

**SANTA FE COUNTY
PUBLIC WORKS DEPARTMENT**

INVITATION FOR BID



IFB# 2016-0204-PW/MM

CN S100282

***REBID* CONSTRUCTION SERVICES FOR THE
SANTA FE RAIL TRAIL SEGMENT 4**

JANUARY 2016

SANTA FE COUNTY

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SANTA FE COUNTY INVITATION FOR BIDS

***Rebid* Construction Services for the Santa Fe Rail Trail Segment 4 (Avenida Vista Grande to Avenida Eldorado)**

IFB# 2016-0204-PW/MM CN S100282

The Santa Fe County Public Works Department is requesting bids from qualified and licensed contractors for construction services for the Santa Fe Rail Trail Segment 4 located in Santa Fe County funded by the Federal Highway Administration (FHWA). The work consists of the construction of a 1.64 mile long crusher fines trail adjacent to the Santa Fe Southern Railway from Avenida Vista Grande to Avenida Eldorado in Santa Fe County. The State Disadvantaged Business Enterprise (DBE) Goal on this project is established at 3%. At this time NMDOT will meet State DBE Goal on Federally assisted projects through a combination of race-neutral and race-conscious measures. The established On the Job Training (OJT) goal for this project goal is 0%. The stipulated construction duration for this contract is 100 working days to commence as directed by Santa Fe County. A working day is defined in Section 101.4 – Terms and Definitions of the NMDOT Standard Specifications. Bids may be held for ninety (90) days subject to action by the County. By submitting a bid for the requested materials and/or services each bidder is certifying that its bid is in compliance with regulations and requirements stated within the Invitation for Bid package. Santa Fe County reserves the right to reject any and all bids in part or whole. A completed bid package shall be submitted in a sealed envelope indicating the bid title and number along with the bidding firm's name and address clearly marked on the outside of the container. Bids are due no later than **February 29, 2016 at 2:00PM** and delivered to the Santa Fe County Purchasing Division located at 142 W. Palace (Second Floor), Santa Fe 87501.

A Pre-Bid Conference will be held on February 4, 2016 at 2:00 PM at the Projects, Facilities & Open Space Division located at 901 W. Alameda, Suite 20-C, Santa Fe, N.M. 87501. Attendance at the Pre-Bid Conference is MANDATORY.

EQUAL OPPORTUNITY EMPLOYMENT: All qualified bidders will receive consideration of contract(s) without regard to race, color, religion, sex, national origin, ancestry, age, physical and mental handicap, serious mental condition, disability, spousal affiliation, sexual orientation or gender identity.

Information on Invitation for Bid Documents including plans and specifications will be available by contacting Maricela Martinez, Santa Fe County Purchasing Division, by telephone at (505) 992-9864 or by email at mcmartinez@santafecountynm.gov or by accessing our website at https://www.santafecountynm.gov/asd/current_bid_solicitations.

BIDS RECEIVED AFTER THE DATE AND TIME SPECIFIED ABOVE WILL NOT BE ACCEPTED.

Publish: January 11, 13, 17,18,24 & 25, 2016

INSTRUCTIONS FOR BIDDERS

Bids are requested by Santa Fe County from qualified, licensed construction companies for the construction of the Santa Fe Rail Trail Segment 4.

1. LOCATION AND DESCRIPTION OF WORK: The work to be performed includes the construction of a 1.64 mile crusher fines trail adjacent to the Santa Fe Southern Railway. The location of the work is generally south of Avenida Vista Grande to Avenida Eldorado, south of the City of Santa Fe, in Santa Fe County.

The work includes grading, base preparation, crusher fines surface placement, placement of base course in selected areas, drainage features, slope protection, fencing, site restoration and signage.

The Contractor shall supply all labor, materials and equipment necessary to complete the work in accordance with the construction plans and specifications.

The bids shall be in the form of unit pricing as per items listed on the bid sheets.

The bid shall include all permits, fees, tie-in fees for all utilities, overhead and profit and incidental costs in the bid amounts. All applicable taxes shall not be included in the bid amounts.

All applicable laws and ordinances and the rules and regulations of all authorities having jurisdiction over the project shall apply to the contractor and all agreements between the contractor and the County.

2. TIME AND PLACE OF RECEIVING AND OPENING BIDS: This information will be found in the "Advertisement for Bids". A bid received after the specified time will not be considered and will be returned to the bidder unopened.
3. SPECIFICATIONS: The construction of this project will be in accordance with the New Mexico Department of Transportation Standard Specifications and Supplemental Specifications for Highway and Bridge Construction 2014 Edition, Special Provisions and the engineering drawings which are included in this bid package except as otherwise specified herein or in the contract.

The Standard Specifications can be found at the following internet link: http://nmshtd.state.nm.us/upload/images/Constrets_Unit/2014_Specs_for_Highway_and_Bridge_Construction.pdf.

4. CONTRACT TIME: The number of days for the completion of work (the contract time) is 100 weather working days upon receipt of the Notice to Proceed.
5. COPIES OF BIDDING DOCUMENTS: Bidders may obtain complete sets of the Bidding Documents by contacting Maricela Martinez by telephone at (505) 992-9864, email at mcmartinez@santafecountynm.gov or by accessing our website at https://santafecountynm.gov/asd/current_bid_solicitations. Bidders shall use complete sets of Bidding Documents in preparing bids; neither the owner nor engineer assumes

responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.

No license or grant of use of the Bidding Documents is conferred by issuance of copies of the bidding documents.

6. **BIDDER'S REPRESENTATION:** By submitting a bid the bidder represents that: a) the bidder has read and understands the Bid Documents and Contract Documents; b) the bid is made in compliance with the Bid Documents and Contract Documents; c) The bidder has visited the site and has become familiar with local conditions under which the Work is to be performed, and has correlated the bidder's personal observations with the requirements of the proposed Contract Documents; d) the bidder has familiarized itself with federal, state and local laws, ordinances, rules, and regulations affecting performance of the Work; and e) the bid is based upon the materials, equipment and systems required by the Bid Documents without exception; and f) the County shall rely on these representations.
7. **INTERPRETATIONS/ADDENDA:** All questions about the meaning or intent of the contract documents shall be submitted to the Procurement Manager in writing.

Replies will be issued by written addenda mailed or delivered to all parties recorded by the printer, as having received the bidding documents at least five (5) calendar days before the scheduled bid opening date. Questions received less than seven (7) calendar days prior to the date for opening of bids will not be answered. Only questions answered by formal written addenda will be binding. Oral and other interpretations or clarifications will be without legal effect. Written questions or inquiries in relation to the Invitation for Bid will be directed to:

Maricela Martinez, Procurement Specialist Senior
Santa Fe County Purchasing Division
142 W. Palace Avenue (Second Floor)
Santa Fe, NM 87501
Ph. (505) 992-9864
Fax (505) 989-3243
Email – mcmartinez@santafecountynm.gov

Addenda will be transmitted to all bidders that are listed on the Bid Holder's List at the printer(s) who have received a complete set of Bid Documents.

Copies of addenda will be made available for inspection wherever Bid Documents are on file for that purpose. Each addendum shall be part of the contract documents as specified in the written contract, attached to these specifications.

Addenda will be issued no later than five (5) working days prior to the date for receipt of bids except an addendum withdrawing the request for bids or one which includes postponement of the date for receipt of bids.

Each bidder shall ascertain prior to submitting a bid that the bidder has received all addenda and the bidder shall acknowledge receipt in the bid.

8. **SUBSTITUTIONS:** The materials, products, and equipment described in the Bid Documents establish a standard of required function, dimension, appearance and quality to be met by any proposed substitution. No substitution will be considered prior to receipt of bids.
9. **WAGE RATES/REGISTRATION OF BIDDER AND SUBCONTRACTORS WITH THE NEW MEXICO DEPARTMENT OF WORKFORCE SOLUTIONS:** The Contractor shall be required to fully comply with the Davis-Bacon Act and Related Acts in accordance with 40 USC § 276a; 29 CFR Parts 1, 3,5, 6, and 7 and the Public Works Minimum Wage Act, NMSA 1978, 13-4-11 thru 13-4-17. The higher wage rate will prevail and both wage determination information will be posted at the construction site. If the minimum wage rate determination for the project is not included in the initial Bid Documents, it will be furnished in an Addendum.

Pursuant to 13-4-13.1 NMSA 1978, Public Works Contracts, Registration of Bidders and Subcontractors, Bidders submitting bid pricing for more than \$60,000 shall be registered with the New Mexico Department of Workforce Solutions prior to submitting a bid to Santa Fe County. The Contractor shall provide its registration number where indicated on the Bid Proposal Form. If a Bidder is not registered at the time of Bid opening, their Bid shall be considered non-responsive Bid and will be rejected. Bidder's subcontractors shall also be registered. The registration number of each subcontractor shall be listed on the designated space on the Subcontractor Listing Form. If a Bidder's Bid includes any subcontractor that is not registered their Bid may be considered for award following substitution of a registered subcontractor for any unregistered subcontractor in accordance with Section 13-4-36 NMSA 1978. Bidders may find additional information on the registration requirements and forms at the website: <http://www.dws.state.nm.us/LaborRelations/LaborInformation/PublicWorks>

It shall be the successful bidder's responsibility to inform itself thoroughly of all state, federal and local laws and statutes pertaining to the employment of labor, the freedom of organization and the conditions of employment and shall strictly adhere to such laws and regulations as are applicable. There shall be no discrimination because of race, creed, color, national origin or legal political affiliation in the employment of persons qualified by training and experience for work under this contract.

10. **BID PREPARATION:**
 - A. Submit the Bid as provided in the Bid Package, and complete the blank spaces in the Required Documents for Bid Submittal. For each Bid Item, the Bidders shall state in numerals, either in ink or digital form, the Bid Item Unit Price for which the Bidder proposes to perform each Bid Item;
 - B. Specify a Bid Item Unit Price for each Bid Item, except when a Bid Item Unit Price is established by the County. The Bid Item Unit Price will be conclusively presumed to include any insurance or overhead expenses necessary to complete that Bid Item;
 - C. Show the Bid Item Prices by multiplying the respective Bid Item Unit Prices and quantities, and also show the Total Bid Amount in the space provided on the Bid Schedule. The Total Bid Amount will be the sum obtained by adding the Bid Item Prices;

- D. Make changes to any entry on the Required Documents for Bid Submittal by marking through the entry in ink and making the correct entry adjacent thereto in ink. Initial the change in ink;
 - E. Show the amounts for the respective Bid Item Unit Prices to a maximum of three decimal places. Truncate additional decimal places in excess of three;
 - F. Exclude the applicable state GRT and local option tax. The Department will pay the applicable tax.
 - G. Exclude any Indian business tax, TERO tax, and other tax imposed by a tribal government. The Department will pay the tax or will exercise its prerogative to challenge the tribal government's authority to impose the tax. If the Department exercises its prerogative to challenge the tribal government's authority to impose the tax, the Department will reimburse the Contractor for such tax only if a court of competent jurisdiction rules the tribe has authority to impose the tax. The Department will reimburse the Contractor only if the final decision of the litigation, or other final disposition of the litigation, results in a determination that the tribe has jurisdiction to impose the tax. The Department shall be subrogated to the rights of the Contractor to claim a refund of, or to contest, any such tax imposed on the Work to the extent any alleged obligation of the Contractor or the Department to pay such taxes arises under this section or through the Contractor's performance of this Contract;
 - H. Submit Required Documents for Bid Submittal signed by the president, vice presidents, owner, or other representative of the Bidder authorized in writing to bind the Bidder.
11. **BID SECURITY:** Each individual bid shall be accompanied by bid security equal to 5% of the amount of the bid. Such bid security shall be in the form of a certified or cashier's check made payable to the County or a surety bond issued by a surety authorized to conduct business in the State of New Mexico and who is approved in federal circular 570 as published by the U.S. Treasury Department.

By submitting the bid and providing the bid security, the bidder pledges to enter into a binding contract with the County and will furnish bonds covering the faithful performance of the contract and payment of all obligations arising hereunder.

The County will have the right to retain the bid security of bidders to whom an award is being considered until either the contract has been executed and bonds, if required, have been furnished or the specified time has elapsed so that bids may be withdrawn or all bids have been rejected.

12. **POWER OF ATTORNEY:** Attorneys in fact who sign bonds must attach certified effective copies of their Power of Attorney to all bonds.
13. **SUBMISSION OF BIDS:** Bids shall be submitted at the time and place indicated in the "Advertisement for Bids" on page 3 of this IFB and shall be enclosed in an opaque sealed envelope, marked with the project title, name and address of the bidder, and accompanied by the list of subcontractors and other required documents. All blanks must be filled in. Conditional bids will not be considered. The envelope shall be addressed to:

Maricela Martinez, Procurement Specialist, Senior
Santa Fe County Purchasing Division
142 W. Palace Avenue (Second Floor)
Santa Fe, NM 87501

14. MODIFICATION AND WITHDRAWAL OF BIDS: A bid may not be modified, withdrawn or canceled by the bidder following the time and date designated for the receipt of bids, and each bidder so agrees to these conditions by submitting a bid.

Prior to the time and date designated for receipt of bids, a bid submitted may be modified or withdrawn by notice to the County at the address designated for receipt of bids. Such notice shall be in writing and signed by the bidder.

Upon receipt such written confirmation shall be date and time stamped by the County on or before the date and time set for receipt of bids. A modification of a bid shall be worded as not to reveal the amount of the original bid.

15. GROSS RECEIPTS TAXES: The amount of the bid shall exclude applicable New Mexico Gross Receipts Taxes or applicable local option taxes. The applicable gross receipts tax or applicable local option taxes shall be computed and shown as a separate amount on each request for payment made under the contract.

16. CONSIDERATION OF BIDS: Bids received on time will be opened publicly and will be read aloud, and an abstract of the amounts of the base bids and alternates or bid items, if any, will be made available to the bidders. Each bid shall be open to public inspection.

17. BID OPENING PROCEDURE: The person or persons opening the bids shall verify that the requirements of the Instruction to Bidders have been fulfilled, and shall read aloud the name of each apparently responsive bidder and the bid amount(s). If any requirements have not been met, the bid shall be deemed non-responsive and disqualified. Each bid shall be reviewed for the following:

- A. Bid Form
- B. Bid Schedule
- C. Bid Bond
- D. Bidder's List of Quoters
- E. Non-Debarment Certification
- F. Certification of Federal Aid Contract
- G. Pay Equity Reporting Acknowledgement
- H. Disadvantaged Business Enterprise (DBE) Program Race Conscious Measures
- I. Race Conscious Measure Project Contract Goal for Disadvantaged Business Enterprise Program in Trail Construction
- J. Non-Collusion Affidavit of Prime Bidder
- K. Certification of Non-Segregated Facilities
- L. Campaign Disclosure Form

IF ANY OF THESE REQUIREMENTS HAVE NOT BEEN MET, THE BID MAY BE DISQUALIFIED AND CONSIDERED NON-RESPONSIVE.

18. BIDS TO REMAIN OPEN: All bids shall remain open for ninety (90) days after the day of the bid opening.
19. AWARD OF CONTRACT:
 - A. The County reserves the right to reject any and all bids and waive any and all informalities or technicalities and the right to disregard all nonconforming or conditional bids or counter proposals.
 - B. If a contract is to be awarded, it will be awarded to the lowest responsible bidder submitting the lowest bid amount.
 - C. If the lowest responsible bidder has otherwise qualified, the lowest bidder may negotiate with the County for a lower bid if the lowest bid is within **ten percent** over budgeted project funds in order to prevent all bids from being rejected. No change in the original scope and/or terms and conditions will be allowed. Negotiations may be permitted with product, materials, and equipment alternatives as determined to be in the best interest of the County.
 - D. Except described in 2014 NMDOT Standard Specification for Highway and Bridge Construction 2014 Edition, Section 103.3, "Bidding Dispute Resolution Procedures," the County will award the contract within 30 days after opening of bids to the lowest responsive bidder.
20. LIQUIDATED DAMAGES: Liquidated damages in the amount of two thousand dollars (\$2,000.00) per each calendar day shall be assessed after the completion date (as adjusted by change orders) until the issuance of a Certificate of Substantial Completion for the entire project.
21. PREFERENCE FOR DOMESTIC MATERIALS: The contractor shall provide Materials in accordance with the Buy America Requirements (23 CFR § 635.410) on federal-aid Projects.
22. LICENSE OR ROYALTY FEES: Licenses and/or royalty fees for products or for processes must be paid for directly by the contractor.
23. PERMITS: It is the responsibility of the contractor and each subcontractor to obtain permits and inspections required by the County and/or the State of New Mexico or any other entity that may have jurisdiction over the construction.
24. COLLUSION: No bidder shall be interested in more than one bid. Collusion among bidders or the submission of more than one bid under different names by any firms or individual shall be cause for rejection of all bids in question without consideration.
25. QUANTITIES: The quantities set forth in the bid proposal are estimated quantities on which bids will be compared and which will be the basis for award of contract. Payment will be made for work actually performed.
26. PROTEST PROCEDURE: Any bidder who is aggrieved in connection with procurement may protest to the County Purchasing Manager as set forth in Resolution No. 2006-60 by the Board of County Commissioners. A copy of Resolution No. 2006-60 is available upon request. The protest must be in writing and be submitted within twelve (12) days

after the facts or occurrences. The complete procedures and requirements regarding protests and resolution of protests are available from the Santa Fe County Purchasing Division upon request.

27. **CONTRACTOR'S QUALIFICATION STATEMENT:** A bidder to whom award of a contract is under consideration shall submit, upon request, information and data to prove that its financial resources, production or service facilities, personnel, and service reputation and experience are adequate to make satisfactory delivery of the services, construction, or items of personal property described in the Bidding Documents.
28. **BOND REQUIREMENTS – PERFORMANCE BOND AND PAYMENT BOND:** If awarded the contract, a bidder shall furnish bonds covering the faithful performance of the contract and payment of all obligations arising thereunder. The amount of the bonds, performance and payment, shall each be equal to 100% of the contract sum. Bonds shall be issued by a surety authorized to conduct business in the State of New Mexico and who is approved in federal circular 570 as published by the U.S. Treasury Department. The cost of the bonds shall be included in the bid.
29. **TIME OF DELIVERY AND FORM OF BONDS.** The bidder shall deliver the required bonds to the County no later than fifteen (15) days following the date of execution of the contract. If the Work is to be commenced prior thereto in response to a letter of intent, the bidder shall, prior to commencement of the Work, submit evidence satisfactory to the County that such bonds will be furnished and delivered in accordance with this section.

The bidder shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the power of attorney.
30. **WARRANTY:** The contractor shall furnish a written warranty of workmanship to the Procurement Manager for a period of one (1) year following the completion date in addition to all other warranties required by the Contract Documents.
31. **NOTICE OF AWARD:** A written Notice of Award shall be issued by the County after review and approval of the bid and related documents.
32. **IDENTICAL BIDS:** If two or more identical low bids are received, the County will apply the process described at Section 13.1.110 NMSA 1978, of the State Procurement Code.
33. **CANCELLATION OF AWARD:** When in the best interest of the public, the County may cancel the award of any contract at any time before the execution of said contract by all parties without any liability against the County.
34. **NOTICE TO PROCEED:** The County will issue a written Notice to Proceed and a purchase order to the contractor stipulating the date from which contract time will be charged and the date contract time is to expire.
35. **FAILURE TO EXECUTE CONTRACT:** Failure to return the signed contract with acceptable contract bonds and certificate of insurance within fifteen (15) calendar days after the date of the Notice of Award shall be just cause for the cancellation of the award.

The award may then be made to the next lowest responsible bidder, or the work may be re-advertised and constructed under contract or otherwise, as the owner may decide.

36. **INSURANCE REQUIREMENTS:** For this project that involves construction within fifty (50) feet of a railroad track special insurance requirements apply. At a minimum upon execution of the contract between the County and the contractor, the contractor shall furnish to the County, Certificates of Insurance that list New Mexico Department of Transportation (NMDOT), Santa Fe Southern Railroad (SFSR), and Santa Fe County as additional insured.

Contractor shall have a certificate of insurance submitted to NMDOT, SFSR, and Santa Fe County. Severability of Interest and NMDOT, SFSR, and Santa Fe County as additional insured shall be indicated on the certificates of insurance.

- A. General Conditions. The Contractor shall submit evidence of insurance as is required herein. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico.
- B. General Liability Insurance, Including Automobile. The Contractor shall procure and maintain during the life of this Agreement a comprehensive commercial general liability insurance with limits of \$2,000,000 each occurrence and \$6,000,000 in the aggregate.

Business automobile insurance policy with liability limits in amounts for personal and bodily injury liability: \$1,000,000 each person; \$2,000,000 each occurrence; (annual aggregate; and, property damage liability: \$2,000,000 each occurrence; (annual aggregate). Said policies of insurance shall include coverage for all operations performed for County by Contractor; coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment, both on and off work; and contractual liability coverage under which this Agreement is an insured contract.

- C. Workers' Compensation and Employers Liability Insurance. The Contractor shall procure and maintain during the life of this Agreement Worker's Compensation and Employers Liability Insurance with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, and \$500,000 by disease each employee.
- D. Railroad Protective Liability Insurance. The Contractor shall procure and maintain during the life of this Agreement Railroad Protective Liability Insurance with limits of at least \$5,000,000 per occurrence and \$10,000,000 in the aggregate.
- E. Worker's Compensation Insurance. The Contractor shall carry worker's compensation insurance and otherwise fully comply with the New Mexico Worker's Compensation Act (NMSA 1978, § 52-1-1 et. seq.) and the New Mexico Occupational Disease Disablement Law (NMSA 1978, § 52-3-1 et. seq.).
- F. Increased Limits. If, during the life of this Agreement, the Legislature of the State of New Mexico increases the maximum limits of liability under the Tort

Claims Act (NMSA 1978, Sections 41-4-1 through 41-4-29, as amended), the PR shall increase the maximum limits of any insurance required herein.

37. CLARIFICATION OF NON-COLLUSION AFFIDAVIT OF SUBCONTRACTOR, AND CERTIFICATION OF SUBCONTRACTOR REGARDING EQUAL EMPLOYMENT OPPORTUNITY: The general contractor is not required to present completed “Non-Collusion Affidavit of Subcontractor” and “Certification of Subcontractor Regarding Equal Employment Opportunity” forms from their subcontractors at the time of bid submittal; however, once the contract is awarded, the general contractor is responsible for providing these forms along with the bonds and certificate of insurance.
38. SUBCONTRACTOR PERFORMANCE AND PAYMENT BOND. A subcontractor whose work to be performed on a public works building project is one hundred thousand twenty five dollars (\$125,000) or more shall submit a performance and payment bond in the amount of the work they are to perform on the project. These bonds will be submitted within the stated (10) calendar days after the date of the Notice to Award.
39. OPERATIONS AND MAINTENANCE MANUALS: At the completion of the project but prior to the Substantial Completion certificate approved by the engineer, the contractor shall submit to the architect two (2) copies of a three ring binder with all maintenance and operations instructions for all systems and items within this phase of construction, if applicable.
40. NOTICE: The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and misdemeanor criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities, and kick backs.
41. SUFFICIENT APPROPRIATION: Any contract awarded as a result of this IFB process may be terminated if sufficient appropriations or authorizations do not exist. Such termination will be effected by sending written notice to the contractor. The County's decision as to whether sufficient appropriations and authorizations are available will be accepted by the contractor as final.
42. NUMBER OF BIDS ACCEPTED. Bidders shall submit only one (1) bid in response to this IFB.
43. DOUBLE-SIDED DOCUMENTS. All submitted bids shall be double-sided, pursuant to Santa Fe County Resolution 2013-7, Adopting Sustainable Resource Management Principles, Section 2. A. Waste Reduction and Reuse...”all documents are to be double-sided, including those that are generated by outside entities using County funds and by consultants and contractors doing business with the County”.

SANTA FE COUNTY

**PURCHASING DIVISION
142 W. PALACE AVENUE
SANTA FE, NM 87501**

**REQUIRED DOCUMENTS
FOR BID SUBMITTAL**

BID NUMBER: 2016-0204-PW/MM (REBID)

CN: S100282

COUNTY: Santa Fe

CONTRACTOR: _____

**SANTA FE COUNTY
BID FORM**

NAME _____ TELEPHONE NO. () _____

ADDRESS _____

*CONTRACT'S LICENSE No. _____ *LICENSE CLASSIFICATION _____

*RESIDENT BIDDER CERTIFICATE No. _____

***Not Required for Bidding on Federal-Aid Projects**

TO SANTA FE COUNTY

The undersigned proposes to construct this New Mexico project in accordance with the current Standard Specifications for Highway and Bridge Construction, the plans, the Bid Schedule, the Special Provisions, Supplemental Specifications, the Disadvantaged Business Enterprise ("DBE") Program and all other contract documents of Santa Fe County, the contents of which are incorporated by reference herein, and certifies to furnish and deliver all the materials and to do all work and labor required for the construction of New Mexico CN S100282 in Santa Fe County, on the Santa Fe Rail Trail Segment 4 being approximately 5.35 miles in length, at the prices stated in the Bid Schedule. The undersigned also certifies that it has examined the site of the proposed work, the material pits, the haul roads, the Standard Specifications, the plans, the Bid Schedule, the Special Provisions, Supplemental Specifications and all other contract documents before submitting the bid and is satisfied as to the requirements therein. As further consideration of the award of this contract, the undersigned agrees to the following terms, conditions and acknowledgements:

1. To execute the standard form contract and to furnish contract payment and performance bonds in the amount of One Hundred Percent (100%) to the total price of this bid within fifteen (15) days after receiving notification of the acceptance of this bid, and failing to do so, to forfeit the accompanying check or bid bond to the Department as liquidated damages, and the Department may proceed to award the contract to others.
2. To commence work within **15** days, or such additional time as may be allowed in writing by the Department, after notification of award of contract, and to complete the contract, as awarded, in **100 working days**.
3. The undersigned declares that it is the only entity or party interested in the bid as principal and that its officers, employees, subsidiaries or parent corporations (check box a. or b. as appropriate):

() a. have not in any way participated in any activities in restraint of trade, or been debarred with relation to public contracts either in the State of New Mexico or any other State of the United States or on any federally-assisted contract during the five-year period immediately preceding this bid or either directly or indirectly entered into any agreement, participated in any collusion or otherwise taken any action in restraint of free competitive bidding in connection with this contract.

() b. have participated in activities in restraint of trade with relation to public contracts either in the State of New Mexico or any other State of the United States or on any federally assisted contracts during the five-year period immediately preceding this bid or entered into collusion, or restraint of free competitive bidding on this contract, and are of the opinion that they are a responsible bidder entitled to the award of a contract involving public moneys and attach hereto an explanation of their activities in restraint of free trade, restraint of free competitive bidding, or collusion.

4. In accordance with the contract, plans and specifications to repair, maintain and guarantee all work performed thereunder until accepted by the County.
5. The bidder, hereby certifies that it has () has not (), participated in a previous contract or subcontract subject to the equal opportunity clause, as required by Executive Orders 11246, 10925 and 1114 as amended, and that it has (), had not (), filed with the Office of Federal Contract Compliance Program all reports due under the applicable filing requirements.
6. We acknowledge receipt of the following Addenda:

No.	DATE	No.	DATE

7. The undersigned agrees that any and all claims that the undersigned may have for overcharges resulting from antitrust violations as to goods, services and materials purchased in connection with this bid are hereby assigned to the County of Santa Fe, but only to the extent that such overcharges are passed on to the County. The undersigned further agrees to require its Subcontractors to assign any and all such claims for overcharges to the County, but only to the extent such overcharges are passed on to the County, by executing an assignment on a form obtainable from the Engineer prior to the commencement of work by a Subcontractor. The undersigned retains all rights to any such antitrust claims to the extent of any overcharges not passed on to the County.

8. The undersigned tenders herewith, as a bid guarantee for which receipt has been given, a certified check, bid bond, cashier's check, postal money order or bank money order in the amount of at least 5% of the amount bid drawn to the order of Santa Fe County.

Organization: _____

By: _____

Title: _____

State of _____)

) ss

County of _____)

_____ DAY OF _____ 2015

NOTARY PUBLIC

My Commission Expires: _____

SANTA FE COUNTY

BID SCHEDULE

BID NUMBER: 2016-0204-PW/MM

CN S100282

THE CONTRACTOR MUST BID ON 38 ITEMS, ENTER ALL UNIT PRICES,
MAKE ALL EXTENSIONS AND TOTAL THE BID.

CONTRACTOR: _____

TOTAL AMOUNT BID \$_____

**SANTA FE COUNTY
BID SCHEDULE**

PROJECT: #2016-0204-PW/MM Construction Services for the Santa Fe Rail Trail Segment 4
CN S100282

LINE NO	ITEM DESCRIPTION	UNIT	QTY	UNIT PRICE	BID AMOUNT
				----- DOLLARS / CENTS	----- DOLLARS / CENTS
1	Section 201 Clearing & Grubbing	LS	1		
2	Section 203 Subexcavation	CY	100		
3	Section 203 Unclassified Excavation	CY	614		
4	Section 207 Drainage Features	EA	29		
5	Section 207 Typical Section E1	LF	1,920		
6	Section 207 Typical Section E2	LF	660		
7	Section 207 Typical Section E3	LF	230		
8	Section 207 Typical Section E4	LF	610		
9	Section 207 Typical Section R1	LF	1,080		
10	Section 207 Typical Section R2	LF	410		
11	Section 207 Typical Section R3	LF	205		
12	Section 207 Typical Section R4	LF	225		

LINE NO	ITEM DESCRIPTION	UNIT	QTY	UNIT PRICE	BID AMOUNT
				----- DOLLARS / CENTS	----- DOLLARS / CENTS
13	Section 207 Typical Section D1	LF	1,070		
14	Section 207 Typical Section D2	LF	1,725		
15	Section 207 Typical Section S1	LF	70		
16	Section 207 Typical Section S2	LF	140		
17	Section 207 Typical Section S3	LF	280		
18	Section 207 Typical Section S4	LF	25		
19	Section 304 Base Course 6" Depth	SY	62		
20	Section 304 Base Course 6" Depth (As Directed)	SY	89		
21	Section 304 Crusher Fines 6" Depth	SY	7,604		
22	Section 507 Rock Headwall	EA	10		
23	Section 570 Culvert Pipe (15")	LF	98		
24	Section 570 Culvert Pipe (42S x 29 R CSP ARCH)	LF	20		
25	Section 602 Riprap Class H	SY	400		
26	Section 602 Riprap Class H (As Directed)	SY	45		

LINE NO	ITEM DESCRIPTION	UNIT	QTY	UNIT PRICE	BID AMOUNT
				----- DOLLARS / CENTS	----- DOLLARS / CENTS
27	Section 602 Riprap Class I	CY	11		
28	Section 603 Soil Retention Blanket	SY	238		
29	Section 603 SWPPP Plan Preparation and Maintenance	LS	1		
30	Section 607 Wire Fence	LF	732		
31	Section 607 Buck & Pole Fence	LF	40		
32	Section 607 Buck & Pole Fence (As Directed)	LF	60		
33	Section 621 (NMDOT) Construction Mobilization	LS	1		
34	Section 632 Seeding	AC	7.1		
35	Section 701 Panel Signs	SF	50		
36	Section 701 Timber Posts	LF	152		
37	Section 701 Mile Marker Signs	EA	2		
38	Section 801 (NMDOT) Construction Staking	LS	1		
39	Railroad Flagman/Insurance	LS	1		
TOTAL BID AMOUNT WRITTEN IN NUMBERS:		\$ _____			
TOTAL BID AMOUNT WRITTEN IN WORDS:					

SANTA FE COUNTY

BID BOND

Date of Bid Opening

Date Bond Executed

Principal: _____

Surety: _____

KNOW ALL MEN BY THESE PRESENTS, that we, the **Principal** and **Surety** above named, are held and firmly bound unto SANTA FE COUNTY in sum of 5% of the amount bid as shown on the Bid Form prepared by the Principal and submitted by him concurrently with this bond, and for the payment of such sum we bind ourselves, our heirs, executors, administrators, successors, jointly and severally by these presents.

THE CONDIITION OF THIS BOND IS THAT the Principal has submitted as sealed bid for the following trail construction project, to wit:

Project #2016-0204-PW/MM Construction services for the Santa Fe Rail Trail Segment 4
Control No. S100282

and this bid is incorporated herein by reference. **NOW THEREFORE, if this bid submitted by Principal is accepted, and the contract is awarded to the Principal, and if the Principal executes the contract and furnishes contract payment and performance bonds as required by Santa Fe County within fifteen (15) days after being notified in writing of the award, then this obligation shall be null and void, otherwise it shall remain and be in full force and effect.**

IN WITNESS WHEREOF, the principal and Surety have caused this instrument to be signed and sealed this _____ day of _____, 2016.

Individual or Partnership Principal: _____

Corporate Principal: _____

Business Address: _____

By: _____

Title: _____

Corporate Surety: _____

Business Address: _____

By: _____

Title: _____

New Mexico

NON-DEBARMENT CERTIFICATION

I. Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification as set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary recipient knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.
4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction" "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12540. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but it is not required to, check the Non-procurement List (Tel. (505) 827-5570).
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

II. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion.

STATE OF _____)
) ss
COUNTY OF _____)

_____ being first
(President or duly authorized Company official

duly sworn deposes and says that he is _____

_____ of _____
(official capacity)

_____ with the intention of becoming
(name of Company)

A primary participant on New Mexico Highway Construction

Project _____
(Project Number)

and that he certifies to the best of his knowledge and belief that said company and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declare ineligible, or voluntarily excluded from covered transactions by an Federal department or agency;
- (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction, violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any offenses enumerated in paragraph (b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

Further affiant sayeth not.

(Signature)

(Print Name)

SUBSCRIBED AND SWORN to before me a notary public this _____

Day of _____, 20 _____

(Notary Public)

My commission expires: _____

NOTICE TO CONTRACTORS

March 14, 1990

CERTIFICATION OF FEDERAL AID CONTRACT

The prospective participant certifies by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, 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, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is material representation of the fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
034B-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(see reverse for public burden disclosure)

1. Type of Federal Action: a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. Status of Federal Action: a. bid/offer/application b. initial award c. post award	3. Report Type: a. initial filing b. material change For material change Only: year _____ quarter _____ date of last report _____
4. Name and Address of Reporting Entity: <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known Congressional District, _____, if known	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address Prime Congressional District, _____, if known	
6. Federal Department/Agency:	7. Federal Program Name/Description CFDA Number, if applicable:	
8. Federal Action Number, if known:	9. Award Amount, if known:	
10. a. Name and Address of Lobbying Entity (if individual, last name, first name, MI): Continuation Sheet(s) attach	b. Individual Performing Services (including address if different from No. 10a) (last name, first name, MI) SF-LLL-A, if necessary	
11. Amount of Payment (check all that apply): \$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned	13. Type of Payment (check all that apply): <input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time fee <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other; specify: _____	
12. Form of Payment (check all that apply): <input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind; specify: nature _____ Value _____		
14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for payment indicated in Item 11: <p style="text-align: center;">(attach Continuation Sheet(s) SF-LLL-A, if necessary)</p>		
15. Continuation Sheet(s) SF-LLL-A attached Yes No		
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.		Signature: _____ _____ Print Name: _____ _____ Title: _____ _____ Telephone No. _____ Date: _____
Authorized for local Reproduction Standard Form---LLL		

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether Subawardee of prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the Subawardee, e.g., the first Subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan committee.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number, Invitation for Bid (IFB) number, grant announcement number, the contract, grant, or loan award number, the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001".
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a); Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

**DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET**

Approved by OMB
0348-0046

Reporting Entity: _____ Page ____ of ____

**New Mexico Pay Equity Reporting Acknowledgement
Executive Order 2009-049**

Contractor: _____
Control No.: S100282

Note: The Executive Order and required forms can be obtained from the following link:
http://www.generalservices.state.nm.us/spd/pay_e.html

Contractor agrees if it has ten (10) or more employees OR eight (8) or more employees in the same job classification, at any time during the term of this contract, to complete and submit the required reporting form (PE10-249 or PE250, depending on their size at the time) either within thirty (30) calendar days of contract award (if the contract did not result from a solicitation) or on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration (if the contract did result from a solicitation).

For contracts that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, contractor also agrees to complete and submit the required form annually within thirty (30) calendar days of the annual contract anniversary date of the initial submittal date and, if more than 180 calendar days has elapsed since submittal of the last report, at the completion of the contract.

Should contractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirements for reporting, contractor agrees to provide the required report within ninety (90) calendar days of meeting or exceeding the size requirement. That submittal date shall serve as the basis for submittals required thereafter.

Contractor also agrees to levy these reporting requirements on any subcontractor(s) performing more than 10% of the dollar value of this contract if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of the contract. Contractor further agrees that, should one or more subcontractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, contractor will submit the required report, for each such subcontractor, within ninety (90) calendar days of that subcontractor meeting or exceeding the size requirement. Subsequent report submittals, on behalf of each such subcontractor, shall be due on the annual anniversary of the initial report submittal. Contractor shall submit the required form(s) to the State Purchasing Division of the General Services Department, and other departments as may be determined, on behalf of the applicable subcontractor(s) in accordance with the schedule contained in this paragraph. Contractor acknowledges that this subcontractor requirement applies even though contractor itself may not meet the size requirement for reporting and be required to report itself.

Contractor shall not be required to report more frequently than annually unless more than 180 calendar days has elapsed since submittal of the last report and the contract has reached completion. The requirement for reporting at contract completion shall not apply in the case of a one-time fulfillment of a purchase order.

By signing this form Contractor acknowledges that it will comply with these requirements.

Signature

Date

DBE A-1

NOTICE TO CONTRACTORS

**DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM
RACE CONSCIOUS MEASURES**

May 14, 2015

CONTROL NO. S100282

This Project is subject to race-conscious measures. The established DBE Goal for this project is 3%.

At the time the bid is submitted to the Department, **ALL BIDDERS** as indicated below, shall establish whether it can or cannot meet the established DBE goal and shall complete, sign and submit Form No. A-585, DBE A-1 Pages 1 and 2 indicating the subcontractors/suppliers that it will use if awarded the project. Each Bidder is responsible for confirming that each DBE it intends to utilize is currently certified. To do so, Bidders should confirm the DBE firm's status by accessing the DBE Directory at <http://nmdot.dbesystem.com>. Any questions about accessing the Directory or properly completing the forms can be addressed to NMDOT Construction Civil Rights Bureau (CCRB) at 1.800.544.0936 or 505.476-0974.

In addition, within five (5) working days after the bid opening, by 4:00 PM, **ALL BIDDERS** shall submit written confirmation from each DBE of its intent to participate in the contract as provided in the Bidder's commitment. See the Notice to Contractors for Disadvantaged Business Enterprise (DBE) Program Race-Conscious Measures – Form A-644 for specific instructions and required form (Form No. A-644).

If the bidder cannot meet the established DBE goal, the bidder shall submit documentation evidencing it "Good Faith Efforts" to obtain DBE participation. This documentation shall be submitted to the CCRB located at 1570 Pacheco Street, Building A, Santa Fe, NM 87505. Documentation will be accepted until 4:00 PM within (5) five working days after the bid opening. The *Selected DBE Program Provisions Disadvantaged Business Participation in USDOT Assisted Contracts* provides a detailed listing of the types of actions that the NMDOT will consider as evidence of a Bidder's "Good Faith Efforts" to obtain DBE participation. At a minimum, the Bidder shall provide evidence that it: solicited through all reasonable and available means the interest of all certified DBE firms that have the capability to perform the work on the contract; and, determined with certainty whether DBE firms were interested by taking appropriate steps to follow up on initial solicitations. Evidence shall include copies of newspaper advertisements, fax logs, telephone logs, or other means utilized to solicit and follow up with the DBE firms.

If a Bidder is submitting "Good Faith Efforts" documentation, this Notice to Contractors; Form A-585A, DBE A-1; and Form No. A-644 shall be completed and submitted in accordance with the time frames indicated above. If the CCRB determines that the apparent low bidder has failed to provide adequate evidence of "Good Faith Efforts", the Department will notify the apparent low bidder of that determination and provide the apparent low bidder with the opportunity to request administrative reconsideration of that determination pursuant to 49 CFR 26.53(b)(3)(d).

FAILURE TO COMPLY WITH THESE REQUIREMENTS SHALL RENDER A BID NON-RESPONSIVE AND THE BID SHALL BE REJECTED.

In accordance with 49 CFR Part 26, the Departments Disadvantaged Business Assistance Program, and the applicable Special Provision, the bidder (Check box a. b. c. as appropriate):

- a. Assures to meet or exceed the established DBE goal.
- b. Cannot meet the established DBE goal. Assures to submit "Good Faith Efforts" documentation.
- c. Is a certified DBE contractor. Shall list itself and any other DBE subcontractor(s) on Form A-585A, DBE A-1.

**New Mexico Department of Transportation
 RACE CONSCIOUS MEASURE PROJECT
 CONTRACT GOAL FOR DISADVANTAGED BUSINESS ENTERPRISE PROGRAM
 IN TRAIL CONSTRUCTION**

For the purpose of this contract, a goal of three (3) percent has been established for certified Disadvantaged Business Enterprise (DBE) Participation.

Type or print legibly

*Name of DBE	DBE Address	Description of Work	Proposed Amount
Total DBE Participation			\$

1. Control No. S100282
2. Contractor's DBE Liaison Officer _____
3. Total Amount of the Bid \$ _____

- ** 4. DBE Participation Percentage _____ % of line 3.
 * Written confirmation from DBE is participating in the contract is required. See Form A-644.
 ** If the contract goal is not met, evidence of "Good Faith Efforts" must e provided. The bidder must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement by the scope, intensity and appropriateness.

I will abide by the Disadvantaged Business Enterprise (DBE) goal set forth for this project and hereby submit the names of the DBE firms that will participate in this project. Substitution(s) will not be allowed without prior submissions of written justification to the Project Manager for approval. I understand that failure to meet the goal may result in Liquidated Damages for the difference between the DBE goal and the actual DBE participation achieved.

