

CITY OF BOX ELDER, SD

ENGINEERING DEPARTMENT



PROJECT: WATER AND SEWER SYSTEM REPAIR

Project No. 240012

ENGINEER: SCOTT LANGE, PE
CITY ENGINEER
CITY OF BOX ELDER
420 VILLA DRIVE
BOX ELDER, SD 57719

BID DATE: November 14, 2024

PROJECT SUMMARY

This work shall be performed under an indefinite delivery indefinite quantity (IDIQ) contract for water or sewer system repair of those owned and operated by the City of Box Elder. An IDIQ contract implies that the level of need is unknown up front. The purpose of this contract is to establish the framework for “on-call” repair services to be used in routine (requiring mobilization for repair within 72 hours) situations, urgent (requiring mobilization for repair within 24 hours) situations, and emergency (requiring mobilization for repair within 4 hours) situations. The primary intent of this contract will be water and sewer main repair. However, there may be other situations which arise involving system elements not directly associated with the main (e.g., service line, meter box, manhole, etc.).

This contract will expire on December 31, 2025. There are two option years available beyond the base year which will be awarded separately at the discretion of the City. The option year proposals shall be based on an escalation percentage from the original base year unit prices.

BIDS DUE: ***Thursday, November 14, 2024, at 2:00 PM***

SUBMIT BID TO:

Hand Deliver or Mail: ***BOX ELDER CITY CLERK
420 VILLA DRIVE
BOX ELDER, SD
605.923.1404***

BID BOND (5% of Bid): NOT Required

EXPECTED SCHEDULE:

- BID OPENING November 14, 2024
- PROJECT AWARD BY CITY : December 3, 2024
- NOTICE TO PROCEED: December 3, 2024
- FIRST DAY OF POTENTIAL SERVICE: January 1, 2025
- INTIAL CONTRACT END DATE: December 31, 2025

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ADVERTISEMENT FOR BID

The City of Box Elder will be accepting sealed bids for **Water and Sewer System Repair, Project No. 240012** until **2:00 PM** local time, **Thursday, November 14, 2024**, at the Box Elder City Hall, 420 Villa Drive, Box Elder, South Dakota, 57719. Bids will be opened at this time and at this location.

This work shall be performed under an indefinite delivery indefinite quantity (IDIQ) contract for water or sewer system repair of those owned and operated by the City of Box Elder. An IDIQ contract implies that the level of need is unknown up front. The purpose of this contract is to establish the framework for “on-call” repair services to be used in routine (requiring mobilization for repair within 72 hours) situations, urgent (requiring mobilization for repair within 24 hours) situations, and emergency (requiring mobilization for repair within 4 hours) situations. The primary intent of this contract will be water and sewer main repair. However, there may be other situations which arise involving system elements not directly associated with the main (e.g., service line, meter box, manhole, etc.).

This contract will expire on December 31, 2025. There are two option years available beyond the base year which will be awarded separately at the discretion of the City. The option year proposals shall be based on an escalation percentage from the original base year unit prices.

It is anticipated the Owner will make two awards from this solicitation. Assuming this occurs, there will be a primary awardee (highest ranking proposal) and a secondary awardee (second highest ranking proposal). The primary awardee will be guaranteed a minimum amount of work valued at \$50,000.00. The secondary awardee will be guaranteed a minimum amount of work valued at \$10,000.00. Combined, the maximum expenditure is estimated to be \$100,000.00.

Proposals will be evaluated based on the criteria form included in the bid package.

Bidders must have access to a current set of City of Box Elder Standard Construction Specifications, which can be found on the City’s website at <https://www.boxeldersd.us/departments/Engineering> All public improvements are required to conform to these specifications and bid prices must reflect these specifications.

Bids may not be withdrawn prior to thirty (30) days after the bid opening. The Owner will award the bid within thirty (30) days after the bid opening.

The Owner has the right to reject any and all bids.

Nicole Schneider
City Finance Officer

Larry Larson,
Mayor

Published two (2) times at the total approximated cost of \$ _____

October 31, 2024

November 2, 2024

INSTRUCTION TO BIDDERS

Bid Proposals shall be submitted to the Box Elder Finance Office no later than **2:00 PM** local time, **Thursday, November 14, 2024**. Bids shall be submitted in a sealed envelope marked "**Water and Sewer System Repair, Project No. 240012**". Bid envelopes shall also bear the name and address of the bidder. If submitted by mail the bid proposal envelope shall be inside a separate mailing envelope addressed to the City of Box Elder, 420 Villa Drive, Box Elder, South Dakota, 57719. No emailed bid can be accepted.

Proposals shall include the following:

1. Type of resource (human or equipment) available for use. The Proposal shall specify:
 - a. The type(s) of human resources proposed to be used for the contract (e.g., working foreman, etc.). Note that equipment is assumed to have a qualified operator. Also, a working foreman's time will only be reimbursed while not involved in other reimbursable time (e.g., equipment operations).
 - b. the type(s) of equipment proposed to be used for the contract (e.g., backhoe, dump truck, portable vibrating compactor, etc.),
 - c. the make(s), model(s), and age(s) of all pieces of equipment to be utilized for the contract,
 - d. the capabilities/capacities of the equipment to be utilized for the contract, and
 - e. the number of equipment operators available to perform contract work.
2. Equipment reimbursement shall include an operator and be based on the following:
 - a. Production equipment by the hour (from the hour meter).
 - b. Haul equipment by the mile (from the odometer).

