



CITY OF RIO RANCHO  
DEPARTMENT OF FINANCIAL SERVICES  
PURCHASING DIVISION  
3200 Civic Center Circle NE – Suite 300  
Rio Rancho, New Mexico 87144  
Telephone: (505) 891-5064 Fax: (505) 891-5762

**ADDENDUM NUMBER (2) TWO**  
**RFP 21-PW-003**  
**ON-CALL RIGHT-OF-WAY ACQUISITION SERVICES**

October 15, 2020

Addendum Number (1) One forms part of the contract documents and modifies them in the manner set forth below.

**ATTENTION CONTRACTORS**

- Questions and Answers
- Clarification
- Remove and Replace
  - Appendix B – Standard Form Agreement

**Questions and Answers**

1. Question: Do you have an expected duration for this contract?

Answer: The award will be for one year with the option to renew for three one year terms, not to exceed four years. Please see the revised draft contract attached hereto.

2. Question: I am wondering if this will be a recurring contract that will advertise annually moving forward?

Answer: This will not be advertised annually if awarded.

3. Question: Are we allowed to include a cover on our proposal and separator tabs for the three sections within our proposal?

Answer: Yes.

**Clarification**

With Addendum One, the City released a revised Appendix D – Reference Form which corrected the alignment of the scoring details, Most and Least. This was a minor clerical error which should

not change the scoring, so if Offerors have sent the original forms to reference contacts the City will accept both the versions of the form. Reference contracts may also email their completed forms to the Point of Contact, Matthew Schimmel at [mschimmel@rrnm.gov](mailto:mschimmel@rrnm.gov) prior to the submission due date of October 22, 2020.

**Remove and Replace**

Please remove pages 21 through 26 of the original RFP document and replace with the Revised Appendix B – Standard Form Agreement attached hereto to correct the contract term.

**All other provisions of the Contract Documents shall remain unchanged. Each Offeror should ensure that they have received all addenda and amendments to this RFP before submitting their proposal.**

**Appendix B**  
**Contract XX-XX-XXX**  
**Professional Services Agreement**  
**On-Call Right-of-Way Acquisition Services**

THIS AGREEMENT (the “Agreement”) is made and entered into by and between the City of Rio Rancho (the “City”), a municipal corporation and political subdivision of the State of New Mexico, and \_\_\_\_\_ (the “Consultant”), a New Mexico corporation, as of the date indicated below.

WHEREAS, the City issued an RFP for On-Call Right-of-Way Acquisition Services, RFP 21-PW-003, on \_\_\_\_\_, containing the scope of work attached hereto as Exhibit A and incorporated herein by reference; and

WHEREAS, the Consultant submitted a proposal in response to RFP 21-PW-003 on \_\_\_\_\_; and

WHEREAS, The City and the Consultant negotiated certain terms regarding the services to be provided pursuant to the RFP 21-PW-003, resulting in the scope of services, labor and direct costs fee proposals, attached hereto as Exhibit xxx and incorporated herein by reference; and

NOW, THEREFORE, in consideration of the premises and the respective obligations set forth herein, the parties agree as follows:

**1. ENGAGEMENT; SCOPE**

The City hereby engages the Consultant to provide the services described in Exhibit xxx attached hereto.

**2. TERM; TERMINATION**

(a) Unless sooner terminated, this Agreement will be effective for a period of one (1) year with option to renew for three (3) additional one (1) year terms. In no event shall the term of this Agreement exceed four years.

(b) Notwithstanding anything to the contrary contained herein, the City may terminate this Agreement at any time by giving the Consultant such written notice as may be reasonable under the circumstances. Upon receipt of such written notice, the Consultant shall cease all work undertaken hereunder, except as may be necessary to provide for an orderly transition of such work. The Consultant may terminate this Agreement at any time with 60 days written notice to the City.

(c) Upon any termination of this Agreement, the Consultant shall provide a final invoice to the City, showing all costs incurred but unpaid, and the City shall pay such costs, as shown therein. The Consultant shall forthwith deliver all files, reports, and other materials concerning the services provided, maintained or controlled by the Consultant at the time of such termination, subject to all applicable federal and state law.

(d) The Consultant shall have no claim, right or cause of action against the City for termination of this Agreement by City in accordance with the provisions of this paragraph, except as may be otherwise expressly provided with respect to the Consultant's earned but unpaid costs as of the date of such termination.