This statement is my assurance that _____ agrees to comply with the requirements of 49 CFR Part 26, and
 (name of firm)
 the New Mexico Department of Transportation's Disadvantaged Business Enterprise Program, and all the requirements contained therein.

_____ Date

_____ Signature of Company Official

NOTICE TO CONTRACTORS

DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM RACE CONSCIOUS MEASURES

FORM NO. A-644

May 14, 2015

CN S100282

This Project is subject to race-conscious measures. The established DBE Goal for this project is 3%.

Within five (5) working days after the bid opening, ALL BIDDERS shall submit written confirmation from each DBE listed on their Form A-585, DBE A-1 that it is participating in the contract. All Bidders shall provide the required information as indicated on Form No. A-644.

These forms shall be submitted to Construction – Civil Rights Bureau (CCRB) located at 1570 Pacheco Street, Building A, Santa Fe NM 87505. CCRB can be contacted at Telephone No. 1-800.544.0936 or 505.476.0974 and FAX No. 505.476.0910. Forms will be accepted until 4:00 PM within five (5) working days after the bid opening.

FAILURE TO COMPLY WITH THIS REQUIREMENT SHALL RENDER A BID NON-RESPONSIVE AND THE BID SHALL BE REJECTED.

NON-COLLUSION AFFIDAVIT OF PRIME BIDDER

STATE OF NEW MEXICO

COUNTY OF _____

_____ being first duly sworn, deposes and says that:

(1) They are the _____ of _____ the Bidder that has submitted the attached Bid Proposal;

(2) They are fully informed respecting the preparation and contents of the attached Bid Proposal and of all pertinent circumstances respecting such bid;

(3) Such bid is genuine and is not a collusive or sham bid;

(4) Neither the said bidder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly with any other bidder, firm or person to submit a collusive or sham bid in connection with the contract for which the attached bid has been submitted or to refrain from bidding in connection with such contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communications or conference with any other bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the Contracting Agency or any person interested in the proposed contract; and

(5) The price or prices quoted in the attached bid are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the bidder or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

(SIGNED) _____

TITLE _____

SUBSCRIBED AND SWORN to before me this ____ day of _____ 2016.

NOTARY PUBLIC

My Commission Expires _____

CERTIFICATION OF NON-SEGREGATED FACILITIES

(Applicable to construction contracts and related subcontracts exceeding \$10,000, which are not exempt from the Equal Opportunity Clause).

The construction contractor certifies that it does not maintain or provide for its employees any segregated facility at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The construction contractor certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The construction contractor agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this contract. As used in this certification, the term "segregated facilities" means any waiting room, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clock, locker rooms and other storage or dressing areas, parking lots, drinking foundations, recreating or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise. The construction contractor agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed SUBCONTRACTORS prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause and that it will retain such certifications in its files.

SIGNED: _____

TITLE: _____

SUBSCRIBED AND SWORN to before me this ____ day of _____, 2016.

NOTARY PUBLIC

My Commission Expires: _____

CAMPAIGN CONTRIBUTION DISCLOSURE

Pursuant to the Procurement Code, Sections 13-1-28, et seq., NMSA 1978 and NMSA 1978, § 13-1-191.1 (2006), as amended by Laws of 2007, Chapter 234, any prospective contractor seeking to enter into a contract with any state agency or local public body **for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources** must file this form with that state agency or local public body. This form must be filed even if the contract qualifies as a small purchase or a sole source contract. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars (\$250) over the two year period.

Furthermore, the state agency or local public body may cancel a solicitation or proposed award for a proposed contract pursuant to Section 13-1-181 NMSA 1978 or a contract that is executed may be ratified or terminated pursuant to Section 13-1-182 NMSA 1978 of the Procurement Code if: 1) a prospective contractor, a family member of the prospective contractor, or a representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or 2) a prospective contractor fails to submit a fully completed disclosure statement pursuant to the law.

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

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

The following definitions apply:

“Applicable public official” means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

“Campaign Contribution” means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official's behalf for the purpose of electing the official to statewide or local office. “Campaign Contribution” includes the payment of a debt incurred in an election campaign, but does not include the value of services provided

without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

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

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

“Prospective contractor” means a person or business that is subject to the competitive invitation for bid process set forth in the Procurement Code or is not required to submit a competitive bid because that person or business qualifies for a sole source or a small purchase contract.

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

Name(s) of Applicable Public Official(s) if any: _____
(Completed by State Agency or Local Public Body)

DISCLOSURE OF CONTRIBUTIONS BY PROSPECTIVE CONTRACTOR:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Date Contribution(s) Made: _____

Amount(s) of Contribution(s) _____

Nature of Contribution(s) _____

Purpose of Contribution(s) _____

(Attach extra pages if necessary)

Signature

Date

Title (position)

--OR--

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

Signature

Date

Title (Position)

**END OF REQUIRED DOCUMENTS
FOR BID SUBMITTAL**

PERFORMANCE BOND

A. KNOW ALL MEN BY THESE PRESENT, THAT WE _____, as PRINCIPAL hereinafter called the "CONTRACTOR" and _____, as SURETY hereinafter called the "SURETY", are held and firmly bound unto OBLIGEE Santa Fe County, a Political Subdivision of the State of New Mexico, hereinafter called the "COUNTY", in the sum of _____ (\$ _____) dollars for the payment whereof CONTRACTOR and SURETY bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

B. WHEREAS, the CONTRACTOR has a written contract dated _____, 2016, with the COUNTY for the Construction Services for the Santa Fe Rail Trail Segment 4 in Santa Fe County, N.M. in accordance with drawings and specifications which contract is referenced made part hereof, and is hereinafter referred to as the "Contract."

C. NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if CONTRACTOR shall promptly and faithfully perform said Contract (including any amendment thereto), then this obligation shall be null and void; otherwise it shall remain in full force and effect until the COUNTY shall by written instrument notify the SURETY that the obligation is discharged, except that the obligation shall continue for at least three (3) months following the expiration of the term of the Contract.

1. The SURETY hereby waives notice of any alteration or extension of the Contract time made by the COUNTY.
2. Whenever CONTRACTOR shall be, and is declared by the COUNTY to be in default under the Contract, the COUNTY having performed the COUNTY'S obligations thereunder, the SURETY must promptly remedy the default and shall promptly:
 - (1) Complete the Contract in accordance with its terms and conditions, or
 - (2) Obtain a bid or bids for submission to the COUNTY for completing the Contract in accordance with its terms and conditions, and upon determination by the COUNTY and SURETY of the lowest responsible bidder, arrange for a contract between such bidder and Santa Fe County, and make available as work progresses (even though there should be a default or a secession of defaults under the Contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract price, but not exceeding, including other costs and damages for which the SURETY may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the Contract price" as used in this paragraph, shall mean the total amount payable by the COUNTY to CONTRACTOR under the Contract and any amendments thereto, less the amount properly paid by the COUNTY to CONTRACTOR.

D. No right of action shall accrue on this Performance Bond to or for the use of any person or corporation other than Santa Fe County named herein or the heirs, executors, administrators, or successors of Santa Fe County.

E. This Bond shall be enforceable without the need to have recourse to any judicial or arbitral proceedings.

SIGNED AND SEALED THIS _____ DAY OF _____, 2016.

CONTRACTOR – PRINCIPAL (signature)

By: _____
(Printed name and title)

NOTARY PUBLIC (seal)

My Commission expires: _____

SURETY (signature)

(Printed name and title)

NOTARY PUBLIC (seal)

My Commission expires: _____

SURETY'S Authorized New Mexico Agent

LABOR AND MATERIAL PAYMENT BOND

KNOW ALL MEN BY THESE PRESENT, THAT WE _____
_____ as PRINCIPAL hereinafter called the "PRINCIPAL" and
_____ as SURETY hereinafter called the "SURETY", are held and
firmly bound unto Santa Fe County, a Political Subdivision of the State of New Mexico as OBLIGEE
hereinafter called the "COUNTY", for the use and benefit of any claimants as herein below defined, in
the amount of _____ (\$.) dollars for the payment whereof
PRINCIPAL and SURETY bind themselves, their heirs, executors, administrators, successors, and
assigns, jointly and severally, firmly by these presents.

WHEREAS, the PRINCIPAL has a written contract dated _____, 2016, with the
COUNTY for the Construction Services for the Santa Fe Rail Trail Segment 4 in Santa Fe County, New
Mexico, which must be constructed in accordance with drawings and specifications which contract is
referenced and made a part hereof, and is hereinafter referred to as the "Contract."

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if PRINCIPAL shall
promptly make payment to all claimants as hereinafter defined, for all labor and material used or
reasonably required for use in the performance of the Contract, then this obligation shall be void;
otherwise, it shall remain in full force and effect, subject to the following conditions:

1. A claimant is defined as one having a direct contract with the PRINCIPAL or with a
subcontractor of the PRINCIPAL for labor, material, or both, used or reasonably required for
use in the performance of the Contract, labor and material being construed to include but not
be limited to that part of water, gas, power, light, heat, oil, gasoline, telephone services or
rental of equipment directly applicable to the Contract.
2. The above named PRINCIPAL and SURETY hereby jointly and severally agree with the
COUNTY that every claimant as herein defined, who has not been paid in full before the
expiration of a period of ninety (90) days after the date on which the last of such claimant's
work or labor was done or performed, or materials were furnished by such claimant,
prosecute a suit to final judgment for such sum or sums as may be justly due claimant, and
have execution thereof. The COUNTY shall not be liable for payment of any cost or
expenses of any such suit.
3. No suit or action shall be commenced hereunder by any claimant:
 - a. Unless claimant, or other than one having a direct contract with the PRINCIPAL,
shall have written notice in the form of an sworn statement to the COUNTY and any
one or both of the following: the PRINCIPAL or SURETY above named, within
ninety (90) days after such said claim is made or suit filed, stating with substantial
accuracy the amount claimed and the name of the party to whom the materials were
furnished, or for whom the work or labor was done or performed.
 - b. Such notice shall be served by mailing the same by registered mail or certified mail,
postage prepaid, in an envelope addressed to the COUNTY, PRINCIPAL or
SURETY, at any place where an office is regularly
maintained by said COUNTY, PRINCIPAL or SURETY for the transaction of
business, or served in any manner in which legal process may be served in the State
in which the aforesaid project is located, save that such service need not be made by a
public officer.

4. Any suit under this Labor and Material Bond must be instituted in accordance with the statute of limitation under Section 37-1-3 NMSA 1978.
5. No right of action shall accrue on this Bond to or for the use of any person or corporation other than subcontractors or sub-subcontractors of the said Contract between PRINCIPAL and Santa Fe County named herein.

SIGNED AND SEALED THIS _____ DAY OF _____, 2016.

CONTRACTOR – PRINCIPAL (signature)

By: _____
(Printed name and title)

NOTARY PUBLIC (seal)

My Commission expires: _____

SURETY (signature)

(Printed name and title)

NOTARY PUBLIC (seal)

My Commission expires: _____

SURETY'S Authorized New Mexico Agent

ACKNOWLEDGEMENT OF RECEIPT OF INVITATION FOR BID FORM
IFB# 2016-0204-PW/MM
CONSTRUCTION SERVICES FOR THE SANTA FE RAIL TRAIL SEGMENT 4
CN S100282

In acknowledgement of receipt of this Invitation for Bids the undersigned agrees that he/she has received a complete copy, beginning with the title page, and ending with the contractual documents. Completed forms must be submitted to Maricela Martinez no later than February 4, 2016 to receive any addenda for this solicitation.

Only Bidders that return this form in a timely manner will receive copies of addenda to this IFB.

FIRM: _____
REPRESENTED BY: _____
TITLE: _____
PHONE NO.: _____
FAX NO.: _____
E-MAIL ADDRESS: _____
MAILING ADDRESS: _____

DELIVERY ADDRESS: _____

By: _____ Date: _____
(Signature)
Name: _____
(Printed)
Title: _____

This name and address will be used for all correspondence related to the Invitation For Bids.

Maricela Martinez
Santa Fe County
Purchasing Division
142 W. Palace Avenue
Santa Fe, NM 87504
Phone: (505) 992-9864 Fax: (505) 989-3243
E-mail: mcmartinez@santafecountynm.gov

NOTICE TO CONTRACTORS

CONTROL NUMBER: S100282

MANDATORY PRE-BID CONFERENCE

A Pre-Bid Conference (MANDATORY) for CN S100282 will be held on **February 4, 2016** at **2:00 PM** at the Santa Fe County Projects Division conference room, 901 W. Alameda, Suite 20-C, Santa Fe, N.M. The purpose of this Mandatory Pre-Bid conference is to discuss: (a) General Overview of Project; (b) Other issues related to the project. For additional information regarding the Pre-Bid Conference, contact Maricela Martinez, Procurement Specialist Senior at (505) 992-9864 or at mcmartinez@santafecountynm.gov.

The Contractors that attend the Mandatory Pre-Bid Conference will be the only Contractors allowed to bid on CN100282 as Prime Contractors.

NOTICE TO CONTRACTORS

RAILROAD PROTECTIVE LIABILITY INSURANCE

For years, Railroad Protective Liability (RRP) insurance has been imposed on contractors by railroads. But exactly why? Just what does this commonly referred to, but seldom understood liability insurance do, and whom does it protect? Here are some answers to these, and other, questions.

RRP covers the contractor for his work for the railroad - right?

Sorry, no. In fact, the RRP policy does not protect the contractor at all - it protects only the railroad, since only the railroad is the "named insured" on the policy. It also states that the railroad is protected for acts or omissions arising out of the "work" at the "job location". The "work" (including the contractor performing the work), and "job location" are specifically designated on the policy.

What if the contractor gets sued?

The RRP is not a replacement for liability insurance for contractors. Every independent railroad contractor should have a Commercial General Liability (CGL) insurance policy with endorsements that delete any restrictions for indemnity or work performed within 50 feet of the railroad or railroad property. It is not unusual for both the contractor and the railroad to be named in a suit from an injured third party, if the injury or damage arises from the contractor's work at the job location. The same suit might allege that the contractor was negligent in the way he performed his work, and that the railroad was negligent in supervising the work of its independent contractor. In this case, the contractor's CGL policy should defend the contractor, and the RRP policy will defend the railroad.

Do railroads have any insurance other than RRP?

Yes. Every operating railroad has some form of operating liability insurance protection. The RRP only protects the railroad from liability associated with specific work (including specific contractor), at a specific job location.

The RRP policy does not provide coverage for any liability that is not somehow connected with the work at the job that is being performed, and is so designated on the RRP policy. Linking the contractor, work and job location in the RRP policy makes it quite clear that it is the project-specific and not just a premises-and-operations policy for the railroad.

So, if the contractor has insurance and the railroad has insurance, why do they need the RRP policy?

Railroads must make important decisions about how they manage their independent contractor risk. They can insure it under their own insurance policies, but that may drive up the cost of the railroad's own liability insurance. Also, they may have very high deductibles or retentions that may impose heavy financial obligations upon them in the event of a claim, particularly if it involves a contractor on their property.

Another option is for the railroad to transfer its risks contractually through indemnity agreements with its independent contractor, and also require special conditions and limits from the contractor's own liability insurance. But then, the railroad is relying solely on the contractor and the contractor's insurance to protect it. What if the contractor defaults, or has its insurance canceled, or limits through claims at other project locations.

Perhaps the best risk-management tool is a combination of contractual indemnification and a specific, stand-alone insurance product, one that is written for a specific project that a specific contractor performs. This is generally the most common risk-management technique employed by today's railroads. That stand-alone policy is the common RRP policy being discussed here.

This risk-management technique is very similar to the one used by other project owners who are not railroads. In those cases, the owners usually require the contractor to provide an Owners Protective Liability, (OCP), policy to protect the owner from claims against him, from specific work, at a specific job site or by a specific contractor. While the RRP and the OCP policies are similar in intent, the language is quite different for each and they are not interchangeable.

Does the RRP policy cover rolling stock?

Under certain situations it does. In addition to protecting the railroad for bodily injury and property damage liability claims, the RRP covers property owned by, leased by or entrusted to the railroad for direct physical damage to that property. This includes rolling stock, other equipment, materials or any property assigned to a specific job site. Again, the policy benefits the railroad only, and loss to covered property must result from acts or omissions arising out of work at a job location. The RRP does not replace a railroad's property or rolling stock properties, since the RRP policy only pays for losses due to acts or omissions at the job. And, like the third party coverage under the RRP, the physical damages coverage stops when the contractor has completed his work.

Does the RRP cover workers' compensation?

No, never. Workers' Compensation disability benefits, unemployment compensation laws and any similar laws are specifically excluded under the RRP policy. However, the exclusion does not apply to any obligation that the insured (the railroad) has under FELA. Thus, if the railroad is sued by an employee for injuries sustained due to acts or omissions arising out of work at a job location, the RRP would respond to protect the railroad.

Does coverage continue if a contractor completes his work ahead of schedule?

No. Coverage for the railroad ceases when the contractor has completed the work. The policy is very specific about what constitutes completed work.

The RRP policy, therefore, does not afford any completed operation coverage for any party. The contractor's own CGL policy should protect it against claims arising out of completed work. The railroad's own operating liability coverage should protect it from any claims made against it for injuries or damages.

What limits are usually required by the railroad for the RRP policies?

The limits of liability will vary from railroad to railroad, and even from project to project. The size and the complexity of the construction project may determine the limits required by the contract. Limits of \$2 million for each occurrence and \$6 million annual aggregate limits are quite common. Please note that the aggregate limit applies on an annual basis even though the RRP policy may be written for a period longer than one year.

Is all RRP policy language the same?

No, but most companies use the Insurance Services Office (ISO) 1994 form, or a later version, and that form is accepted by most railroads. When purchasing or getting quotations for RRP, the contractor should advise of any differences between his form and the railroad's specifications. The railroad will often engage an engineering firm to create the bid documents for the work to be performed. These documents should contain the insurance requirements, including any specific RRP policy form, such as ISO, RIMA or ASSHTO, including modifications in the policy language.

Where does the contractor get the RRP policies and/or quotations for RRP insurance?

There are several sources for RRP insurance. In some cases, the contractor's CGL insurance company may provide the RRP insurance as well. They will always issue a separate policy because the named insured is the railroad, not the contractor.

In many cases, the contractor's CGL insurance company cannot or will not issue the RRP policy. This may be due to limit requirements, special coverage requirements, long policy terms, reinsurance restrictions and a variety of other issues. The contractor may ask his insurance broker to obtain several quotations from several insurance companies that specialize in RRP insurance. Results can vary widely between insurance companies depending on the information submitted and the specific details of the job.

Occasionally, the railroads themselves may carry a "blanket RRP program" in which they enroll "contractors," "work" and "job locations" on an ongoing basis. If the railroad has a plan such as this, it should inform you of such in the contract or bid instructions, and any related cost for participating in this program.

What do contractors need to know in order to get RRP quotations from insurance companies?

Underwriters need some basic information in order to prepare quotations. This includes, but is not limited to, the following:

1.	The named insured (railroad and its name and address).
2.	The "contractor" name and address.
3.	Limits of railroad protective insurance requested.
4.	The descriptive title or job or contract number for the project.
5.	A complete description of the work, where it takes place, how it impacts the railroad's

	tracks (i.e. parallel, over, under or across tracks, etc.)
6.	Total job cost (estimate).
7.	Job cost within 50 feet of track(s).
8.	Percentage and types of work sub-contracted.
9.	Amounts (percentage or costs) of any specialty construction such as blasting, tunneling, rigging (crane hoisting), pile driving and such.
10.	Start date and estimated duration of project.
11.	Train traffic; number of freight and passenger trains during work hours and on a daily basis.
12.	Payrolls or cost associated with railroad employees such as flagmen or switchmen assigned to the job.
13.	Details on slow orders or other restrictions placed on tracks at the job site.
14.	Cost of and values associated with any work trains, other rolling stock or equipment assigned to the job.

Underwriters may also ask for experience or other qualifications of the contractor and details concerning his own CGL insurance program.

Contractors should evaluate the protection afforded them by their own CGL insurance as well as RRP insurance requirements imposed upon them. As a minimum, contractors should:

- Evaluate the indemnity and insurance provisions of your railroad contracts completely to make sure you comply with those provisions. In some cases, the RRP requirement may be an addendum to the contract. Your CGL policy should be amended so that there are no restrictions for contracts that involve work within 50 feet of a railroad or railroad property.
- Evaluate the property provisions in the contract with coverages provided by your installation floater and equipment policies. You may be held responsible for the entire project and it may be necessary to purchase a Builders Risk policy for the project. Or you may be responsible for materials and equipment or work trains assigned to the project by the railroad. Materials may be protected under your installation floater. Other equipment and rolling stock assigned to the job may be added to your equipment floater, delete any exclusion for loaned, leased or rented equipment on this policy.
- Obtain a generic RRP application and become familiar with the information it asks for. Complete one for each contract and include sketches, drawings and other details that will help the insurance underwriter understand the project and its risk. Sometimes a background of your company and its railroad construction experience will be helpful.
- Allow as much time as possible for obtaining quotations for RRP insurance. Although a one or two day turnaround time can be achieved, results are usually better if they are not rushed, especially if there are unusual or complicated construction circumstances associated with the project.

NOTICE TO CONTRACTORS

Avenida Eldorado to Avenida Vista Grande, MP 4.86 to MP 6.5 within the NMDOT Right of Way on the Eldorado Subdivision

CN S100282

Responsibilities of Trail Contractor

- 1) The Contractor is hereby advised of the sensitive nature of construction operations within or adjacent to Railroad Right of Way and the caution with which such operations shall be conducted. As such, consideration including, but not limited to the following items are imperative when bidding the Project, as no Claims for delays shall be allowed.
- 2) All access by the Contractor onto Railroad property shall be coordinated, in advance, through the Santa Fe County Project Manager, Colleen Baker at (505) 992-9868, Rob Fine with the NMDOT Rail Bureau at (505) 827-5133, and Karl Ziebarth with Santa Fe Southern Railway at (214) 850-5642 ("Railroad") in order that Permission for Railroad Right of Way Entry, Job Briefings and Railroad Flagging Protection can be provided, when necessary, during periods of construction activity. This may take 60 days to process.
- 3) The Contractor shall become familiar and adhere to all aspects set forth in the accompanying NMDOT Railroad Right of Way Entry Agreement between Trail Contractor between the NMDOT including Exhibit A - Contractor Requirements.
- 4) No employee of the Contractor, its Subcontractors, agents or invitees shall enter Railroad Right of Way without first executing a Temporary Right-of-Entry agreement with NMDOT and being issued a NMDOT Railroad Right of Way Work Permit.
- 5) The Contractor shall have limited access to the Railroad Right of Way during this Project. The Contractor shall negotiate this access with NMDOT. All agreements for access shall be forwarded to the Santa Fe County Project Manager and NMDOT Rail Bureau Facilities Manager for concurrence and/or approval.
- 6) The Contractor shall give advance notice to Railroad and NMDOT as required in the agreement before commencing Work in connection with construction upon, adjacent or over Railroad's Right of Way.
- 7) No employee of the Contractor, its Subcontractors, agents or invitees shall enter railroad property without having completed Railway Contractor Safety Orientation, found on the web site www.contractororientation.com. The Contractor shall ensure that each of its employees,

Subcontractors, agents or invitees have received Railroad's Contractor Safety Orientation before any Work is performed on the Project and that each of its employees, Subcontractors, agents or invitees observe Railroad rules and regulations. The Contractor shall ensure that each of its employees, Subcontractors, agents or invitees have verification that they have completed the Safety Orientation and that every employee of the Contractor, its Subcontractors, agents or Invitees have a card, in his or her possession, that is properly signed and dated certifying that they have received the Safety Orientation before entering Railroad Property. The Contractor is responsible for paying the cost of the Safety Orientation. It is required that the Safety Orientation be renewed annually. Further clarification can be found on the web site or from the Railroad's Representative.

- 8) Railroad Protective and Flagging services shall be required when construction and/or any Work activity is located over or under or within twenty-five (25) feet from centerline of the nearest in-service track. No construction operations or equipment shall be located within this twenty-five (25) foot requirement without prior coordination with Railroad representatives and the Project Manager.
- 9) The Contractor shall be required to obtain and pay for Railroad Flagging as well as Railroad Protective Liability Insurance as set forth in the attached Railroad Right of Entry agreement.; These costs shall be considered a part of the Contract and bid on as an "Actual Cost Basis". The Contractor shall take these costs into consideration when bidding the contract. No other payment will be provided to the Contractor for these costs.
- 10) The Contractor shall be advised of potential railroad signal lines near or within the Project; the Contractor shall notify the Railroad prior to construction to have Railroad personnel place safety flagging material on all signal lines within the Project vicinity; the Contractor shall, prior to commencing Work every morning, have daily meetings with all Project personnel advising them of a sensitive nature of the Railroad facilities and have daily safety meetings reminding employees when operating any vehicles, cranes, or other construction equipment that these facilities are not to be damaged. If the contractor should damage these facilities, the Contractor shall be liable for any costs associated with line impairment and repair.
- 11) The Contractor shall not endanger or interfere with the safe and timely operation of Santa Fe Southern Railway trains and other operations.
- 12) All existing Railroad access roads shall be kept open during construction operations. Extreme caution shall be taken to protect existing utilities and facilities within Railroad Right of Way.
- 13) The Contractor shall notify Karl Ziebarth, of the Santa Fe Southern Railway in advance as required in the Right of Entry agreement when requesting railroad flagging protection.
- 14) The Contractor shall not commence construction activities until the Contractor has given no less than thirty (30) Working days prior written notice to the Santa Fe County Project Manager and NMDOT Rail Bureau which notice shall state the time construction activities shall commence. All correspondence submitted to the Railroad shall reference the physical

railroad location of construction work: from MP 4.86 to MP 6.5 within the NMDOT Right of Way on the Eldorado Subdivision.

- 15) The Contractor shall contact the Railroad and/or the telecommunications companies to determine whether there is any fiber optic cable systems located within the Project boundaries that could be damaged or their service disrupted due to the construction of the Project. The Contractor shall pothole all lines either shown on the plans or marked in the field in order to verify their locations. The Contractor shall use all reasonable methods when working in the Railroad Right of Way to determine if any other fiber optic lines may exist. Failure by the Contractor to notify, pothole or identify these lines shall be sufficient cause to stop construction at no cost to the State or Railroad until these items are completed. Costs for repairs and loss of revenues and profits due to damage to these facilities through negligent acts by the Highway Contractor shall be the sole responsibility of the Contractor. The Contractor shall indemnify and hold the State and Railroad harmless against and from all cost, liability and expense arising out of or in any way contributed to these negligent acts of the Contractor.
- 16) Railroad safety equipment and facilities will be relocated or installed concurrent with construction and will require close coordination. The Contractor shall make the necessary arrangements with the Railroad, and shall submit a schedule of Work to be accomplished. This shall be officially acknowledged and verified by a representative of the Railroad, and a copy provided to the Santa Fe County Project Manager.
- 17) The Contractor shall furnish the Santa Fe County Project Manager and the NMDOT Rail Bureau two (2) sets of plans for Cribbing and Shoring and two (2) sets of the calculations. The Contractor shall be responsible for obtaining approvals from the Railroad for all demolition clearances.
- 18) The Contractor shall take protective measures as are necessary to keep Railroad facilities, including track ballast, free of sand, debris and other foreign objects and materials resulting from their operations. Any damage to Railroad facilities resulting from the Contractor operations will be repaired or replaced by Railroad at the cost of the Contractor.
- 19) During construction of the bridge, the Contractor shall not drop or lower material or debris into Railroad property within twenty-five (25) feet measured from the centerline of an adjacent track or measured from the edge of a Railroad maintenance-of-way Road, or measured from any Railroad improvement, Railroad Work or staging area.
- 20) The Contractor is notified that any changes or modifications to the Project during construction that affect safety, or the Railroad's operations, shall also be subject to the Railroad's and NMDOT Project Manager's approval.
- 21) The Contractor shall advise the Railroad in writing, with a copy to the NMDOT Project Manager and NMDOT Rail Bureau, of the completion date of the Project within thirty (30) days after such completion and advise therein of the date on which the NMDOT and Contractor will meet with the Railroad for the purpose of making final inspection of the Project.

22) The Contractor shall adhere to the County's construction completion date. The parties agree that the Railroad's failure to provide Protective and Flagging Services in accordance with the construction schedule shall not constitute a breach of the Agreement by the Railroad and will not subject the Railroad to any liability, when due to inclement weather or unforeseen Railroad emergencies. Regardless of the requirements of the Construction schedule, the Railroad reserves the right to reallocate its labor forces, assigned to provide Protective and Flagging Services, in the event of an emergency when the Railroad believes such reallocation is necessary to provide immediate restoration of Railroad operations or to protect persons or property on or near any Railroad-owned property. The Railroad will not be liable for any additional costs or expenses of the Project resulting from any such reallocation of its labor forces. It is agreed that this reallocation of labor forces by Railroad and any direct or indirect results of such will not constitute a breach of agreement by Railroad. NMDOT reserves the right to amend the Contract with the Contractor as may be necessary, subject to advising and coordinating with Railroad.

23) The Contractor when providing any notice concerning these requirements shall do so in writing and be deemed sufficiently given when sent by certified mail, return receipt requested to the parties at the following address and copied to the Santa Fe County Project Manager:

NMDOT Traffic	Afshin Jian NMDOT Traffic Safety Engineer PO Box 1149 Santa Fe, NM 87504-1149
Santa Fe Southern Railway (Flagging and Track)	Karl Ziebarth 430A W. Manhattan St Santa Fe, NM 87501 (214) 850-5642
Santa Fe County Project Manager	Colleen Baker 901 W. Alameda Road Santa Fe, NM 87501 505) 992-9868
NMDOT Rail Bureau	Rob Fine, Rail Facilities Manager NMDOT Rail Bureau P.O. Box 1149, SB-4 Santa Fe, NM 87504-1149 (505) 827-5133

Any questions and/or inquiries regarding Railroad/Highway construction issues shall be directed to the NMDOT Project Manager and copied to NMDOT Rail Bureau as indicated above.



Railroad Property Temporary Right of Entry Agreement Between
NEW MEXICO DEPARTMENT OF TRANSPORTATION
And
XXXX Inc.

Project: CN S100282
Physical Location: Santa Fe Rail Trail between Avenida Vista Grande and Avenida Eldorado, Santa Fe County
Railroad Location: Main Track Eldorado Subdivision, Mileposts 6.5 to 4.86

The undersigned, hereinafter called the ("Contractor"), has entered into a contract, hereinafter the ("Contract") with Santa Fe County for the performance of certain work in connection with the project **County Rail Trail Project Segment 4**. Performance of such work will necessarily require contractor to enter NEW MEXICO DEPARTMENT OF TRANSPORTATION ("NMDOT") railroad right of way and property ("Property"). No work will be commenced within NMDOT Property until the Contractor employed in connection with said work for Project - (i) executes and delivers to NMDOT an Agreement in the form hereof, and (ii) provides insurance of the coverage and limits specified in such Agreement and Section 3 herein, and (iii) is issued a NMDOT Railroad Right-of-Way Temporary Access/Work Permit. If this Agreement is executed by a party who is not the Owner, General Partner, President or Vice President of Contractor, Contractor must furnish evidence to NMDOT certifying that the signatory is empowered to execute this Agreement on behalf of Contractor.

Accordingly, in consideration of NMDOT granting permission to Contractor to enter upon NMDOT Property and as an inducement for such entry, Contractor, effective on the date of the Contract, has agreed and does hereby agree with NMDOT as follows:

Section 1. RELEASE OF LIABILITY AND INDEMNITY

Contractor hereby waives, releases, indemnifies, defends and holds harmless NMDOT and Santa Fe Southern Railway (SFS) for all judgments, awards, claims, demands, and expenses (including attorneys' fees), for injury or death to all persons, including NMDOT, SFS, and officers and employees, and for loss and damage to property belonging to any person, arising in any manner from Contractor's or any of Contractor's subcontractors' acts or omissions or any work performed on or about NMDOT's Property. **THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DESTRUCTION, DAMAGE, DEATH, OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF NMDOT or SFS, THEIR AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF NMDOT or SFS.**

THE INDEMNIFICATION OBLIGATION ASSUMED BY CONTRACTOR INCLUDES ANY CLAIMS, SUITS OR JUDGMENTS BROUGHT AGAINST SFS UNDER THE FEDERAL EMPLOYEE'S LIABILITY ACT, INCLUDING CLAIMS FOR STRICT LIABILITY UNDER THE SAFETY APPLIANCE ACT OR THE BOILER INSPECTION ACT, WHENEVER SO CLAIMED.

Contractor further agrees, at its expense, in the name and on behalf of NMDOT or SFS, that it will adjust and settle all claims made against NMDOT or SFS, and will, at NMDOT's or SFS's discretion, appear and defend any suits or actions of law or in equity brought against NMDOT or SFS on any claim or cause of action



arising or growing out of or in any manner connected with any liability assumed by Contractor under this Agreement for which NMDOT or SFS is liable or is alleged to be liable. NMDOT will give notice to Contractor, in writing, of the receipt or dependency of such claims and thereupon Contractor must proceed to adjust and handle to a conclusion such claims, and in the event of a suit being brought against NMDOT or SFS. NMDOT or SFS may forward summons and complaint or other process in connection therewith to Contractor, and Contractor, at NMDOT's or SFS discretion, must defend, adjust, or settle such suits and protect, indemnify, and save harmless NMDOT or SFS from and against all damages, judgments, decrees, attorney's fees, costs, and expenses growing out of or resulting from or incident to any such claims or suits.

It is mutually understood and agreed that the assumption of liabilities and indemnification provided for in this Agreement survive any termination of this Agreement.

Section 2. TERM

This Agreement is effective from the date of the Contract until (i) the completion of the project set forth herein, and (ii) full and complete payment to NMDOT and SFS of any and all sums or other amounts owing and due hereunder.

Section 3. INSURANCE

Contractor must, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

- A. Commercial General Liability insurance. This insurance must contain broad form contractual liability with a combined single limit of a minimum of \$2,000,000 each occurrence and an aggregate limit of at least \$6,000,000. Coverage must be purchased on a post 2004 ISO occurrence form or equivalent and include coverage for, but not limit to the following:
- ◆ Bodily Injury and Property Damage
 - ◆ Personal Injury and Advertising Injury
 - ◆ Fire legal liability
 - ◆ Products and completed operations

This policy must also contain the following endorsements, which must be indicated on the certificate of insurance:

- ◆ It is agreed that any workers' compensation exclusion does not apply to NMDOT and SFS, payments related to the Federal Employers Liability Act or a NMDOT or SFS Wage Continuation Program or similar programs and any payments made are deemed not to be either payments made or obligations assumed under any Workers Compensation, disability benefits, or unemployment compensation law or similar law.
- ◆ The definition of insured contract must be amended to remove any exclusion or other limitation for any work being done within 50 feet of NMDOT railroad property.
- ◆ Any exclusion related to the explosion, collapse and underground hazards must be removed.

No other endorsements limiting coverage as respects obligations under this Agreement may be included on the policy.

- B. Business Automobile Insurance. This insurance must contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:
- ◆ Bodily injury and property damage
 - ◆ Any and all vehicles owned, used or hired



- C. Workers Compensation and Employers Liability insurance including coverage for, but not limited to:
- ◆ New Mexico's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
 - ◆ Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

The following insurance shall be in effect for work and construction performed under, over or within 25 feet of an in-service track:

- D. Railroad Protective Liability insurance, naming the NMDOT and SFS as the Insured with coverage of at least \$5,000,000 per occurrence and \$10,000,000 in the aggregate. The policy Must be issued on a standard ISO form CG 00 35 10 93 and include the following:
- ◆ Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
 - ◆ Endorsed to include the Limited Seepage and Pollution Endorsement.
 - ◆ Endorsed to remove any exclusion for punitive damages.
 - ◆ No other endorsements restricting coverage may be added.
 - ◆ The original policy must be provided to the NMDOT prior to performing any work or services under this Agreement

Other Requirements:

All policies (applying to coverage listed above) must not contain an exclusion for punitive damages and certificates of insurance must reflect that no exclusion exists.

Contractor agrees to waive its right of recovery against NMDOT and SFS for all claims and suits against NMDOT and SFS. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against NMDOT and SFS, for all claims and suits. The certificate of insurance must reflect the waiver of subrogation endorsement. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against NMDOT, and SFS, for loss of its owned or leased property or property under contractor's care, custody or control.

Contractor's insurance policies through policy endorsement must include wording which states that the policy is primary and non-contributing with respect to any insurance carried by NMDOT and SFS. The certificate of insurance must reflect that the above wording is included in evidenced policies.

All policy (ies) required above (excluding Workers Compensation and if applicable, Railroad Protective) must include a severability of interest endorsement and NMDOT and SFS, must be named as an additional insured with respect to work performed under this agreement. Severability of interest and naming NMDOT and SFS as additional insured must be indicated on the certificate of insurance.

Contractor is not allowed to self-insure without the prior written consent of NMDOT. If granted by NMDOT, any deductible, self-insured retention or other financial responsibility for claims must be covered directly by contractor in lieu of insurance. Any and all NMDOT and SFS liabilities that would otherwise, in accordance with the provisions of this *Agreement*, be covered by contractor's insurance will be covered as if contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to commencing the Work, contractor must furnish to NMDOT an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments and referencing the contract audit/folder number if available. The policy(ies) must



contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify NMDOT in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision must be indicated on the certificate of insurance. Upon request from NMDOT, a certified duplicate original of any required policy must be furnished. Contractor should send the certificate(s) to the following address:

New Mexico Department of Transportation
US Mail: PO Box 1149, Santa Fe Nm 87504
Physical Delivery: 1120 Cerrillos Road, Santa Fe, Nm 87505
Attn: Rob Fine Rail Bureau SB-4
Phone: 505-827-5133

Any insurance policy must be written by a reputable insurance company acceptable to NMDOT or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provide.

Contractor represents that this *Agreement* has been thoroughly reviewed by contractor's insurance agent(s)/broker(s), who have been instructed by contractor to procure the insurance coverage required by this *Agreement*. Allocated Loss Expense must be in addition to all policy limits for coverage's referenced above. Not more frequently than once every five years, NMDOT may reasonably modify the required insurance coverage to reflect then-current risk management practices in the NMDOT industry and underwriting practices in the insurance industry.

If any portion of the operation is to be subcontracted by contractor, contractor must require that the subcontractor provide and maintain the insurance coverage's set forth herein, naming NMDOT and SFS as an additional insured, and requiring that the subcontractor release, defend and indemnify NMDOT and SFS to the same extent and under the same terms and conditions as contractor is required to release, defend and indemnify NMDOT herein.

Failure to provide evidence as required by this section will entitle, but not require, NMDOT to terminate this *Agreement* immediately. Acceptance of a certificate that does not comply with this section will not operate as a waiver of contractor's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by contractor will not be deemed to release or diminish the liability of contractor including, without limitation, liability under the indemnity provisions of this *Agreement*. Damages recoverable by NMDOT and SFS will not be limited by the amount of the required insurance coverage.

Section 4. EXHIBIT "A" CONTRACTOR REQUIREMENTS

The Contractor must observe and comply with the provisions, obligations, requirements and limitations contained in the Contract and the Contractor Requirements set forth on Exhibit "A" attached to the Contract and this Agreement, including, but not be limited to, payment of all costs incurred for any damages to NMDOT roadbed, tracks, and/or appurtenances thereto, resulting from use, occupancy, or presence of its employees, representatives, or agents or subcontractors on or about the construction site.



Section 5. TRAIN DELAY

Contractor is responsible for and hereby indemnifies and holds harmless NMDOT and SFS for, from and against all damages arising from any unscheduled delay to a freight or passenger train which affects NMDOT and SFS ability to fully utilize its equipment and to meet customer service and contract obligations. Contractor will be billed, as further provided below, for the economic losses arising from loss of use of equipment, contractual loss of incentive pay and bonuses and contractual penalties resulting from train delays, whether caused by Contractor, or subcontractors, performing work under this Agreement. NMDOT agrees that it will not perform any act to unnecessarily cause train delay.

For loss of use of equipment, Contractor will be billed the current freight train hour rate per train as determined from NMDOT's records. Any disruption to train traffic may cause delays to multiple trains at the same time for the same period.

Additionally, the parties acknowledge that passenger and freight trains may operate under incentive/penalty contracts or other schedules or commitments involving NMDOT and SFS and possibly its customers. Under these arrangements, if NMDOT and SFS do not meet its contract service commitments or other commitments, NMDOT and SFS may suffer loss of performance or incentive pay and/or be subject to penalty payments. Contractor is responsible for any train performance and incentive penalties or other economic losses actually incurred by NMDOT and SFS which are attributable to a train delay caused by Contractor or its subcontractors.

Contractor and its subcontractors must give the County Project Manager and Santa Fe Southern Railway at least three (3) weeks advance notice of the times and dates for proposed work windows. SFS and Contractor will establish mutually agreeable work windows for the project. NMDOT or SFS has the right at any time to revise or change the work windows due to train operations or service obligations. NMDOT or SFS will not be responsible for any additional costs or expenses resulting from a change in work windows. Additional costs or expenses resulting from a change in work windows shall be accounted for in Contractor's expenses for the project.

Contractor and subcontractors must plan, schedule, coordinate and conduct all Contractor's work so as to not cause any delays to any trains.



NMDOT RAIL

Kindly acknowledge receipt of this document by signing and returning to the NMDOT three original copies of this document, which, upon execution by NMDOT, will constitute an Agreement between us.

