

**City of Truth or Consequences**  
STATE OF NEW MEXICO



**REQUEST FOR PROPOSAL (RFP)**

**RALPH EDWARDS PARK SHADE STRUCTURES**

**RFP #23-24-007**

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

**ISSUED: 05/03/2024**

**NON-MANDATORY PRE-PROPOSAL MEETING: 05/16/2024 10:00 AM MST**

**PROPOSAL DUE DATE: 05/30/2024 2:00 PM MST**

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# I. INTRODUCTION

## A. PURPOSE OF THIS REQUEST FOR PROPOSALS

The purpose of the Request for Proposal (RFP) is to solicit sealed proposals to establish a contract through competitive negotiations for the procurement of improving access to Ralph Edwards Park for residents and tourists alike by providing new shade structures for cool and comfortable spots at existing picnic tables and benches and addressing areas without shade.

## B. SCOPE OF PROCUREMENT

1. Remove all six (6) existing shade structures, cutting the metal at ground level and dismantling metal structures with all debris disposed of properly.
2. The purchase of all needed metal structural steel, and panel roofing for seven (7) new shade structures, approximately 15 X 20.
3. Dig footers of appropriate size and using tube forms, form up, install rebar and pour footer with steel reinforced metal plates for attaching and supporting new shade structures.
4. Fabricate new roof framing for shade structures by welding together 2 X 6 metal members, and creating a new frame for shade structures.
5. Erect new frames to posts welding all framing members together on site to create all framing for new shade structures.
6. Install new metal roofing panel 26 gauge according to manufacturer's instructions and creating a water tight roofing system.
7. Have plans drawn and pull all necessary NM State Building Standards permits for the job.
8. Paint all frames with direct to metal paint in color of the City of T or C's choice.

Please include an estimated time frame from start to finish including material wait time, and date available for contractor to start project.

This RFP will be a single award.

## C. CHIEF PROCUREMENT OFFICER

City of Truth or Consequences has assigned a Chief Procurement Officer who is responsible for the conduct of this procurement whose name, address, telephone number and e-mail address are listed below:

Name: Mindee Holguin, Chief Procurement Officer  
Address: 505 Sims Street, Truth or Consequences, NM 87901  
Telephone: (575) 952-0490  
Email: [mholguin@torcnm.org](mailto:mholguin@torcnm.org)

1. **Any inquiries or requests** regarding this procurement should be submitted, in writing, to the Chief Procurement Officer. Offerors may contact **ONLY** the Chief Procurement Officer regarding this procurement. Other City employees or Evaluation Committee members do not have the authority to respond to questions.
2. **Protests of the solicitation or award must be submitted in writing to the Chief Procurement Officer identified in Section II.B.11.** As a Chief Procurement Officer has been named in this Request for Proposals, pursuant to §13-1-172, NMSA 1978 and 1.4.1.82 NMAC, **ONLY** protests delivered directly to the Chief Procurement Officer 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.

#### D. PROPOSAL DELIVERY

*All deliveries of proposals via express carrier, courier or hand delivery, must be addressed and submitted as follows:*

*Name: City of Truth or Consequences  
Mindee Holguin, Chief Procurement Officer  
Reference RFP Name: RFP # 23-24-008 Ralph Edwards Park Shade Structures  
Address: 505 Sims Street  
Truth or Consequences, NM 87901*

#### E. DEFINITION OF TERMINOLOGY

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

1. **“Agency”** means the City of Truth or Consequences.
2. **“Award”** means the final execution of the contract document.
3. **“Business Hours”** means weekdays (Monday – Friday) 8:00 AM thru 5:00 PM MST/MDT, whichever is in effect on the date given.
4. **“Chief Procurement Officer”** means the person or designee authorized by the City to manage or administer a procurement requiring the evaluation of competitive sealed proposals.
5. **“City”** means the City of Truth or Consequences, County of Sierra, State of New Mexico.
6. **“City Commission”** means the elected individuals whom are responsible for governing the City of Truth or Consequences.

7. **“Confidential”** means confidential financial information concerning Offeror’s organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act §§57-3-A-1 through 57-3A-7, NMSA 1978. See also NMAC 1.4.1.45. The following items may **not** be labelled as confidential: Offeror’s submitted Cost response, Staff/Personnel Resumes/Bios (excluding personal information such as personal telephone numbers and/or home addresses), and other submitted data that is **not** confidential financial information or that qualifies under the Uniform Trade Secrets Act.
8. **“Contract”** means any agreement for the procurement of items of tangible personal property, services, professional services or construction.
9. **“Contractor”** means any business having a contract with the City of Truth or Consequences.
10. **“Determination”** means the written documentation of a decision of a procurement officer including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains.
11. **“Electronic Version/Copy”** means a digital form consisting of text, images or both readable on computers or other electronic devices that includes all content that the Original and Hard Copy proposals contain.
12. **“Evaluation Committee”** means a body appointed to perform the evaluation of Offerors’ proposals.
13. **“Evaluation Committee Report”** means a report prepared by the Procurement Officer and the Evaluation Committee to support the Committee’s recommendation for contract award. It will contain scores and written evaluations of all responsive Offeror proposals.
14. **“Final Award”** means, in the context of this Request for Proposals and all its attendant documents, that point at which the final required signature on the contract(s) resulting from the procurement has been affixed to the contract(s) thus making it fully executed.
15. **“Finalist”** means an Offeror who meets all the mandatory specifications of this Request for Proposals and whose score on evaluation factors is sufficiently high to merit further consideration by the Evaluation Committee, as explained in Section II.B.8.
16. **“Hourly Rate”** means the proposed fully loaded maximum hourly rates that include travel, per diem, fringe benefits and any overhead costs for contractor personnel, as well as subcontractor personnel if appropriate.
17. **“Mandatory”** – the terms “must,” “shall” “will,” “is required,” or “are required,” identify a mandatory item or factor. Failure to meet a mandatory item or factor may result in the rejection of the Offeror’s proposal.

