

SITE CERTIFICATE

This is to certify that ROOSEVELT COUNTY

(Legal Name of Grant Recipient or Applicant, i.e., City, County, District, etc.)

has now acquired all property including sites, easements, right-of-way, or specific use permits necessary for the construction of and/or the permanent operation and maintenance of the water and / or wastewater facilities described as STORM DRAINAGE IMPROVEMENTS PROJECT AT THE ROOSEVELT COUNTY FAIRGROUNDS NMED CWSRF PROJECT # 104
(Proposed Contract No. And Description)

in accordance with approved plans and specifications and designed as Project Number CWSRF PROJECT NO. 104. Any deeds or documents required to be recorded to protect the title(s) held by ROOSEVELT COUNTY
have been recorded or filed for ROOSEVELT COUNTY
(Legal Name of Grant Recipient or Applicant)

In the event of conflicts with existing underground utilities or to preserve unknown cultural or historic resources, ROOSEVELT COUNTY
(Name of Grant Recipient or Applicant)

has the right of eminent domain and will take condemnation action, if necessary, to acquire any sites, easements or rights-of-way which may be required to change the location of any of the facilities described above; and upon acquisition of the rights-of-way and recording of documents, will submit another site certificate to that effect.

EXECUTED this ____ day ____, 20 ____.

(Signature)

ROOSEVELT COUNTY MANAGER
(Title)

NOTE: This certificate **MUST BE EXECUTED BY AN ATTORNEY, LICENSED PROFESSIONAL ENGINEER, LICENSED SURVEYOR, OR A TITLE ABTRACTOR** qualified to evaluate the Grant Recipient's or Applicant's interest in the site and make such a determination. This is a suggested format. The grantee may substitute other format.

SPECIFICATIONS AND CONTRACT
DOCUMENTS

FOR

STORM DRAINAGE IMPROVEMENTS PROJECT
AT THE ROOSEVELT COUNTY FAIRGROUNDS

FOR
ROOSEVELT COUNTY
AND THE
NEW MEXICO ENVIRONMENT DEPARTMENT
CONSTRUCTION PROGRAMS BUREAU
PROJECT NO. CWSRF 104

2021

CONTRACTING AGENCY-ROOSEVELT COUNTY

COUNTY MANAGER
AMBER HAMILTON

PREPARED BY
LYDICK ENGINEERS & SURVEYORS, INC.
205 E. SECOND STREET
CLOVIS, NEW MEXICO

**TABLE OF CONTENTS AND CONTRACT REQUIREMENTS
STORM DRAINAGE IMPROVEMENTS AT THE ROOSEVELT COUNTY
FAIRGROUNDS
ROOSEVELT COUNTY, NEW MEXICO**

SECTION TITLE

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ADVERTISEMENT FOR BIDS
NEW MEXICO ENVIRONMENT DEPARTMENT
CONSTRUCTION BUREAU PROJECT
BID NO. CWSRF 104

ROOSEVELT COUNTY

OWNER

109 West 1st Street, Portales, NM 88130

Address

Separate sealed BIDS for the **CONSTRUCTION of the STORMWATER IMPROVEMENTS PROJECT AT THE ROOSEVELT COUNTY FAIRGROUND, NMED CWSRF PROJECT NO. 104; CITY OF PORTALES**, will be received by the Owner at Roosevelt County, Attention: Liliana Rivera, County Procurement Officer, 109 West 1st Street, Portales New Mexico 88130 until 2:00 p.m. on May 18, 2021, and then at said office publicly opened and read aloud at the Roosevelt County Courthouse Building located at 109 W. 1st Street, Portales, New Mexico 88130.

A Mandatory Pre-Bid Conference will be held on May 04, 2021 at the Jake Lopez Building at the Roosevelt County Fairgrounds.

Project Description:

Termini: Roosevelt County Fairgrounds

Scope of Work:

The Project work includes installation of storm drainage pipe and retention basins with weed mat and seeding, drop inlets, subgrade preparation, base course, double chip and seal surfacing, SWPPP plan preparation and maintenance, and related construction.

Sealed Bids will be received at Roosevelt County Courthouse in the Office of the Procurement Officer, Portales, NM 88130 until 2:00 p.m. Mountain Daylight Time on May 18, 2021. At that time and place bids will be publicly opened and read aloud. Bids received after closing time will be rejected and returned unopened.

Interested bidders may secure a copy of the bid at lriviera@rooseveltcountry.com or the Procurement Officer at 109 W. 1st Street, Portales, NM 88130. **It is Contractor's responsibility to periodically check the website for any possible addenda.**

Roosevelt County reserves the right to reject any and/or all bids and waive all informalities as deemed in the best interest of the County.

CWSRF Bid Advertisement Language for Non-point Source Projects:

This project is wholly or partially funded with United States Environmental Protection Agency funds, and therefore must comply with all applicable federal cross cutter requirements. Neither the United States nor its department's agencies or employees is or will be party to this invitation for bids or any resulting contract. This procurement will be subject to regulations contained in Uniform Administrative Requirements, Cost Principles and Audit Requirements, 2 CFR Parts 200 and 1500

All qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: 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. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause. Bidders on this work will be required to comply with the President's Executive Order No. 11246, as amended.

To ensure that Disadvantaged Business Enterprises (DBEs) have the opportunity to compete for procurements funded by EPA financial assistance, all Bidders shall make the six good faith efforts as outlined by EPA at <https://www.epa.gov/grants/disadvantaged-business-enterprise-program-requirements#sixgoodfaithefforts>. The Bidder must make a good faith effort to solicit and hire Disadvantaged Business to meet the goals outlined in EPA XP-215. A good faith effort requires that the Contractor: 1) Complete the affirmative steps outlined in XP-215, 2) Submit XP-215 with the bid proposal, 3) Submit with the bid proposal proof that affirmative steps have been taken and this should include copies of advertisements and letters of solicitation. A Proposal that omits XP-215 or does not support that a good faith effort was made will be considered non-responsive and the Bid Proposal rejected.

INVITATION TO BID CONSTRUCTION CONTRACT

BID NUMBER: 2021-05

Sealed bid opening date:
May 18, 2021 at 2:00 p.m.
ROOSEVELT COUNTY

OWNER:
ROOSEVELT COUNTY
109 WEST 1ST STREET
CITY OF PORTALES, NM 88130
(575) (356-5307)

DATE: April 04, 2021

PROJECT: STORM DRAINAGE
IMPROVEMENTS AT THE ROOSEVELT
COUNTY FAIRGROUNDS
NEW MEXICO ENVIRONMENT
DEPARTMENT CONSTRUCTION
PROGRAMS BUREAU:
CWSRF NO. 104
CWSRF FUNDING: ☒ YES ☐ NO

Contact Name:
Liliana Rivera
(575) (356-5307) (lrivera@rooseveltcountry.com)

DESIGN PROFESSIONAL OF RECORD:
ROBERT C. LYDICK, P.E. & P.S.

BID OPENING ADDRESS:

ROOSEVELT COUNTY
109 WEST 1ST STREET
CITY OF PORTALES, NM 88130
Telephone: (575) (356-5307)

**IMPORTANT: BIDS MUST BE SUBMITTED IN A
SEALED ENVELOPE WITH THE BID NUMBER
AND OPENING DATE CLEARLY INDICATED ON
THE BOTTOM LEFT HAND SIDE OF THE FRONT
OF THE ENVELOPE.**

SEALED BIDS WILL BE RECEIVED AT THE ABOVE
SPECIFIED DATE, LOCAL TIME AND ADDRESS THEN
PUBLICLY OPENED AT THE ABOVE SPECIFIED

ADDRESS AND READ ALOUD. BIDS NOT RECEIVED BY THE ABOVE SPECIFIED DATE, LOCAL TIME AND
AT THE LISTED ADDRESS PRIOR TO BID TIME, WILL NOT BE OPENED OR CONSIDERED. DELIVERY IS
SOLELY THE RESPONSIBILITY OF THE BIDDER.

THIS BID IS SUBJECT TO THE REQUIREMENTS OF THE BIDDING DOCUMENTS AS DEFINED IN THE
"INSTRUCTIONS TO BIDDERS," SECTION 00100.

THE BID PROPOSAL FORM MUST BE ACCOMPANIED BY A SURETY BOND, SUBCONTRACTOR LISTING
FORM, AND DOCUMENTS SPECIFIED IN THE "INSTRUCTIONS TO BIDDERS."

BIDDERS ON THIS PROJECT MUST BE LICENSED IN NEW MEXICO CONSTRUCTION AND INDUSTRIES
DIVISION. LICENSE CLASSIFICATION REQUIRED FOR THIS PROJECT WOULD INCLUDE GA-98, GB-98, GF-
4. ALL BIDDERS WILL INDICATE THEIR CURRENT NEW MEXICO CONTRACTOR'S LICENSE NUMBER
AND CLASSIFICATION ON THE OUTSIDE OF THE ENVELOPE.

This mailing contains three pages

INVITATION TO BID page 2

Bidding Documents may be obtained at the office of the Design Professional of Record upon payment of **\$50.00** for each complete set. CHECKS SHOULD BE MADE PAYABLE TO "OWNER" as listed on page 1 of this Invitation to Bid. Incomplete sets will not be issued. The successful Bidder will receive refund of his deposit, and any unsuccessful Bidder who returns the Bidding Documents in good and complete condition within fifteen (15) days of the Bid Opening will also receive refund of this deposit. No deposits will be returned after the fifteen-day period.

BIDDING DOCUMENTS MAY BE REVIEWED AT THE FOLLOWING LOCATIONS:

1. Design Professional's location as listed on page 1 of this Invitation to Bid or as determined by Design Professional.
2. Owner's location as listed on page 1 of this Invitation to Bid or as determined by Owner
3. Builder's News and Plan Room
3435 Princeton Drive NE
Albuquerque, New Mexico 87107
(505) 884-1752
4. Construction Reporter
1609 Second Street NW
Albuquerque, New Mexico 87102
(505) 243-9793
5. Dodge Reports
1615 University Boulevard NE
Albuquerque, New Mexico 87102
(505) 243-2817

Bids shall be presented in the form of a total Base Bid proposal under a Lump Sum Contract plus any additive or deductive alternates that are selected by the Owner. A bid must be submitted on all bid items and alternates; segregated bids will not be accepted. Plans and specifications are available from the Design Professional of record.

NOTE: Base Bid price shall not include state gross receipts or local options taxes. Taxes will be included in the Contracted Amount at prevailing rates as a separate item to be paid by Owner.

In submitting this bid, each Bidder must satisfy all terms and conditions of the Bidding Documents. All work covered by this Invitation to Bid shall be in accordance with applicable state laws and, the contractor, prime or not, shall be registered with NM Department of Workforce Solutions at the time of bidding for an award greater than \$60,000.00 per Section 13-4-13.1 NMSA 1978. If the bid amount of the contractor or any subcontractor exceeds \$50,000, the contractor and/or subcontractor must comply with the registration requirements pursuant to the Public Works Minimum Wage Act.

INVITATION TO BID page 3

This project is wholly or partially funded with United States Environmental Protection Agency Funds, and therefore must comply with all applicable federal cross cutter requirements. Neither the United States nor its department's agencies or employees is or will be party to this invitation for bids or any resulting contract. This procurement will be subject to regulations contained in Uniform Administrative Requirements, Cost Principles and Audit Requirements, 2 CFR Part 200 and 1500.

All qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: 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. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause. Bidders on this work will be required to comply with the President's Executive Order No. 11246, as amended.

To ensure that Disadvantaged Business Enterprises (DBEs) have the opportunity to compete for procurements funded by EPA financial assistance, all Bidders shall make the six good faith efforts as outlined by EPA at <https://www.epa.gov/grants/disadvantage-business-enterprise-program-requirements#sixgoodfaithefforts>. The Bidder must make a good faith effort to solicit and direct Disadvantaged Business to meet the goals outlined in EPA XP-215. A good faith effort requires that the Contractor: 1) Complete the affirmative steps outlined in XP-215, 2) Submit XP-215 with bid proposal, 3) Submit with the bid proposal proof that affirmative steps have been taken and this should include copies of advertisements and letter of solicitation. A Proposal that omits XP-215 or does not support that a good faith effort was made will be considered non-responsive and the Bid Proposal rejected.

INVITATION TO BID page 4

Bid Security, if bid greater than \$25,000, in the form of a surety bond executed by a surety company authorized to do business in the State of New Mexico in the amount of **5%** of the total bid, or the equivalent in cash by means of a cashier's check or in a form satisfactory to the Owner, must accompany each bid in accordance with the Instructions to Bidders.

A 100% Performance Bond and a 100% Payment and Materials Bond executed by a surety company authorized to do business in the State of New Mexico shall be required from the successful Bidder prior to award of contract.

A completed Subcontractor Listing Form must accompany each bid.

Each subcontractor shall provide a performance and payment bond on a public works building project if the subcontractor's contract (to the Contractor) for work to be performed on a project is one hundred twenty-five thousand dollars (\$125,000) or more. Failure of a Subcontractor to provide required bond shall not subject the Owner to any increase in cost due to approved substitution of Subcontractor.

The Bidding Documents contain a time for completion of the work and further impose liquidated damages for failure to complete the work within that time period.

No Bidder may withdraw his bid for **45 days** after the actual date of the opening thereof.

The Owner intends to award this Project to the lowest responsible Bidder. The Owner reserves the right to reject any and all bids, to waive technical irregularities, and to award the contract to the Bidder whose bid it deems to be in the best interest of the Owner.

Attention of the Bidder is particularly directed to the current requirements as to Resident Contractor's Preference per Section 13-4-3 NMSA 1978. The provisions of Sections 13-4-1 through 13-4-4 NMSA 1978 are not applicable to projects receiving Federal aid or when the expenditure of Federal funds designated for a specific contract is involved.

Requests for approval of substitutions for "or equal" material or equipment, if allowed by the contract documents, must include a detailed itemized comparison of the proposed substitution with the specified product and be submitted at least 10 days prior to the bid date in accordance with Paragraph 3.3 of the Instructions to Bidders.

A mandatory **pre bid meeting** is scheduled for 2:00 p.m. on May 04, 2021 at:

LOCATION: JAKE LOPEZ BUILDING
ROOSEVELT COUNTY FAIRGROUNDS
CITY OF PORTALES, NEW MEXICO

The deadline for questions is April 30, 2021. All questions must be e-mailed to the Procurement Officer at lriviera@rooseveltcountry.com.

On:

DATE: 5-04-2021 TIME: 2:00 PM

END OF INVITATION TO BID

INSTRUCTIONS TO BIDDERS

Section 00 2113

1.0 DEFINITIONS AND TERMS

1.1 Terms used in these Bidding Documents which are defined in the Instructions to Bidders and in the Conditions of the Contract for Construction (General, Supplementary, and Other Conditions) have the meanings assigned to them in those documents.

- A. **ADDENDUM:** A written or graphic instrument issued prior to the opening of Bids which clarifies, corrects, or changes the Bidding Documents or Contract Documents. Plural: addenda.
- B. **ALTERNATE BID:** If requested by the Bidding Documents, the Amount to be added to the Base Bid if the corresponding change in the project scope, materials, and/or methods of construction is awarded by the Owner.
- C. **BASE BID:** Amount stated in the Bid as the sum for which the Bidder offers to perform the work, excluding alternate Bids.
- D. **BID:** The offer of the bidder submitted on the prescribed form setting forth the prices for the work to be performed in conformance with the Bidding Documents.
- E. **BID LOT:** A major item of work for which a separate quotation or proposal is requested.
- F. **BIDDER:** One who submits a Bid directly to the Owner, as distinct from a subcontractor who submits a bid to a contractor.
- G. **BIDDING DOCUMENTS:** The Bidding Requirements and the Contract Documents.
- H. **BID FORM:** A form which includes a specific space in which the bid price shall be inserted and which the Bidder shall sign and submit along with all other necessary submissions. A Bidder may submit a reasonable facsimile of the Bid Form. - Bids received by facsimile or in electronic format will not be accepted.
- I. **BIDDING REQUIREMENTS:** Notice of Invitation to Bid, Prebid Information, Instructions to Bidders, Information Available for Bidders, the Bid Form, Supplements to the Bid Form, and portions of Addenda relating to any of these.
- J. **DAY:** Day shall mean calendar day unless defined otherwise.
- K. **INVITATION FOR BID:** All documents including those attached or incorporated by reference or utilized for soliciting sealed bids.
- L. **RESPONSIBLE BIDDER:** A Bidder who is properly licensed in accordance with the Construction Industries Licensing Act and 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 Bid.
- M. **RESPONSIVE BID:** A bid which conforms in all material respects to the requirements set forth in the Invitation for Bid.
- N. **SUCCESSFUL BIDDER:** The lowest Responsible Bidder to whom the Owner, on the basis of the Owner's evaluation, makes an award. A Successful Bidder does not become the contractor until an agreement with the Owner is signed.

2.0 EXAMINATION OF BIDDING DOCUMENTS AND SITE

2.1 Before submitting a Bid, each Bidder must, in accordance with the General Conditions with special attention to Article's 1 and 3:

- A. Examine the Bidding Documents thoroughly;
- B. Visit the site to familiarize himself with local conditions that may in any manner affects cost, progress, or performance;
- C. Familiarize himself with Federal, State, and local laws, ordinances, rules, and regulations that may in any manner affect cost, progress, or performance of the Work; and
- D. Study and carefully correlate the Bidder's observations with the Bidding Documents.

2.2 On request, the Owner will provide each Bidder access to the site to conduct such investigations and tests as each Bidder deems necessary for submission of his Bid.

2.3 The lands upon which the Work is to be performed, rights-of-way for access thereto, and other lands designated for use by the Contractor in performing the work are identified in the Bidding Documents.