NEW MEXICO DEPARTMENT OF TRANSPORTATION:

By: _____
Loren D. Hatch, Deputy Secretary

Date: _____ 2015

Approved as to Form _____
Hugh Parry, Office of General Counsel

Date: _____ 2015

CONTRACTOR:

By: _____

Date: _____ 2015

Printed Name: _____

Title: _____

Contact Person: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Email: _____



EXHIBIT "A" CONTRACTOR REQUIREMENTS

1.01 General

- **1.01.01** The Contractor shall cooperate with **New Mexico Department of Transportation**, hereinafter referred to as "NMDOT", and Santa Fe Southern Railway (SFS) where work is over, under, on, or adjacent to NMDOT-owned railroad right-of-way, hereafter referred to as "NMDOT Property", during the work and construction to occur between Railroad Mileposts 6.5 and 4.86, Eldorado Subdivision, Santa Fe County, New Mexico.
- **1.01.02** The Contractor must execute and deliver to the NMDOT duplicate copies of the Agreement, in the form attached hereto, obligating the Contractor to provide and maintain in full force and effect the insurance called for under Section 3 of said Agreement.
- **1.01.03** The Contractor must plan, schedule and conduct all work activities so as not to interfere with the movement of any trains on NMDOT Property. Scheduling will be subject to train movements and railroad personnel availability.
- **1.01.04** The Contractor's right to enter NMDOT's Property is subject to the absolute right of NMDOT to cause the Contractor's work on NMDOT's Property to cease if, in the opinion of NMDOT, Contractor's activities create a hazard to NMDOT's Property, employees, and/or operations. Contractor must receive an executed Temporary Access/Occupancy Permit in addition to execution of the Agreement prior to occupying NMDOT Property.
- **1.01.05** The Contractor is responsible for determining and complying with all Federal, State and Local Governmental laws and regulations, including, but not limited to environmental laws and regulations (including but not limited to the Resource Conservation and Recovery Act, as amended; the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, CERCLA), and health and safety laws and regulations. The Contractor hereby indemnifies, defends and holds harmless NMDOT for, from and against all fines or penalties imposed or assessed by Federal, State and Local Governmental Agencies against the NMDOT which arise out of Contractor's work under this Agreement.
- **1.01.06** The Contractor must notify the NMDOT Rail Bureau at (505) 827-5133 and Santa Fe Southern Railway at (214) 850-5642 at least three (3) weeks before commencing any work on NMDOT Property. Contractor's notification to NMDOT must refer to NMDOT Railroad Right-of-Way Work Permit Number to arrange flagging protection.
- **1.01.07** For any falsework above any tracks or any excavations located within twenty-five (25) feet of the nearest track or intersecting a slope from the plane of the top of rail on a 1 ½ horizontal to 1 vertical slope beginning at eleven (11) feet from centerline of the nearest track, both measured perpendicular to center line of track (whichever is greater), the Contractor must furnish the NMDOT Rail Bureau two sets of working drawings showing details of construction affecting NMDOT Property and tracks. The working drawing must include the proposed method of installation and removal of falsework, and shoring or cribbing not included in the contract plans and two sets of structural calculations of any falsework, shoring or cribbing. All calculations must take into consideration NMDOT surcharge loading and must be designed to meet American Railway



Engineering and Maintenance-of-Way Association (AREMA) Coopers E-80 live loading standard. All drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state of New Mexico. The Contractor must not begin work until notified by the NMDOT that plans have been approved. The Contractor will be required to use lifting devices such as, cranes and/or winches to place or to remove any falsework over NMDOT tracks. In no case will the Contractor be relieved of responsibility for results obtained by the implementation of said approved plans.

- **1.01.08** Subject to the movement of SFS trains, SFS will cooperate with the Contractor such that the work may be handled and performed in an efficient manner. The Contractor will have no claim whatsoever for any type of damages or for extra or additional compensation in the event his work is delayed by SFS.

1.02 Railroad Contractor Safety Orientation

- **1.02.01** No employee of the Contractor, its subcontractors, agents or invitees may enter NMDOT Property without first having completed a Railroad Contractor Safety Orientation. The Contractor must ensure that each of its employees, subcontractors, agents or invitees completes Railroad Contractor Safety Orientation before any work is performed on the Project. Safety orientation may be completed through the website web site www.contractororientation.com. Additionally, the Contractor must ensure that each and every one of its employees, subcontractors, agents or invitees possesses a card certifying completion of the Railroad Contractor Safety Orientation before entering NMDOT Property. The Contractor is responsible for the cost of the Railroad Contractor Safety Orientation. The Contractor must renew the Railroad Contractor Safety Orientation annually. Further clarification can be found on the web site or from the NMDOT's Railroad Representative.

1.03 NMDOT Railroad Requirements

- **1.03.01** The Contractor must take protective measures as are necessary to keep NMDOT railroad facilities, including track ballast, free of sand, debris, and other foreign objects and materials resulting from its operations. Any damage to NMDOT railroad facilities resulting from Contractor's operations will be repaired or replaced by NMDOT or SFS and the cost of such repairs or replacement must be paid for by the Contractor.
- **1.03.03** The Contractor must abide by the following temporary clearances during construction:
 - 15' Horizontally from centerline of nearest track
 - 21'-6" Vertically above top of rail
 - 27'-0" Vertically above top of rail for electric wires carrying less than 750 volts
 - 28'-0" Vertically above top of rail for electric wires carrying 750 volts to 15,000 volts
 - 30'-0" Vertically above top of rail for electric wires carrying 15,000 volts to 20,000 volts
 - 34'-0" Vertically above top of rail for electric wires carrying more than 20,000 volts
- **1.03.04** Upon completion of construction, the following clearances shall be maintained:
 - 25' Horizontally from centerline of nearest track
 - 23'-6" Vertically above top of rail



- **1.03.05** any infringement within State statutory clearances due to the Contractor's operations must be submitted to the NMDOT and must not be undertaken until approved in writing by the NMDOT, and until the NMDOT has obtained any necessary authorization from the State Regulatory Authority for the infringement.

No extra compensation will be allowed in the event the Contractor's work is delayed pending NMDOT approval, and/or the State Regulatory Authority's approval.

- **1.03.06** In the case of impaired vertical clearance above top of rail, NMDOT will have the option of installing tell-tales or other protective devices NMDOT deems necessary for protection of NMDOT railroad operations. The cost of tell-tales or protective devices will be borne by the Contractor.
- **1.03.07** the details of construction affecting the NMDOT's Property and tracks not included in the contract plans must be submitted to NMDOT for approval before work is undertaken and this work must not be undertaken until approved by the NMDOT.
- **1.03.08** At other than public road crossings, the Contractor must not move any equipment or materials across NMDOT's tracks until permission has been obtained from the NMDOT Rail Bureau. The Contractor must obtain a "Temporary Crossing Agreement" from the NMDOT Rail Bureau prior to moving equipment or materials across the NMDOT's tracks. The temporary crossing must be gated and locked at all times when not required for use by the Contractor. The temporary crossing for use of the Contractor will be at the expense of the Contractor.
- **1.03.09** Discharge, release or spill on the NMDOT Property of any hazardous substances, oil, petroleum, constituents, pollutants, contaminants, or any hazardous waste is prohibited and Contractor must immediately notify the NMDOT Rail Facilities Manager of any discharge, release or spills in excess of a reportable quantity. Contractor must not allow NMDOT Property to become a treatment, storage or transfer facility as those terms are defined in the Resource Conservation and Recovery Act or any state analogue.
- **1.03.10** The Contractor, upon completion of the work covered by this contract, must promptly remove from the NMDOT's Property all of Contractor's tools, equipment, implements and other materials, whether brought upon said property by said Contractor or any Subcontractor, employee or agent of Contractor or of any Subcontractor, and must cause NMDOT's Property to be left in a condition acceptable to the NMDOT's Rail Bureau.

1.04 Contractor Roadway Worker on Track Safety Program and Safety Action Plan

- **1.04.01** Each Contractor that will perform work within 50 feet of the centerline of a track must develop and implement a Roadway Worker Protection/On Track Safety Program and work with NMDOT Project Representative to develop an on track safety strategy as described in the guidelines listed in the on track safety portion of the Safety Orientation. This Program must provide Roadway Worker protection/On-Track training for all employees of the Contractor, its subcontractors, agents or invitees. This training is reinforced at the job site through job safety briefings. Additionally, each Contractor must develop and implement the Safety Action Plan, as provided for on the web site www.contractororientation.com, which will be made available to NMDOT prior to commencement of any work on NMDOT Property. During the performance of work, the Contractor must audit its work activities. The Contractor must designate an on-site Project Supervisor who will serve as the contact person for the NMDOT and who will maintain a copy of the Safety Action Plan, safety audits, and Material Safety Datasheets (MSDS), at the job site.



1.05 Protection of NMDOT Railroad Facilities and Railroad Flagger Services:

- **1.05.01** The Contractor must give SFS a minimum of a fifteen (15) weekday advance notice when flagging services will be required so that RMRTD can make appropriate arrangements. If flagging services are scheduled in advance by the Contractor and it is subsequently determined by the parties hereto that such services are no longer necessary, the Contractor must give SFS at least ten (10) working days advance notice so that appropriate arrangements can be made.
- **1.05.02** Unless determined otherwise by a NMDOT railroad representative, SFS flagger and protective services and devices will be required and arranged by the Contractor when Contractor's work activities are located over, under and/or within twenty-five (25) feet measured horizontally from centerline of the nearest track and when cranes or similar equipment positioned beyond 25 feet from the track centerline could foul the track in the event of tip over or other catastrophic occurrence, but not limited thereto for the following conditions:
 - **1.05.02a** when in the opinion of the NMDOT railroad representative it is necessary to safeguard NMDOT's Property, employees, trains, engines and facilities.
 - **1.05.02b** When any excavation is performed below the bottom of tie elevation, if, in the opinion of NMDOT's railroad representative, track or other NMDOT railroad facilities may be subject to movement or settlement.
 - **1.05.02c** when work in any way interferes with the safe operation of trains at timetable speeds.
 - **1.05.02d** When any hazard is presented to NMDOT track, communications, signal, electrical, or other facilities either due to persons, material, equipment or blasting in the vicinity.
 - **1.05.02e** Special permission must be obtained from the NMDOT Rail Bureau before moving heavy or cumbersome objects or equipment which might result in making the track impassable.
- **1.05.03** flagging services will be performed by qualified SFS Railroad employees.
 - **1.05.03a** flagging crew generally consists of one employee. However, additional personnel may be required to protect NMDOT Property and operations, if deemed necessary by the NMDOT's railroad representative.
 - **1.05.03b** each time a flagger is called; the minimum period for billing will be an eight (8) hour basic day including travel to and from the worksite.
 - **1.05.03c** The cost of flagger services provided by SFS representative will be borne by the Contractor. The estimated cost for one (1) flagger is \$125.00 an hour for a minimum of an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. The estimated cost for each flagger includes vacation allowance, paid holidays, NMDOT and unemployment insurance, public liability and property damage insurance, health and welfare benefits, transportation, meals, lodging and supervision. Negotiations for railroad labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase actual or estimated flagging rates. The flagging rate in effect at the time of performance by the Contractor hereunder will be used to calculate the actual costs of flagging pursuant to this paragraph.



- **1.05.03d** The average train traffic on this route is 2 trains per 24-hour period at a maximum speed of 20 MPH.

1.06 Contractor General Safety Requirements

- **1.06.01** Work in the proximity of NMDOT track(s) is potentially hazardous where movement of trains and equipment can occur at any time and in any direction. All work performed by contractors within 25 feet of any track must be in compliance with FRA Roadway Worker Protection Regulations.
- **1.06.02** Before beginning any task on NMDOT Railroad Property, a thorough job safety briefing must be conducted with all personnel involved with the task and repeated when the personnel or task changes. If the task is within 25 feet of any track, the job briefing must include the railroad-employed flagger, as applicable, and include the procedures the Contractor will use to protect its employees, subcontractors, agents or invitees from moving any equipment adjacent to or across any NMDOT track(s).
- **1.06.03** Workers must not work within 25 feet of the centerline of any track without an on track safety strategy approved by the NMDOT's Project Representative. When authority is provided, every contractor employee must know: (1) who the railroad flagger is, and how to contact the flagger, (2) limits of the authority, (3) the method of communication to stop and resume work, and (4) location of the designated places of safety. Persons or equipment entering flag/work limits that were not previously job briefed, must notify the flagger immediately, and be given a job briefing when working within 25 feet of the center line of track.
- **1.06.04** When Contractor employees are required to work on the NMDOT Property after normal working hours or on weekends, the Railroad's representative in charge of the project must be notified. A minimum of two employees must be present at all times.
- **1.06.05** Any employees, agents or invitees of Contractor or its subcontractors under suspicion of being under the influence of drugs or alcohol, or in the possession of same, will be removed from the NMDOT's Property and subsequently released to the custody of a representative of Contractor management. Future access to the NMDOT's Property by that employee will be denied.
- **1.06.06** Any damage to NMDOT Property or any hazard noticed on passing trains must be reported immediately to the NMDOT's representative in charge of the project. Any vehicle or machine which may come in contact with track, signal equipment, or structure (bridge) and could result in a train derailment must be reported immediately to the NMDOT representative in charge of the project. Local emergency numbers are to be obtained from the NMDOT representative in charge of the project prior to the start of any work and must be posted at the job site.
- **1.06.07** For safety reasons, all persons are prohibited from having pocket knives, firearms or other deadly weapons in their possession while working on NMDOT's Property.
- **1.06.08** All personnel protective equipment (PPE) used on NMDOT Property must meet applicable OSHA and ANSI specifications. Current NMDOT personnel protective equipment requirements are listed on the web site, www.contractororientation.com however, a partial list of the requirements include: a) safety glasses with permanently affixed side shields (no yellow lenses); b) hard hats c) safety shoe with hardened toes, above-the-ankle lace-up and a defined heel; and d) high visibility retro-reflective work wear. The Railroad's representative in charge of the project is to be contacted regarding local specifications for meeting



requirements relating to hi-visibility work wear. Hearing protection, fall protection, gloves, and respirators must be worn as required by State and Federal regulations. **NOTE – Should there be a discrepancy between the information contained on the web site and the information in this paragraph, the web site will govern.**

- **1.06.09** The Contractor must not pile or store any materials, machinery or equipment closer than 25'-0" to the center line of the nearest NMDOT track. Materials, machinery or equipment must not be stored or left within 250 feet of any highway/rail at-grade crossings, where storage of the same will interfere with the sight distances of motorists approaching the crossing. Prior to beginning work, the Contractor must establish a storage area with concurrence of the Railroad's representative.
- **1.06.10** Machines or vehicles must not be left unattended with the engine running. Parked machines or equipment must be in gear with brakes set and if equipped with blade, pan or bucket, they must be lowered to the ground. All machinery and equipment left unattended on NMDOT's Property must be left inoperable and secured against movement. (See internet Railroad Contractor Safety Orientation program for more detailed specifications)
- **1.06.11** Workers must not create and leave any conditions at the work site that would interfere with water drainage. Any work performed over water must meet all Federal, State and Local regulations.
- **1.06.12** All power line wires must be considered dangerous and of high voltage unless informed to the contrary by proper authority. For all power lines the minimum clearance between the lines and any part of the equipment or load must be; 200 KV or below - 15 feet; 200 to 350 KV - 20 feet; 350 to 500 KV - 25 feet; 500 to 750 KV - 35 feet; and 750 to 1000 KV - 45 feet. If capacity of the line is not known, a minimum clearance of 45 feet must be maintained. A person must be designated to observe clearance of the equipment and give a timely warning for all operations where it is difficult for an operator to maintain the desired clearance by visual means.

1.07 Excavation

- **1.07.01** Before excavating, the Contractor must determine whether any underground pipe lines, electric wires, or cables, including fiber optic cable systems are present and located within the Project work area. The Contractor must determine whether excavation on NMDOT's Property could cause damage to buried cables resulting in delay to NMDOT traffic and disruption of service to users. Delays and disruptions to service may cause business interruptions involving loss of revenue and profits. Before commencing excavation, the Contractor must contact NMDOT's Rail Facilities Manager at (505) 827-5133. All underground and overhead wires will be considered HIGH VOLTAGE and dangerous until verified with the company having ownership of the line. **It is the Contractor's responsibility to notify any other companies that have underground utilities in the area and arrange for the location of all underground utilities before excavating.**
- **1.07.02** The Contractor must cease all work and notify the NMDOT immediately before continuing excavation in the area if obstructions are encountered which do not appear on drawings. If the obstruction is a utility and the owner of the utility can be identified, then the Contractor must also notify the owner immediately. If there is any doubt about the location of underground cables or lines of any kind, no work must be performed until the exact location has been determined. There will be no exceptions to these instructions.
- **1.07.03** All excavations must be conducted in compliance with applicable OSHA regulations and, regardless of depth, must be shored where there is any danger to tracks, structures or personnel.



- **1.07.04** Any excavations, holes or trenches on the NMDOT's Property must be covered, guarded and/or protected when not being worked on. When leaving work site areas at night and over weekends, the areas must be secured and left in a condition that will ensure that NMDOT employees and other personnel who may be working or passing through the area are protected from all hazards. All excavations must be back filled as soon as possible.

1.08 Hazardous Waste, Substances and Material Reporting

- **1.08.01** If Contractor discovers any hazardous waste, hazardous substance, petroleum or other deleterious material, including but not limited to any non-containerized commodity or material, on or adjacent to NMDOT's Property, in or near any surface water, swamp, wetlands or waterways, while performing any work under this Agreement, Contractor must immediately: (a) notify the NMDOT Rail Facilities Manager at (505) 827-5133, of such discovery: (b) take safeguards necessary to protect its employees, subcontractors, agents and/or third parties: and (c) exercise due care with respect to the release, including the taking of any appropriate measure to minimize the impact of such release.

1.09 Personal Injury Reporting

- **1.09.01** The NMDOT is required to report certain injuries as a part of compliance with Federal Railroad Administration (FRA) reporting requirements. Any personal injury sustained by an employee of the Contractor, subcontractor or Contractor's invitees while on the NMDOT's Property must be reported immediately (by phone mail if unable to contact in person) to the NMDOT's railroad representative in charge of the project. The Non-Employee Personal Injury Data Collection Form contained herein is to be completed and given to the Project Manager and to the NMDOT's railroad representative no later than the close of shift on the date of the injury.



NMDOT RAIL

NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

INFORMATION REQUIRED TO BE COLLECTED PURSUANT TO FEDERAL REGULATION. IT SHOULD BE USED FOR COMPLIANCE WITH FEDERAL REGULATIONS ONLY AND IS NOT INTENDED TO PRESUME ACCEPTANCE OF RESPONSIBILITY OR LIABILITY.

1. Accident City/St _____ 2. Date: _____ Time: _____
County: _____ 3. Temperature: _____ 4. Weather: _____

5. Social Security # _____

6. Name (last, first, mi): _____

7. Address: Street: _____ City: _____ St. _____ Zip: _____

8. Date of Birth: _____ and/or Age _____ Gender: _____

9. (a) Injury: _____ (b) Body Part: _____

10. Description of Accident (To include location, action, result, etc.):

11. Treatment:
- ? First Aid Only
 - ? Required Medical Treatment
 - ? Other Medical Treatment

12. Dr. Name _____ Date: _____

14. Dr. Address:
Street: _____ City: _____ St: _____ Zip: _____

15. Hospital Name: _____

16. Hospital Address:
Street: _____ City: _____ St: _____ Zip: _____

17. Diagnosis:

FAX TO NMDOT: (505) 827-5642

NOTICE TO CONTRACTORS

January 13, 1994

You are hereby advised that Form FHVA-1273, Required Contract Provisions - Federal Aid Construction Contracts is supplemented by the addition of the following:

"II. NONDISCRIMINATION

PREFERENCE EMPLOYMENT OF INDIAN TRIBES

Preference shall be given to members of the Indian Tribe in every aspect of employment including, without limitation of the foregoing, initial hiring, training, promotions, and in situations of termination and reductions in force.

This contract requirement is an expansion of the special provisions pertaining to the specific equal employment opportunity responsibilities for Contractors contained elsewhere in this contract and the provisions contained under FHVA-1273. It is the intent that preferential treatment will be given to Indians. The Contractor will be required to establish liaison for contact persons with local tribal employment offices. The tribal office will then assist contractors in providing Indians with skills and experience."

The above preferential clause will be interpreted to mean that the Contractor will be allowed to move in with his normal supervisory construction force and other specially experienced individuals. Indian preference in employment, training and promotions will be in effect for all other positions or classifications provided there are Indians available who can do the work required. Verification of the availability will be made with the local tribal office.

In addition to the Special Provision for submission of weekly payrolls, all contractors and subcontractors shall be required to submit one (1) additional certified copy of the project weekly payrolls to the state's project manager.

This Notice to Contractors will be deemed as supplemental to and not in conflict with 41 CFR 60-1.5(a)(6) which provides as follows.

"(6) Work on or near Indian Reservations---It shall not be a violation of the equal opportunity clause for a construction or nonconstruction contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation in connection with employment opportunities on or near an Indian reservation. The use of the word "near" would include all that area where a person seeking employment could reasonably be expected to commute to and from in the course of a work day. Contractors or Subcontractors extending such a preference shall not, however, discriminate among Indians on the basis of religion, sex, or tribal affiliation, and the use of such a preference shall not excuse a contractor from complying with the other requirements contained in this chapter. (Subsection 6, as added, effective February 17, 1977)."

NOTICE TO CONTRACTORS

Incorporated in this contract are three Special Provisions on Equal Employment Opportunity designated as PR-1273 Supplements. These are: (1) Specific Equal Employment Opportunity Responsibilities (23 USC 140); (2) Notice of Requirements for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246); and (3) Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246). This notice is to clarify the responsibilities for review of compliance and enforcement for these separate special provision requirements.

The first of the special provisions cited above covers the requirements for the equal employment opportunity program under Title 23 for which the New Mexico Department of Transportation (NMDOT) is responsible. The NMDOT performs the necessary compliance review and enforcement of this special provision which is applicable to all contractors holding Federal-Aid highway contracts.

The latter two special provisions are for the specific equal opportunity requirements for Executive Order 11246 which is the sole responsibility of the Office of Federal Contract Compliance Program (OFCCP), Department of Labor. Review and enforcement under these special provisions is performed by OFCCP.

OFCCP has, under Paragraph 8 of the Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246) recognized the Associated Contractors of New Mexico's Heavy Highway Affirmative Action Plan as meeting the provisions of that special provision and special provision (2) cited above. With this recognition, those contractors signatory to the ACNM Plan have been waived from individual review of OFCCP. However, OFCCP retains the right to review any such contractors whenever circumstances warrant. Also, contractors non-signatory to the ACNM Plan are subject to OFCCP review under EO 11246.

**REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS**

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60.29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under

this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. **EEO Officer:** The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. **Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. **Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. **Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. **Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are

applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar

with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor

will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions

of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein. Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b.(1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination, and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or

will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b (2) or 1.b (3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-

Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b.(1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3 a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly

rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

6. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 8, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

(2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is

evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1. Instructions for Certification – First Tier Participants:

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this

covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epils.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

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2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which

this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the

department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

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Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

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XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, 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, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specialty experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633 207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

SPECIAL PROVISION

SPECIFIC EQUAL EMPLOYMENT OPPORTUNITY RESPONSIBILITIES (23 U.S.C. 140)

1. GENERAL

- a. Equal employment opportunity requirements not to discriminate and to take affirmative action to assure equal employment opportunity as required by Executive Order 11246 and Executive Order 11375 are set forth in Required Contract Provisions (Form PR-1273 and Supplements) and these Special Provisions which are imposed pursuant to Section 140 of Title 23, U.S.C., as established by Section 22 of the Federal-Aid Highway Act of 1968. The requirements set forth in these Special Provisions shall constitute the specific affirmative action requirements for project activities under this contract and supplement the equal employment opportunity requirements set forth in the Required Contract Provisions. The initial measure of the Contractor's good faith efforts to comply with these Special Provisions shall be its efforts to meet the goals set forth in the "Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)" for minority and female participation expressed in percentage terms for the Contractor's work force in each trade on this project.
- b. The contractor will work with the New Mexico Department of Transportation and the Federal Government in carrying out equal employment opportunity obligations and in their review of his/her activities under the contract.
- c. The contractor and all his/her subcontractors holding subcontracts not including material suppliers, of \$10,000 or more, will comply with the following minimum specific requirement activities of equal employment opportunity: (The equal employment opportunity requirements of Executive Order 11246, as set forth in Volume 6, Chapter 4, Section 1, Subsection 1 of the Federal-Aid Highway Program Manual, are applicable to material suppliers as well as contractors and subcontractors.) The contractor will include these requirements in every subcontract of \$10,000 or more with such modification of language as is necessary to make them binding on the subcontractor.

2. Equal Employment Opportunity Policy

The contractor will accept as his operating policy the following statement which is designed to further the provision of equal employment opportunity to all persons without regard to their race, color, religion, sex, or national origin, and to promote the full realization of equal employment opportunity through a positive continuing program:

It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, or national origin. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, preapprenticeship, and/or on-the-job training.

3. Equal Employment Opportunity Officer

The contractor will designate and make known to the New Mexico Department of Transportation contracting officers an equal employment opportunity officer (hereinafter referred to as the EEO Officer) who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of equal employment opportunity and who must be assigned adequate authority and responsibility to do so.

4. Dissemination of Policy

- a. All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's equal employment opportunity policy and contractual responsibilities to provide equal employment opportunity in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:
 - 1) Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's equal employment opportunity policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.
 - 2) All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer or other knowledgeable company official covering all major aspects of the contractor's equal employment opportunity obligations within thirty days following their reporting for duty with the contractor.
 - 3) All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer or appropriate company official in the contractor's procedures for locating and hiring minority group employees.
- b. In order to make the contractor's equal employment opportunity policy known to all employees, prospective employees and potential sources of employees, i.e., schools, employment agencies, labor unions (where appropriate), college placement officers, etc., the contractor will take the following actions:
 - 1) Notices and posters setting forth the contractor's equal employment opportunity policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
 - 2) The contractor's equal employment opportunity policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

5. Recruitment

- a. When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be published in newspapers or other publications having a large circulation among minority groups in the area from which the project work force would normally be derived.
- b. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employees referral sources likely to yield qualified minority group applicants, including, but not limited to, State employment agencies, schools, colleges and minority groups organizations. To meet this requirement, the contractor will, through his EEO Officer, identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.

In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with equal employment opportunity contract provisions. (The U.S. Department of Labor has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended).

- c. The contractor will encourage his present employees to refer minority group applicants for employment by posting appropriate notices or bulletins in areas accessible to all such employees. In addition, information and procedures with regard to referring minority group applicants will be discussed with employees.

6. Personnel Actions

Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin. The following procedures shall be followed:

- a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.
- b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

- c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.
- d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of his avenues of appeal.

7. Training and Promotion

- a. The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.
- b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event the Training Special Provision is provided under this contract, this subparagraph will be superseded as indicated in Attachment 2.
- c. The contractor will advise employees and applicants for employment of available training programs and entrance requirement for each.
- d. The contractor will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

8. Unions

If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:

- a. The contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.
- b. The contractor will use best efforts to incorporate an equal employment opportunity clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, or national origin.
- c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the New Mexico Department of Transportation and shall set forth what efforts have been made to obtain such information.
- d. In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, or national origin, making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The U.S. Department of Labor has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the New Mexico Department of Transportation.

9. Subcontracting

- a. The contractor's attention is called to the Special Provision on Minority Business Enterprise in Federal-Aid Highway Construction.
- b. The contractor will use his best efforts to ensure subcontractor compliance with their equal employment opportunity obligations.

10. Records and Reports

- a. The contractor will keep such records as are necessary to determine compliance with the contractor's equal employment opportunity obligations. The records kept by the contractor will be designed to indicate:
 - 1) the number of minority and non-minority group members and women employed in each work classification on the project,

- 2) the progress and efforts being made in cooperation with unions to increase employment opportunities for minorities and women (applicable only to contractors who rely in whole or in part on unions as a source for their work force),
 - 3) the progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees, and
 - 4) the progress and efforts being made in securing the services of minority group subcontractors or subcontractors with meaningful minority and female representation among their employees.
- b. All such records must be retained for a period of 3 years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the New Mexico Department of Transportation and the Federal Highway Administration.
- c. The contractors will submit an annual report to the New Mexico Department of Transportation each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form PR 1391. If on-the-job training is being required by "Training Special Provisions", the contractor will be required to furnish form FHWA 1409.

**STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY
CONSTRUCTION CONTRACT SPECIFICATIONS*
(EXECUTIVE ORDER 11246)**

1. As used in these specifications:
 - a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
 - b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
 - c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941
 - d. "Minority" includes:
 - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan.

Standard EEO Specifications (6/27/06)

Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7 a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered Construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.
5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications. Executive Order 11246, or the regulations promulgated pursuant thereto.
6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

Standard EEO Specifications (6/27/06)

- a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
- b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organization's responses.
- c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.
- d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
- e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The contractor shall provide notice of these programs to the sources compiled under 7 b above.
- f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

Standard EEO Specifications (6/27/06)

- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
- i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screenings procedures, and tests to be used in the selection process.
- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's workforce.
- k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
- l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
- m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
- n. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
- o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

Standard EEO Specifications (6/27/06)

- p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
12. The Contractor shall carry out such sanctions and penalties for violations of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

Standard EEO Specifications (6/27/06)

14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.
15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

**NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO
ENSURE EQUAL EMPLOYMENT OPPORTUNITY *
(EXECUTIVE ORDER 11246)**

1. The Offeror's or bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set for herein.
2. The goals and timetables for minority and female participation, expressed in percentage terms for the contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Goals for female participation in each trade:

6.9%

Goals for minority participation for each trade:

38.3% - (SMSA Counties: Bernalillo and Sandoval)

45.9% - (Non SMSA Counties: Catron; Colfax; De Baca; Guadalupe; Lincoln, Los Alamos; McKinley; Mora; Rio Arriba; San Juan; San Miguel; Santa Fe; Socorro; Taos; Torrance; Valencia and Cibola)

49% - (Non SMSA Counties: Chaves; Dona Ana; Eddy; Grant; Hidalgo; Luna; Otero and Sierra)

19.5% - (Non SMSA Counties: Lea and Roosevelt)

11% - (Non SMSA Counties: Curry, Harding, Quay and Union)

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its federally involved and non-federally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in a 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall

Notice to Ensure EEO (10/27/83)

make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion date of the subcontract; and the geographical area in which the contract is to be performed.
4. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" means the geographical area described in the solicitation from which this contract resulted.

*THIS NOTICE SHALL BE INCLUDED IN, AND SHALL BE A PART OF, ALL SOLICITATIONS FOR OFFERS AND BIDS ON ALL FEDERAL AND FEDERALLY ASSISTED CONSTRUCTION CONTRACTS OR SUBCONTRACTS IN EXCESS OF \$10,000 TO BE PERFORMED IN GEOGRAPHICAL AREAS DESIGNATED BY THE DIRECTOR OF OFCCP. EXECUTION OF THE CONTRACT BY THE SUCCESSFUL BIDDER AND ANY SUBSEQUENT SUBCONTRACTS WILL BE CONSIDERED THE CONTRACTOR'S AND SUBCONTRACTOR'S COMMITMENT TO THE EEO PROVISIONS CONTAINED IN THIS NOTICE.

NEW MEXICO DEPARTMENT OF TRANSPORTATION
ON THE JOB TRAINING PROGRAM AND SPECIAL PROVISION

I. PROGRAM DESCRIPTION

A. Purpose

The New Mexico Department of Transportation (NMDOT) created its On the Job Training Program and Special Provision (OJT Program) to fulfill the Training Special Provision requirements of federal-aid construction contracts included in 23 CFR 230, Appendix B to Subpart A. The purpose of the OJT Program is to address the underrepresentation of minority and female workers in the construction trades through the assignment of OJT goals. To that end, the primary objective of the OJT Program is the training and upgrading of minorities and females to journeyman status on NMDOT federal-aid contracts.

B. Program Summary

The OJT Program fulfills its objective by: (1) fostering long-term relationships between contractors and trainees, (2) encouraging contractors to assist trainees in fully attaining journeyman status, and (3) offering contractors abundant flexibility in fulfilling their training obligations. The OJT Program assigns contractors an annual training goal based on past dollar amounts awarded to the contractor as an NMDOT federal-aid prime contractor.

Contractors may assign eligible trainees that are enrolled in an approved training program, as outlined in Section II A, to any construction project on which the contractor is a prime, including non-NMDOT projects. Contractors may also assign trainees to be trained by subcontractors on any project, so long as the prime contractor retains the primary responsibility for fulfilling its federal-aid training requirements.

Contractors shall make every effort to meet their OJT Program goals by enrolling minority and female trainees (i.e. by conducting systematic and direct recruitment through public and private sources likely to yield minority and female trainees) to the extent that such persons are available within a reasonable area of recruitment. When a contractor cannot meet its annual training goal with minorities and females, it is responsible for demonstrating its Good Faith Efforts taken to meet the goal. Examples of what actions constitute Good Faith Efforts are set forth in Section III below. NMDOT will make compliance determinations regarding the OJT Program based upon either attainment of the annual goal or the Good Faith Efforts to meet it.

No employee shall be employed as an apprentice or trainee in any classification in which he or she has successfully completed a training course leading to journeyman status or in which he or she has been employed as a journeyman. The contractor shall satisfy this requirement by including appropriate questions in the employment application or by other suitable means. Regardless of the method used, the

contractor's records shall document the findings in each case. Such records shall be available for inspection by authorized representatives of NMDOT and the Federal Highway Administration (FHWA).

The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the approved training program being utilized. When a specific ratio is not provided, the ratio of apprentices and trainees to journeymen expected to be on the contractor's work force during normal operations shall, pursuant to 23 CFR 230.111(c)(10), fall between 1:10 and 1:4.

C. Annual Training Goal

The NMDOT Office of Equal Opportunity Programs will notify contractors assigned an annual training goal prior to the beginning of the calendar year (January 1 to December 31) within which they must participate. Contractors are assigned an annual training goal based on the dollar amount awarded to the contractor as an NMDOT federal-aid prime contractor during the previous state fiscal year (July 1 through June 30). More specifically, each contractor cumulatively awarded ten million dollars or more as a prime contractor on NMDOT federal-aid projects during the previous state fiscal year is assigned and shall commit to train, certify and advance one trainee to journeyman worker status during and before the expiration of the calendar year. The trainee must begin training during the calendar year within which the contractor must participate and trainee time cannot "roll-over" from one calendar year to another for purposes of meeting the annual goal.

While NMDOT strongly encourages contractors to independently provide on the job training on their projects, only those contractors who have reached the above-mentioned threshold are required to participate in and are bound by the provisions of this OJT Program. When a contractor is not assigned an annual training goal but still utilizes trainees/apprentices on a federal-aid project, the contractor will not be reimbursed for training hours under the OJT pay item, but the contractor may pay the trainees/apprentices the wages allowed in the approved training program, which may be less than the minimum pay rate for the classification. The contractor is still required to use an approved training program, register its trainees in the program, pay trainees according to the program, and show trainees on its payrolls as required by FHWA-1273, Sections IV and V.

II. PROGRAM REQUIREMENTS

A. Use of Approved Training Program

NMDOT recognizes four types of contractor based training programs. Those programs are: contractor in-house training programs that have received prior approval from both FHWA and NMDOT; training programs approved in other states subject to proof of approval; the approved Workforce Development Program provided through the Associated Contractors of New Mexico (ACNM); and the New Mexico Department of Workforce Solutions' State Apprenticeship Council programs (e.g. union apprenticeships, if the contract employees are otherwise eligible). If a contractor wants to use a training program other than one of the four mentioned above, the contractor must have the program approved by NMDOT and FHWA prior to commencing work. All training programs must be administered in a manner consistent

with the equal employment obligations of federal-aid highway construction contracts. NMDOT reserves the right to request documentation that a program fulfills these obligations. Contractors must ensure that

each trainee does not exceed the maximum number of training hours required for the completion of the selected training program.

B. Wage Requirements

Contractors must pay each approved trainee at the appropriate percentage of journeyman's wage rate based on the approved training program and consistent with applicable State and Federal regulations and guidance.

C. Reporting Requirements

Contractors must submit the following documents to the administrator of the approved training program being utilized, the NMDOT Office of Equal Opportunity Programs, and, for NMDOT federal-aid projects, to the Project Manager:

1. Contractors shall complete and submit Form A-2201, Contractor OJT Enrollment Form, within seven business days of the contractor's intent to assign a trainee(s) to a project.
2. For NMDOT federal-aid projects, Contractors shall complete and submit form A-2203, OJT Program Labor Classification Request within seven business days of the contractor's intent to assign a trainee(s) to a project.
3. Contractors shall complete and submit Form A-2202, OJT Program Monthly Reporting Form, on or before the 10th of each month, reporting on the preceding month.

Contractors shall submit to the NMDOT Office of Equal Opportunity Programs an Annual Summary Report by January 20th of the following calendar year. The report must give an accurate account of all trainee hours; identifying each trainee by name, ethnicity and gender and identifying each project and/or contract and the trainee hours attributed thereto.

Contractors should also note that:

- a. Monthly reports submitted after January 10th of the following year will not be accepted or considered towards goal attainment for the previous calendar year.
- b. If a contractor did not attain its annual goal, it must submit, with its Annual Summary Report, documentation of its Good Faith Efforts to attain the goal (see Section III below).

Contractors should only submit paperwork for individuals accepted and enrolled in an approved training program as outlined in Section II A, and not for individuals participating in other training and/or apprenticeship programs.

D. Contractor Participation

The contractor's Equal Employment Opportunity Officer (EEO Officer) shall be responsible for monitoring and administering the trainees' progress. The EEO Officer shall serve as the point of contact for NMDOT representatives regarding information, documentation, and conflict resolution. The contractor shall furnish each trainee a copy of the Training Program and other documentation related to the training program. The contractor shall further make every reasonable effort to provide training that develops skills as required by the training program. The contractor shall furnish to each trainee, upon successful completion of their training program, a certificate showing the type and length of training satisfactorily completed.

E. Contractor Reimbursement

Except as otherwise noted below, NMDOT will reimburse the contractor 80 cents per hour of training given an employee on a State or Federal-aid project in accordance with an approved training program. Reimbursements will be made upon submission to and approval by the Project Manager of a request for change order with the properly completed OJT monthly reporting forms attached. Reimbursement will not be made for a trainee's hours that exceed the maximum number of training hours required for the completion of the selected classification in the training program.

III. Good Faith Efforts

If a contractor does not or can not achieve its annual training goal with female or minority trainees, it must produce adequate Good Faith Efforts documentation. Good Faith Efforts are those efforts designed to achieve equal opportunity through positive, aggressive, and continuous result-oriented measures. (23 CFR 230.409(g)(4)). Good Faith Efforts should be taken as trainee hiring opportunities arise. Whenever a contractor requests NMDOT approval of someone other than a minority or a female for credit towards its annual training goal, the contractor must submit documented evidence of its Good Faith Efforts to fill that position with a minority or female.

NMDOT will consider all contractors' documentation of Good Faith Efforts on a case-by-case basis, and take into account the following:

- Availability of minorities and females for training;
- The potential for effective training;
- Duration of the contract;
- Dollar value of the contract;

- Total normal work force that the average bidder could be expected to use
- Geographic location;
- Type of work;
- The need for journey level individuals in the area.

Good Faith Efforts may include, but are not limited to, documentation of efforts to:

- Contact minority and female employees to gain referrals on other minority and female applicants;
- Upgrade minority and female unskilled workers into the skilled classifications when possible;
- Accept applications at the project site or at the contractor's office;
- Review and follow up on previously received applications from minorities and females when hiring opportunities arise;
- Maintain evaluations that monitor efforts made to achieve diversity on federal-aid projects and the contractor's workforce in general (i.e. significant numbers of minorities and females employed on a company wide basis);

NMDOT may reject utilization of non-minority male trainees for credit toward meeting the annual goal if it determines that the contractor failed to make sufficient Good Faith Efforts to hire minorities or female trainees and/or the contractor failed to document or submit evidence of its Good Faith Effort to do so.

IV. NMDOT PROGRAM MONITORING

A. Site Visits

NMDOT may conduct periodic site visits to a contractor's worksite to review OJT Program compliance along with other contract compliance issues related to the project. NMDOT will make every effort to ensure minimal disruption to a contractor's work.

B. End of Year Audits and Sanctions for Non-Compliance

NMDOT will perform an end of year audit of each contractor to verify attainment of the annual OJT goal. If a contractor, through its Annual Summary Report, can demonstrate that it attained its annual OJT Program goal or made adequate Good Faith Efforts to do so, then NMDOT will determine that the contractor is in compliance with the OJT Program requirements.

If a contractor has neither attained its goal nor submitted adequate Good Faith Efforts documentation, NMDOT will issue a Show Cause Notice outlining its findings of non-compliance and providing its determination of sanctions attributed thereto. Within thirty (30) days of receiving the Show Cause Notice, the contractor may submit a written response to the Show Cause Notice providing argument and evidence in opposition to the NMDOT findings of non-compliance and/or its determination of sanctions

On The Job Training
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If a contractor fails to submit a written response to the Show Cause Notice within the specified period or the written response to the Show Cause Notice does not cause NMDOT to change its findings of non-compliance and/or its determination of sanctions, NMDOT will issue its Final Order to the contractor regarding the non-compliance and assessing sanctions.

Sanctions for non-compliance may include, but are not limited to: liquidated damages, suspension of any payment in whole or in part, termination or cancellation of contracts in whole or in part, and/or suspension or debarment of the contractor.

FOR MORE INFORMATION CALL OR WRITE:

New Mexico Department of Transportation
Office of Equal Opportunity Programs
1570 Pacheco Street, Suite A10
Santa Fe, New Mexico 87505
1-800-544-0936

SELECTED DBE (DBE) PROGRAM PROVISIONS DISADVANTAGED BUSINESS PARTICIPATION IN USDOT ASSISTED CONTRACTS

June 11, 2009

Objective:

The purpose of the DBE Program is to implement the provisions of 49 CFR Part 26, other pertinent regulations, and source legislation. The objectives are: (a) To ensure nondiscrimination in the award and administration of USDOT assisted contracts in the USDOT's highway, transit, and airport financial assistance programs; (b) To create a level playing field on which DBEs can compete fairly for USDOT-assisted contracts; (c) To ensure that USDOT's DBE program is narrowly tailored in accordance with applicable law; (d) To ensure that only firms that fully meet the eligibility standards specified in 49 CFR Part 26 are permitted to participate as DBEs; (e) To help remove barriers to the participation of DBEs in USDOT-assisted contracts; (f) To assist the development of firms that can compete successfully in the marketplace outside the DBE program; and (g) To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs; and (h) to comply with the New Mexico Procurement Code §13-1-28 through §13-1-199, NMSA 1978, as amended, and any applicable regulations thereto.