18. **“Minor Irregularities”** means anything in the proposal that does not affect the price, quality and/or quantity, or any other mandatory requirement.
19. **“Offeror”** is any person, corporation, or partnership who chooses to submit a proposal.
20. **“Price Agreement”** means a definite quantity contract or 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.
21. **“Procurement Manager”** means any person or designee authorized by a state agency or local public body with the responsibility, authority, and resources to conduct the RFP procurement, make written determinations regarding the RFP procurement, and/or enter into or administer contracts as a result of the RFP procurement.
22. **“Project”** means a temporary process undertaken to solve a well-defined goal or objective with clearly defined start and end times, a set of clearly defined tasks, and a budget. The project terminates once the project scope is achieved and project acceptance is given by the project executive sponsor.
23. **“Purchase Order or PO”** means the document which directs a contractor to deliver items for tangible personal property or services pursuant to an existing, valid contract.
24. **“Redacted”** means a version/copy of the Offeror’s proposal with the information considered proprietary or confidential (as defined by §§57-3A-1 to 57-3A-7 NMSA 1978 and NMAC 1.4.1.45 and summarized herein and outlined in Section II.C.8 of this RFP) blacked-out BUT NOT omitted or removed.
25. **“Request for Proposals (RFP)”** means all documents, including those attached or incorporated by reference, used for soliciting proposals.
26. **“Responsible Offeror”** means an Offeror who submits a responsive proposal and who has furnished, when required, information and data to prove that his financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services, or items of tangible personal property described in the proposal.
27. **“Responsive Offer or Responsive Proposal”** or means an offer which conforms in all material respects to the requirements set forth in the request for proposals. Material respects of a request for proposals include, but are not limited to price, quality, quantity or delivery requirements.
28. **“Sealed”** means, in terms of a non-electronic submission, that the proposal is enclosed in a package which is completely fastened in such a way that nothing can be added or removed.

Open packages submitted will not be accepted except for packages that may have been damaged by the delivery service itself. The City reserves the right, however, to accept or reject packages where there may have been damage done by the delivery service itself. Whether a package has been damaged by the delivery service or left unfastened and should or should not be accepted is a determination to be made by the Chief Procurement Officer. By submitting a proposal, the Offeror agrees to and concurs with this process and accepts the determination of the Chief Procurement Officer in such cases.

29. **“Services”** means delivering value to customers by facilitating outcomes customers want to achieve.
30. **“Single Source Award”** means an award of contract for items of tangible personal property, services or construction to only one Offeror.
31. **“Solicited and Awarded”** means an Invitation to Bid or RFP was made available to the general public, through any means.
32. **“Staff”** means any individual who is a full-time, part-time, or an independently contracted employee with the Offerors’ company.
33. **“Statement of Concurrence”** means an affirmative statement from the Offeror to the required specification agreeing to comply and concur with the stated requirement(s).
34. **“Successful Offeror”** means an Offeror who has met all qualifications.
35. **“Unredacted”** means a version/copy of the proposal containing all complete information; including any that the Offeror would otherwise consider confidential, such copy for use only for the purposes of evaluation.
36. **“Written”** means typewritten on standard 8 ½ x 11-inch paper. Larger paper is permissible for charts, spreadsheets, etc.

## F. 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 this document through your own internet connection. The library contains information listed below:

RFP, Questions & Answers, RFP Amendments, etc.

[https://www.torcnm.org/services/finance/bid\\_opportunities.php](https://www.torcnm.org/services/finance/bid_opportunities.php)



## II. CONDITIONS GOVERNING THE PROCUREMENT

This section of the RFP contains the schedule of events, the descriptions of each event, and the conditions governing this procurement.

### A. SEQUENCE OF EVENTS

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

Action	Responsible Party	Due Dates
1. Issue RFP	City of T or C	May 3, 2024
2. Acknowledgement of Receipt Form	Potential Offerors	May 13, 2024
3. Pre-Proposal Conference	Agency	May 16, 2024 10:00 A.M.
4. Deadline to submit Written Questions	Potential Offerors	May 20, 2023
5. Response to Written Questions	CPO	May 23, 2024
<b>6. Submission of Proposal</b>	<b>Potential Offerors</b>	<b>May 30, 2024 2: 00 P.M</b>
7.* Proposal Evaluation	Evaluation Committee	Ma 31, 2024
8.* Selection of Finalists	Evaluation Committee	June 5, 2024
9.* Award Recommendation and Contract Submitted to the City Commission	Agency/Finalist Offerors	June 12, 2024
10.* Notice of Award and Contract given to successful Offeror	CPO	June 13, 2024
11.* Protest Deadline	Proposers/CPO	July 5, 2024

\* Dates indicated in Events 7 through 11 are estimates only, and may be subject to change without necessitating an amendment to the RFP.

### B. EXPLANATION OF EVENTS

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

#### 1. Issue RFP

This RFP is being issued on behalf of the City of Truth or Consequences as indicated in Section II.A, Sequence of Events.

## 2. Acknowledgement of Receipt Form

Potential Offerors may e-mail, hand deliver or send by registered or certified mail the Acknowledgement of Receipt Form (APPENDIX A), to the Chief Procurement Officer identified in Section I.D at [mholguin@torcnm.org](mailto:mholguin@torcnm.org) to have their organization placed on the procurement Distribution List. The form must be returned to the Chief Procurement Officer as the date 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 RFP. Failure to return the Acknowledgement of Receipt Form does not prohibit potential Offerors from submitting a response to this RFP. 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.G.) responses to written questions and any amendments to the RFP.

## 3. Pre-Proposal Conference

A pre-proposal conference will be held as indicated in Section II.A, Sequence of Events, in the City of Truth or Consequences at 303 East Riverside Drive, Truth or Consequences, NM 87901. See Attachment A – Address of Pre-Proposal Conference, non-mandatory.

**Potential Offeror(s) are encouraged to submit written questions in advance of the conference to the Chief Procurement Officer** (see Section I.D). The identity of the organization submitting the question(s) will not be revealed. Additional written questions may be submitted at the conference. All questions answered during the Pre-Proposal Conference will be considered **unofficial** until they are posted in writing. All written questions will be addressed in writing on the date listed in Section II.A, Sequence of Events. A public log will be kept of the names of potential Offeror(s) that attended the pre-proposal conference.