(e) Nothing herein shall be construed as relieving the Consultant from liability to the City for damages sustained by the City as a result of a breach of this Agreement by the Consultant, and the City may withhold any payments otherwise due to the Consultant as a set-off against all or part of such damages, until such time as the exact amount of damages due the City from the Consultant is determined and that amount paid to (and/or withheld by) the City in full.

### **3. COMPENSATION AND PAYMENT**

For services rendered hereunder, the Consultant shall invoice the City monthly for services provided in accordance with the Consultant's fee schedule included in Exhibit xxxx. Consultant shall submit monthly invoices to the City showing the amount of compensation due, the amount of any New Mexico gross receipts taxes and the total amount payable. Payment of undisputed amounts shall be due and payable thirty (30) days after the City's receipt of the invoice.

### **4. RELATIONSHIP OF PARTIES**

The Consultant (and each agent, employee and Consultant employed or engaged by the Consultant to fulfill the Consultant's obligations hereunder) shall be an independent Consultant performing professional services for the City and not an employee of the City or an agent of the City for any purpose beyond the specific engagement for services set forth herein. As independent Consultants, the Consultant and its agents and employees shall not qualify for or receive any employee benefits from the City, including but not limited to leave, retirement, insurance, bonding, use of City vehicles, or any other benefits afforded to City employees.

### **5. STANDARD OF PERFORMANCE**

The Consultant agrees and represents that it has the personnel, experience and knowledge necessary to qualify it for the particular duties to be performed under this Agreement. Consultant shall perform the work described herein in accordance with the highest standard of care for performance of the Services.

### **6. DELIVERABLES AND USE OF DOCUMENTS**

All work, work product, and deliverables produced under contract with the City shall remain the exclusive property and shall inure to the benefit of the City as work for hire; the Consultant shall not use, sell, disclose or obtain any other compensation for such work for hire. In addition, the Consultant may not, with regard to all work, work product, deliverables or work for hire required by this Agreement, apply for in its name or otherwise, any copyright, patent or other property right and acknowledges that any such property right created or developed remains the exclusive right of the City.

### **7. EMPLOYEES AND SUBCONTRACTORS**

The Consultant shall be solely responsible for payment of wages, salary or benefits to any and all employees or Consultants retained by the Consultant in the performance of the Services.

Consultant agrees to indemnify, defend and hold harmless the City for any and all claims that may arise from the Consultant's relationships to its employees and subcontractors.

## **8. INSURANCE**

The Consultant shall procure and maintain, at its own expense, all necessary or appropriate insurance coverage for itself and its agents and employees.

- (a) In particular, but not by way of limitation, the Consultant shall maintain in force throughout the term of this Agreement, the following insurance policies:
  - (1) a professional liability insurance policy in an amount not less than One Million Dollars (\$1,000,000) per claim and in the aggregate, written on a "claims made" basis, covering the Consultant's errors and omissions in performing its services hereunder; and
  - (2) a commercial general liability insurance policy (ISO Form CG 0001) written on an occurrence basis and covering liabilities arising out of the performance of the Consultant's services hereunder, including those provided by independent Consultants, with coverage for products and completed operations, personal and advertising liability, and liability assumed under an insured contract, with coverage for any one occurrence or claim of not less than One Million Dollars (\$1,000,000), and One Million Dollars (\$1,000,000) aggregate limit.
- (b) The coverages required under this Section may be provided by two or more separate policies, as long as they together provide the coverages required.
- (c) The Consultant shall provide to the City a certificate of insurance or declarations page(s) demonstrating compliance with the foregoing.
- (d) The City shall be named as an additional insured under all policies required under this Section.

## **9. LIQUIDATED DAMAGES**

The City and Consultant agree time is of the essence and that, in the case of the Consultant's failure to complete the design phase services within the time specified and agreed upon as specified in Exhibit X – Project Schedule, the City will be damaged thereby; and because it is difficult to definitely ascertain and prove the amount of such damages, it is hereby agreed that the amount of such damages shall be the liquidated sum of Fifty Dollars (\$50.00) per calendar day for each day's delay in finishing the complete design phase services in excess of the number of working days prescribed; and the Consultant hereby agrees that said sum shall be deducted from amounts due the Consultant under the contract or, if no amount is due the Consultant, the Consultant hereby agrees to pay to the Owner as liquidated damages such total sum as shall be due for such delay, computed as aforesaid.