The New Mexico Department of Transportation (NMDOT) will strive to meet the annual State Goal for DBE participation in federal-aid construction and consultant design programs and activities in New Mexico. The long-range objective of the Department will be to establish a level playing field for DBE contractors to compete for federally assisted highway construction projects as prime contractors, subcontractors, design consultants, and other consultants. It is the intent of the NMDOT to provide opportunities to DBE firms so they can in time graduate from the DBE Program and perform as prime contractors and subcontractors without DBE Program assistance.

Statutory Authority:

The following is a brief history of the Regulations, which implement the DBE Program.

USDOT Regulations (49 CFR Part 23 and 26) published in the Federal Register, Volume 45, No.63 dated March 31, 1980 established a requirement that all recipients of Federal-Aid highway program funds establish a Minority Business Enterprise (MBE) Program. The regulations were applicable both to Federal-Aid construction and to its non-construction activities. USDOT published further regulations in the Federal Register, Volume 48, No. 141 on July 21, 1983. This regulation implemented Section 105(f) of the Surface Transportation Assistance Act (STAA) of 1982, which provided that not less than a fixed percentage of the amounts authorized to be appropriated under the Act should be expended with small business concerns owned and controlled by socially and economically disadvantaged individuals. USDOT published regulations in the Federal Register, Volume 52, No. 203 on October 21, 1987 implementing Section 106(c) of the Surface Transportation and Uniform Relocation Assistance Act (STURAA) of 1987.

As a result of the decision by the United States Supreme Court in Adarand Constructors Inc. v. Peña, 513 U.S. 1108, 115 S.Ct. 896, 103 L.Ed.2d 781 (1995), and its progeny in federal district courts across the country, USDOT promulgated new regulations to meet the strict scrutiny test

for affirmative action programs announced in Adarand. These new regulations, 49 CFR Part 26, which were published in the Federal Register, February 2, 1999, 64 Fed. Reg. 5095 repeal the former regulations found at 49 CFR Part 23. These regulations are effective March 4, 1999, and require each primary recipient of specified federal-aid, including NMDOT, to develop and implement a DBE Program consistent with Part 26 by September, 1999, as a condition to receiving federal-aid funding. The regulations observe a national aspirational goal of 10% DBE participation in federal-aid public works construction; require primary recipients to establish yearly overall goals based on local availability of DBEs ready, willing and able to participate in public works construction; require primary recipients to use race-neutral means to achieve annual DBE participation goals, and mandate size limits on certified DBEs.

USDOT's legal authority for 49 CFR Part 23 (as amended) and Part 26, includes sundry Executive Orders, 23 U.S.C. 324, 42 U.S.C. 2000d et seq., and 49 U.S.C. 1615, 47107, 47113, and 47123.

Policy Statement:

It is the policy of the New Mexico Department of Transportation, acting through the NMDOT's OEOP, to encourage and support the DBE Program and its objectives to the maximum extent possible. This rule will be circulated throughout the NMDOT, Construction Organizations, DBE and non-DBE business communities that perform work with the NMDOT and other interested parties.

The NMDOT and all recipients of USDOT-assisted contracts will not discriminate on the basis of race, color, national origin or sex in the award and performance of any USDOT-assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. The NMDOT and all recipients will further ensure that the NMDOT and/or all recipients of USDOT-assisted contracts will not discriminate in the development, implementation and administration of the DBE Program. Implementation of the DBE Program by the NMDOT is a legal obligation and failure to carry out its terms will be treated as a violation whereby sanctions may be imposed as provided for under 49 CFR Part 26. The DBE Program is accorded the same priority as compliance with all other legal obligations incurred by the NMDOT in its financial assistance agreements with USDOT.

No person will be excluded from participation in or denied the benefits of, or otherwise discriminated against in connection with the award and performance of any contract covered by this DBE Program or 49 CFR Part 26 on the basis of race, color, sex or national origin.

In administering the DBE Program, the NMDOT will not use criteria or methods that would have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, sex or national origin.

From time to time NMDOT will receive interpretations from USDOT, which will be binding on NMDOT, sub-recipients, and contractors.

Definitions:

AFFILIATION - has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR part 121, except as otherwise provided in 13 CFR part 121, concerns are affiliates of each other when either directly or indirectly one concern controls or has the power to control the other; or a third party or parties controls or has the power to control both; or an identity of interest between or among parties exists that affiliation may be found.

In determining whether affiliations exist, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and statutory cap on the participation of firms in the DBE program.

ALASKA NATIVE - a citizen of the United States who is a person of one fourth (1/4) degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof of a minimum blood quantum, any citizen whom a Native village or Native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.

ALASKA NATIVE CORPORATION (ANC) - any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the state of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, et seq.).

COMMERCIALY USEFUL FUNCTION (CUF) - means that a DBE is responsible for execution of a distinct element of the work of a contract or subcontract and carries out its responsibilities by actually performing, managing and supervising the work involved, or provides professional services.

COMPLIANCE - means that a recipient has correctly implemented the requirements of this part.

CONTRACT - means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them.

CONTRACT GOAL - means the percentage of DBE participation established by NMDOT, if required, for a USDOT- Assisted Contract.

CONTRACTOR - means one who participates, through a contract or subcontract (at any tier), in a USDOT-assisted highway, transit, or airport program.

DEPARTMENT - means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

DESIGN AND BUILD PROJECT DELIVERY SYSTEM - means a procurement process by which a using agency contracts with one firm who has responsibility for the design, construction and delivery of a project under a single contract with the using agency.

DESIGN CONSULTANT (OR OTHER CONSULTANTS) - means an individual, firm or

partnership that contracts with the NMDOT to provide services for engineering, surveying, environmental, hazardous materials, subsurface utility engineering, and other services which require a rigorous, logical, science based approach for data acquisition to be used in the development of NMDOT highway construction plans. Other consultants include providers of any other professional services funded with FHWA monies and FTA and FAA grant recipients receiving \$250,000 or more in aggregate.

DISADVANTAGED BUSINESS ENTERPRISE OR DBE - means a for-profit small business concern that is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and whose management and daily business operation are controlled by one or more of the socially and economically disadvantaged individuals who own it.

GOOD FAITH EFFORTS (GFE) - means efforts to achieve a DBE goal or other requirement of the DBE Program which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirements.

IMMEDIATE FAMILY MEMBER - means father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law or father-in-law.

INDIAN TRIBE - means any Indian tribe, band, nation, or other organized group or community of Indians, including any ANC, recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or are recognized as such by the state in which the tribe, band, nation, group, or community resides.

JOINT VENTURE - means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

LOSP - Liaison Outreach and Services Program - means a contractor who enters into Cooperative Agreements with chambers of commerce and trade associations to provide liaison services between the USDOT, its grantees, recipients, contractors, subcontractors and minority-owned and disadvantaged business enterprises.

NAICS - North American Industrial Classification System - replaces the Standard Industrial Classification Code (SIC) designation which best describes the primary business of a firm.

NATIVE HAWAIIAN - means any individual whose ancestors were natives, prior to 1778, of the area which now comprises the state of Hawaii.

NATIVE HAWAIIAN ORGANIZATION - means any community service organization serving Native Hawaiians in the state of Hawaii which is a not-for-profit organization chartered by the state of Hawaii, is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

NMDOT - means New Mexico Department of Transportation .

NONCOMPLIANCE - means that a recipient has not correctly implemented the requirements of 49 CFR Part 26.

OEOP - means Office of Equal Opportunity Programs.

OPERATING ADMINISTRATION (OA) - means any of the following parts of USDOT: the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), The Federal Transit Administration (FTA). The "Administrator" of any OA includes his or her designees.

OVER-CONCENTRATION - means a condition in which DBE firms are being utilized in certain types of work to the extent that non-DBEs are unduly burdened from participating in this same type of work.

PERSONAL NET WORTH - means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include the individual's ownership interest in an applicant or participating DBE firm; or the individual's equity in his or her primary place of residence. An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.

PRIMARY INDUSTRY CLASSIFICATION - means the six digit NAICS designation which best describes the primary business of a firm. The NAICS code designations are described in the North American Industry Classification Manual.

PRIMARY RECIPIENT - means a recipient to which USDOT financial assistance is given and passes some or all of it on to another recipient

PRINCIPAL PLACE OF BUSINESS - means the business location where the individuals who manage the firm's day-to-day operations spend most working hours and where top management's business records are kept. If the offices from which management is directed and where business records are kept are in different locations, the recipient will determine the principal place of business for DBE program purposes.

PROCUREMENT CODE - means §13-1-28 through §13-1-199, NMSA 1978, as amended and any applicable regulations thereto.

PROCUREMENT CODE REGULATIONS - means 1 NMAC 5.2, as amended.

PROFESSIONAL SERVICES - means the services of architects, archeologists, engineers, surveyors, landscape architects, medical arts practitioners, scientists, management and systems analysts, certified public accountants, registered public accountants, lawyers, psychologists, planners, researchers, construction managers and other persons or businesses providing similar professional services, which may be designated as such by a determination issued by the state purchasing agent or a central purchasing office.

PROGRAM - means any undertaking on a recipient's part to use USDOT financial assistance, authorized by the laws to which this part applies.

PROPOSAL - means an offer compiled and developed by an offeror in response to a Request for Proposal.

RACE-CONSCIOUS MEASURE - means a program that is focused specifically on assisting

only DBEs, including women-owned DBEs.

RACE-NEUTRAL MEASURE - means a program that is, or can be, used to assist all small businesses. For purposes of this part, race-neutral includes gender-neutrality.

READY, WILLING AND ABLE - means, for the purpose of setting annual DBE goals, in the context of a DBE or non-DBE business, that it has the necessary license to perform work on USDOT-assisted contracts in its home state, is not currently suspended or debarred, and has demonstrated its interest in performing work on USDOT-assisted contracts by submitting a bid, proposal, or quotation as a prospective prime contractor, subcontractor, supplier, trucker, consultant, or other relevant business entity, on a New Mexico USDOT-assisted contract within the current or two (2) previous federal fiscal years, or such shorter duration as established by the NMDOT.

RECIPIENT - means any entity, public or private, to which USDOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA, FHWA or FTA or who has applied for such assistance.

REGULAR DEALER - means a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business, if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealer's own distribution equipment will be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis. Packagers, brokers, manufacturer's representatives, or other persons who arrange or expedite transactions are not regular dealers.

REQUEST FOR PROPOSALS (RFP) - means all documents, including those attached or incorporated by reference, used for soliciting proposals.

RESPONSIBLE BIDDER - means a bidder who submits a responsive bid and who has furnished, when required, information and data to prove that his financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services, construction or items of tangible personal property described in the invitation for bids.

RESPONSIBLE OFFEROR - means an offeror who submits a responsive proposal and who has furnished, when required, information and data to prove that his financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services or items of tangible personal property described in the proposal.

RESPONSIVE BID - means a bid which conforms in all material respects to the requirements set forth in the invitation forbids. Material respects of a bid include but are not limited to price, quality, quantity or delivery requirements

RESPONSIVE OFFER - means an offer which conforms in all material respects to the requirements set forth in the request for proposals. Material respects of a request for a proposal include, but are not limited to, price quality, quantity, or delivery requirements.

SECRETARY - means the Secretary of the U.S. Department of Transportation or designee.

SERVICES - means the furnishing of labor, time or effort by a contractor not involving the delivery of a specific end product other than reports and other materials which are merely incidental to the required performance. "Services" includes the furnishing of insurance but does not include construction or the services of employees of a state agency or a local public body.

SET-ASIDE - means a contracting practice restricting eligibility for the competitive award of a contract solely to DBE firms.

SMALL BUSINESS ADMINISTRATION (SBA) - means the United States Small Business Administration.

SMALL BUSINESS CONCERN - means with respect to firms seeking to participate as DBEs in USDOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration Regulations implementing it (13 CFR Part 121) that also does not exceed the cap on average annual gross receipts specified in 49 CFR Part 26.65(b).

SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUAL - means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is –

An individual whom the NMDOT finds to be a socially and economically disadvantaged individual on a case-by-case basis.

Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged;

- (a) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
- (b) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
- (c) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
- (d) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;
- (e) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives islands, Nepal or Sri Lanka;

- (f) Women; and
- (g) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

SOFTWARE-The entire set of programs, procedures, and related documentation associated with a computer programs used for the purpose of reporting Contract/Labor compliance and diversity (DBE related data) information as designated by the Office of Equal Opportunity Programs (OEOP).

STATE GOAL - means the percentage of DBE participation in New Mexico USDOT Assisted contracts that the NMDOT expects absent the effects of discrimination. The NMDOT sets the state goal annually

TRIBALLY OWNED CONCERN - means any concern at least 51 percent owned by an Indian tribe as defined in this section.

UNIFIED CERTIFICATION PROGRAM (UCP) - means an entity that provides a one-stop shopping service to applicants seeking DBE certification. The entity must comply with all provisions of this rule concerning certification and nondiscrimination.

USDOT - means U.S. Department of Transportation.

USDOT-ASSISTED CONTRACT - means any contract between a recipient and a contractor (at any tier) funded in whole or in part with USDOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.

Pre-Bid:

Pre-bid services and Requests for Proposals, to inform the certified Disadvantaged Business Enterprises of contract opportunities will include, but not be limited to, the following:

All certified DBE's will be placed on the NMDOT's regular and/or electronic mailing list to receive Invitations for Bid, Plan Holders List, Requests or Proposals and other NMDOT procurement mailings.

Plans, Specifications, and Invitations for Bid will be available for inspection by certified DBE firms at the OEOP and the PSE Bureau of the NMDOT.

Requests for Proposals (RFP's) will be available for inspection by certified DBE firms at the OEOP and the Contracts Unit of the NMDOT.

Award of Contract Procedures:

The NMDOT Award of Contract Procedures will include, but not be limited to, the following:

The NMDOT will include appropriate DBE contract provisions, or summaries thereof, in the Plans, Specifications, Invitations for Bids, and Requests for Proposals and Contract Proposals for all Federal-Aid contracts. Selected DBE - Program Provisions - DBE Participation in USDOT-Assisted Contracts will be included in appropriate contracts.

For all projects using race-neutral measures, the following DBE forms, as appropriate, are required to be submitted for award of contract:

- (a) The Participating Contractor's and Consultant's Annual Profile Registration Form A-1012 is to be submitted to the OEOP annually
- (b) The Notice to Construction Contractors Bidder's List of Quoters for the DBE Program BL-DBE is to be submitted by all construction bidders with the contract bid at the time of the bid letting
- (c) The Design and Other Consultant Offeror's List- Form A-1013- is to be submitted by all consultants at the time of the proposal submittal
- (d) A fully executed Certification of Consultant or Offeror for DBE Annual State Goal Form A-1014 is to be submitted at the time a proposal is submitted

In the event projects use race-conscious measures, the following DBE forms, as appropriate, are required to be submitted for award of contract:

- (a) The Participating Contractor's and Consultant's Annual Profile Registration-Form A-1012- is to be submitted to the OEOP annually.
- (b) The Notice to Construction Contractors Bidder's List of Quoters for the DBE Program BL-DBE- is to be submitted by all construction bidders with contract bid at the time of the bid letting.
- (c) The Design and Other Consultant Offeror's List Form A-1013 is to be submitted at the time the proposal is submittal.
- (d) A fully executed Certification of Consultant or Offeror for DBE Annual State Goal Form A-1014 is to be submitted at the time a proposal is submitted.
- (e) For construction projects, the apparent low bidder will complete and sign Form A-585A-DBE A-1 at the time of the Bid Opening. All listed DBE firm(s) must be certified by the NMDOT prior to submission of Form A-585DBE A-1.
 - (1) The construction contract will be awarded to the lowest qualified and responsible bidder who gives written assurance to meet the established DBE contract goal or who can satisfactorily demonstrate good faith efforts why it cannot do so. Failure to meet the goal or demonstrate good faith efforts will render the bid non-responsive.
- (f) For design or other consultant proposals, all responsible offerors will complete and sign Form A-585B-DBE A-2 (Appendix L) and include it with other required documents of the offeror's "Proposal Package" upon successful negotiations for consulting services. All offeror's written assurance will be considered binding.
 - (1) The design or other consultant contract will be awarded to the best qualified and responsible offeror who gives this written assurance to meet the established DBE contract goal or who can satisfactorily demonstrate good faith efforts why it cannot do so. Failure to meet the goal or demonstrate good faith efforts will

render the consultants proposal non-responsive.

- (2) The design consultant and other consultants will be selected in accordance with the requirements of NMSA 1978, § 13-1-115 and NMSA 13-1-120.
- (g) The information required by Form A-585 DBE A-1 and form A-585B DBE A-2 must be complete and accurate in every detail and in final form at the time it is submitted to the NMDOT for approval. This form will be evaluated prior to the award of the contract. Failure to submit either document in proper form and accuracy will render the bid or proposal non-responsive. All bidders or offerors are required to list on Form A-585 DBE A-1 or Form A-585B-DBE A-2, the following information:
 - (1) The names of DBE subcontractors/subconsultants and suppliers that will participate in the contract;
 - (2) A description of the work that each DBE will perform;
 - (3) The dollar amount of the participation of each DBE firm listed; and
 - (4) Written documentation of the bidder's or offeror's commitment to use a DBE subcontractor/subconsultant/supplier whose participation it submits to meet the DBE contract goal;
 - (5) If the contract goal is not met, evidence of good faith efforts must be documented and submitted with appropriate Form A-585- DBE A-1 or Form A-585B A-2.

Good Faith Efforts (GFEs):

Good Faith Efforts. When race conscious measures are used and a project goal is established NMDOT will consider the quality, quantity, and intensity of the different kinds of efforts that the contractor or bidder or offeror has made. The efforts employed by the contractor or bidder or offeror should be those that one could reasonably expect a contractor or a bidder or offeror to make if they were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere pro forma efforts are not good faith efforts to meet the DBE contract requirements. On the other hand, NMDOT will count bona fide good faith effort making a determination to award a contract.

The following is a list of types of actions, which the NMDOT will consider as part of the bidder's or offeror's good faith efforts to obtain DBE participation. This list is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive, as other factors or types of efforts may be relevant in appropriate cases. This demonstration should include, but not be limited to, the following:

- (a) Soliciting through all reasonable and available means (e.g. attendance at pre-bid, pre-proposal meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder or offeror must solicit this interest within sufficient time to allow DBEs to respond to the solicitation. The bidder or offeror must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

- (b) Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor or prime consultant might otherwise prefer to perform these work items with its own forces.
- (c) Providing interested DBEs with adequate information about the construction plans, construction specifications, design scope of work and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- (d) Negotiating in good faith with interested DBEs. It is the bidder's or offeror's responsibility to make a portion of the work available to DBE subcontractors, subconsultants and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors, subconsultants and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses and telephone numbers of DBEs that were considered, a description of the information provided regarding the construction plans and specifications for the work selected for subcontracting or requirements and design scope of work of the RFP and subconsulting; and evidence as to why additional agreements could not be reached for DBEs to perform the work. A bidder or offeror using good business judgment would consider a number of factors in negotiating with subcontractors including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's or offeror's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of the prime contractor or consultant to perform the work of a contract with its own organization does not relieve the bidder or offeror of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable. Excessive or unreasonable will be deemed 10% or more than any bid received for that item of work by a non DBE. Prime consultants will evaluate subconsultants on quality of submittal of subconsultant services. Prime consultants are not required to accept subconsultants offers of lower quality with respect to other subconsultants offers.
- (e) Prime contractors and consultants will not reject DBEs as being unqualified without sound reasons which will be based on a thorough investigation of their capabilities. The contractor's or consultant's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids or proposals in the contractor's or design consultant's efforts to meet the project goal.
- (f) Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient, contractor or consultant.
- (g) Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- (h) Effectively using the services of available minority/women community organizations; minority/women contractor's groups; local, state, and Federal minority/women business

assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

In determining whether a bidder or offeror has made good faith efforts, the NMDOT may take into account the performance of other bidders or offerors in meeting the contract. For example, when the apparent successful bidder or offeror fails to meet the contract goal, but others meet it, the NMDOT may reasonably raise the question of whether with additional reasonable efforts; the apparent successful bidder or offeror could have met the goal. If the apparent successful bidder or offeror fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders or offerors, the NMDOT may view this, in conjunction with other factors, as evidence of the apparent successful bidder or offeror having made good faith efforts.

If the NMDOT determines that the contractor or bidder or offeror has failed to meet the requirements outlined in paragraph 20.3.1, the NMDOT will, provide the contractor or bidder or offeror the opportunity for administrative reconsideration before awarding the contract or proposal. As part of this reconsideration, the following guidelines apply:

- (a) The contractor or bidder or offeror will have the opportunity to provide written documentation or argument concerning the issue of whether the bidder or offeror met the DBE contract goal or made adequate good faith efforts to do so.
- (b) The NMDOT's decision on reconsideration will be made by an official who did not take part in the original determination that the bidder or offeror failed to meet the DBE contract goal or make adequate good faith efforts to do so.
- (c) The contractor or bidder or offeror will have the opportunity to meet in person with the NMDOT's reconsideration official to discuss the issue of whether it met the DBE contract goal or made adequate good faith efforts to do so.
- (d) The NMDOT will send a written decision on the reconsideration, explaining the basis for finding that the contractor or bidder or offeror did or did not meet the DBE contract goal or make adequate good faith efforts to do so.
- (e) The result of this reconsideration process is not administratively appealable to the USDOT.

If the NMDOT lets a master contract for "design-build" or "turnkey" contract or similar legally binding instrument, to a contractor or consultant, who in turn lets subsequent subcontracts for the work of the project, the NMDOT may establish a DBE contract goal for the project. The master contractor or consultant then establishes DBE contract goals, as appropriate, for the subcontracts it lets. The NMDOT will maintain oversight of the master contractor's or consultant's activities to ensure that they are conducted consistent with the requirements of the NMDOT's DBE Program and 49 CFR Parts 23 (as amended) and 26.

The NMDOT requires that the successful bidder or offeror, or subsequently the prime contractor or consultant, not terminate for convenience a DBE subcontractor or subconsultant listed in Form A-585A DBE A-1, or A-585B DBE A-2 or an approved substitute DBE firm, and then perform the work of the terminated subcontract with its own forces or those of an affiliate, without the NMDOT's prior written consent See the Termination / Substitution / Replacement of Listed DBE Firms for projects having Race conscious Measures in paragraph 27 of this

program.

- (a) When a DBE subcontractor or subconsultant is terminated, or fails to complete its work on the contract for any reason, the NMDOT will require the prime contractor to make good faith efforts to find another DBE subcontractor or subconsultant to substitute for the original DBE. These good faith efforts will be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal established.
- (b) The NMDOT will apply the requirements of this section to DBE contractors or bidders or offerors for prime contracts. In determining whether a DBE contractor or bidder or offeror for a prime contract has met a contract goal, NMDOT will count the work the DBE has committed to performing with its own forces as well as the work that it has committed to be performed by DBE subcontractors and DBE suppliers.

Counting DBE Participation Toward Goals:

When a DBE participates in a contract, only the value of the work actually performed by the DBE will be credited towards DBE project goals.

The entire amount of the portion of a construction contract or design or other consultant contract that is performed by the DBE's own forces will be credited. Included are the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor or subconsultant purchases or leases from the prime contractor or its affiliate).

Credit will be allowed for the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services or for providing bonds or insurance specifically required for the performance of a USDOT-assisted contract. Credit will be allowed for fees considered reasonable and not excessive as compared with fees customarily allowed for similar services.

When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted only if the DBE's subcontractor or subconsultant is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward meeting the DBE project goal.

When a DBE performs as a participant in a joint venture, credit for a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces will be allowed.

Credit to a DBE contractor will be allowed only if the DBE is performing a commercially useful function on the contract.

A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful

function, an evaluation will be made of the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work and other relevant factors.

A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, an examination of similar transactions, particularly those in which DBEs do not participate will be performed.

If a DBE construction contractor does not perform or exercise responsibility for at least the percentage determined in the NMDOT's Standard Specifications for Highway and Bridge Construction of the total cost of its contract with its own forces, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that the DBE is not performing a commercially useful function.

If a DBE design consultant or other consultant does not perform or exercise responsibility for at least 30% of the total cost of its contract with its own forces, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that the DBE is not performing a commercially useful function.

When a DBE is presumed not to be performing a commercially useful function as provided above, the DBE may present evidence to rebut this presumption. It may be determined that the firm is performing a commercially useful function given the type of work involved and normal industry practices.

Decisions concerning commercially useful function matters are not administratively appealable to USDOT.

To determine whether a DBE trucking firm is performing a commercially useful function, the NMDOT will evaluate the amount of work subcontracted, industry practices and other relevant factors.

The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of counting DBE participation.

The DBE must itself own and operate at least one fully licensed, insured and operational truck used on the contract. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures and operates using drivers it employs.

The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.

The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives

as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.

A lease arrangement or agreement will indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks will display the name and identification number of the DBE.

Prior to beginning work on a contract, the DBE must submit valid lease agreements to the NMDOT on leased trucks and written agreements with owner/operators. Whether the agreement is with an owner/operator or trucks hired from a trucking firm, the agreement must include the:

- (a) Operator's Name;
- (b) Social Security number;
- (c) Federal Identification Number (FIN);
- (d) Cab Card Number of the Truck;
- (e) Description of the Truck and the Method of Payment

Credit for DBE Truck Owner/Operators:

An Owner/Operator must own one (1) fully operational truck and operate it himself/herself for hire. The individual must possess a Commercial Driver's License and the truck must have a warrant certificate to run for hire. If required, the firm must have the appropriate operating license and insurance. The individual must be an independent owner/operator and cannot be in an employee/employer relationship with a prime contractor.

Owner/Operator trucks may be utilized by the prime contractor to meet a DBE goal and must be covered by a fully executed written agreement.

For each owner/operator to be credited, the contractor or subcontractor must submit to the NMDOT an agreement that includes or has attached the following information:

- (a) Operator or Owner/operator's name;
- (b) Social Security Number;
- (c) Copy of Vehicle registration receipts;
- (d) Current Vehicle license numbers;
- (e) Truck Numbers;
- (f) Method of payment (hour, ton, load).

The prime contractor may count towards its DBE participation; the total dollar value paid to an owner/operator for the haul. Payments to owner/operators must be certified to by the prime contractor prior to finalizing the project or as work progresses, as required by the NMDOT. If required, the owner/operators must be shown on the prime contractor's certified payroll.

Termination/Substitution/Replacement of DBE Firms for Projects Having Race-Conscious Measures:

The NMDOT requires that the prime contractor or consultant not terminate for convenience a DBE subcontractor or subconsultant or an approved substitute DBE firm, and then perform the work of the terminated subcontract with its own forces or those of an affiliate, without a justification letter written to the NMDOT.

If a DBE subcontractor or subconsultant is terminated, or the DBE firm fails to complete its work on the contract for any reason, the NMDOT requires the prime contractor or consultant to make good faith efforts to find another certified DBE subcontractor or subconsultant to substitute for the original DBE firm. These good faith efforts will be documented and directed at finding another certified DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to count DBE participation.

If a DBE subcontractor or subconsultant is unwilling or unable to perform the work to meet the established goal for the prime contractor or consultant, the prime contractor or consultant will immediately notify the NMDOT's appropriate project manager in writing, and request to be relieved of meeting the established goal with the named DBE. The prime contractor or consultant Department will include with this request a justification and the efforts made to deal with the named DBE.

If the prime contractor's or consultant's request to be relieved is approved by the NMDOT, and a DBE contract goal shortfall exists, the prime contractor or consultant will immediately attempt to obtain sufficient DBE participation by subcontracting or subconsulting with other certified DBEs.

If the prime contractor or consultant is unable to replace the DBE with another or other certified DBE firms, the prime contractor or consultant will evaluate the remaining items of work and will document and submit the good faith efforts made to subcontract or subconsultant work with certified DBEs or to purchase materials or supplies from certified DBE suppliers for such remaining items. The NMDOT may allow a DBE contract goal waiver, adjust the DBE goal in accordance submitted and accepted good faith efforts, or assess construction contract liquidated damages or design contract liquidated damages as may be appropriate, depending on the individual project's overall circumstances.

Prompt Payment Mechanism to Subcontractors:

To ensure that all obligations under contracts awarded to DBEs are met, the NMDOT will review the construction contractor's or design consultant's and other consultant's DBE involvement efforts during the performance of the contract. Prime contractors or design consultants and other consultants will pay all subcontractors or subconsultants their respective subcontract amount by electronic transfer, if available, for NMDOT undisputed acceptable work within ten

(10) calendar days after the contractor or consultant receives payment for such work from the NMDOT. The construction contractor will be required to submit information as provided for in the supporting software system by indicating when payments made to DBEs and non-DBEs within ten (10) calendar days after the contractor receives payment for such work. A prime contractor, design consultant or other consultant will be required to fully document any alleged disputes with its subcontractors or subconsultants. The prime contractor, design consultant, or other consultant will ensure that all situations in which regularly scheduled payments are not made to subcontractors or subconsultants are reported to the NMDOT. If the prime contractor, design consultant, or other consultant is found to be in violation or fails to abide by the prompt payment mechanisms, the NMDOT will impose sanctions as stated under paragraph 30 Compliance Procedures. The prime contractor, design consultant, or other consultant will further be required to release retain age payments to the subcontractors or subconsultants within thirty (30) calendar days of satisfactory completion of the entire subcontractor's or sub consultant's work and final payment of such work by the NMDOT.

Record Keeping Requirements:

The prime contractor or consultant will keep such records as necessary to ensure compliance with its DBE utilization obligations.

As requested, the prime contractor or consultant will submit all subcontracts and other financial transaction documentation executed with DBEs in such form, manner and content as prescribed by the NMDOT.

All such records must be retained by the prime contractor or consultant for at least three (3) years after project acceptance by the FHWA following the completion of the contract. These records will be available for inspection by the NMDOT, the FHWA, the USDOT or other appropriately sanctioned New Mexico State Agencies or Federal Agencies or Departments.

The prime contractor's or design consultant's or other consultant's DBE liaison officer or designee will be responsible for ensuring DBE's complete Form A-644, Disadvantage Business Enterprise (DBE) Participation, and submit the form to the NMDOT, OEOP.

The NMDOT will conduct at a minimum an annual audit on selected construction and consultant projects to verify actual participation reported on Form A-644 Disadvantage Business Enterprise (DBE) Participation.

The NMDOT will maintain, provide data and monitor DBE participation through the following:

Any information related to the operation of NMDOT's DBE Program as directed by USDOT administration.

NMDOT will create and maintain a Participating Contractor or Consultant Annual Profile Registration list consisting of all firms bidding on prime construction and prime consultant design contracts and bidding on quoting as subcontractors and subconsultants, suppliers on USDOT-assisted projects. For every firm, the following information will be annually collected and maintained:

- (a) Firm's name

- (b) Firm's address (including phone, fax and e-mail)
- (c) Race/Gender
- (f) Firm's status as a DBE or non-DBE
- (g) Age of firm
- (h) The annual gross receipts of firm
- (i) Primary NAICS Codes
- (j) Secondary NAICS Codes

A Notice to Construction Contractors Bidders List of Quoter's and Design or Other Consultant Offeror's List of Quoters will be one method used in determining the availability of DBE and non-DBE firms; and therefore the relative availability of ready, willing and able DBEs, for the purpose of establishing and monitoring the NMDOT's state goal.

The NMDOT will require all construction bidders to submit Form BL-DBE-Bidders List of Quoters at the bid letting. Failure to submit this form will render the bidder non-responsive.

The NMDOT will require all design or other consultant offeror's to submit the Design or Other Consultant Offeror's List of Quoters Form. No A-1013 at the time of submittal of the offeror or other consultant proposal. Failure to submit this form will render the offeror's or other consultant's proposal non-responsive.

Compliance Procedures:

Whenever the NMDOT believes the construction contractor, design consultant or other consultant, or any subcontractor or supplier on a USDOT-assisted contract may not be operating in compliance with the terms, conditions or requirements of this DBE Program, including but not limited to, encouraging fronting, brokering or the circumstance of a DBE not performing a commercially useful function as defined, the NMDOT will conduct an investigation. If it is found that the construction contractor, design consultant or other consultant, any subcontractor or supplier is not in compliance with the DBE Program, the non-compliant party will be notified in writing by the NMDOT. A compliance conference to discuss the area(s) of non-compliance may be held between the NMDOT and the non-compliant party or parties. In the event that the non-compliant party or parties fails or refuses to perform in compliance with the DBE Program or these Selected DBE Program Provisions, a "Notice of Non-Compliance" will be transmitted. If the non-compliant party or parties corrects the deficiencies, the "Notice of Non-Compliance" will be rescinded and the party or parties will be notified as to compliance. If the deficiencies are not corrected, the NMDOT will initiate administrative action against the non-compliant party or parties, which may include but not be limited to;

- (a) Termination of the contract.
- (b) For construction, withholding an appropriate percentage of partial payments pursuant to Section 109 of the Standard Specifications for Highway and Bridge Construction. This appropriate percentage may be the amount of any proposed monetary sanction.

- (c) Initiation of appropriate debarment or decertification proceedings.
- (d) Referral of any unlawful actions to the appropriate enforcement agencies.
- (e) Other actions as appropriate, at the discretion of the NMDOT.

Recipient/Contractor Assurances:

Each contract the NMDOT enters into with a construction contractor, design consultants, other consultants or recipient on a USDOT-assisted project will ensure that such contract and subcontracts Department will include the following assurance:

Recipient will not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR part 26. The NMDOT will take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and the administration of DOT assisted contracts. The NMDOT's DBE Program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program a legal obligation and failure to carry out its terms will be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the USDOT may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

The contractor/sub recipient or subcontractor will not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor will carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as recipient deems appropriate.

NOTICE TO CONTRACTORS

Approved Products List (APL)

Products used on New Mexico Department of Transportation (NMDOT) Projects must be approved by the NMDOT's Product Evaluation Program and listed on the NMDOT's Approved Products List (APL).

The Contractor's Bid Item Unit Price for the Project shall be deemed to rely on the use of the Products listed on the APL. The Contractor shall comply with all APL procedures required by the hyperlink below.

Link: <http://dot.state.nm.us/en/APL.html>

As used in this notice, "Product" means any manufactured item, material, traffic operational device or other feature used in the maintenance or construction of a NMDOT project. All Products must meet requirements found in the current edition of the "New Mexico State Department of Transportation Standard Specifications for Highway and Bridge Construction" and as may be amended by the current Supplemental Specifications, Special Provisions, Standard Drawings or Price Agreement Specifications at the time of Bid.

Approval to use a non-APL Product will not be granted by the Project Manager. The Contractor shall remove any non-APL Product. Removal and replacement will be made at the sole expense of the Contractor if a non-APL Product is used. Any disruption to the Project schedule related to the Contractor's use of a non-APL Product is solely the Contractor's responsibility and no additional contract time will be granted.

Products as defined in the NMDOT AD 206, Directive 4.08 (a-g) may not be required to be approved by the Product Evaluation Program. The Product Evaluation Engineer will make final determination on which Products meet these criteria. Products not on the APL and not addressed by AD 206 will be evaluated consistent with the processes described in the above hyperlink.

NOTICE TO CONTRACTORS

May 14, 2014

SPECIALTY ITEMS

Reference is made to New Mexico Department of Transportation's 2014 Edition of the Standard Specifications for Highway and Bridge Construction, Subsection 101.4 – Terms and Definitions. The following is provided as clarification of the definition of "Specialty Items":

The cost of Work, identified as Specialty Items, may be deducted from the Total Bid Amount before computing the Work required to be performed by the Contractor and will not be used in determining the 40% requirement noted in Section 108.1 - SUBCONTRACTING. The Contractor shall obtain the Project Manager's Approval to Subcontract Specialty Items prior to starting Work.

For the purpose of this notice, all Technician Training and Certification Program (TTCP) requirements for testing of materials shall be considered a Specialty Item and shall require a Subcontract but will not be used in the determination of the 40% requirement noted in Section 108.1 - SUBCONTRACTING.

NOTICE TO CONTRACTORS

March 7, 2014

Professional Services

Reference is made to New Mexico Department of Transportation's 2014 Edition of the Standard Specifications for Highway and Bridge Construction, Subsection 101.4 – Terms and Definitions. The following has been added to the definition for Professional Service:

A Professional Service provider is not considered a Subcontractor unless Work is performed within the Project limits.

A Professional Service provider shall be pre-qualified in accordance with NMAC 18.27.5 when utilized as a Subcontractor as indicated above.

NOTICE TO CONTRACTORS

November 26, 2013

Subcontractor Prompt Payment Provisions, Clarification of Good Cause and Prohibition of Cross-Project Offset

Pursuant to 49 CFR 26.29, as implemented by Section 108.1, paragraph 6 of the New Mexico Department of Transportation Standard Specifications and Notice to Contractors "Selected DBE(DBE) Program Provisions Disadvantaged Business Participation in USDOT Assisted Contracts, June 11, 2009, "Prompt Payment Mechanism to Subcontractors", Contractors SHALL pay Subcontractors and Suppliers for satisfactory performance of their contracts no later than seven (7) Days from receipt of each Progress Payment the Department makes to the Contractor. The Contractor SHALL ensure the Subcontractor or Supplier RECEIVES payment within the above-mentioned timeline.

A Subcontractor's or Supplier's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished, documented and Accepted by the Department. When the Department makes an incremental Acceptance of a portion of the Work, the Work of a Subcontractor or Supplier covered by that Acceptance is deemed to be satisfactorily completed, triggering the Contractor's obligation to promptly pay for that portion of the Work.

The Contractor has the burden of proving compliance with these prompt payment provisions and SHALL do so through its timely B2GNow reporting obligation. The Department may recognize supporting documentation of such payment in one or more of the following forms: (1) proof of the timely deposit of funds into the Subcontractor's or Supplier's bank account, (2) proof of hand delivery of timely payment to the Subcontractor or Supplier, or (3) proof of mailing payment to the Subcontractor or Supplier, postmarked no less than three (3) Days prior to the expiration of the seven (7) Day period.

The ONLY good cause recognized by the Department to excuse a payment beyond the timing set in Section 108.1, paragraph 6, is a claim concerning the Subcontractor's or Supplier's Work. Within a project, the Contractor may only withhold a Subcontractor's or Supplier's payment for Work undisputed and Accepted by the Department upon proof of a claim between the Contractor and Subcontractor for the work at issue. Such proof must be submitted in accordance with Contract provisions, including but not limited to the Notice to Contractors, "Selected DBE (DBE) Program Provisions Disadvantage Business Participation in USDOT Assisted Contracts". The Contractor has the burden of proof to support the Contractor's assertion of good cause and must submit verifiable explanation and proof of the claim between the parties to the Project Manager within the same timeframe for prompt payment, seven (7) Days.

The Contractor is further advised that due to recent federal (FHWA) interpretations of 49 C.F.R Part 26, concerning prompt payment obligations to Subcontractors and Suppliers,

the Department can no longer Accept cross-project offsets as "good cause" excusing untimely payment for undisputed Accepted Work. As a result, the Contractor's contract with Subcontractors or Suppliers shall NOT contain any provision that allows the Contractor to withhold payment from the Subcontractor or Supplier as a result of the Subcontractor's or Supplier's performance on separate contract(s). Any such provision will be without effect, and shall NOT provide good cause excusing a failure to make prompt payment in accordance with the Contract.

This Notice does not alter the sole discretion of the Office of Equal Opportunity Programs to make good cause determinations concerning Contractor prompt payment matters.

NOTICE TO CONTRACTORS

October 23, 2013

Cooperation With Utilities

This work shall be considered incidental to the completion of the project and no separate measurement or payment will be made.

Contractors shall comply with their legal obligation to follow all of the NM One-Call provisions Chapter 62 Article 14 NMSA 1978 - Excavation Law. Those provisions can be located at:

[http://www.nmprc.state.nm.us/transportation/pipeline/docs/Excavator%20Manual%202013-Eng Web.pdf](http://www.nmprc.state.nm.us/transportation/pipeline/docs/Excavator%20Manual%202013-Eng%20Web.pdf).

Specific to those provisions are the requirements for an excavator to preserve line location markings or provide an offset mark before obliterating a locate mark. Also included in those provisions are restrictions on the appropriate use of emergency line locates. Specifically, an emergency is defined as an excavation that must be performed due to circumstances beyond the control of the excavator (UFO) and that affects public health, safety or welfare. Additionally, an emergency locate request should not be used to circumvent poor job planning or economic consequences. Abuse of emergency location requests is a violation of the excavation law and is subject to significant administrative fines.

If a Contractor's activities destroys, obliterates, covers or in any way alters utility markings put in place by the NMDOT (or by a third party on behalf of the NMDOT), the Contractor shall ensure that those line markings are reestablished before they begin or any Sub-Contractor to them (including tiered Sub-Contractors) begins work in the affected area. The Contractor shall either re-mark the utility alignments or provide offset markings to the utility alignment that clearly define the utility alignment. The Contractor shall both photo-document the utility markings in their construction area prior to disturbing those markings and photo-document the remarked utility alignment or the offset markings to ensure accuracy to the original markings. Photos will clearly identify distances and/or recognizable features needed to ensure re-marks or offset marks are accurate.

If, as a result of failure by the Contractor or Sub-Contractor to accurately reestablish previously placed line markings damage occurs to any NMDOT-owned utility infrastructure (including but not limited to electrical service lines, DSL lines, and fiber optics communication lines, associated conduits/pull boxes/manholes, pull tapes and locate wires), the Contractor shall be responsible for all associated repair costs. All damaged infrastructure will be repaired as an emergency repair (within 24-hours), and shall be in accordance with NMDOT standards and specifications. In addition, any delays associated with the project schedule as a result of repairing such damage shall be absorbed by the Contractor not by the project.