All Bid Proposals shall be submitted on the project Bid Proposal Form supplied with the contract documents. All spaces for Bid Prices must be filled in, in ink or typewritten, and the Bid Proposal form must be fully completed and executed. In the event of discrepancy between the unit prices quoted and the extended total prices, the unit prices will govern. In the event of a discrepancy between any numerical price and its written price, the written price will govern.

The Bidder must provide a price for all Bid items shown on the Bid Proposal Form.

The Owner reserves the right to delete or negotiate separate bid items with the low bidder if the total price of the Base Bid work is over the project budget, within the requirements of South Dakota Codified Laws (SDCL).

Each Bid Proposal must be accompanied by a certified check, cashier's check or bank draft in the amount equal to 5% of the total bid or a bid bond in an amount equal to 10% of the total bid. Such bid security shall be a guarantee that the successful Bidder will enter into a contract with the Owner for the work described within the contract documents and will furnish a surety bond in the amount of one hundred percent (100%) of the awarded contract for performance and payment.

Check or bid bonds submitted with the Bid Proposal will be returned to the bidders after the bid is awarded or within thirty (30) days after the date of the bid opening.

Attorneys-in-fact who sign bid bonds or Payment and Performance Bonds must file with each bond a certified and effective copy of their power-of-attorney.

The Owner reserves the right to accept any Bid that is advantageous to the Owner, waive any informalities or minor defects, and to reject any or all bids. Any Bid may be withdrawn prior to the scheduled time and date for opening of the Bids or authorized postponement thereof. Any Bid received after the time and date specified shall not be considered.

Conditional or qualified bids will not be accepted.

BIDDING INFORMATION

Each Bidder is responsible for reading and being thoroughly familiar with the Contract Documents, including any addenda. The failure or omission of any Bidder to do any of the foregoing shall in no way relieve any Bidder from any obligation in respect to their Bid. After Bids have been submitted, the Bidder shall not assert that there were any misunderstandings concerning the quantities of work to be done and the nature of the work to be done.

Bidders must have access to a current set of City of Box Elder Standard Construction Specifications, which can be found on the City's website at <https://www.boxeldersd.us/departments/engineering/>. All public improvements are required to conform to these specifications and bid prices must reflect these specifications.

The low Bidder shall supply the names and contact information of the major material Suppliers and Subcontractors if requested by the Owner.

The Owner may make such investigations as is deemed necessary to determine the ability of the Bidder to perform the work, and the Bidder shall furnish to the Owner all such information and data for this purpose as the Owner may request. The Owner reserves the right to reject any Bid if the evidence submitted by, or investigation of, such Bidder fails to satisfy the Owner the Bidder is properly qualified to carry out the obligation of the Agreement and to complete the work contemplated therein.

Method of payment under this contract will be made on a monthly basis until the work is complete. 10% of the final payment amount will be retained until all lien waivers have been filed and the Owner is satisfied all claims for material and labor have been satisfied.

The Contract Documents contain the provisions required for the construction of the project. Information obtained from an officer, agent, or employee of the Owner, or any other person shall not affect the risks of obligations assumed by the Contractor or relieve them from fulfilling any of the conditions of the contract.

CONTRACT AWARD

The Owner intends to award the project to the lowest responsible, qualified Bidder. The successful Bidder will be required to execute the Agreement and obtain Performance and Payment Bonds in the amount of the guaranteed value of the award within ten (10) calendar days from the date the Notice of Award is delivered to the Bidder. The Notice of Award will be accompanied by the necessary Agreement and Bond forms.

The Owner, within ten (10) calendar days of receipt of acceptable Performance and Payment Bonds and the properly executed agreement, shall sign the Agreement and return one (1) fully executed copy to the awarded Bidder. Should the Owner not execute the Agreement within such period, the awarded Bidder may, by written notice, withdraw his signed Agreement. Such notice of withdrawal shall be effective upon receipt of the notice by the Owner.

The Owner and Contractor hereby acknowledges that the time of completion of the work is of vital importance, and the Contractor will be required to complete the work within the time stipulated in the contract.

All applicable laws, ordinances, and rules and regulations of all authorities having jurisdiction over the construction of the Project shall apply to the contract throughout.

BID PROPOSAL

Bid Proposal submitted to:

City of Box Elder
420 Villa Drive
Box Elder, SD 57719

Bid Proposal for: **Water and Sewer System Repair, Project No. 240012**

The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with the City of Box Elder in the form included in the Bidding Documents for the prices and within the time indicated in this Bid and in accordance with the other terms and conditions on the Bidding Documents.

The Bidder accepts all of the terms and conditions of the Instruction to Bidders. This Bid will remain subject to acceptance for 30 days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner.

In submitting this Bid, Bidder represents that:

1. Bidder has examined and carefully studied the Bidding Documents, other related data identified in the Bidding Documents, and the following Addenda, receipt of which is hereby acknowledged:

Addendum No. / Date

2. Bidder is familiar with and is satisfied as to the general, local, and conditions that may affect cost, progress, and performance of the Work.
3. Bidder is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
4. Bidder has considered the information known to Bidder; information commonly known to contractors doing business in the locality of Box Elder; information and observations obtained from visits; Bidding Documents; and the related reports and drawings identified in the Bidding Documents, with respect to the effect on such information, observations, and documents on the (1) cost, progress, and performance of the Work; (2) the means, methods, techniques, sequence, and procedures of construction to be employed by the Bidder, including applying specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents; and (3) Bidders safety precautions and programs.
5. Based on the information and observations the Bidder does not consider that further examinations, investigation, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the prices bid and within the time required, and in accordance with the other terms and conditions of the Bidding Documents.
6. Bidder is aware of the general nature of the Work to be performed.