## **10. ASSIGNMENT AND DELEGATION**

The Consultant shall not delegate or subcontract any portion of the services to be performed hereunder without the prior written approval of the City or customary in the provision of the Consultant's services. Nor shall the Consultant assign or transfer any interest in this Agreement

without the prior written consent of the City; provided, however, that, notwithstanding the foregoing, amounts due hereunder from the City to the Consultant may be assigned to a bank or trust company. Notwithstanding anything to the contrary contained herein, no assignment or transfer of funds and/or the Consultant's right to payment hereunder shall bind the City to pay any person other than the Consultant for services provided hereunder.

#### **11. RECORDS AND AUDIT**

The Consultant shall maintain appropriate accounts and records to adequately identify and account for all services provided and costs chargeable to the City hereunder and such other records as may be required by law. Subject to applicable federal and state law, such records will be made available to the City and/or its authorized representative(s) during regular business hours, upon reasonable request, and will be retained for two (2) years after the termination of this Agreement, unless provided otherwise by the City in writing.

#### **12. APPROPRIATIONS**

The terms of this Agreement and all amounts payable hereunder are contingent upon sufficient appropriations therefore by the City's Governing Body. If sufficient appropriations are not made, the City shall notify the Consultant of the termination of this Agreement in accordance with the provisions of paragraph 2, above.

#### **13. CONFIDENTIALITY**

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

#### **14. COMPLIANCE WITH LAWS AND POLICIES; CONFLICT OF INTEREST**

(a) In the performance of their obligations hereunder, the parties shall obey and abide by all applicable laws, rules and regulations, and with all applicable ordinances, polices and procedures.

(b) The Consultant hereby covenants, warrants and represents that it 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 its services under this Agreement. Without limiting the generality of the foregoing, the Consultant shall comply with all applicable legal or regulatory provisions concerning conflicts of interest.

(c) Both parties shall abide by all applicable federal and state laws, rules, regulations, and executive orders pertaining to equal employment opportunity; pursuant thereto, shall assure that no person shall, on the grounds of race, color, national origin, sex, age, or disability, be excluded from employment with, participation in, be denied the benefits of or be otherwise subjected to discrimination under, any program or activity performed under this Agreement; and to promptly take appropriate steps to correct any deficiency that may be found to occur in compliance with such laws and rules.

#### **15. RELEASE; INDEMNITY**

By its receipt of final payment of all amounts due under this Agreement, the Consultant shall

release the City, and its officers and employees, from all liabilities, claims, and obligations whatsoever, arising from or under this Agreement. The Consultant shall indemnify and defend the City and hold the City harmless for and from any and every claim, action, liability, loss, damage or suit, arising from the fault of the Consultant in performing (or omitting to perform) services hereunder, including claims for payment with respect to work for items not properly specified in the Consultant's work product.

**16. FORCE MAJEURE**

Neither the City nor the Consultant shall be liable for any delay in the performance of this Agreement, nor for any other breach, nor for any loss or damage arising from uncontrollable forces such as fire, theft, storm, war, or any other force majeure that could not have been reasonably avoided by exercise of due diligence.

**17. LICENSES**

The Consultant shall maintain all required licenses, including without limitation all necessary professional and business licenses, throughout the term of this Agreement. Consultant shall require and shall assure that all of the Consultant's employees and subcontractors maintain all required licenses, including without limitation all necessary professional and business licenses.

**18. NOTICES/POINT OF CONTACT**

For the City, the sole points of contact under this Agreement shall be the Public Works Department - Engineering Section. Any notice required or permitted to be given hereunder shall be sufficient if mailed to the address shown below or faxed to the number shown below for the party receiving notice, or to such other address or fax number of which such party has duly notified the other party in accordance with the provisions of this paragraph.

For notice to the City:  
City of Rio Rancho  
3200 Civic Center Circle  
Rio Rancho, New Mexico 87144  
Telephone:  
Email:

For notice to the Consultant:  
  
Telephone:  
Fax:  
Email:

**19. MERGER; AMENDMENT**

This Agreement represents the entire agreement between the parties with respect to the matters addressed herein, and all prior agreements, covenants, and understandings between the parties concerning the same have been merged into this written Agreement. This Agreement shall not be altered, modified, changed, or amended except by a written instrument executed by the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement, effective as of the date executed by both parties.

**CITY OF RIO RANCHO**

**[CONSULTANT]**

By: \_\_\_\_\_  
Peter Wells, Acting City Manager

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

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

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

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Gregory F. Lauer, City Attorney