Attendance at the pre-proposal conference is highly recommended, but not a prerequisite for submission of a proposal.

## 4. Deadline to Submit Written Questions

Potential Offerors may submit written questions to the Chief Procurement Officer as to the intent or clarity of this RFP as indicated in Section II.A, Sequence of Events. All written questions must be addressed to the Chief Procurement Officer as declared in Section I.D. Questions shall be clearly labeled and shall cite the Section(s) in the RFP or other document which form the basis of the question.

## 5. Response to Written Questions

Written responses to the written questions will be provided via e-mail, on or before the date indicated in Section II.A, Sequence of Events, to all potential Offerors who timely submitted an Acknowledgement of Receipt Form (Section II.B.2 and APPENDIX A).

The Questions and Answers will be posted to:

[https://www.torcnm.org/services/finance/bid\\_opportunities.php](https://www.torcnm.org/services/finance/bid_opportunities.php)

## 6. Submission of Proposal

ALL PROPOSALS MUST BE RECEIVED BY THE CHIEF PROCUREMENT OFFICER OR DESIGNEE NO LATER THAN THE DATE INDICATED IN SECTION II.A, SEQUENCE OF EVENTS. **NO LATE PROPOSAL CAN BE ACCEPTED.** Proposals will be date and time stamped of receipt.

This RFP requires hard copies be delivered. The date and time of receipt will be recorded on each proposal, it is still the responsibility of the Offeror to ensure that the delivery is made on time. An Offeror should take into account all factors regarding the delivery by the third-party entity and ensure that the delivery is made prior to the stated deadline. Weather delays, traffic jams, deliveries to the incorrect address nor any other reason for a delay will be accepted for failure to make the state deadline.

**HARD COPY PROPOSALS MUST BE ADDRESSED AND DELIVERED TO THE CHIEF PROCUREMENT OFFICER AT THE ADDRESS IDENTIFIED IN SECTION I.D.** Proposals must be sealed and labeled on the outside of the package to clearly indicate that they are in response to the RFP #23-24-008 Ralph Edwards Park Shades

A log will be kept of the names of all Offeror organizations that submitted proposals. Pursuant to §13-1-116 NMSA 1978, the contents of proposals shall not be disclosed to competing potential Offerors during the negotiation process. The negotiation process is deemed to be in effect until the contract is awarded pursuant to this Request for Proposals. Awarded in this context means the final required approval by the City Commission and signature(s) on the contract(s) resulting from the procurement has been obtained.

## 7. Proposal Evaluation

An Evaluation Committee will perform the evaluation of proposals. This process will take place as indicated in Section II.A, Sequence of Events, depending upon the number of proposals received. During this time, the Chief Procurement Officer may initiate discussions with Offerors who submit responsive or potentially responsive proposals for the purpose of clarifying aspects of the proposals. However, proposals may be accepted and evaluated without such discussion. Discussions SHALL NOT be initiated by the Offerors.

## 8. Selection of Finalists

The Evaluation Committee will select and the Chief Procurement Officer will notify the finalist Offerors as per schedule Section II.A, Sequence of Events or as soon as possible thereafter.

Responsive proposals will be evaluated on the factors in Section IV, which have been assigned a point value in Section V. The responsible Offerors with the highest scores will be selected as finalist Offerors, based upon the proposals submitted. In accordance with 13-1-117 NMSA 1978, the responsible Offerors whose proposals are most advantageous to the City taking into consideration the Evaluation Factors in Section V will be recommended for award (as specified in Section II.B.9). Please note, however, that a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.

#### **9. Award Recommendation and Contract Submitted to the City Commission**

After approval of the Evaluation Committee Report, any contractual agreement(s) resulting from this RFP will be finalized with the most advantageous Offeror(s) to the City of Truth or Consequences, taking into consideration the evaluation factors set forth in this RFP, as per Section II.A., Sequence of Events, or as soon as possible thereafter. The most advantageous proposal may or may not have received the most points. In the event mutually agreeable terms cannot be reached with the apparent most advantageous Offeror in the time frame 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 are subject to appropriate City Commission approval and signature(s).

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

#### **10. Notice of Award and Contract Given to Successful Offeror**

Upon approval of the award recommendation from the City Commission and 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 an Offeror must be timely submitted and in conformance with §13-1-172 NMSA 1978 and applicable procurement regulations. As a Chief Procurement Officer has been named in this Request for Proposals, pursuant to §13-1-172 NMSA 1978 and 1.4.1.82 NMAC, ONLY protests delivered directly to the Chief Procurement Officer 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. The 15-calendar day protest period shall begin on the day following the notice of award of contract(s) and will end at 5:00 pm MST/MDT on the 15<sup>th</sup> day. Protests must be written and must include the name and address of the protestor and the request for proposal number. It must also contain a statement of the grounds for protest including appropriate supporting exhibits and it must specify the ruling requested from the party listed below. The protest must be directed to:

City of Truth or Consequences  
Chief Procurement Officer  
505 Sims Street  
Truth or Consequences, NM 87901

**ELECTRONIC PROTESTS WILL NOT BE ACCEPTED**  
**PROTESTS RECEIVED AFTER THE DEADLINE WILL NOT BE ACCEPTED**

## **C. GENERAL REQUIREMENTS**

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

Offerors must indicate their acceptance to be bound by the Conditions Governing the Procurement, Section II.C, and Evaluation, Section V, by completing and signing the Letter of Transmittal form, pursuant to the requirements in Section II.C.30, located in APPENDIX E.

### **2. Incurring Cost**

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

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

Any contractual agreement that may result from this RFP shall specify that the prime contractor is solely responsible for fulfillment of all requirements of the contractual agreement with a State Agency or Local Public Body which may derive from this RFP. The State Agency or Local Public Body entering into a contractual agreement with a vendor will make payments to only the prime contractor.