7. Bidder has given Owner written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and the written resolution thereof by Owner is acceptable to Bidder.
8. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Bid is submitted.
9. Bidder will submit written evidence of its authority to do business in the State of South Dakota not later than the date of the execution of the Agreement.

Bidder certifies that;

1. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rule of any group, organization, association, or corporation;
2. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;
3. Bidder has not solicited or induced any individual or entity to refrain from bidding, and
4. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract.
5. Bidder agrees that the following information is correct:
 - a. The bidder, in preparing its bid or in considering proposals submitted from qualified, potential vendors, suppliers, and subcontractors, or in the solicitation, selection, or commercial treatment of any vendor, supplier, or subcontractor, is not an entity, regardless of its principal place of business, that is ultimately owned or controlled, directly or indirectly, by a foreign national, a foreign parent entity, or foreign government from China, Iran, North Korea, Russia, Cuba, or Venezuela, as defined by SDCL 5-18A.
 - b. It is understood and agreed that, if this certification is false, such false certification will constitute grounds for the City to reject the bid or response submitted by the bidder on this project and terminate any contract awarded based on the bid. The successful bidder further agrees to provide immediate written notice to the contracting executive branch agency if during the term of the contract it no longer complies with this certification and agrees such noncompliance may be grounds for contract termination.
 - c. Complete Certification of Prohibited Entity Status and **include with bid proposal** (See Appendix I).

The Bidder will complete the Work in accordance with the Contract Documents for the following price; unit prices to include all work associated, indicated, or implied by contract documents for a completed project; additional elements may need to be included in bid units provided to accomplish work.

ITEM	RESOURCE (HUMAN OR EQUIP. WITH OPERATOR)	UNIT PRICE for Mobilization within:				PER UNIT (HOUR OR MILE)
		30 days Scheduled	72 hours Routine	24 hours Urgent	4 hours Emergency	
	<i>Include Personnel Staging in UNIT PRICE</i>					
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						
13						
14						
15						
16						
17						
18						
19						
20						

Option Year #1 Escalation % (beyond original unit prices above): _____

Option Year #2 Escalation % (beyond original unit prices above): _____

It is also understood that acceptance of a Proposal and subsequent award of a contract does not guarantee any level of work. Subsequent to contract award, any and all work shall be authorized by separate documents as the services are needed. Bidder understands time is of the essence for completion of all work authorizations/purchase orders.

All invoices shall be based on the actual work performed under each line item with an associated operator.

Corporation Name: _____(Corporate Seal)

State of Incorporation: _____

Type: _____
General Business, Professional, Service, Limited Liability

By: _____
Signature

Name (typed or printed): _____

Title: _____

Attest: _____

Bidder's Business Address: _____

Telephone No.: _____ **FAX No.** _____

Contact E-mail: _____

SUBMITTED on _____, 2024

NOTICE OF AWARD

Date: _____

Owner: City of Box Elder

Contractor: _____

Address: 420 Villa Drive

Address: _____

Box Elder, SD 57719

Project Name: Water and Sewer System Repair, Project No. 240012

Project Location: Box Elder, South Dakota

You are hereby notified that your Bid dated November 14, 2024, for the above-named project has been considered. You are the Successful Bidder and are awarded a Contract for Construction for this project.

The guaranteed amount of the contract is \$_____for calendar year 2025.

This work shall be performed under an indefinite delivery indefinite quantity (IDIQ) contract for water or sewer system repair of those owned and operated by the City of Box Elder. An IDIQ contract implies that the level of need is unknown up front. The purpose of this contract is to establish the framework for “on-call” repair services to be used in routine (requiring mobilization for repair within 72 hours) situations, urgent (requiring mobilization for repair within 24 hours) situations, and emergency (requiring mobilization for repair within 4 hours) situations. The primary intent of this contract will be water and sewer main repair. However, there may be other situations which arise involving system elements not directly associated with the main (e.g., service line, meter box, manhole, etc.).

This contract will expire on December 31, 2025. There are two option years available beyond the base year which will be awarded separately at the discretion of the City. The option year proposals shall be based on an escalation percentage from the original base year unit prices.

This is an indefinite delivery, indefinite quantity (IDIQ) contract. Therefore, the need for services covered within this contract along with their associated total cost is unknown and will be detailed within individual work authorizations/purchase orders.

You must comply with the following conditions precedent within ten (10) days of the date you receive this Notice of Award.

1. Deliver to the Owner three (3) signed originals of the Contract for Construction for Owner’s signature.
2. Deliver with the executed Contract and Bonds a copy of your Certificate of Insurance.

Failure to comply with these conditions within the time specified will entitle Owner to consider you in default, annul this Notice of Award and declare your Bid security forfeited.

Within ten (10) days after you comply with the above conditions, Owner will return to you one (1) fully executed counterpart of the Contract for Construction.

Owner: City of Box Elder

Contractor: _____

By: _____
Authorized Signature

By: _____
Authorized Signature

Title

Title

Date

Date

AGREEMENT BETWEEN OWNER AND CONTRACTOR

THIS AGREEMENT dated the _____ day of _____ 2024 is by and between the City of Box Elder (“Owner”) and _____ (“Contractor”).