2.4 The submission of a Bid will constitute an incontrovertible representation by the Bidder that he has complied with every requirement of this Section and that the Bidding Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance of the Work.

3.0 BIDDING DOCUMENTS

3.1 COPIES OF BIDDING DOCUMENTS

3.1.1 Complete sets of the Bidding Documents in the number and for the deposit sum, if any, stated in the Invitation may be obtained from the Design Professional (unless another issuing office is designated in the Invitation for Bid). The deposit will be refunded to Bidders who submit a bona-fide bid and return the bidding Documents in good and complete condition within fifteen (15) calendar days after opening of Bids.

3.1.2 Complete sets of Bidding Documents shall be used in preparing bids; neither the Owner nor the Design Professional assumes responsibility for errors or misinterpretations resulting from the use of incomplete or partial Bidding Documents.

3.1.3 The Owner and Design Professional, in making copies of Bidding Documents available on the above terms, do so only for the purpose of obtaining Bids on the Work and do not confer a license or grant for any other use.

3.2 INTERPRETATIONS

3.2.1 All questions about the meaning or intent of the Bidding Documents shall be submitted to the Design Professional in writing. Replies will be issued by Addenda and mailed or delivered to all parties recorded by the Design Professional as having received the Bidding Documents. **Questions received less than seven (7) days prior to the date for opening of Bids will not be formally answered.** Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

3.2.2 Bidders and Subcontractors shall promptly notify the Design Professional of any ambiguity, inconsistency, or error which they may discover upon examination of the Bidding Documents or of the site and local conditions.

3.3 SUBSTITUTE MATERIAL AND EQUIPMENT

The contract, if awarded, will be on the basis of material and equipment described in the Drawings or specified in the Specifications without consideration of possible substitute or "or-equal" items. Whenever it is indicated in the Drawings or specified in the Specifications that a substitute or "or-equal" item of material or equipment may be furnished or used by the contractor if acceptable to the Design Professional, application for such acceptance will not be considered by the Design Professional unless submitted to the Design Professional with a detailed itemized comparison of the proposed substitution against the specified product at **least ten (10) days prior to the date for opening Bids.** Any product with a 5 (five) year or greater extended warranty must be submitted no less than **forty-five (45) days prior to the opening of Bids, along with the same itemized comparison, to be considered by the Design Professional.** Any allowance of substitutions will be published to all prospective Bidders via addendum. The procedure for submittal of any such application by the Contractor and consideration by the Design Professional is set forth in the Contract Documents.

3.4 ADDENDA

3.4.1 Addenda will be mailed or delivered to all who are known by the Design Professional to have received a complete set of Bidding Documents.

3.4.2 Copies of Addenda will be made available for inspection wherever Bidding Documents are on file for that purpose.

3.4.3 Addenda will be issued no later than four (4) 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.

4.0 BIDDING PROCEDURES

4.1 FORM AND STYLE OF BIDS

4.1.1 Bids shall be submitted on forms identical to the form included with the Bidding Documents.

4.1.2 All blanks on the Bid Form shall be filled in by typewriter or manually in ink.

4.1.3 Where so indicated by the makeup of the Bid Form, sums shall be expressed in both words and figures, and, in case of discrepancy between the two, the amount written in words shall govern.

4.1.4 Any interlineation, alteration, or erasure must be initialed by the signer of the bid.

4.1.5 All requested Additive Alternate Bids shall be bid. If no change in the Base Bid is required, enter "No Change." Deductive Alternates shall not be used.

4.1.6 Where there are two or more major items of work (identified as "Bid Lots") for which separate quotations are requested, the Bidder may, at his discretion, submit quotations for any or all items, unless otherwise specified. Additionally, the Bidder may submit a lump sum price for all lots for which the Bidder has submitted separate quotations.

4.1.7 Each copy of the bid shall include the complete name of the Bidder and a statement that the Bidder is a sole proprietor, a partnership, a corporation, or some other legal entity. Each copy shall be signed by the person or persons legally authorized to bind the Bidder to a contract. A Bid by a corporation shall further give the State of incorporation and have the applicable New Mexico Certificate of Incorporation number or Certificate of Authority number. The Bid shall include the current contractor's license number and type, Department of Workforce Solutions Minimum Wage Act registration number (DWS#), and the current Contractor's preference number. A bid submitted by an agent shall have a current Power of Attorney attached certifying the agent's authority to bind the Bidder.

4.1.8 The Bid shall contain an acknowledgment of receipt of all Addenda (the numbers of which shall be filled in on the Bid Form).

4.1.9 The address to which communications regarding the Bid are to be directed must be shown.

4.1.10 The Project Name and Number, as well as the Invitation to Bid Number, shall be clearly shown on the outside of the envelope in which the sealed Bid is submitted.

4.2 BID SECURITY

4.2.1 Bid security in an amount equal to at least five percent (5%) of the amount of the Bid shall be a bond provided by a surety company authorized to do business in this State, or the equivalent in cash, a cashier's check, or otherwise supplied in a form satisfactory to the Owner (Section 13-1-146, NMSA 1978) and approved in writing by the Owner in advance. All General Contractor, or Primary Contractor, or Construction Manager at Risk Bonds shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies," as published in Circular 570 (amended) by the Audit Staff Bureau of Accounts, United States Treasury Department.

4.2.2 The bid security shall be in the amount of five percent (5%) of the highest Bid amount submitted, unless otherwise stipulated, pledging that the Bidder will enter into a Contract with the Owner on the terms stated herein and will furnish bonds covering the faithful performance of the Contract and payment of all obligations arising there under. Should the Bidder refuse to enter into such Contract or fail to furnish such bonds, the amount of the bid security shall be forfeited to the Owner as liquidated damages, not as a penalty.

4.2.3 The Owner will have the right to retain the bid security of Bidders to whom an award is being considered until:

- A. the Contract has been executed and bonds have been furnished,
- B. the specified time has elapsed so that Bids may be withdrawn, or
- C. all Bids have been rejected.

4.2.4 When the Bidding Documents require bid security, noncompliance by the Bidder requires that the Bid be rejected (13-1-147A, NMSA 1978).

4.2.5 If a Bidder is permitted to withdraw his Bid before award, no action shall take place against the Bidder or the bid security (13-1-147B, NMSA 1978).

4.2.6 The Owner may reduce bid security requirements authorized by the Procurement Code (13-1-28 to 13-1-199, NMSA 1978) to encourage procurement from small businesses. Reduction, if any, and the manner thereof will be stipulated in Paragraph 7. Reduction of the amount of bid security, if any, shall in no way reduce requirements for Performance, Payment, or other Bonds referenced in the Bidding Documents.

4.3 PREBID CONFERENCE

4.3.1 The Design Professional of Record shall conduct a **Prebid Conference** approximately **fifteen (15), but not less than ten (10) days prior to the bid opening** date stated in the Invitation to Bid.

4.3.2 The Design Professional of Record and his consultants, as applicable, shall be represented. Prospective Bidders, Prospective Subcontractors, and Prospective Vendors are encouraged to attend and should be prepared to ask questions regarding substitutions and to request clarification of the Bidding Documents. The failure of a Bidder, Subcontractor, or Vendor to attend shall be interpreted to mean that the Bidding Documents are clear and acceptable to all non-participants at the Prebid Conference. Such clarity and acceptability shall be presumed with respect to all Bidders.

4.3.3 Questions and requests for clarification presented in written form will receive written response, and if warranted, issued as Addenda. No verbal response shall be binding.

4.4 RESIDENT CONTRACTOR'S PREFERENCE

4.4.1 In-State Resident preferences are not applicable with this funding source.

4.5 SUBCONTRACTORS

4.5.1 The bidder shall list the Subcontractors they propose to use for all trades or items on the Subcontractor Listing Form attached to the Bidding Documents. This requirement does not apply to second tier subcontractors, material suppliers, or subcontractors whose contract is for an amount no greater than the listing threshold described by Subsection A of 13-4-34 below. Requirements for Subcontractors pursuant to Chapter 18, Laws of 1988, 2nd Session; are as follows:

AN ACT

RELATING TO CONSTRUCTION INDUSTRIES; ENACTING THE SUBCONTRACTOR FAIR PRACTICES ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

13-4-31 SHORT TITLE

Section 1 through 12 of this act may be cited as the "Subcontractors Fair Practices Act".

13-4-32 LEGISLATIVE FINDINGS

The legislature finds that the practices of bid shopping and bid peddling in connection with the construction, alteration and repair of public works projects often result in poor quality of material and workmanship to the detriment of the public, deprive the public of the full benefits of fair competition among contractors and subcontractors and lead to insolvencies and loss of wages to employees.

13-4-33 DEFINITIONS

As used in the Subcontractors Fair Practices Act:

- A. "contractor" means the prime contractor on a public works construction project who contracts directly with the using agency;
- B. "subcontractor" means a contractor who contracts directly with the contractor;
- C. "listing threshold" means the dollar amount, stipulated in the bidding documents, above which subcontractors must be listed;
- D. "notice" means information, advice or a written warning intended to apprise a contractor, subcontractor or using agency of some proceeding in which the contractor's, subcontractor's or using agency's interests are involved or to inform him of some fact that is his right to know. Notice may be sent to a contractor, subcontractor or using agency by certified or registered mail and shall be deemed to be completed upon date of mailing; and
- E. "using agency" means any state agency or local public body requiring services or construction.
- (F.) (added for clarity from 13-4-13.1) "listed subcontractor" means a subcontractor who is currently registered with the labor and industrial commission.

13-4-34 LISTING OF SUBCONTRACTORS; REQUIREMENTS

- A. Any using agency taking bids for any public works construction project shall provide in the bidding documents prepared for that project a listing threshold which shall be five thousand dollars (\$5,000) or one-half of one percent of the architect's or engineer's estimate of the total project cost, not including alternates, whichever is greater. If the bidding documents do not include a listing threshold, then the using agency shall supply the listing threshold. If the listing threshold has not been included, the bid opening shall be postponed until the using agency has complied with this section. Any contractor or subcontractor interested in bidding may apply to the district court in the county in which the project will be located for an injunction preventing the bid opening until the using agency has complied with this section. Any person submitting a bid shall in his bid set forth:
 - (1) the name and the city or county of the place of business of each subcontractor under subcontract to the contractor who will perform work or labor or render service to the contractor in or about the construction of the public works construction project in an amount in excess of the listing threshold; and
 - (2) the category of the work that will be done by each subcontractor. The contractor shall list only one subcontractor for each category as defined by the contractor in his bid.
- B. A bid submitted by a contractor who fails to comply with the provisions of Subsection A of this section is a non-responsive bid which shall not be accepted by a using agency.

13-4-35 EXEMPTION

With the exclusion of that portion of work covering street lighting and traffic signals, the Subcontractors Fair Practices Act shall not apply to contracts for the construction, improvement or repair of streets or highways, including bridges, underground utilities within easements including but not limited to water lines, sewer lines and storm sewer lines.

13-4-35.1 APPLICATION OF ACT

The Subcontractors Fair Practices Act shall not apply to any transaction occurring after the contractor and the listed subcontractor have executed a subcontract unless subsequent action on the subcontract relates to subcontractor listing requirements.

13-4-36 SUBSTITUTION OF SUBCONTRACTOR

- A. No contractor whose bid is accepted shall substitute any person as subcontractor in place of the subcontractor listed in the original bid, except that the using agency shall consent to the substitution of another person as a subcontractor:
 - (1) when the subcontractor listed in the bid, after having had a reasonable opportunity to do so, fails or refuses to execute a written contract, when such written contract, based upon the general

terms, conditions, plans and specifications for the project involved and the terms of such subcontractor's written bid, is presented to him by the contractor;

- (2) when the subcontractor listed in the original bid becomes bankrupt or insolvent prior to execution of a subcontract;
- (3) when the using agency refuses to approve the subcontractor listed in the original bid, provided such approval has been reserved in the bidding documents;
- (4) when the subcontractor listed in the original bid fails or refuses to perform his subcontract;
- (5) when the contractor demonstrates to the using agency or its duly authorized officer that the name of the subcontractor was listed as the result of an inadvertent clerical error;
- (6) when a bid alternate accepted by the using agency causes the listed subcontractor's bid not to be low;
- (7) when the contractor can substantiate to the using agency that a listed subcontractor's bid is incomplete;
- (8) when the listed subcontractor fails or refuses to meet the bond requirements of the contractor; and,
- (9) when it is determined that the listed subcontractor does not have a proper license to perform the work and the contractor has submitted the name of the subcontractor along with proof that the subcontractor bid work for which he was not licensed by the Construction Industries Division of the Regulation and Licensing Department.
- (10) when it determined by the using agency, the prime contractor or the director of the labor and industrial division of the labor department that a listed subcontractor is not a registered subcontractor on the date bids are unconditionally accepted for consideration.

B. Prior to approval of the contractor's request for substitution of a subcontractor, the using agency shall give notice in writing to the listed subcontractor of the contractor's request to substitute and of the reasons for the request. The notice shall be served by certified or registered mail to the last known address of the subcontractor. The listed subcontractor who has been so notified has five (5) working days within which to submit written objections to the substitution to the using agency. Failure to file written objections shall constitute the listed subcontractor's consent to the substitution. If written objections are filed, the using agency shall give at least five (5) working days' notice in writing to the listed subcontractor of a hearing by the using agency on the contractor's request for substitution.

C. No contractor whose bid is accepted shall permit any subcontract to be voluntarily assigned or transferred or allow it to be performed by anyone other than the original subcontractor listed in the original bid without the consent of the using agency.

D. No contractor whose bid is accepted, other than in the performance of change orders causing changes or deviations from the original contract, shall sublet or subcontract any portion of the work in excess of the listing threshold as to which his original bid did not designate a subcontractor unless:

- (1) the contractor fails to receive a bid for a category of work. Under such circumstances, the contractor may subcontract. The contractor shall designate on the listing form that no bid was received; or
- (2) the contractor fails to receive more than one bid for a category of work. Under such circumstances, the contractor may subcontract. The contractor shall state on the listing form that only one subcontractor's bid was received, together with the name of the subcontractor. This designation shall not occur more than one time on the subcontractor list.

13-4-37 BOND REQUIREMENTS (This requirement to be modified by Invitation to Bid – Section 00 1116- Page 3

A. It is the responsibility of each subcontractor submitting a bid to a contractor to be prepared to submit a faithful performance and payment bond if so requested by the contractor.

B. In the event any subcontractor submitting a bid to a contractor does not, upon the request of the contractor and at the expense of the contractor at the established charge or premium therefore,

furnish to the contractor a bond issued by a corporate surety authorized to do business in New Mexico in accordance with the New Mexico Insurance Code (59A-1-1 to 59A-1-18, NMSA 1978) and listed in the United States treasury department circular 570 wherein the contractor is named the obligee, guaranteeing prompt and faithful performance of the subcontract and the payment of all claims for labor and materials furnished or used in and about the work to be done and performed under the subcontract, the contractor may reject the bid and make a substitution of another subcontractor subject to the provisions of Section 13-4-36, NMSA 1978. Such bond may be required at the expense of the subcontractor only if the contractor in his written or published request for subcontract bids:

- (1) specifies that the expense for the bond shall be borne by the subcontractor; and
- (2) clearly specifies the amount and requirements of the bond.

13-4-38. FAILURE TO SPECIFY SUBCONTRACTOR

If a contractor fails to list a subcontractor in excess of the listing threshold and he does not state that no bid was received or that only one bid was received, he represents that he is fully qualified to perform that portion of the work himself and that he shall perform that portion of the work himself. If after the award of the contract the contractor subcontracts any portion of the work, except as provided in the Subcontractors Fair Practices Act, the contractor shall be guilty of violation of the Subcontractors Fair Practices Act and subject to the penalties provided in Section 13-4-41 NMSA 1978.

13-4-39. INADVERTENT CLERICAL ERROR

A. The contractor, as a condition to assert a claim of inadvertent clerical error in the listing of a subcontractor, shall within four working days after the time of the prime bid opening by the using agency, give written notice to the using agency and to both the subcontractor he claims to have listed in error and the subcontractor who had bid to the contractor prior to bid opening.

B. Any listed subcontractor who has been notified by the contractor in accordance with the provisions of this section as to an inadvertent clerical error shall be allowed twelve working days from the time of the prime bid opening within which to submit to the using agency and to the contractor written objection to the contractor's claim of inadvertent clerical error. Failure of the listed subcontractor to file written notice within the twelve working days shall be primary evidence of his agreement that an inadvertent clerical error was made.

C. The using agency shall, in the absence of an objection to the contrary by the listed subcontractor in the original bid, consent to the substitution of the intended subcontractor if:

(1) the contractor, the listed subcontractor listed in error and the intended subcontractor each submit an affidavit to the using agency, along with such additional evidence as the parties may wish to submit, that an inadvertent clerical error was in fact made, provided that the affidavits from each of the three parties are filed within twelve working days from the time of the prime bid opening; or

(2) affidavits are filed by both the contractor and the intended subcontractor within the specified time but the subcontractor whom the contractor claims to have listed in error does not submit, within twelve working days from the time of prime bid opening, to the using agency and to the contractor written objection to the contractor's claim of inadvertent clerical error as provided in this section.

D. If affidavits are filed by both the contractor and the intended subcontractor but the listed subcontractor has, within twelve working days from the time of the prime bid opening, submitted to the using agency and to the contractor written objection to the contractor's claim of inadvertent clerical error, the using agency shall investigate the claims of the parties and hold a hearing to determine the validity of the claims, within thirty days after the receipt of the contractor's written objection. Any determination made shall be based on facts contained in the affidavits submitted by all three parties and supported by testimony under oath and subject to cross-examination. The using agency may, on its motion or that of any other party, admit testimony of other contractors, any bid

registries or depositories or any other party in possession of facts that may have a bearing on the decision of the using agency.