### **4. Subcontractors/Consent**

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

### **5. Amended Proposals**

An Offeror may submit an amended proposal before the deadline for receipt of proposals. Such amended proposals must be complete replacements for a previously submitted proposal and must be clearly identified as such in the transmittal letter. **Agency personnel will not merge, collate, or assemble proposal materials.**

## 6. Offeror's Rights to Withdraw Proposal

Offerors will be allowed to withdraw their proposals at any time prior to the deadline for receipt of proposals. The Offeror must submit a written withdrawal request addressed to the Chief Procurement Officer and signed by the Offeror's duly authorized representative.

The approval or denial of withdrawal requests received after the deadline for receipt of the proposals is governed by the applicable procurement regulations, 1.4.1.5 & 1.4.1.36 NMAC.

## 7. Proposal Offer Firm

Responses to this RFP, including proposal prices for services, will be considered firm for one-hundred twenty (120) days after the due date for receipt of proposals or ninety (90) days after the due date for the receipt of a best and final offer, if the Offeror is invited or required to submit one.

## 8. Disclosure of Proposal Contents

The contents of all submitted proposals will be kept confidential until the final award has been completed by the Agency. At that time, all proposals and documents pertaining to the proposals will be available for public inspection, *except* for proprietary or confidential material as follows:

- a. ***Proprietary and Confidential information is restricted to:***
  1. confidential financial information concerning the Offeror's organization; and
  2. information that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, §§57-3A-1 through 57-3A-7 NMSA 1978.
- b. An additional but separate redacted version of Offeror's proposal, as outlined and identified in Section III.B.1.a.i, shall be submitted containing the blacked-out proprietary or confidential information, in order to facilitate eventual public inspection of the non-confidential version of Offeror's proposal.

**IMPORTANT:** The price of products offered or the cost of services proposed **SHALL NOT** be designated as proprietary or confidential information.

If a request is received for disclosure of proprietary or confidential materials, the Agency shall examine the request and make a written determination that specifies which portions of the proposal should be disclosed. Unless the Offeror takes legal action to prevent the disclosure, the proposal will be so disclosed. The proposal shall be open to public inspection subject to any continuing prohibition on the disclosure of proprietary or confidential information.

## **9. No Obligation**

This RFP in no manner obligates the City of Truth or Consequences or any of its Agencies to the use of any Offeror's services until a valid written contract is awarded and approved by appropriate authorities.

## **10. Termination**

This RFP may be canceled at any time and any and all proposals may be rejected in whole or in part when the Agency determines such action to be in the best interest of the City of Truth or Consequences.

## **11. Sufficient Appropriation**

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

## **12. Legal Review**

The Agency requires that all Offerors agree to be bound by the General Requirements contained in this RFP. Any Offeror's concerns must be promptly submitted in writing to the attention of the Chief Procurement Officer.

## **13. Governing Law**

This RFP and any agreement with an Offeror which may result from this procurement shall be governed by the laws of the State of New Mexico.

## **14. Basis for Proposal**

Only information supplied in writing by the Chief Procurement Officer or contained in this RFP shall be used as the basis for the preparation of Offeror proposals.

## **15. Contract Terms and Conditions**

The contract between an agency and a contractor will follow the format specified by the Agency and contain the terms and conditions set forth in the Draft Contract Appendix C. However, the contracting agency reserves the right to negotiate provisions in addition to those contained in this RFP (Draft Contract) with any Offeror. The contents of this RFP, as revised and/or supplemented, and the successful Offeror's proposal will be incorporated into and become part of any resultant contract.

The Agency discourages exceptions from the contract terms and conditions as set forth in the RFP Draft Contract. Such exceptions may cause a proposal to be rejected as nonresponsive when, in the sole judgment of the Agency (and its evaluation team), the proposal appears to be conditioned on the exception, or correction of what is deemed to be a deficiency, or an unacceptable exception is proposed which would require a substantial proposal rewrite to correct.

Should an Offeror object to any of the terms and conditions as set forth in the RFP Draft Contract (APPENDIX C) strongly enough to propose alternate terms and conditions in spite of the above, the Offeror must propose **specific** alternative language. The Agency may or may not accept the alternative language. General references to the Offeror's terms and conditions or attempts at complete substitutions of the Draft Contract are not acceptable to the Agency and will result in disqualification of the Offeror's proposal.

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

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

#### **16. Offeror's Terms and Conditions**

Offerors must submit with the proposal a complete set of any additional terms and conditions they expect to have included in a contract negotiated with the Agency. See Section II.C.15 for requirements. The City of Truth or Consequences will determine if the Offeror's Terms and Conditions are acceptable.

#### **17. Contract Deviations**

Any additional terms and conditions, which may be the subject of negotiation (such terms and conditions having been proposed during the procurement process, that is, the RFP process prior to selection as successful Offeror), will be discussed only between the Agency and the Offeror selected and shall not be deemed an opportunity to amend the Offeror's proposal.

#### **18. Offeror Qualifications**

The Evaluation Committee may make such investigations as necessary to determine the ability of the potential Offeror to adhere to the requirements specified within this RFP. The Evaluation Committee will reject the proposal of any potential Offeror who is not a Responsible Offeror or fails to submit a Responsive Offer as defined in §13-1-83 and §13-1-85, NMSA 1978.

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

The Evaluation Committee reserves the right to waive minor irregularities, as defined in Section I.F.21. The Evaluation Committee also reserves the right to waive mandatory requirements, provided that **all** of the otherwise responsive proposals failed to meet the



same mandatory requirements and the failure to do so does not otherwise materially affect the procurement. This right is at the sole discretion of the Evaluation Committee.

## **20. Change in Contractor Representatives**

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

## **21. Notice of Penalties**

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

## **22. Agency Rights**

The Agency in agreement with the Evaluation Committee reserves the right to accept all or a portion of a potential Offeror's proposal.

## **23. Right to Publish**

Throughout the duration of this procurement process and contract term, Offerors and contractors must secure from the agency written approval prior to the release of any information that pertains to the potential work or activities covered by this procurement and/or agency contracts deriving from this procurement. Failure to adhere to this requirement may result in disqualification of the Offeror's proposal or removal from the contract.