Owner and Contractor hereby agree as follows:

The Contractor shall complete all Work as specified or indicated within the Contract Documents for **Water and Sewer Repair, Project No. 240012**. The Work is generally described as:

This work shall be performed under an indefinite delivery indefinite quantity (IDIQ) contract for water or sewer system repair of those owned and operated by the City of Box Elder. An IDIQ contract implies that the level of need is unknown up front. The purpose of this contract is to establish the framework for “on-call” repair services to be used in routine (requiring mobilization for repair within 72 hours) situations, urgent (requiring mobilization for repair within 24 hours) situations, and emergency (requiring mobilization for repair within 4 hours) situations. The primary intent of this contract will be water and sewer main repair. However, there may be other situations which arise involving system elements not directly associated with the main (e.g., service line, meter box, manhole, etc.).

The Owner and Contractor hereby acknowledges that the time of completion of the work is of vital importance, and the Contractor will be required to complete the work within the time stipulated in the contract.

Payment for the work shall be a single lump sum payment upon completion and invoicing of each work authorization/purchase order in accordance with the Contract Documents.

In order to induce the Owner to enter into this Agreement, the Contractor makes the following representations:

1. The Contractor has examined and carefully studied the Contract Documents and the other related data identified within the Contract Documents.
2. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and site conditions that may affect costs, progress, and performance of the Work.
3. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
4. Contractor has considered the information known to Contractor, information commonly known to contractors doing business in the locality of the City of Box Elder; information and observations obtained from visits to the Site; the Contract Documents with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; 2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and (3) Contractor’s safety precautions and programs.

5. Based upon the information and observations referred to herein, Contractor does not consider that further examinations, investigation, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Time, and in accordance with the other terms and conditions of the Contract Documents.
6. Contractor agrees to warrantee the work against defects in material and workmanship for a period of one (1) year after the date of final payment.
7. The Contractor shall save and hold harmless, pay on behalf of, protect, defend, indemnify the City of Box Elder, assume entire responsibility and liability for losses, expenses, demands and claims in connection with or arising out of any injury, or alleged injury (including death) to any person, or damage, or alleged damage, to property of the City of Box Elder or others sustained or alleged to have been sustained in connection with or to have arisen out of or resulting from the performance or the intended performance of any work/service, outlined or resulting from this agreement, by the Contractor or their employees, including losses, expenses or damages sustained by the City of Box Elder; and will hold harmless, pay on behalf of, protect and indemnify the City of Box Elder's officers, agents, and employees from any and all such losses, expenses, damages, demands and claims. The Contractor further agrees to defend any suit or action brought against the City of Box Elder based on any such alleged injury or damage and to pay all damages, cost and expenses in connection therewith or resulting there from. As an integral part of this agreement, the Contractor agrees to purchase and maintain, during the life of this contract, contractual liability insurance in the amounts required in the general liability insurance requirements. The obligations of the Contractor pursuant to this paragraph shall not be limited in any way by any limitation in the amount or type of proceeds, damages, compensation, or benefits payable under any policy of insurance or self-insurance maintained by or for the use and benefit of the Contractor.
8. Providing and maintaining adequate insurance coverage is a material obligation of the Contractor and is of the essence of this contract.
9. All insurance requirements shall meet all laws of the State of South Dakota. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in South Dakota. The Contractor shall always comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing South Dakota laws or this contract. The limits of coverage under each insurance policy maintained by the Contractor shall not be interpreted as limiting the Contractor's liability and obligations under the contract.
10. The policy or policies are to contain, or be endorsed to contain, the following provisions:
 11. Contractor's insurance is for losses that occur as a direct result of the Contractor's actions. Contractors insurance shall contain endorsements for "primary & noncontributory."
 12. Coverage shall state that the Contractor's insurance shall not be suspended, voided, cancelled, reduced in coverage or in limits except after 30 days written notice.
 13. C. Waiver of Subrogation Endorsements waiving recovery against the City of Box Elder.
 14. D. Upon award of this contract, the selected Contractor shall add the City of Box Elder as "additional insured" to their insurance policy.

15. During the term of the contract, the Contractor at their sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the contract. The Contractor agrees to provide the City of Box Elder with a certificate of insurance showing that Contractor has the following minimum coverages:
16. Worker's Compensation – The Contractor shall provide and maintain Worker's Compensation Insurance, as required by the laws of South Dakota, as well as employer's liability coverage with minimum limits of \$1,000,000.00, per occurrence and \$2,000,000.00 in the aggregate. This insurance must include and cover all the Contractor's employees who are engaged in any work under this contract.
17. General Liability – The Contractor shall provide and maintain General Liability Coverage at a rate no less than \$1,000,000 per occurrence and \$2,000,000.00 in the aggregate for bodily injury, personal injury and broad form property damage, product liability, independent contractors (if any), completed operations and contractual liability.
18. Automobile – Automobile Liability Insurance to include liability coverage, covering all owned, hired and non-owned vehicles used in connection with this contract. The minimum combined single limit shall be \$1,000,000.00 bodily injury and property damage; \$500,000.00 uninsured/under insured motorist; and \$5,000.00 medical payment.
19. All Risk Property Coverage – Contractor shall secure, pay for at its sole cost and maintain whatever All Risk Property Coverage Insurance Contractor may deem necessary to protect Contractor against loss of owned or rental capital equipment and tools. The requirement to secure and maintain such insurance is solely for the benefit of the Contractor. Contractor's failure to secure such insurance and/or to maintain adequate levels of coverage shall not obligate the City of Box Elder, its agents or employees, for any losses. Any such insurance policy shall include a waiver of subrogation clause waiving recovery against the City of Box Elder.
20. The City of Box Elder reserves the right to terminate this contract at anytime for cause. The violation of any provision or condition contained in this contract, or the refusal, failure, or inability to carry out any provisions of this contract shall constitute sufficient grounds to terminate this contract for cause. Should the City of Box Elder elect to terminate this contract for cause, The City of Box Elder will notify the Contractor 30 days prior to the termination date and shall specify the cause for termination as well as the date the termination shall be effective. This termination notice will be issued via a written letter sent by certified U.S. mail. Immediate dismissals may be executed if deemed necessary by the City of Box Elder.
21. The City of Box Elder may terminate this contract without cause. Written notice of termination must be sent via certified U.S. mail no later than thirty (30) days prior to the termination date.
22. The Contractor certifies that it will maintain a drug free work place environment to ensure worker safety and workplace integrity. The Contractor further agrees their employees shall comply with this policy.
23. Contractor is aware of the general nature of the work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
24. Contractor has given Owner written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor discovered in the Contract Documents, and the written resolution thereof by Owner is acceptable to Contractor.

25. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

The Contract Documents consist of the following:

1. Advertisement for Bid
2. Individual Work Authorizations
3. Instructions to Bidders
4. Contractor's Bid Proposal
5. Notice of Award
6. This Agreement
7. Payment Bond
8. Bid Bond
9. The project Specifications
10. Any Addenda issued by the Owner
11. Contractor's Bid Proposal
12. Any Documents that may be issued on or after the Effective Date of the Agreement and are not attached hereto such as:
 - a. Notice to Proceed
 - b. Work Change Directive
 - c. Shop Drawing Transmittals
 - d. Change Orders
 - e. Applications for Payment
 - f. Lien Waivers

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement. Counterparts have been delivered to Owner and Contractor. All portions of the Contract Documents have been signed or have been identified by Owner and Contractor or on their behalf.

This Agreement will be effective on _____ 2024
(Effective Date of the Agreement)

OWNER: City of Box Elder

CONTRACTOR

By: _____

By: _____

Title: _____

Title: _____

Address for giving Notices:

Address for giving Notices:

420 Villa Drive

Box Elder, SD 57719

NOTICE TO PROCEED

Date: _____

Owner: City of Box Elder

Contractor: _____

Address: 420 Villa Drive

Address: _____

Box Elder, SD 57719

Project Name: Water and Sewer Repair, Project No. 240012

Project Location: Box Elder, South Dakota

You are hereby notified that the Contract Time under the above Contract will commence to run on January 1, 2025. On or after that date, you may be contacted by the City of Box Elder to perform work under the Contract Documents. In accordance with the Agreement, the term of the contract base year shall expire on December 31, 2025. Each subsequent option year extension shall expire on December 31, of the appropriate year beyond the base year expiration.

Note that all work shall be officially authorized by a duly executed Work Authorization.

Acknowledged by:

Owner: City of Box Elder

Contractor:

By: _____
Authorized Signature

By: _____
Authorized Signature

Title: _____

Title: _____

Date: _____

Date: _____

PERFORMANCE BOND

Any singular reference to Bidder, Surety, Owner or other party shall be considered plural where applicable.

BIDDER (*Name and Address*):

SURETY (*Name and Address of Principal Place of Business*):

OWNER (*Name and Address*): City of Box Elder
 420 Villa Drive
 Box Elder, SD 57719

BID

Bid Due Date: November 14, 2024

Description: Water and Sewer System Repairs, Project No. 240012

BOND

Bond Number:

Date (Not earlier than Bid due date):

Penal Sum \$ _____

(Figures)

(Words)

Surety and Bidder, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR

SURETY

<p>_____ Contractor's Name and Corporate Seal</p> <p>By: _____ Signature</p> <p>_____ Print Name</p> <p>_____ Title</p> <p>Attest: _____ Signature</p> <p>_____ Title</p>	(Seal)	<p>_____ Surety's Name and Corporate Seal</p> <p>By: _____ Signature (Attach Power of Att.)</p> <p>_____ Print Name</p> <p>_____ Title</p> <p>Attest: _____ Signature</p> <p>_____ Title</p>	(Seal)
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Note: Provide execution by additional parties, such as joint venturers, if necessary.

1. If Contractor performs the Contract, Surety and Contractor have no obligation under this Bond, except to participate in conferences as provided in Paragraph 2.1.
2. If there is no Owner Default, Surety's obligation under this Bond shall arise after:
 - 2.1 Owner has notified Contractor and Surety, at the addresses described in Paragraph 9 below, that Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with Contractor and Surety to be held not later than 15 days after receipt of such notice to discuss methods of performing the Contract. If Owner, Contractor, and Surety agree, Contractor shall be allowed a reasonable time to perform the Contract, but such an agreement shall not waive Owner's right, if any, subsequently to declare a Contractor Default; and
 - 2.2 Owner has declared a Contractor Default and formally terminated Contractor's right to complete the Contract. Such Contractor Default shall not be declared earlier than 20 days after Contractor and Surety have received notice as provided in Paragraph 2.1; and
 - 2.3 Owner has agreed to pay the Balance of the Contract Price to:
 1. Surety in accordance with the terms of the Contract; or
 2. Another contractor selected pursuant to Paragraph 3.3 to perform the Contract.
3. When Owner has satisfied the conditions of Paragraph 2, Surety shall promptly, and at Surety's expense, take one of the following actions:
 - 3.1 Arrange for Contractor, with consent of Owner, to perform and complete the Contract; or
 - 3.2 Undertake to perform and complete the Contract itself, through its agents or through independent contractors; or
 - 3.3 Obtain bids or negotiated proposals from qualified contractors acceptable to Owner for a contract for performance and completion of the Contract, arrange for a contract to be prepared for execution by Owner and Contractor selected with Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Contract, and pay to Owner the amount of damages as described in Paragraph 5 in excess of the Balance of the Contract Price incurred by Owner resulting from Contractor Default; or

