

CITY OF RIO COMMUNITIES PURCHASE AGREEMENT

THIS AGREEMENT is made and entered into by and between the Governing Body of the City of Rio Communities, State of New Mexico, hereinafter referred to as the "City" and GM Emulsion, LLC, hereinafter referred to as the "Contractor", and is effective as of the date set forth below upon which it is executed by the Purchasing Agent and the Governing Body.

IT IS AGREED BETWEEN THE PARTIES:

1. Scope of Work.

The Contractor shall deliver products or perform the work outlined on the Scope of Work attached hereto as **Attachment 1** and incorporated herein by reference. Product(s) shall be delivered or work performed only upon receipt of a valid Purchase Order issued by the City that specifically identifies the products or services to be provided by the Contractor.

2. Compensation.

A. The City shall pay to the Contractor in full payment for product(s) accepted or services satisfactorily performed based on the price(s) found in the Bid Form at **Attachment 1**.

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 in which the services were delivered. Invoices received after such date WILL NOT BE PAID.

C. The Contractor shall submit an accurate invoice for each purchase. Any reimbursement of taxes due to the Contractor shall be shown as a separate item. Invoices shall refer to the Purchase Order Number and shall be itemized unless otherwise specified by the City. Invoices are to be mailed to: City of Rio Communities Accounts Payable, 360 Rio Communities Blvd. Rio Communities, NM 87002

D. The payment of taxes due for any money received under this Agreement shall be the Contractor's sole responsibility and shall be reported under the Contractor's Federal and State tax identification number(s).

3. Term.

This Agreement shall terminate upon acceptance by the City and payment for the specified product(s) or services.

4. 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 product(s) delivered and accepted or work

performed prior to the Contractor's receipt of the notice of termination, 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 product(s) delivered or such work performed 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 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 government funds or due to the Appropriations paragraph herein. 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.

5. Appropriations.

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Governing Body for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Governing Body, 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.

6. Insurance.

The Contractor agrees to obtain and maintain, at the Contractor's expense, such insurance as will protect the Contractor from claims under the Workman's Compensation Act and such comprehensive general liability and automobile insurance as will protect the City and the Contractor from all claims for bodily injury, death, or property damage which may arise from the performance by the Contractor, or by the Contractor employees, for the Contractor's functions and services required under this Agreement. Such insurance shall be in an amount not less than **\$1,000,000.00** for injury to any one person and **\$1,000,000.00** on account of any one accident and in the amount of not less than **\$1,000,000.00** for property damage. The comprehensive liability insurance shall name the City an additional insured with specific endorsements so naming the City for any claims against the City arising from the work performed by the Contractor under this Agreement. The Contractor further agrees to procure and maintain

professional liability (errors and omissions, or “E&O”) insurance in an amount not less than \$2,000,000.00 per claim and in the aggregate. Prior to commencement of any work, the Contractor shall furnish to the City a certificate that complies with this paragraph. The certificate shall provide that the policy shall not be canceled until at least thirty (30) calendar days prior written notice shall have been given to the City. Contractor shall provide annual updates of the certificate to demonstrate the policy remains in effect for the duration of this Agreement. The failure to have valid policies of insurance in full force and effect at any time during the term of this agreements shall constitute a material breach of this agreement.

Employer's liability coverage will be required of the Contractor and any subcontractor for any class of employee engaged in work under this agreement that is not protected under the Workmen's Compensation Statute. All insurance will be by insurers acceptable to the City and authorized to do business in the state of New Mexico, and who are rated A,A- (A.M. Best Ratings) or AA+/- (S&P). Except as provided below, coverage shall be on an occurrence basis. All insurance policies shall contain a waiver of subrogation against the City. All insurance policies shall be primary. Coverage shall be on ISO coverage forms. Deductibles in excess of \$10,000 per claim may only be approved by the City. Coverage shall be as broad as that provided in ISO CG 20 01 04 13. Self-insured retentions must be declared and approved by the City. Automobile coverage shall be ISO Form CA 001 covering Code 1 (any auto) with the limits of **\$2,000,000** per accident for bodily injury a property damage. If an E&O policy is on a claims made basis, then the date of the policy must be shown and must be before the date of the Contract or the beginning of the scope of work under the Contract, be maintained and evidence for such coverage to be provided for at least five (5) years after completion of the work under the Contract. If such coverage is cancelled or not renewed, and not replaced with another claims made policy form with a retroactive date prior to the effective date of the Contract, then Contractor must purchase “extended reporting” coverage for a minimum of five (5) years after completion of work under the Contract.

7. Status of Contractor.

The Contractor and its agents and employees are independent contractors providing product(s) or performing services for the City and are not employees of the City of Rio Communities. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of City vehicles, or any other benefits afforded to employees of the City of Rio Communities 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 Rio Communities unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

8. Assignment.

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the City. No such assignment or transfer shall relieve the Contractor from the obligations and liabilities under this Agreement.

9. **Subcontracting.**
Not applicable.