Because utility clearance is directly associated with the Contractor's project activities, costs to repair any damage to NMDOT-owned utilities from failing to comply with the provisions of NM One Call can, and if necessary will, be recovered from the Contractor's project performance bond. Recoverable expenses shall also include any costs incurred by the Department while performing emergency line locates resulting from the Contractor's request of such locates, if those requests are not consistent with the definition established by NM One-call provisions.

NOTICE TO CONTRACTORS

Work Zone Safety and Mobility Rules October 13, 2011

In accordance with 23 CFR 630 Subpart J-Work Zone Safety and Mobility, the following Memorandum establishes requirements to be implemented and provides guidance for systematically addressing the safety and mobility impacts of work zones, and developing strategies to help manage these impacts on highway projects.



MEMORANDUM

To: All Contractors working on NMDOT and federally supported projects for NMDOT
From: Alvin Dominguez PE, Cabinet Secretary NMDOT
Date: June 6, 2011
RE: Work Zone safety and Mobility Rules

Susana Martinez
Governor

Alvin C. Dominguez, P.E.
Cabinet Secretary

Commissioners

Pete Rahn
Chairman
District 3

Debra Hicks
Vice Chairman
District 2

Dr. Kenneth White
Secretary
District 1

Ronald Schmeits
Commissioner
District 4

Butch Mathews
Commissioner
District 5

Jackson Gibson
Commissioner
District 6

NMDOT's policy is to plan, design, construct and maintain highways while providing for the safe and efficient movement of all modes of transportation through or around a temporary traffic control zone and to ensure safety of the workers (both NMDOT and contractor). The goal of this policy is to promote a commitment to implement the requirements of the Work Zone Safety and Mobility Policy (23 CFR 630 Subpart J) by:

1. Providing safe work zones for workers and motorists.
2. Reducing the number of crashes and deaths in work zones
3. Improve training for all project staff involved in plan development and construction administration related to work zones
4. Improve work zone procedures over time by using knowledge and observations gained from past work zones.
5. Develop and implement Transportation Management (TMP's) for work zones.

In order for NMDOT to implement this policy, NMDOT is reaching out to all contractors to communicate our policy for "Federal Highway Administration 23 CFR Part 630 Work Zone Safety and Mobility Rule" NMDOT's policy is in the form of design directive to comply with the rules. They are as follows

1. IDD-2009-2 Work Zone Traffic Control

http://nmshtd.state.nm.us/upload/images/Contracts_Unit/IDD-2009-02.pdf

2. IDD-2009-05- Temporary Traffic Control Devices Rule- Subpart - K

http://nmshtd.state.nm.us/upload/images/Contracts_Unit/IDD-2009-05.pdf

Strict compliance to NMDOT/MUTCD policies is required by all contractors working on NMDOT and Local Government projects. In addition to compliance of NMDOT/MUTCD polices, all contractors shall adhere to Section 618 "Traffic Control Management", Section 702 "Construction Traffic Control Devices" of the NMDOT Standard Specifications and all applicable Section 700's of the Contract Special Provisions for all NMDOT projects.

As the result of our design directives several key points are emphasized:

- "Truth in signing" program and policy
- Quality of traffic control devices to follow NMDOT quality standards
- Training and certification for traffic control Design Specialists, technicians, and supervisors
- Proper documentation and maintenance of the traffic control diary
- Improve worker visibility
- Adherence to NMDOT policy for positive protection devices
- Proper installation and maintenance of temporary traffic control devices during construction
- Positive protective barriers between workers and the motorized traveling public
- Safe entry/exit for work vehicles and equipment
- Use of uniformed law enforcement

NMDOT recognizes the importance of working with our contractors to provide safe work zones for workers and the traveling public. It is imperative that all contractors working on NMDOT and Local Government Projects fully understand the Work Zone Safety and Mobility Policy (23 CFR 630 Subpart J) in order to provide safe work zones through their construction projects for the traveling public and workers.

Your cooperation to implement these rules is required.

Primary Points of Contact on Compliance at NMDOT are as follows:

- State Traffic Engineer (Design Standards & Policies, technical Support)
- District Traffic Engineers (Maintenance & Construction Operations Support, Data Analysis, Work Zone Implementation)
- State Construction Engineer (Construction Support)

NOTICE TO CONTRACTORS

June 23, 2011

NMDOT Office of Inspector General

New Mexico Department of Transportation/Office of Inspector General. As specified in New Mexico State Transportation Commission Policy Number 30 (CP-30), dated June 2006, the Department's Office of Inspector General (OIG) has the authority to carry out all duties required to collect information, conduct audits, special studies and investigations. The duties are the same as those specified in federal law: Office of Inspector General, 23 USC §302 (the capability to carry out the duties required by law); 23 USC §112 (contracting for engineering and design services); 23 USC §106 (project approval); 23 USC 112 - Sec. 112, (letting of contracts); 23 USC 113 - Sec. 113 (prevailing rate of wage); 23 USC 114 - Sec. 114 (construction); 23 CFR 635 & 23 CFR 636 (design build); 23 CFR 637 (construction inspection approval). The duties of the Department's OIG also arise from the responsibility all state Departments of Transportation have for ensuring that all federal-aid projects are carried out in accordance with federal requirements. This responsibility was specifically clarified in 23 U.S.C. 106, as amended by Section 1904(a) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU, Public Law 109-59).

Notice to Contractors

Equal Employment Opportunity (EEO) Software Programs Federal-aid Projects

The prime contractor and all subcontractors working on federal-aid projects shall use the following EEO Software Programs to report specific EEO, Labor Compliance and Disadvantaged Business Enterprise (DBE) information as required by the contract and as specified by the NMDOT's Office of Equal Opportunity Programs. The two software programs are:

- B2Gnow software
- LCPtracker software

B2Gnow – (Business to Government Now), is a web-based software program used to collect, verify and manage payment information for prime contractors and subcontractors working on federal-aid projects. Additionally, the software is used to collect and report DBE participation and utilization on federal-aid projects.

LCPtracker – (Labor Compliance Program Tracker) – LCPtracker is a web-based software program used to collect, verify and manage prevailing wage certified payrolls and related labor compliance documentation for prime contractors and subcontractors on federal-aid projects.

Use of B2Gnow and LCPtracker software programs is required and shall be considered incidental to the contract. Failure of a contractor or subcontractor to use the required software programs to report specific EEO, Labor Compliance and DBE information may result in NMDOT withholding future progress payments until such time as compliance with this requirement is achieved. Weekly submission of hard copy certified payrolls remains mandatory.

Information on access to the software programs, log-on information, use of the programs, available training, user manuals, etc. can be obtained by contacting:

New Mexico Department of Transportation
Office of Equal Opportunity Programs
1570 Pacheco Street, Suite A10
Santa Fe, NM 87505
(505) 827-1774 or Toll Free (800) 544-0936

NOTICE TO CONTRACTORS

February 7, 2008

New Mexico Employees Health Coverage

1. For all contracts solicited and awarded on or after January 1, 2008: If the offeror has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, offeror must agree to:

(a) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2008 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed one million dollars or;

(b) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2009 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$500,000 dollars or

(c) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2010 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.

2. Offeror must agree to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.

3. Offeror must agree to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: <http://insurenemexico.state.nm.us/>.

4. For Indefinite Quantity, Indefinite Delivery contracts (price agreements without specific limitations on quantity and providing for an indeterminate number of orders to be placed against it); these requirements shall apply the first day of the second month after the offeror reports combined sales (from state and, if applicable, from local public bodies if from a state price agreement) of \$250,000, \$500,000 or \$1,000,000.

For all contracts exceeding one million dollars, the Awarded Contractor will be required to provide a letter stating that they currently offer, or that they will offer by July 1, 2008, health insurance to its New Mexico employees.

For all contracts exceeding \$500,000 dollars, the Awarded Contractor will be required to provide a letter stating that they currently offer, or that they will offer by July 1, 2009, health insurance to its New Mexico employees.

For all contracts exceeding \$250,000, the Awarded Contractor will be required to provide a letter stating that they currently offer, or that they will offer by July 1, 2010, health insurance to its New Mexico employees.

NOTICE TO CONTRACTORS

June 6, 2014

Subcontractor Payment and Performance Bonds

Senate Bill 814, passed during the New Mexico 47th Legislature shall not apply to this Project.

NOTICE TO CONTRACTORS

December 9, 2005

Environmental and Archaeological Approvals for Pit Areas

The NMDOT, in consultation with the State Historic Preservation Officer (SHPO) has determined that any pit activity, excluding commercial pits, requires formal tribal consultation. This includes any additional pit clearances during construction, and may extend the approval time beyond 30 days if concerns are expressed by the affected tribes. Contact the NMDOT Environmental Section at (505)827-5224 for a list of relevant tribes.

Therefore, it is highly recommended that comprehensive environmental and archaeological approvals be obtained for any potential pit areas as early as possible.

If additional time beyond 30 days is required for environmental or archaeological approval and the Contractor's critical path is affected, the Contract time will be extended for that additional time. However, no payment of additional monetary compensation due to this delay will be considered.

NOTICE TO CONTRACTORS

Borrow and Surfacing Status

June 6, 2014

This Project may be eligible for free use Materials in accordance with 23 CFR 710.601 Federal Land Transfer.

There is no assurance that a Federal Land Transfer will be granted

In order to accommodate the Federal Land Transfer, should the Contractor elect to pursue the free use Material source(s), the Contractor shall contact the Department (Annette Duran at 505-827-5639 or 505-490-5385) as soon as they have been identified as the Apparent Low Bidder. The Contractor shall be responsible for performing all necessary actions to achieve the Federal Land Transfer.

Borrow and surfacing Material may be obtained from any acceptable source where the Materials conform to the requirements indicated on the Plans and/or Specifications.

The New Mexico Department of Transportation ("NMDOT") is under no obligation to purchase excess Material from the Contractor that is not required for the completion of the Project.

The NMDOT will not provide additional time or compensation to the Contractor for the Federal Land Transfers or for developing alternate source locations in accordance with Section 106.1 "Contractor / Furnished Aggregate Borrow Sources".

A free use permit will not be considered valid to secure a federally funded NMDOT Project. Only an FHWA/NMDOT approved Federal Land Transfer will be considered valid.

NOTICE TO CONTRACTORS

June 6, 2014

To report bid rigging activities call:

1-800-424-9071

The U.S. Department of Transportation (DOT) operates the above toll-free "Hotline" Monday through Friday, 8:00 A.M. to 5:00 P.M., Eastern Time. Anyone with knowledge of possible bid rigging, bidder collusion, or other fraudulent activities should use the "Hotline" to report such activities.

The "Hotline" is part of the DOT's continuing effort to identify and investigate highway construction contract fraud and abuse and is operated under the direction of the DOT Inspector General. All information will be treated confidentially and caller anonymity will be respected.

NOTICE TO CONTRACTORS
LABOR REPORTING AND SUBMISSION OF WEEKLY PAYROLLS
April 1, 2014

The New Mexico Department of Workforce Solutions ("DWS") mandates tracking a construction Project's weekly payrolls and the process by which this reporting is accomplished by the Contractor. Knowledge of the DWS rules and procedures is attributed to the Contractor prior to its Bid submission. The latest forms posted in the DWS website, <http://www.dws.state.nm.us>, must be used for submittals. All outdated forms submitted will be rejected by the Department. If rejected, the Contractor/Subcontractors will be required to submit the current DWS forms.

The following requirements apply to those Contractors and Subcontractors performing Work subject to this Contract's prevailing wage rates:

The Contractor and each Subcontractor (at all tiers) shall complete an original DWS "Statement of Intent to Pay Prevailing Wages" form prior to starting Work on the job site. The Contractor shall provide a copy of each form to the Project Manager in accordance with Standard Specification Section 108.2. For Subcontracts established later on in the Project, the Contractor shall ensure that the Subcontractor's "Statement of Intent to Pay Prevailing Wages" form is submitted to the Project Manager with the "Request for Permission to Subcontract" forms. No Subcontracts shall be approved without the proper forms indicated above.

Once construction begins, the Contractor shall submit weekly payroll information. The Contractor shall ensure that all Subcontractors at all tiers submit weekly payroll information. Weekly payroll information shall be submitted as follows:

- On Federally funded and Federal-aid Projects, the Contractor shall submit and shall ensure all Subcontractors submit weekly payroll information into the LCPtracker software program.
- On 100% State funded Projects, the Contractor shall submit, and shall ensure that all Subcontractors submit one (1) certified hard copy of the Project weekly payroll to the Project Manager's office. Utilization of LCPtracker is not available for 100% State funded Projects.

All payrolls for the Project shall be submitted no later than five (5) Working Days following the close of the second payroll period.

Prior to release of the Final Payment, the Contractor and each Subcontractor (at all tiers) shall complete an original DWS "Affidavit of Wages Paid" form. The Contractor shall submit a copy of all Affidavits of Wages Paid for the Contractor and all Subcontractors to the Project Manager, in accordance with Standard Specification Section 109.10.7.

Each Contractor and Subcontractor shall preserve its weekly payroll records for a period of four (4) years from the date of completion of the Contract.

On state funded Projects, the Rules and Regulations under the New Mexico Public Works Minimum Wage Act are, by this reference, made a part of this Contract. On Federally-funded Projects, these provisions hereby supplement Paragraph V, Part 2 of the Required Contract Provisions on all Federal Aid Construction Contracts, FHWA-1273.

NOTICE TO CONTRACTORS

APPRENTICES/TRAINEES (Program of Department of Labor)

June 24, 2014

YOU ARE HEREBY ADVISED OF THE FOLLOWING:

Before using apprentices/trainees of this project, the Contractor shall present to the Contracting Officer written evidence of registration of such employees. All apprentices shall be properly indentured and in compliance under registered apprenticeship standards and written apprenticeship agreements. All trainees must be properly enrolled in a bona fide training program approved for application on construction projects by the appropriate state and/or federal agency(ies). Written evidence of apprenticeship registration from the U.S. Department of Labor, Bureau of Apprenticeship and Training, Bank of America Building, 500 4th St., N.W., Suite 401, Albuquerque, New Mexico 87102, Telephone No. (505) 248-6530 is required for apprentices. Certification from the registered program Administrator showing enrollment status of trainees is required for trainees. If the apprentice/trainee is not registered in a bona fide apprenticeship/training program as mentioned above, the journeyman's wage rate for that particular classification in which he/she is working is applicable.

OEOP
May 14, 2015

NOTICE TO CONTRACTORS

Required Contract Provisions Title VI - Civil Rights Act

The New Mexico Department of Transportation in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d- 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation issued pursuant to such Act, hereby notified all bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement, minority and women business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, sex, national origin or handicap in consideration for an award.

Reference is made to the Department's Title VI Plan, Appendix A and Title VI assurances.

For further information, contact the Office of Equal Opportunity Programs Bureau located at 1570 Pacheco St, Suite A10, PO Box 1149, Santa Fe, New Mexico, 87504-1149, Telephone Number (505)827-1778.

NOTICE TO CONTRACTORS

April 6, 2009

HELP STOP FRAUD, WASTE & ABUSE

CALL

**1-800-671-STOP
(1-800-671-7867)**

The New Mexico Department of Transportation (NMDOT), Office of Inspector General (OIG), has established the above toll free "Hotline" which is in operation 7 days a week, 24 hours a day.

Anyone with knowledge of an instance of fraud, waste or abuse, or any similar illegal or unethical activity perpetrated by another contractor or employee, NMDOT employee, or other person, which may affect the cost, completion or correct and safe construction of any New Mexico highway project may use this number to report such activity.

The "Hotline" is part of the NMDOT'S continuing effort to ensure that once a project is completed the motoring public can be assured that they are traveling on a safe and sound roadway.

All information will be treated confidentially and caller anonymity will be respected.

The New Mexico Fraud Against Taxpayers Act:

The New Mexico Fraud Against Taxpayers Act, (44-9-12 NMSA 1978) has been in effect since July 1, 2007 and provides civil penalties for submitting a claim to a state agency based on false, fraudulent or misleading information. The Act also includes a financial incentive for parties with knowledge of such a claim to come forward.

NOTICE TO CONTRACTORS

November 17, 2003

Pursuant to Section 13-1-108 NMSA 1978 (1987 Cum. Supp.) you are hereby notified that all bids submitted are to exclude the applicable state gross receipts tax or applicable local option tax. The New Mexico Department of Transportation will pay the applicable tax including any Increase in the applicable tax becoming effective after the date the contract is entered into. The applicable gross receipts tax or applicable local option tax will be shown as a separate amount on each billing or request for payment made under the contract.

NOTICE TO CONTRACTORS

AIR QUALITY PERMITS

November 8, 2011

YOU ARE HEREBY ADVISED OF THE FOLLOWING:

In accordance with 20 NMAC 2.72 of the Air Quality Control Regulations, an air Quality Permit is required for the operation of any asphalt plant or gravel crushing or screening facility prior to commencement of construction. In accordance with 20 NMAC 2.73, a Notice of Intent is required for the operation of a concrete batch plant. Permits and Notices of Intent are administered by the Environment Department's Air Pollution Control Bureau.

In accordance with 20 NMAC 20.41 of the Albuquerque / Bernalillo County Air Quality Control Board regulations, an air quality permit is required for the operation of any asphalt plant or gravel crushing or screening facility or concrete batch plant prior to commencement of construction when operating in Bernalillo County on non Tribal lands. In Bernalillo County, the air quality permits are administered by the City of Albuquerque / Bernalillo County Air Quality Program.

The Contractor is advised that in addition to the documentation required to execute the contract, as indicated on the Preliminary Notice of Award, a copy of the Air Quality Construction Permit or "Ruled Complete" letter or Notice of Intent letter from the Environment Department is also required. The Permit or Notice of Intent letter shall be for the operation of EACH type of plant to be used on the awarded project. This does not apply to relocation notices. Failure to submit the documentation within fifteen days after the Preliminary Notice of Award has been received by the Contractor shall be just cause for the cancellation of the award of contract and the forfeiture of the proposal guaranty which shall become the property of the Highway and Transportation department, not as a penalty, but in liquidation of damages sustained.

For information on Air quality construction permits and Notices of Intent, contact:

Ted Schooly
New Source Review Unit/Air Pollution Control Bureau
New Mexico Environment Department
1301 Siler Road Building B
Santa Fe, New Mexico 87505
Telephone: 505.476.4348

Isreal Tavarez
City of Albuquerque/Environmental Health Department
Air Quality Division
PO Box 1293
Albuquerque, New Mexico 87103
Telephone: 505.768.1972

NOTICE TO CONTRACTORS

MINIMUM WAGE RATES

June 24, 1994

YOU ARE HEREBY ADVISED OF THE FOLLOWING:

In accordance with the rules and regulations under the New Mexico Public Works Minimum Wage Act, all certified payrolls submitted must contain required information as stated on the pertinent information sheet of the Wage Rate Decision issued on said project.

Special reference is made to Item 2G which indicated that the wage rate decision number must be indicated on the certified payroll submission. **THIS WAGE RATE DECISION NUMBER MUST BE INDICATED ON ALL PAYROLL SUBMISSIONS BY THE PRIME CONTRACTOR, SUB-CONTRACTORS AND THEIR TIERS.**

The wage rate decision is an integral part of the project specifications and contracting agencies must insure compliance with this provision before payment is made to the contractor.

**NOTICE TO CONTRACTORS
WAGE RATES**

JANUARY 2, 2015

You are hereby advised that wherever differences exist between the minimum wage rates shown under Wage Decision of the Office of the New Mexico Department of Workforce Solutions, Santa Fe, and those shown under U.S. Department of Labor Wage Decision No. NM150048 dated January 2, 2015, and any modifications thereto noted in the contract assembly, the higher wage rates shall govern.

>

General Decision Number: NM150048 01/02/2015 NM48

Superseded General Decision Number: NM20140048

State: New Mexico

Construction Type: Highway

County: Santa Fe County in New Mexico.

HIGHWAY CONSTRUCTION PROJECTS (excluding tunnels, building structures in rest area projects & railroad construction; bascule, suspension & spandrel arch bridges designed for commercial navigation, bridges involving marine construction; and other major bridges).

Note: Executive Order (EO) 13658 establishes an hourly minimum wage of \$10.10 for 2015 that applies to all contracts subject to the Davis-Bacon Act for which the solicitation is issued on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.10 (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract. The EO minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number Publication Date
 0 01/02/2015

* ELEC0611-003 07/01/2014

	Rates	Fringes
ELECTRICIAN (Boom Operator).....	\$ 29.79	12.74

 SUNM2011-002 08/25/2011

	Rates	Fringes
CARPENTER (Includes Form Work)...	\$ 13.88	0.44
CEMENT MASON/CONCRETE FINISHER...	\$ 14.60	0.6
ELECTRICIAN (Includes Traffic Signalization and Installation).....	\$ 25.96	8.16
HIGHWAY/PARKING LOT STRIPING: Includes Highway Line/Parking Lot Line Striping and Line Striping Truck Driver.....	\$ 14.75	0.35
IRONWORKER, REINFORCING.....	\$ 22.44	4.85

LABORER

Common or General.....	\$ 11.21	0.35
Flagger/Cone Setter.....	\$ 13.95	0.35
Mason Tender-		
Cement/Concrete.....	\$ 10.25	0.35
Pipelayer.....	\$ 17.13	5.04

POWER EQUIPMENT OPERATOR:

Backhoe/Excavator/Trackhoe...	\$ 17.13	0.26
Bobcat/Skid Loader.....	\$ 12.96	0.26
Broom/Sweeper.....	\$ 16.67	1.57
Grader/Blade.....	\$ 17.64	1.51
Loader (Front End).....	\$ 16.43	0.26
Mechanic.....	\$ 23.24	1.51
Oiler.....	\$ 22.08	9.72
Piledriver.....	\$ 15.73	0.26
Roller (Asphalt and Dirt)...	\$ 16.27	1.51
Trencher.....	\$ 15.22	0.26

TRUCK DRIVER

Dump Truck.....	\$ 15.04	0.26
Flatbed Truck.....	\$ 13.51	0.26
Pickup Truck.....	\$ 12.95	0.26
Water Truck.....	\$ 12.96	0.26

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/1/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number

where applicable, i.e., Plumbers Local 619E. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter

* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

=====

END OF GENERAL DECISION

Wage Rates

SUSANA MARTINEZ
GOVERNOR



CELINA BUSSEY
SECRETARY

JOHN SANCHEZ
LT. GOVERNOR

STATE OF NEW MEXICO
DEPARTMENT OF WORKFORCE SOLUTIONS
121 Tijeras Ave NE Suite 3000
Albuquerque, NM 87102
Telephone (505) 841-4405
Fax (505) 841-4424

PUBLIC WORKS PROJECT REQUIREMENTS

As a participant in a Public Works project valued at more than \$60,000 in the State of New Mexico, the following list addresses many of the responsibilities that are assigned by statute to each project stakeholder.

Contracting Agency

- Ensure that all contractors prime contractors wishing to bid on a Public Works project when the project is \$60,000 or more are actively registered with the Labor Relations Division, Labor Enforcement Fund (LEF) prior to bidding
- Provide completed Notice of Award (NOA) and Sub-Contractor list to Labor Relations Division promptly after the project is awarded.
- Provide updates to the Sub-Contractor list to the Labor Relations Division

General Contractor

- Provide to the Contracting Agency within 3 (Three) days of award a complete sub-contractor list and Statements of Intent (SOI) to pay Prevailing Wages for each contractor.
- Ensure that all sub-contractors wishing to bid on a Public Works project when their portion is over \$60,000 are actively registered with the Labor Relations Division prior to bidding
- Submit bi-weekly certified payrolls to the owner contracting agency.
- Make certain NM Apprenticeship and Training Fund payments are to be paid either to an approved Apprenticeship program or to the Labor Relations Division.
- Confirm the Wage Rate poster, provided by the Labor Relations Division, is displayed at the job site in an easily accessible place.
- Make sure, when a project has been completed, the Affidavits of Wages Paid (AWP) is sent to the Contracting Agency.

Sub-Contractor

- Ensure that all sub-contractors wishing to bid on a Public Works project when their portion is over \$60,000 are actively registered with the Labor Relations Division prior to bidding
- Submit bi-weekly certified payrolls to the General Contractor(s).
- Make certain NM Apprenticeship and Training Fund payments are to be paid either to an approved Apprenticeship program or to the Labor Relations Division.

"AN EQUAL OPPORTUNITY EMPLOYER"

Additional Information

Reference material and forms for these requirements are available through the following New Mexico Workforce Solutions Web Link:
www.dwr.state.nm.us/new_Labor_Relations_publicworks.html

Additional Information

Additional information, requirements, and documents on these topics can be found through the Public Works web pages.

- Labor Enforcement Fund (LEF)
- Weekly Certified Payroll
- Public Works Apprenticeship and Training Fund (PWAT)
- Forms: Statement of Intent (SOI), Affidavit of Wages Paid (AWP)
- Prevailing Wage Rates (Base Rates, Fringe, and Apprenticeship Contributions)

CONTACT INFORMATION

Contact us for any questions relating to Public Works Projects.

Kim Kew Kim.Kew@state.nm.us or 505-841-4405
Ous Caddy LynnO.Caddy@state.nm.us 505-841-4406
Stacey Lowrey Stacey.Lowrey@state.nm.us 505-841-4412
Violet Miera Violet.Miera@state.nm.us 505-841-4418

New Mexico Department of Workforce Solutions
Public Works

121 Tijeras Ave. NE, Suite 3000, Albuquerque, NM 87102
Phone: (505)-841-4400 fax to: (505) 841-4424 or Email to: public.works@state.nm.us

Wage Decision # SF-15-1489 A

NOTIFICATION OF AWARD (NOA)

THIS WAGE DECISION # EXPIRES FOR BIDS ON 02 03 16

Description and Location of Work: Santa Fe Rail Trail Segment 4

The work to be performed includes the construction of a 1.64 mile crusher fines trail adjacent to the Santa Fe Southern Railway. The location of the work is generally south of Avenida Vista Grande to Avenida Eldorado, south of the City of Santa Fe, in Santa Fe County. The work includes grading, base preparation, crusher fines surface placement, placement of base course in selected areas, drainage features, slope protection, fencing, site restoration and signage.

City of Santa Fe

County of Santa Fe

Avenida Vista Grande to Avenida Eldorado

REMINDER for Agency Conducting BID Process:

After the Contracting Agency awards this project the Wage Rate Poster, Sub-List and the Project Requirement Document, excluding this NOA must be delivered to the **GENERAL PRIME CONTRACTOR**. The Contracting Agency or its agent must complete this form and submit with the sub-list listing all of the subcontractors including all tiers of subcontractors and fax or email it to the address above. If the project is canceled, this form must be completed by the Contracting Agency conducting the bid process and the wording "Cancelled" written on the form and send to the Labor Relations Division. Failure to submit the NOA in a timely manner is a violation of paragraph 11.1.2.9 B (3) of the Public Works Minimum Wage Act Policy Manual.

General/Prime Contractor Company Name: _____ License#: _____

Address: _____ City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

Project Contact's name: _____ E-Mail: _____

Approximate Date Work to Start: _____

Estimated Completion Date: _____

Estimated Cost of Project: _____

Bid Opening Date: _____

Note: The General/Prime Contractor MUST mail/fax in their Statement of Intent to Pay Prevailing Wages to the Contracting Agency or its agent before beginning work on the project. Each Subcontractor (and all tiers of subcontractors) MUST also mail/fax their Statement of Intent to Pay Prevailing Wages to the General/Prime Contractor 3 days after award of project. After work on the project is completed and before final payment is made to subcontractors and all tiers of subcontractors, the contractor and subcontractors must mail/fax their Affidavit of Wages paid to the Contracting Agency for final payment.

Signature for Contracting Agency (or agent) _____

Printed Name _____

Email address for Contracting Agency (not agent) _____ Required Field

Date _____

SUBCONTRACTOR LIST

DO NOT list suppliers or professional services (such as surveyors)
INCLUDE individual subcontractor dollar amount for project

Email to: publicworks@state.nm.us or fax to (505) 841-4424

Please include 2nd & 3rd Tier subcontractors. Make extra copies of form if necessary.

Wage Decision # SF-15-1489 A

General Contractor:

Company Name: _____
Address: _____ City: _____ State: _____ Zip: _____
E-Mail Address: _____ License No.: _____
Phone No.: _____ Fax No.: _____ Sub: _____ 2nd TIER _____ 3rd TIER _____
(To Whom) (To Whom)
Work to be performed: _____ Start Date: _____ Amount (\$): _____

Company Name: _____
Address: _____ City: _____ State: _____ Zip: _____
E-Mail Address: _____ License No.: _____
Phone No.: _____ Fax No.: _____ Sub: _____ 2nd TIER _____ 3rd TIER _____
(To Whom) (To Whom)
Work to be performed: _____ Start Date: _____ Amount (\$): _____

Company Name: _____
Address: _____ City: _____ State: _____ Zip: _____
E-Mail Address: _____ License No.: _____
Phone No.: _____ Fax No.: _____ Sub: _____ 2nd TIER _____ 3rd TIER _____
(To Whom) (To Whom)
Work to be performed: _____ Start Date: _____ Amount (\$): _____

Company Name: _____
Address: _____ City: _____ State: _____ Zip: _____
E-Mail Address: _____ License No.: _____
Phone No.: _____ Fax No.: _____ Sub: _____ 2nd TIER _____ 3rd TIER _____
(To Whom) (To Whom)
Work to be performed: _____ Start Date: _____ Amount (\$): _____

Company Name: _____
Address: _____ City: _____ State: _____ Zip: _____
E-Mail Address: _____ License No.: _____
Phone No.: _____ Fax No.: _____ Sub: _____ 2nd TIER _____ 3rd TIER _____
(To Whom) (To Whom)
Work to be performed: _____ Start Date: _____ Amount (\$): _____

Company Name: _____
Address: _____ City: _____ State: _____ Zip: _____
E-Mail Address: _____ License No.: _____
Phone No.: _____ Fax No.: _____ Sub: _____ 2nd TIER _____ 3rd TIER _____
(To Whom) (To Whom)
Work to be performed: _____ Start Date: _____ Amount (\$): _____

Santa Fe Rail Trail Segment 4: Wage Decision #SF-15-1489 A

The work to be performed includes the construction of a 1.64 mile crusher fines trail adjacent to the Santa Fe Southern Railway. The location of the work is generally south of Avenida Vista Grande to Avenida Eldorado south of the City of Santa Fe, in Santa Fe County. The work includes grading, base preparation, crusher fines surface placement, placement of base course in selected areas, drainage features, slope protection, fencing, site restoration and signage.

TYPE "A" - STREET, HIGHWAY, UTILITY & LIGHT ENGINEERING

Effective September 24, 2015

Trade Classification	Base Rate	Fringe Rate
Bricklayer/Blocklayer/Stonemason	23.32	8.04
Carpenter/Lather	23.40	9.02
Cement Mason	17.11	6.32
Ironworker	26.12	14.02
Painter (Brush/Roller/Spray)	16.00	5.58
Electricians (outside)		
Groundman	21.28	10.53
Equipment Operator	30.54	12.94
Lineman/Wireman or Tech	35.94	14.34
Cable Splicer	39.52	15.28
Plumber/Pipefitter	28.30	4.07
Laborers		
Group I	12.20	5.30
Group II	12.50	5.30
Group III	12.90	5.30
Operators		
Group I	16.69	6.16
Group II	17.44	6.16
Group III	17.55	6.16
Group IV	17.63	6.16
Group V	17.75	6.16
Group VI	17.89	6.16
Group VII	18.27	6.16
Group VIII	18.50	6.16
Group IX	25.45	6.16
Group X	28.35	6.16
Truck Drivers		
Group I	13.32	0.26
Group II	13.52	0.26
Group III	13.72	0.26
Group IV	13.92	0.26

NOTE: SUBSISTENCE, ZONE AND INCENTIVE PAY APPLY ACCORDING TO THE PARTICULAR TRADES COLLECTIVE BARGAINING AGREEMENT. DETAILS ARE LOCATED AT WWW.DWS.STATE.NM.US.

CERTIFICATE OF PAYMENT OF CLAIMS

For the purpose of obtaining final payment of funds due me for the satisfactory completion of _____ in conformity with the contract documents, including the plans and specifications or authorized modifications thereof, I hereby certify under penalty of perjury as follows (use additional sheets as necessary):

1. That all lawful claims for labor performed and material, supplies and services furnished by me or any sub-contractor for the said work, have been fully paid or satisfied, with the exception of the following disputed claims:

2. That all third party liability claims arising out of the work on this project have been paid, satisfied and released by the claimants, with the exception of the following disputed claim:

3. That the Disadvantage Business Enterprise (DBE) goal (if any) for the contract has been met or exceeded, or is excused for the following reason:

It is requested that final payment of funds due me under the contract be made.

Contractor

By _____

STATE OF NEW MEXICO)
) as
COUNTY OF _____)

Subscribed and sworn to before me this _____ day of _____, 20_____

Notary Public

My Commission expires:

SPECIAL PROVISIONS

SC1 DESCRIPTION OF WORK

The work to be performed under this contract includes the construction of a 1.64 mile crusher fines trail adjacent to the Santa Fe Southern Railway. Other work include grading, base preparation, crusher fines surface placement, placement of base course in selected areas, drainage features, slope protection, fencing, site restoration, and signing. The Contractor shall supply all labor, materials and equipment necessary to complete the work in accordance with the contract plans and specifications.

SC2 LOCATION OF WORK

The location of work to be completed under this contract is generally south of Avenida Vista Grande to Avenida Eldorado, adjacent to the Santa Fe Southern Railway, south of the City of Santa Fe, in Santa Fe County.

SC3 CONTRACT TIME

- A. The work shall be commenced not later than fourteen (14) calendar days from and including the date of the Notice to Proceed and shall be fully completed in a satisfactory and acceptable manner within 100 working days of the Notice to Proceed. Prior to the commencement of work, the Contractor shall submit to the Project Manager, for approval, a schedule showing the time of commencement and proposed progress of the work.
- B. A pre-construction conference and job walk will be scheduled at time of bid award. No work will be allowed to take place prior to a written Notice to Proceed without the written authorization of the Owner's Representative.
- C. Any requests for extension of time due to conditions outside of the Contractor's control shall be made in writing to the Owner's Representative within 48 hours of the cause of the delay. Weather days shall be documented each day by calling the Project Manager to obtain an agreement of weather day conditions on the day of weather event. Delays due to permits, if submitted in a timely manner, will be allowable as additional days to the contract.

SC4 INCIDENTAL WORK

Work not specifically called out, but which is necessary to complete the work required under this contract, shall be considered incidental and a part of this contract and shall be performed by the contractor at no additional cost. Incidental items shall include but not be limited to, project coordination, dust control, traffic control, barricades, clean-up and restoration of any disturbed areas outside the construction limits. Restoration shall include fine grading, reseeding, and mulching. Restoration within the limits shown in the plans will be paid for as Seeding (AC).

SC5 SITE ACCESS / DISTURBANCE

- A. The contractor shall use the existing trail / maintenance road, or the proposed trail alignment for the transport of materials and equipment during construction. The creation of additional parallel access routes will not be allowed. Disturbance of currently undisturbed areas, unless part of the new trail alignment, must be avoided. Any area disturbed outside of the finished trail tread must be restored to preconstruction conditions at no additional cost to the project.
- B. Any modifications to the existing railroad access road to improve access, other than those specifically shown in the plans must be approved by the Project Manager prior to construction. These modifications will not be measured or paid. If directed by the Project Manager, the existing access road to remain shall be restored to a similar or better condition, as determined by the Project Manager upon completion of the project at no additional cost to the project.

SC6 CONSTRUCTION LIMITS

Construction will be limited at all times to the Construction Limits as designated on the plans. Adjustments to the Construction Limits must be made in writing to the Project Manager indicating where modifications are needed. Storage of materials on site is to be determined by Contractor with Owner approval prior to work commencement. See section SC10.

SC7 RAILROAD and NMDOT COORDINATION

- A. The Santa Fe Southern Railway (SFSR) is an active railway. Their schedule is available on their website: www.thetraininsantafe.com.
Contact: Santa Fe Southern Railway
430-A West Manhattan Street
Santa Fe, NM 87501
(505) 989-8600 phone
(505) 983-7620 fax
depot@sfsr.com email
- B. Special insurance requirements apply for construction activities along the railway. See page 12 paragraph 41 for more details.
- C. Flagging and/or Lockout Procedures. SFSR and NMDOT requires any activity associated with the trail construction occurring within 25 feet of the centerline of the train tracks have an approved flagman on site. The contractor will be responsible for scheduling, and coordinating the flagging with Santa Fe County and Santa Fe Southern Railway. Santa Fe Southern Railway will provide the flagging for this phase of construction at the contractor's expense. The contact information for the flagging is: Karl Ziebarth, (214) 850-5642.
- D. The Railway will be paid \$75 per hour or part thereof for any employee who participates in the work of the Contractor, or is otherwise required by Railway or Contractor or desired by Contractor to be present during the work of the Contractor. Employee time for

Railway employees participating in the work of the Contractor will be calculated from the start of the normal work day to the time the employee is finally released to return to his or her normal duties, but not less than one 8-hour day. Agreed upon fee(s) must be tendered in advance before access to ROW is granted.

E. Fees as of December 1, 2015:

a. Flagging Price: \$75 per hour per flagmen; 4 hour minimum

F. Special Training for Contractor: Specialized training to work within the Railway Right of Way is required by the New Mexico Department of Transportation (NMDOT). Any personnel including contractor, foreman, and crew working on site within the Right of Way must take the classes listed below and be certified. They must also carry the card verifying certification at all times while on the job site.

The following class is required: Roadway Worker Protection. The class is available through the Rio Metro Regional Transit District/New Mexico Rail Runner Express. Contact Stephanie Paiz, Safety Coordinator, Rio Metro Regional Transit District/New Mexico Rail Runner Express at (505) 414-1308 or by email at spaiz@mrcog-nm.gov for more information.

Please note: The training classes are not directly affiliated with NMDOT.

SC8 FEES AND PERMITS

A. The Contractor and any necessary subcontractors will be required to have or obtain a current CID License, which will be obtained at his expense and will not be paid for separately. Santa Fe County Open Space and Trails Program have obtained the development permit.

B. The Contractor is responsible for obtaining a work permit from NMDOT in order to work within the NMDOT ROW. The fee for the work permit as of December 2015 is \$350.00 and is good for one year. Contact: Rob Fine, Rail Facilities Manager, NMDOT Rail Bureau, at (505) 827-5134.

C. A Storm Water Pollution Prevention Plan (SWPPP) is to be applied for by the contractor using the relevant construction plans – or approved revisions to the relevant construction plans as part of that application. Application fees are to be paid for by the contractor. A copy of the permit is required prior to project mobilization. The contractor is required to conduct SWPP bi-weekly and storm event inspections using certified Storm Water Management construction inspectors and keeping a full record of all inspections on-site for County review upon request. A copy of the SWPP inspector's certification is required prior to project commencement. Close out of the permit is the responsibility of the contractor – the County will not assume responsibility of permit requirements. A copy of the closed permit is needed prior to Final Acceptance of the project. The contractor shall provide an Erosion Control Supervisor (ECS) to assure compliance with the Permit.

D. The Contractor shall obtain all other necessary permits required to complete the contract.

SC9 WORK HOURS

Work shall be limited to the hours between 7:00 a.m. and 6:00 p.m. on weekdays. No work shall be allowed on Saturdays, Sundays, or the holidays of Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, or New Year's Day. Exceptions to the Saturday workday may be granted, if determined necessary by the Project Manager, upon a formal request in writing from the contractor.

SC10 ACCESS TO THE SITE

Construction access to the site is from the Avenida Vista Grande and Avenida Eldorado right of way at the SFSRR. No other project access points will be provided by Santa Fe County. Other construction easements desired by the contractor (if any) are the responsibility of the contractor to obtain. Any proposed temporary construction crossings of SFSRR facilities by the contractor to facilitate work are the responsibility of the contractor to coordinate with SFSRR and NMDOT. Provide written verification of approval of any construction access / staging areas proposed on private property to the Project Manager prior to utilization of such areas.

Other construction easements desired by the contractor are the responsibility of the contractor to obtain. Provide written verification of the construction access / staging allowed on private property to the Project Manager.

SC11 STAGING AND STORAGE SITES

For all storage sites for materials and equipment proposed and used by the Contractor, the Contractor shall be responsible for the following:

- A. Keeping stockpiles and equipment confined within areas designated to be disturbed as shown in the plans. An agreement as to storage area size and location to be made between Owner and Contractor prior to work. Minimizing the size of the storage area is preferred.
- B. Providing security for his material and equipment and for public safety at the site.
- C. Restoring the site to its original or better condition as determined by the Project Manager.
- D. Containment of storage site per SWPPP requirements.
- E. No materials shall be stored within the 25' railroad clear zone.

SC12 USE OF STREETS BY TRUCKS AND COMMERCIAL VEHICLES

The Contractor shall comply with the all Santa Fe County ordinances with regard to Truck Routes and overweight vehicles.

SC13 SWEEPING AND CLEANING DURING CONSTRUCTION

- A. The Contractor will be responsible for the daily removal of mud and construction debris

whether caused directly by the Contractor's construction operation, or that of his subcontractors and/or material suppliers, or indirectly due to the work site conditions in general, from all public streets, private driveways, parking lots, sidewalks and bike paths within or adjacent to the project area. This will be rigidly enforced. The removal of dirt or debris from any concrete surface with metal edged blades is not allowed.

- B. The Contractor will be responsible for any damage caused due to his maintenance and/or cleaning operations.
- C. No separate payment will be made for this work and all costs in connection therewith shall be considered incidental to the contract.
- D. The Contractor will be responsible for end of week cleaning and securing of all materials prior to leaving the construction site.

SC14 PROTECTION OF CONSTRUCTION

- A. The Contractor shall be responsible for making a reasonable effort to protect the work from vandalism. The Contractor shall be responsible for barricading the work in a manner, which will protect it from vehicular and pedestrian traffic when necessary.
- B. The Contractor shall bring any significant vandalism to the attention of the Project Manager.
- C. Construction activities to be evaluated for potential safety hazards and vandalism at the end of each week and prior to Holidays and be secured appropriately.

