occurrence
\$2,000,000 Aggregate
3. Property Damage Liability Insurance shall not exclude (XCU)
4. Pollution Legal Liability: \$1,000,000 Each Occurrence

C. Business Automobile Liability

1. Combined Single Limit: \$1,000,000 Each Occurrence with ISO CA0001 07/98
2. Pollution Liability (MCS90) for Transportation exposure (if applicable):
\$1,000,000 Each Occurrence

Business Automobile Liability Insurance shall include coverage for the use of all owned, non-owned and hired automobiles and vehicles.

D. Independent Contractors: Included

E. Contractual Liability: Included

The Contractor shall furnish one copy each of Certificates of Insurance herein required for each copy of the Agreement for each annual period, which shall specifically set forth evidence of all coverage required. If such limits are higher than the minimum limits required by the City, such limits shall be certified and shall apply to the coverage afforded the City under the terms and conditions of the Agreement as

though required and set forth in the Agreement. The Contractor shall furnish to the City copies of any endorsements that are subsequently issued amending coverage or limits.

The Contractor shall not commence any work under this Agreement until the proper insurance has been obtained and the proper certificates (or policies) have been submitted to the City.

14. Approval of Insurance

The Contractor or subcontractor(s) shall not deliver any services under this Agreement until the required insurance has been obtained and the proper Certificates of Insurance (or insurance policies) have been filed with the City, adding the City as an additional insured as applicable. Neither approval nor failure to disapprove certificates, policies or insurance by the City shall relieve the Contractor or subcontractor(s) of full responsibility to maintain the required insurance in full force and effect.

15. Increased Limits

If, during the life of this Agreement, the legislature of the State of New Mexico increases the maximum limits of the liability under the Tort Claims Act, the City may require the successful Contractor to increase the maximum limits of any insurance required herein. In the event that the successful Contractor is required to increase the limits of such insurance, an appropriate adjustment in the Agreement amount will be made.

16. Reports and Information

At such times and in such forms as the City may require, there shall be furnished to the City such statements, records, reports, data and information, as the City may request pertaining to matters covered by this Agreement.

17. Audits and Inspections

At any time during normal business hours and as often as the City may deem necessary, there shall be made available to the City for examination all of the Contractor's records with respect to all matters covered by this Agreement. The Contractor shall permit the City to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement.

18. Record Ownership

It shall be clearly understood and agreed between the parties that the City is and shall be the owner of all documents and records of any nature on any medium pertaining to any matter undertaken by the Contractor pursuant to this Agreement.

19. Publication, Reproduction and Use of Material

No material produced in whole or in part under this Agreement shall be subject to copyright in the United States or in any other country. The City shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data or other materials prepared under this Agreement.

20. Release

The Contractor, upon final payment of the amount due under this Agreement, releases the City, its officers and employees, from all liabilities, claims and obligations whatsoever arising from or under this Agreement. The Contractor agrees not to purport to bind the City to any obligation not assumed herein by the City, unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

21. Confidentiality

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

22. Conflict of Interest

The Contractor warrants that he presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of work required under this Agreement.

23. Scope of Agreement

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 understandings, verbal or otherwise, of the parties, or their agents shall be valid or enforceable unless embodied in this Agreement.

24. Notice

Any notices required to be given hereunder shall be sent to the principals at the following addresses. If either party shall change addresses or principals, then such party shall promptly notify the other party in writing. If no notification is made, then notice shall be deemed effective if sent to the principals at the addresses specified herein.

The official address of the City is:

The official name and address of the Contractor is:

City of Truth or Consequences
505 Sims Street
Truth or Consequences, NM 87901

25. Compliance with Applicable Law

Contractor shall comply with State of New Mexico, federal, municipal and city and county laws, rules and ordinances.

26. Waiver

No waiver of any breach of any of the terms or conditions of this Agreement shall be held to be a waiver of any other or subsequent breach; nor shall any waiver be valid or binding unless the same shall be in writing and signed by the party alleged to have granted the waiver.

27. Equal Opportunity Compliance

The Contractor agrees to abide by all Federal and State laws and regulations pertaining to equal employment opportunity. If Contractor is found to be not in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

28. Changes

The City may, from time to time, request changes in the Scope of Work to be performed hereunder. Such changes, including any increase or decrease in the amount of the Contractor's compensation, which are mutually agreed upon by and between the City and the Contractor, shall be incorporated in written amendments to this Agreement. This Agreement shall not otherwise be altered, changed or amended except by an instrument in writing executed by the parties hereto.

29. Assignment

The Contractor shall not assign any interest in this Agreement and shall not transfer any interest in this Agreement without the prior written consent of the City thereto.

30. Construction and Severability

If any part of this Agreement is held to be invalid or unenforceable, such holding will not affect the validity or enforceability of any other part of this Agreement so long as the remainder of the Agreement is reasonably capable of completion.

31. Enforcement

The Contractor agrees to pay to the City all costs and expenses including reasonable attorney's fees incurred by the City in exercising any of its rights or remedies in connection with the enforcement of this Agreement.

32. Penalties

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

33. Entire Agreement

This Agreement contains the entire Agreement of the parties and supersedes any and all other Agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.

34. Ownership of Document

The City is the sole owner of all documents, reports, and data, compiled or arising out of the Contract and/or Project regardless of the medium used.

IN WITNESS WHEREOF, the City of Truth or Consequences and the Contractor have executed this Agreement as of the date first above written:

By: _____
City of Truth or Consequences

Date: _____

By: _____
City's Legal Counsel –Certifying legal sufficiency

Date: _____

By: _____
Contractor

Date: _____

(Scope of work)