10. **Release.**

Final payment of the amounts due under this Agreement shall operate as a release of the procuring agency of the City, its officers and employees, and the City of Rio Communities from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

11. **Confidentiality.**

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

12. **Product of Service -- Copyright.**

All materials developed or acquired by the Contractor under this Agreement shall become the property of the City of Rio Communities 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.

13. **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 City employee while such employee was or is employed by the City and participating directly or indirectly in the City's contracting process;

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

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

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

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

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

C. Contractor's representations and warranties in Paragraphs A and B of this Article 12 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 12 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 12 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 12(B).

14. Amendment.

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

15. Merger.

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

16. Penalties for violation of law.

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.

17. Equal Opportunity Compliance.

The Contractor agrees to abide by all federal, state and City laws and rules and regulations, pertaining to equal employment opportunity. In accordance with all such laws, 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.

18. Applicable Law.

In any action, suit or legal dispute arising from this Agreement, the Contractor agrees that the laws of the State of New Mexico shall govern and that venue will lie in the Seventh Judicial District Court in City of Rio Communities. 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.

19. Workers Compensation.

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

20. Records and Financial Audit.

The Contractor shall maintain detailed time and expenditure records that indicate the date; time, nature and cost of product(s) delivered or services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the City, the Department of Finance and Administration and the State Auditor. The City shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the City to recover excessive or illegal payments

21. Disclaimer and Hold Harmless.

City of Rio Communities shall not be liable to the Contractor, or the Contractor's successors, heirs, administrators, or assigns, for any loss, damage, or injury, whether to Contractor's person or property, occurring in connection with Contractor's performance of Contractor's duties according to this Agreement. Contractor shall hold City of Rio Communities harmless from all loss, damage, and injury, including court costs and attorney fees, incurred by City of Rio Communities in connection with the performance by Contractor of Contractor's duties according to this Agreement.

22. Indemnification.

The Contractor shall defend, indemnify and hold harmless the City of Rio Communities from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, 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, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the City of Rio Communities and the New Mexico Association of Counties by certified mail.

23. Invalid Term or Condition.

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

24. Enforcement of Agreement.

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

25. Authority.

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.

26. Lobbying.

No federal appropriated funds can be paid or will be paid, by or on behalf of the CONTRACTOR, or any person for influencing or attempting to influence an officer or employee of any City, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, or the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, or modification of any Federal contract, grant, loan, or cooperative agreement. If any funds other than federal appropriated funds have been paid or will be paid to any person influencing or attempting to influence an officer or employee of any City, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection of this federal contract, grant, loan, or cooperative agreement, the CONTRACTOR shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

27. Non-Collusion.

In signing this bid the Bidder certifies he/she has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with this offer submitted to the City.

28. Survival.

The Agreement paragraphs titled "Patent, Copyright, Trademark, and Trade Secret Indemnification" and "Indemnification" shall survive the expiration of this Agreement. Software licenses, leases, maintenance and any other unexpired Agreements that were entered into under the terms and conditions of this Agreement shall survive this Agreement.

29. Succession.

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

30. Force Majeure.

A party shall be excused from performance under this Agreement for any period that the party is prevented from performing as a result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination.

31. Mediation.

In the event a dispute arises as to the rights and obligations among the parties hereto, the parties agree to attempt to resolve the dispute through mediation as a condition precedent to seeking legal and equitable remedies. The parties agree to evenly split the costs of any such mediation services. The parties shall mutually agree upon the choice of mediator. In the event the parties have not agreed upon a mediator within twenty (20) days of written notice to the other regarding the dispute, then a list of seven potential mediators will be obtained from the New Mexico Association of Counties and the parties shall utilize a striking process until a mediator is agreed upon.

32. Notice to Proceed.

It is expressly understood that this Agreement is not binding upon the City until it is executed by the Governing Body after voting on the Contract at a public meeting or unless it is executed by the City of Rio Communities City Manager, if the amount of the Contract is \$10,000.00 or less. Further, the Contractor is not to proceed with its obligations under the Agreement until the Contractor has received a fully executed copy of the Agreement and one or more valid Purchase Orders issued by the City.

33. Attorney's Fees.

In the event this Agreement results in dispute, mediation, litigation, or settlement between the parties to this Agreement, the prevailing party of such action shall NOT be entitled to an award of attorneys' fees and court costs.

34. Cooperation.

All parties hereto will fully cooperate with the other and their respective counsel, accountant, and agents in connection with any steps required to be taken under this Agreement.

35. Incorporation and Order of Precedence.

This Invitation for Bids and the Contractor's Bid Form are incorporated by reference into this Agreement and are made a part of this Agreement. In the event of any conflict among these documents, the following order of precedence shall apply:

1. Any Contract amendment(s), in reverse chronological order; then
2. this Contract itself; then

3. the Invitation for Bids; then
4. the Contractor's Bid Form; then
5. the Contractor's standard agreement terms and conditions (which may or may not have been submitted as part of the Contractor's bid).