SC15 WATER FOR CONSTRUCTION

Contractor will be responsible for providing their own source of water.

SC16 HEAVY CONSTRUCTION ON SURFACES WHERE VEGETATION OR OTHER DISTURBANCE MUST BE MINIMIZED

- A. Minimize disruption to only those areas necessary for completion of construction or existing disturbed areas that are intended to be restored. Maintain access in and out on areas scheduled for the future trail, existing maintenance road to remain or to be restored.
- B. No damage to asphalt, concrete or crusher fines paved surfaces due to heavy equipment or other construction work is to be allowed. Repair to those surfaces if damage does occur shall be done at the contractor's own expense.

SC17 CLEANING OF CONCRETE TRUCKS

The cleaning of concrete trucks or site mixing equipment within the project limits is to be strictly limited to the proposed designated areas. All concrete wash is to be removed prior to final grading – complete off-site disposal of contaminants is required. A single concrete wash out area is to be designated on the site, plastic lined and enclosed by straw bales and signed for ease of identification, or portable wash eco-pans shall be used if

several locations are desired. No concrete wash is to contaminate any other areas including landscape areas, ground water or wetland areas at any time. No burial is allowed.

SC18 GEOTECHNICAL INVESTIGATION

A geo-technical investigation has been completed for this project. The report is provided as part of these Contract Documents for informational purposes as Attachment 1.

SC19 INSPECTIONS

Santa Fe County Project Manager, consultants, County personnel, as appropriate, shall observe work during construction. All inspection work is to be coordinated through the Project Manager. Questions or problems should be directed to the Project Manager, who will be responsible for contacting the appropriate personnel, unless specifically directed otherwise. Directions from individuals other than the designated Project Managers should not be considered final, and no additional payment will be allowed, unless verified and allowed by the Project Manager.

SC20 EXISTING CONDITIONS

Some utilities exist within the project limits and are to be protected. Protection of existing utility services, piping, sleeving and other equipment shall be the responsibility of the Contractor upon project commencement.

QWEST – Qwest owns a fiber optic line on the west side of the railroad right of way. No impacts to this line are expected.

SC21 - TEMPORARY POWER / FACILITIES

Temporary power is not available at the site. Providing a generator for this purpose will be the responsibility of the Contractor.

SC22 MATERIAL TESTING

The contract includes an item for Materials Testing. The Testing Company will be Subcontractor to the General Contractor. The Contractor shall be responsible for scheduling all testing directly with the testing lab and payment will be included in the Lump Sum payment for Materials Testing. See Technical Specifications for additional information.

SC23 SURVEY

All project survey including construction staking, verifying existing grades, re-staking as needed, verification for as-built drawing requirements, slope, layout and other survey information necessary to complete the project as designed, shall be the responsibility of the Contractor and will be included in the Lump Sum payment for Construction Staking.

SC24 INSURANCE

Refer to Instructions to Bidders, Paragraph 38. See Notice to Contractors for further information on Railroad Protective Liability Insurance.

SC25 LIQUIDATED DAMAGES

Liquidated damages will be assessed on this project if the contractor is not substantially complete with the project within the specified contract time. Two thousand dollars (\$2,000) per calendar day will be assessed for delays that have not been approved through a time change order to the contract.

SC 26 PROJECT SCHEDULE

A critical path method (CPM) project schedule is required from the contractor at the time of the pre-construction meeting. Monthly updates to the schedule (at a minimum) are required.

SC 27 PROJECT MAINTENANCE

The County will assume maintenance of the project upon Construction Acceptance except as noted in Seeding specification, in which case the Contractor will continue maintenance until Final Acceptance.

SC 28 CONTRACTOR QUALIFICATIONS

Contractors are to be fully qualified for work requested under this bid.

SC 29 MATERIAL SUBSTITUTES

The Bidder may substitute and include in his bid price a material or product other than those specified by name or brand, provided that requests are submitted and accepted in writing by the Project Manager prior to the bid, per the Bidders' information. Adequate time must be given to allow for complete review of substitutions. No requests shall be made when later than the date noted in the Invitation to Bid. When substitutions require no price adjustment, requests may be made within 30 days of contract execution. Full information on requested substitute must be provided to allow for a direct comparison between products.

STANDARD SPECIFICATIONS

The construction of this project will be in accordance with the New Mexico Department of Transportation (NMDOT) Standard Specifications and Special Provisions to 2014 NMDOT Standard Specifications for Highway and Bridge Construction 2014 Edition, except as otherwise specified herein or in the contract.

Where a conflict occurs between NMDOT Standard Specifications, Special Provisions to 2014 NMDOT Standard Specifications, Special Provisions and Santa Fe County's Instructions to Bidders and the Sample Agreement, the County's Instructions to Bidders, Special Provisions, Special Provisions to 2014 NMDOT Standard Specifications and Sample Agreement shall prevail.

New Mexico Department of Transportation Standard Specifications, Special Provisions, and Special Provisions to 2014 NMDOT Standard Specifications shall be interpreted using the following list. References listed to the right are to replace those on the left where those on the left appear in the text.

<u>REFERENCE:</u>	<u>REPLACE WITH:</u>
Commission, Department, District, District Engineer, The State Highway Commission or Department Cabinet Secretary or Secretary	Santa Fe County except where such reference is to rules, codes, or regulations, or pre-qualification of bidders of the New Mexico Department of Transportation
Department	Santa Fe County or its Designated Representative
Engineer	Santa Fe County acting through his duly authorized representative who is normally the Project Engineer, Project Manager or Consulting Engineer
Project Manager	The individual designated by the Engineer who is responsible for observing construction and the administration of the project
State	County or Owner

**SPECIAL PROVISIONS
TO NMDOT 2014 STANDARD SPECIFICATIONS**

The following revisions and/or additions to the Technical Specifications of the Standard Specifications are hereby made a part of the Contract Document.

Supplemental Technical Specifications to Standard Specifications:

Section	Description
201	Clearing and Grubbing
203	Excavation, Borrow, and Embankment
207	Subgrade Preparation and Trail Typical Sections
303	Base Course and Crusher Fines
507	Rock Headwalls
570	Pipe Culvert
602	Slope and Erosion Protection Structures
607	Fence
632	Seeding
701	Traffic Signs and Sign Structures
901	Quality Control / Quality Assurance

SECTION 201 CLEARING AND GRUBBING

Delete the entire Section 201 and substitute the following:

201.1 DESCRIPTION:

This Work consists of clearing, grubbing, scalping, removing, and relocating of vegetation and debris. This Work includes protecting vegetation **NOT** specifically identified for removal. The project manager must approve the removal of any vegetation that is not specifically identified for removal. Clearing and grubbing shall be limited to the grading limits shown in the plans unless otherwise approved. Scalping includes the removal of material such as brush, roots, sod, stumps, and the residue of agricultural crops. Dead and dead standing trees within the trail corridor and those specifically designated on the plan to be relocated shall be disposed of in accordance with section 201.3.3. below.

201.2 MATERIALS – Vacant

201.3 CONSTRUCTION REQUIREMENTS

201.3.1 General

Remove surface debris, trees, stumps, roots, organic matter, and other obstructions. When approved by the Project Manager, the Contractor may leave undisturbed stumps and other solid objects within the Trail Prism that do not extend more than 6 in above existing ground and will be at least 2 ft below the finished Subgrade elevation.

Remove hazardous objects and debris from the project. Backfill and compact stump holes and other holes in accordance with Section 203.3.5, “Embankments.” Remove low-hanging branches from trees or shrubs not designated for removal in accordance with the clearing limits shown on the plans. Trim overhanging tree branches to provide a clearance 10 ft above the trail surface. All cuts should be made as close as possible with less than ¼ inch above the main branch or trunk. All cuts should be cleanly executed with little to no ragged edges or tearing. All tools and equipment should be in good general condition, clean, and free of disease and pests.

201.3.2 Scalping

Scalp before excavation or placement of Embankment. Remove organic material under pipe Culvert bedding, regardless of Embankment height.

201.3.3 Relocation and Disposal of Material

Materials from removed trees, shrubs and limbs within the project area shall be used to close existing social trails and/or restore existing disturbed areas. All material under four (4) inches in diameter from trees, trimmed limbs, dead, or dead standing trees within the project area (including those trees specifically designated on the plan to be relocated) shall be “lopped and scattered” and shall be located as shown in the plans or as otherwise directed by the Project Manager. This material shall be placed to provide a natural appearance and to maximize it’s intended effect of providing a physical and visual obstruction in areas to be closed or restored. All roots and removed materials over four (4) inches in diameter shall be mulched

and spread to a depth not to exceed four (4) inches; or removed from the site; or otherwise legally disposed off site as approved by the Project Manager.

201.4 METHOD OF MEASUREMENT—Vacant

201.5 BASIS OF PAYMENT

Pay Item	Pay Unit
<i>Clearing and Grubbing</i>	Lump Sum

201.5.1 Work Included in Payment

The cost involved in obtaining offsite disposal locations and in making the disposal will be considered incidental to the completion of the work and no measurement or direct payment will be made therefore. The Lop and Scatter placement of removed trees or dead trees for existing trail closure and/or site restoration as shown in the plans or otherwise directed shall be considered incidental to the cost of Clearing and Grubbing.

SECTION 203 EXCAVATION, BORROW, AND EMBANKMENT

Delete the entire Section 203 and substitute the following:

203.1 DESCRIPTION

This Work consists of performing excavation, providing borrow, constructing embankment, hauling, disposing, placing, and compacting materials.

203.2 MATERIALS

The Department will provide geotechnical investigation results in the Contract documents or will make them available at the project office. Use the results for information only. The results are not a representation or warranty of the continuity of the conditions that exist beyond the subsurface investigation's test holes or test pits. The Contractor is solely responsible for interpretations and conclusions drawn from this geotechnical information.

203.2.1 Material Classifications

203.2.1.2 Unclassified Excavation

Unclassified excavation is material other than rock excavation or standard excavation.

203.2.1.3 Borrow

Material from Contractor-provided sources required for Embankment, subexcavation replacement or other Work approved by the Department.

203.2.1.4 Subexcavation

Subexcavation is existing material that is unsuitable or unstable. Unsuitable material is that with an R-value less than the Contract R-value. Unstable material is that which is saturated and pumping.

203.3 CONSTRUCTION REQUIREMENTS

203.3.1 General

Finish Excavation and Embankment for the trail to reasonably smooth and uniform surfaces. Do not remove materials from the project limits without the approval of the Project Manager. Preserve the materials below and beyond the lines and grades while conducting excavation operations. Before beginning excavation, grading, and Embankment operations, perform the necessary clearing and grubbing in accordance with Section 201, "Clearing and Grubbing." Notify the Project Manager before opening excavation or borrow areas.

Terminate operations in the immediate area of environmental or Cultural Resources not listed in the Contract, until the Department reviews and completes appropriate mitigation actions in accordance with Section 107.12, "Environmental and Cultural Resource Discoveries."

Place excess or unsuitable excavated material (including rock and boulders unsuitable for Embankments) in the toe of any fills, use to flatten slopes of nearby fills or to fill in restorations areas as shown in the plans or otherwise directed by the owner. Place at least 2 ft of cover soil

over the rocks and boulders. Dispose of excess or unsuitable material in accordance with environmental requirements and as approved by the Project Manager.

203.3.2 Excavation

Unclassified excavation shall be to the lines and grades shown on the plans.

All clearing and grubbing shall be done before excavation operations begin.

The Project Manager may require Subexcavation to remove unsuitable materials beyond the lines of cut shown on the plans, and backfill these areas with approved material. Take cross sectional measurements before and after removal of unsuitable material, or use other approved means to measure the quantity of unsuitable material to be removed and replaced with suitable material.

203.3.3 Borrow

Obtain the borrow source, unless otherwise specified. Use Roadbed excavated Material for Embankment before using borrow Material, unless approved by the Project Manager.

203.3.4 Embankments

Do not place Embankment Material on frozen earth, or incorporate frozen soils in Embankments. Suspend Embankment construction if Embankment Materials become frozen. Do not resume until the Materials are thawed and suitable for compaction. Before beginning Embankment construction, perform scalping in accordance with Section 201, "Clearing and Grubbing." Bench new Embankments into the following:

1. Natural slopes including rock;
2. Existing Embankments; or
3. Phased Embankment construction.

Ensure benches are wide enough to allow operation and placement of compacting Equipment. Re-compact new Embankment Material and Material that is cut out at no additional cost to the Department. Do not place rock, broken concrete, or other solid materials in Embankment areas where driven pilings, drilled caissons, utility lines, or other Structures are specified in the Plans.

Break up the original ground surface to at least 6 in by plowing, scarifying, or stepping up. Compact this area to 95% of maximum density in accordance with Section 203.3.6, "Moisture and Density Control." Place Material for Trail Embankment in horizontal layers not exceeding 8 in thick and compact in accordance with Section 203.3.6, "Moisture and Density Control."

The Department will allow rocks no larger than 3 ft (in any dimension) as long as the Contractor distributes and fills the interstices to form a dense mass. Do not use rock fragments that may degrade with time or may be water sensitive (such as shale or gypsum) as rock fill in Roadbed Embankments. The Department considers this material to be unsuitable.

Place large rocks in the toe of the slope in accordance with the following requirements:

1. No rock is larger than one-half the Embankment height or 10 ft;
2. No rock is placed in fill height less than 8 ft, measured at the edge of the Roadway Shoulder;
3. Place rocks inside a line 6 in from the slope stake, space a minimum of 3 ft from edge to edge, and cover with approved Embankment Material.

Construct rock Embankments to a maximum of 6 in below Subgrade elevation. Consolidate rock fills by using the appropriate Equipment and methods approved by the Project Manager.

203.3.5 Subexcavation

Remove unsuitable and unstable materials from the Subgrade unless an alternative treatment is specified in the Contract or agreed upon by the Project Manager.

203.3.6 Moisture and Density Control

Construct Trail Embankment with moisture and density control. Compact each layer of Embankment to at least 95% of maximum density. Ensure the moisture content of the soil, at the time of compaction, is not greater than or 5% less than the optimum level in accordance with AASHTO T 224 and AASHTO T 180, Method D (TTCP Modified). For soils with a plasticity index of 15 or greater, ensure the moisture content of the soil at the time of compaction is from optimum moisture to 4 percentage points greater than the optimum level. If the moisture content at the time of compaction is not within the specified range, moisten or dry the Material, then thoroughly mix the Material to the full lift depth before re-compacting. Trail Embankments that contain mostly rock or coarse-grained Material (65% or greater retained on the No. 4 sieve) does not require moisture and density control, except the top 6 in of the Embankment; construct in accordance with Section 207.3, "Construction Requirements." Non-trail embankments of rock Material will not require moisture and density control unless otherwise specified.

Ensure that maximum densities are in accordance with AASHTO T 224 and AASHTO T 180, Method D (TTCP Modified), and field densities are in accordance with AASHTO T 310 or other approved methods. Measure densities at each lift before the next subsequent lift is placed.

203.4 METHOD OF MEASUREMENT

203.4.1 Unclassified Excavation, Borrow, and Subexcavation

STATION: 0+00 TO 18+19

Excavation will be paid for based upon the plan quantity without measurement. If actual quantities vary from plan quantities by greater than 10%, the contractor may request additional payment at the contract unit price. In that case, measure Unclassified Excavation, Borrow, and Subexcavation in its original position. The measurements will include approved excavation of rock, shale, muck, or other unsuitable material, and its placement in the required Embankment or disposal as directed by the Project Manager.

Submit the original ground surface and final surface data for each excavation area using an electronic XML-compatible format approved by the Project Manager. Submit volume summary reports to the Project Manager based on this electronic data for each phase of construction including a report that summarizes the basis for the final volumes. Use a licensed New Mexico professional engineer or professional surveyor to certify these volumes.

STATION: 18+19 TO 86+50

Unclassified excavation will not be measured or paid for separately but shall be included in the unit cost for the corresponding Typical Section pay item per Section 207.

Subexcavation shall be measured in its original position. The measurements will include approved excavation of rock, shale, muck, or other unsuitable material, and its placement in the required Embankment or disposal as directed by the Project Manager.

Submit the original ground surface and final surface data for each excavation area using an electronic XML-compatible format approved by the Project Manager. Submit volume summary reports to the Project Manager based on this electronic data for each phase of construction including a report that summarizes the basis for the final volumes. Use a licensed New Mexico professional engineer or professional surveyor to certify these volumes.

Pay Item	Pay Unit
<i>Unclassified Excavation</i>	<i>Cubic Yard</i>
<i>Subexcavation</i>	Cubic Yard

203.5 BASIS OF PAYMENT

203.5.1 Work Included in Payment for Subexcavation

The Department will consider as included in the payment for the pay item(s) listed in this section and will not measure or pay separately for the following Work:

1. Providing approved material to backfill and compact in subexcavated areas.
2. Surveying, for the purpose of payment, is considered incidental to the excavation Work and is the Contractor's responsibility;
3. Hauling related to *Unclassified Excavation, Borrow, and Subexcavation*

SECTION 207

SUBGRADE PREPARATION AND TRAIL TYPICAL SECTIONS

Delete the entire Section 207 and substitute the following:

207.1 DESCRIPTION

This Work consists of excavating, grading, compacting and finishing the Subgrade beneath trail surfacing materials.

207.2 MATERIALS—Vacant

207.3 CONSTRUCTION REQUIREMENTS

Excavate as needed in accordance with Section 203 and as shown in the plans. The Contractor is expected to adjust grades as needed to provide the approximate cross section as shown in the plans (at-grade section, balanced cut/fill section, full cut section, full fill section, etc.) and meet the maximum longitudinal grade requirements while also providing positive drainage away from the trail.

All organic materials shall be removed from beneath the trail tread. This material can be used in the sideslopes or to fill areas identified in the plans for restoration.

Scarify and compact the top 6 in of the trail to 95% of maximum density.

Ensure the soil moisture content (at the time of compaction) is from optimum to optimum minus 5%, in accordance with AASHTO T 180, Method D (TTCP Modified) and AASHTO T 224. For soils with a PI of 15 or greater, ensure the moisture content of the soil at the time of compaction is from optimum moisture to 4 percentage points greater than the optimum level.

Determine densities in accordance with AASHTO T 180, Method D (TTCP Modified) and conduct field density tests at locations according to minimum testing requirements, in accordance with AASHTO T 310, or by other Department-approved methods.

Bases shall be prepared and proof-rolled in accordance with Section 304.

Grading required for Drainage Features shall be performed according to the plan details in the locations shown in the plans. The contractor will be expected to make minor adjustments to the location and or grading of the drainage features to assure positive drainage away from the trail.

Seeding of disturbed areas adjacent to the trail shall be seeded in accordance with Section 632.

207.3.1 Tolerances

Ensure the top surface elevation of the finished grade does not vary more than 0.050 ft above or below the specified elevation. The surface shall not vary by more than ½” when measured with an 8’ straight edge applied parallel or at right angles to the center-line except as shown in the plans and details for Drainage Features.

207.4 METHOD OF MEASUREMENT—Vacant

207.5 BASIS OF PAYMENT

Pay Item

Pay Unit

Trail Typical Section (Type)	Linear Foot
Drainage Features	Each

207.5.1 Work Included in Payment

No payment will be made for rehandling or reworking material to meet moisture and density requirements.

Trail Typical Section (Type) shall include all excavation and embankment (including grading for drainage swales where shown on the plans) compaction, and base preparation. Riprap shown beneath the trail surface shall be included in the cost. Rock lining for swales, where called for in the plans, will be paid for separately. Trail surfacing material and final surface preparation will be paid for separately.

Drainage Feature (Each) includes the cost of additional grading and workmanship required to form the drainage feature. Compaction and base preparation is paid for as Trail Typical Section (Type). (Drainage Feature areas are included in the plan quantities for Trail Typical Section (Type). Riprap at drainage features, where called for in the plans, will be paid for separately.

SECTION 303 BASE COURSE AND CRUSHER FINES

Delete the entire Section 303 and substitute the following:

303.1 DESCRIPTION

This Work consists of providing, hauling, and placing Base Course and Crusher Fines.

303.1.1 Stockpiling

This Work consists of providing, hauling, and stockpiling Base Course and Crusher Fines at specified locations.

303.1.2 Removing, Processing, and Placing Base Course

This Work consists of removing, hauling, processing, placing Base Course Material and Crusher Fines.

303.2 MATERIALS

303.2.1 General

Base Course consists of Santa Fe Brown 7/8" Base Course, as supplied by Santa Fe Classic Rock, or approved equal. The color of the material shall be brown. Base Course does not contain organic matter or other Deleterious Materials, including silt and clay balls.

Crusher Fines consists of Santa Fe Brown Crusher Fines, as supplied by Santa Fe Classic Rock, or approved equal. The color of the material shall be brown. Base Course does not contain organic matter or other Deleterious Materials, including silt and clay balls.

The following gradations requirements apply to aggregate Materials:

**Table 303.2.1:1
Base Course Gradation**

Sieve size	% passing
1 in	100
3/4 in	80-100
No. 4	30-60
No. 10	20-45
No. 200	3.0-10.0

Use the gradation, as shown in Table 303.2.1:1, "Base Course Gradation," unless otherwise specified.

**Table 303.2.1:2
Crusher Fines Gradation**

Sieve size	% passing
3/8 in	100
No. 4	80-90
No. 10	50-80
No. 40	25-50
No. 200	5-15

Use the gradation, as shown in Table 303.2.1:2, “Crusher Fines Gradation,” unless otherwise specified.

Ensure that at least 50% of the Materials retained on the No. 4 sieve have at least two Fractured Faces (FF) when evaluated by NMDOT Method FF-1, *Fractured Face Determination for Coarse Aggregate*. Provide Base Course with a maximum AI of 35 (calculated in accordance with Section 910, “Aggregate Index,” a maximum LL of 25, and a maximum PI of 6. Determine the AI per source at the untreated natural aggregate source only when using RAP with or without processed glass in combination with an untreated aggregate.

303.2.2 Aggregate Acceptance

The Department will accept Base Course based on periodic random samples taken by the Contractor from the trail in accordance with Section 901, “Quality Control/Quality Assurance (QC/QA).

303.3 CONSTRUCTION REQUIREMENTS

303.3.1 Preparation of Subgrade

Clean the Subgrade of loose and Deleterious Material. Ensure that the top 6 in of the trailbed meets the density requirements of Section 207, “Subgrade Preparation.” Proof-roll the Subgrade with a 27 ton roller or alternate Equipment as approved by the Project Manager to expose and correct soft areas.

303.3.2 Mixing and Placing

Mix the Base Course Material or Crusher Fines Material to a homogenous mixture. Place maximum 6 in (compacted) lifts, unless specified otherwise. Do not place on frozen Subgrade. Use AASHTO T 180, Method D (TTCP Modified) to determine density requirements. Use nuclear testing methods to determine densities in accordance with AASHTO T 310. Correct nuclear moisture contents for residual hydrocarbons before computing in-place dry densities when using RAP.

303.3.3 Surface Tolerance

The Department will allow a surface tolerance of 1/2 in within 8 ft. If the depth is deficient, the Project Manager can accept the Work and reduce the Contractor's payment, or reject the Work with subsequent replacement by the Contractor.

303.3.4 Plan Base Course and Subbase Depths

If the placed thickness deviates from the requirements by more than minus 1/2 in, the Project Manager may:

1. Accept and approve the payment for the measured quantity only; or
2. Accept the in-place layer of Base Course Material along with another layer of Base Course Material up to the specified thickness.

303.3.5 Stockpiled Base Course

Prevent segregation of Materials at each stockpile. Maintain each stockpile in accordance with Section 423.2.2.3, “Stockpiling.”

303.3.6 Sampling and Testing

303.3.6.1 Contractor Quality Control

Sample the stockpiled Material and conduct gradation testing, FF, LL, and PI testing in accordance with applicable AASHTO test procedures in accordance with Section 901. A minimum of one test shall be done for every 500 tons of material to be placed. Test results shall be provided to the project manager for approval prior to placing the material.

303.3 METHOD OF MEASUREMENT

Payment will be made based upon the actual area of Base Course or Crusher Fines placed and accepted.

303.3.1 Stockpiling

See Section 303.1.1, "Stockpiling."

303.5 BASIS OF PAYMENT

Pay Item	Pay Unit
Base Course 6 in Depth	Square Yard
Base Course 6 in Depth (As Directed)	Square Yard
Crusher Fines 6 in Depth	Square Yard

303.5.1 Work Included in Payment

Base Course 6 in Depth shall include all materials and workmanship. The cost of base course preparation shall be included in Typical Section (Type).

Base Course 6 in Depth (As Directed) shall include all materials and workmanship to replace crusher fines material, as shown in the plans, with Base Course 6 in Depth. This item is intended to allow the owner to identify, during construction, additional specific areas to be surfaced with base course material rather than Crusher Fines. Payment will be made based on the actual area of Base Course 6 in depth placed and accepted, as specifically directed by the owner or their assigned representative during construction.

Crusher Fines 6 in Depth shall include all materials and workmanship to place Crusher Fines 6 in Depth. Payment will be made based on the actual area of Crusher Fines 6 in depth placed and accepted.

SECTION 507 ROCK HEADWALLS

The following Section shall be added:

507.1 DESCRIPTION

This work will consist of furnishing and placing rock gravity headwalls in accordance with these Specifications and in conformity with the lines, grades, and dimensions as shown on the Plans or as established. The material for the rock and grout used and the construction of these walls shall be as specified herein.

The firm producing the rock retaining wall work of this section shall have 7 years experience in work of similar scope and nature to that specified. The proposed contractor must provide a minimum of 3 examples of similar work which are accessible to the owner for inspection.

507.2 MATERIALS

Materials shall meet the following requirements:

- (a) **Rock.** The rock used for the construction of the rock retaining walls shall be locally available Moss Block Rock, generally reddish in color.
 - 1. Rock Retaining Walls, Seat Walls and Headwalls: The rocks for the construction of the Rock Walls shall be well graded and vary in size from 6 inches to 24 inches. Control of gradation will be by visual inspection. However in the event the Project Manager determines rock to be unacceptable, the Project Manager will pick two (2) random truckloads to be dumped and checked for gradation. The Contractor at no additional cost shall provide mechanical equipment and labor needed to assist in checking gradation to the Owner.
 - 2. Rock Edge: Rocks for the construction of Rock Edge shall be similar in size, as shown in the plans, with random lengths, suitable to provide a uniform edge.
- (b) **Grout.** Provide Portland cement, aggregates and water for grout in accordance with Section 509.

507.3 CONSTRUCTION REQUIREMENTS

Construction Requirements for Rock Walls shall be as follows:

- 1. The rock for the rock walls shall be placed tightly, without obvious grout on the outside face of the rock wall. Rocks should be hand shaped as needed to provide a maximum gap between rocks of 1/2 inch. All exposed rocks in the final wall configuration must have at least have the dimension of one side greater than 8 inches and no side less than 4 inches. Chinking gaps with small rocks (under 4 inches) will not be allowed.
- 2. Subgrade under walls shall be compacted to 95% of maximum density determined in accordance with AASHTO T180, with a minimum bearing capacity of 2000 psf.

3. The rock walls shall be constructed to the dimensions and in the locations shown on the drawings. The walls shall be constructed with a 1 horizontal to 4 vertical batter on the front and back face, with a minimum width of 1 foot at the top of the wall.
4. The stone for the wall shall be laid to form substantial masonry presenting a neat, finished appearance. Headers shall hold the heart of the wall to the face. Headers shall occupy at least 20% of the area and they shall be evenly distributed. The length of stretchers shall not exceed three times their rise. Face stones shall be laid to break joint so that each rock laid rests on two beneath it. Spalls and pinners will not be allowed in the face and shall be used in the backing only where necessary.
5. All face stones shall be pitched to a string line on straight walls or laid to batter stakes for curved walls. The batter shall be consistent with respect to all parts of the wall and shall meet the minimum requirements set forth in the detail. The degree of roughness on the exposed face shall be measured with a six-foot straight edge supported between adjacent projections on the stone face. Variations in the face in excess of 2 inches, measured from the straight edge to the extreme depression in the stone will not be permitted. Rear faces shall present approximately plane surfaces and shall in general conform to the detail.
6. The top course of rock shall be grouted in place.
7. Prior to placing the grout, any type of debris, fines, smaller rock or silt shall be removed from around the rocks. Dewatering shall be implemented to guarantee that the grout will not be placed in water and the area will remain dewatered for a period of ten (10) hours after the grout has been placed. The surface of the rocks receiving grout shall be wet at all times prior to receiving grout.
8. Clean and wash any spillage before the grout sets on the outside face and top of walls. The visual surfaces of the rocks will be free of grout to provide a clean natural appearance. If washing does not clean off grout residue, the Contractor shall wash off any grout residue with muriatic acid and water, using a brush to scrub off the residue.
9. The underdrain system, as shown on the drawings, will not be paid for separately but is included in the work.
10. Examine the substrates, adjoining construction and the conditions under which the work is to be installed. Do not proceed with the work until unsatisfactory conditions have been corrected.
11. Verify dimensions before proceeding with the work. Obtain field measurements for work required to be accurately fitted to other construction. Be responsible for the accuracy of such measurements and precise fitting and assembly of finished work.
12. Job Mock-up: Prior to the construction of any rock walls, the Contractor, or Subcontractor who is constructing the walls for the Contractor, shall show the Project Manager, an example of similar rock walls that they had constructed previously. After acceptance of this previous work, the Contractor or Subcontractor shall construct approximately 40 square feet of rock wall as shown on the drawings for approval by the Project Manager. If the construction is approved, the Contractor or Subcontractor shall construct the remainder of the rock walls as approved. If the construction is not

approved, the Contractor shall make any changes required by the Owner and Engineer to obtain approval, and construct the remainder of the walls as approved.

507.4 METHOD OF MEASUREMENT

Rock Headwalls will be measured by the actual number of headwalls installed.

507.5 BASIS OF PAYMENT

The unit price of Rock Headwall shall be compensation for complete installation including but not limited to subgrade compaction, water, structure excavation and backfill, rock, grout, construction dewatering, delivery and installation.

Grout hot and cold weather operations shall be performed in accordance with Section 511 of the Standard Specifications. Hot and cold weather concreting will not be paid for separately, but shall be included in the work.

Payment will be made under:

<u>Pay Item</u>	<u>Pay Unit</u>
Rock Headwall	Each

**SECTION 570
PIPE CULVERTS**

1. Subsection 570.2 MATERIALS: Delete the first paragraph and replace it with the following:

All pipe shall be Corrugated Metal Pipe in accordance with Section 570.2 of the Standard Specifications.

2. Subsection 570.4: Delete the last paragraph and replace it with the following:

Structure excavation, bedding material, and backfill will not be paid for separately but shall be included in the linear foot cost of the pipe.

Rock headwalls will be paid for separately according to section 507.

SECTION 602

SLOPE AND EROSION PROTECTION STRUCTURES

Delete the entire Section 602 and substitute the following:

602.1 DESCRIPTION

This Work consists of providing and placing riprap on the Embankment slopes and the sides and bottoms of channels, drain outlets, ditches, and other such locations.

602.2 MATERIALS

602.2.1 Rock

Riprap will be classified as shown below. Provide riprap with at least 80% of the stones meeting the specified size requirements. Use stones less than the minimum dimensions to fill voids.

Class	Description	Material	Min Dimension (In.)
H	Rock Swales:	Golden Buck	2 - 4
I	Non-Enclosed Riprap	Golden Buck	4 – 8

Golden Buck Stone as available at:

Albert Montano Sand & Gravel
4519 Agua Fria Street
Santa Fe, NM 87507
505-989-7921
or approved equal

602.2.2 Base Course

Provide Base Course shall be in accordance with Section 304 “Base Course”.

602.2.3 Geotextile

Provide geotextile (filter fabric) Class 1 as per section 604 “Soil and Drainage Geotextiles”

602.3 CONSTRUCTION REQUIREMENTS

602.3.1 General Placement Requirements

Place riprap stones forming a continuous blanket in accordance with the Contract. Place stones with the long axis parallel to the toe of the slope, with a stable bearing upon the underlying soil or stones.

Place large stones as close together as possible. Use smaller stones to fill the areas between the larger stones.

Ensure that the finished riprap surface varies no more than 3 in from the specified slope unless others-wise shown.

Unless otherwise specified, place the riprap foundation course in a trench excavated to 24 in below the toe of the slope of the Embankment or side of channel.

Place a layer of Class 1 geotextile filter fabric between the riprap and the backfill Material.

602.3.2 Placement of Geotextile

Place Class 1 non-woven geotextile (filter fabric) between the riprap or revetment mattresses and the supporting soil. Ensure that the fabric is in accordance with Section 604, “Soil and Drainage Geotextiles.”

602.4 METHOD OF MEASUREMENT

The Department will measure *Riprap Class H* based on the specified thickness and accepted surface area.

602.5 BASIS OF PAYMENT

Pay Item	Pay Unit
Riprap Class H	Square Yard
Riprap Class H (As Directed)	Square Yard
Riprap Class I	Cubic Yard
Riprap Class I (As Directed)	Cubic Yard

602.5.1 Work Included in Payment

The following work and items will be considered as included in the payment for the main item(s) and will not be measured or paid for separately:

- Dewatering;
- Drainage geotextile(s).
- Base Course Material.

Excavation for placement of riprap is included in the plan quantities for Unclassified Excavation except as stated below.

Riprap (Class) (As Directed) shall include all materials and workmanship to place additional riprap not shown in the plans, but specifically directed by the owner or their assigned representative during construction. This item is intended to allow the owner to identify, during construction, additional specific areas to receive slope protection treatments. This item includes removal of the site materials and placement of imported riprap material according to these specifications. Payment will be made based on the actual quantity of additional riprap placed and accepted, as specifically directed by the owner or their assigned representative during construction.

SECTION 607 FENCE

Delete the entire Section 607 and substitute the following:

607.1 DESCRIPTION

This Work consists of constructing fence and gates.

607.2 MATERIALS

607.2.1 Wire

Provide wire and wire components with at least a Class 1 zinc coating in accordance with ASTM A 121 or ASTM A 116, unless otherwise specified in the Contract. Instead of Class 1 coating, the Contractor may coat the wire with aluminum alloy covering at least 0.3 oz per square foot of wire surface.

Provide coated brace wire with a size of at least 12 ½ gauge; use for constructing line wire, end braces and intermediate braces with wood posts.

607.2.2 Post Fasteners

Provide coated staples with a diameter of at least 0.148 in and a length of at least 1 1/2 in; use for fastening fence wire to wood posts.

607.2.3 Spikes

Provide 60D galvanized common nails, use for fastening Fencing (Type 3).

607.2.4 Posts

Provide metal or wood corner, brace, intermediate brace gate, and line posts of the specified type, size, and length in accordance with the Contract.

607.2.5 Wood Posts

Provide wood posts cut from live cedar. Provide straight posts that are free of decay and other defects, trimmed smooth of knots and projections, and with both ends sawed off perpendicular to the centerline. Provide an average nominal diameter at the top of each post of at least 3 in. Ensure the diameter of corner, brace, intermediate brace, and gate posts is at least 6 in, measured 6 in below the top of the post.

The Contractor may provide line posts with a slight crook in one direction, but the post may not vary more than 1 1/2 in from a straight line connecting both ends of the post.

607.2.6 Gates

Contractor shall provide tubular steel or steel panel frame gates.

Galvanize gates in accordance with Section 607.2.2.2.1, "Metal Posts," or coat in accordance with Section 545, "Protective Coating of Miscellaneous Structural Steel." Use "Interstate Green" as the finished color coating, except for galvanized gates and unless otherwise specified in the Contract.

607.2.7 Fittings

Provide fittings, hardware, and appurtenances for fences and gates that are of commercial-quality steel, malleable iron, or wrought iron, and galvanized in accordance with ASTM A 153.

607.2.8 Concrete

Provide concrete with a 28-day compressive strength of 3000 psi minimum. Quikcrete or other similar packaged, pre-blended concrete mixtures to be mixed at the site according to the manufacturer's directions may be used.

607.3 CONSTRUCTION REQUIREMENTS**607.3.1 General**

Clear the fence lines of trees, bush, stumps, logs, weeds, existing fences, and other obstructions that may interfere with fence construction, unless the Project Manager requires certain trees to remain in place. Dispose of removed material in accordance with Section 201, "Clearing and Grubbing."

The Contractor is to embed gate posts in concrete and shall install temporary guys or bracing to hold the posts in position until the concrete sets. Unless otherwise specified, do not install Materials on posts and do not strain posts, braces, or anchors set in concrete until 7 Days after concrete placement, or until the concrete has reached a compressive strength of 2,500 psi, whichever occurs first. Crown the concrete at the top of the foundation to shed water.

Only cut the tops of posts as approved by the Project Manager. Repair of Damaged Coating on Pull Cables and Tension Wires.

Firmly attach wire and fencing to the posts and braces. Tightly stretch wire and install it at the required elevations. Place fence wire on the field side of the posts, except on the inside of curves.

At each location where an electric transmission, distribution, or secondary line crosses new fence, provide and install a ground connection in accordance with the NEC®. Build new fences adjacent to existing fence before removing existing fences. When removing and rebuilding fences, maintain the security of livestock and protect adjacent properties and the traveling public. Remove the existing fence or unused Materials and neatly roll it up in single strand rolls. Remove the fence posts without damaging them and place the posts with the rolls of wire within the Right of Way for property owners to salvage, unless otherwise directed by the Project Manager. If the property owners do not pick the fence up within the allotted time, dispose of the fence as directed by the Project Manager.

607.3.2 Wire Fence

Set posts plumb and in accordance with the Plans. The Contractor may drive metal line posts. Excavate for footings and anchors in accordance with the Plans or as directed by the Project Manager. Place post hole backfill in thin layers and compact each layer.

607.3.2.1 Fence Tensioning

Stretch fence wire with a mechanical stretcher or other similar device. Do not allow the length between pull posts to exceed 300 ft.

607.3.2.2 Braces and Corner Posts

Place intermediate braces at equal intervals of not more than 300 ft or less and at every fence grade-change, such as edges of arroyos, bottoms and tops of hills, and as directed by the Project Manager. Maintain the required distance between the bottom wire and the ground. Space intermediate braces evenly between end braces and gateposts. Place end post and brace at end of fence segments. Stretch the wires and firmly attach them to the corner posts.

607.3.3 Gates

Fabricate and construct gates in accordance with the Contract.

607.4 METHOD OF MEASUREMENT

The Department will measure fences and gates along the top from outside to outside of end posts for each continuous run of fence or gate.

607.5 BASIS OF PAYMENT

Pay Item	Pay Unit
Wire Fence	Linear Foot
Buck and Pole Fence	Linear Foot
Buck and Pole Fence (As Directed)	Linear Foot
Vehicular Gate	Each

607.5.1 Work Included in Payment

The following work and items will be considered as included in the payment for the main item(s) and will not be measured or paid for separately: clearing and grubbing, grading, excavation, backfill, disposal of surplus material, concrete, fasteners, galvanizing, coating repairs and all additional bracing required for grade changes.

Buck and Pole Fence (As Directed) shall include all materials and workmanship to place additional buck and pole fence not shown in the plans, but specifically directed by the owner or their assigned representative during construction. This item is intended to allow the owner to identify, during construction, additional fence locations. Payment will be made based on the actual quantity of additional fence placed and accepted, as specifically directed by the owner or their assigned representative during construction.

**SECTION 632
SEEDING**

Replace this section with the following technical specification for Native Grass Seeding.

NATIVE GRASS SEEDING

PART 1 - GENERAL

1.01 SCOPE

- A. Furnish all labor, materials, and equipment necessary for preparation of seedbed, installation of seed, hydro-mulching and tackifying, and related work specified herein.

1.02 APPLICABLE STANDARDS

- A. All native grass seed shall be certified by state of origin. The certification authority for the state of New Mexico is the New Mexico Crop Improvement Association.

1.03 QUALIFICATIONS

- A. All work specified herein shall be performed by a licensed landscape contractor experienced with the type and scale of work required, which includes hydro-mulching, and having equipment and personnel adequate to perform the work satisfactorily.
- B. Contractors may submit alternate but equal seeding specifications to the client and Landscape Architect for written approval for use in substitution of these specifications.

1.04 COORDINATION

- A. Determine the acceptability of subgrade preparation prior to the start of native grass seeding operations. Protect all existing items to remain and new work of other trades to ensure proper timing of each phase of work.

1.05 SUBMITTALS

- A. Proposed source of all native grass and shrub seed which shall indicate the location from which the seed was harvested.
- B. Sources of supply for hydromulch, tackifier and fertilizer.
- C. Seed bag tags and weights per bag and copies of invoices identified by project name.

1.06 MAINTENANCE AND GUARANTEE

- A. The work included in this section is intended to cover performance only during construction period with no guarantee or maintenance after project is completed.

PART 2 - MATERIALS

2.01 SEED

- A. The seed mix shall be a mixture of the Dryland Blend (30 lbs per acre) and the High Plains Mix (3 lbs per acre), available from Plants of the Southwest (www.plantsofthesouthwest.com) or approved equals. The seed mixtures shall be blended at the nursery.
- B. Contractor shall furnish certification showing origin of all seed and pure live seed (P.L.S.) content as determined by a certified authority. Pure live seed shall be the product of percent purity times percent germination. Each bag of seed shall be tagged and sealed by the seed dealer in accordance with the State Department of Agriculture or other local certification authority within the state of origin. The tag or label shall indicate analysis of seed and date of analysis, which shall not be more than 9 months prior to delivery date. Seed may be premixed by the seed dealer and appropriate data indicated on the bag label for each variety.
- C. The seed mix shall be as noted on the plans.