13-4-40. EMERGENCY SUBCONTRACTING

Subcontracting any portion of the work in excess of the listing threshold as to which no subcontractor was designated in the original bid shall be permitted only in the case of public emergency or necessity and then only upon a written finding by the using agency setting forth the facts constituting the emergency or necessity.

13-4-41. PENALTIES

A. When a contractor violates any provision of the Subcontractors Fair Practices Act except Section 13-4-34 NMSA 1978, the using agency shall:

(1) in the case of a contractor who substitutes another subcontractor in violation of Section 13-4-36 NMSA 1978, for the subcontractor originally included in the bid, assess the contractor a penalty in an amount equal to the greater of ten percent of the amount bid by the listed subcontractor or the difference between the amount bid by the listed subcontractor and the amount bid by the substituted subcontractor;

(2) in the case of a contractor substituting a listed subcontractor for another subcontractor, and the substituted subcontractor knowingly participated in a violation of Section 13-4-36 NMSA 1978, assess the substituted subcontractor a penalty in an amount equal to the greater of ten percent of the amount bid by the listed subcontractor and the difference between the amount bid by the listed subcontractor and the substituted subcontractor; or

(3) in the case of a contractor who fails to list a subcontractor in excess of the listing threshold as defined in Section 13-4-38 NMSA 1978, assess the contractor a penalty of eight percent of the amount of the subcontract issued for the first violation and thirty percent of the amount of the subcontract issued for any violation thereafter, on any one project.

B. Penalties assessed pursuant to the provisions of this section shall be deposited into the fund from which the contract was awarded.

C. In a proceeding under this section, the contractor shall be entitled to a hearing after notice.

D. A violation of the provisions of the Subcontractors Fair Practices Act constitutes grounds for disciplinary action against a contractor or a subcontractor, pursuant to regulations of the construction industries division of the regulation and licensing department.

E. A contractor or a subcontractor who attempts to circumvent the provisions of the Subcontractors Fair Practices Act shall be subject to the penalties established pursuant to this section.

F. Any listed subcontractor removed in violation of the Subcontractors Fair Practices Act may bring an action in the district court for damages, injunctive or other relief.

13-4-42. COVERAGE OF HOME RULE MUNICIPALITIES

Any home rule municipality or H class county chartered under the provisions of Article 10, Section 6 of the constitution of New Mexico is expressly denied authority to legislate regulation of the subject matter covered in the Subcontractors Fair Practices Act that conflicts with the provisions of that act.

13-4-43. DISPUTE RESOLUTION

Once the using agency has determined the existence of a valid claim under the provisions of the Subcontractors Fair Practices Act, the using agency or agent of the using agency may:

A. hold a public hearing for the purpose of providing an informal resolution of the dispute by preparing a "form of dispute" which shall be available to all parties. The form shall state concisely, in numbered paragraphs, the matter at issue or dispute which the complainant expects to be determined. The agent or the using agency shall evaluate the issues presented by both sides of the dispute and render a decision within ten days after the hearing, and provide the parties with a written copy of the decision by certified mail, return receipt requested; or

B. refer the matter in dispute to be resolved through arbitration.

4.5.2 The Bidder shall not list himself as the supplier or as the Subcontractor for any trade unless he has previously performed work of this type or can prove to the Design Professional and the Owner's satisfaction that he actually has, or will obtain, fully adequate ability to perform the work with his own forces.

4.5.3 Omission or non-compliance with the intent of the Subcontractor Listing (Section 00430) will be grounds for considering a bid as non-responsive.

4.5.4 Prior to the award of the Contract, the Design Professional will notify the Bidder in writing if either the Owner or the Design Professional, after due investigation and written findings of fact, has reasonable and substantial objection to any person or organization on such list. If the Owner or Design Professional has reasonable and substantial objection to any person or organization on such list and refuses in writing to accept such person or organization, the Bidder may, at his option:

A. withdraw his Bid, or,

B. submit an acceptable substitute Subcontractor.

In the event of withdrawal under this paragraph, bid security will not be forfeited.

4.5.5 The Successful Bidder shall, within ten (10) days of Notice of Award of the Contract for the Work, submit to the Design Professional all of the requirements of Subparagraph 6.1.

4.5.6 The Successful Bidder will be required to establish to the satisfaction of the Design Professional and the Owner the reliability and responsibility of the persons or entities proposed to furnish and perform the work described in the Bidding Documents.

4.5.7 Persons and organizations proposed by the Bidder and to whom the Owner and the Design Professional have made no reasonable objection under the provisions of Paragraph 4.5.6 must be used on the work for which they were proposed and shall not be changed except with the written consent of the Owner and the Design Professional. In an effort to gain consent, provide, if possible, a written request from the person or organization wishing to be replaced by the Bidder explaining the need for the replacement.

4.5.8 No Successful Bidder shall be required to employ any Subcontractor, other person, or organization against whom he has reasonable objection.

4.6 SUBMISSION OF BIDS

4.6.1 Bid, bid security, Subcontractors Listing Form, and other required documents listed in the Bidding Documents shall be submitted in an opaque sealed envelope marked in accordance with Subparagraph 4.6.2 below.

4.6.2 The Bid envelope shall be addressed as required by Section 00_2114 – Instructions to Bidders – Part B.

4.6.3 Bids received after the date and time for receipt of bids will be returned unopened.

4.6.4 The Bidder shall assume full responsibility for timely delivery of bids to the Owner, including those Bids submitted by mail or otherwise. Bids hand delivered to the Bid Opening Address shall be received beginning one hour prior to the bid. Bids will be clocked in at the time received, which must be prior to the time specified. Bids will then be held for public opening.

4.6.5 Oral, telephonic, or telegraphic bids are invalid and will not receive consideration.

4.7 CORRECTION OR WITHDRAWAL OF BIDS

4.7.1 A bid containing a mistake discovered before Bid Opening may be withdrawn by a bidder prior to the time set for Bid Opening by delivering verbal, written or telegraphic notice to the location designated in the Invitation for Bid as the place where bids are to be received.

4.7.2 Bid security, if required, shall be in an amount sufficient for the bid in conformance with Section 4.2.

4.7.3 Withdrawn Bids may be resubmitted up to the time and date designated for the receipt of Bids, provided they are then fully in conformance with the Bidding Documents.

4.7.4 After Bid Opening time, no modifications in bid prices or other provisions of bids shall be permitted.

4.7.5 After Bid Opening, a low Bidder alleging a material mistake of fact which makes his Bid non-responsive may be permitted to withdraw his Bid if the:

A. mistake is clearly evident on the face of the Bid Document; or

B. Bidder submits evidence which clearly and convincingly demonstrates that a mistake was made.

Any decision by the Owner to permit or deny the withdrawal of a Bid on the basis of a mistake contained therein shall be supported by a written determination setting forth the grounds for the decision. If withdrawal is permitted, bid security will not be forfeited.

4.8 NOTICE OF CONTRACT REQUIREMENTS BINDING ON BIDDER

4.8.1 In submitting this bid, the Bidder represents that he has familiarized himself with the nature and extent of the following requirements and of the Conditions of the Construction Contract (General, Supplementary, Project and Other Conditions):

4.9 REJECTION OR CANCELLATION OF BIDS

An Invitation for Bid may be canceled, or any or all Bids may be rejected in whole or in part, when it is in the best interest of the Owner. A determination containing the reasons therefore shall be made part of the Project file. Bid security for rejected Bids shall be returned to the Bidder.

4.10 CONSIDERATION OF BIDS

4.10.1 RECEIPT, OPENING, AND RECORDING

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 (13-1-107, NMSA 1978).

4.10.2 BID EVALUATION AND AWARD

4.10.2.1 The Owner shall have the right to waive technical irregularities in the form of the Bid of the low Bidder which do not alter the price, quality, or quantity of the services, construction, or items of tangible personal property bid (13-1-132, NMSA 1978).

4.10.2.2 It is the intent of the Owner to award a contract to the lowest responsible bidder, provided the Bid has been submitted in accordance with the requirements of the Bidding Documents. The unreasonable failure of a Bidder to promptly supply information in connection with an inquiry with respect to responsibility is grounds for a determination that the Bidder is not a responsible Bidder (13-1-133, NMSA 1978). See Section 6 as to Post-Bid Information that may be required of a Contractor as to qualifications.

4.10.2.3 If the Base Bid is within the amount of funds available to finance the construction, contract award will be made to the responsible Bidder submitting the low Base Bid; except that, if sufficient funds are available to fund alternates, the Owner may award the contract to the responsible Bidder submitting the low combined Bid within the amount of funds available (Base Bid plus or minus alternates. If

the award is based on alternates, the Owner shall accept them in the order in which they are listed on the Bid Form.

4.10.2.4 Discrepancies in the Bid Form between words and figures will be resolved in favor of words. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

4.10.2.5 Conditional Bids or Bids with additional terms will not be accepted.

4.11 NOTICE OF AWARD

A written Notice of Award shall be issued by the Owner after review and approval of the bid and related documents by the Owner with reasonable promptness (13-1-100 and 13-1-108, NMSA 1978).

4.12 CANCELLATION OF AWARD

When in the best interest of the public, the Owner may cancel the award of any contract at any time before the execution of said contract by all parties without any liability against the Owner.

5.0 PROTESTS

5.1 Any bidder, offerer, or contractor who is aggrieved in connection with this procurement (Bid) may protest to the Owner's Central Purchasing Agent and the Owner in accordance with the requirements of General Services Department Rule 93-601. The protest should be made in writing within twenty-four (24) hours after the facts or occurrences giving rise thereto, but in no case later than fifteen (15) calendar days after the facts or occurrences giving rise thereto (13-1-172, NMSA 1978).

5.2 In the event of a timely protest under Subparagraph 4.10.1 (13-1-172, NMSA 1978 of the Procurement Code), the Owner's Central Purchasing Agent and the Owner shall not proceed further with the procurement unless the Owner's Purchasing Agent or the Owner makes a determination that the award of contract is necessary to protect substantial interests of the Owner (13-1-173, NMSA 1978).

5.3 The Owner's Central Purchasing Agent or his designee shall have the authority to take any action reasonably necessary to resolve a protest of an aggrieved bidder, offerer, or contractor concerning a procurement.

5.4 The Owner's Central Purchasing Agent or his designee shall promptly issue a determination relating to the protest. The determination shall:

- A. state the reasons for the action taken; and
- B. inform the protestant of the right to judicial review of the determination pursuant to Section 13-1-183, NMSA 1978 of the Procurement Code (13-1-175, NMSA 1978).

5.5 A copy of the determination issued under Section 13-1-175, NMSA 1978 of the Procurement Code shall immediately be mailed to the protestant and other bidders or offerers involved in the procurement (13-1-176, NMSA 1978).

6.0 POST-BID INFORMATION

6.1 SUBMITTALS TO DESIGN PROFESSIONAL

Within ten (10) days of Notice of Award and prior to construction, the following shall be submitted to the Design Professional:

- A. the Contractor required bonds and Certificates of Insurance;

- B. for the Owner's consideration for approval, a resume and Statement of Qualification of proposed Superintendent(s) and assistants until acceptable individuals are selected in accordance with Subparagraph 3.9.2 of the General Conditions to the Construction Contract;
- C. signed Subcontractors List including contract amount of each, evidence of required bonds, costs of each bond, and beneficiary of each bond; evidence of DOL registration, evidence of CID licensure;
- D. Assignment of Antitrust Claims (required for the Contractor, all Subcontractors, and all Suppliers);
- E. Certificate of Insurance;
- F. State W-9;
- G. evidence of other bonds or documents as specified in the Bidding Documents; and
- H. Schedule of Values and required supporting data in accordance with Paragraph 9.2 of the General Conditions to the Construction Contract.

6.2 RETURN OF BID SECURITY

All Bid Security in the form of checks, except those of the two lowest Bidders, will be returned immediately following the opening and checking of the Bids. The retained bid security of the unsuccessful of the two lowest bidders, if in the form of a check, will be returned within fifteen (15) days following the award of contract. The retained bid security of the Successful Bidder, if in the form of a check, will be returned after a satisfactory contract bond has been furnished and the Contract has been executed. Bid Securities in the form of Bid Bonds will be returned only upon the request of the unsuccessful Bidder, but will be released by the Purchasing Agent for the District after the Notice of Award is sent by the Owner.

6.3 EXECUTION AND APPROVAL OF CONTRACT

The Contract shall be signed by the Successful Bidder and returned, together with both the Contract Bonds and Certificate of Insurance, within fifteen (15) days after the date of the Notice of Award. If the Contract is not executed by the Owner within forty-five (45) days following receipt from the Bidder of the signed Contract with Bonds and Certificate, the Bidder shall have the right to withdraw his proposal without penalty unless the Bidder has previously agreed to extend the date for acceptance by the Owner. No Contract shall be effective until it has been fully executed by all of the parties thereto.

6.4 NOTICE TO PROCEED

The Owner will issue a written Notice to Proceed to the Contractor stipulating the date from which Contract Time will be charged and the date Contract Time is to expire, subject to valid modifications of the Contract authorized by Change Order.

6.5 FAILURE TO EXECUTE CONTRACT

Failure to return the signed Contract with acceptable Contract Bonds and Certificate of Insurance within fifteen (15) days after the date of the Notice of Award shall be just cause for the cancellation of the award and the forfeiture of the Bid Security, which shall become the property of the Owner, not as a penalty, but in liquidation of damages sustained. 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.

6.6 CONTRACTOR'S QUALIFICATIONS STATEMENT

Bidders to whom award of a contract is under consideration shall submit, upon request, information and data to prove that their financial resources, production or service facilities, 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 (13-1-82, NMSA 1978). The Contractor shall always submit the requirements of Subparagraph 3.9.2 of the General Conditions to the Construction Contract and also in accordance with Paragraph 6.1-B above.

7.0 OTHER INSTRUCTIONS TO BIDDERS

7.1 The bid will be awarded in accordance with Subparagraph 4.10.2.3. The Owner may accept from the apparent low bidder prior to the Award, a reduction to the bid cost or time and, may discuss with the apparent low bidder for potential deductive modifications to the Work prior to the Award however, the Award shall be made on the un-modified Construction Documents with alternates accepted in accordance with this Paragraph 7.0.

7.2 If the lowest responsible bid has otherwise qualified, and if there is no change in the original project scope, terms or conditions, the lowest bidder may negotiate with the purchaser for a lower total bid in order to avoid rejection of all bids for the reason that the lowest bid was up to ten percent higher than budgeted project funds. Such negotiation shall not be allowed if the lowest bid was more than ten percent over budgeted project funds.

7.3 Bidders are to refer to CWSRF Supplemental Conditions in this Section, and that prime and Subcontractors must have a DUNS number and be listed on SAM.gov with no exceptions in order to be awarded the contract.

INSTRUCTIONS TO BIDDERS – PART B

Section 00 2114

1.0 BID ENVELOPE

The Bid envelope shall be addressed at the front center of the envelope to:

ROOSEVELT COUNTY COURTHOUSE
MS. LILIANA RIVERA
COUNTY PROCUREMENT OFFICER
109 WEST 1ST STREET
CITY OF PORTALES, NM 88130

Also on the front of the envelope the Bidder shall mark: the name and address of the Bidder shall in the upper left corner; the name of project, Invitation to Bid Number, date of opening and, time of opening in the lower left corner; and, "**SEALED BIDS ENCLOSED**" in the lower right corner or otherwise on the face thereof.

-END OF SECTION-

BID FORM (Lump Sum or Unit Price)

BIDDER'S Name and Address:

Telephone:

Fax:

Federal Tax ID #:

New Mexico Tax ID #:

CID License #

ITB NO.: 2021-05

PROJECT NAME: STORM DRAINAGE
IMPROVEMENTS

PROJECT AT ROOSEVELT COUNTY
FAIRGROUNDS

PROJECT NO.: 104

LOCATION: ROOSEVELT COUNTY
FAIRGROUNDS
CITY OF PORTALES, NEW MEXICO

This Bid is submitted to Owner:

ROOSEVELT COUNTY
109 West First Street
CITY OF PORTALES, NM 88130
Phone (575) (356-5307)

In collaboration with NMED Construction
Programs Bureau:

New Mexico Environment Department
CONSTRUCTION PROGRAMS BUREAU
121 Tijeras Ave. N.E.
Suite 1000
Albuquerque, NM 87102-3400
Phone (505) 222-9568

1. The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an agreement with the Owner in the form included in the Bidding Documents to perform and furnish all Work as specified or indicated in the Bidding Documents for the Contract Price and within the Contract Time indicated in this Bid and in accordance with the other terms and conditions of the Contract Documents.

2. The Bidder accepts all of the terms and conditions of the Invitation for Bid and Instructions to Bidders, including without limitation those dealing with the disposition of bid security and other Bidding Documents. This Bid will remain subject to acceptance for forty-five (45) days after the day of Bid opening. The Bidder shall sign and submit the Agreement between Owner and Contractor (hereinafter called Agreement) with the Bonds and other documents required by the Bidding Requirements within fifteen (15) days after the date of the Owner's Notice of Award.