36. Patent, Copyright, Trademark and Trade Secret Indemnification.

A. The Contractor shall defend, at its own expense, the City of Rio Communities against any claim that any product or service provided under this Agreement infringes any patent, copyright or trademark in the United States or Puerto Rico, and shall pay all costs, damages and attorneys' fees that a court finally awards as a result of any such claim. In addition, if any third party obtains a judgment against the City of Rio Communities based upon the Contractor's trade secret infringement relating to any product or service provided under this Agreement, the Contractor agrees to reimburse the City of Rio Communities for all costs, attorneys' fees and the amount of the judgment. To qualify for such defense and/or payment, the City of Rio Communities shall:

- i. give the Contractor prompt written notice of any claim;
- ii. allow the Contractor to control the defense or settlement of the claim; and
- iii. cooperate with the Contractor in a reasonable way to facilitate the defense or settlement of the claim.

B. If any product or service becomes, or in the Contractor's opinion is likely to become the subject of a claim of infringement, the Contractor shall at its option and expense:

- i. provide a procuring agency of the City the right to continue using the product or service;
- ii. replace or modify the product or service so that it becomes non-infringing; or
- iii. accept the return of the product or service and refund an amount equal to the depreciated value of the returned product or service, less the unpaid portion of the purchase price and any other amounts which are due to the Contractor. The Contractor's obligation will be void as to any product or service modified by the procuring agency of the City to the extent such modification is the cause of the claim.

37. Escalation Clause.

Price escalation due to increased cost to the Contractor is not allowed.

38. Warranties.

Contractor warrants the materials, supplies or services furnished to be exactly as specified, free from defects in Contractor's design, labor, materials and manufacture, and to be in compliance with any drawings or specifications incorporated herein and with any samples

To the Contractor: GM Emulsion, LLC

5935 Agua Fria Street

Santa Fe, NM 87507

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of signature of all parties.

CONTRACTOR

By: _____ Date: _____
Contractor

Printed Name: _____

Address: _____

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CITY OF RIO COMMUNITIES

APPROVED, ADOPTED, AND PASSED on this ____ day of _____, 2021.

GOVERNING BODY OF THE CITY OF RIO COMMUNITIES

MARK GWINN, MAYOR

MARGARET "PEGGY" GUTJAHR
MAYOR PRO-TEM

BILL BROWN
COUNCILOR

JOSHUA RAMSELL
COUNCILOR

JIM WINTERS
COUNCILOR

ATTEST BY:

ELIZABETH "LISA" ADAIR, CITY CLERK

By: _____
City of Rio Communities Procurement Officer

Date: _____

Gm

**RIO COMMUNITIES PAVEMENT REHABILITATION/IMPROVEMENTS OF
CITY ROADS
BID PROPOSAL
BASE BID**

BID ITEM	ITEM DESCRIPTION	UNIT	ESTIMATED		UNIT PRICE	AMOUNT
			QTY			

BASE BID LOT

1	Single Chip Seal	S.Y.	18667	\$5.50	\$102,668.50
2	Fog Seal Coat	S.Y.	18667	\$0.75	\$1,400.25
3	Mobilization	L.S.	L.S.	\$7,500	\$7,500.00
4	Traffic Control	L.S.	L.S.	\$7,500	\$7,500.00

BID OPTION NO. 1

5	Single Chip Seal	S.Y.	3017	\$5.50	\$16,593.50
6	Fog Seal Coat	S.Y.	3017	\$0.75	\$2,262.75
7	Mobilization	L.S.	L.S.	\$7,500	\$5,500.00
8	Traffic Control	L.S.	L.S.	\$7,500	\$2,500.00

Write out Base Bid Amount:

one hundred forty five thousand nine hundred twenty five and 00/100	Dollars
a) Base Bid – Subtotal of Bid Items No. 1 through 4	\$119,068.75
b) Bid Option No. 1 – Subtotal of Bid Items No. 5 through 8	\$ 26,856.25
c) Allowances:	\$ <u>0.00</u>
Total Allowances:	
d) Subtotal –Base Bid subtotal plus Allowances:	<u>\$145,925.00</u>
e) New Mexico Gross Receipts Tax (NMGRT) on amount online d) Subtotal at 7.9375%:	<u>\$ 11,582.80</u>

f) BASE BID TOTAL – Line d) Subtotal plus Line e) NMGRT: \$157,507.80

one hundred fifty seven thousand five hundred seven and 80/100 Dollars
(Total amount written in words)

NOTE: The City reserves the right to award bid based upon the lowest base bid only or if alternates are included, the lowest based bid for any combination of base bid and alternates(s).

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The undersigned, as Bidder, hereby declares that the only persons or firms interested in the proposal as principals are named herein; that no other persons or firms have any interest in this proposal or in the contract to be entered into; that this proposal is made without collusion with any other person, company, or parties making a bid; and that it is in all respects fair and in good faith, without collusion or fraud.