- 3.4 Waives its right to perform and complete, arrange for completion, or obtain a new Contractor, and with reasonable promptness under the circumstances:
 1. After investigation, determine the amount for which it may be liable to Owner and, as soon as practicable after the amount is determined, tender payment therefor to Owner; or
 2. Deny liability in whole or in part and notify Owner citing reasons therefore.
4. If Surety does not proceed as provided in Paragraph 3 with reasonable promptness, Surety shall be deemed to be in default on this Bond 15 days after receipt of an additional written notice from Owner to Surety demanding that Surety perform its obligations under this Bond, and Owner shall be entitled to enforce any remedy available to Owner. If Surety proceeds as provided in Paragraph 3.4, and Owner refuses the payment tendered or Surety has denied liability, in whole or in part, without further notice Owner shall be entitled to enforce any remedy available to Owner.
5. After Owner has terminated Contractor's right to complete the Contract, and if Surety elects to act under Paragraph 3.1, 3.2, or 3.3 above, then the responsibilities of Surety to Owner shall not be greater than those of Contractor under the Contract, and the responsibilities of Owner to Surety shall not be greater than those of Owner under the Contract. To the limit of the amount of this Bond, but subject to commitment by Owner of the Balance of the Contract Price to mitigation of costs and damages on the Contract, Surety is obligated without duplication for:
 - 5.1 The responsibilities of Contractor for correction of defective Work and completion of the Contract;
 - 5.2 Additional legal, design professional, and delay costs resulting from Contractor's Default, and resulting from the actions of or failure to act of Surety under Paragraph 3; and
 - 5.3 Liquidated damages, or if no liquidated damages are specified in the Contract, actual damages caused by delayed performance or non-performance of Contractor.
6. Surety shall not be liable to Owner or others for obligations of Contractor that are unrelated to the Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than Owner or its heirs, executors, administrators, or successors.
7. Surety hereby waives notice of any change, including changes of time, to Contract or to related subcontracts, purchase orders, and other obligations.
8. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the Work or part of the Work is located, and shall be instituted within two years after Contractor Default or within two years after Contractor ceased working or within two years after Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
9. Notice to Surety, Owner, or Contractor shall be mailed or delivered to the address shown on the signature page.
10. When this Bond has been furnished to comply with a statutory requirement in the location where the Contract was to be performed, any provision in this Bond conflicting with said statutory requirement shall be deemed deleted herefrom and provisions conforming to such statutory requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

11. Definitions.

- 11.1 Balance of the Contract Price: The total amount payable by Owner to Contractor under the Contract after all proper adjustments have been made, including allowance to Contractor of any amounts received or to be received by Owner in settlement of insurance or other Claims for damages to which Contractor is entitled, reduced by all valid and proper payments made to or on behalf of Contractor under the Contract.
- 11.2 Contract: The agreement between Owner and Contractor identified on the signature page, including all Contract Documents and changes thereto.
- 11.3 Contractor Default: Failure of Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Contract.
- 11.4 Owner Default: Failure of Owner, which has neither been remedied nor waived, to pay Contractor as required by the Contract or to perform and complete or otherwise comply with the other terms thereof.

FOR INFORMATION ONLY - (Name, Address, and Telephone) Surety Agency or Broker:

Owner's Representative Engineer or other:

PAYMENT BOND

Any singular reference to Bidder, Surety, Owner or other party shall be considered plural where applicable.

BIDDER *(Name and Address):*

SURETY *(Name and Address of Principal Place of Business):*

OWNER *(Name and Address):* City of Box Elder
420 Villa Drive
Box Elder, SD 57719

BID

Bid Due Date: November 14, 2024

Description: Water and Sewer System Repairs, Project No. 240012

BOND

Bond Number:

Date (Not earlier than Bid due date):

Penal Sum \$ _____

(Figures)

(Words)

Surety and Bidder, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR

SURETY

Contractor's Name and Corporate Seal (Seal)

Surety's Name and Corporate Seal (Seal)

By: _____
Signature

By: _____
Signature (Attach Power of Att.)

Print Name

Print Name

Title

Title

Attest: _____
Signature

Attest: _____
Signature

Title

Title

Note: Provide execution by additional parties, such as joint venturers, if necessary.

1. Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to Owner to pay for labor, materials, and equipment furnished by Claimants for use in the performance of the Contract, which is incorporated herein by reference.
2. With respect to Owner, this obligation shall be null and void if Contractor:
 - 2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and
 - 2.2 Defends, indemnifies, and holds harmless Owner from all claims, demands, liens, or suits alleging nonpayment by Contractor by any person or entity who furnished labor, materials, or equipment for use in the performance of the Contract, provided Owner has promptly notified Contractor and Surety (at the addresses described in Paragraph 12) of any claims, demands, liens, or suits and tendered defense of such claims, demands, liens, or suits to Contractor and Surety, and provided there is no Owner Default.
3. With respect to Claimants, this obligation shall be null and void if Contractor promptly makes payment, directly or indirectly, for all sums due.
4. Surety shall have no obligation to Claimants under this Bond until:
 - 4.1 Claimants who are employed by or have a direct contract with Contractor have given notice to Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.
 - 4.2 Claimants who do not have a direct contract with Contractor:
 1. Have furnished written notice to Contractor and sent a copy, or notice thereof, to Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials or equipment were furnished or supplied, or for whom the labor was done or performed; and
 2. Have either received a rejection in whole or in part from Contractor, or not received within 30 days of furnishing the above notice any communication from Contractor by which Contractor had indicated the claim will be paid directly or indirectly; and
 3. Not having been paid within the above 30 days, have sent a written notice to Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to Contractor.
5. If a notice by a Claimant required by Paragraph 4 is provided by Owner to Contractor or to Surety, that is sufficient compliance.
6. Reserved.
7. Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by Surety.
8. Amounts owed by Owner to Contractor under the Contract shall be used for the performance of the Contract and to satisfy claims, if any, under any performance bond. By Contractor furnishing and Owner accepting this Bond, they agree that all funds earned by Contractor in the performance of the Contract are dedicated to satisfy obligations of Contractor and Surety under this Bond, subject to Owner's priority to use the funds for the completion of the Work.

9. Surety shall not be liable to Owner, Claimants, or others for obligations of Contractor that are unrelated to the Contract. Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.
10. Surety hereby waives notice of any change, including changes of time, to the contract or to related subcontracts, purchase orders, and other obligations.
11. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the Work or part of the Work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Paragraph 4.1 or Paragraph 4.2.3, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
12. Notice to Surety, Owner, or Contractor shall be mailed or delivered to the addresses shown on the signature page. Actual receipt of notice by Surety, Owner, or Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.
13. When this Bond has been furnished to comply with a statutory requirement in the location where the Contract was to be performed, any provision in this Bond conflicting with said statutory requirement shall be deemed deleted herefrom and provisions conforming to such statutory requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory Bond and not as a common law bond.
14. Upon request of any person or entity appearing to be a potential beneficiary of this Bond, Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.
15. Definitions
 - 15.1 Claimant: An individual or entity having a direct contract with Contractor, or with a first-tier subcontractor of Contractor, to furnish labor, materials, or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Contract, architectural and engineering services required for performance of the Work of Contractor and Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.
 - 15.2 Contract: The agreement between Owner and Contractor identified on the signature page, including all Contract Documents and changes thereto.
 - 15.3 Owner Default: Failure of Owner, which has neither been remedied nor waived, to pay Contractor as required by the Contract, or to perform and complete or otherwise comply with the other terms thereof.

FOR INFORMATION ON Y - (Name, Address, and Telephone) Surety Agency or Broker: Owner's Representative Engineer or other:

WORK AUTHORIZATION (Example Form)

Date: _____

Number: _____

Owner: City of Box Elder

Contractor: _____

Address: 420 Villa Drive

Address: _____

Box Elder, SD 57719

Phone: _____

Phone: _____

Project Name: Water and Sewer System Repair, Project No. 240012

Contractor, you are hereby notified of the following required service:

Scheduled Routine Water

Emergency Urgent Sewer

Repair Description: _____

Repair Location: _____

Attachment(s): _____

Owner's Staff Assigned to Work Authorization: _____

Owner's Assigned Staff Contact Phone(s): _____

Authorized by (Owner's duly authorized representative):

<i>Authorized Signature</i>	<i>Printed Name</i>	<i>Title</i>	<i>Date</i>
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CONTRACTOR'S APPLICATION FOR PAYMENT (Example Form)

2024 Revision - City of Box Elder

Contractor's Application for Payment No. 0

To (Owner): City of Box Elder, SD	Application Period: Previous Application Date to This Application Date: Application Date: XXXX.XX.XX	Via (Engineering Consultant): Engineering Consultant Project No.:
Project: Project Name	Contract: Contractor's Project No.:	
City Contract No.:	Contractor's Project No.:	

Application For Payment Change Order Summary

Approved Change Orders	Number	Additions	Deductions
TOTAL \$		\$0.00	\$0.00
NET CHANGE BY CHANGE ORDERS		\$0.00	

1. ORIGINAL CONTRACT PRICE..... \$	\$ 50.00
2. Net change by Change Orders..... \$	\$ 50.00
3. Current Contract Price (Line 1 ± 2)..... \$	\$ 50.00
4. TOTAL COMPLETED AND STORED TO DATE	
(Column F total on Progress Estimates)..... \$	\$ 0.00
5. RETAINAGE:	
a. 10% X 30.00 Work Completed. \$	\$ 0.00
b. 10% X 30.00 Stored Material... \$	\$ 0.00
c. Total Retainage (Line 5.a + Line 5.b)..... \$	\$ 0.00
6. AMOUNT ELIGIBLE TO DATE (Line 4 - Line 5.c)..... \$	\$ 0.00
7. LESS PREVIOUS PAYMENTS (Line 6 from prior Application)..... \$	\$ 0.00
8. AMOUNT DUE THIS APPLICATION..... \$	\$ 0.00
9. BALANCE TO FINISH, PLUS RETAINAGE	
(Column G total on Progress Estimates + Line 5.c above)..... \$	\$ 0.00