3. The Contractor shall include the following cash allowances in his Bid:

A. for	(page	of Specs)	\$
B. for	(page	of Specs)	\$
C. for	(page	of Specs)	\$
D. for	(page	of Specs)	\$

E. for

(page

of Specs) \$

4. In submitting this Bid, the Bidder represents, as more fully set forth in the Agreement, that:

A. the Bidder has examined copies of all the Bidding Documents and of the following Addenda (receipt of all of which is hereby acknowledged):

No. _____	Title: _____	Date: _____
No. _____	Title: _____	Date: _____
No. _____	Title: _____	Date: _____
No. _____	Title: _____	Date: _____
No. _____	Title: _____	Date: _____
No. _____	Title: _____	Date: _____

B. the Bidder has familiarized himself with the nature and extent of the Bidding Documents, Work, site, locality, and all local conditions, laws, and regulations that in any manner may affect cost, progress, performance, or furnishing of the Work;

C. the Bidder has carefully studied all reports and drawings of subsurface conditions which are identified in the Information Available to Bidders and accepts the determination set forth in the Information Available to Bidders of the extent of the technical data contained in such reports and drawings upon which the Bidder is entitled to rely;

D. the Bidder has correlated the results of all such observations, examinations, investigations, explorations, tests, reports, and studies with the terms and conditions of the Bidding Documents;

E. the Bidder has given the Design Professional written notice of all conflicts, errors, and discrepancies that he has discovered in the Bidding Documents, and the written resolution thereof by the Design Professional is acceptable to the Bidder;

F. this Bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm, or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization, or corporation; the Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid; the Bidder has not solicited or induced any person, firm, or corporation to refrain from bidding; and the Bidder has not sought by collusion to obtain for himself any advantage over any other Bidder or over the Owner;

G. the Bidder acknowledges that he has attended any mandatory pre-bid conference scheduled by the Owner or the Design Professional pertaining to this project;

H. the Bidder agrees to show clearly on the envelope in which the Bid is submitted the Project Name and Number, and Invitation to Bid Number; and,

I. the Bidder will complete the Work for the following price(s) (**do not include any gross receipts tax in the price(s)**).

5. Bids shall be presented in the form of a total Base Bid proposal under a Lump Sum Contract plus additive alternates that are selected by the Owner. A bid must be submitted on all bid items and alternates; segregated bids will not be selected by the Owner.

(Design Professional to strike out subsection not applicable.)

A. LUMP SUM PRICE (please use typewriter or print legibly in ink) Base Bid (use words):

_____ (\$ _____)

Alternate 1 (add)(deduct)

_____ (\$ _____)

Alternate 2 (add)(deduct)

_____ (\$ _____)

Alternate 3 (add)(deduct)

_____ (\$ _____)

Alternate 4 (add)(deduct)

_____ (\$ _____)

All specific cash allowances are included in the price(s) set forth above.

B. UNIT PRICE

SEE SHEET 00 4113-8 BID PROPOSAL SHEET

_____ (\$ _____)

If the required quantities of the items listed below are increased or decreased by Change Order, the adjustment unit prices set forth below shall apply to such increased or decreased quantities:

ITEM

UNIT PRICE (in words)

_____ (\$ _____)

6. The Bidder agrees that:

A. The Work to be performed under this Contract shall be commenced not later than ten (10) consecutive days after the date of written Notice to Proceed, and that Substantial Completion shall be achieved not later than 45 days after the date of written Notice to Proceed, except as hereafter extended by valid written Change Order by the Owner.

B. Should the Contractor neglect, refuse, or otherwise fail to complete the Work within the time specified, the Contractor agrees to pay to the Owner in partial consideration for the award of this Contract the amount of Five Hundred Dollars (\$500.00) per consecutive day, not as a penalty, but as liquidated damages for such breach of the Contract.

C. The above prices shall include all labor, materials, removal, overhead, profit, insurance, taxes (**not including gross receipts tax**), etc., to cover the finished work of the several kinds called for. Changes shall be processed in accordance with the Contract Documents.

D. It is understood that the Owner reserves the right to reject any or all Bids and to waive any technical irregularities in the bidding.

7. The following documents are attached to and made a condition of this Bid:

- A.** Bid Security with Agent's Affidavit;
- B.** Subcontractors Listing; and,
- C.** Other (list):

8. The terms used in this Bid and the Bidding and Contract Documents which are defined in the Conditions of the Construction Contract (General, Supplementary, and Other Conditions), included as part of the Bidding Documents, have the meanings assigned to them in those Conditions.

9. The Bidder is a(n):

A. INDIVIDUAL;

By: _____
(Individual's Signature)

Doing business as: _____

Business address: _____

Telephone: () _____

FAX: () _____

B. PARTNERSHIP:

By: _____
(Firm Name)

(General Partner's Signature)

Business address: _____

Telephone: () _____

FAX: () _____

C. CORPORATION:

Corporation Name: _____

State of Incorporation: _____

By _____ Title: _____
(Print Name of Person Authorized to Sign)

* _____
Signature of Authorized Person

If a New Mexico Corporation: _____
NM Certificate of Incorporation Number

If a Foreign Corporation: _____
NM Certificate of Authority Number

Attest (Secretary): _____

Business address _____

Telephone: () _____

FAX: () _____

CORPORATE SEAL HERE

or,

D. JOINT VENTURE:

By _____
(Name)

Address: _____

(General Partner's Signature)

Business address: _____

Telephone: () _____

FAX: () _____

C. CORPORATION:

Corporation Name: _____

State of Incorporation: _____

By _____ Title: _____
(Print Name of Person Authorized to Sign)

* _____
Signature of Authorized Person

If a New Mexico Corporation: _____
NM Certificate of Incorporation Number

If a Foreign Corporation: _____
NM Certificate of Authority Number

Attest (Secretary): _____

Business address _____

Telephone: () _____

FAX: () _____

CORPORATE SEAL HERE

or,

D. JOINT VENTURE:

By _____
(Name)

Address: _____

BID PROPOSAL
STORM DRAINAGE IMPROVEMENTS
ROOSEVELT COUNTY FAIRGROUNDS
CITY OF PORTALES, NEW MEXICO
FEBRUARY 05, 2021

CONSTRUCTION BID ITEMS

ITEM NO.	DESCRIPTION	APPROX. QUANTITY	UNIT BID PRICES	AMOUNT BID
1.	UNCLASSIFIED EXCAVATION & HAUL (3 BASINS) AT _____ C.Y.	4,380.0		
2.	SUBGRADE PREPARATION & GRADING AT _____ S.Y.	11,925.0		
3.	BASE COURSE – 6" DEPTH AT _____ S.Y.	1,970.0		
4.	DOUBLE PENETRATION CHIP SEAL COAT (5/8" & 3/8" AGGREGATE) AT _____ S.Y.	11,925.00		
5.	RETENTION BASIN WEED MAT AND GRAVEL AT _____ S.Y.	2,100.0		
6.	INVERTED SWALE SECTION (10' WIDTH) AT _____ S.Y.	1,280.0		
7.	CONCRETE SWALE (6" X 8') AT _____ S.Y.	360.0		
8.	MEDIAN DROP INLET WITH 10' X 10' CONCRETE PAD AT _____ EA.	3.0		
9.	MEDIAN DROP INLET WITH 5'X 5' CONCRETE PAD EA.	2.0		
10.	RIP – RAP (CLASS "A" – WIRE WRAPPED) AT _____ EA.	3.0		
11.	CONCRETE RUNDOWN SECTION - 6" RPCC AT _____ S.Y.	205.0		
12.	CSP – 8" DIAMETER (IN-PLACE) AT _____ L.F.	600.0		
13.	CSP – 12" DIAMETER (IN-PLACE) AT _____ L.F.	870.0		
14.	CHAIN LINK FENCE – 4' (IN-PLACE) AT _____ L.F.	1,100.0		
15.	CHAIN LINK FENCE GATE 4' AT _____ EA.	2.0		

BID PROPOSAL
STORM DRAINAGE IMPROVEMENTS
ROOSEVELT COUNTY FAIRGROUNDS
CITY OF PORTALES, NEW MEXICO
FEBRUARY 05, 2021

CONSTRUCTION BID ITEMS

ITEM NO.	DESCRIPTION	APPROX. QUANTITY	UNIT BID PRICES	AMOUNT BID
16.	REMOVAL OF STRUCTURES & OBSTRUCTIONS AT _____ L.S.	1.0		
17.	GRADING AND SEEDING AT _____ S.Y.	2,100.0		
18.	CONSTRUCTION STAKING BY CONTRACTOR AT _____ L.S.	1.0		
19.	MOBILIZATION AT _____ L.S.	1.0		
	SUB-TOTAL			
	TAX (8.1875%)			
	TOTAL BID			

Contractors Name & N.M. License No.

02-05-2021

DATE

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to Chapter 81, Laws of 2006, any prospective contractor seeking to enter into a contract with any state agency or local public body must file this form with that state agency or local public body. 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.

THIS FORM 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 either 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.

“Contract” means any agreement for the procurement of items of tangible personal property, services, professional services, or construction.

“Family member” means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law.

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

“Person” means any corporation, partnership, individual, joint venture, association or any other private legal entity.

“Prospective contractor” means a person who is subject to the competitive sealed proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person 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.

DISCLOSURE OF CONTRIBUTIONS:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Name of Applicable Public Official: _____

Date Contribution(s) Made: _____

Amount(s) of Contribution(s) _____

Nature of Contribution(s) _____

Purpose of Contribution(s) _____

(The above fields are unlimited in size)

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)

AGENT'S AFFIDAVIT



THIS FORM MUST
BE USED BY
SURETY

(To be filled in by Agent)

STATE OF _____)
) ss.
COUNTY OF _____)

_____, being first duly sworn, deposes and says
that he /

she is the duly appointed agent for
and is
licensed in the State of New Mexico.

Deponent further states that a certain bond was given to indemnify the State of New
Mexico in connection with the construction of

dated the _____ day of _____, 20____, executed by
Contractor, as principal, and _____, as surety, signed by
this Deponent; and Deponent further states that said bond was written, signed, and
delivered by him/her; that the premium on the same has been or will be collected by
him/her; and that the full commission thereon has been or will be retained by him/her.

Subscribed and sworn to before me, a notary public in and for the County of,
, this _____ day of _____, 20____.

Notary Public

My Commission Expires:

AGENT'S ADDRESS:

Telephone

**COMBINED
LIST OF SUBCONTRACTORS
and
ASSIGNMENT OF ANTITRUST CLAIMS
by
CONTRACTOR, SUBCONTRACTORS,
SUBSUBCONTRACTORS, and SUPPLIERS**

EXAMPLE TRADES AND SUPPLIERS: SITE WORK, EXCAVATION, STORM DRAIN DROP INLETS AND
PIPING, SUBGRADE PREPARATION, BASE COURSE, CHIP AND SEAL SURFACING, CONCRETE
PAVEMENT, WEED MAT, SEEDING AND FENCING

1. Subcontractor Listing shall be included with Bid as a condition of the Bid and be fully complete with regards to all Subcontractors providing services valued at \$5,000.00 or more, or one-half of one percent of the architect's or engineer's estimate of the total project cost, not including alternates, whichever is greater pursuant to Section 13-4-34, NMSA 1978.

Listing Threshold for this Project: \$5,000.00

a. Subcontractor Listing shall be expanded after Bid by apparent low bidder if Awarded, and before Contract, to include major Suppliers and, each entity listed shall be signed by individual empowered to obligate Supplier, Subcontractor, or Subsubcontractor.

b. Subcontractor Listing shall also be expanded after Bid by apparent low bidder if Awarded, and before Contract, to include the Department of Workforce Solutions labor enforcement fund registration number. See the Department of Workforce Solutions web site at www.dws.state.nm.us under "Public Works" for registration form, listings and information.

c. See Instructions to Bidders, Section 00 2113 Paragraph 4.5, Subcontractors, for rules regarding changes in this list after bidding.

2.

PROJECT NAME: Storm Drainage Improvements at the Roosevelt County Fairgrounds

INVITATION TO BID NUMBER:

The undersigned agrees that any and all claims which the firm may have or may inure 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 the Owner, but only to the extent that such overcharges are passed on to the Owner. It is agreed that the firm retains all rights to any such antitrust claims to the extent of any overcharges not passed on to the District, including the right to any treble damages attributable thereto.

(DATE & TIME)
ROOSEVELT COUNTY

*Signature not required until after Bid but before Award

DBB v.3.1 4.15.11

PREQUALIFICATION

GENERAL

The Contractor represents to the Owner that the Contractor:

1. is financially solvent, able to pay debts, and has sufficient working capital to complete the Work;
2. is able to furnish the plant, tools, materials, supplies, equipment, skilled labor and sufficient experience and competence required to complete the Work equal to or exceeding industry standards;
3. shall, prior to bid, be properly licensed according to the requirements of the Construction Industries Licensing Act, Chapter 60, Article 13 NMSA 1978 and ensures to the Owner that such license shall remain in effect for the duration of the Work and warranty periods that the Contractor is authorized and properly licensed to do business in the State of New Mexico and in the locale where the Work is located;
4. execution of the agreement and performance thereof is within the Contractor's duly authorized powers; and
5. or assigns have visited the site of Work and has become familiar with the conditions under which the Work is to be performed, obtained all available information and have correlated observations and acquired information with the requirements of the Contract Documents including conditions:
 - a) bearing upon access to the site, accommodations required, transportation, disposal, handling and storage;
 - b) affecting availability of labor, materials, equipment, water, electricity, utilities and roads;
 - c) such as weather, river stages, flooding;
 - d) related to the apparent form and nature of the Work site, including the surface and sub-surface conditions; and,
 - e) that in general would be deemed by a prudent contractor to be material to the Work as to assess risk, contingencies and other circumstances;
6. has completed prior contracts with diligent and continuous effort and has been responsive to post-occupancy corrections.

PREQUALIFICATION FORMS

Not required.

DEBARRED OR SUSPENDED CONTRACTORS

A business (contractor, subcontractor, or supplier) that has either been debarred or suspended pursuant to the requirements of Sections 13-1-177 through 13-1-180 and 13-4-11 through 13-4-17, NMSA 1978 as amended, shall not be permitted to do business with the State and shall not be considered for award of contract during the period for which it is debarred or suspended.

Request for Taxpayer Identification Number and Certification

Give Form to the
requester. Do not
send to the IRS.

► Go to www.irs.gov/FormW9 for instructions and the latest information.

Print or type. See Specific Instructions on page 3.	1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.	
	2 Business name/disregarded entity name, if different from above	
	3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes.	
	<input type="checkbox"/> Individual/sole proprietor or single-member LLC <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate	
	<input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ► _____ Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.	
	<input type="checkbox"/> Other (see instructions) ► _____	
	4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3): Exempt payee code (if any) _____ Exemption from FATCA reporting code (if any) _____ (Applies to accounts maintained outside the U.S.)	
5 Address (number, street, and apt. or suite no.) See instructions.		
6 City, state, and ZIP code		
7 List account number(s) here (optional)		
Requester's name and address (optional)		

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number										
				-				-		
or										
Employer identification number										
				-						

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign
Here

Signature of
U.S. person ►

Date ►

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.

By signing the filled-out form, you:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and
4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See *What is FATCA reporting*, later, for further information.

Note: If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien;
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States;
- An estate (other than a foreign estate); or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax under section 1446 on any foreign partners' share of effectively connected taxable income from such business. Further, in certain cases where a Form W-9 has not been received, the rules under section 1446 require a partnership to presume that a partner is a foreign person, and pay the section 1446 withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid section 1446 withholding on your share of partnership income.

In the cases below, the following person must give Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States.

- In the case of a disregarded entity with a U.S. owner, the U.S. owner of the disregarded entity and not the entity;
- In the case of a grantor trust with a U.S. grantor or other U.S. owner, generally, the U.S. grantor or other U.S. owner of the grantor trust and not the trust; and
- In the case of a U.S. trust (other than a grantor trust), the U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

Foreign person. If you are a foreign person or the U.S. branch of a foreign bank that has elected to be treated as a U.S. person, do not use Form W-9. Instead, use the appropriate Form W-8 or Form 8233 (see Pub. 515, *Withholding of Tax on Nonresident Aliens and Foreign Entities*).

Nonresident alien who becomes a resident alien. Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items.

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

Example. Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity, give the requester the appropriate completed Form W-8 or Form 8233.

Backup Withholding

What is backup withholding? Persons making certain payments to you must under certain conditions withhold and pay to the IRS 24% of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, payments made in settlement of payment card and third party network transactions, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the instructions for Part II for details),
3. The IRS tells the requester that you furnished an incorrect TIN,
4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or
5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See *Exempt payee code*, later, and the separate Instructions for the Requester of Form W-9 for more information.

Also see *Special rules for partnerships*, earlier.

What is FATCA Reporting?

The Foreign Account Tax Compliance Act (FATCA) requires a participating foreign financial institution to report all United States account holders that are specified United States persons. Certain payees are exempt from FATCA reporting. See *Exemption from FATCA reporting code*, later, and the Instructions for the Requester of Form W-9 for more information.

Updating Your Information

You must provide updated information to any person to whom you claimed to be an exempt payee if you are no longer an exempt payee and anticipate receiving reportable payments in the future from this person. For example, you may need to provide updated information if you are a C corporation that elects to be an S corporation, or if you no longer are tax exempt. In addition, you must furnish a new Form W-9 if the name or TIN changes for the account; for example, if the grantor of a grantor trust dies.

Penalties

Failure to furnish TIN. If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

Civil penalty for false information with respect to withholding. If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

Criminal penalty for falsifying information. Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

Misuse of TINs. If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

Specific Instructions

Line 1

You must enter one of the following on this line; **do not** leave this line blank. The name should match the name on your tax return.

If this Form W-9 is for a joint account (other than an account maintained by a foreign financial institution (FFI)), list first, and then circle, the name of the person or entity whose number you entered in Part I of Form W-9. If you are providing Form W-9 to an FFI to document a joint account, each holder of the account that is a U.S. person must provide a Form W-9.

a. **Individual.** Generally, enter the name shown on your tax return. If you have changed your last name without informing the Social Security Administration (SSA) of the name change, enter your first name, the last name as shown on your social security card, and your new last name.