The Contractor agrees that should he fail to complete the project in 30 calendar days, he agrees to pay as liquidated damages the amount of three hundred dollars (\$300.00) per calendar day for each day exceeding the contract substantial completion date, representing monetary damage and risk to property or life. The Contractor further agrees that any extensions in the contract time shall apply only to the date of completion for the entire contract.

Attached hereto is the required proposal guarantee described as follows:

Bid Surety in the amount of 5% of the bid

The proposal guarantee shall be 5% of the total amount bid. The receipt of Addenda is acknowledged below:

Addendum No. 1 Date 6/24/2021

Addendum No. _____ Date _____

Addendum No. _____ Date _____

Dated: June 26, 20 21.

(SEAL) if Bid is by a Corporation

SIGNATURE OF BIDDER



By: Michelle Martinez

(Print Name)

Title: President

Company: GM Emulsion, LLC

Date: 6/27/2021

Address: 5935 Agua Fria Street

Santa Fe, NM 87507

New Mexico Contractor's Classification and License No. 370602 (GA01, GA98, GB98, GF01, GF02, GF03, GF04, GF05, GF07, GF08, GF09, GS08)

Resident Bidder Preference Certification No. L1391423280
(if applicable)

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A. Scope of Work

DESCRIPTION

The project consists of chip-seal at six locations throughout the City of Rio Communities.

Chip-seal: Consists of adding a single layer of chip-seal and a fog seal overlay.

BASE BID

Repair #	Location	Type of Repair	Repair Description	Specification needed
1	Suncrest Blvd	Chip-seal	Chip-seal entire length	Refer to Sections 1, and 2 in the Special Provisions
2	Sombrero Lp (Entire Length)	Chip-seal	Chip-seal entire loop	Refer to Sections 1, and 2 in the Special Provisions
3	349 Gorman Ave to End of Pageant Dr	Chip-seal	Chip-seal entire length starting from previous repair	Refer to Sections 1, and 2 in the Special Provisions

BID OPTION NO. 1

Repair #	Location	Type of Repair	Repair Description	Specification needed
4	Plunket Ct (Cul de Sac)	Chip-seal	Chip-seal entire length	Refer to Sections 1, and 2 in the Special Provisions
5	Unitas Ct (Cul de Sac)	Chip-seal	Chip-seal entire length	Refer to Sections 1, and 2 in the Special Provisions
6	Guapo Dr	Chip-seal	Chip-seal to Aviso	Refer to Sections 1, and 2 in the Special Provisions

BASE BID

Surfacing Schedule			
Repair #	Areas per Exhibits	Chip Seal	Fog Seal
	S.F.	S.Y.	S.Y.
1	60,000	6,666.67	6,666.67
2	48,000	5,333.33	5,333.33
3	60,000	6,666.67	6,666.67
	Subtotal	18666.67	18666.67
	Total	18,667	18,667

BID OPTION NO. 1

Surfacing Schedule			
Repair #	Areas per Exhibits	Chip Seal	Fog Seal
	S.F.	S.Y.	S.Y.
4	11,237	1,248.56	1,248.56
5	10,157	1,128.56	1,128.56
6	5,750	638.89	638.89
	Subtotal	3016.01	3016.01
	Total	3017	3017

Project Locations: GPS Coordinates

BASE BID

Repair #	Location	GPS Coordinates
1	Suncrest Blvd	34°38'30.4"N 106°43'16.7"W
2	Sombrero Lp (Entire Length)	34°39'02.2"N 106°43'30.3"W
3	349 Gorman Ave to End of Pageant Dr	34°39'25.9"N 106°43'01.6"W

BID OPTION NO. 1

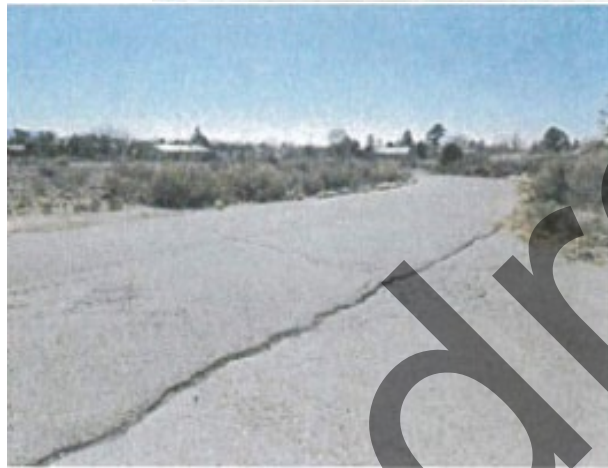
Repair #	Location	GPS Coordinates
4	Plunket Ct (Cul de Sac)	34°38'08.2"N 106°43'41.6"W
5	Unitas Ct (Cul de Sac)	34°38'05.0"N 106°43'40.0"W
6	Guapo Dr	34°38'11.0"N 106°43'12.1"W