## **24. Ownership of Proposals**

All documents submitted in response to the RFP shall become property of the City of Truth or Consequences. If the RFP is cancelled, all responses received shall be destroyed by the Agency unless the Offeror either picks up, or arranges for pick-up, the materials within three (3) business days of notification of the cancellation. Offeror is responsible for all costs involved in return mailing/shipping of proposals.

## **25. Confidentiality**

Any confidential information provided to, or developed by, the contractor in the performance of the contract resulting from this RFP 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 Agency.

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

## 26. Electronic mail address required

A large part of the communication regarding this procurement will be conducted by electronic mail (e-mail). Offeror must have a valid e-mail address to receive this correspondence. (See also Section II.B.5, Response to Written Questions).

## 27. Use of Electronic Versions of this RFP

This RFP is being made available by electronic means. In the event of conflict between a version of the RFP in the Offeror's possession and the version maintained by the agency, the Offeror acknowledges that the version maintained by the agency shall govern. Please refer to: [https://www.torcnm.org/services/finance/bid\\_opportunities.php](https://www.torcnm.org/services/finance/bid_opportunities.php)

## 28. Campaign Contribution Disclosure Form

Offeror must complete, sign, and return the Campaign Contribution Disclosure Form (APPENDIX B) as a part of their proposal. This requirement applies regardless whether a covered contribution was made or not made for the positions of Mayor, Mayor Pro-tem, Commissioners or other identified official. **Failure to complete and return the signed, unaltered form will result in Offeror's disqualification.**

## 29. Letter of Transmittal

Offeror's proposal must be accompanied by a Letter of Transmittal Form (APPENDIX E), which must be **signed** by the individual authorized to contractually obligate the company, identified in #2 below.

Provide the following information:

1. Identify the submitting business entity; Name, Mailing Address, Phone Number, Federal Tax ID Number (TIN), and New Mexico Business Tax ID Number (BTIN, formerly CRS);
2. Identify the Name, Title, Telephone, and E-mail address of the person authorized by the Offeror's organization to (A) contractually obligate the business entity providing the Offer, (B) negotiate a contract on behalf of the organization; and/or (C) provide clarifications or answer questions regarding the Offeror's proposal content (*A response to B and/or C is only necessary if the responses differ from the individual identified in A*);
3. Identify any subcontractor/s that may be utilized in the performance of any resultant contract award (if applicable);
4. The individual identified in #2 above, must sign and date the form, attesting to the veracity of the information provided, and acknowledging (a) the organization's acceptance of the Conditions Governing the Procurement stated in Section II.C.1, (b) the organizations acceptance of the Section V Evaluation Factors, and (c) receipt of any and all amendments to the RFP.

**Failure to submit a signed Letter of Transmittal Form (Appendix E) will result in Offeror's disqualification.**

### 30. Disclosure Regarding Responsibility

- A. Any prospective Contractor and any of its Principals who enter into a contract greater than sixty thousand dollars (\$60,000.00) with any state agency or local public body for professional services, tangible personal property, services or construction agrees to disclose whether the Contractor, or any principal of the Contractor's company:
  - 1. is presently debarred, suspended, proposed for debarment, or declared ineligible for award of contract by any federal entity, state agency or local public body;
  - 2. has within a three-year period preceding this offer, been convicted in a criminal matter or had a civil judgment rendered against them for:
    - a. the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) contract or subcontract;
    - b. violation of Federal or state antitrust statutes related to the submission of offers; or
    - c. the commission in any federal or state jurisdiction of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violation of Federal criminal tax law, or receiving stolen property;
  - 3. is presently indicted for, or otherwise criminally or civilly charged by any (federal state or local) government entity with the commission of any of the offenses enumerated in paragraph A of this disclosure;
  - 4. has, preceding this offer, been notified of any delinquent Federal or state taxes in an amount that exceeds \$3,000.00 of which the liability remains unsatisfied. Taxes are considered delinquent if the following criteria apply.
    - a. The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge of the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.
    - b. The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.
    - c. Have within a three-year period preceding this offer, had one or more contracts terminated for default by any federal or state agency or local public body.
- B. Principal, for the purpose of this disclosure, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity or related entities.
- C. The Contractor shall provide immediate written notice to the Chief Procurement Officer or other party to this Agreement if, at any time during the term of this Agreement, the Contractor learns that the Contractor's disclosure was at any time erroneous or became erroneous by reason of changed circumstances.

- D. A disclosure that any of the items in this requirement exist will not necessarily result in termination of this Agreement. However, the disclosure will be considered in the determination of the Contractor's responsibility and ability to perform under this Agreement. Failure of the Contractor to furnish a disclosure or provide additional information as requested will render the Offeror nonresponsive.
- E. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the disclosure required by this document. The knowledge and information of a Contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- F. The disclosure requirement provided is a material representation of fact upon which reliance was placed when making an award and is a continuing material representation of the facts during the term of this Agreement. If during the performance of the contract, the Contractor is indicted for or otherwise criminally or civilly charged by any government entity (federal, state or local) with commission of any offenses named in this document the Contractor must provide immediate written notice to the City's Chief Procurement Officer or other party to this Agreement. If it is later determined that the Contractor knowingly rendered an erroneous disclosure, in addition to other remedies available to the Government, the State Purchasing Agent or Central Purchasing Officer may terminate the involved contract for cause. Still further the City's Chief Procurement Officer or Central Purchasing Officer may suspend or debar the Contractor from eligibility for future solicitations until such time as the matter is resolved to the satisfaction of the City's Chief Procurement Officer or Central Purchasing Officer.

### III. RESPONSE FORMAT AND ORGANIZATION

#### A. NUMBER OF RESPONSES

Offerors shall submit only four (4) proposals in response to this RFP.

#### B. NUMBER OF COPIES

Offeror's proposals must be clearly labeled and numbered and indexed as outlined in **Section III.C. Proposal Format**. Proposals must be submitted in the manner outlined below, and sealed according to the definition provided in Section I.F.28.

Offeror's shall provide four (4) copies of their proposal to the location specified on the cover page on or before the closing date and time for receipt of proposals.

Any proposal that does not adhere to the requirements of this Section and **Section III.C.1 Proposal Content and Organization**, may be deemed non-responsive and rejected on that basis.