Note: ITIN applicant: Enter your individual name as it was entered on your Form W-7 application, line 1a. This should also be the same as the name you entered on the Form 1040/1040A/1040EZ you filed with your application.

b. **Sole proprietor or single-member LLC.** Enter your individual name as shown on your 1040/1040A/1040EZ on line 1. You may enter your business, trade, or "doing business as" (DBA) name on line 2.

c. **Partnership, LLC that is not a single-member LLC, C corporation, or S corporation.** Enter the entity's name as shown on the entity's tax return on line 1 and any business, trade, or DBA name on line 2.

d. **Other entities.** Enter your name as shown on required U.S. federal tax documents on line 1. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on line 2.

e. **Disregarded entity.** For U.S. federal tax purposes, an entity that is disregarded as an entity separate from its owner is treated as a "disregarded entity." See Regulations section 301.7701-2(c)(2)(iii). Enter the owner's name on line 1. The name of the entity entered on line 1 should never be a disregarded entity. The name on line 1 should be the name shown on the income tax return on which the income should be reported. For example, if a foreign LLC that is treated as a disregarded entity for U.S. federal tax purposes has a single owner that is a U.S. person, the U.S. owner's name is required to be provided on line 1. If the direct owner of the entity is also a disregarded entity, enter the first owner that is not disregarded for federal tax purposes. Enter the disregarded entity's name on line 2, "Business name/disregarded entity name." If the owner of the disregarded entity is a foreign person, the owner must complete an appropriate Form W-8 instead of a Form W-9. This is the case even if the foreign person has a U.S. TIN.

Line 2

If you have a business name, trade name, DBA name, or disregarded entity name, you may enter it on line 2.

Line 3

Check the appropriate box on line 3 for the U.S. federal tax classification of the person whose name is entered on line 1. Check only one box on line 3.

IF the entity/person on line 1 is a(n) . . .	THEN check the box for . . .
• Corporation	Corporation
• Individual • Sole proprietorship, or • Single-member limited liability company (LLC) owned by an individual and disregarded for U.S. federal tax purposes.	Individual/sole proprietor or single-member LLC
• LLC treated as a partnership for U.S. federal tax purposes, • LLC that has filed Form 8832 or 2553 to be taxed as a corporation, or • LLC that is disregarded as an entity separate from its owner but the owner is another LLC that is not disregarded for U.S. federal tax purposes.	Limited liability company and enter the appropriate tax classification. (P= Partnership; C= C corporation; or S= S corporation)
• Partnership	Partnership
• Trust/estate	Trust/estate

Line 4, Exemptions

If you are exempt from backup withholding and/or FATCA reporting, enter in the appropriate space on line 4 any code(s) that may apply to you.

Exempt payee code.

- Generally, individuals (including sole proprietors) are not exempt from backup withholding.
- Except as provided below, corporations are exempt from backup withholding for certain payments, including interest and dividends.
- Corporations are not exempt from backup withholding for payments made in settlement of payment card or third party network transactions.
- Corporations are not exempt from backup withholding with respect to attorneys' fees or gross proceeds paid to attorneys, and corporations that provide medical or health care services are not exempt with respect to payments reportable on Form 1099-MISC.

The following codes identify payees that are exempt from backup withholding. Enter the appropriate code in the space in line 4.

1—An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2)

2—The United States or any of its agencies or instrumentalities

3—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities

4—A foreign government or any of its political subdivisions, agencies, or instrumentalities

5—A corporation

6—A dealer in securities or commodities required to register in the United States, the District of Columbia, or a U.S. commonwealth or possession

7—A futures commission merchant registered with the Commodity Futures Trading Commission

8—A real estate investment trust

9—An entity registered at all times during the tax year under the Investment Company Act of 1940

10—A common trust fund operated by a bank under section 584(a)

11—A financial institution

12—A middleman known in the investment community as a nominee or custodian

13—A trust exempt from tax under section 664 or described in section 4947

The following chart shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 13.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt payees except for 7
Broker transactions	Exempt payees 1 through 4 and 6 through 11 and all C corporations. S corporations must not enter an exempt payee code because they are exempt only for sales of noncovered securities acquired prior to 2012.
Barter exchange transactions and patronage dividends	Exempt payees 1 through 4
Payments over \$600 required to be reported and direct sales over \$5,000 ¹	Generally, exempt payees 1 through 5 ²
Payments made in settlement of payment card or third party network transactions	Exempt payees 1 through 4

¹ See Form 1099-MISC, Miscellaneous Income, and its instructions.

² However, the following payments made to a corporation and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, gross proceeds paid to an attorney reportable under section 6045(f), and payments for services paid by a federal executive agency.

Exemption from FATCA reporting code. The following codes identify payees that are exempt from reporting under FATCA. These codes apply to persons submitting this form for accounts maintained outside of the United States by certain foreign financial institutions. Therefore, if you are only submitting this form for an account you hold in the United States, you may leave this field blank. Consult with the person requesting this form if you are uncertain if the financial institution is subject to these requirements. A requester may indicate that a code is not required by providing you with a Form W-9 with "Not Applicable" (or any similar indication) written or printed on the line for a FATCA exemption code.

A—An organization exempt from tax under section 501(a) or any individual retirement plan as defined in section 7701(a)(37)

B—The United States or any of its agencies or instrumentalities

C—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities

D—A corporation the stock of which is regularly traded on one or more established securities markets, as described in Regulations section 1.1472-1(c)(1)(i)

E—A corporation that is a member of the same expanded affiliated group as a corporation described in Regulations section 1.1472-1(c)(1)(i)

F—A dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any state

G—A real estate investment trust

H—A regulated investment company as defined in section 851 or an entity registered at all times during the tax year under the Investment Company Act of 1940

I—A common trust fund as defined in section 584(a)

J—A bank as defined in section 581

K—A broker

L—A trust exempt from tax under section 664 or described in section 4947(a)(1)

M—A tax exempt trust under a section 403(b) plan or section 457(g) plan

Note: You may wish to consult with the financial institution requesting this form to determine whether the FATCA code and/or exempt payee code should be completed.

Line 5

Enter your address (number, street, and apartment or suite number). This is where the requester of this Form W-9 will mail your information returns. If this address differs from the one the requester already has on file, write NEW at the top. If a new address is provided, there is still a chance the old address will be used until the payor changes your address in their records.

Line 6

Enter your city, state, and ZIP code.

Part I. Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN.

If you are a single-member LLC that is disregarded as an entity separate from its owner, enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

Note: See *What Name and Number To Give the Requester*, later, for further clarification of name and TIN combinations.

How to get a TIN. If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local SSA office or get this form online at www.SSA.gov. You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at www.irs.gov/Businesses and clicking on Employer Identification Number (EIN) under Starting a Business. Go to www.irs.gov/Forms to view, download, or print Form W-7 and/or Form SS-4. Or, you can go to www.irs.gov/OrderForms to place an order and have Form W-7 and/or SS-4 mailed to you within 10 business days.

If you are asked to complete Form W-9 but do not have a TIN, apply for a TIN and write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

Note: Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

Caution: A disregarded U.S. entity that has a foreign owner must use the appropriate Form W-8.

Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if item 1, 4, or 5 below indicates otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). In the case of a disregarded entity, the person identified on line 1 must sign. Exempt payees, see *Exempt payee code*, earlier.

Signature requirements. Complete the certification as indicated in items 1 through 5 below.

1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983. You must give your correct TIN, but you do not have to sign the certification.

2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983. You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

3. Real estate transactions. You must sign the certification. You may cross out item 2 of the certification.

4. Other payments. You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments made in settlement of payment card and third party network transactions, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), ABLE accounts (under section 529A), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions. You must give your correct TIN, but you do not have to sign the certification.

What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account) other than an account maintained by an FFI	The actual owner of the account or, if combined funds, the first individual on the account ¹
3. Two or more U.S. persons (joint account maintained by an FFI)	Each holder of the account
4. Custodial account of a minor (Uniform Gift to Minors Act)	The minor ²
5. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee ¹
b. So-called trust account that is not a legal or valid trust under state law	The actual owner ¹
6. Sole proprietorship or disregarded entity owned by an individual	The owner ³
7. Grantor trust filing under Optional Form 1099 Filing Method 1 (see Regulations section 1.671-4(b)(2)(i)(A))	The grantor ⁴

For this type of account:	Give name and EIN of:
8. Disregarded entity not owned by an individual	The owner
9. A valid trust, estate, or pension trust	Legal entity ⁴
10. Corporation or LLC electing corporate status on Form 8832 or Form 2553	The corporation
11. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
12. Partnership or multi-member LLC	The partnership
13. A broker or registered nominee	The broker or nominee

For this type of account:	Give name and EIN of:
14. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity
15. Grantor trust filing under the Form 1041 Filing Method or the Optional Form 1099 Filing Method 2 (see Regulations section 1.671-4(b)(2)(i)(B))	The trust

¹ List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

² Circle the minor's name and furnish the minor's SSN.

³ You must show your individual name and you may also enter your business or DBA name on the "Business name/disregarded entity" name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

⁴ List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules for partnerships*, earlier.

***Note:** The grantor also must provide a Form W-9 to trustee of trust.

Note: If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

Secure Your Tax Records From Identity Theft

Identity theft occurs when someone uses your personal information such as your name, SSN, or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

If your tax records are affected by identity theft and you receive a notice from the IRS, respond right away to the name and phone number printed on the IRS notice or letter.

If your tax records are not currently affected by identity theft but you think you are at risk due to a lost or stolen purse or wallet, questionable credit card activity or credit report, contact the IRS Identity Theft Hotline at 1-800-908-4490 or submit Form 14039.

For more information, see Pub. 5027, Identity Theft Information for Taxpayers.

Victims of identity theft who are experiencing economic harm or a systemic problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

Protect yourself from suspicious emails or phishing schemes.

Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to phishing@irs.gov. You may also report misuse of the IRS name, logo, or other IRS property to the Treasury Inspector General for Tax Administration (TIGTA) at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at spam@uce.gov or report them at www.ftc.gov/complaint. You can contact the FTC at www.ftc.gov/idtheft or 877-IDTHEFT (877-438-4338). If you have been the victim of identity theft, see www.IdentityTheft.gov and Pub. 5027.

Visit www.irs.gov/IdentityTheft to learn more about identity theft and how to reduce your risk.

Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons (including federal agencies) who are required to file information returns with the IRS to report interest, dividends, or certain other income paid to you; mortgage interest you paid; the acquisition or abandonment of secured property; the cancellation of debt; or contributions you made to an IRA, Archer MSA, or HSA. The person collecting this form uses the information on the form to file information returns with the IRS, reporting the above information. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation and to cities, states, the District of Columbia, and U.S. commonwealths and possessions for use in administering their laws. The information also may be disclosed to other countries under a treaty, to federal and state agencies to enforce civil and criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. You must provide your TIN whether or not you are required to file a tax return. Under section 3406, payers must generally withhold a percentage of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to the payer. Certain penalties may also apply for providing false or fraudulent information.



STATE OF NEW MEXICO

Taxation and Revenue Department



APPLICATION FOR RESIDENT VETERAN CONTRACTOR CERTIFICATION

SECTION I		General Information	
Name of Licensed Contractor		Doing Business As (DBA) if applicable	
Mailing Address - City, State, Zip Code			
Physical Address - City, State, Zip Code			
Name of Business Owner or Officer	Phone Number of Business Owner or Officer	E-mail of Business Owner or Officer	
Name of Business Contact	Phone Number of Business Contact	E-mail of Business Contact	
NM(CRS) Number:	Contractor License Number	FEIN/SSN	
VIN of Vehicle Registered by Contractor with New Mexico		Name of Vehicle Owner	
SECTION II		Resident Veteran Contractor Status Information	
Please choose the relevant business status category below and place a checkmark next to all statements that apply to the applicant's business under the relevant category. If any statement under the relevant category is not appropriate to or does not otherwise describe the applicant's business, it may not qualify for certification.			
Existing Contractor			
<input type="checkbox"/> The contractor has been in existence for at least five years; and <input type="checkbox"/> The contractor is licensed as a contractor in New Mexico; and <input type="checkbox"/> The contractor has paid property taxes or rent on real property in New Mexico in <i>each</i> of the preceding five years; and <input type="checkbox"/> The contractor has paid at least one other tax administered by the State of New Mexico in <i>each</i> of the preceding five years; and <input type="checkbox"/> The contractor has paid unemployment insurance on at least three full-time New Mexico resident employees in <i>each</i> of the preceding five years or the contractor has been licensed as a contractor in New Mexico for ten consecutive years.			
New Contractor			
<input type="checkbox"/> The contractor did not exist as a business in any form and has been in existence for less than five years; and <input type="checkbox"/> The contractor is currently licensed as a contractor in New Mexico; and <input type="checkbox"/> The owner or majority of owners of the business have paid property taxes or rent on real property in New Mexico in <i>each</i> of the preceding five years; and <input type="checkbox"/> The owner or majority of owners of the business have paid at least one other tax administered by the State of New Mexico in <i>each</i> of the preceding five years; and <input type="checkbox"/> This contractor has not applied for a Resident Business Certificate or Resident Contractor Certificate during the preceding five years.			
Relocated Contractor			
<input type="checkbox"/> The contractor moved at least eighty (80%) percent of its total domestic personnel from another state to New Mexico in the past five years; and <input type="checkbox"/> The contractor is currently licensed as a contractor in New Mexico; and <input type="checkbox"/> Eighty (80%) percent or more of the total personnel of the business in the prior year were residents of New Mexico; and <input type="checkbox"/> The business has leased real property in New Mexico for ten years; or The business has purchased real property in New Mexico valued in excess of \$100,000.			

Previously Certified Contractor or a Contractor Previously Eligible for Certification			
<input type="checkbox"/> The contractor is licensed as a contractor in New Mexico; and <input type="checkbox"/> After January 1, 2012, but less than three years ago, the contractor obtained and was eligible for resident contractor certification. However, the contractor has since: (1) changed its name; (2) reorganized into one or more different legal entities; or (3) been purchased by or merged with another legal entity, but now operates in New Mexico as substantially the same commercial enterprise;			
OR			
After January 1, 2012, but less than three years ago, the contractor applied and was eligible for resident contractor certification. However, before the Department was able to issue certification, the business: (1) changed its name; (2) reorganized into one or more different legal entities; or (3) was purchased by or merged with another legal entity, but now operates in New Mexico as substantially the same commercial enterprise.			
SECTION III Annual Revenue and Documentation			
Please provide the business' previous year's annual revenues below and attach the required documents. If the required documents are attached, please place a checkmark next to the second statement below. An application submitted without the required information and documentation will be incomplete.			
<input type="checkbox"/> The previous year's annual revenues of the resident veteran business are \$ _____; and <input type="checkbox"/> Attached to this application is verification by the Federal Dept. of Veterans Affairs that the business is either a veteran-owned small business or a service-disabled veteran-owned small business;			
OR			
Attached to this application is proof that a veteran or veterans own a majority of the business and verification of either (1) veteran status as indicated by the U.S. Dept. of Defense DD Form 214 of release or discharge from active duty with an honorable discharge or (2) service disabled-veteran status by the Dept. of Veterans Affairs.			
AND			
<input type="checkbox"/> Any applicant provided a certificate of Resident Veterans Preference by the Taxation and Revenue Department as either a business or a contractor under the provisions of Sections 13-1-21 or 13-1-22 NMSA 1978, agrees that when awarded a contract involving a Veterans Preference during the last calendar year beginning on January 1 and ending on December 31, to report the award amount involved to the State Purchasing Division of the General Services Department. The report will be given under the penalty of perjury and indicate whether the awarded amount was as a purchase from a public body, or as a public works contract from a public body, as the case may be.			
SECTION IV Affidavit			
AFFIDAVIT FROM CERTIFIED PUBLIC ACCOUNTANT			
STATE OF _____ COUNTY OF _____		I hereby swear, <u>under oath</u> that it is my professional opinion that the applicant meets the required criteria set forth in NMSA 1978, Section 13-1-22 (2012) for Resident Veteran Business Certification and that ALL information provided and ALL checkmarked statements in the foregoing application are true and complete to the best of my knowledge.	
Name	CPA License #	State	Date
Signature			
NOTARY			
Subscribed and sworn to before me this _____ day of _____, 20_____.			
Notary Public _____ (NOTARY SEAL)		My Commission Expires _____	
I am authorized to sign this application on behalf of the applicant and attest to the truthfulness of the information provided herein.			
Signature of Applicant		Date	
Please see last of instructions; APPLICATION AND FEE SUBMISSION for correct mailing address and fee.			

APPLICATION FOR RESIDENT VETERAN CONTRACTOR CERTIFICATE INSTRUCTIONS

Beginning January 1, 2012, but not after June 30, 2022, New Mexico veteran contractors who wish to obtain a resident veteran contractor preference must first apply for and obtain a resident veteran contractor certificate issued by the New Mexico Taxation and Revenue Department (TRD). The preference may be used by the holder to obtain a bidding advantage when participating in a formal bid process or formal request for proposal process for the sale of goods or services to a New Mexico state or local public body. The contractor must submit with its bid or proposal a copy of a valid resident veteran contractor certificate.

So long as the contractor initially meets and continues to meet the necessary requirements, the certificate is valid for three years from the date of issuance. The contractor must submit a new application if the contractor's status has changed or if there is a change in ownership of more than fifty percent.

The purchasing agent for a public body may verify that a resident veteran contractor certificate is issued by TRD by accessing the TRD web site at <https://secure.mvd.newmexico.gov/residentcertificate/default.aspx>, or by calling (505) 827-0951.

RESIDENT VETERAN CONTRACTOR CERTIFICATE APPLICATION

TRID has prescribed form ASD-22244 that must be completed in order to obtain a resident veteran contractor certificate. The required contents of the form are summarized below.

SECTION I General Information

This section requires provision of the applicant's general business information, including basic contact information. The contact information provided must be that of the contractor or the contractor's authorized representative.