Repair #1:
Suncrest Dr



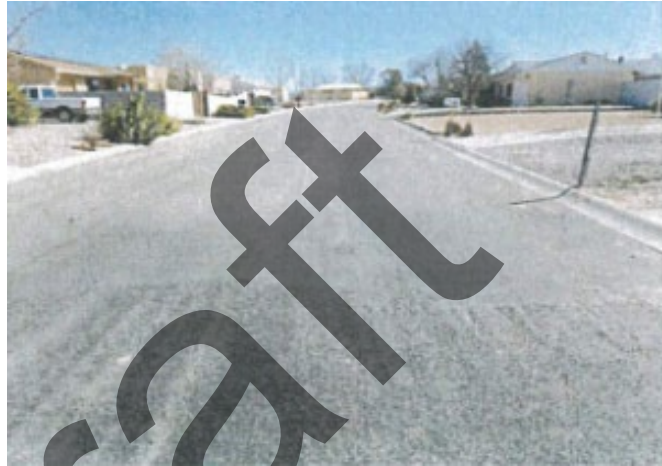
Repair: Chip-seal
Area: 60,000 SF (W30' X L2,000')

Repair #2:
Sombrero Lp (Entire Length)



Repair: Chip-seal
Area: 48,000 SF (W24' X L2,000')

Repair #3:
349 Gorman Ave to end of Pageant Dr



Repair: Chip-seal
Area: 60,000 SF (W30' X L2,000')

Repair #4:
Plunket Ct (Cul de Sac)



Repair: Chip-seal

Area: 11,237 SF (W27' X L230' X 40'R)

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Repair #5:

Unitas Ct (Cul de Sac)



Repair: Chip-seal
Area: 10,157 SF (W27' X L190' X 40'R)

Repair #6:
Guapo Dr to Aviso St



Repair: Chip-seal
Area: 5,750 SF (W23' X L250')

INTENT OF CONTRACT

The intent of the contract is to provide for the construction and completion in every detail of the work described herein. The Contractor shall furnish all labor, materials, equipment, tools, transportation, and supplies required to complete the work in accordance with the plans, specifications, and terms of the contract.

SIGNIFICANT CHANGES IN THE CHARACTER OF WORK

The City reserves the right to make, in writing, at any time during the work, such modifications in quantities and such alterations to the work as are necessary to satisfactorily complete the project. Such modifications in quantities and alterations to the work shall not invalidate the contract nor release the surety, and the Contractor shall agree to perform the work as altered.

If the alterations to the work or modifications in quantities significantly change the character of the work under the contract whether such alterations or modifications are in themselves significant changes to the character of the work or because by affecting other work, they cause such other work to become significantly different in character an adjustment, excluding anticipated profit, shall be made to the contract. The basis for the adjustment shall be agreed upon prior to the performance of the work. If a basis cannot be agreed upon, then an adjustment shall be made either for or against the Contractor in such amount as the City may determine to be fair and equitable.

If the alterations to the work or changes in quantities do not significantly change the character of the work to be performed under the contract, the altered work will be paid for as provided elsewhere in the contract. The term "significant change" shall be construed to apply only to the following circumstances:

- A. When the character of the work as changed differs materially in kind or nature from that involved or included in the original proposed construction; or
- B. When a major item of work as defined elsewhere in the contract is increased in excess of 125% or decreased below 75% of the original contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 125% of original contract item quantity, or in the case of a decrease below 75%, to the actual amount of work performed.
- C. When the change affects work performed under a subcontract agreement approved by the City, adjustments will be made if prior to doing the work the prime Contractor can show the City that the initiated change adversely affected the subcontractor or the subcontractor's work or payment. No consideration will be given to customary increases/decreases in quantities necessary to complete the work that were changed by the Contractor's schedule of operations, by his or her planning of the work, or for unscheduled mobilizations. No consideration will be made after subcontractor work is completed and claims for additional compensation are received.

DIFFERING SITE CONDITIONS

During the progress of work, if subsurface or latent physical conditions differing materially from those indicated in the contract are encountered at the site or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the contract, are encountered at the site the party discovering such conditions shall promptly notify the other party in the contract in writing of the specific differing conditions before they are disturbed, or as soon as practicable thereafter, and before the affected work continues.

- A. Upon written notification, the City shall, within a reasonable time, investigate the conditions. If the City determines that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the contract, an adjustment that excludes anticipated profits but includes cost of delays will be made, and the contract will be modified in writing accordingly.

B. In the event the Contractor fails to provide the written notification in a timely fashion and the City's costs are increased as a result, the damage that could have been mitigated by timely notice will be calculated and the contract adjustment will be reduced accordingly.

MAINTENANCE OF TRAFFIC

The Contractor shall furnish, erect, and maintain barricades, warning signs, flaggers, and pilot cars in accordance with the MUTCD, the Traffic Control Plan, and the requirements of Division 700, Traffic Control Devices. Flaggers shall be provided with equipment and training pursuant to requirements of the MUTCD. The equipment used by the flaggers shall be kept clean and in good repair by the Contractor at the Contractor's expense. The Contractor shall take all steps necessary to either keep the existing roadway open with a minimum of inconvenience to the traveling public or provide an approved alternate route.