2.02 MULCH AND TACKIFIER

- A. The mulch shall include a colloidal polysaccharide or grain starch tackifier. This tackifier shall be adhered to the fibers, during manufacturing, to prevent separation during shipment and to avoid chemical agglomeration during mixing in the hydraulic mulching equipment. The tackifier shall be homogeneous within the unit package. It shall have no growth or germination inhibiting factors and be nontoxic.
- B. The mulch material shall consist of virgin wood fibers manufactured expressly from whole wood chips. The chips shall be processed in such a manner as to contain no growth or germination inhibiting factors. Fiber shall not be produced from recycled material such as sawdust, paper, cardboard, or residue from pulp and paper plants.
- C. The wood cellulose fibers of the mulch must maintain uniform suspension in water under agitation. Upon application, the mulch material shall form a blotter-like mat covering the ground. This mat shall have the characteristics of moisture absorption, percolation and shall cover and hold grass seed in contact with the soil.
- D. The wood fiber mulch shall conform to the following specifications:
- Percent moisture content: 10.0% +/- 3.0%
 - Percent organic matter: 96.2% +/- .8% O.D. Basis
 - Percent tackifier: 3.0% +/- 0.5% O.D. Basis
 - Percent ash content: 0.8% +/- 0.2% O.D. Basis
 - pH: 4.8% +/- 0.5%

- Water holding capacity (minimum) 1,000 grams water/100 grams fiber.

E. The rate of application of the mulch/tackifier on this project shall be 4,000 lbs. per acre.

2.03 SOIL RETENTION BLANKET

A. Slopes steeper than 3:1 shall be covered with soil retention blanket according to Section 603.2.3.2 as shown in the plans.

2.04 FERTILIZER

A. Shall be as noted on the Drawings, or Gro Power Plus (www.gropower.com) applied as per manufacturer's recommendation if not noted on plans.

PART 3 - EXECUTION

3.01 SOIL PREPARATION

- A. Areas for seeding shall be cleared of all debris. Acceptability of the grades shall be determined by the contractor prior to seed bed preparation.
- B. The seed bed shall be prepared to a maximum depth of 4 inches by tilling with a rotovator or disc. All competitive vegetation, with the exception of existing shrub material (including Chamisa, 4-Wing Salt Bush, and others) shall be uprooted during seed bed preparation and the soil shall be uniformly worked to a smooth surface free of clods, large stones of over 3 inches in any dimension, or other foreign material that would interfere with the seeding operations.
- C. Tilling will not be required on ground which in the opinion of the Landscape Architect is already loose to a depth of 2 inches or more which has undergone re-grading and fill. All newly cut slopes will require tilling.
- D. Tilling must be performed across the slope when practical and shall be performed in two directions whenever one is insufficient to adequately break up the soil in the Project Manager's opinion. Tilling shall not occur when the wind is over 10 mph and is causing a dust problem to adjoining areas.
- E. Leave surface roughed state. Do not rake smooth
- F. The extent of seed bed preparation shall not exceed the area on which the entire seeding operation can be accomplished within a 24 hour period.

3.02 SEEDING

- A. Seed shall be applied by hand, rotary seed spreader, or hydro seeding without mulch.

- B. If by hand: spread seed by mixing with small amounts of
 1. Sand or clean soil for even distribution
 2. Spread evenly at rate per acre. Cross entire area in two directions perpendicular each other.
- C. If by rotary seed spreader:
 1. Spread seed using spreader. Cross over in two directions perpendicular to each other.
- D. If by hydroseed:
 1. Spray using lowest pressure practical
 2. Spray area in two directions approximately perpendicular to each other.

3.03 RAKING - CHAINING

- A. Lightly rake over small areas to cover spread seed approximately ½”
- B. Chain over large areas to cover seed approximately ½”

3.04 FERTILIZATION

- A. Fertilizer of the type and formulation and rate of application as designated shall be applied uniformly to the prepared seed bed.

3.05 MAINTENANCE

- A. Contractor shall keep all native grass areas free of weeds until acceptance by the Project Manager.

3.06 CLEANUP AND PROTECTION

- A. During the work, keep trail clear and work areas in orderly condition.
- B. Protect work and materials from damage due to seeding operations, operations by other contractors and trades and trespassers. Maintain protection during installation and maintenance periods. Treat, repair or replace damaged work as directed.

A.07 INSPECTION AND ACCEPTANCE

- A. When work is completed including maintenance, Project Manager upon request, will make an inspection to determine acceptability.
- B. Where inspected seeding work does not comply with requirements, replace rejected work and continue specified maintenance until re-inspected by Architect and found to be acceptable.

- B. Final acceptance shall be granted when the seeding area is at least 70% covered with living vegetation.
- C. Seeding areas that have not germinated after season shall have seed and mulch reapplied at no additional cost to the project.

SECTION 701 TRAFFIC SIGNS AND SIGN STRUCTURES

701.1 DESCRIPTION

This Work consists of providing and installing trail signs in accordance with the *MUTCD*.

701.2 MATERIALS

701.2.1 General

Provide Materials manufactured in accordance with the requirements of ASTM D 4956, current version.

701.2.2 Sign Components

701.2.2.1 Retroreflective Sheeting

Use retroreflective sheeting included in the Department's *Approved Products List*. Provide certification that sheeting is in accordance with ASTM D 4956, current version. Provide sheeting that has a smooth, flat exterior film with retroreflective elements homogeneous in appearance, weather resistant, and with a protected, pre-coated adhesive backing.

701.2.2.2 Color

Use a sign face color in accordance with ASTM D 4956, current version.

701.2.2.3 Aluminum Panel Signs

Use 0.08 in minimum thickness 6061-T6 or 5052-H38 aluminum alloy for signs 24 in wide or less. Use 1/8 in minimum thickness 6061-T6 or 5052-H38 aluminum alloy for signs wider than 24 in.

Provide aluminum panel signs with smooth edges and corners.

701.2.2.4 Corners

Cut corner radii in accordance with the FHWA Standard Highway Signs manual.

701.2.2.5 Aluminum Sign Substrate

Prepare aluminum sign substrate for retroreflective sheeting as specified by the sheeting material manufacturer. Apply sheeting, legend, and clear coat in accordance with the manufacturer's recommendations. Keep a copy of the manufacturer's recommendations on file as specified in Section 701.2.1.1, "Sign Manufacturer's Quality Control." Punch or drill a hole in the aluminum sign panel to receive tamper proof hardware.

701.2.3.1 Posts

Provide 4 x 4 pressure treated wood posts with beveled tops.

701.2.3.2 Post Assembly Hardware

Use post assembly hardware that is:

1. Hot dipped galvanized or cadmium plated in accordance with ASTM B766-86;
2. Stainless steel; or
3. Mechanically galvanized in accordance with ASTM B545 (Class Fe/Sn 20).

701.2.3.4 Fasteners

Use size M8 tamper-proof carriage bolts to attach signs that are:

1. Hot dipped galvanized, or cadmium plated in accordance with ASTM B766-86;
2. Stainless steel; or
3. Mechanically galvanized in accordance with ASTM B 545 (Class Fe/Sn 20).

The Contractor may use rivets to attach signs. Follow manufacturer’s recommendations for installation procedures.

Use size M8 tamper-proof nuts fabricated from C 1008 hot rolled steel, case hardened to R55-60, and plated with zinc yellow dichromate, from 0.002 in to 0.005 in thick.

701.2.4 General Fabrication Requirements

Ensure arrangement, letter spacing and height, letter series, symbols, and borders for each sign face are in accordance with the *FHWA Standard Highway Signs* manual.

Shear, blank, saw, or mill Material 1/2 in thick or less. Ensure that cut edges are true, smooth, and free from excessive burrs or ragged breaks. Fillet re-entrant cuts by drilling before cutting. Flame cutting is prohibited. Drill bolt holes to finish sizes.

701.3.1 General

701.3.2 Installation Requirements

Compact sign Structure footing foundations and backfill to 95% of maximum density as determined by AASHTO T 99.

Set posts plumb. Ensure that the mounting faces of multiple sign posts lie in the same plane.

701.3.3 Mileposts Installation

Notify the Project Manager two weeks before placing mileposts; the project manager will mark the milepost locations.

701.4 METHOD OF MEASUREMENT - Vacant

701.5 BASIS OF PAYMENT

Pay Item	Pay Unit
Panels Signs	Square Foot
Timber Posts	Linear Foot
Mile Marker Signs	Each

701.5.1 Work Included in Payment

The following work and items will be considered as included in the payment for the main items and will not be measured or paid for separately:

- A. Hardware;
- B. Excavation, backfill, and compaction for sign installation and/or removal;
- C. Mile Marker Signs will include both the sign panel and the post.

SECTION 901

QUALITY CONTROL/QUALITY ASSURANCE

Replace this section with the following technical specification.

DEFINITIONS:

Direct Supervision. The required supervision of a TTCP trainee by a certified TTCP technician who is on a project with the trainee and who is both signing off and is personally responsible for all of that trainee's sampling and testing procedures, results and reports.

Qualified Sampling and Testing Technician. A technician who has been certified under TTCP to independently perform inspections, sampling, and testing in specified Materials testing area(s) for either quality control or acceptance testing.

The term "qualified" and "certified" have the same meaning.

TTCP Trainee. A technician who has attended the appropriate TTCP training class and has a certificate of completion, and is receiving required "on-the-job-training" under the direct supervision of a TTCP certified technician, as such is eligible to take a particular TTCP certification exam.

901.1 INSPECTIONS AND TESTING OF MATERIALS

901.1 General

This work shall consist of compaction testing and material testing in accordance with the plans and specifications. This work is to be done by a commercial materials testing laboratory run by a licensed professional engineer. The testing lab will be a sub-contractor to the general contractor.

Materials are subject to inspection, sampling, and testing before acceptance of the work.

References in the Contract to test methods or specifications are to the latest versions as of the Bid Advertisement date, unless otherwise noted. Test methods may be subject to modification at the discretion of the Owner. The Department's current *TTCP Manual* contains AASHTO and ASTM test method modifications.

901.2 Technician Certification

Ensure that testing is performed under the direct supervision of an individual certified by the State Materials Bureau's TTCP. Certification is based on demonstration of abilities for test methods and procedures, and a written test. The TTCP Board of Directors, in conjunction with the State Materials Bureau and the State Construction Bureau, will establish term and expiration date of certification and requirements for renewal of certification. If the competence of a certified individual is questioned, the question of competence must be documented in accordance with the *TTCP Manual*.

901.2 Quality Control

901.2.1 Quality Control Laboratory

Perform the quality control testing using a private testing Laboratory or a Contractor provided Laboratory. Calibrate or check testing Equipment in accordance with AASHTO R 18. Maintain calibration documentation at the Laboratory and provide this to the Project Manager

upon request. The Project Manager will determine acceptability of the quality control Laboratory. Allow the Department unrestricted access to the Laboratory. The Department will conduct independent inspection of the Contractor's field Laboratory. The Project Manager will provide the Contractor a written accounting of Laboratory deficiencies.

901.2.2 Sampling

The sampling plan shall contain a random sampling selection technique in accordance with specified Department, AASHTO, or ASTM procedures, as modified by the State Materials Bureau. Allow the Project Manager to witness all sampling and testing. Take additional samples if directed by the Project Manager.

901.2.3 Testing

Compaction and material testing will be done at the frequency required by the Specifications and by the Construction Engineer. Generally these frequencies will be outlined in the following paragraphs.

Embankment Material: Compaction tests will be required for each lift at approximately every 250 lineal feet and in accordance with Section 203.34.

Trail Subgrade and Surface Preparation: Compaction tests will be required at approximately every 250 lineal feet and in accordance with Section 207.3.

Base Course: Compaction tests will be required at approximately every 250 lineal feet and in accordance with Section 304.3.2. Material shall be tested in accordance with Section 304.3.6.1.

Wall Subgrade: Compaction tests will be required at approximately every 100 lineal feet and in accordance with Section 507.3

It will be the responsibility of the Contractor to schedule testing. The Owner shall be notified daily of the intended testing times.

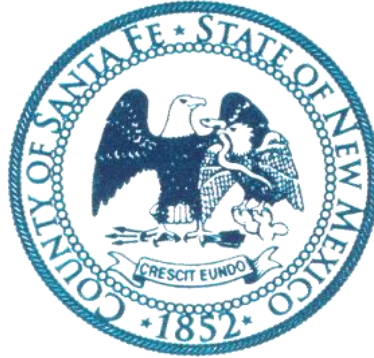
901.2.4 Records

Maintain a complete set of original test records (written in non-black ink), including supporting documents (calculations, scratch sheets, internal forms etc.) and, upon request, make them available to the Project Manager within 4 hours. No hard copy laboratory testing documentation will be destroyed for any reason, even after the data is entered into the computer spreadsheet for analysis. Maintain all original test documentation for a minimum of three years after the Physical Completion Date.

901.3 METHOD OF MEASUREMENT—Vacant

SAMPLE AGREEMENT

**AGREEMENT BETWEEN SANTA FE COUNTY AND CONTRACTOR
FOR CONSTRUCTION SERVICES**



**SANTA FE COUNTY
ADMINISTRATIVE SERVICES DEPARTMENT
PURCHASING DIVISION
2014 EDITION**

[Changes, additions, deletions and/or any modifications other than those agreed upon by the parties upon execution of this contract, without the written consent of Santa Fe County shall render this document null and void.]

THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES; CONSULTATION WITH AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS COMPLETION OR MODIFICATION.

Hereafter "County":

Katherine Miller, County Manager
Santa Fe County
PO Box 276
Santa Fe, New Mexico 87504-0276
TELEPHONE: 505-986-6200
FAX: 505-985-2740

Hereafter "Contractor":

TELEPHONE: _____
E-MAIL ADDRESS: _____

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RECITALS

WHEREAS, in accordance with Section 13-1-103 through Section 13-1-110 NMSA 1978, the County issued Invitation for Bid (IFB) No. 2016-135-PW/MM for construction services for Santa Fe Rail Trail Segment 4;

WHEREAS, the Contractor submitted its bid, dated _____ in response to IFB No. 2016-0135-PW/MM;

WHEREAS, the County is authorized to enter into a construction contract for the Project pursuant to Sections 13-1-100, NMSA 1978;

WHEREAS, the Contractor hereby represents that it is a licensed contractor of the State of New Mexico pursuant to Chapter 60, Article 13 NMSA 1978;

WHEREAS, the Owner agrees to hire the Contractor, and the Contractor agrees to provide Construction Services as required herein for the Project in accordance with the terms and conditions set forth in this Agreement; and,

WHEREAS, the County requires the services of the Contractor, and the Contractor is willing to provide these services and both parties wish to enter into this Agreement.

**ARTICLE 1
THE CONTRACT DOCUMENTS**

1.1 DOCUMENTS

The contract documents consist of the following:

- Agreement between County and Contractor
- General Conditions of the Construction Contract
- Conditions of the Work of the Construction Contract
- Bid Sheet Attachment A
- Addenda and Modifications issued Attachment B
before and after execution of this Contract

1.2 CERTIFICATES AND DOCUMENTATION

The following certificates and documentation are hereby attached as exhibits as follows:

- Project Manual Exhibit A
- Technical Specifications as listed in Plan Set Exhibit B
- Labor and Material Payment Bond Exhibit C
- Performance Bond Exhibit D
- Assignment of Antitrust Claims Exhibit E
- Certificate of Insurance Exhibit F

Notice of Award
Notice to Proceed
Change Order
Certificate of Substantial Completion

Exhibit G
Exhibit H
Exhibit I
Exhibit J

ARTICLE 2 THE WORK

2.1 THE WORK

The Contractor shall perform all the Work required by the Contract Documents for the following:

The work to be performed includes the construction of a 1.64 mile crusher fines trail adjacent to the Santa Fe Southern Railway. The location of the work is generally south of Avenida Vista Grande to Avenida Eldorado, south of the City of Santa Fe, in Santa Fe County.

The work includes grading, base preparation, crusher fines surface placement, placement of base course in selected areas, drainage features, slope protection, fencing, site restoration and signage.

The Contractor shall supply all labor, materials and equipment necessary to complete the work in accordance with the construction plans and specifications.

ARTICLE 3 EFFECTIVE DATE, TIME OF COMMENCEMENT, SUBSTANTIAL COMPLETION AND AMENDMENTS

3.1 EFFECTIVE DATE

The Effective Date of this Agreement is the date of signature by the County.

3.2 TIME OF COMMENCEMENT

The work to be performed under this Contract shall be commenced no later than ten (10) consecutive calendar days after the date of written Notice to Proceed issued by the County, hereto attached as Exhibit H.

3.3 SUBSTANTIAL COMPLETION

The Contractor shall achieve Substantial Completion of the entire work no later than one hundred eighty (180) working days from the date of the Notice to Proceed, except as hereafter extended by valid written Change Order. A Certificate of Substantial Completion, attached hereto as Exhibit J, will be issued by the County to the Contractor, as adjusted by any Change Order, attached hereto as Exhibit I.

3.4 TIME FOR COMPLETION AND LIQUIDATED DAMAGES

Should the Contractor neglect, refuse, or otherwise fail to complete the Work within the time specified in this Article, the Contractor agrees that Liquidated Damages in the amount of Two Thousand Dollars (\$2000.00) shall be assessed per each calendar day that expires after the date of substantial completion, as adjusted by any change order, and until issuance by the County of a certificate of Substantial Completion in accordance with Paragraph 7 EFFECTIVE DATE AND TERM of the General Conditions.

- A. It is hereby understood and mutually agreed, by and between the Contractor and the County, that the date of beginning and the time for completion as specified in the contract of the work to be done hereunder are *essential conditions* of this contract and it is further mutually understood and agreed that the work outlined in this contract shall be commenced on a date to be specified in the "Notice to Proceed."
- B. The Contractor agrees that work shall be prosecuted regularly, diligently and uninterruptedly at such rate of progress as will insure full completion thereof within the time specified. It is expressly understood and agreed, by and between the Contractor and the County, that the time for the completion of the work described herein is a reasonable time for the completion of the same, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality.
- C. If the Contractor shall neglect, fail or refuse to complete the work within the time herein specified or any proper extension thereof granted by the County, then the Contractor does hereby agree, as a part consideration for the awarding of this contract, to pay to the County the amount specified in the contract, not as a penalty but as liquidated damages for such breach of contract as herein set forth, for each and every calendar day that the contract shall be in default after the time stipulated in the contract for completing the work.
- D. The amount is fixed and agreed upon by and between the Contractor and the County because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the County would in such event sustain, and the amount is agreed to be the amount of damages which the County would sustain and the amount shall be retained from time to time by the County from current periodical estimates.
- E. It is agreed that time is of the essence of each and every portion of this contract and of the specifications wherein a definite and certain length of time is fixed for the performance of any act whatsoever and where under the contract an additional time is allowed for the completion of any work, the new time limit fixed by such extension shall be of the essence of this contract. Provided that the Contractor shall not be charged with liquidated damages or any excess cost when the County determines that the Contractor is without fault and the Contractor's reasons for the time extension are acceptable to the County. Provided that the Contractor shall not be charged with

liquidated damages or any excess cost when the delay in completion of the work is due:

1. To any preference, priority or allocation order duly issued by the County;
2. To unforeseeable cause beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, or of the public enemy, acts of the County, acts of another contractor in the performance of a contract with the County, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and severe weather;
3. To any delays of subcontractors or suppliers occasioned by any of the causes specified in subsections above.

F. Provided further, that the Contractor shall, within ten (10) days from the beginning of such delay, unless the County shall grant a further period of time prior to the date of final settlement of the contract, notify the County in writing of the causes of the delay, who shall ascertain the facts and extent of the delay and notify the Contractor within a reasonable time of its decision in the matter.

3.5 AMENDMENTS

This Agreement may be amended by mutual agreement by both parties upon issuance of a Change Order by the County to the Contractor. Any such amendment shall be in accordance with Paragraph 10 AMENDMENTS-CHANGE ORDERS of the General Conditions. Unless otherwise agreed to by the parties, an amendment shall not affect any outstanding Purchase Order(s) issued by the County prior to the effective date of the amendment.

ARTICLE 4 CONTRACT SUM

4.1 LUMP SUM

The County shall pay the Contractor in current funds for the performance of the Work, subject to additions and deductions by Change Order as provided in the Contract Documents, an agreed upon Lump Sum of (enter dollar amount in words) Dollars (\$0.00 enter dollar amount), exclusive of New Mexico gross receipts tax.

4.2 CONTRACT AMOUNT

The Contract sum is determined as follows:

(insert data from bid form concerning base bid, alternates, etc.)

Base Bid	\$
List Alternates, if applicable	\$
	\$
	\$
Total Contract Amount	\$

ARTICLE 5 PROGRESS PAYMENTS

5.1 PROGRESS PAYMENTS

Based upon an Application for Payment submitted to the County by the Contractor and Certificates for Payment issued by the County, the County shall make progress payments on account of the Contract sum to the Contractor as provided in the Contract documents for the period ending the last day of the month as follows:

- A. No later than (21) working days following receipt by the County of an undisputed Application for Payment, one hundred percent (100%) of the portion of the Contract Sum properly allocable to labor, materials, and equipment incorporated in the Work and one hundred percent (100%) of the portion of the Contract Sum properly allocable to materials and equipment suitably stored at the site or some other location agreed upon in writing for the period covered by the Application for Payment, less the aggregate of previous payments made by the County; less such amounts as the Architect/ Engineer shall determine for all incomplete Work and unsettled claims as provided in the Contract Documents (Section 57-28-5, NMSA 1978).
- B. When making payments, the County, Contractor or subcontractor shall not retain, withhold, hold back or in any other manner not pay amounts owed for work performed. For additional information regarding retainage and the Prompt Payment Act (refer to Section 57-28-5, NMSA 1978).
- C. Contractors and subcontractors shall make prompt payment to their subcontractors and suppliers for amounts owed for work performed on the construction project within twenty-one days after receipt of payment from the County, contractor or subcontractor. If the contractor or subcontractor fails to pay its subcontractor and suppliers by first-class mail or hand delivery within twenty-one days after receipt of an undisputed request for payment, the contractor or subcontractor shall pay interest to its subcontractors and suppliers beginning on the twenty-second day after payment was due, computed at one and one-half percent of the undisputed amount per month or fraction of a month until payment is issued. These payment provisions apply to all tiers of contractors, subcontractors and suppliers (Section 57-28-1 et. seq. NMSA 1978).
- D. In preparing estimates the material delivered on the site and preparatory work done may be taken into consideration.
- E. All material and work covered by partial payments made shall thereupon become the sole property of the County, but this provision shall not be construed as relieving the Contractor from the sole responsibility for the care and protection of materials and work upon which payments have been made or the restoration of any damaged work,

or as a waiver of the right of the County to require the fulfillment of all of the terms of the contract.

- F. County's right to withhold certain amounts and make application thereof. The Contractor agrees that it will indemnify and hold the County harmless from all claims growing out of the lawful demands of subcontractors, laborers, workmen, mechanics, material men, and furnisher of machinery and parts thereof, equipment, power tools, and all supplies, including commissary, incurred in the furtherance of the performance of this contract. The Contractor shall, at the County's request, furnish satisfactory evidence that all obligations of the nature hereinabove designated have been paid, discharged, or waived. If the Contractor fails so to do, then the County may, after having served written notice on the said Contractor, either pay unpaid bills, of which the County has written notice, direct, or withhold from the Contractor's unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to the Contractor shall be resumed, in accordance with the terms of this contract, but in no event shall the provisions of this sentence be construed to impose any obligations upon the County to either the Contractor or its Surety. In paying any unpaid bills of the Contractor, the County shall be deemed the agent of the Contractor, and any payment so made by the County shall be considered as a payment made under the contract by the County to the Contractor and the County shall not be liable to the Contractor for any such payments made in good faith.

ARTICLE 6 FINAL PAYMENT

6.1 FINAL PAYMENT

The entire unpaid balance of the Contract Sum, shall be paid by the County to the Contractor within thirty (30) calendar days after notification of the County by the Architect/Engineer that all incomplete and unacceptable work that was noted during the Substantial Completion Inspection and listed on the attachment to the Certificate of Substantial Completion has been corrected, and provided the Contract has been fully performed and a final Certificate for Payment has been issued by the Architect/Engineer. In addition, the Contractor shall provide to the County a certified statement of Release of Liens and Consent of Surety.

6.2 ACCEPTANCE OF FINAL PAYMENT CONTITUTES RELEASE

The acceptance by the Contractor of final payment shall be and shall operate as a release to the County of all claims and all liability to the Contractor for all things done or furnished in connection with this work and for every act and neglect of the County and others relating to or arising out of this work. No payment, however, final or otherwise, shall operate to release the Contractor or its sureties from any obligations under this contract or the Performance and Payment Bond.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date first written above.

SANTA FE COUNTY

Robert A. Anaya
Santa Fe County Board of County Commissioners

Date

ATTESTATION:

Geraldine Salazar
Santa Fe County Clerk

REVIEWED AS TO LEGAL FORM AND SUFFICIENCY

Gregory S. Shaffer
Santa Fe County Attorney

Date

FINANCE DEPARTMENT APPROVAL:

Carole H. Jaramillo
Santa Fe County Finance Director

Date

CONTRACTOR:

Signature

Date

Print Name

Print Title

**GENERAL CONDITIONS
TO AGREEMENT BETWEEN SANTA FE COUNTY
AND CONTRACTOR
FOR CONSTRUCTION SERVICES**

1.0 DEFINITIONS

The following terms as used in this contract are respectively defined as follows:

- 1.1** *Application for Payment* Contractor's written request for payment for completed portions of the work and, for materials delivered or stored and properly labeled for the respective project.
- 1.2** *Change Order* A written document between the County and the Contractor signed by the County and the Contractor authorizing a change in the work or an adjustment in the contract sum or the contract time. A change order may be signed by the Architect or Engineer, provided they have written authority from the County for such procedure and that a copy of such written authority is furnished to the Contractor upon request. The contract sum and the contract time may be changed only by change order. A change order may be in the form of additional compensation or time; or less compensation or time known as a Deduction (from the contract) the amount deducted from the contract sum by change order.
- 1.3** *Calendar Day* Each and every Day shown on the calendar, beginning and ending at midnight.
- 1.4** *Contract Period* The elapsed number of working days or calendar days from the specified date of commencing work to the specified date of completion, as specified in the contract.
- 1.5** *Contractor* is a person, firm or corporation with whom the contract is entered into with the County.
- 1.6** *Construction Documents* All drawings, specifications and addenda associated with a specific construction project.
- 1.7** *Construction Schedule* A schedule in form satisfactory to the County, showing the proposed dates of commencement and completion of each of the various subdivisions of work required under the contract documents and the anticipated amount of each monthly payment that will become due the Contractor in accordance with the progress schedule.
- 1.8** *Day* The word "day" means a calendar day of 24 hours measured from midnight to the next midnight.
- 1.9** *Labor and Material Payment Bond* A written form of security from a surety (bonding) company to the County, on behalf of an acceptable prime Contractor or

subcontractor, guaranteeing payment to the County in the event the Contractor fails to pay for all labor, materials, equipment, or services in accordance with the contract. (see Performance Bond and Surety Bond).

- 1.10 Lump Sum Agreement** (*See Stipulated Sum Agreement*)
- 1.11 Lump Sum Bid** A single entry amount to cover all labor, equipment, materials, services, and overhead and profit for completing the construction of a variety of unspecified items of work without the benefit of a cost breakdown.
- 1.12 Lump Sum Contract** A written contract between the County and Contractor wherein the County agrees to pay the contractor a specified sum of money for completing a scope of work consisting of a variety of unspecified items or work.
- 1.13 Payment Bond** A written form of security from a surety company to the County, on behalf of an acceptable prime contractor or subcontractor, guaranteeing payment to all persons providing labor, materials, equipment, or services in accordance with the contract.
- 1.14 Performance Bond** A written form of security from a surety company to the County, on behalf of an acceptable prime contractor or subcontractor, guaranteeing the completion of the work in accordance with the terms of the contract.
- 1.15 Progress Payment** A payment from the County to the Contractor determined by calculating the difference between the completed work and materials stored and a predetermined schedule of values or unit costs. (see Schedule of Values, Unit Costs).
- 1.16 Progress Schedule** A pictorial or written schedule (including a graph or diagram) that shows proposed and actual start and completion dates of the various work elements.
- 1.17 Punch list** a list of items to be completed or corrected, prepared by the Architect/Engineer, checked and augmented as required by the Contractor or Construction Manager is appended hereto as Exhibit J. Note: The failure to include any item on such list does not relieve the Contractor of the responsibility to complete all work in accordance with the contract documents.
- 1.18 Schedule of Values** A statement furnished by the Contractor to the Architect or Engineer and the County reflecting the portions of the contract sum allotted for the various parts of the work and used as the basis for reviewing the Contractor's Applications for Payment.
- 1.19 Services** Includes services performed, workmanship, and material furnished or utilized in the performance of services.

- 1.20** *Stipulated Sum Agreement* A written agreement in which a specific amount is set forth as the total payment for completing the contract (See Lump Sum Contract).
- 1.21** *Subcontractor* is a person, firm or corporation supplying labor and materials or only labor for work at the site of the project for, and under separate contract or agreement with, the Contractor.
- 1.22** *Unit Price Contract* A written contract wherein the County agrees to pay the Contractor a specified amount of money for each unit of work successfully completed as set forth in the contract.
- 1.23** *Unit Prices* A predetermined price for a measurement or quantity of work to be performed within a specific contract. The designated unit price would include all labor materials, equipment or services associated with the measurement or quantity established.
- 1.24** *Working Day* means every day except Saturday, Sunday and holidays recognized by Santa Fe County. Based on a review of weather that may adversely affect the Contractor's ability to effectively prosecute the Work, and the actual Work performed by the Contractor, the Architect or Engineer will determine (between the end of the day and noon of the next day) if the County will charge a Working Day. If the Contractor was able to effectively prosecute Work on a critical path item for six (6) or more hours on a Saturday, Sunday or County-recognized Holiday, the Architect or Engineer may charge a Working Day.
- 1.25** *Work on (at) the project* is work to be performed at the location of the project, including the transportation of materials and supplies to or from the location of the project by employees of the Contractor and any subcontractor.

2. CONTRACT AND CONTRACT DOCUMENTS

- 2.1** *Entire Agreement.* This Agreement represents the entire contract between the parties and, except as otherwise provided herein, may not be amended, changed, modified, or altered without the written consent of the parties hereto. This Agreement incorporates all of the conditions, agreements, and understandings between the parties concerning the subject matter of this Agreement, and all such conditions, understandings, and agreements have been merged into this written Agreement. No prior condition, agreement, or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless incorporated in this written Agreement.
- 2.2** *Relationship of Contract Documents.* The Contract Documents are complementary, and any requirement of one Contract Document shall be as binding as if required by all.
- 2.3** *Conflicting Conditions.* Any provisions in any of the Contract Documents which may be in conflict or inconsistent with any of the paragraphs in these General Conditions shall be void to the extent of such conflict or inconsistency.

3. PLANS, SPECIFICATIONS AND ADDENDA

- 3.1** The plans, specifications and addenda, hereinafter enumerated in Article 1 of the Agreement Between County and Contractor for Construction shall form part of this Contract and the provisions thereof shall be as binding upon the parties hereto as if they were herein fully set forth. The table of contents, titles, headings, running headlines and marginal notes contained herein and in said documents are solely to facilitate reference to various provisions of the Contract Documents and in no way affect or limit the interpretation of the provisions to which they refer.
- 3.2** Certificates and Documents Incorporated. All certificates and documentation required by the provisions of the Agreement shall be attached to this Agreement at the time of execution, and are hereby incorporated by reference as though set forth in full in this Agreement to the extent they are consistent with its conditions and terms.

4. CONTRACT SECURITY – BONDS

- 4.1** Performance Bond. The Contractor shall furnish a performance bond in an amount at least equal to one hundred percent (100%) of the contract sum as security for the faithful performance of this contract. The performance bond and the payment bond may be in one or in separate instruments in accordance with local law.
- 4.2** Payment Bond. The Contractor shall provide payment bond in an amount not less than one hundred percent (100%) of the contract price or in a penal sum not less than that prescribed by state, territorial or local law, as security for the payment of all persons performing labor on the project under this contract, furnishing materials in connection with this contract and all of Contractor's requirements as specified in the contract documents. The Payment Bond shall remain in effect until one year after the date when final payment becomes due.
- 4.3** Additional or Substitute Bond. If at any time the County for justifiable cause shall be or become dissatisfied with any surety or sureties, then upon the Performance or Payment Bonds, the Contractor shall within five (5) days after notice from the County so to do, substitute an acceptable bond (or bonds) in such form and sum and signed by such other surety or sureties as may be satisfactory to the County. The premiums on such bond shall be paid by the Contractor. No further payments shall be deemed due nor shall be made until the new surety or sureties shall have furnished such an acceptable bond to the County.
- 4.4** Labor and Material Bond. The Contractor shall provide to the County Labor and Material Bond in an amount equal to the required payments by the Contractor to pay specified subcontractors, laborers, and materials suppliers associated with the project.

5. TERMS AND MEANINGS

Terms used in this Agreement that are defined in the Conditions of the Contract shall have the meanings designated in those Conditions.

- 5.1** Words and Phrases. Words, phrases, and abbreviations which have well-known technical or trade meanings used in the Contract Documents shall be used according to such recognized meanings. In the event of a conflict, the more stringent meaning shall govern.
- 5.2** Gender, Singular/Plural. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.
- 5.3** Captions and Section Headings. The captions and section headings contained in this Agreement are for convenience of reference only, and in no way limit, define, or enlarge the terms, scope and conditions of this Agreement.
- 5.4** Interchangeable Terms. For purposes of all provisions within this Agreement and all attachments hereto, the terms “Agreement” and “Contract” shall have the same meaning and shall be interchangeable.

6. COMPLIANCE WITH APPLICABLE LAW, CHOICE OF LAW

- 6.1** This Agreement shall be governed exclusively by the provisions hereof and by the laws of the State of New Mexico and applicable ordinances of Santa Fe County.
- 6.2** In performing its obligations hereunder, the Contractor shall comply with all applicable laws, ordinances, and regulations, including Santa Fe County Ordinance 2014-1 (Establishing a Living Wage).
- 6.3** Minimum Wage Rates. The Contractor, all subcontractors and subsubcontractors warrants and agree to will comply with all applicable provisions of the New Mexico Public Works Minimum Wage Act as outlined in the Bid Documents. Wage rates are not applicable to projects costing less than \$60,000.
- 6.4** This Agreement shall be construed in accordance with the substantive laws of the State of New Mexico, without regard to its choice of law rules. Contractor and the County agree that the exclusive forum for any litigation between them arising out of or related to this Agreement shall be federal and state district courts of New Mexico.
- 6.5** Pursuant to 13-1-191, NMSA 1978, reference is hereby made to the criminal laws of New Mexico, including §30-14-1, §30-24-2, and §30-41-1 through 3 NMSA 1978, which prohibit bribes, kickbacks, and gratuities, violation of which constitutes a felony. Further, the Procurement Code, 13-1-28 through 13-1-199 NMSA 1978, imposes civil and criminal penalties for its violation.
- 6.6** New Mexico Tort Claims Act. By entering into this Agreement, neither party shall be responsible for liability incurred as a result of the other party’s acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Sections 41-4-1, et Seq. NMSA 1978, as amended. The County and its “public employees” as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not

waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

- 6.7** Provision Required by Law Deemed Inserted. Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the contract shall forthwith be physically amended to make such insertion or correction.

7. EFFECTIVE DATE AND TERM

- 7.1** This Agreement shall, upon due execution by all parties, become effective in accordance with the Agreement Between County and Contractor for Construction, Article 3 - Effective Date, Time of Commencement and Substantial Completion. This Agreement shall not become effective until: (1) approved by the Santa Fe County Commissioners and/or the County Manager or their designee; and (2) signed by all parties required to sign this Agreement.
- 7.2** This Contract shall achieve Substantial Completion in accordance with the Agreement Between County and Contractor, Article 3 - Effective Date, Time of Commencement and Substantial Completion, unless earlier terminated pursuant to Section 8 (Termination) or 9, (Appropriations and Authorizations) of these General Conditions.

8. TERMINATION

- 8.1** Termination of Agreement for Cause. Either party may terminate the Agreement based upon any material breach of this Agreement by the other party. The non-breaching party shall give the breaching party written notice of termination specifying the grounds for the termination. The termination shall be effective thirty (30) days from the breaching party's receipt of the notice of termination, during which time the breaching party shall have the right to cure the breach. If, however, the breach cannot with due diligence be cured within thirty (30) days, the breaching party shall have a reasonable time to cure the breach, provided that, within thirty (30) days of its receipt of the written notice of termination, the breaching party began to cure the breach and advised the non-breaching party in writing that it intended to cure.
- 8.2** Termination for Convenience of the County. The County may, in its discretion, terminate this Agreement at any time for any reason by giving the Contractor written notice of termination. The notice shall specify the effective date of termination, which shall not be less than fifteen (15) days from the Contractor's receipt of the notice. The County shall pay the Contractor for acceptable work, determined in accordance with the specifications and standards set forth in this Agreement, performed before the effective date of termination but shall not be liable for any work performed after the effective date of termination.

- 8.3 Right of the County to Terminate Contract** In the event that any of the provisions of this contract are violated by the Contractor, or by any of its subcontractors, the County may serve written notice upon the Contractor and the Surety of its intention to terminate the contract, such notices to contain the reasons for such intention to terminate the contract, and unless within ten (10) days after the serving of such notice upon the Contractor, such violation or delay shall cease and satisfactory arrangement of correction be made, the contract shall, upon the expiration of said ten (10) days, cease and terminate. In the event of any such termination, the County shall immediately serve notice thereof upon the Surety and the Contractor and the Surety shall have the right to take over and perform the contract. Provided, however, that if the Surety does not commence performance thereof within ten (10) days from the date of the mailing to such Surety of notice of termination, the County may take over the work and prosecute the same to completion by contract or by force account and at the expense of the Contractor and the Contractor and its Surety shall be liable to the County for any excess cost occasioned the County thereby, and in such event the County may take possession of and utilize in completing the work, such materials, appliances, and plant as may be on the site of the work and necessary therefore.

9. APPROPRIATIONS AND AUTHORIZATIONS

This Agreement is contingent upon sufficient appropriations and authorizations being made for performance of this Agreement by the Santa Fe County Board of County Commissioners and/or, if state funds are involved, the New Mexico State Legislature. If sufficient appropriations and authorizations are not made in this or future fiscal years, this Agreement shall terminate upon written notice by the County to the Contractor. Such termination shall be without penalty to the County, and the County shall have no duty to reimburse the Contractor for expenditures made in the performance of this Agreement. The County is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure by the County. The County's decision as to whether sufficient appropriations and authorizations have been made for the fulfillment of this Agreement shall be final and not subject to challenge by the Contractor in any way or forum, including a lawsuit.

10. AMENDMENTS – CHANGE ORDERS

Contract Documents may be amended by a Change Order, hereto attached as Exhibit I to allow for additions, deletions, and revision as specified in Article 2 “The Work” of the Agreement between Santa Fe County and the Contractor or to amend the terms and conditions by a Change Order.

11. INDEMNIFICATION

- 11.1** The Contractor shall defend, indemnify, and hold harmless the County and its elected officials, agents, and employees from any losses, liabilities, damages, demands, suits, causes of action, judgments, costs or expenses (including but not limited to court costs and attorneys' fees) resulting from or directly or indirectly arising out of the Contractor's performance or non-performance of its obligations under this Agreement, including but not limited to the Contractor's breach of any representation or warranty made herein.

- 11.2** The Contractor agrees that the County shall have the right to control and participate in the defense of any such demand, suit, or cause of action concerning matters that relate to the County and that such suit will not be settled without the County's consent, such consent can not to be unreasonably withheld. If a conflict exists between the interests of the County and the Contractor in such demand, suit, or cause of action, the County may retain its own counsel to represent the County's interest.
- 11.3** The Contractor's obligations under this section shall not be limited by the provisions of any insurance policy the Contractor is required to maintain under this Agreement.

12. AGGRIEVEMENT PROCEDURE DURING CONTRACT ADMINISTRATION

- 12.1** Any claims, disputes, or other matters in question between the Contractor and the County, except those which have been waived by the making or acceptance of final payment as provided in Paragraph 6.2 of the Agreement Between Santa Fe County and Contractor for Construction, shall be presented in the form of a written request accompanied by supporting data to the Architect/Engineer for formal decision, with a copy to the other party. Such formal decision of the Architect/Engineer is binding upon the Contractor and the Owner unless either or both notify each other and the Architect/Engineer in writing within fifteen (15) days of their receipt of the decision that they are unwilling to abide by the Architect's/Engineer's decision, are thereby aggrieved in connection with the decision, and are separately exercising such rights as either may have under the Contract Documents or by law and regulation. If the Architect/Engineer fails to provide a written decision or a reasonable schedule to issue a written decision within ten (10) days after the County or the Contractor has presented its request, that party may consider itself aggrieved and may proceed to exercise its rights.
- 12.2** A settlement agreement signed by the County and the Contractor shall supersede and cancel any other dispute resolution proceedings regarding the same matter.
- 12.3** Unless work is stopped or payment withheld in accordance with the conditions of the Contract, or unless otherwise agreed in writing, the Contractor shall carry on the Work and maintain its progress during any dispute resolution proceedings, and the Owner shall continue to make payments to the Contractor in accordance with the Contract Documents.

13. DISPUTE RESOLUTION

- 13.1** Either County or Contractor may request mediation pursuant to the New Mexico Public Works Mediation Act, 13-4C-1 NMSA 1978, of any claim before such decision become final and binding. The request for mediation shall be submitted in writing to the other party. Timely submission of the request shall stay the effect of Paragraph 12.1.
- 13.2** County and Contractor shall participate in the mediation process in good faith. The process shall be completed within Sixty (60) days of filing of the request. The mediation shall be governed by the rules for mediation pursuant to the New Mexico Public Works Mediation

Act.

13.3 If the dispute is not resolved by mediation, the dispute shall be resolved through litigation in the district court. The parties agree that the exclusive forum for such litigation shall be the State of New Mexico District Court for the First Judicial District at Santa Fe, New Mexico. Contractor irrevocably consents to the jurisdiction of said Court and agrees to accept service of a summons and complaint by mail or commercial courier service in accordance with Rule 1-004(E)(3) NMRA.

14. INSURANCE

14.1 The Contractor shall not commence work under this contract until they have obtained all the insurance required under this paragraph and such insurance has been approved by the County, nor shall the Contractor allow any subcontractor to commence work on its subcontract until the insurance required of the subcontractor has been so obtained and approved.

14.2 Proof of Carriage of Insurance. The Contractor shall furnish the County with certificates showing the type, amount, class of operations covered, effective dates and date of expiration of policies. Such certificates shall also contain substantially the following statement: "Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions".

14.3 General Conditions. The Contractor shall submit evidence of insurance as is required herein. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico.

14.4 General Liability Insurance, Including Automobile. The Contractor shall procure and maintain during the life of this Agreement a comprehensive general liability and automobile insurance policy with liability limits in amounts not less than \$1,000,000.00 combined single limits of liability for bodily injury, including death, and property damage for any one occurrence. Said policies of insurance shall include coverage for all operations performed for the County by the Contractor; coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment, both on and off work; and contractual liability coverage under which this Agreement is an insured contract. The Santa Fe County shall be a named additional insured on the policy.

14.5 Subcontractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance. The Contractor shall either 1) require each of its subcontractors to procure and to maintain during the life of its subcontract, Subcontractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance of the type and in the amounts specified in 14.4 above.

14.6 Workers' Compensation Insurance. The Contractor shall comply with the provisions of the Workers' Compensation Act, 52-1-1 to 52-1-70 NMSA 1978. The Contractor shall procure and shall maintain during the life of this contract Workmen's Compensation Insurance as

required by applicable State law for all of its employees to be engaged in work at the site of the project under this Contract and, in case of any such work sublet, the Contractor shall require the subcontractor similarly to provide Workmen's Compensation Insurance for all of the latter's employees to be engaged in such work unless such employees are covered by the protection afforded by the Contractor's Workmen's Compensation Insurance. In case any class of employees engaged in hazardous work on the project under this contract is not protected under the Workmen's Compensation law, the Contractor shall provide and shall cause each subcontractor to provide adequate employer's liability insurance for the protection of such of its employees as are not otherwise protected.

- 14.7** Scope of Insurance and Special Hazards. The insurance require under subparagraphs 14.4 and 14.5 hereof shall provide adequate protection for the Contractor and his subcontractors, respectively, against damage claims which may arise from operations under this Contract, whether such operations be by the insured or by anyone directly or indirectly employed by him and, also against any of the special hazards which may be encountered in the performance of this Contract.
- 14.8** Builder's Risk Insurance (Fire and Extended Coverage). Until the project is completed and accepted by the County, the County, or Contractor at the County's option is required to maintain Builder's Risk Insurance (fire and extended coverage) on a 100 percent completed value basis on the insurable portion of the project for the benefit of the County, the Contractor, subcontractors as their interests may appear. The Contractor shall not include any costs for Builder's Risk Insurance (fire and extended coverage) premiums during construction unless the Contractor is required to provide such insurance; however, this provision shall not release the Contractor from its obligation to complete, according to plans and specifications, the project covered by the contract, and the Contractor and his Surety shall be obligated to full performance of the Contractor's undertaking.
- 14.9** Increased Limits. If, during the life of this Agreement, the New Mexico State Legislature increases the maximum limits of liability under the Tort Claims Act (NMSA 1978, Sections 41-4-1 through 41-4-29, as amended), the Contractor shall increase the maximum limits of any insurance required herein.
- 14.10** Additional insured. Santa Fe County will be listed as an additional insured on all policies, and proof of coverage must be provided before work begins. Contractor shall maintain adequate insurance in at least the maximum amounts which the County could be liable under the New Mexico Tort Claims Act. It is the sole responsibility of the Contractor to be in compliance with the law.

15. INDEPENDENT CONTRACTOR

- 15.1** The Contractor and the Contractor's agents and employees are independent contractors performing professional and technical services for the County and are not employees of the County. The Contractor and the Contractor's agents and employees shall not accrue leave, retirement, insurance, bonding, use of County's vehicles, or any other benefits afforded to employees of the County as a result of this Agreement.

15.2 The Contractor shall not subcontract any portion of the services to be performed under this Agreement without prior written approval of the County.

15.3 The Contractor shall maintain detailed time records which indicate the date, time and nature of services rendered. These records shall be subject to inspection by the County and the State Auditor. The County shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the County to recover excessive illegal payments.

16. CONFLICT OF INTEREST OF OFFICERS OR EMPLOYEES OF THE LOCAL JURISDICTION, MEMBERS OF THE LOCAL GOVERNING BODY, OR OTHER PUBLIC OFFICIALS

16.1 No officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this contract, during its tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed. Further, the Contractor shall cause to be incorporated in all subcontracts the language set forth in this paragraph prohibiting conflict of interest.

16.2 No official of the County who is authorized in such capacity and on behalf of the County to negotiate, make, accept or approve, or to take part in negotiating, making accepting or approving any architectural, engineering, inspection, construction or material supply contract or any subcontract in connection with the construction of the project, shall become directly or indirectly interested personally in this contract or in any part hereof. No officer, employee, architect, attorney, engineer or inspector of or for the County who is authorized in such capacity and on behalf of the County to exercise any legislative, executive, supervisory or other similar functions in connection with the construction of the project, shall become directly or indirectly interested personally in this contract or in any part thereof, any material supply contract, subcontract, insurance contract, or any other contract pertaining to the project.

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

17. ASSIGNMENT

17.1 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 advance written approval of the County. Any attempted assignment or transfer without the County's advance written approval shall be null and void and without any legal effect.

18. SUBCONTRACTING

18.1 The Contractor shall not subcontract or delegate any portion of the services to be

performed under this Agreement without the advance written approval of the County. Any attempted subcontracting or delegating without the County's advance written approval shall be null and void and without any legal effect.

- 18.2** Contractor shall provide to the County a listing of subcontractors within ten (10) days of the Contract award.
- 18.3** Contractor shall adhere to all provisions of the Subcontractor's Fair Practices Act 13-4-31 to 13-4-42, NMSA 1978.
- 18.4** Contractor shall provide to the County completed Non-Collusion Affidavit of Subcontractor form and Certification of Subcontractor Regarding Equal Employment Opportunity form for all subcontractors listed.
- 18.5** The Contractor shall not award any work to any subcontractor without prior written approval of the County, which approval will not be given until the Contractor submits to the County a written statement concerning the proposed award to the subcontractor, which statement shall contain such information as the County may require.
- 18.6** The Contractor shall be as fully responsible to the County for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as they are for the acts and omissions of persons directly employed by them.
- 18.7** The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind subcontractors to the Contractor by the terms of the General Conditions and other contract documents insofar as applicable to the work of subcontractors and to give the Contractor the same power as regards terminating any subcontract that the County may exercise over the Contractor under any provision of the contract documents.
- 18.8** Nothing contained in this contract shall create any contractual relation between any subcontractor and the County.
- 18.9** All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate written agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of County. Any contract between Contractor and a Subcontractor or Supplier shall provide that any remedy or claim for nonpayment of sums due or owing to Subcontractor or Supplier or services performed or materials provided is against Contractor and not County, subject to any remedy or rights Subcontractor or Supplier may have under the terms of the Contractor's Performance Bond and Section 13-4-19 NMSA 1978, the New Mexico Little Miller Act.

19. PERSONNEL

- 19.1** All work performed under this Agreement shall be performed by the Contractor or under its supervision.

19.2 The Contractor represents that it has, or will secure at its own expense, all personnel required to discharge its obligations under this Agreement. Such personnel (i) shall not be employees of or have any contractual relationships with the County and (ii) shall be fully qualified and licensed or otherwise authorized or permitted under federal, state, and local law to perform such work.

20. NOTICES

20.1 Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the County: Santa Fe County
Office of the County Attorney
102 Grant Avenue
Santa Fe, New Mexico 87501

To the Contractor: _____

20.2 Nothing herein contained shall preclude the giving of any such written notice by personal service. The address to which notices shall be mailed to either party may be changed by written notice given by such party to the other as hereinabove provided.

21. RELEASE

The Contractor, upon final payment of the amounts due under this Agreement, releases the County, the County’s officers and employees from all liabilities and obligations arising from or under this Agreement, including, without limitation, all damages, losses, costs, liability, and expenses, including, without limitation, attorney’s fees and costs of litigation that the Contractor may have.

22. WAIVER

No provision of this Agreement shall be deemed to have been waived by either party unless such waiver be in writing signed by the party making the waiver and addressed to the other party; nor shall any custom or practice which may evolve between the parties in the administration of the terms hereof be construed to waive or lessen the right of either party to insist upon performance by the other party in strict accordance with the terms hereof. Further, the waiver by any party of a breach by the other party of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition thereof.

CONDITIONS OF THE WORK

1. ADDITIONAL INSTRUCTIONS AND DETAIL DRAWINGS

- 1.1** The Contractor will be furnished additional instructions and detail drawings as necessary to carry out the work included in the Contract. The additional drawings and instructions supplied to the Contractor will coordinate with the Contract Documents and will be so prepared that they can be reasonably interpreted as part thereof. The Contractor shall carry out the work in accordance with the additional detail drawings and instructions. The Contractor and the Architect/Engineer/County will prepare jointly (a) a schedule, fixing the dates at which special detail drawings will be required, such drawings, if any, to be furnished by the Architect/ Engineer/County in accordance with the schedule, and (b) a schedule fixing the respective dates for the submission of shop drawings, the beginning of manufacture, testing and installation of materials, supplies and equipment, and the completion of the various parts of the work; each schedule to be subject to change from time to time in accordance with progress of the work.

2. SHOP OR SETTING DRAWINGS

- 2.1** The Contractor shall submit promptly to the Architect/Engineer/County two (2) copies of each shop or setting drawing prepared in accordance with the schedule predetermined as aforesaid. After examination of such drawings by the Architect/Engineer/County and the return thereof, the Contractor shall make such corrections to the drawings as have been indicated and shall furnish the Architect/ Engineer/County with two corrected copies. If requested by the Architect/Engineer/County the Contractor must furnish additional copies. Regardless of corrections made in or approval given to such drawings by the Architect/Engineer/County, the Contractor will be responsible for the accuracy of such drawings and for their conformity to the Plans and Specifications, unless the Contractor notifies the Architect/Engineer/County in writing of any deviations at the time the Contractor furnishes such drawings.

3. MATERIALS, SERVICES AND FACILITIES

3.1 It is understood that except as otherwise specifically stated in the Contract Documents, the Contractor shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, superintendence, temporary construction of every nature, and all other services and facilities of every nature whatsoever necessary to execute, complete, and deliver the work within the specified time.

3.2 Any work necessary to be performed after regular working hours, on Sundays or legal holidays, shall be performed without additional expense to the County.

4. CONTRACTOR'S TITLE TO MATERIALS

- 4.1** No materials or supplies for the work shall be purchased by the Contractor or by any

subcontractor subject to any chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller. The Contractor warrants that he/she has good title to all materials and supplies used by him/her in the work, free from all liens, claims or encumbrances.

5. INSPECTION AND TESTING OF MATERIALS

5.1 All materials and equipment used in the construction of the project shall be subject to adequate inspection and testing in accordance with accepted standards. The laboratory or inspection agency shall be selected by the County. The County will pay for all laboratory inspection service direct, and not as a part of the Contract.

5.2 Materials of construction, particularly those upon which the strength and durability of the structure may depend, shall be subject to inspection and testing to establish conformance with specifications and suitability for uses intended.

6. "OR EQUAL" CLAUSE

6.1 Whenever a material, article or piece of equipment is identified on the plans or in the specifications by reference to manufacturers' or vendors' names, trade names, catalogue numbers, etc., it is intended merely to establish a standard; and, any material, article, or equipment or other manufacturers and vendors which will perform adequately the duties imposed by the general design will be considered equally acceptable provided the material, article, or equipment so proposed, is, in the opinion of the Architect/Engineer/County, of equal substance and function. It shall not be purchased or installed by the Contractor without the Architect/Engineer/County's written approval.

7. PATENTS

7.1 The Contractor shall hold and save the County and its officers, agents, servants, and employees harmless from liability of any nature or kind, including cost and expenses for, or on account of, any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the Contract, including its use by the County, unless otherwise specifically stipulated in the Contract Documents.

7.2 License and/or Royalty Fees for the use of a process which is authorized by the County of the project must be reasonable, and paid to the holder of the patent, or its authorized licensee, direct by the County and not by or through the Contractor.

7.3 If the Contractor uses any design, device or materials covered by letters, patent or copyright, the Contractor shall provide for such use by suitable agreement with the County of such patented or copyrighted design, device or material. It is mutually agreed and understood, that, without exception, the Contract prices shall include all royalties or costs arising from the use of such design, device or materials, in any way involved in the work. The Contractor and/or its Sureties shall indemnify and save harmless the County of the project from any and all claims for infringement by reason of the use of such patented or

copyrighted design, device or materials, or any trademark or copyright in connection with work agreed to be performed under this Contract, and shall indemnify the County for any cost, expense or damage which it may be obliged to pay by reason of such infringement at any time during the prosecution of the work or after, completion of the work.

8. SURVEYS, PERMITS AND REGULATIONS

- 8.1** Unless otherwise expressly provided for in the Specifications, the County will furnish to the Contractor all surveys necessary for the execution of the work.
- 8.2** Unless otherwise expressly provided for in the Specifications, the Contractor shall procure and pay all permits, licenses and approvals necessary for the execution of this Contract.
- 8.3** The Contractor shall comply with all laws, ordinances, rules, orders, and regulations relating to performance of the work, the protection of adjacent property, and the maintenance of passageways, guard fences or other protective facilities.

9. CONTRACTOR'S OBLIGATIONS

- 9.1** The Contractor shall and will, in good workmanlike manner, do and perform all work and furnish all supplies and materials, machinery, equipment, facilities and means, except as herein otherwise expressly specified, necessary or proper to perform and complete all the work required by this Contract, within the time herein specified. The Contractor will perform the Work in accordance with the provisions of this Contract and said specifications and in accordance with the plans and drawings covered by this Contract any and all supplemental plans and drawings, and in accordance with the directions of the Architect/Engineer/County as given from time to time during the progress of the work. The Contractor shall furnish, erect, maintain, and remove such construction plans and such temporary works as may be required.
- 9.2** The Contractor shall observe, comply with, and be subject to all terms, conditions, requirements, and limitations of the Contract and specifications, and shall do, carry on, and complete the entire work to the satisfaction of the Architect/Engineer and the County.

10. WEATHER CONDITIONS

- 10.1** In the event of temporary suspension of work, or during inclement weather, or whenever the Architect/Engineer/County shall direct, the Contractor will, and will cause its subcontractors to protect carefully its and their work and materials against damage or injury from the weather. If, in the opinion of the Architect/Engineer/County, any work or materials shall have been damaged or injured by reason of failure on the part of the Contractor or any of its Subcontractors so to protect its work, such materials shall be removed and replaced at the expense of the Contractor.

11. PROTECTION OF WORK AND PROPERTY-EMERGENCY

- 11.1** The Contractor shall at all times safely guard the County's property from injury or loss in connection with this Contract. The Contractor shall at all times safely guard and protect its own work, and that of adjacent property from damage. The Contractor shall replace or make good any such damage, loss or injury unless such is caused directly by errors contained in the Contract or by the County, or its duly authorized representatives.
- 11.2** In case of an emergency which threatens loss or injury of property, and/or safety of life, the Contractor will be allowed to act, without previous instructions from the Architect/Engineer/County, in a diligent manner. The Contractor shall notify the Architect/Engineer/County immediately thereafter. Any claim for compensation by the Contractor due to such extra work shall be promptly submitted to the Architect/Engineer/County for approval.
- 11.3** Where the Contractor has not taken action but has notified the Architect/Engineer/County of an emergency threatening injury to persons or to damage to the work or any adjoining property, the Contractor shall act as instructed or authorized by the Architect/Engineer/County.
- 11.4** The amount of reimbursement claimed by the Contractor on account of any emergency action shall be determined in the manner provided in Paragraph 15 of these Conditions of the Work.

12. INSPECTION

- 12.1** The authorized representatives and agents of the County shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials, and other relevant data and records.

13. REPORTS, RECORDS AND DATA

- 13.1** The Contractor shall submit to the County such schedule of quantities and costs, progress schedules, payrolls, reports, estimates, records and other data as the County may request concerning work performed or to be performed under this Contract.

14. SUPERINTENDENT BY CONTRACTOR

- 14.1** At the site of the work the Contractor shall employ a construction superintendent or foreman who shall have full authority to act for the Contractor. It is understood that such representative shall be acceptable to the Architect/ Engineer/County and shall be one who can be continued in that capacity for the particular job involved unless he/she ceases to be on the Contractor's payroll.

15. CHANGES IN WORK

15.1 No changes in the work covered by the approved Contract Documents shall be made without having prior written approval of the County. Charges or credits for the work covered by the approved change shall be determined by one or more, or a combination of the following methods:

- A. Unit bid prices previously approved.
- B. An agreed lump sum.
- C. The actual cost of:
 - 1) Labor, including foremen;
 - 2) Materials entering permanently into the work;
 - 3) The County's or rental cost of construction equipment during the time of use on the extra work;
 - 4) Power and consumable supplies for the operation of power equipment;
 - 5) Insurance;
 - 6) Social Security and old age and unemployment contributions.
- D. To the costs for changes in work a fixed fee will be added to be agreed upon but not to exceed ten percent (10%) of the actual cost of the work. The fee shall be compensation to cover the cost of supervision, overhead, bond, profit and any other general expenses.

16. EXTRAS

16.1 Without invalidating the contract, the County may order extra work or make changes by altering, adding to or deducting from the work, the contract sum being adjusted accordingly, and the consent of the Surety being first obtained where necessary or desirable. All the work of the kind bid upon shall be paid for at the price stipulated in the proposal, and no claims for any extra work or materials shall be allowed unless the work is ordered in writing by the County or the Architect/Engineer, acting officially for the County, and the price is stated in such order.

17. INSPECTION OF SERVICES

17.1 The Contractor shall provide and maintain an inspection system acceptable to the County covering the services under this Contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the County during contract performance and for as long afterwards as the Contract requires.

17.2 The County has the right to inspect and test all services called for by the Contract, to the extent practicable at all times and places during the term of the Contract. The County shall perform inspections and tests in a manner that will not unduly delay the work.

17.3 If the County performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of these duties.

17.4 If any of the services do not conform with the Contract requirements, the County may require the Contractor to perform the services again in conformity with Contract requirements, at no increase in contract amount. When the defects in services cannot be corrected by re-performance, the County may require the Contractor to take necessary action to ensure that future performance conforms to contract requirements; and reduce the Contract sum to reflect the reduced value of the services performed.

17.5 If the Contractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with Contract requirements, the County may by contract or otherwise, perform the services and charge to the Contractor any cost incurred by the County that is directly related to the performance of such service, or terminate the Contract for default.

18. CORRECTION OF WORK

18.1 All work, all materials, whether incorporated in the work or not, all processes of manufacture, and all methods of construction shall be at all times and places subject to the inspection of the Architect/ Engineer/County who shall be the final judge of the quality and suitability of the work, materials, processes of manufacture, and methods of construction for the purposes for which they are used. Should they fail to meet their approval they shall be forthwith reconstructed, made good, replaced and/or corrected, as the case may be, by the Contractor at its own expense. Rejected material shall immediately be removed from the site. If, in the opinion of the Architect/Engineer/County, it is undesirable to replace any defective or damaged materials or to reconstruct or correct any portion of the work injured or not performed in accordance with the Contract Documents, the compensation to be paid to the Contractor hereunder shall be reduced by such amount as in the judgment of the Architect/Engineer/County shall be equitable.

19. WARRANTY OF CONSTRUCTION

19.1 In addition to any other warranties in this Contract, the Contractor warrants that work performed under this Contract conforms to the Contract requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by the Contractor or any subcontractor or supplier at any tier.

19.2 This warranty shall continue for a period of one (1) year from the date of final acceptance of the work. If the County takes possession of any part of the work before final acceptance, this warranty shall continue for a period of one (1) year from the date the County takes possession.

19.3 The Contractor shall remedy at the Contractor's expense any failure to conform, or any defect. In addition, the Contractor shall remedy at the Contractor's expense any damage to County-owned or controlled real or personal property, when that damage is the result of the Contractor's failure to conform to contract requirements or any defect of equipment, material, workmanship, or design furnished.

- 19.4** The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for one (1) year from the date of repair or replacement.
- 19.5** The County shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.
- 19.6** If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the County shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.
- 19.7** With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this Contract, the Contractor shall obtain all warranties that would be given in normal commercial practice; require all warranties to be executed, in writing, for the benefit of the County, if directed by the County; and, enforce all warranties for the benefit of the County, if directed by the County.
- 19.8** In the event the Contractor's warranty under subparagraph 19.4 of this clause has expired, the County may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.
- 19.9** Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by the County nor for the repair of any damage that results from any defect in County-furnished material or design.
- 19.10** This warranty shall not limit the County's rights under the Inspection and Acceptance clause of this Contract with respect to latent defects, gross mistakes, or fraud.

20. SUBSURFACE CONDITIONS FOUND DIFFERENT

- 20.1** Should the Contractor encounter sub-surface and/or latent conditions at the site materially differing from those shown on the Plans or indicated in the Specifications, the Contractor shall immediately give notice to the Architect/Engineer/County of such conditions before they are disturbed. The Architect/Engineer/County will thereupon promptly investigate the conditions, and if they find that they materially differ from those shown on the Plans or indicated in the Specifications, they will at once make such changes in the Plans and/or Specifications as they may find necessary, any increase or decrease of cost resulting from such changes to be adjusted in the manner provided in Paragraph 15 above.

21. CLAIMS FOR EXTRA COST

- 21.1** No claim for extra work or cost shall be allowed unless the same was done in pursuance of a written order of the Architect/Engineer approved by the County, as aforesaid, and the claim presented with the first estimate after the changed or extra work is done. When work is performed under the terms of General Conditions, the Contractor shall furnish

satisfactory bills, payrolls and vouchers covering all items of cost and when requested by the County, giving the County access to accounts relating thereto.

22. CONSTRUCTION SCHEDULE AND PERIODIC ESTIMATES

22.1 Immediately after execution and delivery of the Contract, and before the first partial payment is made, the Contractor shall deliver to the County an estimated construction progress schedule in a form satisfactory to the County, showing the proposed dates of commencement and completion of each of the various subdivisions of work required under the Contract Documents and the anticipated amount of each monthly payment that will become due to the Contractor in accordance with the progress schedule. The Contractor shall also furnish on forms to be supplied by the County (a) a detailed estimate giving a complete breakdown of the Contract sum and (b) periodic itemized estimates of work done for the purpose of making partial payments thereof. The costs employed in making up any of these schedules will be used only for determining the basis of partial payments and will not be considered as fixing a basis for additions to or deductions from the Contract price.

22.2 Schedule

The Contractor shall, within five (5) days after the effective date of Notice to Proceed, prepare and submit five (5) copies of a progress schedule covering project operations for the Contract period. This progress schedule shall be of the type generally referred to as a Critical Path Method (CPM), Critical Path Schedule (CPS), and Critical Path Analysis (CPA), and other similar designations. The CPM shall be used to control the timing and sequences of the project. All work shall be done in accordance with the CPM Planning and Scheduling. A written statement of explanation shall be submitted with the progress schedule. All costs incurred by the contractor to implement the CPM shall be borne by the Contractor.

23. ASSIGNMENTS

23.1 The Contractor shall not assign the whole or any part of this Contract or any monies due or to become due hereunder without written consent of the County. In case the Contractor assigns all or any part of any monies due or to become due under this Contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any monies due or to become due to the Contractor shall be subject to prior claims of all persons, firms and corporations of services rendered or materials supplied for the performance of the work called for in this Contract.

24. MUTUAL RESPONSIBILITY OF CONTRACTORS

24.1 If, through acts of neglect on the part of the Contractor, any other Contractor or any subcontractor shall suffer loss or damage on the work, the Contractor agrees to settle with such other Contractor or subcontractor by agreement or arbitration if such other Contractor or subcontractors will so settle. If such other Contractor or subcontractor shall assert any claim against the County on account of any damage alleged to have been sustained, the

County shall notify the Contractor, who shall indemnify and save harmless the County against any such claim.

25. SEPARATE CONTRACT

25.1 The Contractor shall coordinate its operations with those of other contractors. Cooperation will be required in the arrangement for the storage of materials and in the detailed execution of the work. The Contractor, including its subcontractors, shall keep informed of the progress and the detail work of other contractors and shall notify the Architect/Engineer/County immediately of lack of progress or defective workmanship on the part of other contractors. Failure of a contractor to keep informed of the work progressing on the site and failure to give notice of lack of progress or defective workmanship by others shall be construed as acceptance by the Contractor of the status of the work as being satisfactory for proper coordination with its own work.

26. ARCHITECT/ENGINEER'S AUTHORITY

26.1 The Architect/Engineer/County shall give all orders and directions contemplated under this Contract and specifications, relative to the execution of the work. The Architect/Engineer/County shall determine the amount, quality, acceptability, and fitness of the several kinds of work and materials which are to be paid for under this Contract and shall decide all questions which may arise in relation to said work and the construction thereof. The Architect/Engineer/County's estimates and decisions shall be final and conclusive, except as herein otherwise expressly provided. In case any question shall arise between the parties hereto relative to said contract or specifications, the determination or decision of the Architect/Engineer/County shall be a condition precedent to the right of the Contractor to receive any money or payment for work under this Contract affected in any manner or to any extent by such question.

26.2 The Architect/Engineer/County shall decide the meaning and intent of any portion of the specifications and of any plans or drawings where the same may be found obscure or be in dispute. Any differences or conflicts in regard to their work which may arise between the Contractor under this Contract and other Contractors performing work for the County shall be adjusted and determined by the Architect/Engineer/County.

27. STATED ALLOWANCES

27.1 It is understood that Contractor has included in its proposal for the Contract sum all allowances including "Allowed Materials" The Contractor shall purchase the "Allowed Materials" as directed by the County on the basis of the lowest and best bid of at least three competitive bids. If the actual sum for purchasing the "Allowed Materials" is more or less than the "Cash Allowance," the Contract sum shall be adjusted accordingly. The adjustment in contract price shall be made on the basis of the purchase price without additional charges for overhead, profit, insurance or any other incidental expenses. The cost of installation of the "Allowed Materials" shall be included in the applicable sections of the Contract Specifications covering this work.

28. USE OF PREMISES AND REMOVAL OF DEBRIS

28.1 The Contractor expressly undertakes at its own expense:

- A. to take every precaution against injuries to persons or damage to property;
- B. to store its apparatus, materials, supplies and equipment in such orderly fashion at the site of the work as will not unduly interfere with the progress of its work or the work of any other subcontractors;
- C. to place upon the work or any part thereof only such loads as are consistent with the safety of the portion of the work;
- D. to clean up frequently all refuse, rubbish, scrap materials, and debris caused by its operations, to the end that at all times the site of the work shall present a neat, orderly and workmanlike appearance;
- E. before final payment to remove all surplus material, false-work, temporary structures, including foundations thereof, plant of any description and debris of every nature resulting from its operations, and to put the site in a neat, orderly condition.
- F. to effect all cutting, fitting or patching of its work required to make the same to conform to the plans and specifications and, except with the consent of the Architect/Engineer/County, not to cut or otherwise alter the work of any other Contractor.

29. QUANTITIES OF ESTIMATE

29.1 Wherever the estimated quantities of work to be done and materials to be furnished under this Contract are shown in any of the documents including the proposal, they are given for use in comparing bids and the right is especially reserved except as herein otherwise specifically limited, to increase or diminish them as may be deemed reasonably necessary or desirable by the County to complete the work contemplated by this Contract, and such increase or diminution shall in no way void this Contract, nor shall any such increase or diminution give cause for claims or liability for damages.

30. LANDS AND RIGHTS-OF-WAY

30.1 Prior to the start of construction, the County shall obtain all lands and rights-of-way necessary for the carrying out and completions of work to be performed under this Contract.

31. GENERAL GUARANTY

31.1 Neither the final certificate of payment nor any provision in the Contract Documents, nor partial or entire occupancy of the premises by the County, shall constitute an acceptance of work not done in accordance with the Contract Documents or relieve the Contractor of liability in respect to any express warranties or responsibility for faulty materials or workmanship. The Contractor shall remedy any defects in the work and pay for any damage to other work resulting therefrom, which shall appear within a period of one (1) year from the date of final acceptance of the work unless a longer period is specified. The

County will give notice of observed defects with reasonable promptness.

32. PROTECTION OF LIVES AND HEALTH

32.1 The Contractor shall exercise proper precaution at all times for the protection of persons and property and shall be responsible for all damages to persons or property, either on or off the site, which occur as a result of its prosecution of the work. The safety provisions of applicable laws and building and construction codes shall be observed and the Contractor shall take or cause to be taken, such additional safety and health measures as the County may determine to be reasonably necessary.

33. INTEREST OF MEMBER

33.1 No member of Santa Fe Board of County Commissioners shall be admitted to any share or part of this Contract or to any benefit that may arise therefrom.

34. OTHER PROHIBITED INTERESTS

34.1 No official of the County who is authorized in such capacity and on behalf of the County to negotiate, make, accept or approve, or to take part in negotiating, making accepting or approving any architectural, engineering, inspection, construction or material supply contract or any subcontract in connection with the construction of the project, shall become directly or indirectly interested personally in this Contract or in any part hereof. No officer, employee, architect, attorney, engineer or inspector of or for the County who is authorized in such capacity and on behalf of the County to exercise any legislative, executive, supervisory or other similar functions in connection with the construction of the project, shall become directly or indirectly interested personally in this Contract or in any part thereof, any material supply contract, subcontract, insurance contract, or any other contract pertaining to the project.

35. USE AND OCCUPANCY PRIOR TO ACCEPTANCE BY COUNTY

35.1 The Contractor agrees to the use and/or occupancy of a portion or unit of the project before formal acceptance by the County, provided the County:

- A. Secures written consent of the Contractor except in the event, in the opinion of the Architect/ Engineer, the Contractor is chargeable with unwarranted delay in final cleanup of punch list items or other contract requirements.
- B. Secures endorsement from the insurance carrier and consent of the surety permitting occupancy of the building or use of the project during the remaining period of construction.
- C. When the project consists of more than one building, and one of the buildings is occupied, secures permanent fire and extended coverage insurance, including a permit to complete construction. Consent of the surety must also be obtained.

ATTACHMENT A
BID SHEETS

ATTACHMENT B
ADDENDA & MODIFICATIONS

EXHIBIT A
PROJECT MANUAL

EXHIBIT B

TECHNICAL SPECIFICATIONS AS LISTED IN PLAN SET

EXHIBIT C

LABOR AND MATERIAL PAYMENT BOND (SAMPLE)

KNOW ALL MEN BY THESE PRESENT, THAT WE _____ as PRINCIPAL hereinafter called the "PRINCIPAL" and _____ as SURETY hereinafter called the "SURETY", are held and firmly bound unto Santa Fe County, a Political Subdivision of the State of New Mexico as OBLIGEE hereinafter called the "COUNTY", for the use and benefit of any claimants as herein below defined, in the amount of _____ (\$.) dollars for the payment whereof PRINCIPAL and SURETY bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the PRINCIPAL has a written contract dated _____, 2015, with the COUNTY for the construction services for the _____ (insert project description) _____ in Santa Fe County, New Mexico, which must be constructed in accordance with drawings and specifications which contract is referenced and made a part hereof, and is hereinafter referred to as the "Contract."

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if PRINCIPAL shall promptly make payment to all claimants as hereinafter defined, for all labor and material used or reasonably required for use in the performance of the Contract, then this obligation shall be void; otherwise, it shall remain in full force and effect, subject to the following conditions:

1. A claimant is defined as one having a direct contract with the PRINCIPAL or with a subcontractor of the PRINCIPAL for labor, material, or both, used or reasonably required for use in the performance of the Contract, labor and material being construed to include but not be limited to that part of water, gas, power, light, heat, oil, gasoline, telephone services or rental of equipment directly applicable to the Contract.
2. The above named PRINCIPAL and SURETY hereby jointly and severally agree with the COUNTY that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, prosecute a suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereof. The COUNTY shall not be liable for payment of any cost or expenses of any such suit.
3. No suit or action shall be commenced hereunder by any claimant:
 - a. Unless claimant, or other than one having a direct contract with the PRINCIPAL, shall have written notice in the form of an sworn statement to the COUNTY and any one or both of the following: the PRINCIPAL or SURETY above named, within ninety (90) days after such said claim is made or suit filed, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed.
 - b. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the COUNTY, PRINCIPAL or SURETY, at any place where an office is regularly maintained by said COUNTY,

PRINCIPAL or SURETY for the transaction of business, or served in any manner in which legal process may be served in the State in which the aforesaid project is located, save that such service need not be made by a public officer.

- 4. Any suit under this Labor and Material Bond must be instituted in accordance with the statute of limitation under Section 37-1-3 NMSA 1978.
- 5. No right of action shall accrue on this Bond to or for the use of any person or corporation other than subcontractors or sub-subcontractors of the said Contract between PRINCIPAL and Santa Fe County named herein.

SIGNED AND SEALED THIS _____ DAY OF _____, 2015.

CONTRACTOR – PRINCIPAL (signature)

By: _____
(Printed name and title)

NOTARY PUBLIC (seal)

My Commission expires: _____

SURETY (signature)

(Printed name and title)

NOTARY PUBLIC (seal)

My Commission expires: _____

SURETY’S Authorized New Mexico Agent

EXHIBIT D

PERFORMANCE BOND (SAMPLE)

A. KNOW ALL MEN BY THESE PRESENT, THAT WE _____, as PRINCIPAL hereinafter called the “CONTRACTOR” and _____, as SURETY hereinafter called the “SURETY”, are held and firmly bound unto OBLIGEE Santa Fe County, a Political Subdivision of the State of New Mexico, hereinafter called the “COUNTY”, in the sum of _____ (\$ _____) dollars for the payment whereof CONTRACTOR and SURETY bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

B. WHEREAS, the CONTRACTOR has a written contract dated _____, 2015, with the COUNTY for the construction services for the (insert project description) Santa Fe County, New Mexico, in accordance with drawings and specifications which contract is referenced made part hereof, and is hereinafter referred to as the “Contract.”

C. NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if CONTRACTOR shall promptly and faithfully perform said Contract (including any amendment thereto), then this obligation shall be null and void; otherwise it shall remain in full force and effect until the COUNTY shall by written instrument notify the SURETY that the obligation is discharged, except that the obligation shall continue for at least three (3) months following the expiration of the term of the Contract.

1. The SURETY hereby waives notice of any alteration or extension of the Contract time made by the COUNTY.
2. Whenever CONTRACTOR shall be, and is declared by the COUNTY to be in default under the Contract, the COUNTY having performed the COUNTY’S obligations thereunder, the SURETY must promptly remedy the default and shall promptly:
 - (1) Complete the Contract in accordance with its terms and conditions, or
 - (2) Obtain a bid or bids for submission to the COUNTY for completing the Contract in accordance with its terms and conditions, and upon determination by the COUNTY and SURETY of the lowest responsible bidder, arrange for a contract between such bidder and Santa Fe County, and make available as work progresses (even though there should be a default or a secession of defaults under the Contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract price, but not exceeding, including other costs and damages for which the SURETY may be liable hereunder, the amount set forth in the first paragraph hereof. The term “balance of the Contract price” as used in this paragraph, shall mean the total amount payable by the COUNTY to CONTRACTOR under the Contract and any amendments thereto, less the amount properly paid by the COUNTY to CONTRACTOR.

D. No right of action shall accrue on this Performance Bond to or for the use of any person or corporation other than Santa Fe County named herein or the heirs, executors, administrators, or successors of Santa Fe County.

E. This Bond shall be enforceable without the need to have recourse to any judicial or arbitral proceedings.

SIGNED AND SEALED THIS _____ DAY OF _____, 2015.

CONTRACTOR – PRINCIPAL (signature)

By: _____
(Printed name and title)

NOTARY PUBLIC (seal)

My Commission expires: _____

SURETY (signature)

(Printed name and title)

NOTARY PUBLIC (seal)

My Commission expires: _____

SURETY'S Authorized New Mexico Agent

EXHIBIT E

ASSIGNMENT OF ANTITRUST CLAIMS

TO BE EXECUTED BY GENERAL CONTRACTORS, SUBCONTRACTORS, SUPPLIERS,
AND SUBSUBCONTRACTORS OF CONTRACTORS ON COUNTY CONTRACTS.

FIRM NAME:
ADDRESS:

PROJECT:

PHONE NO.:

PROJECT NO:

_____ agrees that any and all claims which it may have or may incur to it for overcharges resulting from antitrust violations as to goods, services, and materials purchased in connection with the above-referenced project are hereby assigned to Santa Fe County, but only to the extent that such overcharges are passed on to the County. It is agreed that the undersigned retains all rights to any such antitrust claims to the extent of any overcharges not passed on to the County, including the right to any treble damages attributable thereto.

FIRM: _____

BY: _____
Signed by Individual empowered to obligate Suppliers,
Subcontractors or Subsubcontractors

TITLE: _____

EXHIBIT F
CERTIFICATE OF LIABILITY INSURANCE

EXHIBIT G

NOTICE OF CONTRACT AWARD

TO:

FROM: _____, **Public Works Department**

CONTRACT NO. _____

This is to inform that you that you have been awarded the Contract for:

Project Name: _____

Date of Award _____ Amount of Award _____

Contractor Information:

Firm Name: _____ License# _____

Address: _____ Phone # _____

It is anticipated that construction will take place:

Approximate Starting Date: _____ Approximate Completion Date: _____

Santa Fe County hereby accepts your offer on the solicitation No. _____ as reflected in this award document. The rights and obligations of the parties shall be subject to and governed by this document and any documents attached or incorporated by reference.

SANTA FE COUNTY

Name of Public Works Director or designee: _____
(Print Name)

Signature

EXHIBIT H

NOTICE TO PROCEED

TO: DATE:
PROJECT:
ATTN: PROJECT NO.
CONTRACT NO.
IFB NO.

Enclosed is your copy of the Contract, which has been approved. Please consider this letter as official NOTICE TO PROCEED on the above-referenced project.

Your firm shall commence work within ten (10) calendar days of the above date and shall achieve Substantial Completion [REDACTED] calendar days thereafter, which shall be [REDACTED], 2015, unless modified by Change Order.

It is essential that you make reference to the above-stated project number on all documents sent to the Architect/Engineer from your office. These documents shall include correspondence, change order proposals, change orders, payment request statements, and all other project-related material which you forward to the Architect/Engineer for information and processing.

Also, before you may start any Work at the site, you must (add any other requirements):

OWNER: Santa Fe County
SFC [REDACTED] DEPARTMENT

By: [REDACTED]
Director, SFC Department

EXHIBIT I

CHANGE ORDER

PROJECT:

CONTRACTOR
CHANGE ORDER NO:

ARCHITECT/ENGINEER

PROJECT NO:

Contractor Telephone:
Contractor e-mail:
ENGINEER'S/ARCHITECT'S PROJECT NO:

CHANGE ORDER JUSTIFICATION (Provide definitive reason for proposed change order.)

You are directed to make the following changes in this Contract: (Provide a detailed description of the Scope of the Work.)

NOT VALID UNTIL SIGNED BY BOTH THE COUNTY AND THE ARCHITECT/ENGINEER.
Signature of the Contractor indicates his agreement herewith, including any adjustment in the Contract Sum or Contract Time.

The Original Contract Sum was _____
Net change by previously authorized Change Orders \$0.00
The Contract Sum prior to this Change Order was he Contract Sum will be increased/decreased/unchanged
by this Change Order in the amount of \$0.00
The new contract Sum including this Change Order will be \$0.00
The Contract Time will be increased/decreased/unchanged by days.
The date of Substantial Completion as of the date of this Change Order therefore is:

CHANGE ORDER SIGNATURE PAGE

REVIEWED

Santa Fe County By: _____ Date: _____

AGREED AND RECOMMENDED

CONTRACTOR By: _____ Date: _____

Title: _____

ARCHITECT/ENGINEER By: _____ Date: _____

APPROVED

SANTA FE COUNTY By: _____ Date: _____

EXHIBIT J

CERTIFICATE OF SUBSTANTIAL COMPLETION

SANTA FE COUNTY – (INSERT DEPARTMENT)

Public Works Director or designee (name): _____

CONTRACTOR: _____

Contractor Purchase Order Number: _____

ARCHITECT/ENGINEER: _____

Project Name: _____

Contract Date: _____

Project Description - Article 2 to Agreement Between Santa Fe County and Contractor (include address and project location description):

The contractor hereby certifies the Work of this project to be in complete conformance to the Contract Documents and is substantially complete, enabling the County to make use of the Work as intended.

By its signature below the Contractor further requests Architect/Engineer and County to inspect the Work and to concur in the Work’s substantial completion by their signature and/or to provide in a timely manner to Contractor a listing of work items adjudged by them as remaining to be completed or corrected. Contractor agrees to complete and correct all work items (Punch List) representative of such listing within ___ days from date of receipt from Architect/Engineer.

Contractor

Signature

Print Name

Date

Accepted by Santa Fe County

Signature (Public Works Director or Designee) Print Name Date

Inspected/Concurrence Architect/Engineer

Signature Print Name Date

PUNCH LIST

A list of items (Punch List) to be completed or corrected, verified by the Architect/Engineer and County, is appended hereto. Failure to include any incomplete items on such list does not alter the responsibility of the Contractor to provide all Work in complete conformance with the Contract Documents.

The Contractor shall complete or correct the work on the punch list appended hereto by _____ (Date)

The punch list consists of _____(indicate number of items) items.

The Work performed under this Contract has been reviewed and found to be substantially complete by the Director of Public Works who has hereby established the Date of Substantial Completion as _____ (date) which is also the date of commencement of all warranties and guarantees required by the Contract Documents. The Date of Substantial Completion of the Work or designated portion thereof is the date established by the Director of Public Works (or designee) when construction is sufficiently complete, in accordance with the Contract Documents, so the County may occupy the Work, or designated portion thereof, for the use for which it is intended.

The County accepts the Work or designated portion thereof as substantially complete and assumes full possession thereof, in accordance with the contract documents.

Punch List Items: (Use additional sheets if necessary)