SECTION II Resident Veteran Contractor Status Information

To complete the application, the CPA must select the contractor status category that applies to the contractor: existing contractor, new contractor, relocated contractor, or previously certified contractor or contractor previously eligible for certification. The CPA must select only the contractor status category that pertains to the applicant and indicate which statements included in the applicable category accurately describe the contractor. If any statement is not appropriate to or does not otherwise describe the applicant's business, it may not qualify for certification.

NOTE: When a contractor is an existing contractor, the application must indicate whether, during the previous five years, the contractor paid unemployment insurance on at least three full-time employees who are residents of New Mexico. When a contractor is a relocated contractor, the application must indicate whether at least 80% of the total personnel of the contractor in the prior year were New Mexico residents. For the purposes of this application, a New Mexico "resident" is considered to be a person who is domiciled in this state during any part of the calendar year or a person who is physically present in this state for at least 185 days during the calendar year.

SECTION III Annual Revenue and Documentation

Complete Section III by entering the previous year's annual revenues of the resident veteran contractor and attaching the documentation required. An application submitted without the required information and documentation will be incomplete.

SECTION IV**Affidavit**

This portion of the form is a sworn statement by the CPA indicating that the statements selected in Section II are accurate descriptions of the contractor, and that all other information provided in the form is true and correct to the best of the CPA's knowledge. The affidavit also provides a sworn statement that it is the CPA's professional opinion that the contractor meets the required criteria for resident veteran contractor certification.

The contractor, officer of the contractor business or the contractor's authorized representative must also sign the application, affirming that the statements made and information provided in the application are true and correct.

APPROVALS AND PENALTIES

TRD will examine the application and affidavit. If necessary, TRD may seek additional information to ensure the contractor's eligibility. If TRD determines that the contractor is eligible, it will issue a certificate to the contractor. If TRD determines that the contractor is not eligible, it will issue notification within 30 days. If such notification is not provided by the Department, the application is deemed approved.

A certificate is valid for three years from the date of issuance; provided that if there is a change of ownership of more than 50%, the applicant must reapply. A contractor must also reapply if it has changed its name, reorganized into one or more different legal entities or was purchased by or merged with another legal entity, but now operates in New Mexico as substantially the same commercial enterprise. In such a case, the certification of the contractor in its previous form will apply three years from the date of the previous certification, but only to the extent the contractor was eligible for certification in its previous form.

If an application is denied, the business has 15 days from the date of the denial to file an objection with TRD, submitting evidence to support the objection. TRD must review the evidence and issue a response to the objection within 15 days of the filing of the objection.

If following a hearing and an opportunity to be heard, TRD finds that a contractor provided false information to TRD in order to obtain a certificate or that a contractor used a certificate to obtain a preference and the contractor did not perform the percentage of the contract specified in the bid or proposal, the business:

1. Is not eligible to receive a certificate or preference for a period of five years from the date on which TRD became aware of the submission of the false information or the failure to perform the contract as specified in the bid or proposal; and
2. Is subject to an administrative penalty of up to \$50,000 for each violation.

REVOCATIONS

TRD will contemplate revoking an issued certificate if information is revealed that the holder's situation has changed and/or the business does not qualify as a resident veteran contractor. If TRD contemplates revocation, it will issue a Notice of Contemplated Action to the contractor. The contractor will be provided with an opportunity to request an administrative hearing on the matter.

APPLICATION AND FEE SUBMISSION

Submit the application along with \$35 application fee to:

New Mexico Taxation and Revenue Department
Santa Fe District Office
PO Box 5374
Santa Fe, NM 87502-5374

For questions concerning the application process please call (505) 827-0951.



STATE OF NEW MEXICO

ROOSEVELT COUNTY

In Collaboration With

NEW MEXICO ENVIRONMENT DEPARTMENT
CONSTRUCTION PROGRAMS BUREAU

121 Tijeras Avenue N.E., Suite 1000
Albuquerque, New Mexico 87102-3400

MICHELLE LUJAN-GRISHAM
GOVERNOR

JOHN RHODERICK
DISTRICT MANAGER

NOTICE OF INTENT TO AWARD

TO:

DATE:

PROJECT: Storm Drainage Improvements at
Roosevelt County Fairgrounds

PROJECT NO. 104

ITB REF NO. 2021-05

Ladies and Gentlemen:

THIS IS NOT AN AWARD. This letter is to advise you that the Floyd Municipal School District is still considering the Apparent Low Bid offer with the intent to award the Project to you when all considerations and approvals are complete. Without authorizing you to incur any costs or obligation, with the exception of Building Permit Cost, the Floyd Municipal School District would like you to proceed with administrative procedures such as application for Building Permit, submittals and the like in anticipation of the Award and to minimize the time to Project start-up.

OTHER CONDITIONS PRECEDENT (if none, write none)

None

You are reminded that at Notice to Award, but not at this time, you will be asked to produce, along with executed Agreement the following within ten (10) calendar days of that notice:

The Performance Bond, Labor and Material Payment Bond; Agent's Affidavit; Subcontractors List including contract amount of each, evidence of required bonds, costs of each bond, and beneficiary of each bond; evidence of DOL registration, evidence of CID licensure; Assignment of Antitrust Claims (required for the Contractor, all Subcontractors, and all Suppliers); Certificate of Insurance; State W-9; evidence of other bonds or documents as specified in the Bidding Documents; and, Schedule of Values.

Prior to the first Payment Application, the Project Schedule will be required and prior to the second Payment Application, a schedule of submittals will be required.

Liliana Rivera
Procurement Officer

Distribution to:

- ☐ District Purchasing Agent (original)
- ☐ Design Professional of Record (copy)
- ☐ PSFA Contracts Administrator (copy)
- ☐ Other Bidders (copy)
- ☐ Other _____

NOTICE OF INTENT TO AWARD

00 5101 - 1



STATE OF NEW MEXICO
ROOSEVELT COUNTY
In Collaboration With
NEW MEXICO ENVIRONMENT DEPARTMENT
CONSTRUCTION PROGRAMS BUREAU
121 Tijeras Avenue N.E., Suite 100
Albuquerque, New Mexico 87105

MICHELLE LUJAN-GRISHAM
GOVERNOR

JOHN RHODERICK
DISTRICT MANAGER

NOTICE OF AWARD

TO:

DATE:

PROJECT: Storm Drainage Improvements at
Roosevelt County Fairgrounds

PROJECT NO. 104

ITB REF NO. 2021-05

Ladies and Gentlemen:

This letter is to advise you that ROOSEVELT COUNTY, in conjunction with the New Mexico Environment Department Construction Programs Bureau (CWSRF), approved award of the construction contract to your firm for:

The Contract Price is as follows:

	Description	Amount: (General Contract)	Amount: (Other separate contract)
Base Bid Amount:		\$	
Alternate #1:			\$
Alternate #		\$	
Alternate #		\$	
Alternate #		\$	
Alternate #		\$	
Alternate #		\$	
Total Contract Amount:		\$	

Two (2) counterparts of each of the proposed Contract Documents (except Drawings) will be provided to you by the District for execution. Five sets of the Drawings will be delivered separately or otherwise made available to you by the Design Professional of Record.

You must comply with the following conditions within ten (10) calendar days of the date of this Notice of Award, that is, by

1. You must deliver to the Owner two fully executed counterparts of the Agreement, including all Contract Documents. Each of the Contract Documents must bear your signature on the appropriate page. Provide both your State of New Mexico and Federal Tax Identification Numbers on the signature page.
2. You must deliver with the executed Agreement; the Contractor's Performance Bond, Labor and Material Payment Bond; Agent's Affidavit; Subcontractors List including contract amount of each, evidence of required bonds, costs of each bond, and beneficiary of each bond, evidence of DWS registration, evidence of CID licensure; Assignment of Antitrust Claims (required for the Contractor, all Subcontractors, and all Suppliers); Certificate of Insurance; State W-9; evidence of other bonds or documents as specified in the Bidding Documents; and, Schedule of Values; and,

3. OTHER CONDITIONS PRECEDENT (if none, write none)

NONE

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

Within thirty (30) days after you comply with these conditions, the Owner will return to you one fully signed counterpart of the Agreement with the Contract Documents attached.

You are reminded that prior to the first Payment Application, the Project Schedule will be required and prior to the second Payment Application, a schedule of submittals will be required.

By: _____
LILIANA RIVERA
COUNTY PROCUREMENT OFFICER
ROOSEVELT COUNTY

By: _____

Distribution to:

- ☐ County Purchasing Agent (original)
- ☐ Design Professional of Record (copy)
- ☐ Other _____

Agreement between the Owner and the Contractor

2019 Edition, Version 3.5

THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES; CONSULTATION WITH AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS COMPLETION

Project (short title): Storm Drainage Improvements at
The Roosevelt County Fairgrounds
Location: Roosevelt County Fairgrounds
Portales, New Mexico

Contract No.: 2021-05

CWSRF Project No.: 104

Distribution to:



- ☐ County Representative (original)
- ☐ Contractor (original)
- ☐ Design Professional (copy)
- ☐ NMED Regional Manager (copy)
- ☐ NMED Contracts Administrator (copy)
- ☐ Other _____

This Agreement entered into this day of , 2021, by and between the parties as follows:

THE OWNER:

ROOSEVELT COUNTY
(COUNTY COMMISSION)
104 WEST 1ST STREET
PORTALES, NM 88130
Telephone: (575) 356-5307

THE CONTRACTOR:

Telephone: ()
Fax: ()

and, hereinafter "Owner" and,
NMED ☐ IS ☒ IS NOT a Co-Owner in this
Agreement.

CO-OWNER with OVERSIGHT:

DESIGN PROFESSIONAL OF RECORD:

ROBERT C. LYDICK
LYDICK ENGINEERS & SURVEYORS
P. O. BOX 728
205 E. 2ND STREET
CLOVIS, NM 88101
Telephone: (575) 762-3771
Fax: (575) 762-9093

RECITALS

WHEREAS The New Mexico Environment Department Construction Programs Bureau (CWSRF) allocated funding from the United States Environmental Protection Agency Funds for the above referenced project on , 2021;

WHEREAS, the County, otherwise known as the Owner, has entered into Agreement with the NMED and its Construction Programs Bureau (CWSRF) to act as Co-Owner, oversee and manage the work and make direct payment of Owner-approved expenses;

WHEREAS, the Owner may also oversee and manage the work and make direct payment of Owner-approved expenses in collaboration and agreement with the NMED;

WHEREAS the Owner, through its Commission, is authorized to enter into a construction contract for the Project pursuant to Sections 13-1-100 and 22-5-4, NMSA 1978; and

WHEREAS the Owner has let this contract according to the established State purchasing procedures for contracts of the type and amount let.

The OWNER and the CONTRACTOR agree as set forth below.

ARTICLE 1

THE CONTRACT DOCUMENTS

The Contract Documents consist of the following:

Bid Form	Notice to Proceed
Agreement Between Owner and Contractor	Conditions of the Contract (General,
Performance Bond	Supplementary, and Other Conditions)
Labor and Material Payment Bond	Drawings
Agent's Affidavit	Specifications
Certificate of Insurance	All Addenda Issued Prior to and All
Assignment of Antitrust Claims	Modifications Issued after Execution
Notice of Award	of This Agreement

These documents form the Contract, and all are as fully a part of the Contract as if attached to this Agreement or repeated herein. An enumeration of the Contract Documents appears in Article 7.

ARTICLE 2

THE WORK

The Contractor shall perform all the Work required by the Contract Documents for the following:

ARTICLE 3

TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

The Work to be performed under this Contract shall commence not later than ten (10) consecutive calendar days after the date of written Notice to Proceed. Substantial Completion shall be achieved not later than 90 calendar days after the date of written Notice to Proceed, except as hereafter extended by valid written Change Order by the Owner.

Should the Contractor neglect, refuse, or otherwise fail to complete the Work within the time specified for Substantial Completion, the Contractor agrees, in partial consideration for the award of this Contract, to pay to the Owner the amount of Five Hundred Dollars (\$500.00) per consecutive calendar day, not as a penalty, but as liquidated damages for such breach of this Contract.

ARTICLE 4

CONTRACT SUM

The Owner 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.

ARTICLE 5

PROGRESS PAYMENTS

Based upon Applications for Payment submitted to the Design Professional by the Contractor and Certificates for Payment issued by the Design Professional, the Owner 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:

Not later than twenty-one (21) days following the end of the period covered by the Application for Payment of the portion of the Contract Sum properly allocable to labor, materials, and equipment incorporated in the Work and 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 Owner; less such amounts as the Design Professional shall determine for all incomplete Work and unsettled claims as provided in the Contract Documents.

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate provided by State statute regulating prompt payment.

ARTICLE 6

FINAL PAYMENT

This contract is subject to the extended payment provisions of 57-28-5 (B) and final payment, constituting the entire unpaid balance of the Contract Sum, shall be paid by the Owner to the Contractor within forty-five (45) calendar days after notification of the Owner by the Design Professional 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, a Certificate for Final Completion and final Certificate for Payment has been issued by the Design Professional; and the Contractor has provided to the Owner a certified statement of Release of Liens (AIA Document G706A or approved form) and Consent of Surety and such other documents required by the General Conditions.

ARTICLE 7

GENERAL AND SPECIAL PROVISIONS

7.1 This document shall be executed in no less than five (5) counterparts, each of which shall be deemed an original.

7.2 Owner Provided Insurance. The Owner will not provide Builder's Risk.

7.2.1 Property Insurance/Builder's Risk. Contractor shall provide insurance which will protect the interests of the Contractor and Subcontractors in the Work. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, or until no person or entity other than the Owner has an insurable interest in the property required by this Paragraph to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, and Subcontractors in the Project.

7.3 This Agreement shall be governed exclusively by the provisions hereof and by the laws of the State of New Mexico as the same from time to time exist.

7.4 Terms used in this Agreement which are defined in the Conditions of the Contract shall have the meanings designated in those Conditions.

7.5 As between the parties to this Agreement: As to all acts or failures to act by either party to this Agreement, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the relevant Date of Substantial Completion of the Work; and as to any acts or failures to act occurring after the relevant Date of Substantial Completion, not later than the date of the Owner's approval of the Final Certificate of Payment.

7.6 The Contractor shall hold harmless and indemnify the Owner against any and all injury, loss, or damage, including cost of defense - including but not limited to court costs and attorneys' fees - arising out of the negligent acts, errors, or omissions of the Contractor.

7.7 This Agreement shall not become effective until:
A. approved by the Public School Facilities Authority; and,
B. signed by all parties required to sign this Agreement.

7.8 The Contractor and his agents and employees are independent contractors and are not employees of the Owner or the State of New Mexico. The Contractor and his agents and employees shall not accrue leave, retirement, insurance, bonding, use of State vehicles, or any other benefits afforded to employees of the Owner or the State of New Mexico as a result of this Agreement.

7.9 The Contractor, upon Final Payment of the amounts due under this Agreement, releases the Owner, his officers and employees, and the State of New Mexico from his liabilities and obligations arising from or under this Agreement, including but not limited to all damages, losses, costs, liability, and expenses, including but not limited to attorneys' fees and costs of litigation that the Contractor may incur.

7.10 The Contractor agrees not to purport to bind the Owner or the State of New Mexico to any obligation not assumed herein by the Owner or the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

7.11 Notices. All notices herein provided to be given, or which may be given, by either party to the other shall be deemed to have been fully given when made in writing and deposited in the United States mail postage prepaid, in the instance of Notice of Termination of Work, Certified Mail, Federal Express, or similar verifiable delivery method addressed as follows:

OWNER: ROOSEVELT COUNTY
AMBER HAMILTON-COUNTY MANAGER
109 WEST 1ST STRETT
PORTALES, N.M. 88130

CONTRACTOR:

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 herein above provided.

7.12 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 requires otherwise.

7.13 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.

7.14 This document shall be executed in no less than five (5) counterparts, each of which shall be deemed an original.

7.15 Certificates and Documents Incorporated. All certificates and documentation required of the Contractor by the provisions of this 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.

7.16 Separability. If any clause or provision of this Agreement is illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, then and in that event it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby.

7.17 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.

7.18 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 embodied in this written Agreement.

7.19 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.

7.20 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.

7.21 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.

7.22 Pursuant to Section 13-1-191, NMSA 1978, reference is hereby made to the Criminal Laws of New Mexico (including Sections 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 (Sections 13-1-28 through 13-1-199, NMSA 1978) imposes civil and criminal penalties for its violation.

7.23 The Contract Documents, which constitute the entire Agreement between the Owner and the Contractor, are listed in Article 1 and, except for Modifications issued after execution of this Agreement, are enumerated in this Paragraph 7.21.

7.24.1 The following documents bound in the Project Manual dated:

DOCUMENTS

Division 00 – Procurement and Contracting Requirements

*******Design Professional to include appropriate section number related to actual bid form used and strike out section not applicable*******

[00 4113] [00] Bid Form
00 4336 Combined Subcontractor Listing and Assignment of Antitrust Claims
00 5101 Notice of Intent to Award
00 5102 Notice of Award
00 5213 Agreement between Owner and Contractor
00 5501 Notice to Proceed
00 6113 Performance Bond
00 6114 Labor and Material Payment Bond
00 6129 Agent's Affidavit – Construction Contract Bonds
00 6131 Bond Review Form – Construction Contract Bonds
00 6216 Certificate of Insurance

00 7200 General Conditions of the Contract
00 7300 Supplementary Conditions
----- Addenda and Modifications

SPECIFICATIONS

Division 01 - General Requirements

*******Please reference the General Conditions before adding Supplementary or Division 01 requirements to ensure that there are no conflicts.*******

01 1000 Summary
01 3100 Project Management and Coordination
01 3300 Submittal Procedures
01 3301 Submittal Transmittal Form
01 4000 Quality Requirements
01 5000 Temporary Facilities and Controls
01 6300 Product Substitution Procedures
01 6301 Prior Approval Substitution Form
01 6302 Contractor Substitution Request form
01 7000 Execution Requirements
01 7700 Closeout Procedures
01 7800 Closeout Submittals

Division _____

7.24.3 The following Drawings, dated _____

Title Sheet

Civil C- THRU C-

Structural S

Architectural A

Mechanical M

Plumbing P

Electrical E

Other (list)

7.24.3 Addenda N/A

No. _____ Description _____ Date _____

No. _____ Description _____ Date _____

No. _____ Description _____ Date _____

No. _____ Description _____ Date _____

END OF ARTICLE 7

Contract No.:
NMED (CWSRF) Project No.: 104

AGREED: This Agreement is entered into as of the day and year first written above.