The Contractor's equipment shall enter and leave the traveled way only in the direction of public traffic. All movements on or across the traveled way shall be performed in a manner that will not endanger the traveling public.

The City will be responsible for snow removal on all sections of roadway open to the traveling public. The Contractor shall be responsible for snow removal as required for the protection of the work on all sections of the project not open to the traveling public.

The Contractor shall be liable and agrees to pay the City for additional costs and expenses incurred by the City in correcting the defect(s).

The Contractor shall provide ingress and egress to local businesses and residences for the duration of the contract. The Contractor shall advise and schedule access modifications with local business owners, residences, and the Engineer at least twenty-four (24) hours in advance.

FINAL CLEANUP

Before final acceptance, the roadway, all pit sites used by the Contractor, and all ground occupied or used by the Contractor in connection with the work shall be cleaned of all rubbish including but not limited to concrete and asphalt chunks, loose rock, excess materials, and temporary structures. All parts of the work shall be left in an acceptable condition. If appropriate arrangements have been made with private property owners, removal of equipment from private property shall not be required prior to final acceptance.

Borrow pits, surfacing pits, haul roads, and all ground occupied by the Contractor in connection with the work shall be revegetated in accordance with the requirements of NMDOT Standard Specifications for Highway and Bridge Construction Section 632. Haul roads or other areas may be excepted from these requirements when a letter of intent from the landowner for future use has been accepted by the City.

APPENDIX A

STANDARD SPECIFICATIONS FOR

RIO COMMUNITIES ROAD PAVING IMPROVEMENTS OF CITY ROADS

The "New Mexico Department of Transportation 2019 Standard Specifications for Highway and Bridge Construction, and the New Mexico Standard Specifications for Public Works Construction are incorporated by reference, the same as if fully rewritten herein, in the contract, proposal, bond, and other contract documents for work to be performed under this contract for the CITY OF RIO COMMUNITIES. Said "New Mexico Department of Transportation Standard Specifications for Highway and Bridge Construction," Current Edition, are for the purpose of the contract, proposal, bond, and other contract documents, supplemented, modified, and amended as follows, and as may be hereinbefore and hereinafter provided.

Whenever, in the Supplemental General Provisions, Special Conditions and Technical Specifications the word "Section" is followed by a number and a caption (such as "Section 102.4 - Rejection of Proposals") reference is made to that specific section of the "New Mexico Department of Transportation Standard Specifications for Highway and Bridge Construction," Current Edition and the New Mexico Standard Specifications for Public Works Construction. The Supplemental General Provisions, Special Conditions, Supplemental Technical Specifications, Special Provisions and Supplemental Specifications shall govern over the Standard Specifications and are hereby made a part of the Contract Documents.

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SPECIAL PROVISIONS TO BE USED

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<i>Section</i>	<i>Description</i>
1	CHIP SEAL
2	FOG SEAL
3	TRAFFIC CONTROL

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SECTION 1

CHIP AND SEAL

1. DESCRIPTION

The work consists of furnishing all labor, material, equipment, traffic control, quality control and warranties to apply asphalt emulsion and aggregate material on an existing surface, in accordance with these

specifications and in conformity with the lines shown on the plans or established.

a. ASPHALT EMULSION

Polymer-Modified High-Float Emulsion conforming to the requirements of Table 1.

Table 1	Polymer-Modified High Float Emulsions Requirements	
Test	HFE-100P	
Viscosity, Saybolt Furol at 122°F, Seconds	50+	
Sieve Test, Retained on No. 20 Sieve, %	0.10-	
Storage Stability Rest, 1 Day, %	1-	
Demulsibility, 1.2 fl. oz. 0.10 N, CaCl, %	30+	
Residue from Distillation Test to 400°F	65+	
Oil Distillate by Volume of Emulsion, %	3-	
Tests on Residue from Distillation Test		
Penetration at 77°F, 3.5 oz., 5 s, 0.1 mm	90-150	
Ductility 77°F, 2 inch/min	40+	
Elastic Recovery, %	58 ^a	
Float Test @ 140°F, Seconds	1,200+	
^a Test in accordance with AASHTO T301 at a test temperature of 50°F.		

b. AGGREGATE

Aggregate shall be free from clay or adherent films of clay or other matter that would prevent it from adhering to the emulsified asphalt. Aggregate must conform to gradations requirement as specified herein shall be determined by ASTM C136.

i. 3/8" AGGREGATE (CHIP)

Sieve Size	Maximum % Passing
1/2"	
3/8"	100
No. 4	0-10
No. 10	0-2
No. 200	1.0 max.

Percent Wear: Percent of LA wear of 40 or less shall be determined by ASTM C131.

Soundness: A loss of 12 or less shall be determined by AASHTO T104.

Fractured Faces: The amount of crushing shall be regulated so that at least 92 percent, by weight, of all the plus No.4 sieve material shall have a minimum of 2 fractured faces.

Aggregate that becomes contaminated or otherwise unusable shall be corrected by screening or washing at the contractor's expense.

2. EQUIPMENT

a. EMULSIFIED ASPHALT DISTRIBUTOR

The distributor and equipment shall be capable of uniformly distributing asphalt emulsion at even temperature and uniform pressure on variable widths of surface up to 20 feet at readily determined and controlled rates from 0.05 to 2.0 gallons per square yard. The allowable variation any specified rate shall not exceed plus or minus 0.02 gallon per square yard. The distributor's spreading capabilities shall be computer controlled or it shall be calibrated to conform to the distributor manufacturer's procedure prior to applying the emulsified asphalt. Distributor equipment shall include a tachometer, pressure gauges, accurate volume measuring devices or a calibrated tank, and a thermometer for measuring temperatures of tank contents. Distributors shall be equipped with a power unit for the pump, and full circulation spray bars adjustable laterally and vertically. Distributors shall be equipped with an automatic heater capable of maintaining the asphalt emulsion at the manufacture's recommended application temperature or at 140°F, whichever is higher.

b. MECHANICAL SPREADER

Self-propelled aggregate spreader of approved design supported by at least four wheels equipped with pneumatic tires on two axles. The aggregate spreader shall be capable of applying the larger chip material and shall have positive controls, so the required quantity of materials is deposited uniformly over the full width of the asphalt emulsion. Other types of aggregate spreaders may be used provided they accomplish equivalent results and are approved.

c. ROLLERS

A minimum of two self-propelled pneumatic tire rollers weighting no less than 5 tons or more than 10 tons and consist of 2 axles on which are mounted not less than 9 pneumatic-tired wheels in such manner that the rear group of tires will not follow in the tracks of the forward group. The axles shall be mounted in a rigid frame provided with a loading platform or body suitable for ballast loading. The tires shall be uniformly inflated.

If required, one 5-8 ton static steel wheel roller shall be provided.

d. POWER BROOM

A rotary power broom with a positive means of controlling vertical pressure and capable of cleaning and removing loose aggregate.

3. CONSTRUCTION

a. WEATHER LIMITATIONS

Chip seal materials shall be applied only when the surface is dry and when there is no rain or threat of rain. The ambient temperature at the time of application of chip seal materials shall be at least 70°F and rising. The chip seal shall not be placed if the ambient temperature during the curing period is expected to be below 50°F in a twenty-four-hour period.

b. SURFACE PREPARATION

The entire surface shall be cleaned of loose sand, dust, rock, mud and all other debris that could prevent proper adhesion of the asphalt emulsion. The cleaning shall be accomplished by power broom, scaping, blading or other approved measures. The operation shall not be started until the surface is approved.

c. APPLICATION

i. RATE OF APPLICATION

SINGLE CHIP SEAL

Single coat 3/8" chips at 22 to 35 pounds per square yard with 0.33 to 0.45 gallon per square yard of asphalt emulsion.

ii. ASPHALT EMULSION

Asphalt emulsion shall be applied by a pressure distributor in a uniform, continuous spread and within the temperature range specified. The

distributor's spreading capability shall be computer controlled or calibrated to conform to the distributor manufacturer's procedure prior to applying the emulsified asphalt. If streaking occurs, the distributor operation shall be stopped immediately until the cause is determined and corrected. Streaking is alternating, narrow, longitudinal areas of excessive and then insufficient quantities of asphalt emulsion. The quantity of asphalt emulsion per square yard may vary from the rate shown in the contract, as directed. A strip of building paper at least 3 feet in width and with a length equal to that of the spray bar of the distributor plus 1 foot shall be used at the beginning of each spread. If the distributor does not have a positive cut-off, the paper shall be used at the end of each spread. The paper shall be removed and disposed of in a satisfactory manner. The distributor shall be moving forward at proper application speed at the time the spray bar is opened. Skipped areas and deficiencies shall be corrected. Junctions of spreads shall be carefully made to assure a smooth riding surface.

The length of spread of asphalt emulsion shall not be in excess of the area that trucks loaded with aggregate can immediately cover.

The spread of asphalt emulsion shall not be more than 6 inches wider than the width covered by the chop material from the spreading device. Under no circumstances shall operations proceed so asphalt emulsion will be allowed to chill, set up, dry or otherwise impair retention of the aggregate.

The distributor shall be parked so that asphalt emulsion will not drip on the surface of the traveled way.

iii. AGGREGATE

The aggregate shall be applied after the emulsion has broken or as directed by the Project Manager. The aggregate shall be spread in quantities as designated. The spreading rate may vary from the rate shown in the contract when approved. Spreading shall be accomplished so the tires of the trucks or aggregate spreader do not contact the uncovered and newly applied asphalt emulsion.

The aggregate shall be moistened with a sufficient amount of water to reduce the dust coating of the aggregate prior to spreading. The cover coat material shall not contain free moisture as evidenced by drain down in the delivery truck bed.

Immediately after the aggregate material is spread, deficient areas shall be covered with additional material. Rolling shall begin immediately behind

the spreader and shall continue until three complete coverages are obtained. Rolling shall be completed the same day the asphalt emulsion and aggregate are applied.

d. CLEANING, PROTECTING, AND SWEEPING

The completed roadway surface shall be lightly broomed the following morning to remove any excess material, without removing any imbedded material. The contractor shall conduct additional brooming if so directed.