#### C. PROPOSAL FORMAT

All proposals must be submitted as follows:

Hard copies must be typewritten on standard 8 ½ x 11-inch paper (larger paper is permissible for charts, spreadsheets, etc.) and placed within binders with tabs delineating each section.

Organization of folders/envelopes for hard copy proposals:

##### 1. Proposal Content and Organization

For evaluation purposes, Offeror's are expected to provide a detailed description of how they will provide and perform the tasks identified in the detailed scope of work in Section IV A.

Within each section of the proposal, Offerors should address the items in the order indicated below. All forms provided in this RFP must be thoroughly completed and included in the appropriate section of the proposal.

The proposal **must be** organized and **indexed/tabbed** in the following format and **must contain, at a minimum**, all listed items in the sequence indicated.

1. Signed Letter of Transmittal
2. Signed Campaign Contribution Form
3. Table of Contents
4. Response to Contract Terms and Conditions (from Section II.C.15)

5. Offeror's Additional Terms and Conditions (from Section II.C.16)
6. Response to Specifications
  - a. Organizational Experience
  - b. Cover Sheet
  - c. Company Information Form
  - d. Detailed Scope of Work Response Form
  - e. Conflict of Interest and Debarment/Suspension Certification Form
  - f. Proof of General Liability Insurance
7. Other Supporting Material (if applicable)
8. Completed Cost Response Form (APPENDIX D)

## IV. SPECIFICATIONS

### A. DETAILED SCOPE OF WORK

1. Remove all six (6) existing shade structures, cutting the metal at ground level and dismantling metal structures with all debris disposed of properly.
2. The purchase of all needed metal structural steel, and panel roofing for seven (7) new shade structures, approximately 15 X 20.
3. Dig footers of appropriate size and using tube forms, form up, install rebar and pour footer with steel reinforced metal plates for attaching and supporting new shade structures.
4. Fabricate new roof framing for shade structures by welding together 2 X 6 metal members, and creating a new frame for shade structures.
5. Erect new frames to posts welding all framing members together on site to create all framing for new shade structures.
6. Install new metal roofing panel 26 gauge according to manufacturer's instructions and creating a water tight roofing system.
7. Have plans drawn and pull all necessary NM State Building Standards permits for the job.
8. Paint all frames with direct to metal paint in color of the City of T or C's choice.

Please include an estimated time frame from start to finish including material wait time, and date available for contractor to start project.

### B. TECHNICAL SPECIFICATIONS

#### 1. Organizational Experience

Offeror **must**:

- a) provide a brief description of relevant corporate experience with state government and private sector. The experience of all proposed subcontractors must be described. The narrative **must** thoroughly describe how the Offeror has supplied expertise for similar contracts and must include the extent of their experience, expertise and knowledge as

a provider of shade structure installations. All contractors provided to private sector will also be considered;

- b) provide a brief resume of all key personnel Offeror proposes to use in performance of the resulting contract, should Offeror be awarded. Offeror must include key personnel education, work experience and applicable certifications/licenses.
- c) describe at least two project successes and failures of shade structure installations. Include how each experience improved the Offeror's services.

## C. BUSINESS SPECIFICATIONS

### 1. Letter of Transmittal Form

The Offeror's proposal **must** be accompanied by the Letter of Transmittal Form located in APPENDIX E. The form **must** be completed and must be signed by the person authorized to obligate the company. **Failure to submit a signed form will result in Offeror's disqualification.**

### 2. Campaign Contribution Disclosure Form

The Offeror must complete an unaltered Campaign Contribution Disclosure Form and submit a signed copy with the Offeror's proposal. This must be accomplished whether or not an applicable contribution has been made. (See APPENDIX B). **Failure to complete and return the signed, unaltered form will result in Offeror's disqualification.** the sole discretion of the Evaluation Committee.

### 3. Cost

Offerors must complete the Cost Response Form in APPENDIX D.

### 4. Company Information Form

The Offeror's proposal must be accompanied by the Company Information Form in APPENDIX G. The form **must** be completed and signed by the person authorized to obligate the company. The section on acknowledges receipt of the Addenda must also be completed. For any Addenda, please reference the Procurement Library in Section I.G.

## V. EVALUATION

### A. EVALUATION POINT SUMMARY

The following is a summary of evaluation factors with point values assigned to each. These weighted factors will be used in the evaluation of individual potential Offeror proposals by sub-category.

<b>Evaluation Factors</b> <i>(Correspond to Sections IV.B and IV.C)</i>	<b>Points Available</b>
<b>A. Technical Specifications (## Total Points)</b>	
B. 1. Organizational Experience	300
<b>B. Business Specifications (## Total Points)</b>	
C.1. Financial Stability	300
C.2. Performance Surety Bond	Pass/Fail
C.3. Letter Of Transmittal	Pass/Fail
C.4. Campaign Contribution Disclosure Form	Pass/Fail
C.6. Cost	400
<b>TOTAL POINTS AVAILABLE</b>	<b>1,000</b>

Table 1: Evaluation Point Summary

### B. EVALUATION FACTORS

#### 1. B.1 Organizational Experience (See Table 1)

Points will be awarded based on the thoroughness and clarity of Offeror's response in this Section. The Evaluation Committee will also weigh the relevancy and extent of Offeror's experience, expertise and knowledge; and of personnel education, experience and certifications/licenses. In addition, points will be awarded based on Offeror's candid and well-thought-out response to successes and failures, as well as the ability of the Offeror to learn from its failures and grow from its successes.

#### 2. C.2 Performance Bond (See Table 1)

Pass/Fail only. No points assigned.

#### 3. C.3 Letter of Transmittal (See Table 1)

Pass/Fail only. No points assigned.

#### 4. C.4 Campaign Contribution Disclosure Form (See Table 1)

Pass/Fail only. No points assigned.



## C. EVALUATION PROCESS

1. All Offeror proposals will be reviewed for compliance with the requirements and specifications stated within the RFP. Proposals deemed non-responsive will be eliminated from further consideration.
2. The Procurement Manager may contact the Offeror for clarification of the response as specified in Section II. B.7.
3. Responsive proposals will be evaluated on the factors in Section IV, which have been assigned a point value in Section V. The responsible Offerors with the highest scores may be selected as finalist Offerors, based upon the proposals submitted. In accordance with §13-1-117 NMSA 1978, the responsible Offerors whose proposals are most advantageous to the State taking into consideration the Evaluation Factors in Section V will be recommended for award (as specified in Section II.B.12). Please note, however, that a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.

# APPENDIX A

## REQUEST FOR PROPOSAL

RALPH EDWARDS PARK SHADE STRUCTURES  
RFP #23-24-008

### ACKNOWLEDGEMENT OF RECEIPT FORM

This optional Acknowledgement of Receipt Form establishes a distribution list to be used for the distribution of written responses to questions, and/or any amendments to the RFP. Failure to return the Acknowledgement of Receipt Form does not prohibit potential Offerors from submitting a response to this RFP. 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.G.) responses to written questions and any amendments to the RFP.

The information below will be used for all correspondence related to the Request for Proposal. Only one contact per Offeror is permitted.

ORGANIZATION: \_\_\_\_\_

CONTACT NAME: \_\_\_\_\_

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

E-MAIL: \_\_\_\_\_

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

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

**Submit Acknowledgement of Receipt Form to:**

To: City of Truth or Consequences  
Chief Procurement Officer  
505 Sims Street

Truth or Consequences, NM 87901

E-mail: [mholguin@torcnm.org](mailto:mholguin@torcnm.org)

Subject Line: RFP # 23-24-008 Ralph Edwards Park Shade Structures

## APPENDIX B

### 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 C  
DRAFT CONTRACT

**The Agreement included in this APPENDIX C 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 is made and entered into by and between the City of Truth or Consequences New Mexico (the "City"), a municipal corporation and political subdivision of the State of New Mexico, and [REDACTED] (the "Contractor") and is effective as of the date set forth below upon which it is executed.

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

WHEREAS, all terms and conditions of the Request For Proposal Number 23-24-008 Ralph Edwards Park Shade Structures and the Contractor's response to such document(s) are incorporated herein by reference (Attachment A).

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

**1. Scope of Work.**

- a. The Contractor shall perform the work as outlined in the scope of work attached hereto and incorporated herein by reference.

**2. Compensation.**

- a. The City shall pay to the Contractor [REDACTED] dollars and [REDACTED] cents (\$xxxxxx.xx) plus New Mexico Gross Receipts Tax for services satisfactorily performed.
- b. Payment is subject to availability of funds pursuant to the Appropriations Paragraph set forth below. All invoices MUST BE received by the City no later than fifteen (15) days after the termination of the Fiscal Year (the fiscal year is July 1 to June 30) in which the services were delivered.
- c. Contractor must submit a detailed statement accounting for all services performed and expenses incurred to the Accounts Payable Department at 505 Sims Street,

Truth or Consequences, NM 87901. If the City finds that the services are not acceptable, within thirty days after the date of receipt of written notice from the Contractor that payment is requested, it shall provide the Contractor a letter of exception explaining the defect or objection to the services, and outlining steps the Contractor may take to provide remedial action. Upon certification by the City that the services have been received and accepted, payment shall be tendered to the Contractor within thirty days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, the City shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

**3. Term.**

- a. This Agreement shall be in effect as of \_\_\_\_\_ and will expire on \_\_\_\_\_.

**4. Contract Renewal.**

- a. This contract may not be renewed

**5. Termination.**

- a. Termination. This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. Except as otherwise allowed or provided under this Agreement, the City's sole liability upon such termination shall be to pay for acceptable work performed prior to the Contractor's receipt of the notice of termination along with contractors expenses to comply with City's termination notice, if the City is the terminating party, or the Contractor's sending of the notice of termination, if the Contractor is the terminating party; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor if the Contractor becomes unable to perform the services contracted for, as determined by the City, and fails to implement corrective action within ten (10) business days of the City's notice, or if, during the term of this Agreement, the Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of state funds or due to the Appropriations paragraph herein and contractors failure to implement corrective actions for fault. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE CITY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.

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

**6. Appropriations.**

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

**7. Status of Contractor**

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

**8. Discrimination Prohibited**

- a. In performing the services required hereunder, the Contractor shall not discriminate against any person on the basis of race, color, religion, sex, national origin or ancestry, age, physical handicap or disability.



## **9. ADA Requirement**

- a. In performing the Services required hereunder, the Contractor agrees to meet all the requirements of the regulations, (the “ADA”), which are imposed directly on the Contractor or which would be imposed on the City as a public entity. The Contractor agrees to be responsible for knowing all applicable rules and requirements of the ADA and to defend, indemnify and hold harmless the City, its officials, agents, and employees from and against any claims, actions, suits or proceedings of any kind brought against the Contractor as a result of any act or omissions of the Contractor or its agents in violation.

## **10. Reports and Information**

- a. 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 in this Agreement. (additional requirements may be added)

## **11. Establishment and Maintenance of Records**

- a. Records shall be maintained by the Contractor in accordance with applicable law and requirements prescribed by the City with respect to all matters covered by this Agreement. Except as otherwise authorized by City, such records shall be maintained for a period of three years after receipt of final payment under this Agreement. Copies and originals of pertinent documents shall be provided to the City as directed by the City Manager.

## **12. Publication, Reproduction and Use of Materials**

- a. No material(s) 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. The City and the Contractor acknowledge that the above is not meant to affect the attorney/client privilege unless waived by the City Commission.

## **13. Construction and Severability**

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

**14. Claims**

- a. The Contractor shall defend, save and hold harmless the City from claims to the extent caused or allegedly caused by negligence on the part of the Contractor in performance of Contractor's scope of work under this Agreement.

**15. Subcontracting**

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

**16. Release**

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

**17. Confidentiality**

- a. 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.

**18. Product of Service - Copyright.**

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

**19. 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.

**20. Merger.**

- a. This Agreement incorporates all the Agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, Agreements and understandings have been merged into this written Agreement. No prior Agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

**21. Penalties for Violation of Law.**

- a. The Procurement Code, Sections 13-1-28 through 13-1-199, NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.
- b. The parties hereto affirmatively state that no illegal bribes, gratuities or kickbacks of any sort have been or will be made or requested in connection with this Agreement.

**22. Equal Opportunity Compliance.**

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

**23. Applicable Law.**

- a. The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with Section 38-3-1 (G) NMSA 1978. By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

**24. Workers Compensation.**

- a. The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the City.

**25. Records and Audits**

- a. The Contractor shall maintain accounts and records, including personnel, property and financial records, adequate to identify and account for all costs pertaining to the Agreement and such other records as may be deemed necessary by the City and to assure proper accounting for all project funds, both federal and non-federal shares. These records will be made available for audit purposes to the City or any authorized representative, and will be retained for three (3) years after the payment for the work under this Agreement unless permission to destroy them is granted by the City and the funding City.

**26. Indemnification.**

- a. The Contractor shall defend, indemnify and hold harmless the City from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source to the extent caused by the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor or City the receiving party shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the other party by certified mail.

**27. Invalid Term or Condition.**

- a. If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

**28. Enforcement of Agreement.**

- a. A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

**29. Notices.**

- a. Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:
- b. To the City:
  - i. Chief Procurement Officer  
505 Sims Street  
Truth or Consequences, NM 87901
- c. To the Contractor:
  - ii. \_\_\_\_\_

**30. Authority.**

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

**31. Insurance**

- a. Contractor shall maintain the types and amounts of insurance required by the New Mexico State Tort Claims Act for the term of this Agreement.

**32. Assignability**

- a. The Contractor shall not assign any interest on this Agreement, and shall not transfer any interest in the same (whether by assignment or notation), without the prior written consent of the City thereto: Provided, however, that claims for money

by the Contractor from the City under the Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment or transfer shall be furnished promptly to the City.

**33. Amendment**

- a. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.
- b. If the City proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in Article 4 herein, or to agree to the reduced funding.

**34. Entire Agreement:**

- a. This Agreement shall be governed and construed and enforced in accordance with the laws of the State of New Mexico and the ordinances of the City of Truth or Consequences.

**IN WITNESS WHEREOF, the parties have executed this Agreement as \_\_\_\_\_, 2024.**

By: \_\_\_\_\_  
City of Truth or Consequences

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

By: \_\_\_\_\_  
City's Legal Counsel –Certifying legal sufficiency

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

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

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

**APPENDIX D**

**COST RESPONSE FORM**

**REQUEST FOR PROPOSAL #FY-FY-###**

**RFP NAME**

Description	Type	Quantity	Cost per Item

All amounts provided must include all labor, materials, equipment, transportation, configuration, installation, training and profit to provide the goods and/or services described in Section IV.A, (as amended by any current RFP amendments for the period specified).

## APPENDIX E

### Letter of Transmittal Form

Please complete this form in its entirety. Failure to **sign and/or submit** this form will result in the disqualification of Offeror's proposal.

RFP#: 23-24-008 RALPH EDWARDS PARK SHADE STRUCTURES

1. Identify the following information for the submitting organization:

Offeror Name	
Mailing Address	
Telephone	
FED TIN#	
NM BTIN#	

2. Identify the individual(s) authorized by the organization to (A) contractually obligate, (B) negotiate, and/or (C) clarify/respond to queries on behalf of this Offeror:

	A Contractually Obligate	B Negotiate*	C Clarify/Respond to Queries*
Name			
Title			
E-mail			
Telephone			

\* If the individual identified in Column A also performs the functions identified in Columns B & C, then no response is required for those Columns. If separate individuals perform the functions in Columns B and/or C, they must be identified.

3. Will any subcontractor/s be used in the performance of any resultant contract? (Select one):

No.

Yes. Identify subcontractor/s: \_\_\_\_\_

4. Will any other entity/-ies (such as a State Agency, reseller, etc., that is not a subcontractor identified in #3 above) be used in the performance of any resultant contract? (Select one)

No.

Yes. Identify entity/-ies: \_\_\_\_\_

**By signing the form below, the Authorized Signatory attests to the accuracy and veracity of the information provided on this form, and explicitly acknowledges the following:**

- On behalf of the submitting-organization identified in item #1, above, I accept the Conditions Governing the Procurement, as required in Section II.C.1. of this RFP;
- I concur that submission of our proposal constitutes acceptance of the Evaluation Factors contained in Section V of this RFP; and
- I acknowledge receipt of any and all amendments to this RFP, if any.

Sign: \_\_\_\_\_

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

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



## APPENDIX F

### COMPANY INFORMATION FORM

Date of Proposal: \_\_\_\_\_

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

New Mexico State Business License No. \_\_\_\_\_

Resident Business or Veteran Business Preference Certificate No. \_\_\_\_\_

*NOTE: Attach a copy of the valid certificate and documentation to validate Percent preference.*

Contractor's New Mexico Gross Receipts Tax No. \_\_\_\_\_

Contractor's Federal Employee Identification No. \_\_\_\_\_

(Hereinafter called the "Respondent") organized and existing under the laws of the State of New Mexico, doing business as a Corporation, Partnership or Individual, Limited Liability Company, Joint Venture, Other (Circle correct one).

The undersigned, as an authorized representative for the Offeror named above, in compliance with the Request for Proposals #23-24-008 RALPH EDWARDS PARK SHADES.

The Respondent understands that the contract will be awarded in accordance with the provisions of the Request for Proposals and that the Owner reserves the right to reject any or all proposals and to waive any technical irregularities and will become the property of the Owner in the event the contract and bonds are not executed within the time set forth herein, as liquidated damages for the delay and additional expenses to the Owner caused thereby.

Respectfully Submitted,

By: (Authorized Signature) \_\_\_\_\_ Date: \_\_\_\_\_

By: (Same name, printed or typed) \_\_\_\_\_

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

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

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

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

City, State, Zip: \_\_\_\_\_

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

(Affix Corporate Seal if proposal is by Corporation)

## APPENDIX G

### 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 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

ATTACHMENT A – Pre-Proposal Conference Meeting, non-mandatory