Contractor's Certification The undersigned Contractor certifies, to the best of its knowledge, the following: (1) All previous progress payments received from Owner on account of Work done under the Contract have been applied on account to discharge Contractor's legitimate obligations incurred in connection with the Work covered by prior Applications for Payment; (2) Title to all Work, materials and equipment incorporated in said Work, or otherwise listed in or covered by this Application for Payment, will pass to Owner at time of payment free and clear of all Liens, security interests, and encumbrances (except such as are covered by a bond acceptable to Owner indemnifying Owner against any such Liens, security interest, or	Payment c \$ 0.00 is recommended by: (Date) Project Engineer
Contractor Signature By: _____	Payment c \$ 0.00 is approved by: (Date) City Engineer Approved by: (Date) Owner (City of Box Elder)

SPECIAL PROVISIONS

GENERAL

1.1 SUMMARY

- A. The work to be performed under this contract shall consist of furnishing the following to perform the work outlined in these specifications or as indicated by project drawings:
1. tools
 2. equipment
 3. materials
 4. labor
 5. supplies
 6. manufactured articles
 7. all transportation to complete the work
 8. temporary facilities
 9. owner required traffic control

Location of Work: City of Box Elder, South Dakota

- B. Incidentals Items: All work, materials, and services not expressly listed as being provided by others or not expressly called for in the contract but are necessary for the completion of the work in good faith, shall be furnished, installed, and performed by the contractor.

1.2 SUMMARY OF WORK TO BE DONE BY CONTRACTOR

- A. The work shall consist of general repairs of water and sewer systems at various locations in and around the City of Box Elder as the need arises.
- B. As work is identified it shall be authorized by and described within individual work authorizations. The required mobilization (departure of resources from Contractor's primary place of business) response time shall be as follows:
1. Scheduled: Within 30 days of notification
 2. Routine: Within 72 hours of receipt of work authorization.
 3. Urgent: Within 24 hours of receipt of work authorization.
 4. Emergency: Within 4 hours of receipt of work authorization.
- C. Required parts and materials shall be first sought from the City of Box Elder Public Works (PW) shop via the assigned staff member. If the PW shop does not possess the required materials the Contractor shall independently arrange and procure the required parts and/or materials. The Contractor shall keep all parts and material invoices and include copies of same with the appropriate Contractor invoices for work performed for this contract. Accepted and approved invoices submitted for reimbursement shall be paid at the listed invoice cost plus 10%.
- D. The Contractor shall be responsible for tracking all information required for invoicing including:
1. ensuring work was previously duly authorized,
 2. ensuring equipment included on the invoice had an operator on board (i.e., was not idle), and

3. documenting equipment usage (mileage or hours) and personnel time (if being invoiced separate from equipment).

1.3 ADDITIONAL INFORMATION

For information regarding the technical aspects of the project, contact the Project Manager:

Cassie Furchner
City of Box Elder, Assistant Public Works Director
420 Villa Drive
Box Elder, SD 57719
Telephone: 605-923-1404

Comply with all City of Box Elder ordinances and other State and local regulations related to the completion of the work including the acquisition of necessary permits.

1.4 PRICE AND PAYMENT

A. Summary

1. Work covered by each section includes method of measure and basis of payment for all divisions included.
2. Payment for the various Bid Items shall include all compensation to be received by the Contractor for furnishing all tools, equipment, materials, labor, supplies, manufactured articles, transportation, and temporary facilities required to complete the work in accordance with contract documents including incidentals.
3. Compensation for time-based proposal resources shall not begin prior to arrival at the project site and shall only be made for time spent in production (i.e., not idle time).
4. Respective prices and payment shall constitute full compensation for all work completed including incidentals.
5. All items not expressly listed as being provided by others that are necessary for the completion of work shall be furnished and installed by the Contractor.
6. Invoicing will be separated for each work order.

1.5 PROPOSAL SCHEDULE ITEMS

- #### **A. Payment shall be full compensation to complete the work items in good faith, including incidental work.**

APPENDIX I: PROHIBITED ENTITY STATUS

SDCL 5-18A-51

Request for Proposal

Solicitation for Bid

Other Procurement

SDCL 5-18A-1(19A) defines “Prohibited Entity” as follows:

“[A]n organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates, of those entities or business associations, regardless of their principal place of business, which is ultimately owned or controlled by:

- (a) A foreign parent entity from the People's Republic of China, the Republic of Cuba, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Russian Federation, or the Bolivarian Republic of Venezuela; or
- (b) The government of the People's Republic of China, the Republic of Cuba, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Russian Federation, or the Bolivarian Republic of Venezuela.

A prohibited entity does not include a citizen or legal permanent resident of the United States, or an individual foreign national.”

The undersigned hereby certifies the following:

1. I am an authorized representative and agent of _____ (“Bidder”);
2. Initial one:
 - ___ Bidder is not a Prohibited Entity as defined by SDCL 5-18A-1(19A); or
 - ___ Bidder is a Prohibited Entity pursuant to SDCL 5-18A-1(19A) but grounds for waiver exist pursuant to SDCL 5-18A-52. If marking this option, provide the basis for the requested grounds for waiver.
3. I understand that a Bidder who becomes a Prohibited Entity, as defined above, at any time after making this certification that it is not a Prohibited Entity, Bidder must provide written notice to the City, who may terminate the contract.

4. I understand that the City of Box Elder has the right to terminate a contract with any contractor who submits a false certification, and that any bidder who submits a false certification may be subject to suspension or debarment under SDCL 5-18D-12.

Dated this _____ day of _____, 20____.

(Contractor Business Name)

By: _____

Printed name: _____

Title: _____