CONTRACTOR

By:
Printed Name:
Title: Date:

Federal Identification Number:
NM CRS Identification Number:

OWNER: ROOSEVELT COUNTY

By:
Printed Name: Amber Hamilton
Title: County Manager Date:



STATE OF NEW MEXICO
ROOSEVELT COUNTY
In Collaboration With
NEW MEXICO ENVIRONMENT DEPARTMENT
CONSTRUCTION PROGRAMS BUREAU
121 Tijeras Ave. N.E., Suite 1000
Albuquerque, New Mexico 87102-3400

MICHELLE LUJAN-GRISHAM
GOVERNOR

JOHN RHODERICK
DISTRICT MANAGER

NOTICE TO PROCEED

TO:

DATE:

PROJECT: STORM DRAINAGE
IMPROVEMENTS AT THE ROOSEVELT
COUNTY FAIRGROUNDS

PROJECT NO. CWSRF #104

ITB REF NO. 2021-05

CONTRACT NO.

Ladies and Gentlemen:

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 90 calendar days thereafter, which shall be _____, 2021, unless modified by Change Order.

It is essential that you make reference to the above stated project number on all documents sent to the Design Professional from your office. These documents shall include correspondence, modification change requests (MCR's), change orders, payment request statements, and all other project related material which you forward to the Design Professional for information and processing.

Before you may start any Work on the site, off the site, or otherwise incur expenses or liabilities, you have delivered all pre-Work documents required by the Construction Documents that include, but are not limited to, the Labor Material and Performance Bonds and Certificate of Insurance and you must have received a Purchase Order for the Work.

In addition, you must deliver (add any other requirements):

Invoicing for Work: Under no circumstances shall an invoice be received prior to Purchase Order date or prior to approval of Schedule of Values.

In addition, you must (add any other requirements):

PROJECT NO. CRSRF # 104
CONTRACT NO.

OWNER:

ROOSEVELT COUNTY
109 WEST 1ST STREET
PORTALES, NM 88130
PHONE: (575) 356-5307

By: _____
MS. AMBER HAMILTON
COUNTY MANAGER
ROOSEVELT COUNTY

Distribution to:

- ☐ County Purchasing Agent (original)
- ☐ Design Professional of Record (copy)

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: that

(Name of Contractor)

(Address of Contractor)

a _____, hereinafter called Principal, and

(Name of Surety)

(Address of Surety)

hereinafter called Surety, are held and firmly bound unto _____

(Name of Owner)

(Address of Owner)

hereinafter called OWNER, and the United States of America in the total aggregate penal sum of _____ Dollars (\$ _____) in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the OWNER, dated the _____ day of _____, 19____, a copy of which is hereto attached and made a part here of for the construction of:

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term thereof, and any extensions thereof which may be granted by the OWNER,

with or without notice to the Surety and during the one year guaranty period, and if he shall satisfy all claims and demands incurred under such contract, and shall fully indemnify and save harmless the OWNER from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the OWNER all outlay and expense which the OWNER may incur in making good any default, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDE, FURTHER, that the liability of the PRINCIPAL AND SURETY hereunder to the GOVERNMENT shall be subject to the same limitations and defenses as may be available to them against a claim hereunder by the OWNER, provided, however, that the GOVERNMENT may, at this option, perform any obligations of the OWNER required by the contract.

PROVIDED, FURTHER, that the said **SURETY**, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to **WORK** to be performed thereunder or the **SPECIFICATIONS** accompanying same shall in any way affect its obligation on the **BOND**, and it does hereby waiver notice of any such change, extension of time, alteration or addition to the terms of the contract or to the **WORK** or to the **SPECIFICATIONS**.

PROVIDED, FURTHER, that it is expressly agreed that the **BOND** shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon amendment to the Contract not increasing the contract price more that 20 percent, so as to bind the **PRINCIPAL** and the **SURETY** to the full and faithful performance of the **CONTRACT** as so amended. The term **AAmendment**≡, wherever used in this **BOND**, and whether referring to this **BOND**, the Contract or the Loan Documents shall include any alteration, addition, extension, or modification of any character whatsoever.

PROVIDED, FURTHER, that not final settlement between the **OWNER** and **GOVERNMENT** and the **PRINCIPAL** shall abridge the right of the other beneficiary hereunder, whose claim may be unsatisfied. The **OWNER** and **GOVERNMENT** are the only beneficiaries hereunder.

IN WITNESS WHEREOF, this instrument is executed in _____ counterparts, each

one of which shall be deemed an original, this the _____^(Number) day of _____.

ATTEST:

Principal

(Principal) Secretary

(SEAL)

By _____(s)

(Witness as to Principal)

(Address)

(Address)

(Surety)

ATTEST:

Witness to Surety

By _____
Attorney-in-Fact

(Address)

(Address)

NOTE: Date of **BOND** must not be prior to date of Contract.

If **CONTRACTOR** is partnership, all partners should execute **BOND**.

IMPORTANT: Surety companies executing **BONDS** must appear on the Treasury Department=s most current list (Circular 570 as amended) and be authorized to transact business in the state where the Project is located.

PERFORMANCE BOND

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: that

(Name of Contractor)

(Address of Contractor)
a _____, hereinafter called Principal, and
(Corporation, Partnership or individual)

and _____
(Name of Surety)

(Address of Surety)
hereinafter called Surety, are held and firmly bound unto

(Name of Owner)

(Address of Owner)

hereinafter called OWNER, and the United States of America in the total aggregate penal sum of _____ Dollars (\$ _____) in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the OWNER, dated the _____ day of _____ 19____, a copy of which is hereto attached and made a part here of for the construction of:

NOW, THEREFORE, if the Principal shall promptly make payment to all persons, firms, SUBCONTRACTORS, and corporations furnishing materials for or performing labor in the prosecution of the WORK provided for in such contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, coal and coke, repairs on machinery, equipment and tools, consumed or used in connections with the construction of such WORK, and all insurance premiums on said WORK whether by SUBCONTRACTOR or otherwise, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, that beneficiaries or claimants hereunder shall be limited to the SUBCONTRACTORS, and persons, firms, and corporations having a direct contract with the PRINCIPAL or its SUBCONTRACTORS.

PROVIDED, FURTHER, that it said SURETY, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or the WORK to be performed thereunder or the SPECIFICATIONS accompanying same shall in any way affect its obligation on this BOND, and it does hereby waiver notice of any such change, extension of time, alteration or addition to the terms of the contract or to the WORK or to the SPECIFICATIONS.

PROVIDED, FURTHER, that no suit or action shall be commenced hereunder by any claimant: (a) Unless claimant, other than one having a direct contract with the PRINCIPAL (or with the GOVERNMENT in the event the GOVERNMENT is performing the obligations of the OWNER), shall have given written notice to any two of the following: The PRINCIPAL, the OWNER or the SURETY above named within ninety (90) days after such claimant did or performed the last of the work or labor, or furnished the last of the work or labor, or furnished the last of the materials for the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the PRINCIPAL, OWNER or SURETY, at any place where an office is regularly maintained 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. (b) After the expiration of one (1) year following the date or which PRINCIPAL ceased work on said CONTRACT, is being understood, however, that if any limitation embodied in the BOND is prohibited by any law controlling the construction hereof, such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

PROVIDED, FURTHER, that it is expressly agreed that is BOND shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon amendment to the Contract not increasing the contract price more than 20 percent, so as to bind the PRINCIPAL and the SURETY to the full and faithful performance of the Contract as so amended. The term "Amendment", wherever used in this BOND and whether referring to this BOND, the contract or the loan Documents shall include any alteration, addition, extension or modification of any character whatsoever.

PROVIDED, FURTHER, that no final settlement between the OWNER or GOVERNMENT and the CONTRACTOR shall abridge the right of any beneficiary herunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in _____ counterparts, each
(Number)
one of which shall be deemed an original, this the _____ day of _____
_____.

ATTEST:

Principal

(Principal) Secretary

(SEAL)

By _____ (s)

(Witness as to Principal)

(Address)

(Address)

(Surety)

ATTEST:

Witness to Surety

By _____
Attorney-in-Fact

(Address)

(Address)

NOTE: Date of BOND must not be prior to date of Contract.
If CONTRACTOR is partnership, all partners should execute BOND.

IMPORTANT: Surety companies executing BONDS must appear on the Treasury
Department's most current list (Circular 570 as amended) and be authorized to transact business
in the state where the Project is located.

PAYMENT BOND

AGENT'S AFFIDAVIT



THIS FORM MUST
BE USED BY
SURETY

(To be filled in by Agent)

STATE OF _____)
) ss.
COUNTY OF _____)

_____, being first duly sworn, deposes and says
that he /

she is the duly appointed agent for
and is
licensed in the State of New Mexico.

Deponent further states that a certain bond was given to indemnify the State of New
Mexico in connection with the construction of

dated the _____ day of _____, 20____, executed by
Contractor, as principal, and _____, as surety, signed by
this Deponent; and Deponent further states that said bond was written, signed, and
delivered by him/her; that the premium on the same has been or will be collected by
him/her; and that the full commission thereon has been or will be retained by him/her.

Subscribed and sworn to before me, a notary public in and for the County of,
, this _____ day of _____, 20____.

Notary Public

My Commission Expires:

AGENT'S ADDRESS:

Telephone

Instructions:

1. Contractor shall attach pre-signed or un-signed form to Performance Bond and Labor and Material Bond and submit to Design Professional with Post-Bid submittals (see Section 00 2113 - Instructions to Bidders).
2. District shall review Surety for acceptability and, if approved, sign form prior to approval of Contract.
3. After review and approval of bonds, District shall include signed form with approved Contract in transmittal to PSFA.

REVIEW AND APPROVAL:

This Bond has been executed by a Surety named in the current list of "companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies," as published in Circular 570 (amended) by the Audit Staff Bureau of Accounts, United States Treasury Department.

APPROVED:

By: _____
Owner's Representative or Governing Authority

Date: _____

MODIFICATION / CHANGE REQUEST

PROJECT NAME: **STORM DRAINAGE IMPROVEMENTS AT ROOSEVELT COUNTY FAIRGROUNDS** PROJECT NUMBER: **NMED (CWSRF PROJECT # 104)**

M/CR LOG NUMBER _____ (Assigned by DP) Current Date _____

REQUESTED BY OWNER ☐ CONTRACTOR ☐ DP ☐ NMED ☐ INITIAL _____

WHO HAS REQUESTED THE WORK BE DONE _____
ie; user group name/individual/contractor/subcontractor/ etc.

DESCRIPTION OF CHANGE
First why, then how.

ATTACHMENT(S)

YES ☐ NO ☐

OWNER REVIEW OF CONTENT AND/OR FEASIBILITY

INITIAL _____ DATE _____
DR
INITIAL _____ DATE _____
NMED

☐ DO NOT PROCEED

☐ PROCEED WITH ESTIMATE OF COSTS ONLY (within 10 calendar days of receipt of this MCR)!

☐ PROCEED WITH WORK, ESTIMATES OF COSTS TO FOLLOW (estimate within 10 days of receipt of this MCR)!

A/E – ESTIMATED COST OF REQUIRED DESIGN WORK: (estimate within 5 days; Include breakdown of costs)

\$ _____ Initial _____ Date _____
Project DP

PROCEED WITH DESIGN: (Forward proposed costs of work to OWNER for approval, include GRT)

APPROVED AMOUNT \$ _____ Initial _____ Date _____
DR NMED

CONTRACTOR'S PROPOSED COST: (Include backup, include GRT)

APPROVED AMOUNT \$ _____ Initial _____ Date _____
DR NMED

MUST BE COMPLETED TO FINALIZE:

INITIAL _____ DATE _____
DR
INITIAL _____ DATE _____
NMED

☐ PROCEED WITH MODIFICATION OF WORK AND TO CONTRACT SUM (INCLUDE IN CHANGE ORDER)

☐ REJECTED BUT, REPLACED BY MCR # _____

☐ REJECTED – STOP ALL ACTION ON THIS REQUEST _____

MODIFICATION / CHANGE REQUEST (MCR) FORM

00 6360 - 1

MODIFICATION / CHANGE REQUEST NO. _____

DATE: _____

CWSRF PROJECT NO. 104

DESCRIPTION OF PROPOSED WORK:

NOTE: Fill out a separate worksheet for each subcontractor on this MCR. The GC shall use this same form to summarize the total of all subcontractor proposals while adding GC costs. Attach all worksheets and breakdowns to summary sheet for each MCR.

SUBCONTRACTOR'S COSTS (ATTACH SUBCONTRACTOR'S SHEET AND COST BREAKDOWNS):*		
1	Total of subcontractor's material (attach itemized breakdown):	\$ -
2	Total of subcontractor's labor cost including fringe benefits and labor burden (attach itemized breakdown):	\$ -
3	Other directly attributable costs allowed (attach itemized breakdown):	\$ -
4	Subtotal:	\$ -
5	Subcontractor's O&P (0 % of Item 4)	\$ -
6	Subcontractor's Bond:	\$ -
7	Permits paid by subcontractor:	\$ -
8	Subcontractor's Total Costs:	\$ -

GENERAL CONTRACTOR'S COSTS (ATTACH WORKSHEETS)*		
9	GC's material (attach itemized breakdown):	\$ -
10	General Contractor's labor cost including fringe benefits and labor burden (attach itemized breakdown) @ 0 %:	\$ -
11	Construction equipment (rental):	\$ -
12	Directly attributable field supervision, insurance, etc. (attach itemized breakdown):	\$ -
13	Subtotal:	\$ -
14	General Contractor's Overhead and Profit on subcontractor (0 % of Item 8)	\$ -
15	General Contractor's Overhead and Profit on work by General Contractor's own forces (0 % of Item 13):	\$ -
16	Subtotal (sum of Items 13, 14, and 15):	\$ -
17	Permits paid by General Contractor:	\$ -
18	Subtotal (sum of Items 8, 16, and 17):	\$ -
19	Insurance (0 % of Item 18):	\$ -
20	Subtotal (sum of Items 18 and 19):	\$ -
21	Bond (0 % of Item 20):	\$ -

22	MCR Subtotal (sum of Items 20 and 21):	\$ -
23	Gross Receipts Tax (7.0000 % of Item 22):	\$ -
24	General Contractor's total cost (sum of Items 22 and 23):	\$ -

* Allowable costs and percentages shall not exceed those indicated in Article 7.2.5.

NMED PROJECT #104PROJECT NAME: STORM DRAINAGE IMPROVEMENTS ROOSEVELT COUNTY FAIRGROUNDSCHANGE ORDER #CONTRACTOR: 0CHANGE ORDER TOTAL \$STATE SHARE TO ADEQUACY \$TOTAL OWNER \$

By: AMBER HAMILTON COUNTY MANAGER	By: Name of Signatory 0	By: Name of Signatory 0
Date:	Date:	Date:
Reviewed By: Name of Regional Manager NMED MANAGER	Approved By: Martica Casias NMED DIRECTOR	
Date:	Date:	



STATE OF NEW MEXICO
ROOSEVELT COUNTY
In Collaboration With
NEW MEXICO ENVIRONMENT DEPARTMENT
CONSTRUCTION PROGRAMS BUREAU
121 Tejas Ave. N.E., Suite 1000
Albuquerque, New Mexico 87102-3400

Michelle Lujan Grisham
GOVERNOR

Joe Guillen
CHAIR

Jonathan Chamblin
DIRECTOR
(505) 468-0301

CERTIFICATE OF SUBSTANTIAL COMPLETION

PROJECT NUMBER:

CONTRACT DATED:

PROJECT NAME: STORM DRAINAGE IMPROVEMENTS AT THE ROOSEVELT
COUNTY FAIRGROUNDS

WORK SUBSTANTIALLY COMPLETE:

SUBSTANTIAL COMPLETION is defined, in accordance with Article 9 of the General Conditions, as the date certified by the Design Professional when all the Work, or portion of the Work, is complete except for minor items so that the Owner can completely occupy or fully utilize the Work for its intended use.

The Design Professional also certifies that Contractor's Punch List of items to be completed or corrected prior to Final Completion, and Close-out List, have been reviewed by the Design Professional's best effort and found to be accurate. The Design Professional and the Contractor certify that attached are; 1) any agreed upon modifications or exceptions to Warranties stated in the Contract Documents, 2) Punch List, and 3) Close-out List and Schedule .

The DESIGN PROFESSIONAL therefore has determined that the Date of Substantial Completion for that Work defined above was _____.

DESIGN PROFESSIONAL: Lydick Engineers & Surveyors, Inc.

By:

Date:

The CONTRACTOR certifies that the above is true and in agreement and to be responsible for any Liquidated Damages due related to Substantial Completion date in accordance with the Contract Documents.

CONTRACTOR:

By:

Date:

The OWNER hereby accepts the above defined Work as being Substantially Complete on said date.