The contractor shall protect manholes, valve boxes and other surfaces. Care shall be taken to prevent the spraying of asphalt upon adjacent pavements and that portion of the street being used for traffic or structures, guard rails, guideposts, markers, trees, shrubs, adjacent property, improvements, and facilities of all kinds.

e. TRAFFIC CONTROL

A traffic control plan approved by the Project Manager will be required before any work commences. The cost of signage, marker, flaggers and traffic control necessary to complete this project shall be included in the unit price of the chip seal.

f. QUALITY CONTROL

i. QUALITY CONTROL TESTING

The contractor is responsible for quality control (QC) sampling and testing.

Chip seal aggregate:

Provide material gradation and quality test results taken during production. The testing rate for gradation is one per 250 tons per source.

Asphalt emulsion:

Only emulsion from certified sources is allowed for use. The contractor shall provide material certification and quality control test results for each batch of asphalt emulsion used on the project. Include the supplier's name, plant location, emulsion grade and batch number on all reports.

4. METHOD OF MEASUREMENT AND PAYMENT

The chip seal shall be measured and paid for by the square yard sealed and accepted by the City. Payment will be full compensation for the chip seal work completed in accordance with the above specifications.

5. WORK INCLUDED IN PAYMENT

All labor, material, equipment, traffic control, quality control and warranties.

6. METHOD OF PAYMENT

PAY ITEM

Single Chip Seal

UNIT

Square Yard

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SECTION 2

FOG SEAL

Refer to the NEW MEXICO STANDARD SPECIFICATIONS FOR PUBLIC WORKS
CONSTRUCTION 2006 EDITION Section 333 and 113. Copies are attached for reference.

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SECTION 3

TRAFFIC CONTROL

1. SCOPE

The work shall consist of establishing traffic control and maintaining safe, convenient use of public roads and rights-of-way. A traffic control plan approved by the Project Manager will be required before any work commences.

2. TRAFFIC AND ACCESS

The contractor's operations shall cause no unnecessary inconvenience to the public. The public rights-of-way shall be maintained.

at all times unless interruption is authorized by proper local authority. Contractor's authorized closing or detour plans shall be provided to the engineer for approval.

Safe and adequate access shall be provided and maintained to all public protection devices and to all critical utility control locations. Facility access shall be continuous and unobstructed unless otherwise approved.

3. STORAGE OF EQUIPMENT AND MATERIAL IN PUBLIC STREETS

Construction materials and equipment shall not be stored or parked on public streets, roads, or highways. During any material or equipment loading or unloading activities that may temporarily interfere with traffic, an acceptable detour shall be provided for the duration of the activity. Any associated expense for this activity is the responsibility of the contractor.

Excavated material, including suitable material that is intended for adjacent trench backfill or other earth backfill as specified in section 5 of this specification, shall not be stored on public streets, roads, or highways that remain in service for the public. Any waiver of this requirement must be obtained from the proper local authority and approved by the engineer. All excess and unsuitable material shall be removed from the site as soon as possible. Any spillage shall be removed from roadways before they are used by the public.

4. STREET CLOSURES, DETOURS, AND BARRICADES

The contractor shall comply with the requirements of all applicable responsible units of government for closure of any street, road, or highway. The contractor shall provide the required barriers, guards, lights, signs, temporary bridges, and flaggers together with informing the public of any detours and construction hazards by the most suitable means available, such as local newspapers or radio stations. The contractor is also responsible for compliance with additional public safety requirements that may arise during construction. The contractor shall furnish, install, and, upon completion of the work, promptly remove all signs, warning devices, and other materials used in the performance of this work.

Unless otherwise specified, the contractor shall notify, in writing, the fire chief, police chief, county sheriff, state patrol, schools that operate school buses, or any other government official as may be appropriate no less than 7 days before closing, partly closing, or reopening any street, road, or highway.

Unless otherwise specified, the contractor shall furnish to the engineer a written plan showing the proposed method of signing, barricading for traffic control, and safety for street detours and closures.

All temporary detours will be maintained to ensure use of public rights-of-way is provided in a safe manner. This may include dust control, grading, and graveling as required in section 7 of this

specification.

5. GENERAL AND SPECIFIC REFERENCES

All signs, signals, barricades, use of flaggers, and other traffic control and public safety devices shall conform to the general requirements set forth in the Manual of Uniform Traffic Control Devices (MUTCD) and the latest edition of The New Mexico Department of Transportation Standard Drawings and Specifications unless otherwise specified in the contract.

6. MEASUREMENT AND PAYMENT

Payment will constitute full compensation for all flaggers, labor, materials, equipment, and all other items necessary and incidental to completion of the work. Progress payments will be made based upon the percentage of estimated total time that traffic control will be required.

7. PAY ITEM
Traffic Control

PAY UNIT
Lump Sum

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