By: _____
MS. AMBER HAMILTON
COUNTY MANAGER
ROOSEVELT COUNTY

By: _____
NMED REGIONAL FACILITIES
MANAGER

Date: _____

Date: _____

Distribution to:

- ☐ County Purchasing Agent
- ☐ Design Professional of Record
- ☐ Sr. Facilities Manager, NMED
- ☐ Contracts Administrator, NMED
- ☐ Other



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MICHELLE LUJAN GRISHAM
GOVERNOR

JOE GULEN
CHAIR

JONATHAN CHAMBLIN
DIRECTOR
(505) 468-0301

CERTIFICATE OF FINAL COMPLETION

PROJECT NUMBER:

CONTRACT DATED:

PROJECT NAME: STORM DRAINAGE IMPROVEMENTS AT THE ROOSEVELT
COUNTY FAIRGROUNDS

SUBSTANTIAL COMPLETION DATE:

FINAL COMPLETION is defined, in accordance with Article 9 of the General Conditions, as the date certified by the Design Professional when all the Work of the Project is fully complete, the Close-Out requirements of Paragraph 9.10 of the General Conditions have been completed, the Contract fully performed in accordance with the Contract Documents, and the Contractor entitled to final payment.

The DESIGN PROFESSIONAL has inspected the Work and has determined that the Date of Final Completion was _____.

DESIGN PROFESSIONAL: LYDICK ENGINEERS & SURVEYORS, INC.

By:

Date:

ONE YEAR INSPECTION: Approximately thirty days prior to _____, the one-year anniversary of the Date of Substantial Completion, the Design Professional, the Owner, and the Contractor shall conduct an inspection of the Project to determine any correction of the Work which may be required at that time.

The CONTRACTOR certifies that the Work is fully completed and was completed on or before _____, and submits herewith:

Application for Final Payment (AIA G702 or equal)
Affidavit of Payments (AIA G706 or equal)
Consent of Surety (AIA G707 or equal)
Release of Liens (AIA G706A or equal)
Labor Standards Certificate

CONTRACTOR:

By:

Date:

The OWNER hereby accepts the Work as fully complete and will make final payment.

By: _____

By: _____

MS. AMBER HAMILTON
COUNTY MANAGER
ROOSEVELT COUNTY

NMED REGIONAL MANAGER

Date: _____

Date: _____

Distribution to:

- ☐ County Purchasing Agent
☐ Design Professional of Record
☐ Sr. Facilities Manager, NMED
☐ Contracts Administrator, NMED
☐ Other



STATE OF NEW MEXICO
NEW MEXICO ENVIRONMENT DEPARTMENT
CONSTRUCTION PROGRAMS BUREAU

CWSRF PROJECT #104

ROOSEVELT COUNTY, NEW MEXICO

General Conditions of the Contract for
Construction
2019 Edition, Version 3.1a

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ARTICLE 1 GENERAL PROVISIONS

1.1 BASIC DEFINITIONS

1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents consist of the Agreement between Owner and Contractor (hereinafter the Agreement), Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications and Addenda issued prior to execution of the Contract, and Modifications. Modifications are (1) a written amendment to the Contract signed by Owner and Contractor, (2) Modification / Change Request hereinafter referred to as MCR approved by Owner, Contractor and Design Professional, (3) Change Order, or (4) a written order for a minor change in the Work, hereinafter referred to as Supplemental Instruction issued by the Design Professional. Unless specifically enumerated in the Agreement, the Contract Documents do not include other documents such as bidding requirements (advertisement or Invitation to Bid, Instructions to Bidders, sample forms, the Contractor's bid or portions of Addenda relating to bidding requirements).

1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Design Professional and Contractor, (2) between the Owner and a Subcontractor, Material Supplier and Equipment Supplier, (3) between the Owner and Design Professional or (4) between any persons or entities other than the Owner and Contractor. The Design Professional shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Design Professional's duties.

1.1.2.1 Each and every provision of law and clause required by law to be inserted in this Contract shall be read and enforced as though it were included herein; and if through error or otherwise any such provision is not inserted, or is not correctly inserted, then upon the written application of either party the Contract shall be amended without cost to make such insertion or correction and that the remainder of this Contract shall remain in effect and not be affected thereby.

1.1.3 THE WORK

The term "Work" means the construction and services required by or reasonably inferable from the Contract Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the results indicated by the Contract Documents in a safe, expeditious, orderly and workmanlike manner in keeping with current standards of the industry. The Work may constitute the whole or a part of the Project.

1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner or by separate contractors.

1.1.5 THE DRAWINGS

GENERAL CONDITIONS

The Drawings are the graphic and pictorial portions of the Contract Documents showing, the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

1.1.6 THE SPECIFICATIONS

The Specifications are the written requirements of the Contract Documents for products, materials, workmanship, and performance of related services.

1.1.7 THE PROJECT MANUAL

The Project Manual is the volume of written Construction Documents typically containing Bidding Requirements, contract forms, Conditions of the Contract and Specifications.

1.1.8 PUNCH LIST

A punch list is a comprehensive list of incomplete, defective or incorrect Work prepared by the Contractor, Design Professional or Owner to indicate Work required to be completed. Specific punch lists required by the Contract Documents include the Substantial Completion Punch List created by the Contractor prior to application for Substantial Completion in accordance with Paragraph 9.8, and that includes the Close-Out Punch List as required by Paragraph 9.10, and any other punch list created by the Owner or Design Professional for the purposes of this Paragraph and otherwise successful completion of the Work.

1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

1.2.2 Reasonably Inferable, as used in this Contract, shall mean information or knowledge that is derivable or evident by prudent and diligent examination of the Contract Documents and other information reasonably available by the Contractor or Subcontractor knowledgeable in their field and includes items:

1. specified in the Contract Documents required to complete the Work, but not graphically indicated. Contractor shall provide the minimum product or work necessary to fulfill the specifications or otherwise the requirements of any industry standards, such as, but not limited to, final function of Work such as strength, profile, or use as indicated by the Contract Documents; and,
2. shown or graphically indicated as required to complete the Work but not specified. Contractor shall provide the minimum product or work necessary to complete the depicted Work, such as, but not limited to, final function of Work such as strength, profile, or use as indicated by the Contract Documents.

1.2.3 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings are for convenience of reference only and shall not control the Contractor in dividing the

Work among Subcontractors or in establishing the extent of Work to be performed by any trade. Such separation will not operate to make the Owner or Design Professional an arbiter of labor disputes or work agreements.

1.2.4 Words shall be first interpreted within the context they are used and by definition, if any, provided by the Contract Documents themselves. Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in accordance with such recognized meanings. If the meaning of a word is not clear from the Contract Documents or have a well-known technical or construction industry meaning, the Webster's Collegiate Dictionary, current at time of contract, meaning shall apply.

1.2.5 INCONSISTENCIES

In the event of conflicts in the Contract Documents, the most restrictive or otherwise most beneficial to the Owner shall apply to all similar conditions. Other rules for conflicts in the Contract Documents shall be that:

1. Addenda shall govern over all other Contract Documents and subsequent Addenda shall govern over prior Addenda only to the extent modified;
2. between drawings and specifications, the specifications shall govern;
3. within the drawings:
 - a) schedule, when identified as such, shall govern over notes or other directions included within the drawings.
 - b) specific note shall govern over general note.
 - c) note evidently intended to be used as a general or typical note, shall be used as such throughout.
 - d) dimensions provided shall take precedence over scaled measurements.
 - e) large scale drawings shall take precedence over smaller scale drawings; and
4. General Conditions shall govern over all sections of the Contract Documents, except as modified by Supplementary General Conditions or Addenda.
5. The Contractor shall comply with the provisions of Article 3.2 in providing notification of conflict within the Contract Documents, regardless of rules governing such conflicts and contained in this subparagraph.

1.3 CAPITALIZATION

1.3.1 Within the General Conditions, these terms are capitalized when they are used specifically in relations to the Agreement: Owner and Contractor who are parties to this Agreement, Design Professional who performs services under agreement with the Owner, Subcontractors who perform work under subcontract at any tier with the Contractor, the various Bidding and Contract Documents, Project, Work, titles of numbered Articles and Paragraphs within the Contract Documents, and names used to identify parts of the Project. When these terms are used generically and not specifically associated with the Project, they are not capitalized.

1.4 INTERPRETATION

1.4.1 In the interest of brevity, the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent

from one statement and appears in another is not intended to affect the interpretation of either statement.

1.5 EXECUTION OF CONTRACT DOCUMENTS

1.5.1 The Contract Documents shall be signed by the Owner and Contractor. If either the Owner or Contractor does not sign all the required documents of the Contract Documents, the Design Professional shall identify such unsigned documents.

1.5.2 Execution of the Contract by the Contractor is representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

1.6 OWNERSHIP AND USE OF DRAWINGS AND SPECIFICATIONS

1.6.1 Drawings, specifications and copies thereof shall remain the Owner's property. They are not to be used on another project. Neither the Contractor nor any Subcontractor, material supplier or equipment supplier or any person or entity shall own or claim a copyright to any Drawings, Specifications or any other documents prepared or developed for definition of the Work. The Owner will retain all common law, statutory and other reserved rights, in addition to the copyrights. The Contractor, Subcontractors, material suppliers and equipment suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents for use in the execution of their Work under the Contract Documents. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Owner's copyrights or other reserved rights.

2.1 GLOSSARY OF COMMONLY-USED TERMINOLOGY

2.1.1 These General Conditions utilize specific terms which relate to the Owner's organization, systems, and standard forms and documents. Examples of such terms are listed and defined as follows:

1. "Modification Change Request (MCR)" is a written document required by the Owner on matters involving changes in the Work, and as defined by Paragraph 7.2.

ARTICLE 2 OWNER

2.1 GENERAL

2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Subparagraph 4.2.1, the Design Professional does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

2.2.1 The Owner shall, at the written request of the Contractor, prior to commencement of the Work and thereafter, furnish to the Contractor reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract. Furnishing of such evidence shall be a condition precedent to commencement or continuation of the Work. After such evidence has been furnished, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

2.2.2 Except for permits and fees, including those required under Subparagraph 3.7.1, which are the responsibility of the Contractor under the Contract Documents, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities that shall include utility expansion charges but, not tapping fees.

2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner, but shall exercise proper precautions relating to the safe performance of the Work.

2.2.4 Unless stated otherwise in the Contract Documents, the Owner shall furnish in accordance with Article 6 specific testing, adjusting and compliance monitoring and explicitly:

- 1.** geotechnical testing and analysis including soil testing and compaction, but excluding load testing for caissons and piers; and,
- 2.** concrete testing including slump analysis and compression testing with, at the Owner's request, the Contractor responsible for forming test cylinders or similar; and

3. testing and balancing of heating and air-conditioning systems with the Contractor responsible for timely, diligent and coordinated corrections to Work required until performance is compliant with the Contract Documents.

The Contractor shall be responsible for testing and costs as defined by Paragraph 13.5 and Subparagraph 12.2.1.1.

2.2.5 Information or services required of the Owner by the Contract Documents shall be furnished by the Owner with reasonable promptness. Any other information or services relevant to the Contractor's performance of the Work, under the Owner's control, shall be furnished by the Owner after receipt from the Contractor of a written request for such information or services.

2.2.6 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, five (5) copies of Drawings and Project Manuals; however, the Contractor may have more copies free of charge if they are available without additional cost to the Owner.

2.3 OWNER'S RIGHT TO STOP THE WORK

2.3.1 If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Paragraph 12.2 or persistently fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Subparagraph 6.1.3.

2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

2.4.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven (7) day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may after such seven (7) day period, without prejudice to other remedies that the Owner may have, correct such deficiencies. In such case, an appropriate Modification in accordance with Article 7 shall be issued deducting from payments then or thereafter due the Contractor for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Design Professional's additional services made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

2.4.2 If in the event that the Contractor defaults or neglects to carry out the Work to final completion in keeping with the Substantial Completion Schedule provided in accordance with Subparagraph 9.8.2 and, fails within a seven (7) day period after receipt of written notice from the Owner to correct such default with diligence and promptness, the Owner may after such seven (7) day period, without prejudice to other remedies, correct Punch List and Close-Out deficiencies to achieve project completion without further notice to the Contractor or its surety. In such case, an appropriate Modification in accordance with Article 7 shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Design Professional's additional services made necessary

by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

2.4.3 In carrying out the Owner's right to complete the Work in accordance with Paragraph 2.4, the Owner shall have the right to exercise the Owner's sole discretion as to the manner, methods and reasonableness of costs of completing the Work.

ARTICLE 3 CONTRACTOR

3.1 GENERAL

3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representative.

3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Design Professional in the Design Professional's administration of the Contract, or by tests, inspections or approvals required or performed by persons other than Contractor.

3.1.4 The Contractor shall, prior to bid, be properly licensed according to the requirements of the Construction Industries Licensing Act, Chapter 60, and Article 13 NMSA 1978 and shall ensure to the Owner that such license shall remain in effect for the duration of the Work and warranty periods.

3.1.5 Debarred or Suspended Contractors: A business (Contractor, Subcontractor, or supplier) that has either been debarred or suspended pursuant to the requirements of Sections 13-1-177 through 13-1-180, and 13-4-11 through 13-4-17, NMSA 1978, shall not be permitted to do business with the State and shall not be considered for award of contract during the period for which it is debarred or suspended.

3.1.6 Bribes, Gratuities and Kickbacks

3.1.6.1 It is illegal in the State of New Mexico for any public employee to solicit or accept anything of value in connection with award of contract for this Bid and for any person to offer or pay anything of value to any such public employee (30-24-1 and 30-24-2, NMSA 1978).

3.1.6.2 Pursuant to Section 13-1-191, NMSA 1978, reference is hereby made to the Criminal Laws of New Mexico (including 30-24-1, 30-24-2, and 30-41-1 through 30-41-3, NMSA 1978), which prohibit bribes, kickbacks, and gratuities, and 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.

3.1.7 Assignment of Antitrust Claims

3.1.7.1 The Contractor agrees that any and all claims that the Contractor may have or that may inure to the Contractor for overcharges resulting from antitrust violations as to goods, services, and materials purchased in connection with this Bid are hereby assigned to the State of New Mexico, but only to the extent that such overcharges are passed on to the State. The Contractor further agrees to require each of its Subcontractors and suppliers to assign any and all such claims for overcharges to the State by executing an assignment on the form provided by the Owner for such purpose. The executed forms (see Section 00 4336 of the Bid Documents) shall be submitted prior to the commencement of the Work or the supplying of any materials by the supplier or Subcontractor. The submission of this executed form may be waived by the Owner upon a showing of a good-faith effort by the Contractor to obtain agreement in writing from its supplier or Subcontractor. Waiver by the Owner will not unreasonably be denied.

3.1.7.2 It is agreed that the Contractor retains all rights to any such antitrust claims to the extent of any overcharges not passed on to the State, including the right to any treble damages attributable thereto.

3.1.8 Contracts with Nonresident Persons or Partnerships or Un-admitted Foreign Corporations; Agent for Service of Process

If Contractor is a non-resident person or partnership or a foreign corporation not admitted to do business in the State, Contractor will comply with all requirements of NMSA 1978 §§ 13-4-21 through 13-4-24 for designation of an agent for service of process.

3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

3.2.1 Since the Contract Documents are complementary, before starting each portion of the Work, the Contractor shall carefully study and compare the various Drawings and other Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Subparagraph 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating construction by the Contractor and for the purpose of discovering errors, omissions in the Contract Documents; any errors, inconsistencies or omissions discovered by the Contractor shall be reported promptly in writing to the Design Professional as a Request for Interpretation in accordance with Subparagraph 3.2.4.

3.2.1.1 Before ordering any materials or proceeding with Work, the Contractor and Subcontractors shall verify measurements at the Work site and shall be responsible for the correctness of such measurements.

3.2.2 Any design errors or omissions noted by the Contractor during this review shall be reported promptly in writing to the Owner and to the Design Professional, but it is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed Design Professional, unless otherwise specifically provided in the Contract Documents. The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, but any suspected non conformity discovered by or made known to the Contractor shall be reported promptly in writing to the Owner and to the Design Professional. If the Contractor performs Work knowing it to be contrary to laws,

statutes, ordinances, building codes, and rules and regulations without such notice to the Design Professional and Owner, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

3.2.3 If the Contractor believes that additional cost or time is involved because of clarifications or instructions issued by the Design Professional in response to the Request for Interpretation pursuant to Subparagraphs 3.2.1 and 3.2.1.1, the Contractor shall make Claims as provided in Subparagraphs 4.3.6 and 4.3.7. If the Contractor fails to perform the obligations of Subparagraphs 3.2.1 and 3.2.1.1, the Contractor shall pay such costs and damages resulting from errors, inconsistencies or omissions in the Contract Documents or for differences between field measurements or conditions and the Contract Documents as would have been avoided if the Contractor had performed such obligations.

3.2.4 REQUEST FOR INTERPRETATION

3.2.4.1 Any question concerning a variation or deviation from the Contract Documents, including a minor change in the Work found necessary due to actual field conditions, shall be submitted to the Design Professional as a Request for Interpretation (RFI) for review and resolution before proceeding with the Work. When submitting an RFI, the Contractor must provide all information necessary for the Design Professional to promptly process, including detailed:

1. reference(s) to Specification number, Drawing page and detail, and the like;
2. description of issue;
3. drawings, photos or sketches of conditions, if necessary; and,
4. submittals or other information as necessary to facilitate resolution.

3.2.4.2 Request for Interpretation may be initiated only by the Contractor and shall be answered by Design Professional within **ten (10) days**, or other reasonable time agreed upon between the parties. All Subcontractor RFI's must be initiated through the Contractor. All answers to RFI's by the Design Professional's consultants or Owner must be initiated through the Design Professional.

3.2.4.3 If substitutions are allowed after the contract award, RFI shall not be used for any substitution request (see Subparagraph 3.4.2).

3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Design Professional and shall not proceed with that portion of the Work without further written instructions from the Design Professional with concurrence from the Owner. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall