

**CONTRACT DOCUMENTS FOR
CURRY ROAD K REHABILITATION PROJECT**

**PCN: LP20025
BID NUMBER: ITB#2021/22-03**

Curry County, New Mexico



March 2022

**Jesus E, Avitia P.E.
N.M.P.E No. 25777
Project Engineer
Souder, Miller & Associates**

Bid Open Date: April 5, 2022
Bid Time: 2:00 p.m.

CURRY COUNTY
LANCE PYLE, COUNTY MANAGER

DISTRICT 1 COMMISSIONER	ROBERT O. SANDOVAL
DISTRICT 2 COMMISSIONER	TOM MARTIN
DISTRICT 3 COMMISSIONER	CHET SPEAR
DISTRICT 4 COMMISSIONER	SETH MARTIN
DISTRICT 5 COMMISSIONER	ROBERT THORNTON

SPECIFICATIONS AND CONTRACT DOCUMENTS FOR:

CURRY ROAD K REHABILITATION PROJECT
ITB # 2021/22-03 CN: LP20025

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NOTICE TO CONTRACTOR:

NTC – Curry County Replaces NMDOT

NTC – 2019 Standard Drawings for Highway and Bridge Construction Updates
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NTC – 2019 Standard Drawings for Highway and Bridge Construction Disclaimer

NTC – ADA Construction Inspection Procedure
NTC – Additional Named Insured
NTC – Cooperation with Utilities
NTC – Monthly Asphalt Binder Price Adjustment Procedures (01/01/19)
NTC – Ramp-Up Time
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NTC – Approved Products List
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NTC – New Mexico Employees Health Coverage
NTC – Office of Inspector General
NTC – Patents on Milling Equipment and Milling Operations
NTC – Professional Services
NTC – Quality Standards for Traffic Control Devices
NTC – Return of Lobbying Disclosure/Disclosure of Lobbying Activities Form
NTC – Temporary Access Control Breaks
NTC – License from Construction Industries Division (CID)
NTC – NMDOT TLPA – Section 100

SPECIAL PROVISIONS

PROJECT SPECIFIC SPECIAL PROVISIONS:

Item No. 618000 Traffic Control Management

STANDARD SPECIAL PROVISIONS:

SECT 423 (5-28-19) HOT MIX ASPHALT (HMA) (MAJOR PAVING)

SECT 701 (3-26-19) TRAFFIC SIGNS AND SIGN STRUCTURES

SECT 704 (12-23-19) PAVEMENT MARKINGS

SECT 902 (2-11-19) QUALITY CONTROL

SECT 904 (1-1-19) QUALITY LEVEL ANALYSIS (QLA)

SECT 906 MINIMUM TESTING REQUIREMENTS (MTR'S)

ADVERTISEMENT FOR BIDS
CURRY ROAD K REHABILITATION PROJECT
ITB #2021/22-03 CN: LP20025

CURRY COUNTY

Owner

417 Gidding Street, Clovis, NM 88101

Address

Sealed BIDS for the **CURRY ROAD K REHABILITATION PROJECT**, will be received electronically through Curry County's Procurement Provider, Vendor Registry. Registration and access to all documents is free of charge. To register, please visit the link: <https://vrapp.vendorregistry.com/Bids/View/BidsList?BuyerId=d69c53ca-aa20-4cff-8b2e-2c8698705a65>. Bids will be accepted electronically until 2:00 p.m. on April 05, 2022 at which time electronic bids will be opened publicly via GoogleMeet. Refer to the Invitation to Bid for meeting login instructions. Bids will be time-stamped in the Vendor Registry system disallowing submission after the due date. Curry County reserves the right to reject any and/or all bids and waive any informalities and technicalities as deemed in the best interest of the County. A Pre-Bid Conference will not be held.

Last Day for Questions:

March 30, 5:00 p.m. is the last date and time for written questions. No more questions will be received after this date and time. Questions may be emailed to Lorraine Schlimm at lschlimm@currycounty.org.

Project Description:

This roadway project involves two available options herein listed as Alternate No. 1 and Alternate No. 2.

Alternate No. 1 consists of the reconstruction and widening to 28 feet of Curry Road K from Curry Road 7 to Curry Road 8 with a pavement section of 2" of Hot Mix Asphalt over 6" of Processing, Placing, and Compaction infused with 2" of Basecourse. From Curry Road 8 to Curry Road 9 (W Brady Avenue) pavement rehabilitation consists of Milling and Overlaying 4" of Hot Mix Asphalt.

Alternate No. 2 entails the reconstruction and widening to 28 feet of Curry Road K from Curry Road 7 to Curry Road 8 with a pavement section of Double Penetration Chip Seal over 6" of Processing, Placing, and Compaction infused with 2" of Basecourse. Reconstruction of five accesses with Double Penetration Chip Seal over 6" of Basecourse. From Curry Road 8 to Curry Road 9 (W Brady Avenue) pavement rehabilitation consists of Milling and Overlaying 4" of Hot Mix Asphalt.

The CONTRACT DOCUMENTS (in electronic media format) may be obtained at the following location:

Copies of the CONTRACT DOCUMENTS in electronic media format may be obtained through Curry County's procurement provider, Vendor Registry, at no cost. **It is Contractor's responsibility to periodically check the website for any project updates and possible addenda.**

Electronic Data

- A. For the present Project, Bidding Documents in electronic media format are furnished to bidding contractors for the sole purpose of preparing bids, and not for construction. The selected construction Contractor shall not rely on files provided in electronic media format for construction, but rather hard copies of such data provided by the Engineer or Owner upon award of the Contract.
- B. Because Data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party

shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party.

- C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

ENGINEER CERTIFICATION
CURRY ROAD K REHABILITATION PROJECT

These Contract Documents and Construction Specifications for the **Curry Road K Rehabilitation Project, PCN: LP20025; BID NUMBER: ITB#2021/22-03**, Curry County, New Mexico were prepared by:

Souder, Miller & Associates
500 North Main Street, Suite 504
Roswell, NM 88201
(575) 624-2400

The technical material and data contained in the specifications were prepared under the supervision and direction of Jesus E. Avitia, P.E., whose seal as a Professional Engineer licensed to practice in the state of New Mexico is affixed below.



Jesus E. Avitia, P.E.
New Mexico PE License #25777





Date

All questions about the meaning of intent of these documents shall be submitted only to the Engineer of Record stated above, IN WRITING for interpretations.

On behalf of the Board of Curry County Commissioners and pursuant to and in compliance with the NM State Procurement Code, Curry County hereby invites competitive sealed bids submitted electronically for the reconstruction and widening to 28 feet of Curry Road K from Curry Road 7 to Curry Road 8, and pavement rehabilitation from Curry Road 8 to Curry Road 9 (W Brady Avenue), to include processing, placing and compaction of the existing roadway section, base course, shoulder widening, hot mix asphalt, reshaping the roadside ditches for drainage, striping, traffic control and associated construction.

COMMODITY CODE:

- 91327 – Construction, Highway and Road
- 91371 – Maintenance and Repair, Highway and Road
- 91384 – Maintenance and Repair, Street
- 91395 – Paving/Resurfacing, Highway and Road
- 91396 – Paving/Resurfacing, Street

IMPORTANT:

BIDS ARE DUE BY APRIL 5, 2022, AT 2:00 P.M.

BIDS MUST BE SUBMITTED ELECTRONICALLY THROUGH CURRY COUNTY'S PROCUREMENT PROVIDER, VENDOR REGISTRY. REGISTRATION AND ACCESS TO ALL DOCUMENTS IS FREE OF CHARGE. TO REGISTER, PLEASE VISIT THE LINK <https://vrapp.vendorregistry.com/Bids/View/BidsList?BuyerId=d69c53ca-aa20-4cff-8b2e-2c8698705a65> BIDS WILL BE TIME-STAMPED IN THE VENDOR REGISTRY SYSTEM WHEN BIDDER SUBMITS. THE BIDDER WILL RECEIVE AN EMAIL OF THE SUBMISSION FOR THEIR RECORDS. SUCH ELECTRONIC SUBMISSION WILL BE CONSIDERED SEALED BIDS IN CONFORMANCE WITH STATUTE.

WE LOOK FORWARD TO YOUR BID SUBMISSION.

IF THERE IS ANY PROBLEM REGARDING THE FOLLOWING BID SPECIFICATIONS OR CONDITIONS THAT WOULD PREVENT YOU FROM SUBMITTING A BID, CONTACT THE PURCHASING AGENT BY EMAIL AT lschlimm@currycounty.org IMMEDIATELY FOR CLARIFICATION OR CONSIDERATION OF AN ADDENDUM.

Lorraine Schlimm
Curry County Purchasing Agent
lschlimm@currycounty.org

The **CONTRACT DOCUMENTS** (in electronic media format) may be obtained at the following location:

Copies of the CONTRACT DOCUMENTS in electronic media format may be obtained through the County's procurement provider, Vendor Registry or through the county's website, currycounty.org, at no cost. **It is Bidder's responsibility to periodically check the website for any project updates and possible addenda.**

Electronic Data

- A. For the present Project, Bidding Documents in electronic media format are furnished to bidding contractors for the sole purpose of preparing bids, and not for construction. The selected construction Contractor shall not rely on files provided in electronic media format for construction, but rather hard copies of such data provided by the Engineer or County upon award of the Contract.
- B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party.
- C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

SPECIFIC CONDITIONS

Bids must be received by **April 05, 2022 at 2:00 p.m.** Mountain Time. Any bids received after 2:00 p.m. Mountain Time will not be accepted. Sealed bids will be publicly opened online via GoogleMeet. Instructions for participating in the meeting are as follows:

Meeting ID

meet.google.com/wbs-ryse-yhg

Phone Numbers

[\(US\)+1 765-325-5737](tel:+17653255737)

PIN: 391 678 477#

1. **Criteria for Award**: Award shall be based on the lowest responsible bid prices for Alternate No. 1 which meet specifications. In the event lowest bid for Alternate No. 1 exceeds available funds the lowest bid price for Alternate No. 2 will be awarded.

The Board of Curry County Commissioners reserves the right to reject any or all bids, to waive any technicalities and to accept the bid(s) which in its judgment is most advantageous to the County.

2. **Guaranteed Performance**: The bidder, if awarded a contract as a result of this bid, guarantees that services will conform to the specifications in this bid. Failure of the bidder to comply with providing a service which meets minimum specifications may result in termination of the award of that item or termination of the contract.

SCOPE OF WORK

This roadway project involves two available options herein listed as Alternate No. 1 and Alternate No. 2.

Alternate No. 1 entails the reconstruction and widening to 28 feet of Curry Road K from Curry Road 7 to Curry Road 8 with a pavement section of 2" of Hot Mix Asphalt over 6" of Processing, Placing, and Compaction infused with 2" of Basecourse. From Curry Road 8 to Curry Road 9 (W Brady Avenue) pavement rehabilitation consists of Milling and Overlaying 4" of Hot Mix Asphalt.

Alternate No. 2 entails the reconstruction and widening to 28 feet of Curry Road K from Curry Road 7 to Curry Road 8 with a pavement section of Double Penetration Chip Seal over 6" of Processing, Placing, and Compaction infused with 2" of Basecourse. Reconstruction of five accesses with Double Penetration Chip Seal over 6" of Basecourse. From Curry Road 8 to Curry Road 9 (W Brady Avenue) pavement rehabilitation consists of Milling and Overlaying 4" of Hot Mix Asphalt.

PRE-BID CONFERENCE

A pre-bid conference is not scheduled. Should you have questions regarding the location of the lots or specifics of the project, please contact Lorraine Schlimm by email at lschlimm@currycounty.org.

BID SECURITY

Each bidder shall submit a certified check or a satisfactory bid bond provided by a surety company authorized to do business in the State of New Mexico in an amount equal to (5%) five percent of the total amount of the bid, with each bid proposal. The security is required as outlined in Section 13-1-146 NMSA 1978.

PERFORMANCE BOND

This (performance bond) shall be required on any contract awarded in excess of (\$25,000) twenty-five thousand dollars. The successful bidder shall supply the County with a performance bond executed by a surety company authorized to do business in the state of New Mexico with said surety to be approved by the State Board of Finance in the amount of 100% of the total bid price. This bond is required as outlined in Section 13-4-18 (1) of NMSA 1978.

PAYMENT BOND

This (payment bond) shall be required on any contract awarded in excess of (\$25,000) twenty-five thousand dollars. The successful bidder shall supply the County with a payment bond executed by a surety company authorized to do business in the State of New Mexico with said surety to be approved by the State Board of Finance in the amount of 100% of the total bid price. This bond is for the protection of all persons supplying labor and materials to the contractor or its subcontractors for the performance of the work provided in the contract and is required as outlined in Section 13-4-18 (1) of NMSA 1978.

NOTICE TO PROCEED

The notice to proceed will be issued within ten (10) working days from execution of contract, unless arrangements have been made with the successful bidder prior to contract execution.

VARIATIONS

Any variations from, or exceptions to, the conditions and specifications of this bid must be listed on a separate sheet labeled "Exception(s) to Bid Conditions" and attached to the bid.

BID FORM

Bidders shall use the attached Bid Form(s) to submit their bids. The Bid Form(s) must be signed.

NEW MEXICO BIDDER'S PREFERENCE

Pursuant to Sections 13-1-21 & 13-4-2 NMSA 1978, and GSD Rule 1.4.1 NMAC, bidders claiming the 5% preference must be certified prior to the bid opening. The number must appear on the Quotation Sheet(s) in the space provided in order to receive the preference.

BID OPENING

Competitive sealed bids will be accepted until **April 05, 2022, at 2:00 p.m.** Bids must be submitted electronically through Curry County's procurement provider, Vendor Registry. Registration and access to all documents is free of charge. To register, please visit <https://vrapp.vendorregistry.com/Bids/View/BidsList?BuyerId=d69c53ca-aa20-4cff-8b2e-2c8698705a65>

Bids will be time-stamped in the vendor registry system when bidder submits. The bidder will receive an email of the submission for their records. Such electronic submission will be considered sealed binds in conformance with statute. The software does not allow submission of bids past the **April 05, 2022, at 2:00 p.m.** due date.

RESERVATIONS

The Curry County Commission reserves the right to reject any or all bids, to waive any technicalities, to accept in whole or in part such bid or bids as may be deemed in the best interest of the County.

BIDDER'S PRE-START REPRESENTATIONS

Bidders represents that they have familiarized themselves with and assumes full responsibility for having familiarized themselves with the nature and extent of the contract documents, work, locality, and with all local conditions including weather conditions, and federal, state and local laws, ordinances, rules and regulations that may in any manner affect performance of the work and represents that they have correlated their study and observations with the requirements of the contract documents.

Bidder also represents that they have studied all surveys and investigation reports of subsurface latent physical conditions referred to in the specifications and made such additional surveys and investigations as deemed necessary for the performance of the work at the bid price in accordance with the requirements of the contract documents and that it has correlated the results of all such data with the requirements of the contract documents.

SAFETY REQUIREMENTS

It shall be the contractor's responsibility to provide for the safety of its workers and the public in compliance with the requirements of insurance and public health and safety standards.

PUBLIC WORKS

This solicitation is for a Public Works Project and subject to the public works statutes of the State of New Mexico (13-4-18(A)(2) to 13-4-43 NMSA 1978); Construction Industries Licensing Act (60-13-1 et seq. NMSA 1978); CID Rules and Regulations; Applicable Federal, State and Local Statutes and Laws; and the City of Clovis Ordinances.

SUBMITTALS

Each Bidder will furnish, when requested, printed literature and manufacturers specifications sheets that fully describe the material they propose to furnish the County. The acceptance or rejection of equals or equivalents shall be determined solely by the County or its representative.

SUBCONTRACTORS

The listing threshold for subcontractors for this project is **\$5,838.43** and shall be submitted in compliance with 13-4-32 thru 13-4-43 NMSA 1978. There shall be only one subcontractor listed for each classification. If subcontractors change according to bid options/additive alternates accepted than list the subcontractors and the bid lots where they are to be used.

The County reserves the right to disqualify subcontractors and suppliers in accordance with the conditions of the bid and contract. The bidders agrees that it is fully responsible to the County for the acts and omissions of its subcontractors and or persons either directly or indirectly employed by them, as the bidder is for the acts and omissions of persons directly employed by the bidder. Nothing contained in the contract documents shall create any contractual relationship between any subcontractor and the County.

The bidder may be required to establish the reliability and responsibility of the proposed subcontracts or of any manufacturer to furnish and perform the work in accordance with the contract documents and completion schedule, and may also be required to require performance and payment bonds of some or all subcontractors in conformance with sec. 13-4-37 NMSA 1978.

CODE COMPLIANCE

Complete installation must meet federal, state, and local laws, codes and regulations.

INSPECTION

The County or its designee shall at all times have the right to inspect and approve the work and materials.

WAGES

Wages will be paid in accordance with the State of New Mexico Public Works Statues regarding Wage Rates. The Wage Decision number for this project is CU-22-0583-A. A Wage Rate Schedule is enclosed with this Bid. Contractor and all tiers of subcontractors will submit certified weekly payrolls to the County Road Superintendent (BI-Weekly).

AWARD

The award may be made to the bidder providing a responsive, responsible bid that meets and satisfies all of the requirements herein and results in the lowest overall cost to the County for Alternate No.1. In the event lowest bid for Alternate No. 1 exceeds available funds the lowest bid price for Alternate No. 2 will be awarded. The award will be made by the Curry County Commission at their regularly scheduled meeting. Bid prices must be good for ninety (90) days subsequent to date of opening.

PROTEST

Any bidder who is aggrieved in connection with this solicitation or award of a contract may protest to the County Finance Director. The protest shall be submitted in writing within fifteen (15) calendar days after contract award. Protests shall be written and shall include the name and address of the protestor and the Invitation to Bid number. It shall also contain a statement of grounds for protest including appropriate support exhibits, and it shall specify the ruling requested from the Finance Director. The protest shall be delivered to the Finance Director at the Curry County Administration Office, 417 Gidding Street, Suite 100, Clovis, NM 88101.

CHANGED WORK

The County may from time to time order additions, deletions or revisions in the work; these will be authorized by a written change order prepared and signed by the County.

Additional work performed without authorization of a written and executed change order will not entitle bidder to an increase of contract price or an extension of contract time.

If notice of a change affecting the general scope of work or change in contract price is required by the provisions of any bond to be given to the surety, it will be the bidder's responsibility to notify the surety, and the amount of each applicable bond shall be adjusted accordingly.

QUESTIONS

Questions regarding the specifications stated within the bid or the bidding process should be directed to Lorraine Schlimm, Purchasing Agent at lschlimm@currycounty.org

Written questions/requests must be submitted no later than **March 30, 2022 at 5:00 p.m.** and must include the bidder's name, mailing address, email address, telephone and firm he/she represents. Only written questions/requests that are sent to the aforementioned email address will be considered. Oral questions/requests will not be considered. Written oral questions/requests submitted to any other Department or contact will NOT be considered.

GENERAL CONDITIONS

Bid Forms: All pages included in this Invitation to Bid that are marked "**BID FORM**" must be completed and returned as part of the bid document. All bids must be completed and securely sealed prior to submitting to the purchasing office. No un-sealed, faxed or e-mailed bids are acceptable.

1. Bids Binding Ninety (90) days: Unless otherwise specified all formal bids submitted shall be binding for ninety (90) calendar days following bid opening date, unless the bidder(s), upon request of the County Manager, agrees to an extension.
2. Payment Terms: For all goods/services provided by bidder, payment shall be made net thirty (30) days from invoice date after receipt of goods/services unless otherwise specified on bid form or as otherwise agreed by both parties. All invoices shall be submitted directly to the Curry County Finance Department at 417 Gidding, Suite 100, Clovis, NM 88101. The successful bidder must submit and have a completed W9 form on file with the County prior to any payments being issued.

For all services paid by Credit Card, standard payments are usually made within 3-5 business days. All services made by credit card require a receipt. Invoices shall not be submitted separately if payment is made with credit card. Curry County shall not pay any fees when utilizing a credit card for payment.

3. Equivalency: The County hereby reserves the right to approve as equivalent, or to reject as not being equivalent, any item the bidder proposes to furnish which contains variations from specification requirements but may comply substantially therewith. Such decisions are strictly at the discretion of the County.
4. If there is any clarification, problem, ambiguity or question regarding this bid, you must contact the Procurement Officer or designee prior to the bid opening. Clarifications and addenda will be considered prior to the bid opening. Answers provided regarding the bid specifications or bid package **MUST** be answered by the Procurement Officer or designee. Questions answered by any other person or County official shall be considered completely non-applicable to the legal provisions of this bid, except as specifically authorized by the Procurement Officer.
5. Restrictive Specifications: It is the responsibility of the prospective bidder to review the entire Invitation to Bid (ITB) packet and to notify the Purchasing Agent if the specifications are formulated in a manner which would unnecessarily restrict competition. Any such protest or question regarding the specifications or bidding procedures must be received in the purchasing department not less than seventy-two (72) hours prior to the time set for bid opening.
6. An in-state resident or resident veteran preference will be given to all resident New Mexico businesses that have been issued certification by the State of New Mexico. To qualify for the preference, the bidder must list a valid resident business certificate number and shall submit a copy of the certificate with the bid. If you have a question regarding a Resident Business (or Resident Veteran Business) Certification, or wish to be given a number, you may contact the New Mexico State Department of Taxation and Revenue at 505-827-0951. This number is valuable to have as it allows the

county to consider your bid at five to ten percent less than the amount submitted, and could mean a difference in award. Please note that this number is NOT your State CRS Number (i.e. 01-503047-004). In addition, **any preference numbers issued by the NM State Purchasing Office were valid only through December 31, 2011 and must be re-issued through the Taxation and Revenue Department.**

7. Bidders shall list on a separate sheet of paper any variations from or exceptions to the conditions and specifications of this bid. **This sheet shall be labeled "Exception(s) to Bid Conditions" and shall be included with bid.**
8. Non-collusion: Bidders, by submitting a signed bid, certify that the accompanying bid or proposal is not the result of, or affected by, any unlawful act of collusion with any other person or company engaged in the same line of business or commerce, or any other fraudulent act punishable under New Mexico or United States law.
9. Non-discrimination Statement: Curry County in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award. Please refer to complete Curry County Title VI Plan, specifically Appendices A and E at <http://www.currycounty.org/dr/miscellaneous>.
10. Qualifications of Bidders: The County Purchasing Agent may make such investigations as deemed necessary to determine the ability of the bidder to perform the work, and the bidder shall furnish to the County all such information and data for this purpose as the County may request. The County reserves the right to reject any bid if the evidence submitted by, or investigation of, such bidder fails to satisfy the County that such bidder is properly qualified to carry out the obligations of the contract and to complete the work contemplated therein.
11. The State of New Mexico's Procurement Code, Section 13-1-28 through Section 13-1-199 NMSA 1978, imposes civil and criminal penalties for its violations. In addition, the New Mexico Criminal Statutes impose felony penalties for illegal bribes, gratuities and kickbacks.
12. Curry County reserves the right to reject any bid from a bidder who previously failed to perform properly, or complete on time, contracts of similar nature, or to reject the bid of a bidder who is not in a position to perform such a contract satisfactorily. Such is at the discretion of the County.
13. The successful bidder agrees to protect, defend and save the County, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of the contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the contractor and/or its

agents, employees, representatives, assigns, subcontractors, except the sole negligence of the County under this agreement.

14. If a bidder to whom a bid is awarded refuses to accept the award or, fails to deliver in accordance with the contract terms and conditions, the County may, in its discretion, suspend the bidder/contractor for a period of time from entering into any contracts with Curry County.
15. This solicitation is governed by the laws of the State of New Mexico. By signing and submitting a bid, the parties agree that any litigation concerning this bid, request for proposal, limited solicitation, or subsequent contract or purchase order, must be brought in the Ninth Judicial District in and for Curry County, State of New Mexico, and each party shall pay its own costs and attorney fees.
16. Successful bidder must, in performance of work, agree to fully comply with all applicable federal, state and local laws, rules and regulations. The bidder will be required to carry the following minimum insurance coverage with Curry County named as additional insured on all policies:
 - a. General and professional liability insurance in the amount of \$1,050,000 single limit, and \$2,000,000 aggregate
 - b. Workers' Compensations insurance as required by state statute.
17. It is the responsibility of the bidder to ensure that any addenda issued related to this Invitation to Bid have been received prior to submitting a bid. The County guarantees that any addenda issued will be distributed and available to every party on the Distribution List for this solicitation. The County will not accept responsibility for addenda not being obtained and will not guarantee that addenda will be forwarded or available if the original packet was not obtained as directed.

CONTRACT AGREEMENT

This AGREEMENT is dated as of the _____ day of _____ in the year 2022 by and between Curry County, a New Mexico municipal corporation ("OWNER") and _____, a New Mexico _____ ("CONTRACTOR").

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1 - CONTRACT DOCUMENTS

The Contract Documents which comprise the entire AGREEMENT between OWNER and CONTRACTOR concerning the Work consist of the following:

- This AGREEMENT
- Exhibits to this AGREEMENT
- All required Bonds
- Notice of Award
- Conditions of the Contract (General, Supplementary, and Other Conditions)
- Project Specifications
- Drawings with each sheet bearing the following general title:

**CURRY ROAD K REHABILITATION PROJECT
ITB # 2021/22-03
CN: LP20025**

- Notice to Proceed
- Bid Documents and CONTRACTOR'S *Bid Schedule*
- The Certificate of Insurance
- All Addenda Issued Prior to, and all Modifications Issued after, Execution 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.

There are no Contract Documents other than those listed above in the Article 1.

ARTICLE 2 - WORK

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

CURRY ROAD K REHABILITATION PROJECT

and consisting of the following: See attached *Exhibit A*.

ARTICLE 3 - TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

The date of commencement of the Work is the date established in the NOTICE TO PROCEED AS ISSUED BY THE OWNER. Substantial Completion shall be achieved per the table shown below:

The date of commencement of the Work is the date established in the NOTICE TO PROCEED AS ISSUED BY THE OWNER. Substantial Completion shall be achieved no later than Sixty (60) Weather Working Days, after the date of written "Notice to Proceed", except as hereafter extended by valid written Change Order, by the OWNER. Final Completion shall be achieved no later than Ten (10) Weather Working Days after the date of Substantial Completion.

The contract shall include Ten (10) Weather Working Day Ramp Up Time.

Should the CONTRACTOR neglect, refuse, or otherwise fail to complete the Work within the time specified in this article, the CONTRACTOR agrees, in partial consideration for the award of this Contract, to pay to the OWNER the amount Identified in Section 108.8 Liquidated Damages of the NMDOT Standard Specifications for Highway and Bridge Construction 2019 Edition per consecutive Weather Working Day, not as a penalty, but as liquidated damages for such breach of this Contract.

ARTICLE 4 - CONTRACT PRICE

OWNER shall pay CONTRACTOR in current funds for performance of the Work, subject to additions and deductions by Change Order as provided in the Contract Documents, the Contract Price determined as follows: \$##### (excluding Gross Receipts Tax).

ARTICLE 5 - PROGRESS PAYMENTS

The OWNER shall make progress payments on account of the Contract Price to the CONTRACTOR as provided in the Contract Documents for the period ending the last day of the month as follows:

Not later than forty-five (45) days following receipt by the OWNER, of the undisputed Application, for Payment, one hundred percent (100%) of the portion of the Contract Price properly allocable to labor, materials, and equipment incorporated in the Work, and one hundred percent (100%) of the portion of the Contract Price 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; and upon Substantial Completion of the entire Work, a sum sufficient to increase the total payments to one hundred percent (100%) of the Contract Price, less such amounts as the Engineer shall determine for all incomplete Work and unsettled claims as provided in the Contract Documents, which shall be paid in accordance in Article 6 of this Contract.

Valid, undisputed payments, due and unpaid, under the Contract Documents shall bear interest from the date payment is due, at the legal rate established by Laws of 2001, Chapter 68, Section 5. Section 13-4-28, NMSA 1978.

ARTICLE 6 - FINAL PAYMENT

Final payment, constituting the entire undisputed, unpaid balance of the Contract Price, shall be paid by the OWNER to the CONTRACTOR within ten (10) days after notification of the OWNER, by the Architect/Engineer that all incomplete and unacceptable Work that was noted during the Substantial Completion Inspection, and listed on the attachment to the Certificate of Substantial Completion has been corrected, and provided the Contract has been fully performed, and a final Certificate for Payment has been issued by the Architect/Engineer. In addition, the CONTRACTOR shall provide to the OWNER a certified statement of Release of Liens (AIA Document G706A or approved form) and Consent of Surety.

ARTICLE 7 - CONTRACTOR'S REPRESENTATIONS

CONTRACTOR makes the following representations:

CONTRACTOR has studied and become familiar with the nature and extent of the Contract Documents, Work, site, locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the Work.

CONTRACTOR has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.

CONTRACTOR has given OWNER's Representative all conflicts, errors or discrepancies that CONTRACTOR has discovered in the Contract Documents and the written resolution thereof by OWNER's Representative is acceptable to CONTRACTOR.

ARTICLE 8 - GENERAL AND SPECIAL PROVISIONS

The OWNER's Representative is Walon Jones, County Road Superintendent for Curry County, New Mexico, who is hereinafter called OWNER's Representative and who is to act as OWNER's Representative, assume all duties and responsibilities and have the rights and authority assigned to OWNER's Representative in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

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.

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

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.

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.

This AGREEMENT shall not become effective until it is signed by all parties which are required to sign this AGREEMENT.

The CONTRACTOR and his agents and employees are independent CONTRACTORS and are not employees of Curry County. The CONTRACTOR and his agents and employees shall not accrue leave, retirement, insurance, bonding, use of City vehicles, or any other benefits afforded to employees of Curry County, as a result of this AGREEMENT.

The CONTRACTOR, upon final payment of the amounts due under this AGREEMENT, releases the OWNER, his officers and employees, and Curry County from all 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.

The CONTRACTOR agrees not to purport to bind Curry County to any obligation not assumed herein by Curry County unless the CONTRACTOR has express written authority to do so, and then only within the strict limits of that authority.

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 also by certified mail - and addressed as follows:

THE OWNER:
Curry County
417 Gidding , Suite 100
Clovis, NM 88101

THE 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 here in above provided.

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.

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.

Certificates and Documents Incorporated. All certificates and documentation required 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.

Severability. 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.

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 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.

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 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.

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.

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.

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.

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

A potential CONTRACTOR, or the CONTRACTOR, agrees to comply with state laws and rules pertaining to worker's compensation insurance coverage for its employees. If CONTRACTOR fails to comply with the Worker's Compensation Act, and applicable rules when required to do so, the contract may be canceled effective immediately.

OWNER and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have Executed two copies of this AGREEMENT. One counterpart each has been delivered to CONTRACTOR and OWNER's Representative. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR or by OWNER's Representative on their behalf.

CONTRACTOR

By: _____

NM Taxpayer Identification Number: _____

Federal Taxpayer Identification Number: _____

OWNER
CURRY COUNTY, NEW MEXICO
a New Mexico Municipal Corporation

By: _____
Lance Pyle, Curry County Manager

ATTEST:

Troy Hall, Finance Director

EXHIBIT A

CURRY ROAD K REHABILITATION PROJECT ITB#2021/22-03 CN: LP20025

Project Scope of Work:

This roadway project involves two available options herein listed as Alternate No. 1 and Alternate No. 2.

Alternate No. 1 entails the reconstruction and widening to 28 feet of Curry Road K from Curry Road 7 to Curry Road 8 with a pavement section of 2" of Hot Mix Asphalt over 6" of Processing, Placing, and Compaction infused with 2" of Basecourse. From Curry Road 8 to Curry Road 9 (W Brady Avenue) pavement rehabilitation consists of Milling and Overlaying 4" of Hot Mix Asphalt.

Alternate No. 2 entails the reconstruction and widening to 28 feet of Curry Road K from Curry Road 7 to Curry Road 8 with a pavement section of Double Penetration Chip Seal over 6" of Processing, Placing, and Compaction infused with 2" of Basecourse. Reconstruction of five accesses with Double Penetration Chip Seal over 6" of Basecourse. From Curry Road 8 to Curry Road 9 (W Brady Avenue) pavement rehabilitation consists of Milling and Overlaying 4" of Hot Mix Asphalt.

The county will select the lowest bid for Alternate No. 1 as the winning bid. In the case that the winning bid for Alternate No. 1 is higher than available funds for project completion the lowest bid for Alternate No. 2 will be chosen as the winner.

New Mexico Department of Transportation ("NMDOT")
Affidavit of Bidder
ITB # 2021/22-03 PCN: LP20025

BIDDER: _____ TELEPHONE: () _____
ADDRESS: _____

The Bidder shall execute this Certification of Bidder. I _____ hereby affirm per 23 C.F.R. § 635.112(f) (2009) and as a condition to the NMDOT's execution of this Contract that I have not either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the Bid for this Contract.

Further affiant sayeth not.

Title: _____

Bidder (print): _____

Bidder Signature: _____

STATE OF _____)

COUNTY OF _____)

SUBSCRIBED AND SWORN TO BEFORE ME ON THIS:

_____ day of _____ 2022

Notary Public

My Commission Expires: _____

New Mexico Department of Transportation ("NMDOT")
Bid Guaranty
ITB # 2021/22-03 PCN: LP20025

BIDDER: _____ TELEPHONE: () _____
ADDRESS: _____

SURETY: _____
SURETY BUSINESS ADDRESS: _____

KNOWN ALL MEN by these presents that the Surety having its registered office at the above address are bound unto the NMDOT in the sum of five percent (5%) of the Total Bid Amount as shown on the Project Bid Schedule for which payment well and truly to be made to the NMDOT the Surety binds itself, its successors and assigns by these presents.

The Surety undertakes to pay the NMDOT up to the above amount upon receipt of the NMDOT's first written demand, without the NMDOT having to substantiate its demand, provided that in its demand the NMDOT will note that the amount claimed by the NMDOT is due to the Bidder failing to return the signed Contract and Contract Bonds within fifteen (15) Days of receiving the Contract. The Guaranty will remain in force up to 30 Days after Bid Opening or as it may be extended by the NMDOT, notice of which extension(s) to the Surety is hereby waived.

NOTICE TO CONTRACTORS

CURRY ROAD K REHABILITATION PROJECT

ITB # 2021/22-03 PCN: LP20025

Curry County, New Mexico

YOU ARE HEREBY ADVISED OF THE FOLLOWING:

Contractor is advised that there is no project specific DBE Goal, however, a Bidder's List of Subcontractors will be required.

New Mexico Department of Transportation ("NMDOT")
Non-Debarment Certification
ITB # 2021/22-03 PCN: LP20025

BIDDER: _____ TELEPHONE: () _____
ADDRESS: _____

The Federal Highway Administration suspends or debar contractors to protect taxpayer dollars and the NMDOT is required to Award Contracts to responsible Bidders. The submission of the Bid is the Bidder's certification that neither it nor its principals are presently suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this Project by any federal department or agency. The Bidder further agrees that if it is the lowest Responsible Bidder and awarded the Contract then it shall comply with the following:

1. The Contractor shall verify through the SAM.gov website at <https://www.sam.gov/portal/SAM/##11> that its Subcontractor(s), at any tier(s), is not presently suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Project. The result of this verification shall be provided in the NMDOT's permission to subcontract request form number A - 1086 and A - 1087; and
2. If circumstances change to render this certification inaccurate then the Contractor shall provide the changed circumstances immediately in writing to the Project Manager.

If the Contractor knowingly makes a false certification the NMDOT may take any available actions under the Contract.

Failure to acknowledge the terms and conditions above shall render the Bid non-responsive and the Bid shall be rejected.

I acknowledge

New Mexico Department of Transportation ("NMDOT")
Pay Equity Reporting Acknowledgement
New Mexico Executive Order 2009-049
ITB # 2021/22-03 PCN: LP20025

BIDDER: _____ TELEPHONE: () _____
ADDRESS: _____

Pre-Award

The State of New Mexico requires the lowest Responsible Bidder to, in order to contract with Executive Branch Agencies, including the NMDOT, comply with Executive Order 2009-049. To comply with the Executive Order, after receipt of the notice of preliminary award of contract, the lowest Responsible Bidder shall submit per the notice of preliminary award of contract either form PE10-249 or PE250 depending on its number of employees at the time it receives the notice of preliminary award of contract.

Failure of the lowest Responsible Bidder to comply with this Pay Equity Reporting Acknowledgement may constitute just cause for cancellation of the Award and the forfeiture of the Bid Guaranty.

Exemptions exist regarding compliance with the Executive Order. The Executive Order and required forms can be obtained from the following link:

[http://www.generalservices.state.nm.us/slalepurchasir.glpay equity.aspx](http://www.generalservices.state.nm.us/slalepurchasir.glpay%20equity.aspx)

Post-Award

If Contract Time extends beyond one (1) year from the date in the Notice to Proceed, then within ten Days of the annual anniversary date of the Notice to Proceed, the Contractor shall submit to the Project Manager an updated form PE 10-249 or PE250 depending on the number of employees it has at that time.

If at the expiration of Contract Time, more than 180 Days has elapsed since submittal of the last PE 10-249 or PE250, the Contractor shall submit to the Project Manager an updated form PE 10-249 or PE250.

If a Subcontractor, at any tier, performs ten percent or more of the Total Original Contract Amount and has ten or more employees or eight (8) employees in the same job classification then the Contractor shall submit to the Project Manager the PE 10-249 or PE250. The Contractor shall submit the appropriate form with the permission to subcontract package forms A-1086 or A-1087.

If a Subcontractor, at any tier, performs ten percent or more of the Total Original Contract Amount and during the performance of this Work grows to have ten or more employees or eight (8) employees in the same job classification then the Contractor shall immediately submit form PE 10-249 or PE250. Subsequent form PE 10-249 or PE250 submittals, by the Contractor for its Subcontractors, at any tier, shall be due yearly on the anniversary date of the Project Manager's approval of the permission to subcontract package. Failure of the Contractor to comply with this Pay Equity Reporting Acknowledgement shall result in the NMDOT exercising its remedies under the Contract.

I acknowledge

New Mexico Department of Transportation ("NMDOT")
 Subcontractors Fair Practices Act Compliance
 ITB # 2021/22-03 PCN: LP20025

BIDDER: _____ TELEPHONE: () _____
 ADDRESS: _____

The Subcontractors Fair Practices Act, NMSA 1978, §§ 13 – 4 – 31 to – 43 (1995), applies to this Project.

The Subcontractors Fair Practices Act prevents Contractors from Bid shopping and Bid peddling. The Subcontractors Fair Practices Act requires that Subcontractor quotes received for specific Work shall be listed when the quote exceeds the listing threshold identified herein.

For this Project, quotes for street lighting and traffic signal Work that exceed the listing threshold in the Advertisement shall be listed.

Only one Subcontractor shall be listed below for each Description of Work.

The listing requirements do not apply if the Contractor:

- 1) Receives no quotes for the Work and the Contractor states the same below; or
- 2) Receives only one quote for the Work, the Contractor states the name of the sole quoter below and the designation of sole quoter below only occurs one time.

Description of Work	Subcontractor (and if sole quoter designation as sole quoter)	Address	Quote Amount

Failure to list a Subcontractor quote, that no quotes were received, or that a sole quote was received for the Work that exceed the listing threshold is the Contractor's representation that it is qualified and shall self perform the Work itself.

Substitutions of listed Subcontractors with other listed Subcontractors or with non-listed Subcontractors are allowed only per Section 13-4-36 and is conditioned upon the written consent of the NMDOT before the substitution occurs.

Failure of the Contractor to comply with the requirements herein shall be grounds for NMDOT's exercising its contractual remedies and the assessment of penalties per Section 13-4-41.

State Wage Rates



PUBLIC WORKS PROJECT REQUIREMENTS

As a participant in a Public Works project valued at more than \$60,000 in the state of New Mexico, the following list addresses many of the responsibilities that are defined by statute or regulation to each project stakeholder.

Contracting Agency

- Ensure that all contractors wishing to bid on a Public Works project when the project is \$60,000 or more are actively registered with the Public Works and Apprenticeship Application (PWAA) website: <http://www.dws.state.nm.us/pwaa> (Contractor Registration) prior to bidding.
- Please submit Notice of Award (NOA) and Subcontractor List(s) to the PWAA website promptly after the project is awarded.
- Please update the Subcontractor List(s) on the PWAA website whenever changes occur.
- All sub-contractors and tiers (excluding professional services) regardless of contract amount must be listed on the Subcontractor List and must adhere to the Public Works Minimum Wage Act.
- Ninety days after project completion please go into the PWAA system and close the project. Only contracting agencies are allowed to close the project. Agents or contractors are not allowed to close projects.

General Contractor

- Provide a complete Subcontractor List and Statements of Intent (SOI) to Pay Prevailing Wages for all contractors, regardless of amount of work, to the contracting agency within 3 (three) days of award.
- Ensure that all subcontractors wishing to bid on a Public Works project have an active Contractor Registration with the Public Works and Apprenticeship Application (PWAA) website: <http://www.dws.state.nm.us/pwaa> prior to bidding when their bid will exceed \$60,000.
- Make certain the Public Works Apprentice and Training Act contributions are paid either to an approved Apprenticeship Program or to the Public Works Apprentice and Training Fund.
- Confirm the Wage Rate poster, provided in PWAA, is displayed at the job site in an easily accessible place.
- When the project has been completed, make sure the Affidavits of Wages Paid (AWP) are sent to the contracting agency.
- All subcontractors and tiers (excluding professional services) regardless of contract amount must pay prevailing wages, be listed on the Subcontractor List, and adhere to the Public Works Minimum Wage Act.



LABOR RELATIONS DIVISION

401 Broadway NE
Albuquerque, NM 87102
Phone: 505-841-4400
Fax: 505-841-4424

WWW.DWS.STATE.NM.US

Subcontractor

- Ensure that all subcontractors wishing to bid on a Public Works project have an active Contractor Registration with the Public Works and Apprenticeship Application (PWAA) website: <http://www.dws.state.nm.us/pwaa> prior to bidding when their bid will exceed \$60,000.
- Make certain the Public Works Apprentice and Training Act contributions are paid either to an approved Apprenticeship Program or to the Public Works Apprentice and Training Fund.
- All subcontractors and tiers (excluding professional services) regardless of contract amount must pay prevailing wages, be listed on the Subcontractor List, and adhere to the Public Works Minimum Wage Act.

Additional Information

Reference material and forms may be found in the New Mexico Department of Workforce Solutions Public Works web pages at: <https://www.dws.state.nm.us/Labor-Relations/Labor-Information/Public-Works>.

CONTACT INFORMATION

Contact the Labor Relations Division for any questions relating to Public Works projects by email at public.works@state.nm.us or call (505) 841-4400.



TYPE “A” – STREET, HIGHWAY, UTILITY & LIGHT ENGINEERING

Effective January 1, 2022

Trade Classification	Base Rate	Fringe Rate
Bricklayer/Block layer/Stonemason	24.46	8.81
Carpenter/Lather	26.48	12.14
Carpenter- Los Alamos County	29.24	13.94
Cement Mason	17.74	7.41
Drywall Finisher/Taper	25.21	8.00
Glazier		
Glazier/Fabricator	21.00	6.45
Delivery Driver	11.50	6.45
Ironworker	27.70	17.89
Painter- Commercial	17.75	8.20
Paper Hanger	17.75	8.20
Plumber/Pipefitter	33.10	13.10
Electricians- Outside Classifications: Zone 1		
Ground man	24.57	11.74
Equipment Operator	35.25	16.06
Lineman	44.32	18.08
Journeyman technician	41.47	17.37
Cable Splicer	48.75	19.19
Electricians-Outside Classifications: Zone 2		
Ground man	24.57	11.74
Equipment Operator	35.25	16.06
Lineman	44.32	18.08
Journeyman technician	41.47	17.37
Cable Splicer	48.75	19.19
Electricians-Outside Classifications: Los Alamos		
Ground man	25.27	11.76
Equipment Operator	36.27	16.09

Lineman	45.47	18.36
Journeyman technician	42.41	17.60
Cable Splicer	49.59	19.40
Laborers		
Group I	14.79	6.93
Group II	15.29	6.93
Group III	16.79	6.93
Group IV	17.29	6.93
Operators		
Group I	19.93	6.74
Group II	20.92	6.74
Group III	21.02	6.74
Group IV	21.14	6.74
Group V	21.24	6.74
Group VI	21.44	6.74
Group VII	21.61	6.74
Group VIII	21.92	6.74
Group IX	29.87	6.74
Group X	33.32	6.74
Soft Floor Layers	20.75	8.45
Truck Drivers		
Group I-IX	17.65	8.72

NOTE: All contractors are required to pay SUBSISTENCE, ZONE AND INCENTIVE PAY according to the particular trade. Details are located in a PDF attachment at WWW.DWS.STATE.NM.US. Search Labor Relations/Labor Information/Public Works/Prevailing Wage Rates.

For more information about the Subsistence, Zone, and Incentive Pay rates, or to file a wage claim, contact the Labor Relations Division at (505) 841-4400 or visit us online at www.dws.state.nm.us.

BID BOND

KNOW ALL MEN BY THESE PRESENTS, that we the undersigned,
_____, as PRINCIPAL, and
_____, as SURETY are held and firmly bound unto The
Curry County, New Mexico, hereinafter called the OWNER, in the penal sum of
_____ dollars, (\$_____) lawful money of the United
States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs,
executors, administrator, successors, personal representatives, and assigns, jointly and
severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal has submitted
the accompanying Bid, dated _____, 20____, for
_____.

NOW, THEREFORE, if the Principal shall not withdraw said Bid within the period therein
specified after the Bid Opening of the same or, if no period be specified, within forty-five (45)
days after the said opening, and shall within the period specified therefore, or if no period be
specified, within fifteen (15) days after the prescribed forms are presented to Principal for
signature, enter into a written Contract with the OWNER in accordance with the Bid as
accepted, and give bond with good and sufficient surety or sureties, as may be required, for the
faithful performance and proper fulfillment of such Contract, or in the event of the withdrawal of
said Bid within the period specified, or the failure to enter into such Contract and give such bond
within the time specified, the Principal shall pay the OWNER the difference between the amount
specified in said Bid and the amount for which the OWNER may procure the required Work or
supplies or both, if the latter be in excess of the former, then the above obligation shall be void
and of no effect, otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, the above bounded parties have executed this instrument under their
several seals this _____ day of _____, 20____, the
name and corporate seal of each corporate party being hereto affixed and these presents
signed by its undersigned representative, pursuant to authority of its governing body.

In presence of:

[Individual Principal]	[SEAL]
	[Business Address]
	[Partnership] [SEAL]
	[Business Address]

Attest: _____

By: _____

[Corporate Principal]

[Business Address]

By: _____ Affix
Corporate Seal

Attest: _____

[Corporate Surety]

By: _____ Affix
Corporate Seal

Countersigned

By: _____

Attorney-in-Fact¹, State of _____

¹Power-of-attorney for person signing for Surety Company must be attached to bond and must indicate availability for service in the State of New Mexico and a current mailing address.

STATEMENT OF BIDDER'S QUALIFICATIONS

(TO BE SUBMITTED BY THE BIDDER AND INCLUDED WITH BID)

All questions must be answered and the data given must be clear and comprehensive. This statement must be notarized. If necessary, questions may be answered on separate attached sheets. The Bidder may submit additional information.

1. Name of Bidder, current N.M. Contractor's License Number, and current Curry County Business Registration Number (if available)
 2. Is the Contractor on the NMDOT Pre-Qualified list?
 3. Permanent main office address
 4. When organized?
 5. If a corporation, where incorporated?
 6. How many years have you been engaged in the contracting business under your present firm or trade name?
 7. Contracts on hand (Schedule these, showing amount of each Contract and the approximate anticipated dates of completion.)
 8. General character of Work performed by your company
 9. Have you ever failed to complete any Work Awarded to you? If so, where and why?
 10. Have you ever defaulted on a Contract? If so, where and why?
 11. List the more important Projects recently completed by your company, stating the approximate cost for each and the month and year completed.
 12. List your major equipment available for this Contract.
 13. Experience in construction work similar in importance to this Project.
 14. Background and experience of the principal members of your organization, including the officers.
 15. Credit available: \$_____.
 16. Give bank reference:
-
17. Will you, upon request, fill out a detailed Financial Statement and furnish any other information that may be required by the OWNER?

18. The undersigned hereby authorizes any person, firm, or corporation to furnish any information requested by the OWNER in verification of the recitals comprising this statement of Bidder's Qualifications. This _____ day of _____, 20____, dated at _____.

Name of Bidder

By: _____

Title: _____

State of _____)

) ss.

County of _____)

_____, the _____ of
Name Position

_____ being duly sworn,
Company Name

deposes and says that the answers to the foregoing questions and all statements therein contained are true and correct.

Subscribed and sworn to before me this _____ day of _____, 20____.

Notary Public

My Commission expires _____, 20____

CURRY ROAD K REHABILITATION PROJECT

ITB # 2021/22-03 PCN: LP20025

Alternate No. 1 Bid Form

ITEM #	ITEM DESCRIPTION	UNIT	QTY	UNIT PRICE	ESTIMATED COST
209000	BLADING AND RESHAPING	MILE	1		
302000	PROCESSING, PLACING AND COMPACTING EXISTING SURFACE	SQ.YD.	19000		
303120	BASE COURSE 2"	SQ.YD.	17500		
407000	ASPHALT MATERIAL FOR TACK COAT	TON	8		
408100	PRIME COAT MATERIAL	TON	75		
414140	COLD MILLING (ASPHALT) 4"	SQ.YD.	23400		
423283	HMA SP IV COMPLETE	TON	7020		
603281	SWPPP PLAN PREPARATION AND MAINTENANCE	L.S.	LS		
618000	TRAFFIC CONTROL MANAGEMENT	L.S.	LS		
618011	PUBLIC AWARENESS	ALLOW	ALLOW		
621000	MOBILIZATION	L.S.	LS		
702810	TRAFFIC CONTROL DEVICES FOR CONSTRUCTION	L.S.	LS		
801000	CONSTRUCTION STAKING BY THE CONTRACTOR	L.S.	LS		
902001	TESTING ALLOWANCE	ALLOW	ALLOW		
704000	RETROREFLECTORIZED PAINTED MARKINGS 4"	LIN.FT.	83,200		
				PROJECT TOTAL	

BID FORM/SCHEDULE

BIDDER agrees to perform all of the work described in the specifications and shown on the plans for the following unit or lump sum prices. Bidder understands award will be made to the bidder providing a responsive, responsible bids that meets and satisfies all requirements herein and results in the lowest overall cost to the County. Only in the event the lowest bid for Alternate No. 1 exceeds available funds, the lowest bid price for Alternate No 2. may be awarded. Amounts are to be in both words and figures. In case of a discrepancy, the amount shown in words will govern.

**CURRY COUNTY
Curry Road K Rehabilitation Project
ITB#2021/22-03
Project Control No. LP20025**

BID RECAP:

TOTAL ALTERNATE No. 1 BID \$ _____

IN WORDS: _____

TOTAL ALTERNATE No. 2 BID \$ _____

IN WORDS: _____

NOTE: Gross receipts tax shall be paid with each pay request as it is submitted at the current tax rate for Curry County, New Mexico (6.1250%).

Bidder acknowledges that estimated quantities are not guaranteed, and are solely for the purpose of comparison of Bids, and final payment for all Unit Price Bid items will be based on actual quantities, determined as provided in the Contract Documents.

To the Curry County, New Mexico (hereinafter called "OWNER"), the undersigned, (hereinafter called "BIDDER"), in compliance with your invitation for bids for the construction of **Curry Road K Rehabilitation Project**, having carefully examined the Contract Documents and the site of the proposed Work, and being familiar with all of the conditions surrounding the construction of the proposed Project including the availability of materials and labor, hereby proposes the furnish all labor, materials, and supplies, and to construct the Project in accordance with the Contract Documents, within the time set forth herein, and at the unit prices stated above. These prices are to cover all expenses incurred in performing the Work required under the Contract Documents of which this Bid Schedule is a part. Quantities shown in this Bid Schedule are estimated and actual payment will be made on the basis of the unit Bid prices for confirmed quantities as constructed.

BIDDER acknowledges receipt of the following addenda: _____

BID FORM/SCHEDULE

Business Name of Bidder

Authorized Signature of Bidder

Printed Name and Title of Authorized Signature

BIDDER'S New Mexico Contractor's License No. & Classification

BIDDER'S Current New Mexico Business License No. (if available)

Address

Telephone

Fax

(SEAL) If Bid Proposal is submitted by a corporation

**SUBCONTRACTOR LISTING
INVITATION TO BID ITB#2021/22-03**

The Subcontractor Listing Threshold for this Project is \$5,838.43, and Attached to the Bid in Compliance with 13-4-32 thru 13-4-43 NMSA 1978, Together with the City or County location of their place of business listed. The following subcontractors will work on the construction of the project if the bid is accepted. List only one entry for each category of work as defined by Contractor. Bidder represents that it is licensed and qualified to Perform 100% of the category of work for which no subcontractor is listed. D.W.S Registration Number required if amount of work exceed \$60,000.

Company Name: _____
Address: _____
City/County: _____ State: _____
Work to be performed: _____
Amount (\$): _____
License No.: _____
DWS Registration No. _____

Company Name: _____
Address: _____
City/County: _____ State: _____
Work to be performed: _____
Amount (\$): _____
License No.: _____
DWS Registration No. _____

Company Name: _____
Address: _____
City/County: _____ State: _____
Work to be performed: _____
Amount (\$): _____
License No.: _____
DWS Registration No. _____

Company Name: _____
Address: _____
City/County: _____ State: _____
Work to be performed: _____
Amount (\$): _____
License No.: _____
DWS Registration No. _____

Company Name: _____
Address: _____
City/County: _____ State: _____
Work to be performed: _____
Amount (\$): _____
License No.: _____
DWS Registration No. _____

Company Name: _____
Address: _____
City/County: _____ State: _____
Work to be performed: _____
Amount (\$): _____
License No.: _____
DWS Registration No. _____

Company Name: _____
Address: _____
City/County: _____ State: _____
Work to be performed: _____
Amount (\$): _____
License No.: _____
DWS Registration No. _____

Company Name: _____
Address: _____
City/County: _____ State: _____
Work to be performed: _____
Amount (\$): _____
License No.: _____
DWS Registration No. _____

-No bidder 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 County.

-No bidder 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 the original bid did not designate a subcontract unless:

(1) the bidder fails to receive a bid from a category of work. Under such circumstances, the bidder may subcontract. The bidder shall designate on the listing form that no proposal was received or;

(2) the bidder fails to receive more than one bid for a category of work. Under such circumstances, the bidder may subcontract. The bidder shall state on the listing form that only one subcontractor's proposal was received, together with the name of the subcontractor. This designation shall not occur more than one time on the subcontractor list.

(Signature of Business Representative)*

(Date)

*Must be an authorized signatory for the Business.

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

THAT, *[Insert the name or legal title of the CONTRACTOR]*

_____ as Principal,
herein after called the CONTRACTOR, and *[Insert the legal title of the surety and address]*

_____ a corporation organized and existing under and
by virtue of the laws of the State of _____ and
authorized to do business in the State of New Mexico, hereinafter called the Surety, are held
and firmly bound unto *[Insert the name or legal title and address of the OWNER]*

_____ as Obligee, hereinafter called the OWNER, in the
amount of _____ Dollars (\$ _____), for the payment whereof
CONTRACTOR and Surety bind themselves, their heirs, executors, administrators, successors,
and assigns, jointly and severally, firmly by these presents.

WHEREAS, CONTRACTOR has by written AGREEMENT dated
_____, _____, entered into a Contract described as follows:

_____,
which Contract is by reference made a part hereof and is hereinafter referred to as the Contract.

NOW, THEREFORE, the condition of this obligation is such that, if CONTRACTOR shall
faithfully perform and complete said Contract according to its terms and comply with all
requirements of law, then this obligation shall be null and void; otherwise it shall remain in full
force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the OWNER.

Whenever the CONTRACTOR shall be, and shall be declared by the OWNER to be, in default
under the said Contract, the OWNER having performed its obligations hereunder, the Surety
may promptly remedy the default or shall promptly:

1. Complete the contract in accordance with its terms and conditions, or
2. At OWNER'S option, obtain a Bid or Bids for submission to the OWNER for completing
said Contract in accordance with its terms and conditions and, upon determination by the
OWNER and Surety of the lowest responsible Bidder, arrange for a Contract between such
Bidder and the OWNER and make available as Work progresses (even though there should be
a default or a succession of defaults under the Contract or Contracts of completion arranged
under this paragraph) sufficient funds to pay the cost of completion less the balance of the
Contract price but not exceeding, including other costs and damages for which the Surety may
be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the
Contract price", as used in this paragraph shall mean the total amount payable by the OWNER
to the CONTRACTOR under the Contract and any amendments thereto less the amount
previously paid by the OWNER to the CONTRACTOR.

The Surety acknowledges that said Contract may contain express guarantees and agrees that said guarantees, if any, are covered by the Surety's obligation hereunder.

Right of action with respect to any express guarantees in the Contract shall accrue from the date of completion and formal acceptance of the Work under the Contract.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the OWNER named herein or its successors or assigns.

SIGNED AND SEALED _____, _____.

[Contractor-Principal]

In presence of: _____

By: _____

Title: _____
[Surety]

Approved as to form:

By: _____
Attorney for the Owner

Title: _____

Countersigned:

Surety's Authorized New Mexico Agent for Service

LABOR AND MATERIAL PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS:

THAT, *[Insert the name or legal title and address of the CONTRACTOR]*

_____, as Principal, hereinafter called the CONTRACTOR, and *[Insert the legal title of the surety and address]*

_____, a corporation organized and existing under and by virtue of the laws of the State of _____ and authorized to do business in the State of New Mexico, hereinafter called the Surety, as held and firmly bound unto *[Insert the name or legal title and address of the OWNER]*

_____ as Obligee, hereinafter called the OWNER and supplier of labor, material or supplies as joint obligees, in the amount of

_____ dollars (\$ _____), for the payment whereof CONTRACTOR and Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally firmly by these presents.

WHEREAS, CONTRACTOR has by written AGREEMENT dated _____, 20____ entered into a contract described as follows:

_____, which contract is by reference made a part hereof and is hereinafter referred to as the Contract.

NOW, THEREFORE, the condition of this obligation is such that, if the CONTRACTOR shall pay as they become due all just claims for labor performed and materials and supplies furnished upon or for the Work under the Contract, whether said labor be performed and materials and supplies be furnished under the original Contract or any contract there-under, then this obligation shall be null and void; otherwise it shall remain in full force and effect, subject, however, to the following conditions.

The right to sue on this bond accrues only to the OWNER and the parties to whom the right is granted pursuant to Section 13-4-1 et. seq., NMSA 1978 (1988 repl. pamp.) and New Mexico Law; and any such right shall be exercised only in accordance with the provisions and limitations of said statutes.

SIGNED AND SEALED ON _____, _____

[Contractor-Principal]

In presence of: _____

By: _____

Title: _____

Approved as to form:

[Surety]

Attorney for the Owner

By: _____

Title: _____

Countersigned:

Surety's Authorized New Mexico Agent for Service

This bond is issued simultaneously with performance bond in favor of OWNER and suppliers of labor, materials or supplies for the faithful performance of the Contract.

CERTIFICATE OF INSURANCE

**PLEASE ATTACH AN INSURANCE CERTIFICATE
FROM A NEW MEXICO LICENSED INSURANCE AGENT**

BID FORM 3
CAMPAIGN CONTRIBUTION DISCLOSURE FORM

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

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

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

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

The following definitions apply:

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

“Campaign Contribution” means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official's behalf for the

purpose of electing the official to statewide or local office. "Campaign Contribution" includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

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

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

"Prospective contractor" means a person or business that 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 or business qualifies for a sole source or a small purchase contract.

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

Name(s) of Applicable Public Official(s) if any: Tom Martin, Robert Sandoval, Chet SPear, Robert Thornton, Seth Martin, Anastasia Hoglan, Candace London, Kendall Kempf, Wesley Waller and Mark Lansford.

DISCLOSURE OF CONTRIBUTIONS BY PROSPECTIVE CONTRACTOR:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Date Contribution(s) Made: _____

Amount(s) of Contribution(s) _____

Nature of Contribution(s) _____

Purpose of Contribution(s) _____

(Attach extra pages if necessary)

Signature

Date

Title (position)

--OR--

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

Signature

Date

Title (Position)

PROPOSAL FORM
RESIDENT/VETERANS PREFERENCE CERTIFICATION FORM

_____ (NAME OF CONTRACTOR) hereby certifies the following
in regard to application of the resident veterans' preference to this procurement:

Please check one box only

I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is less than \$3M allowing me the 10% preference discount on this bid or proposal. I understand that knowingly giving false or misleading information about this fact constitutes a crime

Resident Businesses:

I declare under penalty of perjury that my business is a New Mexico resident business allowing me the 5% preference discount on this bid or proposal. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

"I agree to submit a report, or reports, to the State Purchasing Division of the General Services Department declaring under penalty of perjury that during the last calendar year starting January 1 and ending on December 31, the following to be true and accurate:

"In conjunction with this procurement and the requirements of this business' application for a Resident Veteran Business Preference/Resident Veteran Contractor Preference under Sections 13-1-21 or 13-1-22 NMSA 1978, when awarded a contract which was on the basis of having such veterans preference, I agree to report to the State's Division of the General Services Department the awarded amount involved. I will indicate in the report the awarded amount as a purchase from a public body or as a public works contract from a public body as the case may be.

"I understand that knowingly giving false or misleading information on this report constitutes a crime."

I declare under penalty of perjury that this statement is true to the best of my knowledge. I understand that giving false or misleading statements about material fact regarding this matter constitutes a crime.

Resident Business/Veteran Business Certificate Number: _____

The representations made in checking the boxes constitutes a material representation by the business that is subject to protect and may result in denial of an award or un-award of the procurement involved if the statements are proven to be incorrect.

A valid New Mexico Resident Business or New Mexico Veteran's Resident Business Certificate number must be provided in order to receive preference.

I do not claim New Mexico Resident Business or New Mexico Veteran's Resident Business preference on this bid.

(Signature of Business Representative)*

(Date)

*Must be an authorized signatory for the Business.

NOTICE TO CONTRACTORS

NTC – Curry County Replaces NMDOT
NTC – 2019 Standard Drawings for Highway and Bridge Construction Updates
(Effective January 2020 Letting)
NTC – 2019 Standard Drawings for Highway and Bridge Construction Disclaimer
NTC – ADA Construction Inspection Procedure
NTC – Additional Named Insured
NTC – Cooperation with Utilities
NTC – Monthly Asphalt Binder Price Adjustment Procedures (01/01/19)
NTC – Ramp-Up Time
NTC – Contract Time
NTC – Schedule Format
NTC – Approved Products List
NTC – Buy America
NTC – Electronic Data Files
NTC – Environmental and Archaeological Approvals for Pit Areas
NTC – Federal Requirements
NTC – Gross Receipts Tax
NTC – New Mexico Employees Health Coverage
NTC – Office of Inspector General
NTC – Patents on Milling Equipment and Milling Operations
NTC – Professional Services
NTC – Quality Standards for Traffic Control Devices
NTC – Return of Lobbying Disclosure/Disclosure of Lobbying Activities Form
NTC – Temporary Access Control Breaks
NTC – License from Construction Industries Division (CID)
NTC – NMDOT TLPA – Section 100

NOTICE TO CONTRACTORS

YOU ARE HEREBY ADVISED OF THE FOLLOWING:

Any reference made to the **New Mexico Department of Transportation (NMDOT)** shall be replaced with the **Curry County**.

NOTICE TO CONTRACTORS

2019 Standard Drawings for Highway and Bridge Construction Updates (Effective January 2020 Letting)

The 2019 Edition of the New Mexico Department of Transportation Standard Drawings for Highway and Bridge Construction shall apply in addition to the following:

Delete the following 2019 Standard Drawings for Highway and Bridge Construction:

Standard Section 511 - Concrete Structures

- 511-65-2/3, Concrete Box Culvert Triple Opening – Design Fills B, C, D, E, Dimensions and Rebar Schedule (4-9-07)

Standard Section 543 - Metal Railing for Bridges

- 543-02-1/1, Metal Railing Type "A" (11-13-09)
- 543-03-1/2, Metal Railing Type "D" (11-13-09)
- 543-03-2/2, Metal Railing Type "D" Details (11-13-09)

Standard Section 564 - Preformed Closed Cell Foam Bridge Joint Seals

- 564-01-1/1, Preformed Closed Cell Foam Bridge Joint Seal (6-24-13)

Standard Section 602 - Slope and Erosion Protection Structures

- 602-08-1/2, Wire Enclosed Tire Bales for Erosion Control or Earth Retaining (1-9-12)
- 602-08-2/2, Wire Enclosed Tire Bales for Erosion Control or Earth Retaining (1-9-12)

Standard Section 606 - Metal Barrier, Cable Barrier and Concrete Wall Barrier

- 606-22-1/4, 20' Concrete Barrier General Notes & Reinforcing Schedule (1-26-17)
- 606-22-2/4, 20' Concrete Barrier Fabrication and Reinforcement Details (1-26-17)
- 606-22-3/4, 20' Concrete Barrier Staking & Anchoring Details (1-26-17)
- 606-22-4/4, 20' Concrete Barrier Staking & Connection Details (1-26-17)

Standard Section 702 - Construction Traffic Control Devices

- Delete all 702 Standard Drawings

Standard Section 707 - Signal and Lighting Standards

- 707L-08-1/7, High Mast Luminaire Support Structures Type VI (12-15-08)
- 707L-08-2/7, High Mast Luminaire Support Structures Type VI (12-15-08)
- 707L-08-3/7, High Mast Luminaire Support Structures Type VI (12-15-08)
- 707L-08-4/7, High Mast Luminaire Support Structures Type VI (12-15-08)
- 707L-08-5/7, High Mast Luminaire Support Structures Type VI (12-15-08)
- 707L-08-6/7, High Mast Luminaire Support Structures Type VI (12-15-08)

Add the following Standard Drawings to the 2019 Standard Drawings for Highway and Bridge Construction:

Standard Section 206 - Excavation and Backfill for Culverts and Minor Structures

- 206-11-1/1, Fill Heights for HDPE and PP Pipe Excavation Details (12-16-19)

Standard Section 511 - Concrete Structures

- 511-65-2/3, Concrete Box Culvert Triple Opening - Design Fills B, C, D, E, Dimensions and Rebar Schedule (2-19-19)

Standard Section 514 - Concrete Barrier Railing for Bridges

- 514-10-1/1, Bridge Number Plate, TAG and Survey Marker (12-16-19)

Standard Section 543 - Metal Railing

- 543-09-1/1, Bridge Number Plate, TAG and Survey Marker (12-16-19)

Standard Section 606 - Metal Barrier, Cable Barrier and Concrete Wall Barrier

- 606-22-1/4, 20' Concrete Barrier General Notes & Reinforcing Schedule (12-17-19)
- 606-22-2/4, 20' Concrete Barrier Fabrication and Reinforcement Details (12-17-19)
- 606-22-3/4, 20' Concrete Barrier Staking & Anchoring Details (12-17-19)
- 606-22-4/4, 20' Concrete Barrier Staking & Connection Details (12-17-19)

Standard Section 702 - Construction Traffic Control Devices

- 702-01-1/1, Traffic Control General Notes (12-11-19)
- 702-02-1/1, Temporary Traffic Markings for Construction (12-11-19)
- 702-03-1/3, Double Fines in Work Zones Signing Layout (12-11-19)
- 702-03-2/3, Double Fines in Work Zones and B.O.P and E.O.P (Approach and Departure) Sign Face Details (12-11-19)
- 702-03-3/3, Project Limit Signing (12-11-19)
- 702-04-1/2, 4 Lane, Interstate/Non-Interstate, Typical Crossover Signing (12-11-19)
- 702-04-2/2, 4 Lane, Interstate/Non-Interstate, Typical Crossover Signing (12-11-19)
- 702-05-1/1, Inside/Median and Outside Lane Operations for Divided Interstates & Non-Interstates (12-11-19)
- 702-06-1/1, Examples of Temporary Pedestrian Detour Routing for Roadways with Posted Speeds of 40 MPH or Less (12-11-19)

Standard Section 707 - Signal and Lighting Standards

- 707L-08-1/9, High Mast Luminaire Support Structures Type VI (12-8-11)
- 707L-08-2/9, High Mast Luminaire Support Structures Type VI (12-8-11)
- 707L-08-3/9, High Mast Luminaire Support Structures Type VI (12-8-11)
- 707L-08-4/9, High Mast Luminaire Support Structures Type VI (12-8-11)
- 707L-08-5/9, High Mast Luminaire Support Structures Type VI (12-8-11)
- 707L-08-6/9, High Mast Luminaire Support Structures Type VI (12-8-11)
- 707L-08-7/9, High Mast Luminaire Support Structures Type VI (12-8-11)

Standard Section 730 - Weigh-In-Motion System and Continuous Count Station

- 730-01-1/3, Weigh-In-Motion (WIM) Undivided Section Details (12-17-19)
- 730-01-2/3, Weigh-In-Motion (WIM) Divided Section Details (12-17-19)
- 730-01-3/3, Weigh-In-Motion (WIM) 6-Lane Section Details (12-17-19)
- 730-02-1/3, Continuous Count Station (CCS) Undivided Section Details (12-17-19)
- 730-02-2/3, Continuous Count Station (CCS) Divided Section Details (12-17-19)
- 730-02-3/3, Continuous Count Station (CCS) 6-Lane Section Details (12-17-19)
- 730-03-1/2, Radar Continuous Count Station 1 to 4 Lanes Single Sensor (12-17-19)
- 730-03-2/2, Radar Continuous Count Station 5 to 8 Lanes Dual Sensors (12-17-19)

The added Standard Drawings are available at the following link:

<https://dot.state.nm.us/content/nmdot/en/Standards.html>

Chief Engineer
December 18, 2019

NOTICE TO CONTRACTORS

2019 Standard Drawings for Highway and Bridge Construction Disclaimer

The 2019 Edition of the New Mexico Department of Transportation (NMDOT) Standard Drawings for Highway and Bridge Construction and all updates are for use on NMDOT Projects.

These Standard Drawings are for use only on NMDOT Projects. Others who use the NMDOT Standard Drawings do so at their own risk and accept the responsibility of determining their applicability and any resulting liability.

NOTICE TO CONTRACTORS

ADA Construction Inspection Procedure

PCN LP20025

General Comments

NMDOT is recognized as a Title II public entity under the Americans with Disabilities Act of 1990 (Public Law 101-336) (the "ADA"). The ADA provides protections to individuals with disabilities that are at least equal to those provided by the nondiscrimination provisions of title V of the Rehabilitation Act of 1973. The ADA extends the prohibition of discrimination in federally assisted programs, established by section 504 of the Rehabilitation Act, to all activities of State and local government, irrespective of the funding source for the program. As a Title II entity NMDOT must comply with the ADA to make public facilities accessible so as to prohibit discrimination against any "qualified individual with a disability"

Meeting ADA compliance is an ongoing NMDOT obligation, which requires commitment and diligence on multiple levels from project planning through construction of a public right-of-way (PROW) facility.

For this project, to ensure ADA compliance is met, the Contractor shall implement the NMDOT ADA Construction Inspection Policy and Procedure. This Work shall be considered incidental to the completion of the Project and no additional payment shall be made. Failure to comply with this Notice to Contractors may be deemed a Nonconformance in accordance with Specification Section 101.4 "Terms and Definitions" and subject the Contractor to Specification Section 108.9 "Default of Contract".

ADA Construction Compliance Requirement:

All constructed ADA facilities meet the *Proposed Accessibility Guidelines for Pedestrian Facilities in the Public Right-of -Way (PROWAG)*, July 26, 2011, which may be accessed through the State Construction Bureau webpage (<http://dot.state.nm.us/content/nmdot/en/Construction.html>).

Construction Inspection Procedure

The ADA Curb Ramp Documentation forms attached to this Notice to Contractors will be used for the inspection process to ensure compliance with both PROWAG guidelines and NMDOT construction Plan design. The ADA Curb Ramp documentation forms and this procedure will be discussed at the mandatory Pre-Bid Meeting, if one is held, and the Pre-Construction Conference.

Procedure: The following procedure describes the use of the NMDOT ADA Curb Ramp Documentation form and the inspection process.

ADA Construction Inspection Procedure

PCN: LP20025

Page 2

1) The Contractor must provide notice to the Project Manager in accordance with Standards Specification 105.10 "Inspection of Work".

- The Contractor shall use only a 24 inch electronic digital ("Smart") level with 0.1% slope accuracy shall be permitted for ADA construction and inspection Acceptance.
- The Contractor and the NMDOT shall calibrate each Smart level prior to performing the next step.
- The Contractor and NMDOT shall select which curb ramp form best aligns with the type to be inspected.
- Before scheduling delivery of concrete and with an NMDOT inspector present, the Contractor shall complete the Pre-Pour Inspection Form verifying that the concrete formwork is constructed to dimensions and grades shown on plans and meets PROWAG, 2011 technical design criteria and NMDOT Construction Plans.
- The NMDOT inspector will verify that the measurements on the Pre-Pour Form meet the requirements or require correction of all discrepancies in accordance with Standard Specification 105.11 "Removal of Unacceptable and Unauthorized Work", before scheduling of concrete to ensure the finished concrete Work will meet PROWAG and NMDOT Construction Plans.
- When all measurements meet the Contract requirements then the NMDOT inspector will permit the concrete pour.
- The Contractor shall repeat the procedure using the Constructed Inspection Form after the concrete pour to ensure the curb ramp(s) meets PROWAG compliance and NMDOT Construction Plan design criteria.
- The NMDOT inspector will verify measurements on the Constructed Inspection Form. Once the NMDOT inspector has verified the measurements the Work will be eligible for payment. Unacceptable Work will be subject to Standard Specification 105.11 "Removal of Unacceptable and Unauthorized Work".

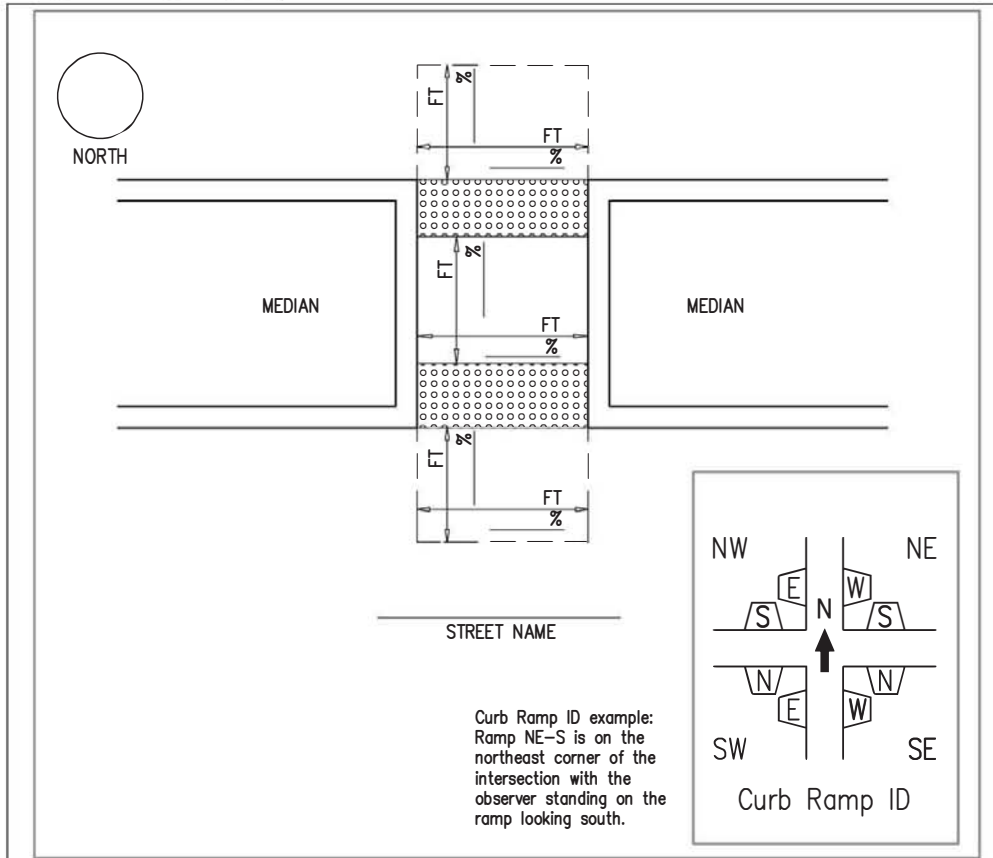
The Contractor shall prepare the final documentation to include all applicable field measurements documented on the ADA Curb Ramp Documentation inspection forms; verification of measurements by the inspector; and a minimum of two (2) pictures of the constructed curb ramp(s). The Contractor shall submit the completed forms to the NMDOT Project Manager, before the next Progress Payment. Payment for ADA Curb Ramps will not occur until all documents have been submitted and accepted by the Project Manager.

The Contractor shall protect and maintain the constructed ADA facilities until such time that Final Acceptance of the ADA facility occurs. Final Acceptance occurs in accordance with Standards Specification section 109.10 "Project Closure".



ADA Curb Ramp Documentation
Type: Median – Area of Refuge

Pre-Pour Inspection



INSPECTOR SIGNATURE: _____
 PRINT NAME: _____
 CONTRACTOR: _____
 CONTRACTOR SIGNATURE: _____
LEVEL CALIBRATION
 NMDOT INSPECTOR INITIAL _____ DATE _____
 CONTRACTOR INITIAL _____ DATE _____

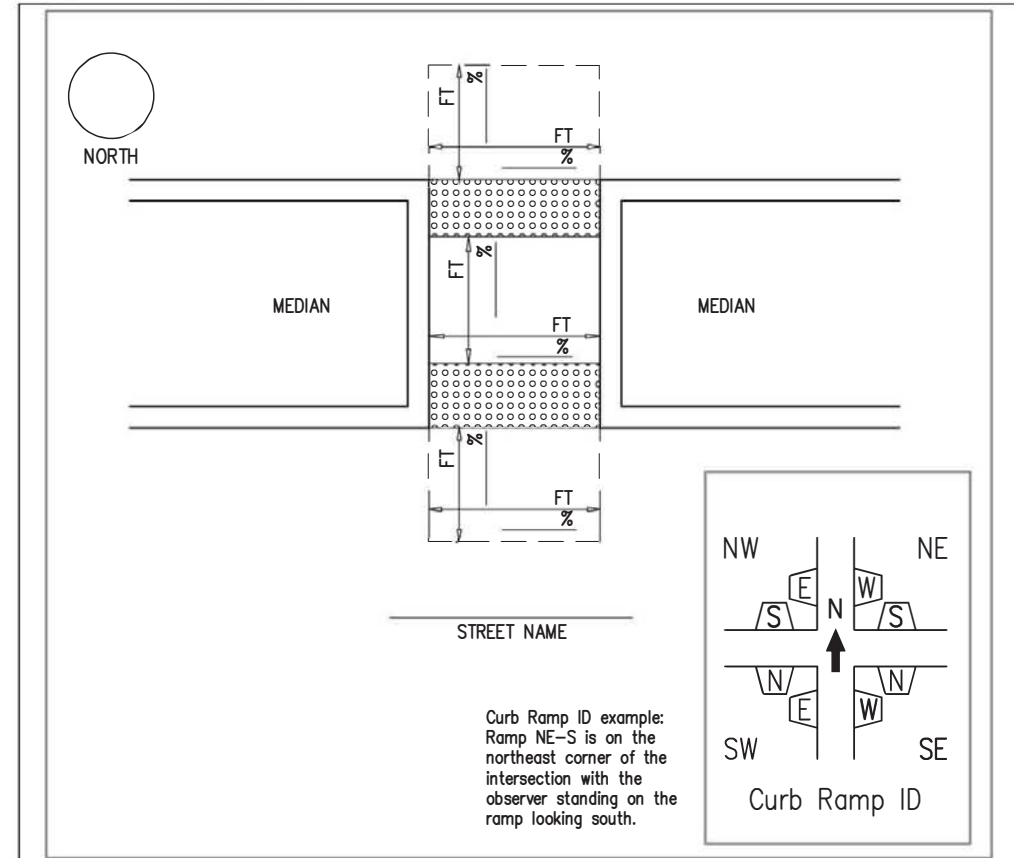
NMDOT PROJECT #: _____
 NMDOT DISTRICT #: _____
 CURB RAMP MP#: _____
 STA: _____ OFFSET: _____
 CORNER: _____
 CITY/STATE: _____
 DATE: _____

FINAL ACCEPTANCE OF CURB RAMP DOES NOT OCCUR UNTIL THE FINAL INSPECTION OF THE PROJECT



ADA Curb Ramp Documentation
Type: Median – Area of Refuge

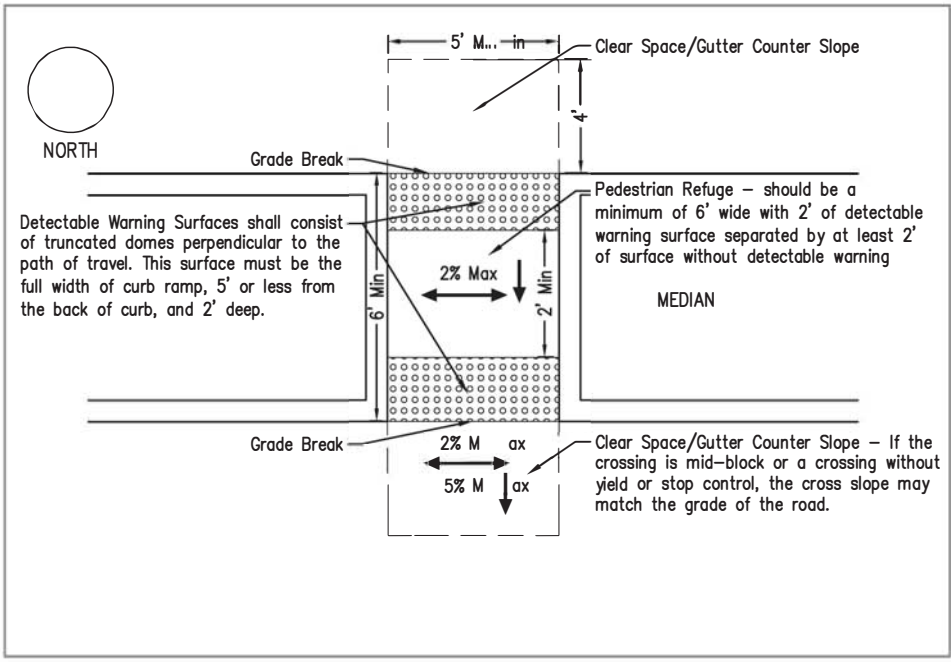
Constructed Inspection



INSPECTOR SIGNATURE: _____
 PRINT NAME: _____
 CONTRACTOR: _____
 CONTRACTOR SIGNATURE: _____
LEVEL CALIBRATION
 NMDOT INSPECTOR INITIAL _____ DATE _____
 CONTRACTOR INITIAL _____ DATE _____

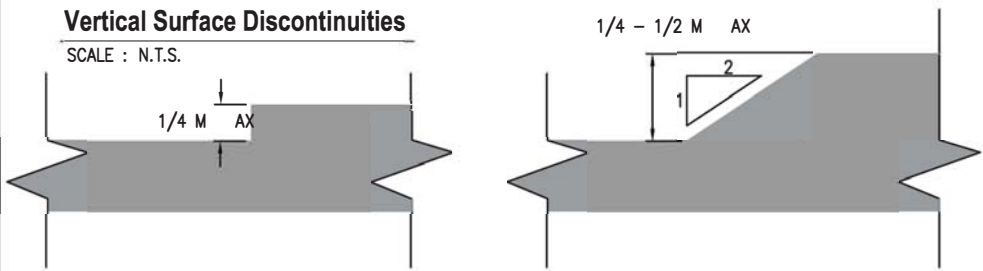
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 NMDOT DISTRICT #: _____
 CURB RAMP MP#: _____
 STA: _____ OFFSET: _____
 CORNER: _____
 CITY/STATE: _____
 DATE: _____

FINAL ACCEPTANCE OF CURB RAMP DOES NOT OCCUR UNTIL THE FINAL INSPECTION OF THE PROJECT



Vertical Surface Discontinuities

SCALE : N.T.S.



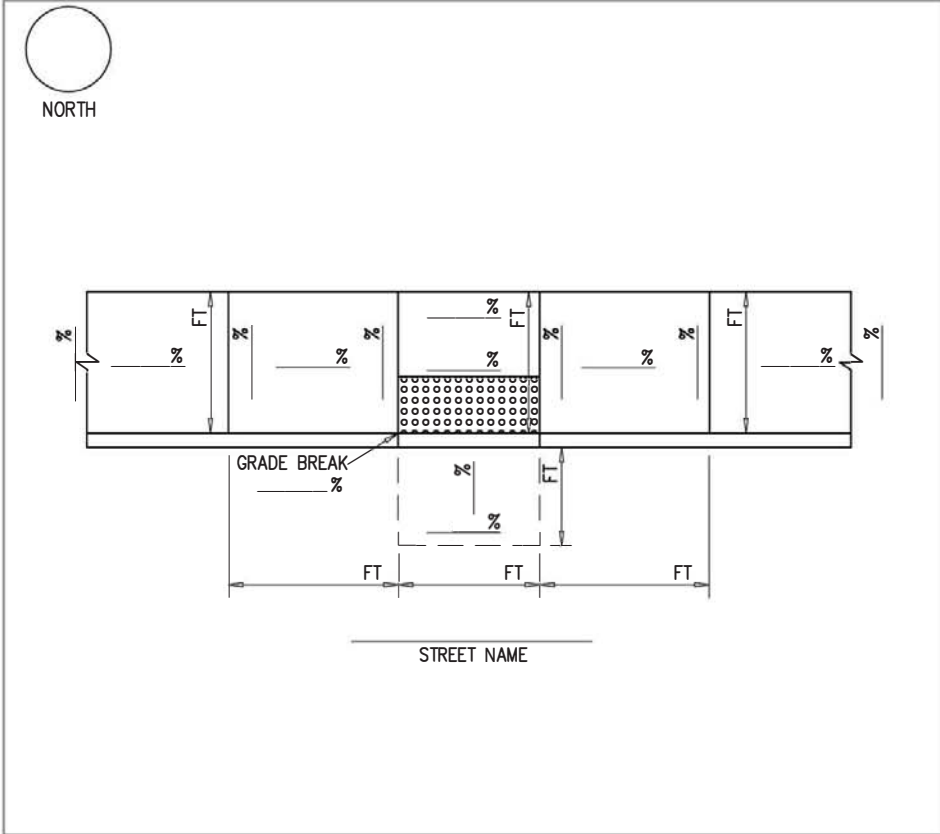
Vertical surface discontinuities shall be 0.5" maximum. Vertical discontinuities between 0.25" and 0.5" shall be beveled with a slope not steeper than 50%. The bevel shall be applied across the entire vertical surface discontinuity.

COMMENTS:



ADA Curb Ramp Documentation
Type: Mid-Block Parallel

Pre-Pour Inspection



INSPECTOR SIGNATURE: _____
 PRINT NAME: _____
 CONTRACTOR: _____
 CONTRACTOR SIGNATURE: _____
LEVEL CALIBRATION
 NMDOT INSPECTOR INITIAL _____ DATE _____
 CONTRACTOR INITIAL _____ DATE _____

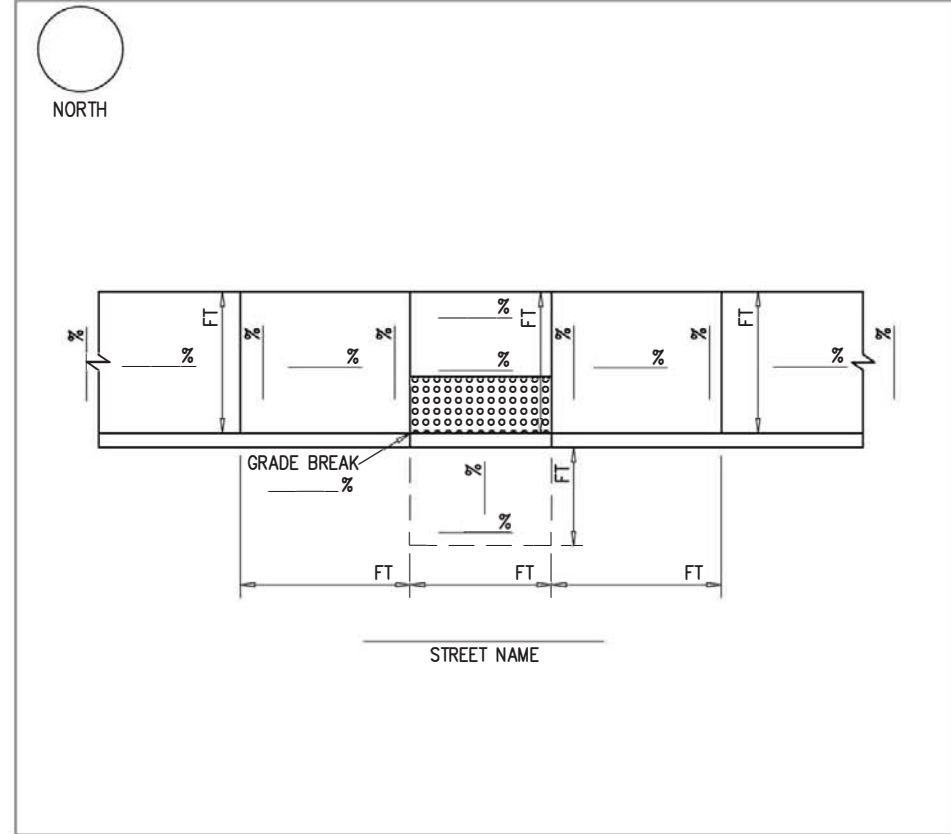
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 CURB RAMP MP#:
 STA: _____ OFFSET: _____
 CORNER:
 CITY/STATE:
 DATE:

FINAL ACCEPTANCE OF CURB RAMP DOES NOT OCCUR UNTIL THE FINAL INSPECTION OF THE PROJECT



ADA Curb Ramp Documentation
Type: Mid-Block Parallel

Constructed Inspection



INSPECTOR SIGNATURE: _____
 PRINT NAME: _____
 CONTRACTOR: _____
 CONTRACTOR SIGNATURE: _____
LEVEL CALIBRATION
 NMDOT INSPECTOR INITIAL _____ DATE _____
 CONTRACTOR INITIAL _____ DATE _____

NMDOT PROJECT #:
 NMDOT DISTRICT #:
 CURB RAMP MP#:
 STA: _____ OFFSET: _____
 CORNER:
 CITY/STATE:
 DATE:

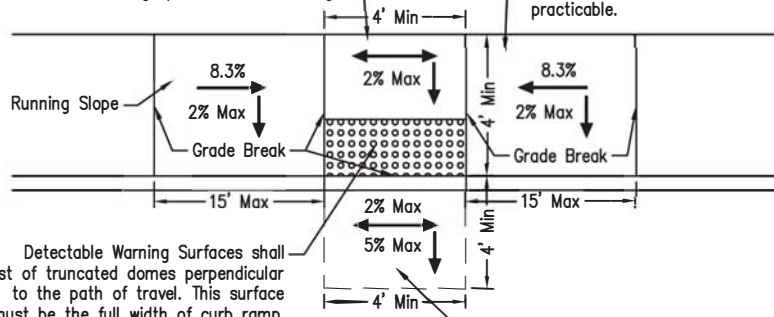
FINAL ACCEPTANCE OF CURB RAMP DOES NOT OCCUR UNTIL THE FINAL INSPECTION OF THE PROJECT



NORTH

Where the turning space is constrained at the back-of-sidewalk, the turning space shall be 4' min by 5' min. The 5' dimension shall be provided in the direction of the ramp run. If the turning space is constrained on two or more sides the turning space shall be 5' long.

Running Slope - shall be 8.3% maximum but shall not require the ramp length to exceed 15'. To avoid chasing grade indefinitely when connecting to steep grades, the running slope shall be extended as flat as maximum extent practicable.

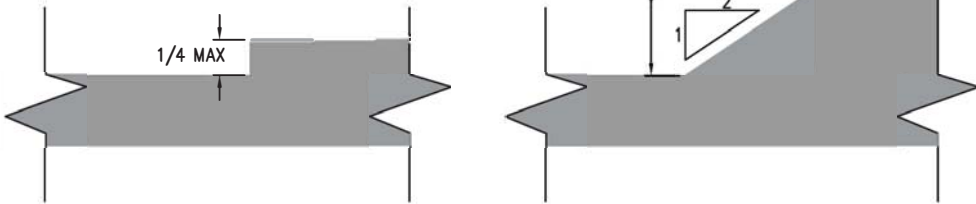


Detectable Warning Surfaces shall consist of truncated domes perpendicular to the path of travel. This surface must be the full width of curb ramp, 5' or less from the back of curb, and 2' deep.

Clear Space/Gutter Counter Slope - If the crossing is mid-block or a crossing without yield or stop control, the cross slope may match the grade of the road.

Vertical Surface Discontinuities

SCALE : N.T.S.



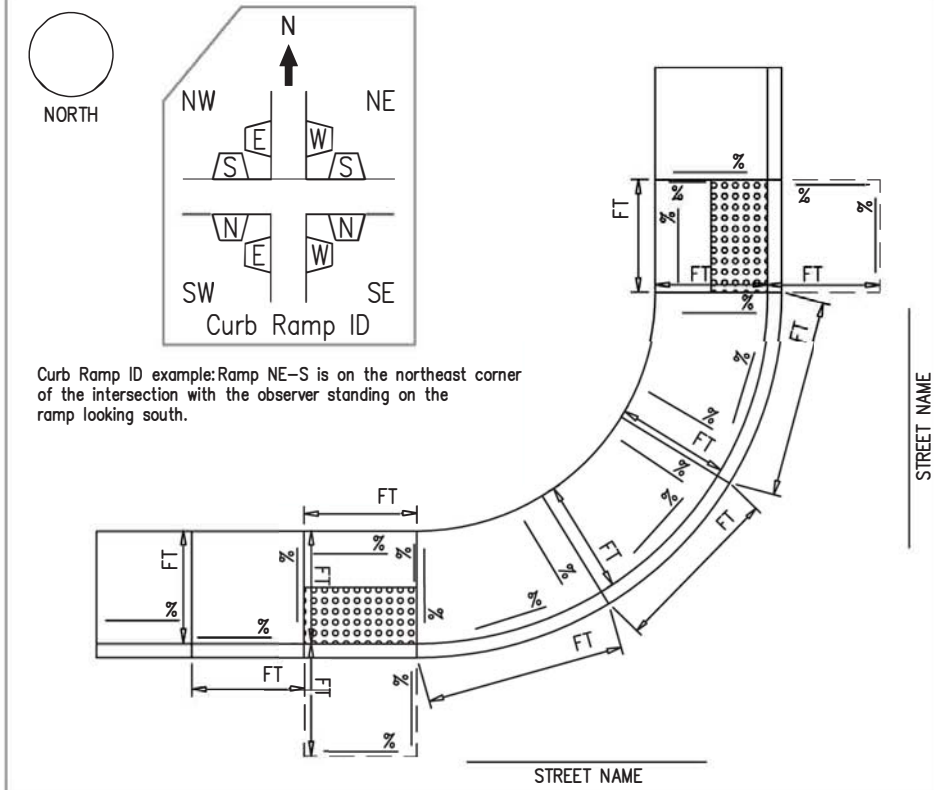
Vertical surface discontinuities shall be 0.5" maximum. Vertical discontinuities between 0.25" and 0.5" shall be beveled with a slope not steeper than 50%. The bevel shall be applied across the entire vertical surface discontinuity.

COMMENTS:



ADA Curb Ramp Documentation
Type: Parallel (Directional)

Pre-Pour Inspection



INSPECTOR SIGNATURE: _____

PRINT NAME: _____

CONTRACTOR: _____

CONTRACTOR SIGNATURE: _____

LEVEL CALIBRATION

NMDOT INSPECTOR INITIAL _____ DATE _____

CONTRACTOR INITIAL _____ DATE _____

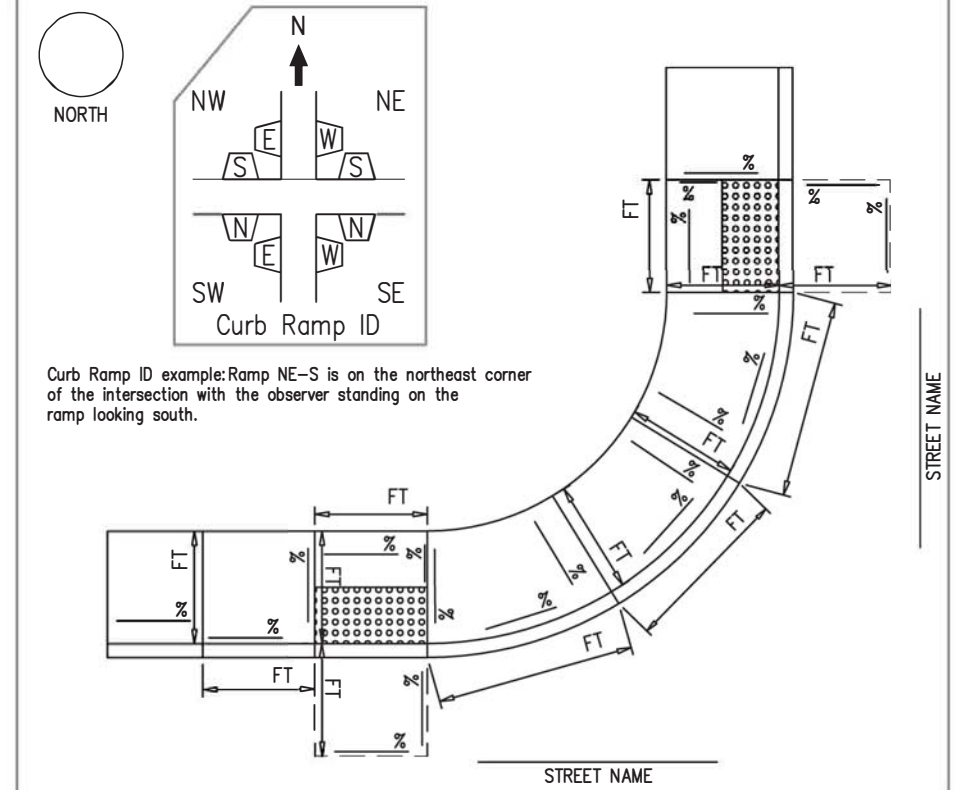
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NMDOT DISTRICT #:
CURB RAMP MP#:
STA: OFFSET:
CORNER:
CITY/STATE:
DATE:

FINAL ACCEPTANCE OF CURB RAMP DOES NOT OCCUR UNTIL THE FINAL INSPECTION OF THE PROJECT



ADA Curb Ramp Documentation
Type: Parallel (Directional)

Constructed Inspection



INSPECTOR SIGNATURE: _____

PRINT NAME: _____

CONTRACTOR: _____

CONTRACTOR SIGNATURE: _____

LEVEL CALIBRATION

NMDOT INSPECTOR INITIAL _____ DATE _____

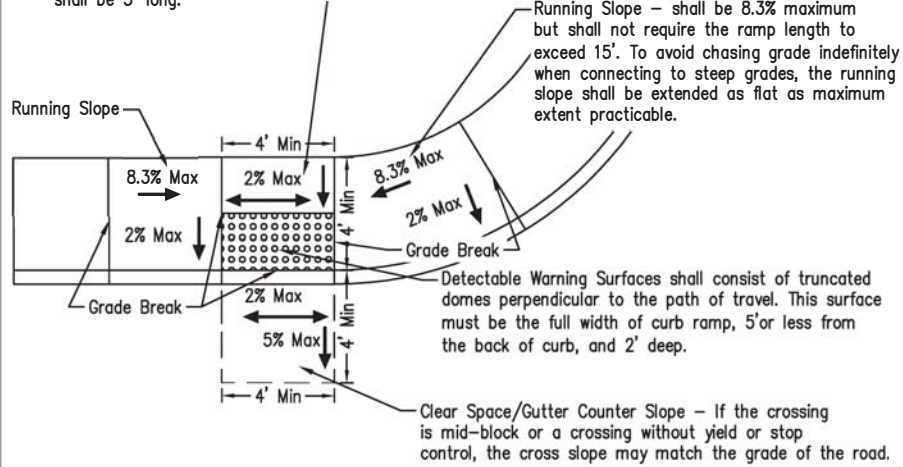
CONTRACTOR INITIAL _____ DATE _____

NMDOT PROJECT #:
NMDOT DISTRICT #:
CURB RAMP MP#:
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CORNER:
CITY/STATE:
DATE:

FINAL ACCEPTANCE OF CURB RAMP DOES NOT OCCUR UNTIL THE FINAL INSPECTION OF THE PROJECT

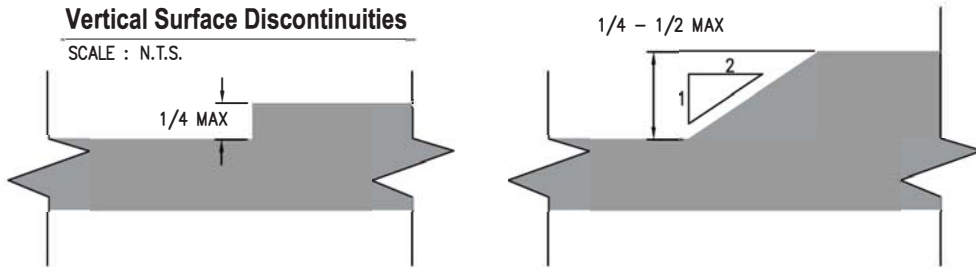


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Vertical Surface Discontinuities

SCALE : N.T.S.



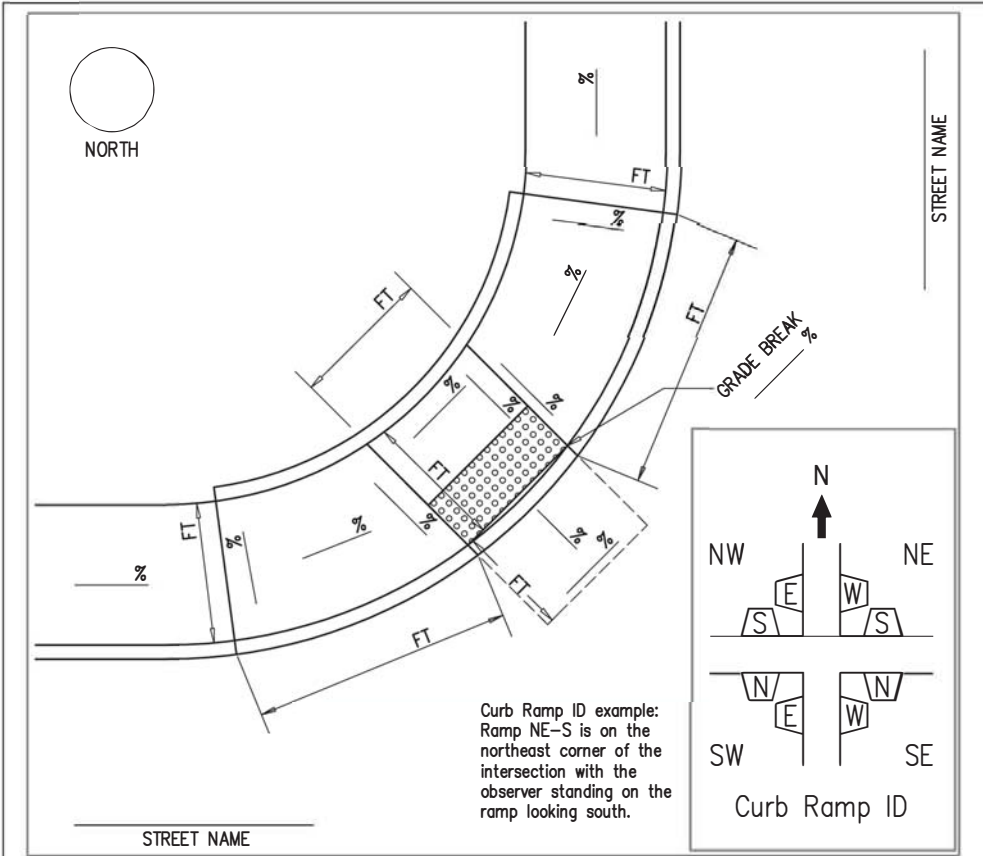
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COMMENTS:



ADA Curb Ramp Documentation
Type: Parallel (Diagonal)

Pre-Pour Inspection



INSPECTOR SIGNATURE: _____

PRINT NAME: _____

CONTRACTOR: _____

CONTRACTOR SIGNATURE: _____

LEVEL CALIBRATION

NMDOT INSPECTOR INITIAL _____ DATE _____

CONTRACTOR INITIAL _____ DATE _____

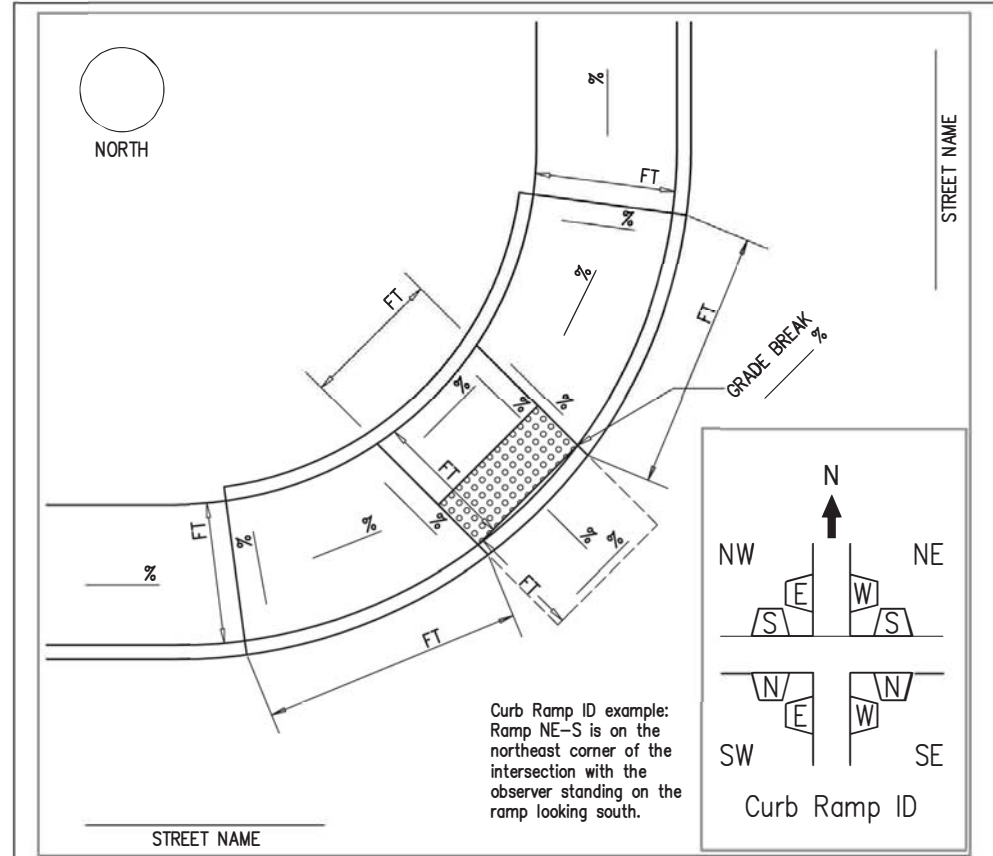
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NMDOT DISTRICT #:	
CURB RAMP MP#:	
STA:	OFFSET:
CORNER:	
CITY/STATE:	
DATE:	

FINAL ACCEPTANCE OF CURB RAMP DOES NOT OCCUR UNTIL THE FINAL INSPECTION OF THE PROJECT



ADA Curb Ramp Documentation
Type: Parallel (Diagonal)

Constructed Inspection



INSPECTOR SIGNATURE: _____

PRINT NAME: _____

CONTRACTOR: _____

CONTRACTOR SIGNATURE: _____

LEVEL CALIBRATION

NMDOT INSPECTOR INITIAL _____ DATE _____

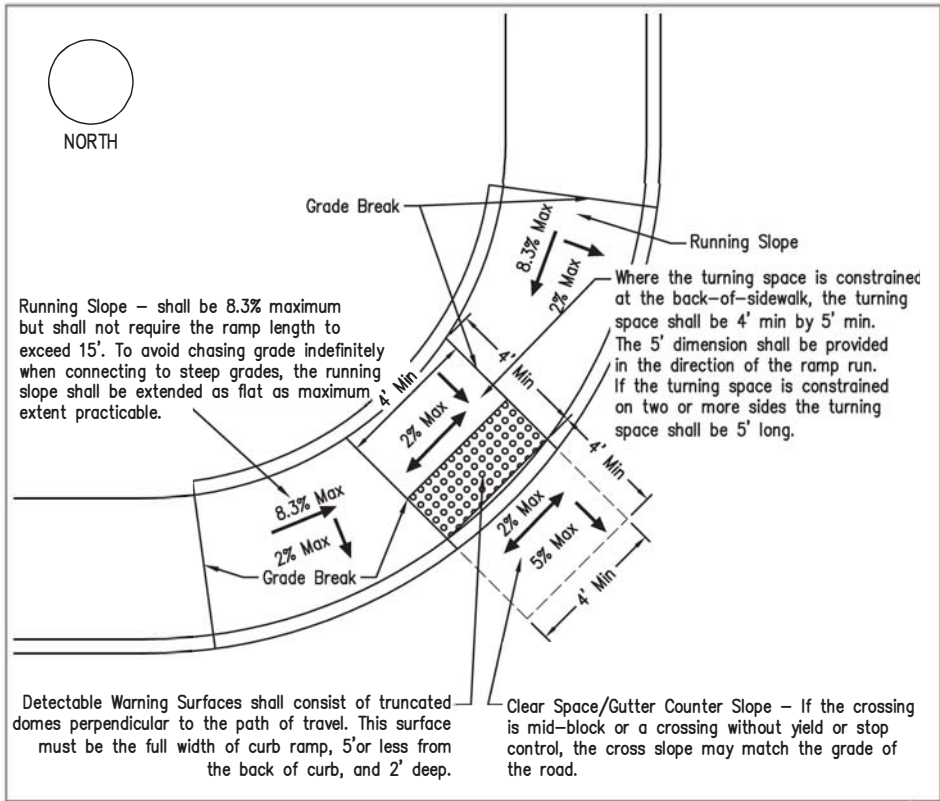
CONTRACTOR INITIAL _____ DATE _____

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NMDOT DISTRICT #:	
CURB RAMP MP#:	
STA:	OFFSET:
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CITY/STATE:	
DATE:	

FINAL ACCEPTANCE OF CURB RAMP DOES NOT OCCUR UNTIL THE FINAL INSPECTION OF THE PROJECT



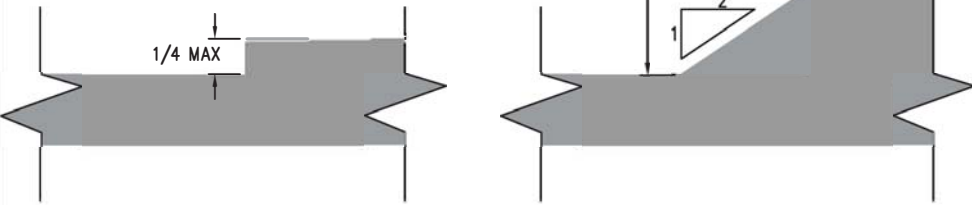
ADA Curb Ramp Documentation
Type: Parallel (Diagonal)



Vertical Surface Discontinuities

SCALE : N.T.S.

1/4 - 1/2 MAX



Vertical surface discontinuities shall be 0.5" maximum. Vertical discontinuities between 0.25" and 0.5" shall be beveled with a slope not steeper than 50%. The bevel shall be applied across the entire vertical surface discontinuity.



ADA Curb Ramp Documentation
Type: Parallel (Diagonal)

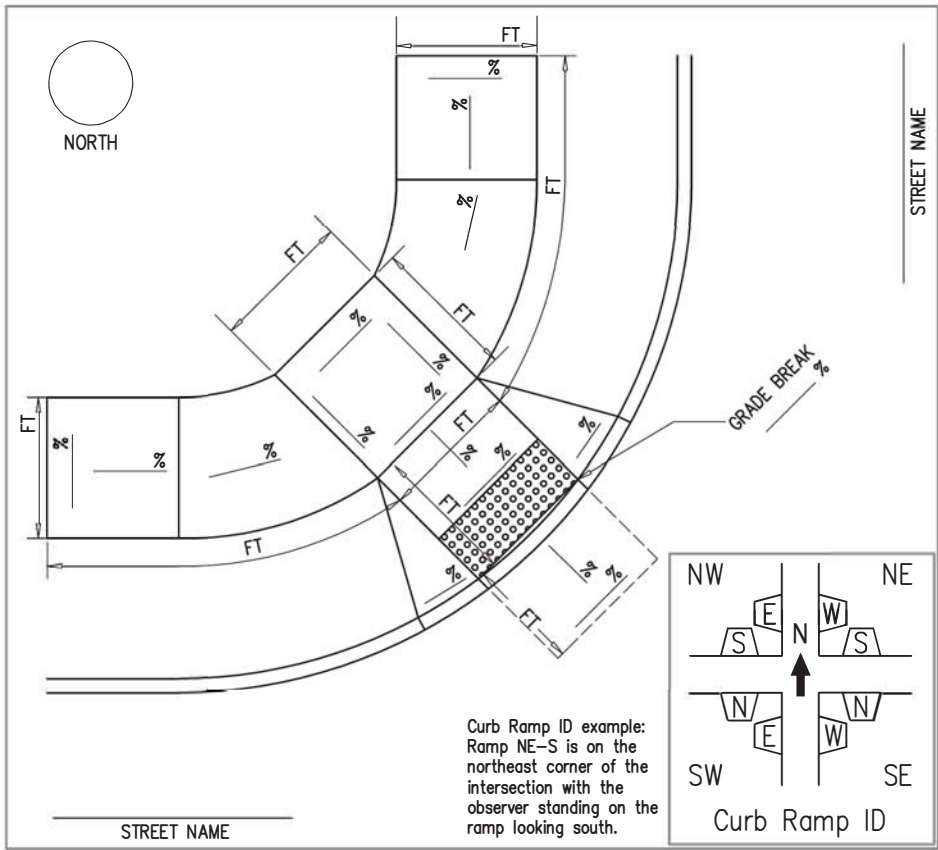
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Empty box for comments.



ADA Curb Ramp Documentation
Type: Perpendicular- Detached Walk

Pre-Pour Inspection



INSPECTOR SIGNATURE: _____

PRINT NAME: _____

CONTRACTOR: _____

CONTRACTOR SIGNATURE: _____

LEVEL CALIBRATION

NMDOT INSPECTOR INITIAL _____ DATE _____

CONTRACTOR INITIAL _____ DATE _____

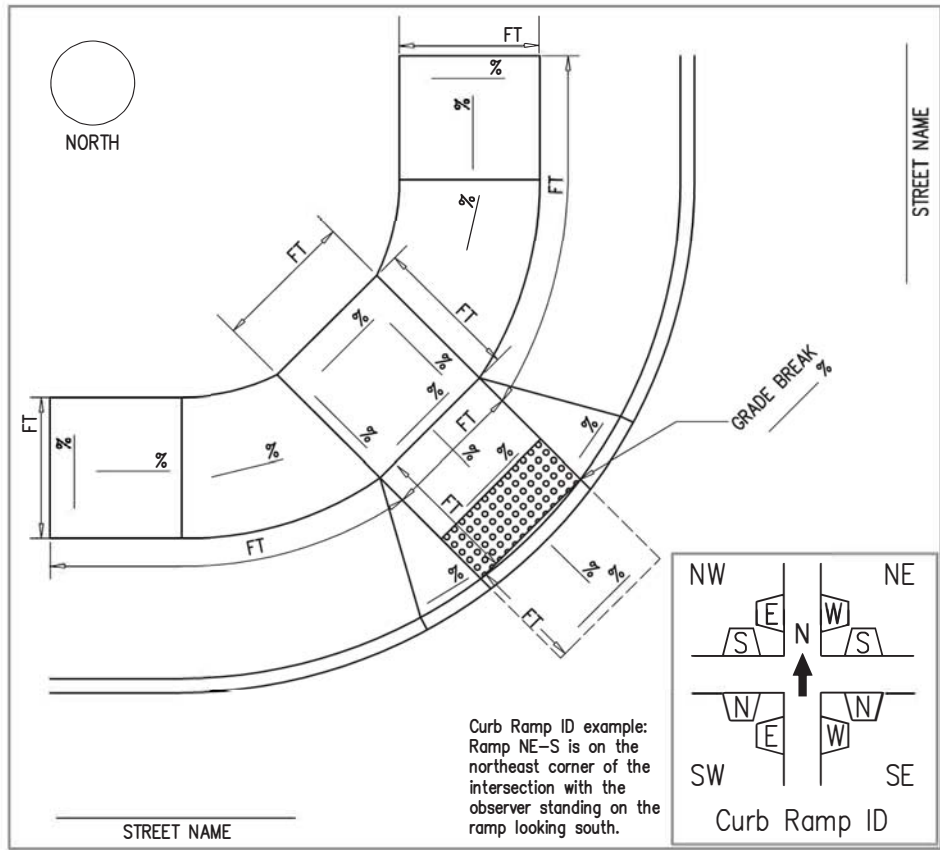
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NMDOT DISTRICT #:	
CURB RAMP MP#:	
STA:	OFFSET:
CORNER:	
CITY/STATE:	
DATE:	

FINAL ACCEPTANCE OF CURB RAMP DOES NOT OCCUR UNTIL THE FINAL INSPECTION OF THE PROJECT



ADA Curb Ramp Documentation
Type: Perpendicular- Detached Walk

Constructed Inspection



INSPECTOR SIGNATURE: _____

PRINT NAME: _____

CONTRACTOR: _____

CONTRACTOR SIGNATURE: _____

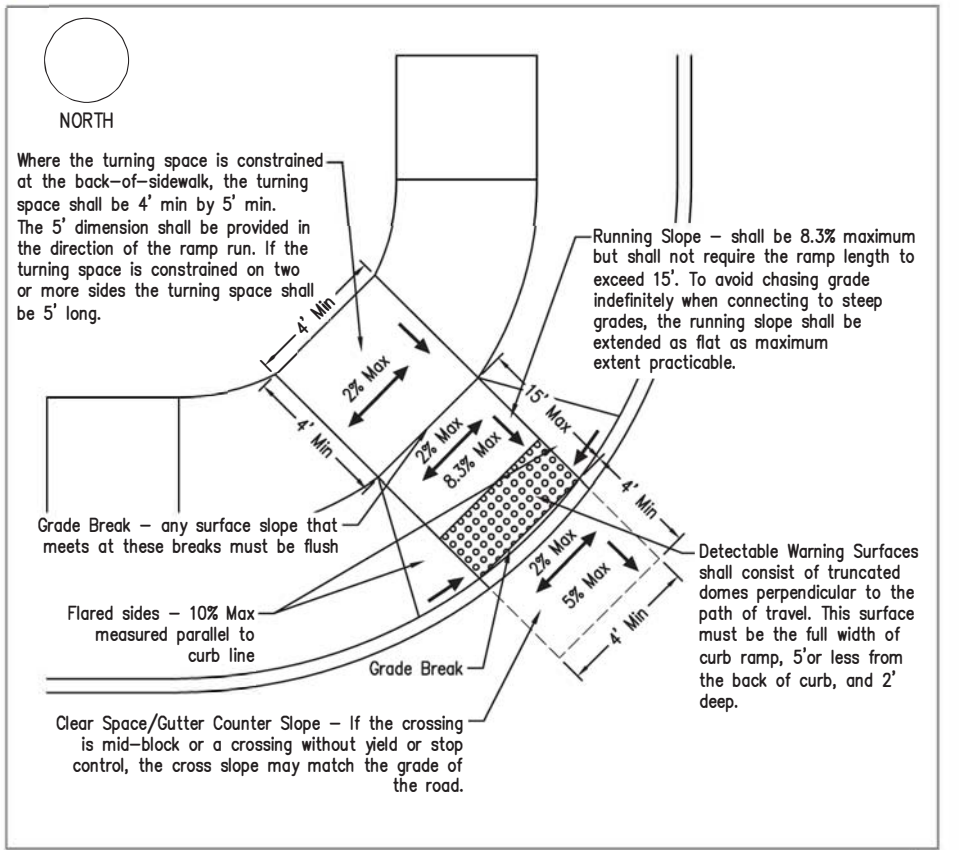
LEVEL CALIBRATION

NMDOT INSPECTOR INITIAL _____ DATE _____

CONTRACTOR INITIAL _____ DATE _____

NMDOT PROJECT #:	
NMDOT DISTRICT #:	
CURB RAMP MP#:	
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CORNER:	
CITY/STATE:	
DATE:	

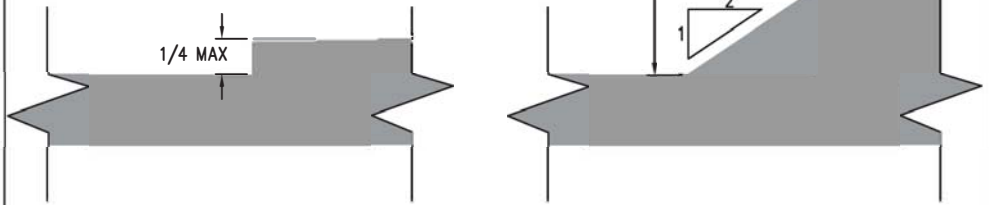
FINAL ACCEPTANCE OF CURB RAMP DOES NOT OCCUR UNTIL THE FINAL INSPECTION OF THE PROJECT



Vertical Surface Discontinuities

SCALE : N.T.S.

1/4 - 1/2 MAX



Vertical surface discontinuities shall be 0.5" maximum. Vertical discontinuities between 0.25" and 0.5" shall be beveled with a slope not steeper than 50%. The bevel shall be applied across the entire vertical surface discontinuity.

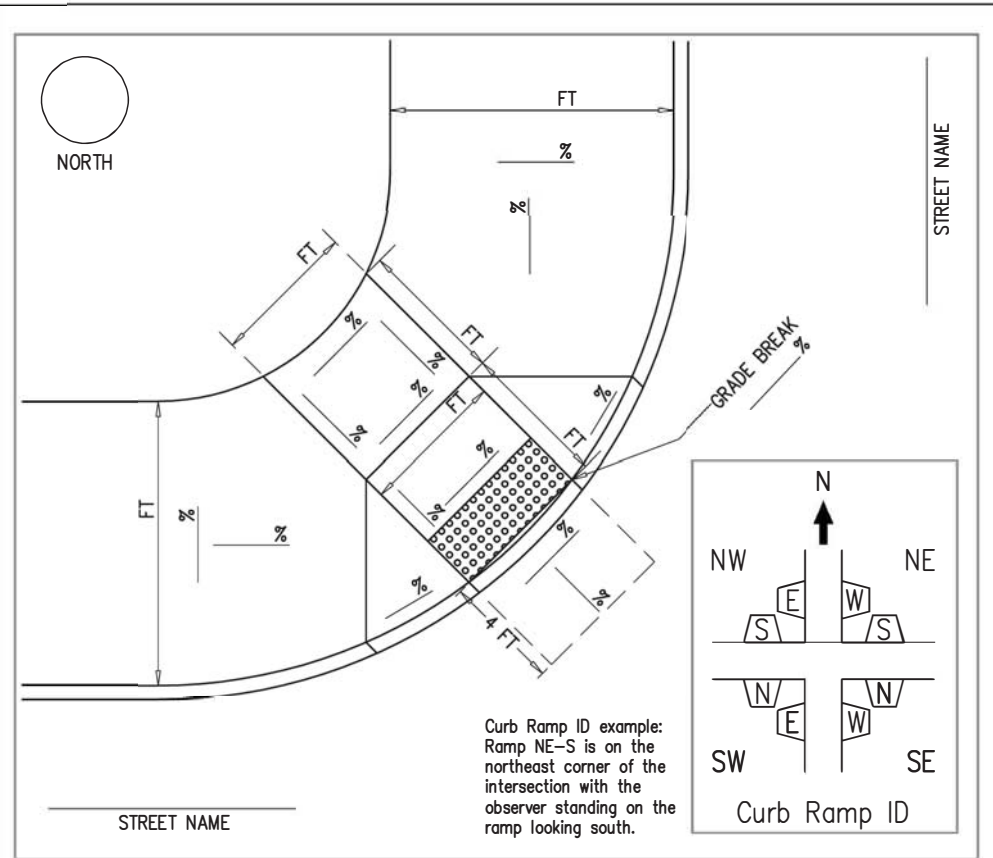
COMMENTS:

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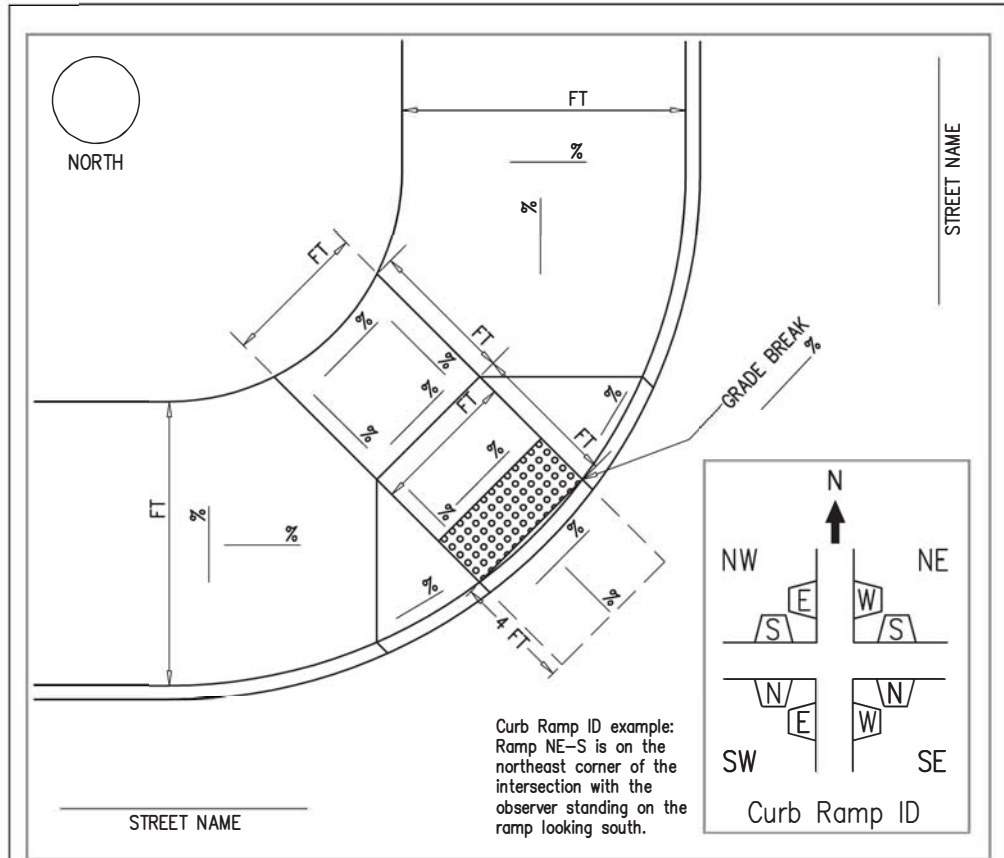
ADA Curb Ramp Documentation
Type: Perpendicular (Diagonal)

Pre-Pour Inspection



ADA Curb Ramp Documentation
Type: Perpendicular (Diagonal)

Constructed Inspection



INSPECTOR SIGNATURE: _____

PRINT NAME: _____

CONTRACTOR: _____

CONTRACTOR SIGNATURE: _____

LEVEL CALIBRATION

NMDOT INSPECTOR INITIAL _____ DATE _____

CONTRACTOR INITIAL _____ DATE _____

NMDOT PROJECT #: _____

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CURB RAMP MP#: _____

STA: _____ OFFSET: _____

CORNER: _____

CITY/STATE: _____

DATE: _____

FINAL ACCEPTANCE OF CURB RAMP DOES NOT OCCUR UNTIL THE FINAL INSPECTION OF THE PROJECT

INSPECTOR SIGNATURE: _____

PRINT NAME: _____

CONTRACTOR: _____

CONTRACTOR SIGNATURE: _____

LEVEL CALIBRATION

NMDOT INSPECTOR INITIAL _____ DATE _____

CONTRACTOR INITIAL _____ DATE _____

NMDOT PROJECT #: _____

NMDOT DISTRICT #: _____

CURB RAMP MP#: _____

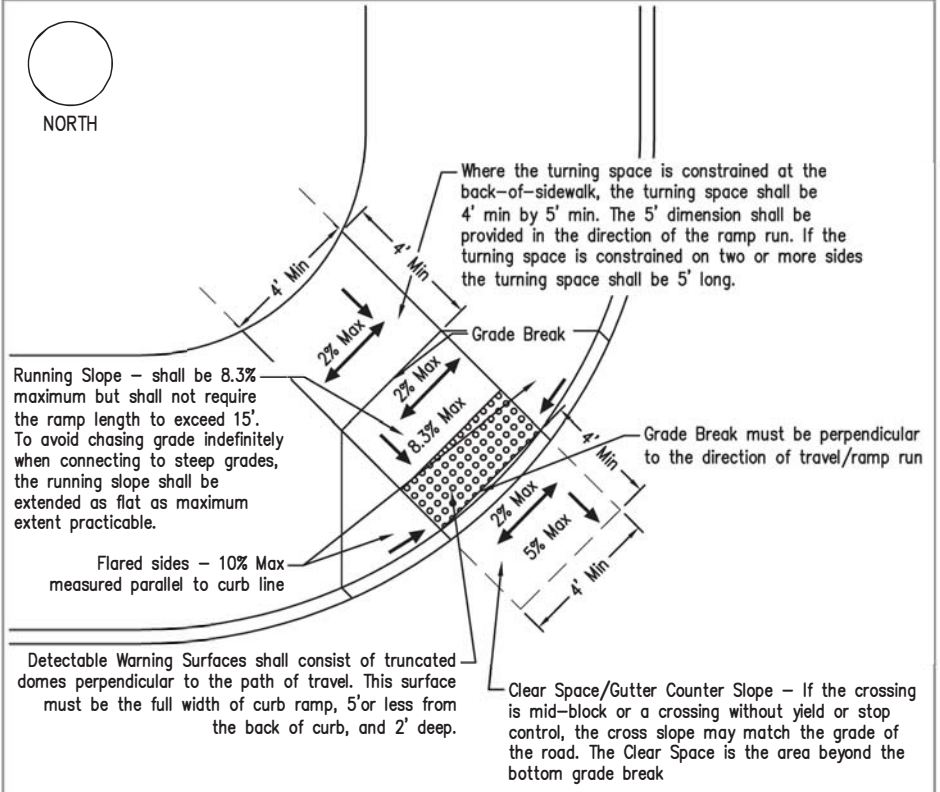
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CITY/STATE: _____

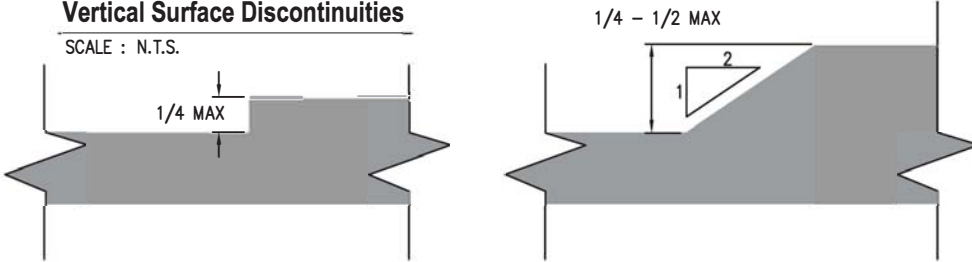
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FINAL ACCEPTANCE OF CURB RAMP DOES NOT OCCUR UNTIL THE FINAL INSPECTION OF THE PROJECT



Vertical Surface Discontinuities

SCALE : N.T.S.



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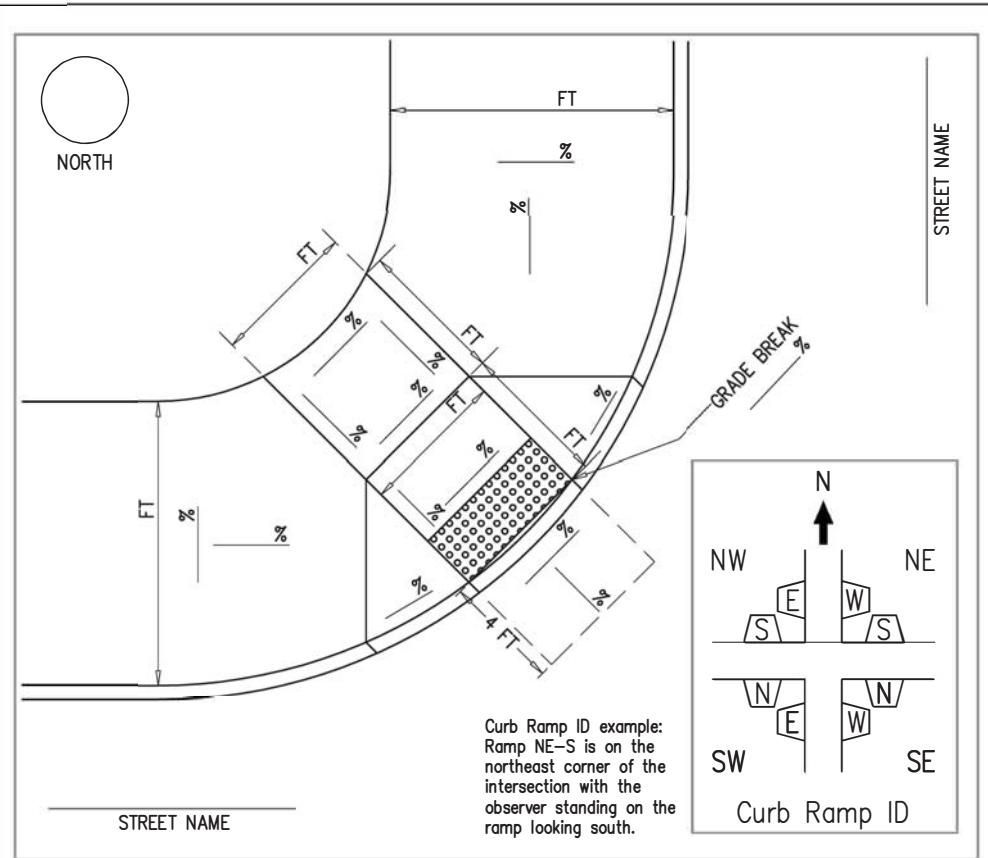
COMMENTS:

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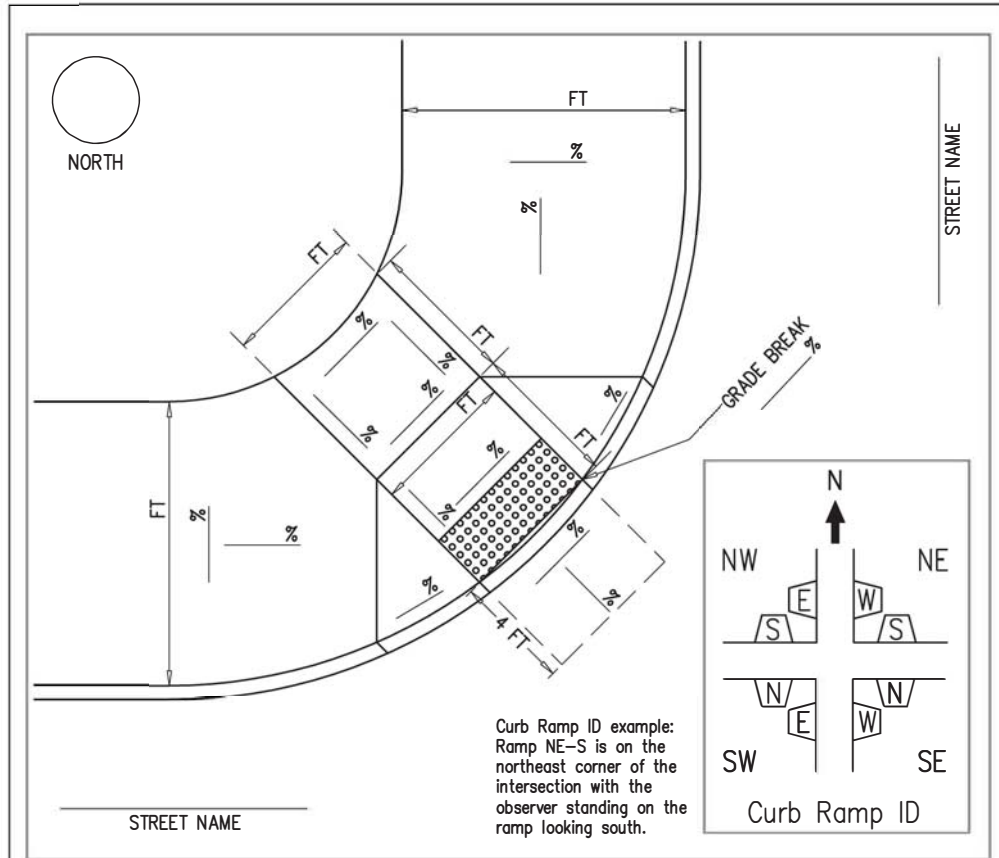
ADA Curb Ramp Documentation
Type: Perpendicular (Diagonal)

Pre-Pour Inspection



ADA Curb Ramp Documentation
Type: Perpendicular (Diagonal)

Constructed Inspection



INSPECTOR SIGNATURE: _____

PRINT NAME: _____

CONTRACTOR: _____

CONTRACTOR SIGNATURE: _____

LEVEL CALIBRATION

NMDOT INSPECTOR INITIAL _____ DATE _____

CONTRACTOR INITIAL _____ DATE _____

NMDOT PROJECT #: _____

NMDOT DISTRICT #: _____

CURB RAMP MP#: _____

STA: _____ OFFSET: _____

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CITY/STATE: _____

DATE: _____

FINAL ACCEPTANCE OF CURB RAMP DOES NOT OCCUR UNTIL THE FINAL INSPECTION OF THE PROJECT

INSPECTOR SIGNATURE: _____

PRINT NAME: _____

CONTRACTOR: _____

CONTRACTOR SIGNATURE: _____

LEVEL CALIBRATION

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CONTRACTOR INITIAL _____ DATE _____

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NMDOT DISTRICT #: _____

CURB RAMP MP#: _____

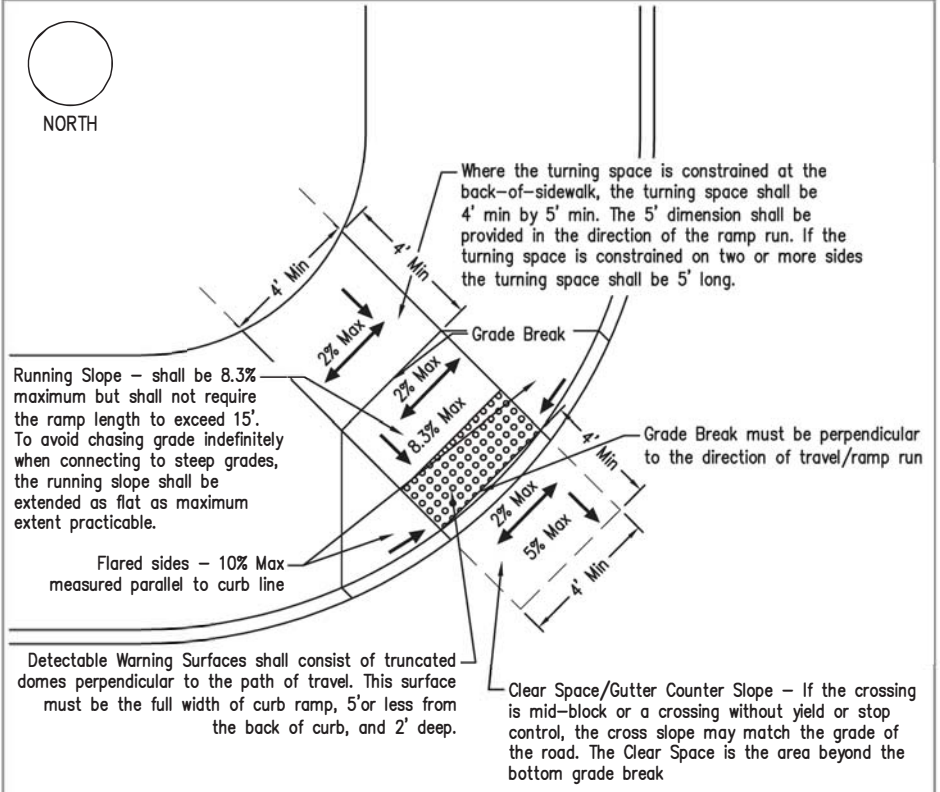
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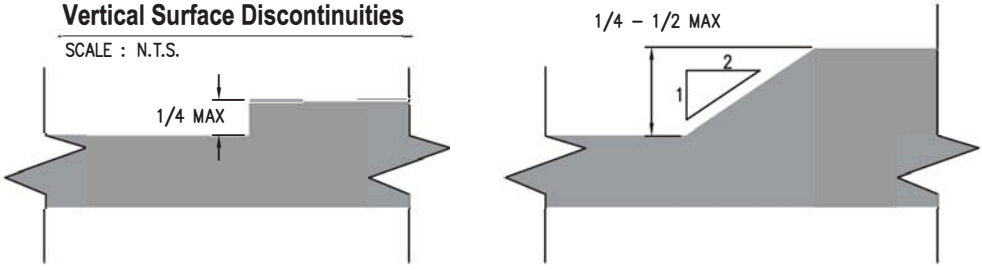
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FINAL ACCEPTANCE OF CURB RAMP DOES NOT OCCUR UNTIL THE FINAL INSPECTION OF THE PROJECT



Vertical Surface Discontinuities

SCALE : N.T.S.



Vertical surface discontinuities shall be 0.5" maximum. Vertical discontinuities between 0.25" and 0.5" shall be beveled with a slope not steeper than 50%. The bevel shall be applied across the entire vertical surface discontinuity.

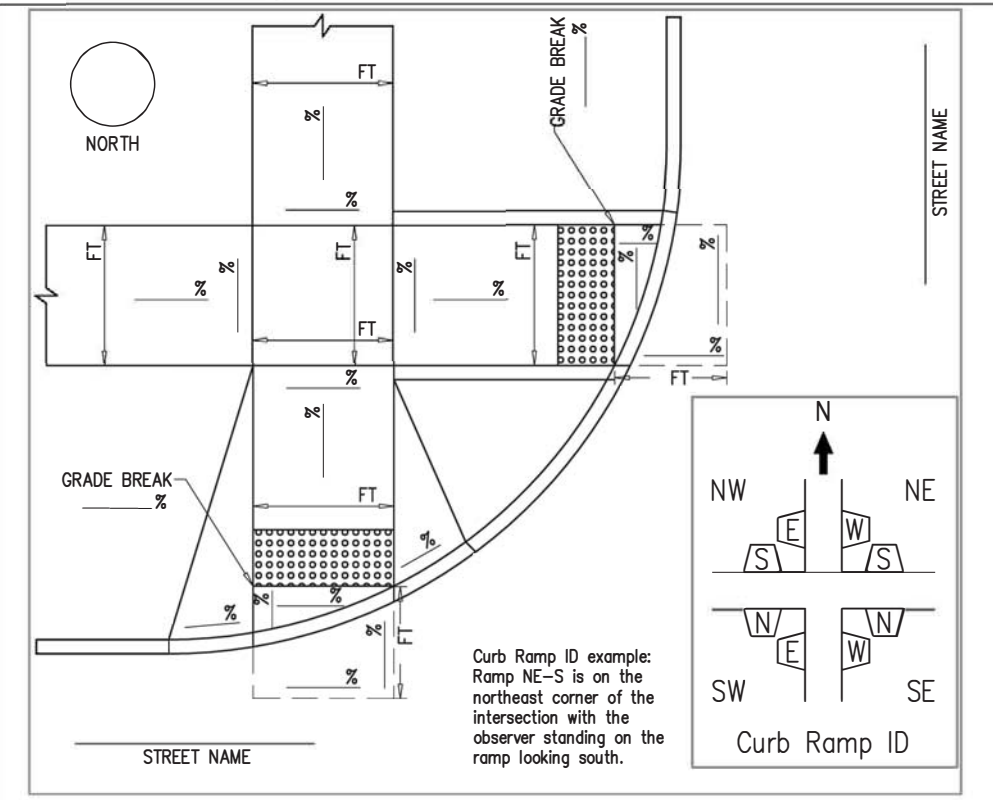
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ADA Curb Ramp Documentation
Type: Perpendicular (Directional)

Pre-Pour Inspection



INSPECTOR SIGNATURE: _____

PRINT NAME: _____

CONTRACTOR: _____

CONTRACTOR SIGNATURE: _____

LEVEL CALIBRATION

NMDOT INSPECTOR INITIAL _____ DATE _____

CONTRACTOR INITIAL _____ DATE _____

NMDOT PROJECT #: _____

NMDOT DISTRICT #: _____

CURB RAMP MP #: _____

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CORNER: _____

CITY/STATE: _____

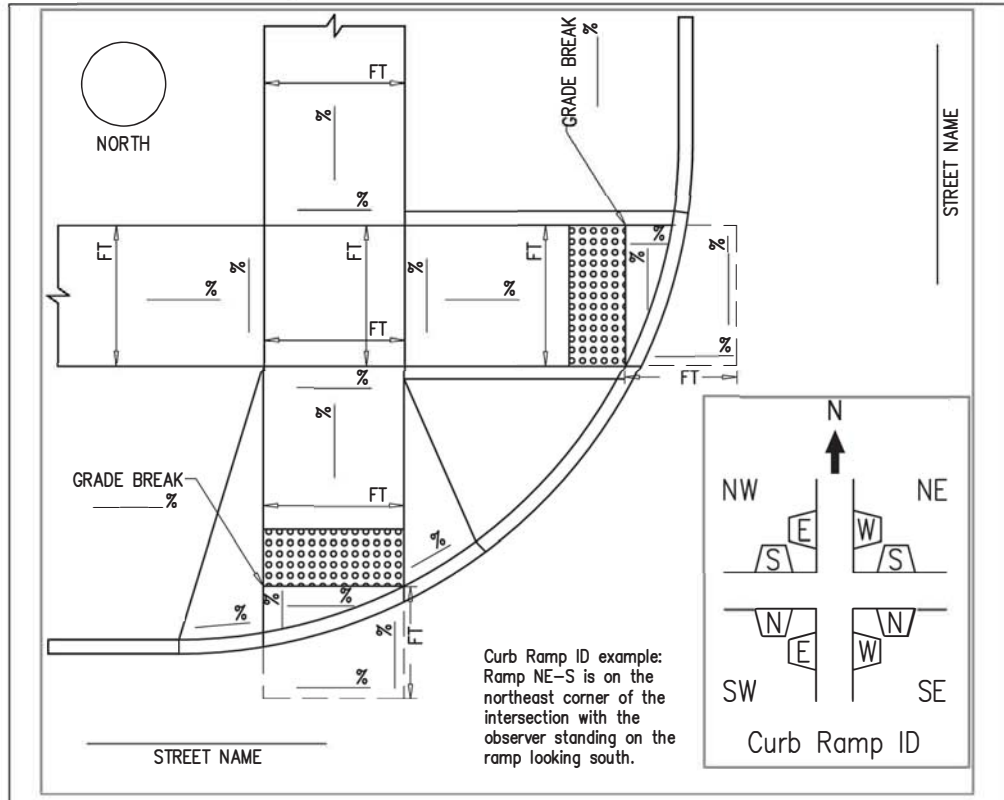
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FINAL ACCEPTANCE OF CURB RAMP DOES NOT OCCUR UNTIL THE FINAL INSPECTION OF THE PROJECT



ADA Curb Ramp Documentation
Type: Perpendicular (Directional)

Constructed Inspection



INSPECTOR SIGNATURE: _____

PRINT NAME: _____

CONTRACTOR: _____

CONTRACTOR SIGNATURE: _____

LEVEL CALIBRATION

NMDOT INSPECTOR INITIAL _____ DATE _____

CONTRACTOR INITIAL _____ DATE _____

NMDOT PROJECT #: _____

NMDOT DISTRICT #: _____

CURB RAMP MP #: _____

STA: _____ OFFSET: _____

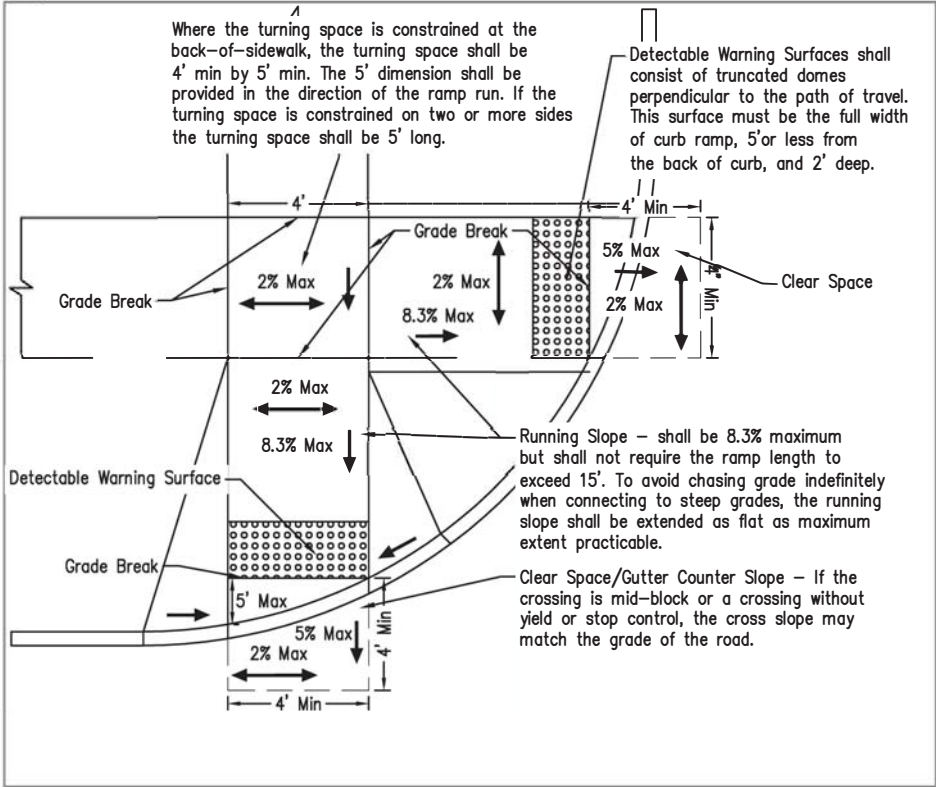
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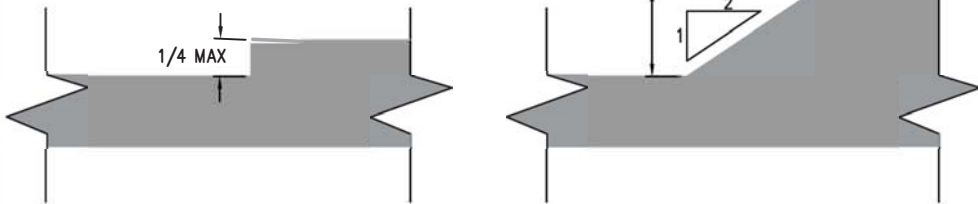
FINAL ACCEPTANCE OF CURB RAMP DOES NOT OCCUR UNTIL THE FINAL INSPECTION OF THE PROJECT

ADA Curb Ramp Documentation
Type: Perpendicular (Directional)



Vertical Surface Discontinuities

SCALE : N.T.S.



Vertical surface discontinuities shall be 0.5" maximum. Vertical discontinuities between 0.25" and 0.5" shall be beveled with a slope not steeper than 50%. The bevel shall be applied across the entire vertical surface discontinuity.

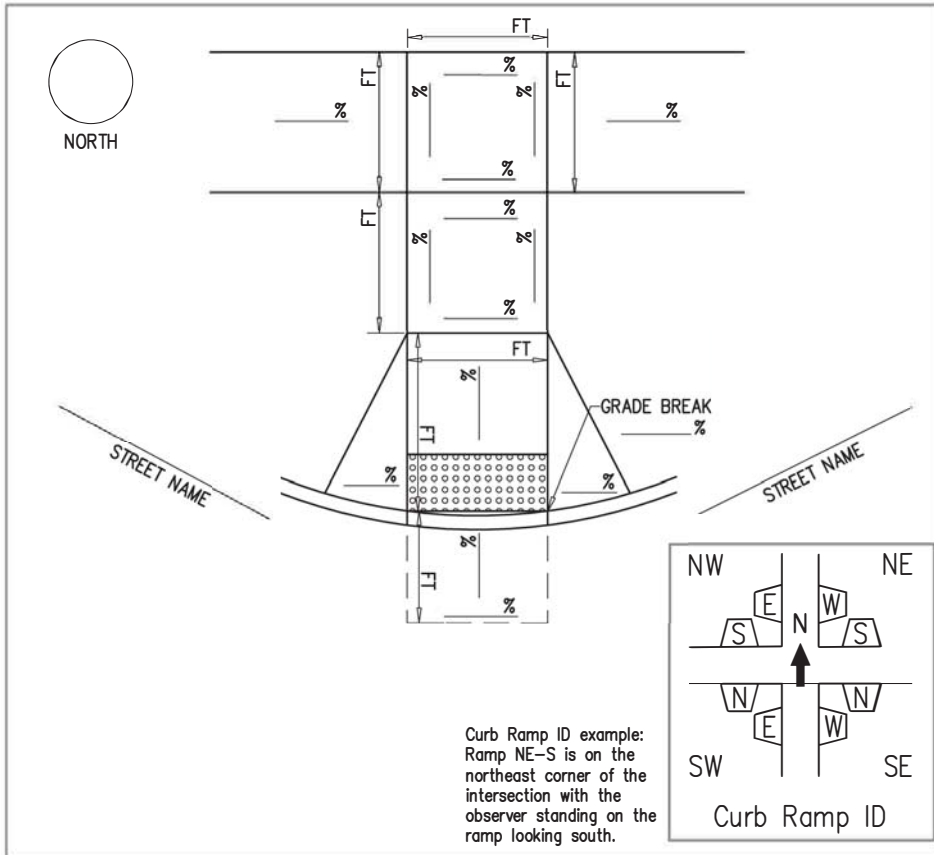
ADA Curb Ramp Documentation
Type: Perpendicular (Directional)

COMMENTS:



ADA Curb Ramp Documentation
Type: Perpendicular (Radial)

Pre-Pour Inspection



INSPECTOR SIGNATURE: _____
 PRINT NAME: _____
 CONTRACTOR: _____
 CONTRACTOR SIGNATURE: _____
 LEVEL CALIBRATION
 NMDOT INSPECTOR INITIAL _____ DATE _____
 CONTRACTOR INITIAL _____ DATE _____

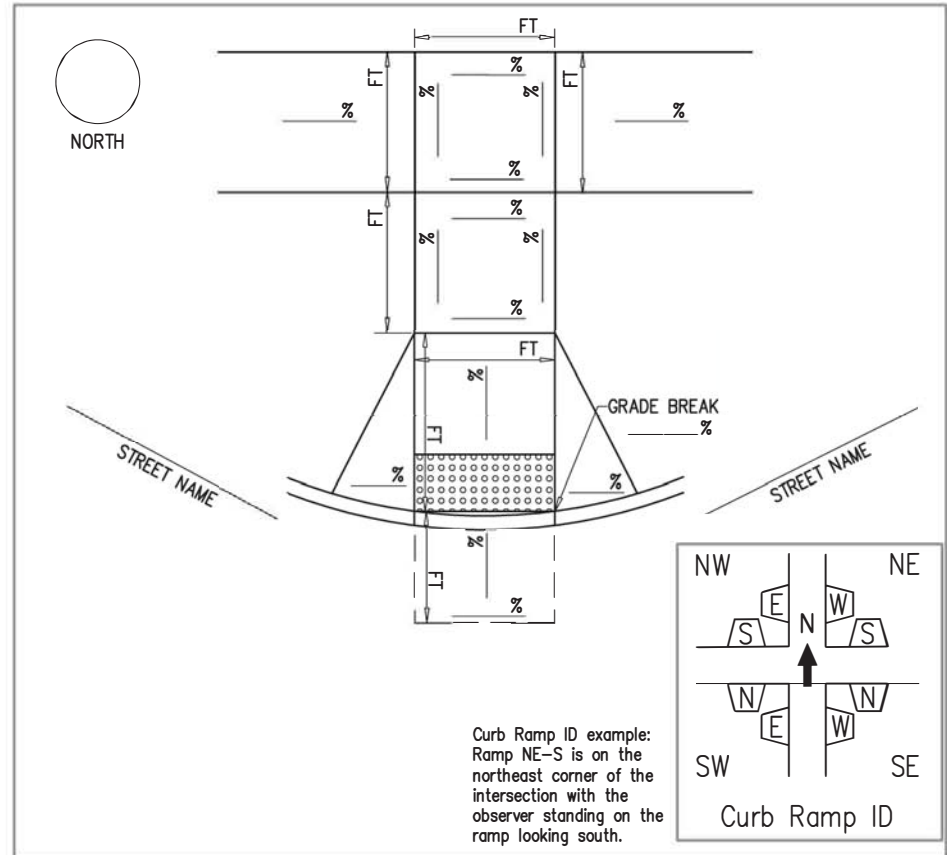
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NMDOT DISTRICT #:
CURB RAMP MP#:
STA: OFFSET:
CORNER:
CITY/STATE:
DATE:

FINAL ACCEPTANCE OF CURB RAMP DOES NOT OCCUR UNTIL THE FINAL INSPECTION OF THE PROJECT



ADA Curb Ramp Documentation
Type: Perpendicular (Radial)

Constructed Inspection

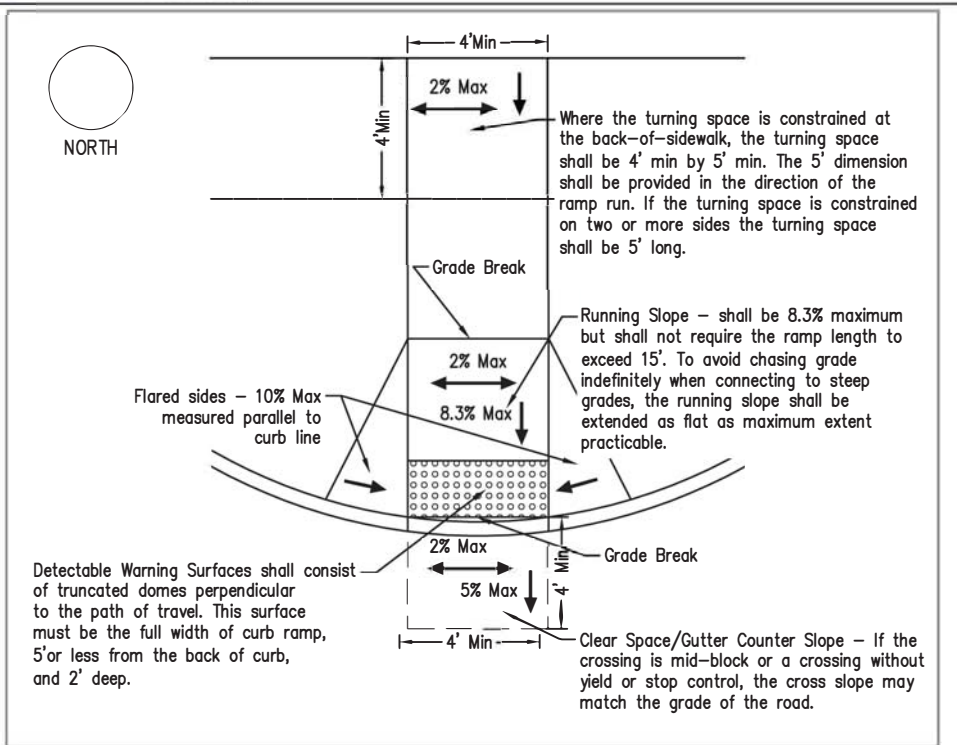


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 CONTRACTOR: _____
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 LEVEL CALIBRATION
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 CONTRACTOR INITIAL _____ DATE _____

NMDOT PROJECT #:
NMDOT DISTRICT #:
CURB RAMP MP#:
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CITY/STATE:
DATE:

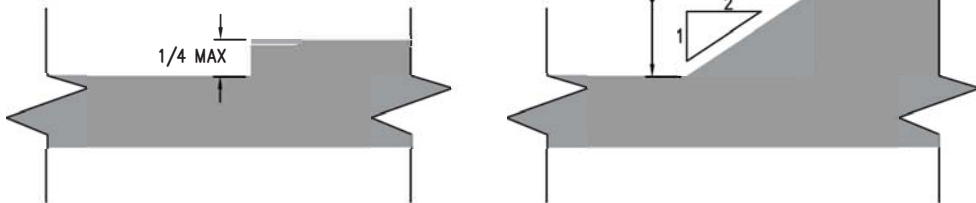
FINAL ACCEPTANCE OF CURB RAMP DOES NOT OCCUR UNTIL THE FINAL INSPECTION OF THE PROJECT

ADA Curb Ramp Documentation
Type: Perpendicular (Radial)



Vertical Surface Discontinuities

SCALE : N.T.S.



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ADA Curb Ramp Documentation
Type: Perpendicular (Radial)

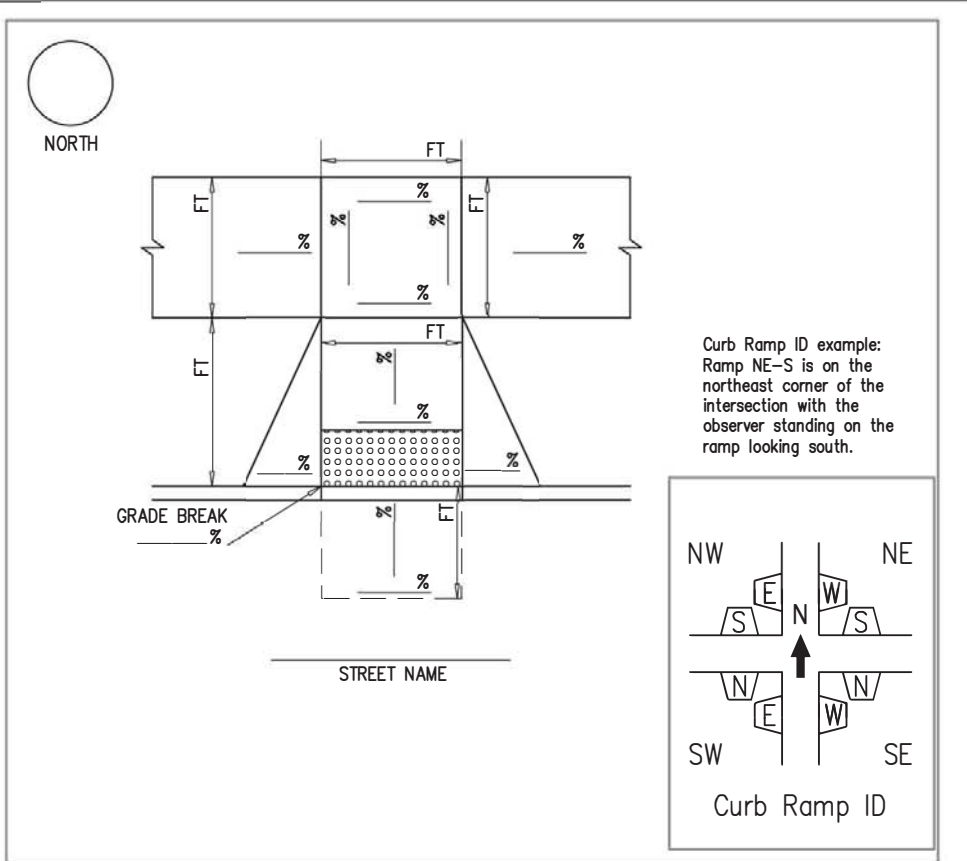
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ADA Curb Ramp Documentation
Type: Perpendicular

Pre-Pour Inspection



INSPECTOR SIGNATURE: _____
 PRINT NAME: _____
 CONTRACTOR: _____
 CONTRACTOR SIGNATURE: _____
 LEVEL CALIBRATION
 NMDOT INSPECTOR INITIAL _____ DATE _____
 CONTRACTOR INITIAL _____ DATE _____

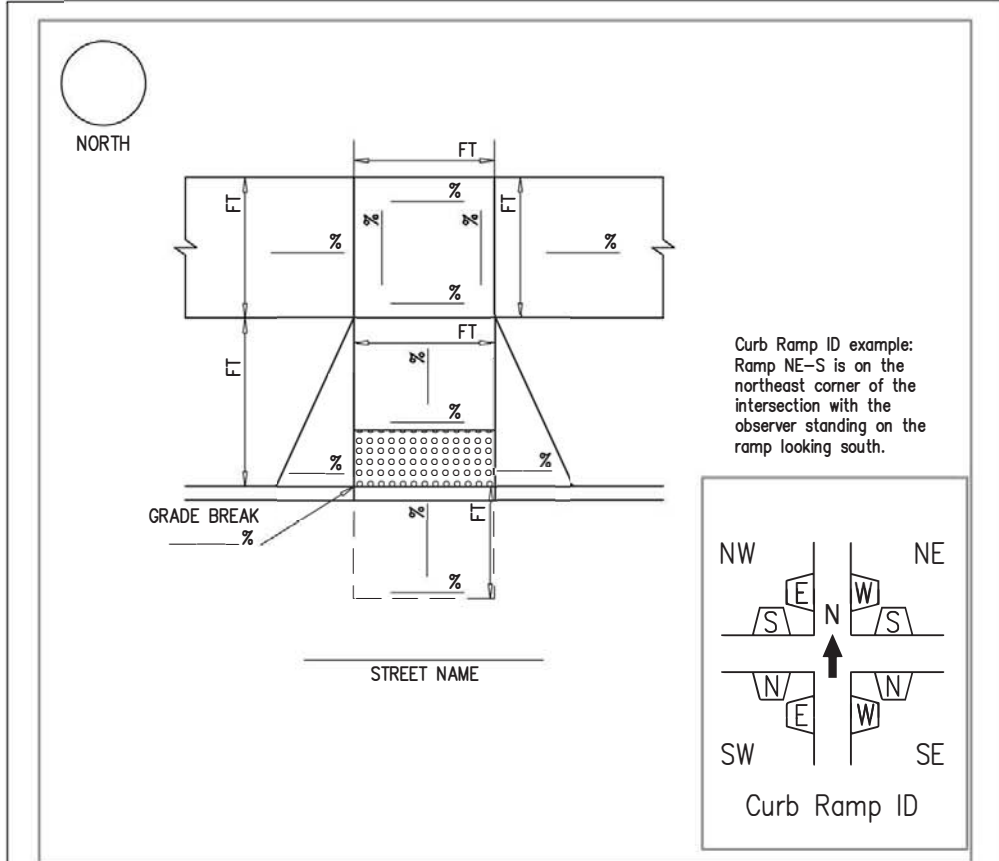
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NMDOT DISTRICT #	
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STA:	OFFSET:
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CITY/STATE:	
DATE:	

FINAL ACCEPTANCE OF CURB RAMP DOES NOT OCCUR UNTIL THE FINAL INSPECTION OF THE PROJECT



ADA Curb Ramp Documentation
Type: Perpendicular

Constructed Inspection

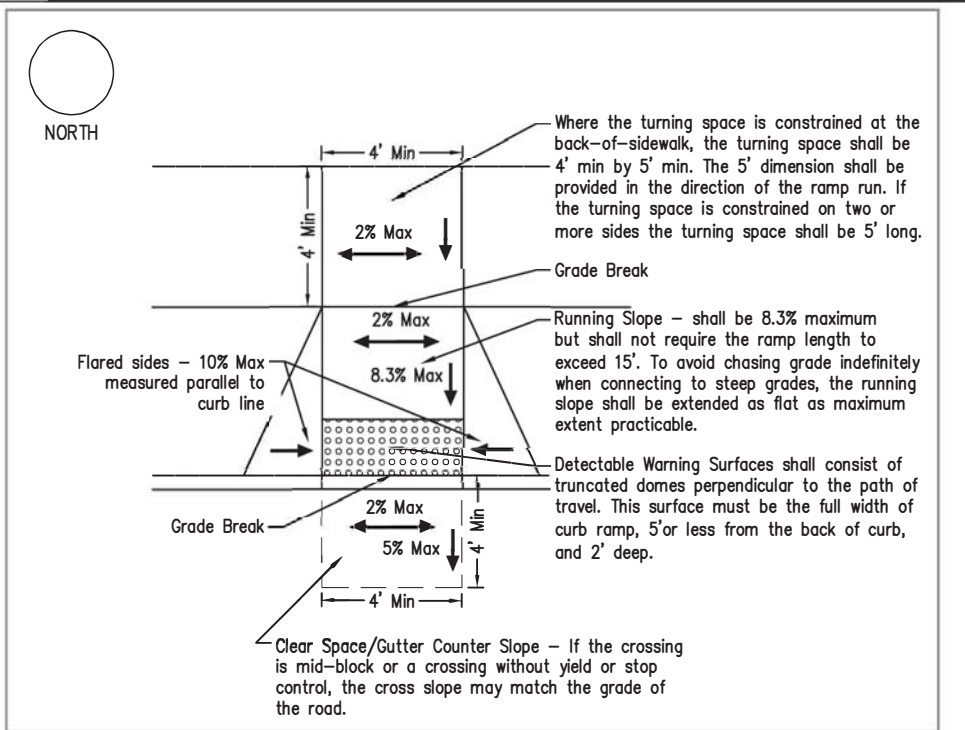


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 PRINT NAME: _____
 CONTRACTOR: _____
 CONTRACTOR SIGNATURE: _____
 LEVEL CALIBRATION
 NMDOT INSPECTOR INITIAL _____ DATE _____
 CONTRACTOR INITIAL _____ DATE _____

NMDOT PROJECT #	
NMDOT DISTRICT #	
CURB RAMP MP#	
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CITY/STATE:	
DATE:	

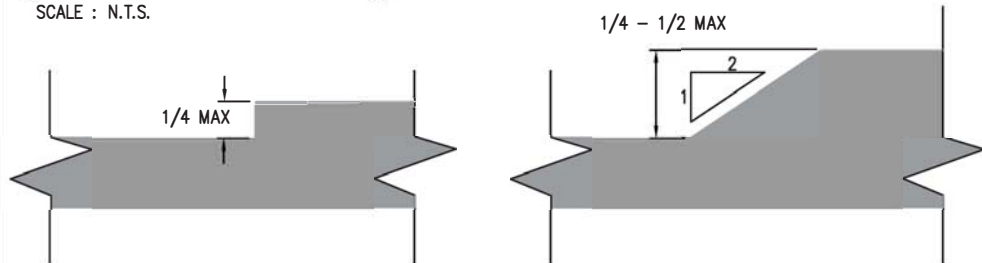
FINAL ACCEPTANCE OF CURB RAMP DOES NOT OCCUR UNTIL THE FINAL INSPECTION OF THE PROJECT

ADA Curb Ramp Documentation
Type: Perpendicular



Vertical Surface Discontinuities

SCALE : N.T.S.



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ADA Curb Ramp Documentation
Type: Perpendicular

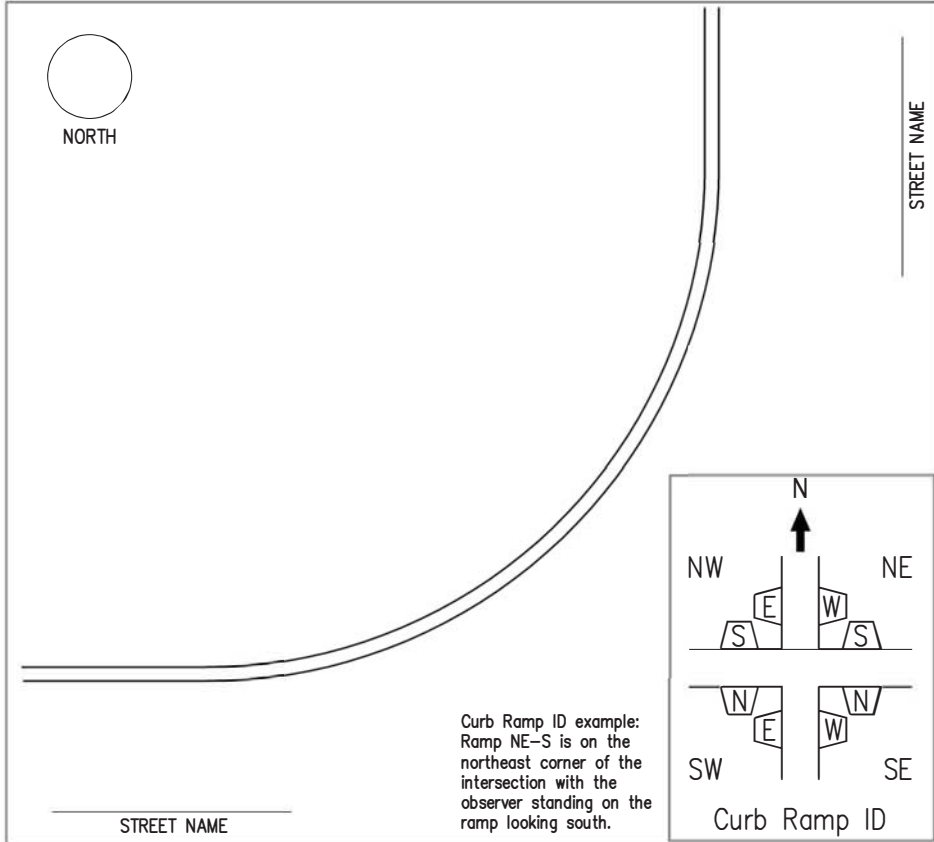
COMMENTS:

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ADA Curb Ramp Documentation
Type: Blank Curb Ramp

Pre-Pour Inspection



INSPECTOR SIGNATURE: _____
 PRINT NAME: _____
 CONTRACTOR: _____
 CONTRACTOR SIGNATURE: _____

LEVEL CALIBRATION
 NMDOT INSPECTOR INITIAL _____ DATE _____
 CONTRACTOR INITIAL _____ DATE _____

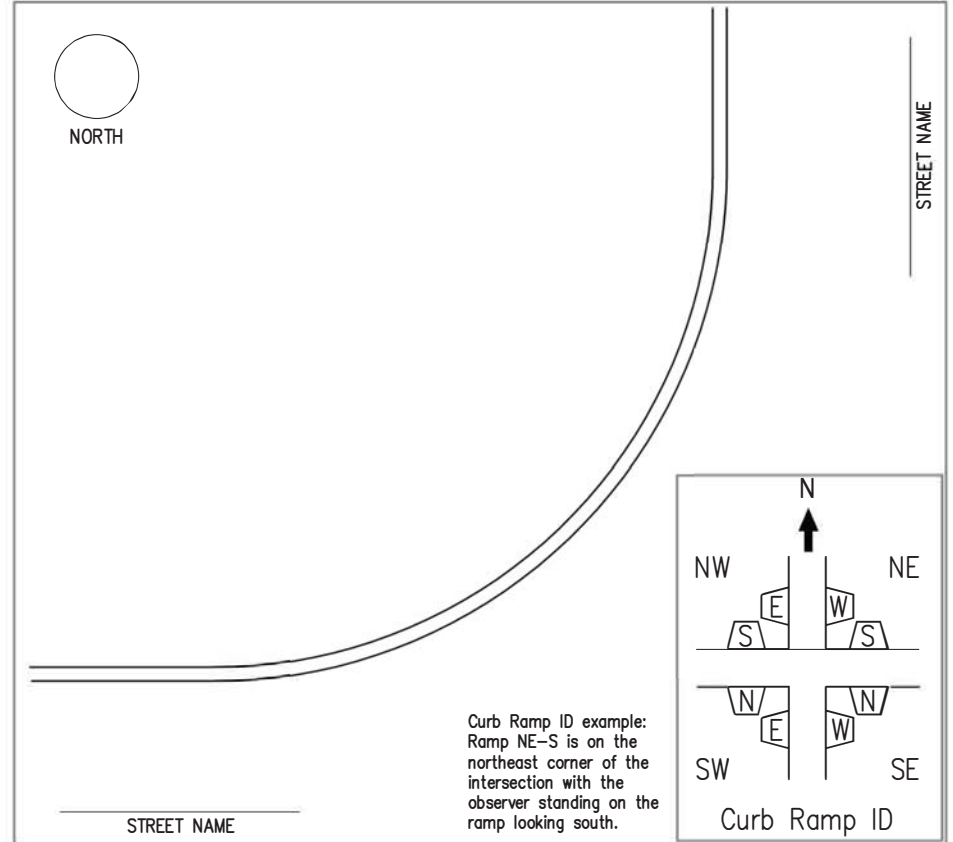
NMDOT PROJECT #:
NMDOT DISTRICT #:
CURB RAMP MP#:
STA: OFFSET:
CORNER:
CITY/STATE:
DATE:

FINAL ACCEPTANCE OF CURB RAMP DOES NOT OCCUR UNTIL THE FINAL INSPECTION OF THE PROJECT



ADA Curb Ramp Documentation
Type: Blank Curb Ramp

Constructed Inspection



INSPECTOR SIGNATURE: _____
 PRINT NAME: _____
 CONTRACTOR: _____
 CONTRACTOR SIGNATURE: _____

LEVEL CALIBRATION
 NMDOT INSPECTOR INITIAL _____ DATE _____
 CONTRACTOR INITIAL _____ DATE _____

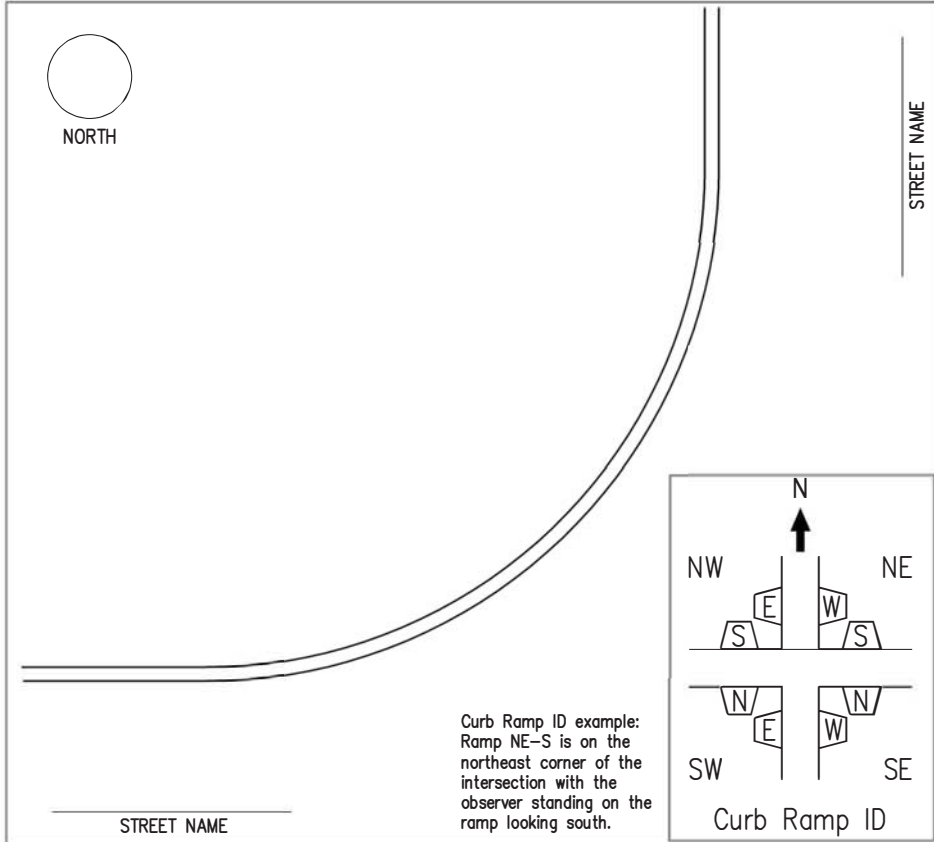
NMDOT PROJECT #:
NMDOT DISTRICT #:
CURB RAMP MP#:
STA: OFFSET:
CORNER:
CITY/STATE:
DATE:

FINAL ACCEPTANCE OF CURB RAMP DOES NOT OCCUR UNTIL THE FINAL INSPECTION OF THE PROJECT



ADA Curb Ramp Documentation
Type: Blank Curb Ramp

Pre-Pour Inspection



INSPECTOR SIGNATURE: _____

PRINT NAME: _____

CONTRACTOR: _____

CONTRACTOR SIGNATURE: _____

LEVEL CALIBRATION

NMDOT INSPECTOR INITIAL _____ DATE _____

CONTRACTOR INITIAL _____ DATE _____

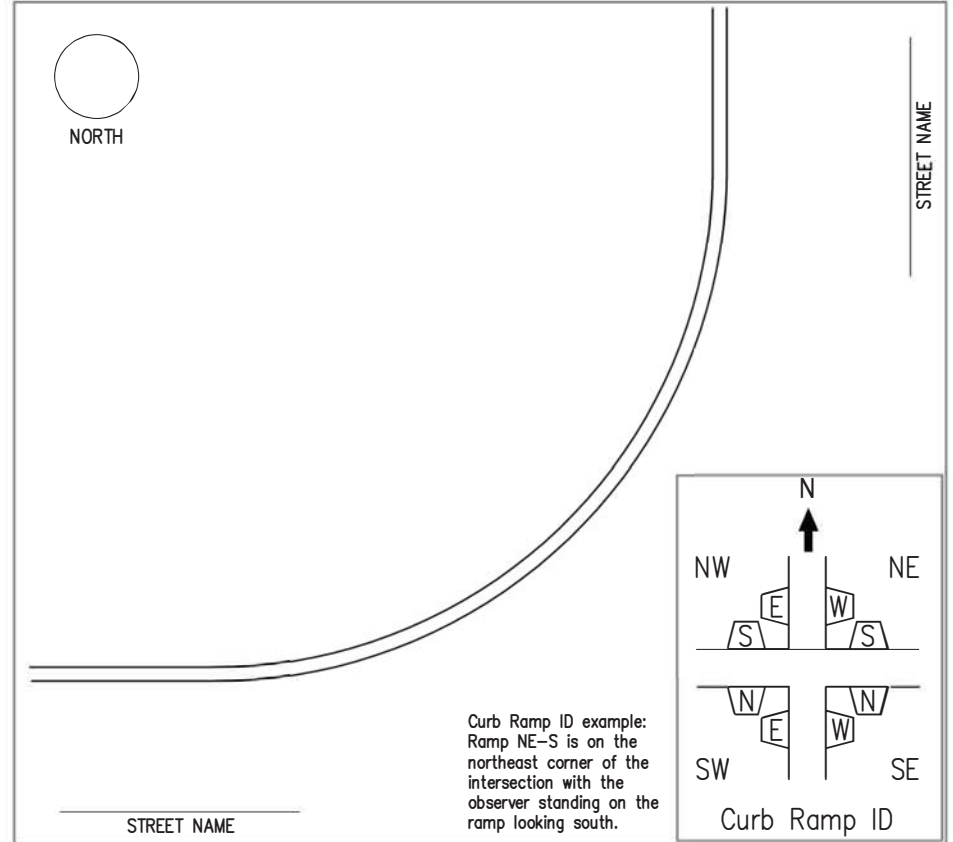
NMDOT PROJECT #:	
NMDOT DISTRICT #:	
CURB RAMP MP#:	
STA:	OFFSET:
CORNER:	
CITY/STATE:	
DATE:	

FINAL ACCEPTANCE OF CURB RAMP DOES NOT OCCUR UNTIL THE FINAL INSPECTION OF THE PROJECT



ADA Curb Ramp Documentation
Type: Blank Curb Ramp

Constructed Inspection



INSPECTOR SIGNATURE: _____

PRINT NAME: _____

CONTRACTOR: _____

CONTRACTOR SIGNATURE: _____

LEVEL CALIBRATION

NMDOT INSPECTOR INITIAL _____ DATE _____

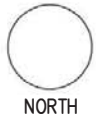
CONTRACTOR INITIAL _____ DATE _____

NMDOT PROJECT #:	
NMDOT DISTRICT #:	
CURB RAMP MP#:	
STA:	OFFSET:
CORNER:	
CITY/STATE:	
DATE:	

FINAL ACCEPTANCE OF CURB RAMP DOES NOT OCCUR UNTIL THE FINAL INSPECTION OF THE PROJECT

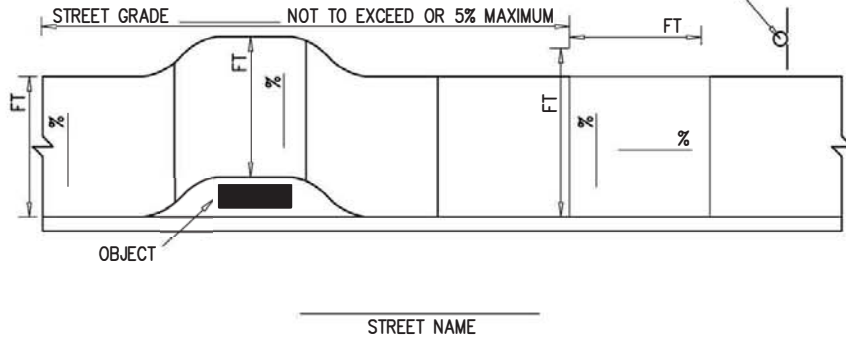


ADA Pedestrian Access Route (PAR) Documentation
Type: Typical PAR



NOTE: MEASURE RUNNING AND CROSS SLOPE EVERY 10'

Post/pylon Mounted Objects
Type of Sign _____
Height to Base _____
Protrusion in Walk _____
Base Dimensions _____



INSPECTOR SIGNATURE: _____
PRINT NAME: _____
CONTRACTOR: _____
CONTRACTOR SIGNATURE: _____
LEVEL CALIBRATION
NMDOT INSPECTOR INITIAL _____ DATE _____
CONTRACTOR INITIAL _____ DATE _____

NMDOT PROJECT #:
NMDOT DISTRICT #:
CURB RAMP MP#:
STA: OFFSET:
CORNER:
CITY/STATE:
DATE:

FINAL ACCEPTANCE OF CURB RAMP DOES NOT OCCUR UNTIL THE FINAL INSPECTION OF THE PROJECT



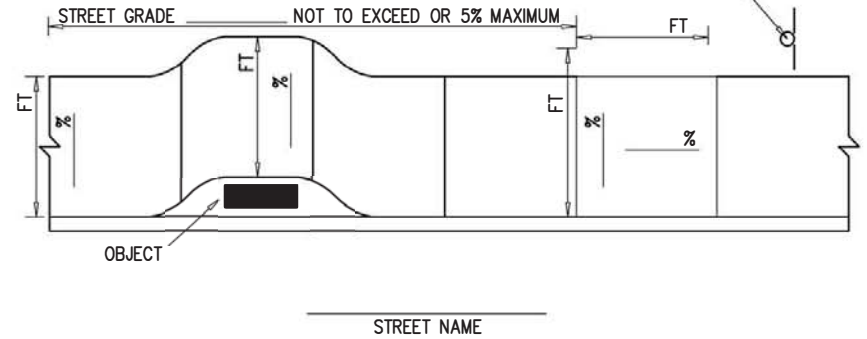
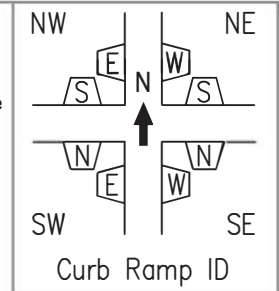
ADA Pedestrian Access Route (PAR) Documentation
Type: Typical PAR Constructed Inspection



NOTE: MEASURE RUNNING AND CROSS SLOPE EVERY 10'

Post/pylon Mounted Objects
Type of Sign _____
Height to Base _____
Protrusion in Walk _____
Base Dimensions _____

Curb Ramp ID example:
Ramp NE-S is on the northeast corner of the intersection with the observer standing on the ramp looking south.



INSPECTOR SIGNATURE: _____
PRINT NAME: _____
CONTRACTOR: _____
CONTRACTOR SIGNATURE: _____
LEVEL CALIBRATION
NMDOT INSPECTOR INITIAL _____ DATE _____
CONTRACTOR INITIAL _____ DATE _____

NMDOT PROJECT #:
NMDOT DISTRICT #:
CURB RAMP MP#:
STA: OFFSET:
CORNER:
CITY/STATE:
DATE:

FINAL ACCEPTANCE OF CURB RAMP DOES NOT OCCUR UNTIL THE FINAL INSPECTION OF THE PROJECT

Chief Engineer
January 1, 2019

NOTICE TO CONTRACTORS

Additional Named Insured

PCN LP20025

In accordance with the 2019 Edition of the New Mexico Department of Transportation Standard Specifications Section 107.25.4, "Department as Additional Insured" the successful Bidder shall name the as an additional named insured on the comprehensive general liability form or commercial general liability form and return the same with the return of the Contract documents listed and in the timeframe required in the notice of preliminary Award of Contract letter.

Pursuant to Section 103.8, "Execution of Contract", failure by the successful Bidder to comply with this Notice to Contractors may constitute just cause for cancellation of the Award and the forfeiture of the Bid Guaranty

Notice to Contractors

Cooperation with Utilities

PCN LP20025

For construction purposes this Notice to Contractors ("NTC") does not supersede or alter the obligations in the 2019 Edition of the New Mexico Department of Transportation ("NMDOT") Standard Specifications for Highway and Bridge Construction, ("Standard Specifications") Section 105.6, "Cooperation with Utilities". This Project's Work affects utilities. The NMDOT may or may not own the utilities that are within the Project limits. Therefore, the Contractor shall coordinate with both the NMDOT and the respective utility identified in this NTC. Failure by the Contractor to comply with this NTC and the Contract may result in delays to the Project and may result in Non-Conformances. This coordination and associated Work shall be considered incidental to the completion of the Project and no separate measurement or payment will be made.

The Contractor shall preserve line location markings or provide an offset mark before obliterating a locate mark. Restrictions exist regarding the use of emergency line locates. An emergency is defined as an excavation that must be performed due to circumstances beyond the control of the Contractor and that affects public health, safety or welfare. Emergency locate request shall not be used to circumvent poor job planning or economic consequences.

NMDOT Owned Facility Infrastructure

If a Contractor's or Subcontractor's activities at any tier, destroys, obliterates, covers or in any way alters utility markings put in place by the NMDOT, the Contractor shall ensure that those line markings are reestablished or provide offset markings before the Contractor or its Subcontractor at any tier begins Work in the affected area. The Contractor shall both photo document the utility markings in their construction area prior to disturbing those markings and photo document the remarked utility alignment or the offset markings to ensure accuracy to the original markings. Photos will clearly identify distances and/or recognizable features needed to ensure re-markings or offset markings are accurate.

If the Contractor or Subcontractor at any tier fails to accurately reestablish previously placed line markings and damage occurs to any NMDOT owned facility infrastructure the Contractor shall be responsible for all associated repair costs and no additional Contract Time will be granted for repairs. If any NMDOT owned facility is damaged, the Contractor shall bear the cost of repair to the satisfaction of the NMDOT. NMDOT incurred costs related to damage to NMDOT owned facility infrastructure may be recovered from the Contractor by Progress Payment offset or the Contractor's Project performance bond. All damaged infrastructure will be repaired as an emergency repair (within 24-hours), and shall be performed in accordance with the Standard Specifications.

Non-NMDOT Owned Utility Infrastructure

Utilities shown on the Plans, which will not be relocated, shall require the Contractor to take the necessary precautions to protect the utility from damage caused by the Work. If any such utility is damaged, the Contractor shall bear the cost of repair to the satisfaction of the utility owner. The Contractor shall be responsible for all associated repair costs and no additional Contract Time will be granted for repairs.

Utility Relocation

Utilities detailed below, shall require the Contractor to take the necessary precautions to protect the utility from damage caused by the Work. If any such utility is damaged, the Contractor shall bear the cost of repair to the satisfaction of the utility owner. The Contractor shall be responsible for all associated repair costs and no additional Contract Time will be granted for repairs.

All timeframes listed below are reflected in Days. Per Standard Specification Section 108.3 "Schedule" the Contractor shall include the timeframes listed below as an activity in the CPM Baseline Schedule or Bar Graph Baseline Schedule, as called for in the Contract, and all schedule updates so that the NMDOT can readily identify the Work and measure the progress of the same.

Curry County:

No Conflicts

Gas Company:

No Conflicts

Electric Company:

No Conflicts

Telephone Company:

No Conflicts

NOTICE TO CONTRACTORS

Monthly Asphalt Binder Price Adjustment Procedures

PCN LP20025

Adjustments will be made to the Bid Item Unit Price for asphalt binder if the asphalt binder price placed on the Project increases or decreases based on the New Mexico Asphalt Rack-Price Index ("price index") per ton of asphalt binder. Historical price index data and the basis for the method of calculation for the price index is available at the hyperlink below:

http://dot.state.nm.us/content/dam/nmdot/Plans_Specs_Estimates/NMDOT_Aspphalt_Index.pdf

The increase or decrease is based on the price index corresponding to the month the asphalt binder was actually placed on this Project.

Bid Items subject to adjustment are: 301-A – Full Depth Reclamation (FDR) Foamed Asphalt Stabilized Base, 301-B – Cold Central Plant Recycling (CCPR) Foamed Asphalt Stabilized Base, 403 - Open Graded Friction Course Complete, Warm Mix Open-Graded Friction Course Complete and Rubberized Open- Graded Friction Course Complete, 423 Hot Mix Asphalt (HMA) (Major Paving) and 424 Warm Mix Asphalt (WMA) (Major Paving).

The Contractor shall submit applicable mix designs, including percentage of asphalt binder, for inclusion in the price adjustment for the Pay Items listed above in the Contract.

Monthly Adjustment:

The Progress Payment shall reflect the monetary monthly adjustment to the Contract for asphalt binder as determined by equation (1) or (2), as appropriate.

The variables applicable to the equations below are:

- A – Monetary monthly adjustment to the Contract for asphalt binder.
- B – Price per ton of asphalt binder corresponding to the month the binder was actually placed on the Project based on the price index.
- C – Price per ton of asphalt binder at time of Bid Opening based on price index.
- D – Tons of asphalt binder placed on the Project corresponding to the subject month.

Monthly Asphalt Binder Price Adjustment Procedures

PCN LP20025

Page 2

For increasing prices (The monthly adjustment shall apply on those Contracts whose monthly fluctuations have a (B / C) ratio greater than 1.1). Use Equation (1).

Equation (1): $A = (B - (1.1 * C)) * D$

For decreasing prices (The monthly adjustment shall apply on those Contracts whose monthly fluctuations have a (B / C) ratio less than 0.9). Use Equation (2).

Chief Engineer
January 1, 2019

NOTICE TO CONTRACTORS

Ramp-Up Time

PCN LP20025

Ramp-up time for this Project is 10 Working Days.

Contract Work shall begin no later than the latest start date in the Notice to Proceed plus the ramp-up time.

At the end of ramp-up time, Contract Time shall automatically commence.

If the Contractor elects to commence Work before the end of the ramp-up time, the Contractor shall provide the Project Manager 48 hour written notice of the date elected to commence Project Work.

The Contractor shall not impact traffic within the Project's limits during ramp-up time.

No Progress Payments shall be made to the Contractor during ramp-up time unless for stockpile Bid Items designated in the Notice to Contractors for Stockpile.

Chief Engineer

NOTICE TO CONTRACTORS

Contract Time

PCN LP20025

Contract time for this Project is 60 Working Days.

Contract Work shall begin no later than the end of Ramp-Up Time. The project must be substantially complete within the time frame stated above.

Chief Engineer
January 1, 2019

NOTICE TO CONTRACTORS

Schedule Format

PCN LP20025

In lieu of a critical path method Baseline Schedule format the schedule format for this Project shall be a bar graph Baseline Schedule.

The Baseline Schedule shall conform to the 2019 Edition of the New Mexico Department of Transportation Standard Specifications for Highway and Bridge Construction, Section 108.3.2.2 – “Bar Graph Baseline Schedule”.

NOTICE TO CONTRACTORS

Approved Products List

Products used on New Mexico Department of Transportation (“NMDOT”) Projects must be approved by the NMDOT’s product evaluation program and listed on the NMDOT’s approved products list (“APL”).

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

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

As used in this Notice to Contractors, “product” means any manufactured item, Material, traffic operational device or other feature used in the maintenance or construction of a NMDOT Project.

Approval to use a non-APL product may be granted by the Project Manager on a Project specific basis with written concurrence from the Product Evaluation Engineer. Project specific approvals are for said Project and does not constitute placement of said product on the NMDOT APL. When requesting to use a non-APL product on a Project, the Contractor shall submit a written request to include a reasonable justification as to why the manufacturer could not acquire product approval through the conventional NMDOT product evaluation process. For products currently not on the APL and prior to a project specific approval being granted, the Project Manager shall ensure that the Contractor and/or manufacturer has submitted an application to be evaluated consistent with the processes described in the above hyperlink.

If a non-APL product is used by the Contractor without written approval of the Project Manager, the Contractor shall remove any non-APL product. Removal and replacement will be made at the sole expense of the Contractor if a non-APL Product is used. Any disruption to the Project schedule related to the Contractor’s use of a non-APL Product is solely the Contractor’s responsibility and no additional Contract Time will be granted.

NOTICE TO CONTRACTORS

Buy America

The following clarifies the 2019 Edition of the New Mexico Department of Transportation's (NMDOT) Standard Specifications for Highway and Bridge Construction Section 106.12 - "Buy America Requirements" which requires the Contractor to provide Materials that comply with the Buy America requirements in 23 CFR § 635.410.

Previous interpretations of the Buy America requirements allowed exclusions for certain steel and iron manufactured products that contained less than 90% steel or iron components. Previous interpretations also allowed exclusions for miscellaneous steel and iron components, subcomponents and hardware. These exclusions no longer apply.

Since these exclusions no longer apply, the Contractor shall provide certification proving that all steel or iron Materials were manufactured in the United States before performing Work that uses steel or iron Materials. Additionally, the Contractor shall provide certification that all coatings on the steel or iron Materials were applied in the United States. If these certifications are not provided, the NMDOT may take any remedies available under the Contract.

Other exclusions to the Buy America requirements remain in effect, including but not limited to, minimal use of foreign steel and iron Materials. The exclusion allows the Contractor to use foreign steel or iron Material that does not exceed one-tenth of one percent (0.1%) of the Total Bid Amount or that does not exceed \$2,500.00 whichever is greater. To comply with the minimal use exclusion, the Contractor shall provide to the NMDOT Project Manager invoices showing the cost of the foreign steel or iron Material that cannot be certified as delivered to the Project.

NOTICE TO CONTRACTORS

Electronic Data Files

The New Mexico Department of Transportation (“NMDOT”) will only provide electronic data files in the format and software version in which the files were produced and subject to the conditions set out in this Notice to Contractors (“NTC”).

Providing electronic data files under this NTC does not alter the Bidder’s obligations found in the NMDOT’s 2019 Edition of the Standard Specifications for Highway and Bridge Construction (“Standard Specifications”), Section 102.7 - “Examination of Contract, Site of Work and Requests for Contract Interpretation”.

The NMDOT will make available the following electronic data files for this Project:

A) Survey Data, in accordance with the Standard Specifications Section 801.1.2 - “Department-Supplied Documents and Services”:

1. Existing Computer Aided Design Drafting (“CADD”) survey files; and,
2. Existing Digital Terrain Model (“DTM”) files.

B) Design Files, subject to the terms and conditions below:

1. Centerline Alignment Files (“CAF”), including horizontal and vertical alignment files for all alignments referenced in the plans.

The electronic data provided in sub-section “B” is for information purposes only. The data is furnished in an “as is” condition without any warranty as to fitness for a particular use beyond information purposes. The Contractor accepts all risks associated with the use of the data provided in sub-section “B” as modifications may have been made to the official hard copy Contract which do not appear in the electronic data files. The Contractor is solely responsible for confirming, conforming and correlating the accuracy and completeness of the electronic data files to the official Contract.

This NTC does not alter the definition of the Contract nor modify the order of importance of the documents as specified in the Standard Specifications, Section 105.4 - “Coordination of Contract Documents”.

The electronic data referenced in sub-sections “A” and “B” will be available to the requestor on discs and will be available at the Plans Specifications & Estimate Bureau, located at 1120 Cerrillos Road, Santa Fe, NM 87504, Room 223.

NOTICE TO CONTRACTORS

Environmental and Archaeological Approvals for Pit Areas

In addition to the requirements contained in the 2019 Edition of the New Mexico Department of Transportation (“NMDOT”) Standard Specifications for Highway and Bridge Construction Section 107.14.1 “Environmental and Cultural Resource Studies and Approvals” the Contractor shall coordinate pit activity with the NMDOT in order to facilitate government-to-government tribal consultation, excluding commercial pits with affected tribes. The listing of affected tribes can be obtained from the following link:

<http://nmhistoricpreservation.org/outreach/native-american-consultations.html>

The Contractor shall initiate tribal consultation in writing through the NMDOT Project Manager (“PM”). The Contractor shall include, in the request to initiate tribal consultation, its scope of Work and clearly delineate plan view location of the Contractor located activity on a United State Geological Service 7.5’ map. This process takes approximately 45 Days from the PM’s receipt of the Contractor’s written request to initiate tribal consultation. If concerns are expressed by the affected tribes this process will exceed 45 Days.

NOTICE TO CONTRACTORS

Federal Requirements

- I. TITLE VI
- II. DISADVANTAGED BUSINESS ENTERPRISE (DBE)
- III. SUBCONTRACTOR PROMPT PAYMENT PROVISIONS
- IV. REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS AND SUPPLEMENTS
- V. SUPPLEMENTAL EEO REQUIREMENTS
- VI. INDIAN PREFERENCE
- VII. NMDOT ON THE JOB TRAINING/SUPPORTIVE SERVICES ("OJT/SS") PROGRAM
- VIII. WAGE RATES
- IX. LABOR REPORTING AND SUBMISSION OF WEEKLY PAYROLLS
- X. TITLE VI ASSURANCES APPENDIX A AND APPENDIX E

References made to the New Mexico Department of Transportation ("NMDOT") web page can be accessed through the following link: <http://dot.state.nm.us/content/nmdot/en.html>.

I. TITLE VI

The text United States Department of Transportation (USDOT) Order No. 1050.2A has been excerpted for this section with minimal modification by the NMDOT.

The Contractor (herein referred to as the "Recipient"), HEREBY AGREES THAT, as a condition to receiving any Federal financial assistance from the U.S. Department of Transportation (DOT), through the NMDOT, is subject to and will comply with the following:

Statutory/Regulatory Authorities

Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); 49 C.F.R. Part 21 (entitled Nondiscrimination In Federally-Assisted Programs Of The Department Of Transportation—Effectuation Of Title VI Of The Civil Rights Act Of 1964); 28 C.F.R. section 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964);

The preceding statutory and regulatory cites hereinafter are referred to as the "Acts" and "Regulations," respectively.

General Assurances

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policy, memoranda, and/or guidance, the Recipient hereby gives assurance that it will promptly take any measures necessary to ensure that:

"No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity," for which the Recipient receives Federal financial assistance from DOT, including NMDOT.

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI and other Nondiscrimination requirements (The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973), by restoring the broad, institutional-wide scope and coverage of these nondiscrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is Federally assisted.

“The NMDOT, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively insure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award”.

The NMDOT's Title VI Assurances, Appendices A and E are included in Section X at the end of this Notice to Contractors (“NTC”).

For further information, contact the Title VI coordinator for the NMDOT through the following link: <http://dot.state.nm.us/content/nmdot/en/OEOP.html>.

II. DISADVANTAGED BUSINESS ENTERPRISE (“DBE”)

Per 49 C.F.R. § 26.13(b) (2014), the Contract NMDOT signs with the Contractor (and each Subcontract the Contractor signs with a Subcontractor) must include the following assurance:

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

- (1) withholding of monthly progress payments;
- (2) assessing sanctions;
- (3) liquidated damages; and/or
- (4) disqualifying the contractor from future bidding as non-responsible.”

For the purposes of the assurance, DOT-assisted Contracts means Contracts that receive federal funding and recipient means the NMDOT.

Terms and Definitions

Terms and Definitions contained in 49 C.F.R. § 26.5 are incorporated in this NTC by reference. Terms and definitions in the same control over terms that conflict with the terms and definitions in the 2019 Edition of the NMDOT Standard Specifications for Highway and Bridge Construction (“Standard Specifications”) Section – 101.4 “Terms and Definitions”.

Pre-Award Procedures

Projects that have DBE goals established in the Advertisement are subject to race-conscious measures. When a DBE goal is established the following DBE form and NTC, or evidence of the Bidder's good faith efforts, are required in order for the Bid to be considered responsive:

1. Disadvantaged Business Enterprise Goal Form A-585 (“A-585”); and

2. NTC Disadvantaged Business Enterprise (DBE) Bidder's Commitment and DBE's Confirmation Form A-644 ("A-644").

In the event the Bidder is also a certified DBE Contractor, and intends to self-perform a portion of the Work, the Bidder shall list itself and any other DBE it will use on Form A-585. Failure to comply with this requirement shall render the Bid non-responsive.

Pre-Award Bidder's Good Faith Efforts

When a Project has an established DBE goal, a Bidder may meet the requirements even if it doesn't meet the goal through documenting adequate good faith efforts. This means that the Bidder must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful. The documentation of good faith efforts shall include, but is not limited to, copies of each DBE and non-DBE quote submitted to the Bidder when a non-DBE was selected over a DBE for Work on the Contract.

Per 49 C.F.R. § 26.53 (b)(3) (2014) and 49 C.F.R. § 26 Appendix A the NMDOT has the responsibility to make a fair and reasonable judgment as to whether a Bidder, that did not meet the goal, made adequate good faith efforts.

The below contains a list of types of actions, which the NMDOT may consider as part of the Bidder's good faith efforts to obtain DBE participation. This is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive, as other factors or types of efforts may be relevant in appropriate cases. The following is a list of the type of actions, and documentation, which the NMDOT will consider as part of the Bidder's good faith efforts to obtain DBE participation:

- 1) The Bidder's copies of each DBE and non-DBE subcontractor quote submitted to the Bidder when a non-DBE subcontractor was selected over a DBE for Work on the Contract to review whether DBE prices were substantially high; and the NMDOT may contact the DBEs listed on a the Bidder's List of Quoters submitted by the Bidder to inquire whether DBE primes were contacted by the Bidder. Pro forma mailings to DBEs requesting bids are not alone sufficient to satisfy good faith efforts under this NTC or rule;
- 2) The Bidder's solicitation of the interest of DBEs as early in the acquisition process as possible and as practicable to allow the DBEs to respond to the solicitation and submit a timely offer for the Subcontract. The Bidder should determine with certainty if the DBEs are interested by taking appropriate steps to follow-up initial solicitations;
- 3) The Bidder's selection of portions of the Work to be performed by the DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out Contract Work items into economically feasible units to facilitate DBE participation even when the Bidder might otherwise prefer to perform these Work items with its own forces;
- 4) The Bidder's negotiations in good faith with interested DBEs. It is the Bidder's responsibility to make a portion of the Work available to DBE subcontractors, sub-consultants and Suppliers and to select those portions of the Work or material needs consistent with the available DBE subcontractors, sub-consultants and Suppliers, so as to facilitate DBE participation. Evidence of such negotiations includes the names, addresses and telephone numbers of DBEs that were considered, a description of the information provided regarding the construction plans and

specifications for the Work selected for subcontracting or requirements of Work, and evidence as to why additional agreements could not be reached for DBEs to perform the Work; and,

- 5) The Bidder's rejection of DBEs as being unqualified. The Bidder shall not reject a DBE as being unqualified without sound reasons based on a thorough investigation of their capabilities. The DBE's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of Bids in the Bidder's efforts to meet the Project goal. Another practice considered insufficient good faith effort is the rejection of the DBE because its quotations for Work were not the lowest received. However, nothing in this paragraph will be considered to require the Bidder to accept unreasonable quotes to satisfy the Contract goal.

If the NMDOT determines that the Bidder has failed to make adequate good faith efforts to meet the DBE goal requirements, the NMDOT shall reject the Bid as non-responsive. The Bidder may dispute this determination and rejection of the Bid through the procedures in Standard Specification Section - 103.3 "Bidding Dispute Resolution Procedures".

Post-Award

Counting DBE Participation Toward Goals

This section in no way alters the obligations in Standard Specification Section - 108.1 "Subcontracting" and is only used to determine DBE participation levels for each Bidder. The Contractor must still comply with Standard Specification Section - 108.1 and perform with its own organization at least 40% of the Work based on the Total Bid Amount.

Only the value of the Work actually performed by the DBE will be counted towards DBE Project goals. DBE participation shall be credited as follows:

1. Count the entire amount of that portion of the Contract Work that is performed by the DBE's own forces. Include the cost of supplies and Materials obtained by the DBE for the Work including supplies purchased or equipment leased by the DBE. Supplies and equipment purchased or leased by a DBE from a prime contractor shall not be counted toward the DBE Project goal.
2. Count the entire amount of fees or commissions charged by a DBE for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required of the performance of the Contract, toward DBE goals, provided NMDOT determines the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.
3. When a DBE subcontracts part of its Work to another firm, the value of the subcontracted Work may be counted toward DBE goals only if the DBE's Subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE does not count toward DBE goals.

When a DBE performs as a participant in a joint venture, count the portion of the total dollar value of the Contract equal to the distinct, clearly defined portion of the Work of the Contract that the DBE performs with own forces toward DBE goals.

The NMDOT counts expenditures to a DBE toward DBE goals only if the DBE is performing a commercially useful function (“CUF”) on the Contract.

1. A DBE performs a CUF when it is responsible for execution of the Work of the Contract and is carrying out its responsibilities by actually performing, managing, and supervising the Work involved. To perform a CUF, the DBE must also be responsible, with respect to Materials and supplies used on the Contract, for negotiating price, determining quality and quantity, ordering the Material and installing (where applicable) and paying for the Material itself.
2. A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, Contract, or Project through which funds are passed in order to obtain the appearance of DBE participation.
3. If a DBE Contractor or Subcontractor, at any tier, does not perform or exercise responsibility for at least 30% of the total cost of its Contract with its own forces, or the DBE subcontracts a greater portion of the Work of a Contract than would be expected on the basis of normal industry practice for the type of Work involved, it will be presumed that the DBE is not performing a CUF.
4. A DBE Supplier must be an established, regular business that engages, as its principle business and under its own name, in the purchase and sale or lease of products or supplies in order to perform a CUF.
5. When a DBE is presumed not to be performing a CUF as provided in paragraph 3 of this section, the DBE may present evidence to rebut this presumption.
6. Decisions concerning CUF matters are not administratively appealable to USDOT.

DBE Trucking

Per the Standard Specification Section 108.1 “Subcontracting”... “A Trucker is not a Subcontractor unless the Contractor is using the Trucker to meet the DBE requirement associated with the Project”. The following factors shall be used to determine whether DBE trucking Subcontractors are performing a CUF:

1. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular Contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.
2. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the Contract.
3. The DBE receives credit for the total value of the transportation services it provides on the Contract using trucks it owns, insures, and operates using drivers it employs.
4. The DBE may lease trucks from another DBE, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Contract.

5. The DBE may also lease trucks from a non-DBE, including from an owner-operator. The DBE that leases trucks equipped with drivers from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE leased trucks equipped with drivers not to exceed the value of transportation services on the Contract provided by DBE-owned trucks or leased trucks with DBE employee drivers. Additional participation by non-DBE owned trucks equipped with drivers receives credit only for the fee or commission it receives as a result of the lease arrangement.
6. The DBE may lease trucks without drivers from a non-DBE truck leasing company. If the DBE leases trucks from a non-DBE truck leasing company and uses its own employees as drivers, it is entitled to credit for the total value of these hauling services.
7. For purposes of this DBE trucking section a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

DBE Supplying Materials

1. If the Materials or supplies are obtained from a DBE manufacturer, count 100 % of the cost of the Materials or supplies toward the DBE goal. A DBE manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises the Materials, supplies, articles, or Equipment required under the Contract.
2. If the Materials or supplies are purchased from a DBE regular dealer, count 60 % of the cost of the Materials or supplies toward DBE goals. A DBE regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the Materials, supplies, articles or Equipment required under the Contract are bought, kept in stock and regularly sold or leased to the public in the usual course of business. The DBE regular dealer, must be an established regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.

A DBE may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as required in paragraph 1 of this section if the DBE both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on ad hoc or contract-by-contract basis.

Packagers, brokers, manufacturers' representatives, or other person who arrange or expedite transactions are not regular dealers for the purpose of paragraph 2 of this section.

3. With respect to Materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees and commissions charged for assistance in the procurement of the Materials and supplies, or fees or transportation charges for the delivery of Materials and supplies required on a job site, toward DBE goals, provided the NMDOT determines

the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. The cost of the Materials or supplies themselves is not creditable toward DBE goals.

Credit for Work performed shall not be counted toward the DBE project goal until the amount committed has been paid to the DBE.

Pre-Award Substitution/Replacement and Post-Award Termination of DBE for Projects Having a DBE Goal

The Contractor shall use the DBE listed on the A-585 and confirmed on the A-644 to perform the specific Work identified. The Contractor shall not substitute, replace or terminate a DBE listed on the A-585 and confirmed on the A-644 (or an approved substitute DBE) without the prior written consent of NMDOT. The NMDOT considers it an improper DBE substitution, replacement or termination when a Contractor performs Work originally designated for a DBE with its own forces or those of an affiliate, or with a non- DBE, or with a substitute DBE. Unless NMDOT consent is provided, the Contractor shall not be entitled to any payment for Work or Materials unless it is performed by the listed DBE.

NMDOT will provide written consent to the termination request only if NMDOT agrees, for reasons stated in its concurrence document, that the Contractor has good cause to terminate the DBE. For purposes of this paragraph, good cause includes the following circumstances:

1. The listed DBE fails or refuses to execute a written Contract;
2. The listed DBE fails or refuses to perform the Work consistent with normal industry standards, provided, however, that good cause does not exist if the failure or refusal to perform results from the bad faith or discriminatory action of the Contractor;
3. The listed DBE fails or refuses to meet the Contractor's reasonable, nondiscriminatory bond requirements;
4. The listed DBE becomes bankrupt, insolvent, or exhibits credit unworthiness;
5. The listed DBE is ineligible to Work on public works projects because of suspension or debarment proceedings pursuant to 26 CFR Parts 180, 215 or 1200 or applicable state law;
6. The listed DBE is not a responsible Contractor;
7. The listed DBE voluntarily withdraws from the Project and provides to NMDOT written notice of its withdrawal;
8. The listed DBE is ineligible to receive DBE goal credit for the type of Work required;
9. A DBE owner dies or becomes disabled with the result that the listed DBE is unable to complete its Work on the Project; or
10. Other documented good cause that NMDOT determines compels the termination of the DBE. Provided that good cause does not exist if the Contractor seeks to terminate a DBE it relied on to

obtain the Contract so that the Contractor can self-perform the Work for which the DBE was engaged or so that the Contractor can substitute another DBE or non-DBE after Contract Award.

Before seeking concurrence from the NMDOT to substitute, replace or terminate a DBE (or an approved substitute DBE) the Contractor must provide the DBE written notice including the reason of its intent to substitute, replace or terminate and give the DBE 5 Days to respond to the Contractor's notice. If required in a particular case as a matter of public necessity the NMDOT may allow a response period shorter than 5 Days. The DBE in response to the notice may provide the Contractor and NMDOT with the reasons, if any, why it objects to the proposed substitution, replacement or termination and why NMDOT should not approve the Contractor's request.

After receipt and review of the DBE response the NMDOT will provide a written response to the Contractor's request. NMDOT's decision is not appealable to USDOT.

After an approved termination of a DBE the Contractor shall make good faith efforts to subcontract with a substitute DBE which can perform the same type of work on the Project as the substituted, replaced or terminated DBE or to subcontract with a replacement DBE which can perform other types of work remaining on the Project. The good faith efforts shall be documented by the Contractor. The NMDOT may request a copy of the documented good faith efforts and the Contractor shall submit the same in 7 Days, which may be extended to an additional 7 Days at the request of the Contractor. The NMDOT will provide a written determination stating whether or not good faith efforts have been demonstrated. The Contractor may refer to Appendix A of 49 C.F.R. § 26 for guidance on good faith efforts.

NMDOT may allow a DBE contract goal waiver, adjust the DBE goal, or assess construction contract liquidated damages or design contract liquidated damages as may be appropriate, depending on the individual project's overall circumstances. NMDOT's decision to waive or adjust the contract goal is not appealable to USDOT.

Record Keeping Requirements

The Contractor shall keep such records as necessary to ensure compliance with its DBE utilization obligations, in accordance with Standard Specification Section - 107.28 "Contractor Records".

Compliance Procedures

The Contractor is solely responsible and obligated to ensure DBE compliance at all tiers until the final payment is made in accordance with Standard Specification Section - 109.10 "Project Closure".

If it is found that the Contractor or Subcontractor at any tier is not in compliance with this NTC and DBE program, NMDOT will notify the non-compliant party in writing. Failure to be compliant is a material breach of the Contract and may result including, but not limited to, the NMDOT exercising the remedies below. The NMDOT may conduct a compliance conference with the non-compliant party or parties to discuss the area(s) of non-compliance. In the event that the non-compliant party or parties fails or refuses to perform in compliance the NMDOT will send the non-compliant party or parties a "Notice of Non-Compliance" containing a deadline for the compliance. If the non-compliant party becomes compliant after the "Notice of Non-Compliance" the NMDOT will rescind the "Notice of Non-Compliance" and notify the party or parties. If

the deficiencies are not corrected, NMDOT will initiate administrative action against the non-compliant party or parties, which may include but not be limited to:

1. Termination of the Contract;
2. Withholding of monthly progress payments;
3. Initiation of appropriate suspension or debarment proceedings;
4. Referral of any unlawful actions to the appropriate enforcement agencies; or
5. Other actions as appropriate, at the discretion of NMDOT.

III. SUBCONTRACTOR PROMPT PAYMENT PROVISIONS

This NTC does not alter the sole discretion of the NMDOT to make good cause determinations concerning Contractor prompt payment matters.

To ensure that all obligations to promptly pay Subcontractors are met Contractors shall pay all Subcontractors, Suppliers and Fabricators their respective Subcontract amount by electronic transfer, if available, for NMDOT undisputed Accepted Work within the timeframes specified in the Standard Specification Section 108.1 - "Subcontracting".

The Contractor is solely responsible and obligated to ensure prompt payment obligations and compliance reporting through all tiers until the final payment is made in accordance with Standard Specification Section 109.10 - "Project Closure". Contractors, Subcontractors or Suppliers, at all tiers, shall be required to submit payment information regardless of DBE status. Contractors, Subcontractors, and DBE Suppliers and/or DBE Fabricators shall be required to submit payment information in the B2GNow supporting software system when payments are made to any Subcontractor, DBE Supplier and/or DBE Fabricator. The Subcontractor, Supplier or Fabricator shall in B2GNow timely select whether payment was or was not received for the undisputed and Accepted Work.

Contractors shall be required to complete and submit Form A-1339, "Contractor's Certification of Prompt Payment to Suppliers and Fabricators," for payments made to 1st tier non-DBE Suppliers and Fabricators with invoices over \$50,000.00. Contractors shall submit Form A-1339 to the Project Manager within thirty- one (31) days of receiving each Progress Payment from NMDOT. The Contractor shall also complete Form A-1339 and submit to the Project Manager for zero dollar (\$0.00) Progress Payments if payment is due and was made by the Contractor for work performed by the Supplier or Fabricator.

The NMDOT may recognize supporting documentation of such payment(s) in one or more of the following forms:

1. Proof of the timely deposit of funds into the Subcontractor, Supplier and or Fabricator bank account;
2. Proof of timely hand delivery of payment to the Subcontractor, Supplier and or Fabricator; or

3. Proof of timely mailing payment to the Subcontractor, Supplier and or Fabricator.

The Contractor shall notify the NMDOT in all situations when it will not make full prompt payment to its Subcontractor, Supplier or Fabricator before the payment becomes due. The Contractor shall also notify the Subcontractor, Supplier or Fabricator in all situations when it will not make full prompt payment before the payment becomes due. A Contractor will be required to fully document any alleged disputes with its Subcontractors, Suppliers and or Fabricators and provide the documentation to the NMDOT upon request.

The Contractor shall have good cause for any failure to fully or partially provide prompt payment for Accepted Work. The NMDOT determines good cause. Good cause recognized by the NMDOT to excuse a failure to promptly pay includes, but is not limited to, a claim concerning the Subcontractor's or Supplier's Work, failure to provide certified payrolls, and other required Project documentation. The amount withheld cannot exceed the amount in dispute between the Contractor and Subcontractor or Supplier. The Contractor has the burden to support the Contractor's assertion of good cause. If the failure to fully or partially provide prompt payment is based on a claim, the Contractor shall submit a verifiable explanation and/or proof of the claim between the parties to the Project Manager.

Retainage

The NMDOT will require Contractors to pay all retainage owed to the Subcontractor, Supplier or Fabricator within 30 Days of the Progress Payment indicating Acceptance of the completed Subcontract Work, even if the NMDOT continues to withhold retainage from the Contractor. The Subcontract Work is completed when all the tasks called for in the Subcontract have been accomplished, documented and Accepted by the NMDOT. The Contractor may request partial acceptance in accordance with Standard Specifications Section - 105.18.1 "Partial Acceptance" upon satisfactory completion of the Subcontract Work. Good cause recognized by the NMDOT to excuse a failure to promptly release retainage includes, but is not limited to, a claim concerning the Subcontractor's or Supplier's Work, failure to provide certified payrolls, and other required Project documentation. The amount withheld cannot exceed the amount in dispute between the Contractor and Subcontractor or Supplier. The Contractor has the burden to support the Contractor's assertion of good cause for the failure to promptly release retainage. If the failure to promptly release retainage is based on a claim, the Contractor shall submit verifiable explanation and/or proof of the claim between the parties to the Project Manager.

Cross-Project Offsets

The NMDOT will not recognize cross-Project offsets as "good cause" excusing untimely payment for Accepted Work. The Contractor's Contract with Subcontractors or Suppliers shall not contain any provision that allows the Contractor to withhold payment from the Subcontractor or Supplier as a result of the Subcontractor's or Supplier's performance on separate Contract(s). Any such provision will be without effect, and shall not be recognized as good cause excusing a failure to make prompt payment.

IV. REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS AND SUPPLEMENTS

FHWA-1273 -- Revised May 1, 2012

REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS

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

I. GENERAL

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

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

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

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

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.
3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract,

suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

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

II. NONDISCRIMINATION

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

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

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

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

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

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:
 - a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

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

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

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.
3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:
 - a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.
 - b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.
 - c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.
 - d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
 - e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.
4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.
 - a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

- b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.
 - c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.
5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:
- a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.
 - b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.
 - c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.
 - d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.
6. Training and Promotion:
- a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.
 - b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

- c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.
 - d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.
7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:
- a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.
 - b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.
 - c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.
 - d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.
8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.
9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment.

The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

- a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.
- b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

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

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

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

- a. The records kept by the contractor shall document the following:
 - (1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;
 - (2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and
 - (3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;
- b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

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

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

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

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

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

1. Minimum wages

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

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein:

Provided; That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b.

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

- (i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (ii) The classification is utilized in the area by the construction industry; and
- (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

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

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

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

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

the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

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

2. Withholding

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

3. Payrolls and basic records

- a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b.

- (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <https://www.dol.gov/whd/programs/dbra/wh347.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..
 - (2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
 - (i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;
 - (ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
 - (iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
 - (3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.
 - (4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.
- c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the

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

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

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

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

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

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

b. Trainees (programs of the USDOL).

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

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

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

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

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

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

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

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

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime

contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.
8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.
9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.
10. Certification of eligibility.
 - a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
 - b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
 - c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such

District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contacting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.
4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

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

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).
 - a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:
 - (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
 - (2) the prime contractor remains responsible for the quality of the work of the leased employees;

- (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
 - (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.
 - b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.
2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.
 3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.
 4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.
 5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

VII. SAFETY: ACCIDENT PREVENTION

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

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.
2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction

safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

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

VIII.FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Instructions for Certification – First Tier Participants:

- a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
- c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.
- d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or

subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

- f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
 - g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.
 - h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website <https://sam.gov> which is compiled by the General Services Administration.
 - i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
 - j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.
2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:
- a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

- (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;
 - (2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and
 - (4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

3. Instructions for Certification - Lower Tier Participants:

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

- a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.
- b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.
- d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the

prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

- e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
- f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.
- g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website <https://sam.gov> which is compiled by the General Services Administration.
- h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

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

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

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

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:
 - a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
 - b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

V. SUPPLEMENTAL EEO REQUIREMENTS

Incorporated in this Contract, by reference, are supplemental requirements to the Department of Labor, Office of Federal Contract Compliance Programs ("OFCCP") Equal Employment Opportunity Program ("EEO"). The supplemental requirements are:

1. Exec. Order No. 11246, 30 FR 12319 (September 24, 1965);
2. 41 C.F.R. § 60-4.1 through 60-4.9 (2015);
3. Exec. Order No. 13665 Non-Retaliation for Disclosure of Compensation Information (April 8, 2014);
and
4. Further Amendments to Exec. Order No. 11478, Equal Employment Opportunity in the Federal Government and Exec. Order No. 11246, Equal Employment Opportunity (July 21, 2014).

Per 41 C.F.R. § 60-4.2 all federally-assisted Contracts shall include (information has been interlineated applicable to this Contract as required):

“(a) All Federal contracting officers and all applicants shall include the notice set forth in paragraph (d) of this section and the Standard Federal Equal Employment Opportunity Construction Contract Specifications set forth in § 60–4.3 of this part in all solicitations for offers and bids on all Federal and federally assisted construction contracts or subcontracts to be performed in geographical areas designated by the Director pursuant to § 60–4.6 of the part. Administering agencies shall require the inclusion of the notice set forth in paragraph (d) of this section and the specifications set forth in § 60–4.3 of this part as a condition of any grant, contract, subcontract, loan, insurance or guarantee involving federally assisted construction covered by this part 60–4.

(b) All non-construction contractors covered by Executive Order 11246 and the implementing regulations shall include the notice in paragraph (d) of this section in all construction agreements which are necessary in whole or in part to the performance of the covered non-construction contract.

(c) Contracting officers, applicants and non-construction contractors shall give written notice to the Director within 10 working days of award of a contract subject to these provisions. The notification shall include the name, address and telephone number of the contractor; employer identification number; dollar amount of the contract, estimated starting and completion dates of the contract; the contract number; and geographical area in which the contract is to be performed.

(d) The following notice shall be included in, and shall be a part of, all solicitations for offers and bids on all Federal and federally assisted construction contracts or subcontracts in excess of \$10,000 to be performed in geographical areas designated by the Director pursuant to § 60–4.6 of this part (see 41 CFR 60–4.2(a)):

Notice of Requirement for Affirmative Action To Ensure Equal Employment Opportunity (Executive Order 11246)

1. The Offeror's or Bidder's attention is called to the “Equal Opportunity Clause” and the “Standard Federal Equal Employment Specifications” set forth herein.

2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

The most current participation goals for minorities and females can be found at http://www.dol.gov/ofccp/TAGuides/TAC_FedContractors_JRF_QA_508c.pdf and are:

New Mexico:

160 Albuquerque, NM:

SMSA Counties.

0200 Albuquerque, NM-38.3%

NM Bernalillo; NM Sandoval.

Non-SMSA Counties-45.9%

NM Catron. NM Colfax; NM De Baca; NM Guadalupe; NM San Juan; NM San Miguel; NM Santa Fe; NM Socorro; NM Taos; NM Torrance; NM Valencia.

Goals for females:
Nationwide goal-6.9%

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

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

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

The most current OFFCP staffing can be found at <http://www.dol.gov/ofccp/contacts/regkeyp.htm> and are:

SOUTHWEST and ROCKY MOUNTAIN REGION

Covered States/Territories: Arkansas, Colorado, Louisiana, Montana, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, Wyoming

Regional Director: Melissa L. Speer

Deputy Regional Director: Aida Collins

Regional Outreach Coordinator: E. Michelle Hernandez

Contact Information:

U.S. Department of Labor for OFCCP
Federal Building, Room 840
525 South Griffin St.
Dallas, TX 75202
(972) 850-2550
(972) 850-2552 (Fax)

(877) 889-5627 (TTY-National Office)
Pre-Award Email Address: OFCCP-SW-PreAward@dol.gov
For Complaints: OFCCP-SW-CC4@dol.gov

4. As used in this Notice, and in the contract resulting from this solicitation, the “covered area” is in the Advertisement.”

VI. INDIAN PREFERENCE

This Contract preference requirement is an expansion of the provisions of the equal employment opportunity responsibilities for Contractors contained elsewhere in this NTC and the provisions contained under FHWA-1273.

If the Project is located on or near a reservation the Contractor, or its Subcontractor at any tier, may be required to extend a publically announced preference in employment to Indians living on or near an Indian reservation in connection with employment opportunities on or near an Indian reservation. The word “near” includes all areas where a person seeking employment could reasonably expected to commute in the course of a work day. Contractors or Subcontractors, at any tier, shall not discriminate among Indians on the basis of religion, sex, tribal affiliation, and the use of such a preference shall not excuse compliance with the remaining EEO provisions of this NTC.

If the Contractor extends an Indian preference, then this NTC requires that Contractors shall afford preference to initial hiring, reassignment, transfer, competitive promotion, reappointment, reinstatement, or any personnel action to fill a vacant position to qualified and enrolled members of federally recognized Indian tribe. The extended preference shall extend to Indians and not extend to a specific tribe or tribal affiliation. There may be tribal laws and regulations that the Contractor is required to follow if an Indian preference is extended. Contractors shall make themselves aware of any labor requirements, taxes, fees, licenses, permits or conditions that may be imposed by the affected tribes for the Project work performed in the area. In order to be apprised of the tribal law or regulation requirements, the Contractor shall establish a liaison with local tribe employment offices and provide this individual’s name and contact information to the Project Manager at the Pre-Construction Conference per Standard Specification Section 108.2 “Notice to Proceed and Pre-Construction Conference”. The tribe’s employment office may then assist the Contractor in identifying qualified and tribally enrolled individuals and assist in guidance related to applicable tribal laws or regulations. Verification of available, qualified and enrolled individuals will be provided to the Contractor by the tribe’s employment office. A list of contacts to facilitate the Contractor’s coordination with the tribal liaison is at:

http://dot.state.nm.us/content/dam/nmdot/planning/Tribal_Contact_Listing.pdf

VII. NMDOT ON THE JOB TRAINING/SUPPORTIVE SERVICES (“OJT/SS”) PROGRAM

The primary objective of the Special Provisions referenced in the below-link is to address the underrepresentation of minority and female workers in the construction trades through the assignment of OJT goals. To that end, the primary objective of the OJT program is the training and upgrading of minorities and females to journeyman status on NMDOT state lead, federal-aid contracts. Accordingly, the Contractor shall make every effort to enroll minority, women and economically disadvantaged persons to the extent that such persons are available within a reasonable area of recruitment. This training commitment is not

intended, and will not be used to discriminate against any applicant for training, whether or not he/she is a member of a minority group.

If Federal-aid funding is available and the NMDOT elects that the Project will be subject to the OJT/SS requirements then the Contractor or Subcontractor, at any tier, shall comply with the procedures outlined in Appendix B to Subpart A of 230 C.F.R. § 230. The OJT/SS program implemented by the Contractor or Subcontractor, at any tier, must be formally approved by the NMDOT before use of the program. In lieu of the use of a formally approved OJT/SS program the Contractor, or Subcontractor at any tier, may submit its own individual OJT/SS program for NMDOT consideration and approval. Until formal approval is received from the NMDOT CCRB through ACNM the individual Contractor or Subcontractor OJT/SS program cannot be used.

http://dot.state.nm.us/content/dam/nmdot/OEOP/On_The_Job_Training_Program_and_Special_Provision_2016.pdf

Contractors meeting the selection criteria for implementation of an OJT/SSS program, and who have a formally approved OJT/SSS program will be notified by the NMDOT's CCRB of its training assignment at the beginning of the reporting period. The reporting period and the training assignment will be identified in the notification from the NMDOT's CCRB.

The Contractor shall fulfill all of the requirements of the OJT training program including the maintenance of records and submittal of periodic reports documenting program performance. The requirements and reports related to the OJT/SSS program shall include the Contractor's use of forms A-2201, A-2202, A-2203. The forms are incorporated herein by reference. The Contractor shall submit Form A-2202 by the tenth (10th) of each month of the reporting period or as indicated on the form itself.

The Contractor has the option to pay its trainees either the full prevailing wage for the trainee's job classification or at least 60% of the minimum prevailing wage for the trainee's job classification for the first half of the training period, 75% for the third quarter, and 90% for the last quarter respectively. Prevailing wages are those specific to this Contract.

For federally-funded Projects, and if requested the Contractor may be reimbursed \$0.80 per training hour by the NMDOT. Requests for reimbursement shall be submitted by the Contractor to the Project Manager in writing and after Substantial Completion for the Project is declared. Reimbursement is not available for 100% state-funded Projects.

Noncompliance with the responsibilities and requirements of this section, including being a non-responsive participant in the program, may be cause for the NMDOT to issue a show cause notice and other action as deemed necessary by the NMDOT.

VIII. WAGE RATES

The higher wage rates shall govern in the event of a discrepancy between the minimum wage rates in the Wage Decision of the DWS and the U.S. Department of Labor Wage Decision applicable to this Contract.

IX. LABOR REPORTING AND SUBMISSION OF WEEKLY PAYROLLS

Contractors and Subcontractors must pay employees weekly. Certified Payrolls and Statements of Compliance on federally funded Projects are due to the NMDOT seven (7) Days after date that the actual payment is processed by Contractor or Subcontractor, at any tier, to its employee.

The date that the actual payment is processed to the employee may be different than the payroll end date in some situations. Notwithstanding the difference between a payroll end date and actual payment date, the Contractor or Subcontractor at any tier shall make actual full payment to the employee no later than seven (7) Days after the payroll end date. And then shall submit the Certified Payrolls and Statements of Compliance no later than seven (7) Days after the actual payment date.

The Contractor and Subcontractors at all tiers Working on federal-aid Projects shall use the following EEO Software Programs to report specific EEO, Labor Compliance and DBE information as required by the Contract and as specified by this NTC. The two software programs are:

- B2GNow software
- LCPtracker software

Use of B2GNow and LCPtracker software programs is required and shall be considered Incidental. Failure of a Contractor or Subcontractor to use the required software programs to report specific EEO, Labor Compliance and DBE information may result in the issuance of a Non-Conformance per Standard Specification Section – 109.8.2 “Non-Conformance” or other Contract remedies.

B2GNow - (Business to Government Now), is a web-based software program used to collect, verify and manage payment information for Contractors and Subcontractors working on federal-aid Projects. Additionally, the software is used to collect and report DBE participation and utilization on federal-aid Projects. Information related to the use of the software is available at <https://nmdot.dbesystem.com/>.

The Contractor shall upload the fully executed contract between the Contractor and Subcontractor at any tier, the completed permission to subcontract form and associated attachments, and subcontract checklist to B2GNow.

LCPtracker - (Labor Compliance Program Tracker) is a web-based software program used to collect, verify and manage prevailing wage certified payrolls and related labor compliance documentation for Contractors and Subcontractors on federal-aid Projects. Information related to the use of the software is available at <https://prod.lcptracker.net/Lcp/WebForms/Login.aspx>. On all Projects, the Contractor shall submit and shall ensure all Subcontractors submit weekly payroll information into the LCPtracker software program.

To adequately track timely submission of weekly payrolls the Contractor shall enter the actual payment date in the field on the weekly Certified Payroll reporting form in LCPtracker titled “payment date”.

Information on access to the software programs, log-on information, use of the programs, available training, user manuals, etc. can be obtained by accessing the web page referenced in this NTC.

X. TITLE VI Assurances Appendix A and E

Appendix A of the Title VI Assurances

Appendix A of the Title VI Assurances

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the “contractor”) agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time-to-time, (hereinafter referred to as the “Regulations”), which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate either directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of the 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor’s obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the New Mexico Department of Transportation or the Federal Highway Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the New Mexico Department of Transportation (NMDOT), or the Federal Highway Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of the contractor’s non-compliance with the nondiscrimination provisions of this contract, the New Mexico Department of Transportation (NMDOT) will impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating or suspending the contract, in whole or in part.

6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the NMDOT or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the NMDOT to enter into any litigation to protect the interests of the NMDOT. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

Appendix E of the Title VI Assurances

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (29 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the program or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your program (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (U.S.C. 1681 *et seq.*)

NOTICE TO CONTRACTORS

Gross Receipts Tax

The New Mexico Procurement Code, NMSA 1978, § 13-1-108 (1984) requires the New Mexico Department of Transportation (“NMDOT”) to exclude the applicable state gross receipts tax, or applicable local option tax, from Bids received for this Project. The NMDOT will pay the applicable tax including any increase in the applicable tax effective after the Contract is executed by the NMDOT. The applicable gross receipts tax or applicable local option tax will be shown as a separate amount on each Progress Payment.

NOTICE TO CONTRACTORS

New Mexico Employees Health Coverage

If the Bidder has, or grows to, six (6) or more employees who Work, or who are expected to Work, an average of at least 20 hours per week over a six (6) month period during the term of this Contract, the Bidder certifies by the submission of its Bid and if Awarded the Contract agrees to have in place, and agrees to maintain for the term of the Contract, health insurance for those employees and to offer that health insurance to those employees if the expected annual value in the aggregate of any and all Contracts between the Bidder and the New Mexico Department of Transportation ("NMDOT") exceeds \$250,000.00.

The Bidder agrees to maintain a record of the number of employees who have:

- A. Accepted health insurance;
- B. Declined health insurance due to other health insurance coverage already in place; or
- C. Declined health insurance for other reasons.

These records are subject to review and audit by a representative of the NMDOT.

The Bidder agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: <http://www.insurenewmexico.state.nm.us/>.

For all Contracts exceeding \$250,000, the Bidder Awarded the Contract will be required to provide a letter stating that they currently offer health insurance to its New Mexico employees.

NOTICE TO CONTRACTORS

Office of Inspector General

The New Mexico Department of Transportation (“NMDOT”) Office of Inspector General (“OIG”) has the authority to carry out all duties required to collect information, conduct audits, special studies and investigations. The duties of the NMDOT’s OIG also arise from the responsibility all state Departments of Transportation have for ensuring that all Projects are carried out in accordance with federal or state requirements.

The NMDOT’s OIG shall be provided access to all documents associated with the Project per the 2019 Edition of the NMDOT’s Standard Specifications for Highway and Bridge Construction, Section 107.28 - “Contractor Records”.

To Report Fraud, Waste & Abuse

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

The NMDOT OIG has established the above toll free number for reports of fraud, waste, abuse or similar illegal or unethical activity affecting the cost, completion or correct and safe construction of a Project. All information will be treated confidentially and caller anonymity will be respected.

The New Mexico Fraud Against Taxpayers Act:

The New Mexico Fraud Against Taxpayers Act, NMSA 1978, §§ 44-9-1 to -14 (2007, as amended through 2015) provides civil penalties for submitting a claim to a state agency based on false, fraudulent or misleading information. The Act also includes a financial incentive for parties with knowledge of such a claim to come forward.

To Report Bid Rigging Activities

1-800-424-9071

The U.S. Department of Transportation, Office of Inspector General has established the above toll free number for reports of Bid rigging, Bidder collusion, or other similar illegal or unethical activity affecting the cost, completion or correct and safe construction of a Project. All information will be treated confidentially and caller anonymity will be respected.

NOTICE TO CONTRACTORS

Patents On Milling Equipment and Milling Operations

Milling equipment and processes intended for use by the Bidder to perform any milling Work required under this Contract may be subject to United States patents. It is the responsibility of the Bidder to investigate the applicability of such patents to the milling Work, and pay royalties and other lawfully imposed charges by the patent holders. Royalties and other lawfully imposed charges are incidental and shall be factored into the Project Bid Item Unit Price for milling.

**Chief Engineer
January 1, 2019**

NOTICE TO CONTRACTORS

Professional Services

The following has been added to the 2019 Edition of the New Mexico Department of Transportation's Standard Specifications for Highway and Bridge Construction Section 101.4 "Terms and Definitions".

A Professional Service provider is considered a Subcontractor when Work is performed within the Project limits and shall be prequalified in accordance with 18.27.5 NMAC (12/07/2000, as amended through 01/01/2015).

Traffic
January 1, 2019

NOTICE TO CONTRACTORS

Quality Standards for Traffic Control Devices

The Contractor shall comply with quality standards for traffic control devices in the Intra-Departmental Design Directive ("IDD") 2009-05 and incorporated herein by reference. The IDD adopts quality standards in accordance with 23 C.F.R. § 630 (2007) Subpart K-Temporary Traffic Control Devices.

NOTICE TO CONTRACTORS

Return of Lobbying Disclosure

Pre-Award

This Project is Federal-aid funded. Per 49 C.F.R. § 20.105 and 31 U.S.C. 1352 the Bidder is prohibited from using Federal-aid funds for certain lobbying activities. In addition to this prohibition, the Bidder is required to certify that no Federal-aid funds have been or will be used for such lobbying activities. The Bidder makes this certification through the submission of its Bid with its digital id. The terms and conditions of the certification appear in the Notice to Contractors (“NTC”) titled “Federal Requirements” in the section called “Required Contract Provisions Federal-aid Construction Contracts and Supplements (FHWA-1273)” in subsection “XI Certification Regarding Use of Contract Funds for Lobbying”.

In addition to the certification above, if any funds other than Federal-aid funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Project the attached form titled “Disclosure of Lobbying Activities” (“Disclosure”) shall be submitted. After receipt of the notice of preliminary award of contract letter the successful Bidder shall complete and return the Disclosure with the documents in the notice of preliminary award of contract letter.

Failure by the successful Bidder to comply with this Notice to Contractors may constitute just cause for cancellation of the Award and the forfeiture of the Bid Guaranty.

Post-Award

At the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any Disclosure previously submitted the Contractor shall immediately submit an updated Disclosure to the Project Manager.

In addition, for subcontracts at any tier over \$100,000.00, the Contractor as a recipient of Federal-aid funds is required to:

1. Add the NTC titled “Federal Requirements” in all subcontracts at any tier. The inclusion of the NTC ensures that the terms and conditions of the certification are incorporated into the Subcontract at any tier;
2. If any funds other than Federal-aid funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee or any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Project require its Subcontractors at any tier to complete and return the Disclosure with its permission to subcontract request form A-1086; and
3. Require its Subcontractors at any tier to submit an updated Disclosure to the Contractor at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any Disclosure previously submitted by the Subcontractor. The Contractor shall immediately submit the same to the Project Manager.

Per 31 U.S.C.A. § 1352 (d)(1)(A)(C)(2) exclusions exist regarding the requirements of this lobbying certification and completion of Disclosure. Some of the applicable exclusions are:

1. Payment of a reasonable compensation made to employed officers or employees of a person requesting or receiving Federal-aid funds.
2. A request of or receipt of a Contract that does not exceed \$100,000.00.

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

Approved by OMB

0348-0046

(See reverse for public burden disclosure.)

1. Type of Federal Action: <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	2. Status of Federal Action: <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	3. Report Type: <input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change For Material Change Only: year _____ quarter _____ date of last report _____
4. Name and Address of Reporting Entity: <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known: Congressional District, if known: _____	5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime: Congressional District, if known: _____	
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, if applicable: _____	
8. Federal Action Number, if known:	9. Award Amount, if known: \$ _____	
10. a. Name and Address of Lobbying Entity <i>(if individual, last name, first name, MI):</i>	b. Individuals Performing Services <i>(including address if different from No. 10a)</i> <i>(last name, first name, MI):</i>	
<i>(attach Continuation Sheet(s) SF-LLLA, if necessary)</i>		
11. Amount of Payment (check all that apply): \$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned	13. Type of Payment (check all that apply): <input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time fee <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other; specify: _____	
12. Form of Payment (check all that apply): <input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind; specify: nature _____ value _____		
14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11: <i>(attach Continuation Sheet(s) SF-LLLA, if necessary)</i>		
15. Continuation Sheet(s) SF-LLLA attached: <input type="checkbox"/> Yes <input type="checkbox"/> No		
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____	
Federal Use Only:		Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

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

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

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLLA Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

NOTICE TO CONTRACTORS

Temporary Access Control Breaks

The New Mexico Department of Transportation (“NMDOT”) cannot guarantee a temporary access control break for any Project.

Due to operational safety NMDOT and the Federal Highway Administration (“FHWA”) will not allow any temporary access control break within a two (2) mile (mi) radius of an existing access control break.

Bidders shall Bid the Work using established Interchanges and routes for all haul related activities.

If a temporary access control break is approved the Contractor shall return the reduced costs for all items effected by the temporary access control break to the NMDOT.

Any and all costs associated with a temporary access control break, shall be considered Incidental to the construction of the Project.

Process to Request a Temporary Access Control Break

Temporary access control break requests shall be submitted to the Project Manager (“PM”) a minimum of ten (10) Days prior to the Pre-Construction Conference, in accordance with Standard Specification Section 108.2 - “Notice to Proceed and Pre-Construction Conference”, item numbers four (4) and fifteen (15).

The Contractor shall fill out Form C-196 attached and provide the form and associated pertinent documentation.

The NMDOT review and action for the temporary access control break request requires approximately 30 Days. Re-submittals of temporary access control break requests start the review process and timeline again. No additional Contract Time or compensation shall be provided for the temporary access control break process.

If, by the date of the Pre-Construction Conference the temporary access control break request is not approved, the Contractor shall continue with the Work utilizing the as Bid, established Interchanges and routes.

Temporary Access Control Breaks

Page 2 of 2

Conditions

The Contractor is hereby advised that the temporary access control break if approved can be revoked, without re-instatement, if the Contractor fails to comply with the terms and conditions of the approval.

If a temporary access control break request is approved the following standard conditions shall apply.

1. Each access break point must be approved individually and must be approved for each applicable Project.
2. No more than two (2) temporary access control breaks will be allowed on any one (1) Project.
3. In no case will Equipment be allowed to cross an active lane of traffic. Only right in right out access maneuver shall be allowed with NMDOT approved traffic safety mitigations for the temporary access control break.
4. The temporary access control break NMDOT approved traffic safety mitigations shall be removed and placed outside of clear zone during non-working hours per Project Manager's approval.
5. All Work required to construct and to restore the temporary access control break to original condition shall be the responsibility of the Contractor unless otherwise approved by the NMDOT. No additional time or compensation shall be provided by NMDOT for this Work.
6. No loaded scrapers will be allowed on the roadway facilities.
7. The Contractor is not allowed to haul in the direction of opposing traffic.
8. A traffic control plan signed and sealed by a New Mexico Licensed professional engineer shall be provided for each access break requested. Attached is an example schematic plan that shall be similarly designed according to field conditions. Geometrics, traffic volumes, truck traffic percentage, and any other influencing factors shall be considered in the design of the plans to assure safety and mobility in the roadway facilities. Traffic control shall be in accordance with the current version of the Manual of Uniform Traffic Control Devices ("MUTCD"). Minor modifications may be necessary to fit field conditions and must be approved by the Project Manager.

Additional conditions may be provided upon approval of the temporary access control break as noted on Form C-196.

TEMPORARY ACCESS CONTROL PERMIT REQUEST

I/we request approval of a temporary Right of Way (ROW) access control break in connection with our Project. A vicinity map is attached identifying the location of the access break and all roads, interchanges medians, crossovers, major drainages, fences, pipelines, power lines and any previously approved access breaks that may be affected by this temporary access break. Also attached is a traffic control plan designed and stamped by a New Mexico registered Professional Engineer, identifying all traffic control devices, spacing, distances, vehicle paths and flagmen etc. that relate to the traffic control operations.

Contractor may attach additional pages as necessary to fully address each question below:

1. Control Number, Route and Location of Proposed Access Break (station or milepost): _____
2. Traffic Control Locations (station or milepost): _____
3. Purpose of Break: _____
4. Type of Vehicles Using Break: _____
5. Route AADT: _____
6. Contractor's Proposed AADT Utilizing Break: _____
7. Proposed Days and Time of Operation: _____
8. Proposed Duration of Access Break: _____
9. Work Required to Construct and to Restore Temporary Access Break to Original Condition: _____
10. Other Available Alternatives: _____
11. Additional conditions set by the Department or detailed by other agencies (i.e. FHWA, BLM etc.): _____

I/we certify that I/we will comply with the traffic control plan submitted, as may be modified by the Department, with the standard conditions of approval, the terms and conditions set forth in the NTC "Temporary Access Control Break" and any additional conditions set forth with the approval of the Temporary Access Control Break detailed by the Department.

I we understand that this approval can be revoked at any time by the Project Manager , without re-instatement if we fail to fully comply with the terms and conditions of this approval.

Printed Name of Requestor, Printed Title of Official for Requestor, Signature and Date

Recommended

Printed Name of Project Manager, Signature and Date

Printed Name of District Engineer, Signature and Date

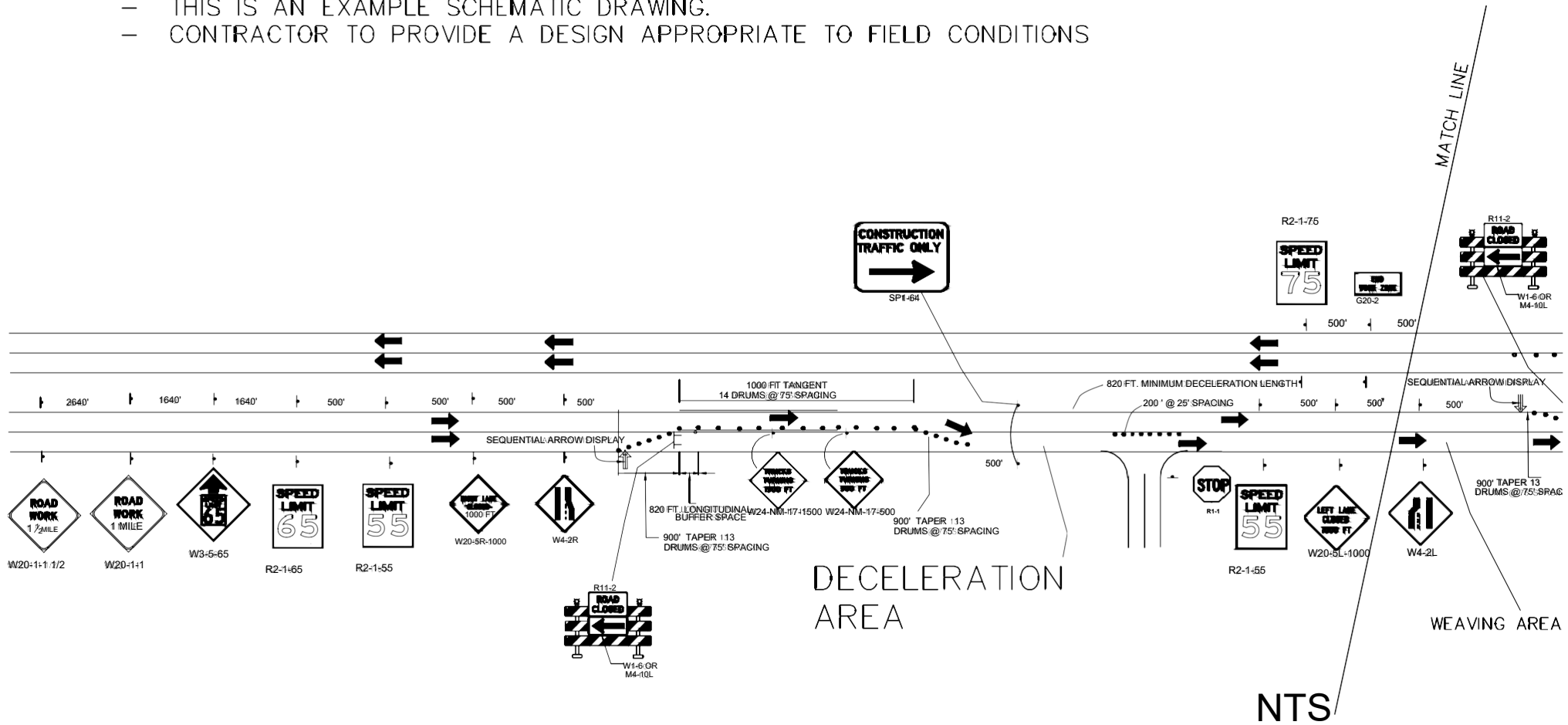
Concurred

Printed Name of State Construction Engineer, Signature and Date

Approved

Printed Name of Federal Highway Administration Representative, Signature and Date

- THIS IS AN EXAMPLE SCHEMATIC DRAWING.
- CONTRACTOR TO PROVIDE A DESIGN APPROPRIATE TO FIELD CONDITIONS



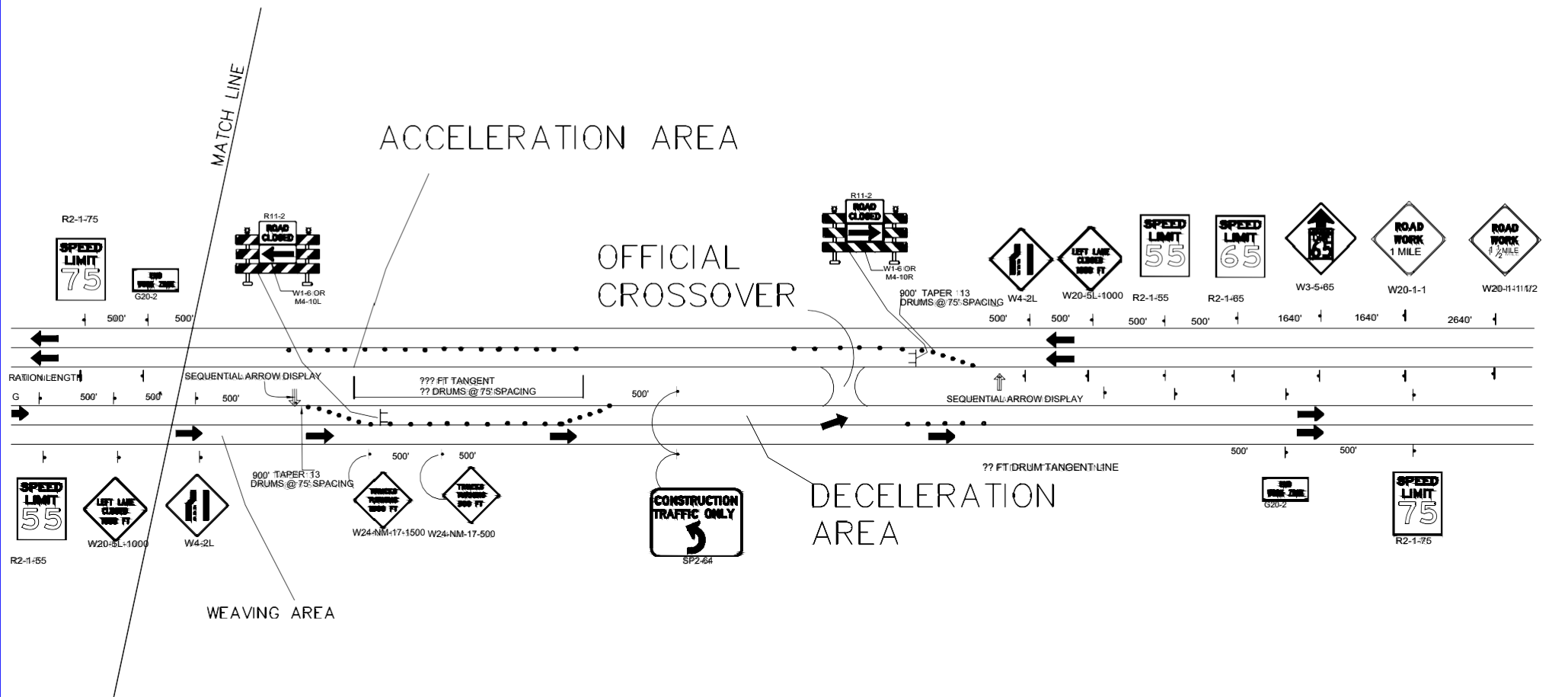
4		
3		
2		
1		
NO.	DESCRIPTION	DATE BY

REVISIONS (OR CHANGE NOTICES)

NEW MEXICO DEPARTMENT OF TRANSPORTATION

EXAMPLE INTERSTATE ACCESS HAUL ROAD SIGNING

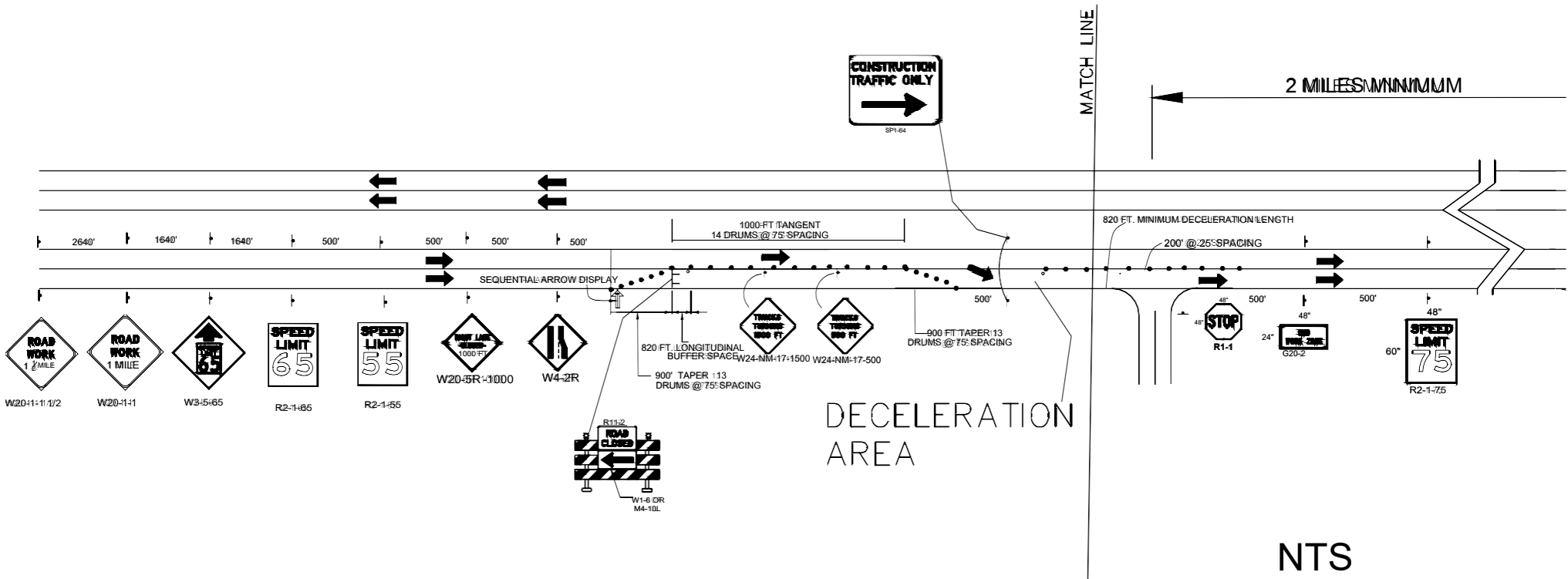
JENEL J. MAEZ
12/20/18



- THIS IS AN EXAMPLE SCHEMATIC DRAWING.
- CONTRACTOR TO PROVIDE A DESIGN APPROPRIATE TO FIELD CONDITIONS

NTS

4			
3			
2			
1			
NO.	DESCRIPTION	DATE	BY
REVISIONS (OR CHANGE NOTICES)			
NEW MEXICO DEPARTMENT OF TRANSPORTATION			
EXAMPLE INTERSTATE ACCESS HAUL ROAD SIGNING			



- THIS IS AN EXAMPLE SCHEMATIC DRAWING.
- CONTRACTOR TO PROVIDE A DESIGN APPROPRIATE TO FIELD CONDITIONS

NTS

4		
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NO.	DESCRIPTION	DATE BY

REVISIONS (OR CHANGE NOTICES)
NEW MEXICO DEPARTMENT
OF TRANSPORTATION

EXAMPLE INTERSTATE ACCESS
HAUL ROAD SIGNING

- THIS IS AN EXAMPLE SCHEMATIC DRAWING.
- CONTRACTOR TO PROVIDE A DESIGN APPROPRIATE TO FIELD CONDITIONS

MATCH LINE

2 MILES

820 FT. MINIMUM DECELERATION LENGTH

200' @ 25' SPACING



NEAREST INTERCHANGE

NTS

4		
3		
2		
1		
NO.	DESCRIPTION	DATE BY

REVISIONS (OR CHANGE NOTICES)

NEW MEXICO DEPARTMENT OF TRANSPORTATION

EXAMPLE INTERSTATE ACCESS HAUL ROAD SIGNING

NOTICE TO CONTRACTORS

License from Construction Industries Division (CID)

For federally funded Projects, the Bidder is not required to have a license from the CID for the Project's Work in order to submit a Bid. However, upon becoming the apparent successful Bidder, the Bidder must obtain a valid license with the proper classification for the Project's Work within 30 Days of the date on the notice of preliminary Award letter.

SECTION 100

These General Conditions have been prepared for use by T/LPAs in the administration of Federal-aid Projects. The purpose of these General Conditions is to define each contracting party's duties and privileges, and the rules by which they are to meet obligations and perform the Work they agreed upon. Nothing in these General Conditions should be taken to contradict any mandatory federal, State or local laws and regulations. Nor should these General Conditions be interpreted as altering or superseding any such mandatory federal, State or local laws and regulations. T/LPAs should consult their own legal counsel for advice regarding the use of these General Conditions.

SECTION 101: ABBREVIATIONS, SYMBOLS, TERMS, AND DEFINITIONS

101.1 ACTIVE VOICE, IMPERATIVE MOOD, REFERENCES, USE OF LANGUAGE

These General Conditions were developed with an emphasis on the active voice. In a sentence written in the active voice, someone acts on something. For example: "The Engineer will take a sample." A similar sentence in the passive voice "A sample will be taken" would be unclear about who was responsible for taking the sample.

This edition of the Standard Specifications also makes use of the imperative mood. The imperative mood is used when the party issuing an instruction and the party receiving it are already understood. In these Standard Specifications, the T/LPA is stating its requirements or directions for Work to the Contractor; such statements have the same force as if they contained the word "shall." In an imperative sentence such as, "Pour the concrete," the T/LPA is indicating that it requires the Contractor to pour the concrete. Before an Award of a Contract, imperative statements are directed to the Bidder. After a Contract has been Awarded, imperatives are directed to the Contractor. The Standard Specifications are divided into various parts in this order: divisions, sections and subsections.

The T/LPA will identify parties other than the Bidder or Contractor to whom it gives a responsibility in these Standard Specifications. In phrasings where the responsible party has already been clearly identified or in factual statements when it is not important to do so, the T/LPA may use the passive voice.

The word "shall" is used in a mandatory or imperative sense and signifies that the T/LPA is imposing a duty on a person or body that is the subject in the sentence. The word "may" is used to signify the conferring of a discretionary power, privilege, or right. However, use of the term "may not" signifies that a right, privilege, or power is intended to be denied.

The titles or headings of the sections and subsections herein are intended for convenience of reference and shall not be considered as having any bearing on their interpretation.

The Contractor, having an obligation to comply with, observe, and comply with all federal and State law and regulations, any reference to any federal or State law or regulation shall constitute a reference to any applicable amendment or successor law or regulation.

101.2 ABBREVIATIONS

When the following abbreviations are used in the Plans, the Specifications, other Contract documents, and T/LPA correspondence, their meaning is as follows:

Table 101.2:1 Acronyms and Abbreviations	
Acronym or short form	Full name or meaning
AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
AI	Aggregate Index
AMRL	AASHTO Material Reference Laboratory
ASTM	American Society for Testing and Materials
AWG	American Wire Gauge
AWPA	American Wood Preservers' Association
AWWA	American Water Works Association
CBC	concrete box Culvert
CCD	closed circuit detection
CD	compact disc
CFR	Code of Federal Regulations
CMP	corrugated metal pipe
CN	control number
CPM	Critical Path method
CTR	certified test report
CWB	concrete wall barrier
DBE	disadvantaged business enterprise
EA	Entrance Angle
ESAL	equivalent single axle loading
FHWA	Federal Highway Administration
GRT	gross receipt tax
HDPE	high density polyethylene
HFE	high-float emulsion
HID	high-intensity discharge
HMA	hot-mix asphalt
HMWM	high molecular weight methacrylate
IES	Illuminating Engineering Society
IMC	intermediate metallic conduit
ITE	Institute of Transportation Engineers
JMF	Job Mix Formula
LCD	liquid crystal display
LL	liquid limit
SDS	Safety Data Sheet
MTR	mill test report
MUTCD	Manual on Uniform Traffic Control Devices
MFBM	Thousand Board Feet

Table 101.2:1 Acronyms and Abbreviations	
Acronym or short form	Full name or meaning
NCHRP	National Cooperative Highway Research Program
NEC®	National Electrical Code®
NEMA	National Electrical Manufacturers Association
NMAC	New Mexico Administrative Code
NMDA	New Mexico Department of Agriculture
NMED	New Mexico Environment Department
NMSA	New Mexico Statutes Annotated
NMSSPWC	New Mexico Standard Specifications for Public Works Construction
NPDES	National Pollutant Discharge Elimination System
NTSC	National Transmission Standards Committee
OA	Observation Angle
OGFC	open-graded friction course
OSHA	Occupational Safety and Health Administration
PCC	portland cement concrete
PCCP	portland cement concrete pavement
PCI	Prestressed Concrete Institute
PCT	process control technician
PE-P	penetrating emulsified prime
PI	plasticity index
PTL	private testing Laboratory
PVC	polyvinyl chloride
QA	Quality Assurance
QC	Quality Control
QCT	Quality Control technician
QLA	Quality Level Assurance
RAP	reclaimed asphalt pavement
ROW	Right of Way
SSPC	Society of Protective Coating (formerly Steel Structures Painting Council)
SWPPP	storm water pollution prevention plan
TERO	Tribal Employment Rights Organization
TTCP	Technician Training and Certification Program
TV	target value
UBC™	Uniform Building Code™
UL	Underwriters Laboratories
USEPA	United States Environmental Protection Agency
UV	Ultraviolet
VMA	voids in mineral aggregate
VTM	voids in total mix
WMA	warm mix asphalt

101.3 SYMBOLS

Within the Specifications and Contract, reference to the English system of measurement

symbols is a reference to the U.S. Customary (Inch-pound) system.

Some of the symbols for units of measurement used in the Specifications and in the Bid Schedule are defined as shown in Table 101.3:1, "Measurement Symbols." The symbols for other units of measurement used in the Specifications are as defined in the various Specifications and tests referenced in the Specifications.

**Table 101.3:1
Measurement Symbols**

Physical Characteristic	Unit name	Symbol
Length	Microinch	μin
	mil (0.001 inch)	Mil
	Inch	In
	Foot	Ft
	Yard	Yd
	Mile	Mi
Area	square inch	in ²
	square foot	ft ²
	square yard	yd ²
	square mile	mi ²
	Acre	Acre
Volume	Pint	Pt
	Quart	Qt
	Gallon	Gal
	cubic inch	in ³
	cubic foot	ft ³
	cubic yard	yd ³
Mass (weight)	Ounce	Oz
	Pound	Lb
	ton, short (2,000 lb)	Ton
Temperature	degree Fahrenheit	°F
Time	Millisecond	Ms
	Second	S
	Minute	Min
	Hour	H
Speed	miles per hour	Mph
Pressure	pound-force per square inch	Psi

**Table 101.3:1
Measurement Symbols**

Physical Characteristic	Unit name	Symbol	
	Watt	W	
	Kilowatt	kW	
	Milliampere	mA	
	Ampere	A	
	Volt	V	
Power, energy and electricity	Volt-ampere	VA	
	Ohm	Ω	
	Hertz	Hz	
	Joule	J	
	Lumen	Lm	
	Footcandle	Fc	
	Horsepower	Hp	
	Force	pound-force	Lbf
		1,000 pounds-force	Kip
	Torque	pound-force foot	lbf•ft
Viscosity, dynamic	Centipoises	cP	
	Poise	P	
Viscosity, kinematic	Centistokes	cSt	
Flow	gallons per minute	Gpm	
Concentration	parts per million	Ppm	
Inductance	Henries	H	
Frequency, concrete consolidation	vibrations per minute	Vpm	
Sound	Decibel, A-Scale	dbA	

101.3.1 Engineer's Estimate Symbols

The measurement symbols shown on the Engineer's Estimate may differ from those found in the rest of Contract documents. Table 101.3.1:1, "Symbols for Engineer's Estimate," lists and defines the symbols found in both the Engineer's Estimate and Contract documents.

Table 101.3.1:1
Symbols for Engineer's Estimate

Symbol	Unit of measure or meaning
LS	Lump Sum
EACH	Each
ALOW	Allowance
L.F.	Linear Foot
MILE	Mile
S.F.	Square Foot
S.Y.	Square Yard
SYIN	Square Yard Inch
ACRE	Acr
C.Y.	Cubic Yard
LB	Pound
TON	Ton

101.4 TERMS AND DEFINITIONS

Unless the context otherwise requires, if the following capitalized terms are used in the Contract documents and T/LPA correspondence, the intent and meaning shall be interpreted as follows:

Acceptance. (Also called **Accept, Accepted and Acceptable**) 1) The determination by the **T/LPA** that **Materials** and **Work** are in compliance with the **Contract**. 2) The process by which the **T/LPA** determines whether or not the quality of produced **Material** or **Work** is **Acceptable** pursuant to the **Contract**, including sampling, testing, certifications and assessment of test results. **Acceptance** shall not be construed as a warranty by the **T/LPA** that the **Contractor's** methods will succeed or will be the most efficient or economical method of accomplishing the **Work**, nor shall the term be construed that the actual **Materials** used in construction will perform as represented in test results supplied to the **T/LPA** by the **Contractor**.

Addendum. A change in the **Contract** issued after the **Advertisement** and before the **Bid Opening**.

Advertisement. A public announcement, as required by law, inviting **Bids** for **Work** to be performed or **Materials** to be provided. Also called **Invitation for Bids**.

Apparent Low Bidder. The **Bidder** who submits a **Total Bid Amount** that is numerically lower than the **Total Bid Amount** submitted by other **Bidders**, but who's **Bid** may later be subject to rejection, recalculation or other modification that may change the order of **Bidders**.

Award. The T/LPA's selection of a **Bidder's Bid** subject to the **Contractor's** and T/LPA's execution of the **Contract**.

Base Course. The layer or layers of specified **Material** placed on a **Subbase** or a **Subgrade** normally used to support a **Surface Course**.

Basis of Payment. The terms under which **Work** is paid, as a designated **Pay Item** in accordance with the quantity measured and the **Pay Unit**. Basis of Payment includes the performance of all **Work** and furnishing of all labor, **Equipment, Materials** and **Incidentals** described in the text of a specific item included in that **Contract**.

Bid. The offer of a **Bidder** for performing the **Work** at the prices quoted.

Bidder. An individual, partnership, firm, corporation, joint venture, or their authorized representative submitting a **Bid**.

Bid Form. The approved form on which the T/LPA requires **Bidders** to prepare and submit **Bids**.

Bid Guaranty. The security provided with a **Bid** to guarantee that the **Bidder** will enter into the **Contract** if the T/LPA **Accepts** its **Bid**.

Bid Item (Contract Item, Pay Item). A specifically described unit of **Work** for which a **Bidder** provides a **Bid Item Unit Price** and **Bid Item Price**. The **Bid Items** become **Contract Items** when the **Contract** is fully executed. The **Contract Items** become **Pay Items** when calculating **Progress Payments**.

Bid Item Price. The extended price established by the **Contractor** for each individual **Bid Item** on the **Bid Schedule** which is the product of the **Bid Item** quantity and the **Bid Item Unit Price**.

Bid Item Unit Price. The price established by the **Contractor** for each unit of an individual **Bid Item** on the **Bid Schedule**. A **Bid Item Unit Price** reflects a **Bidder's** actual and direct costs for the item plus a reasonable proportionate share of the **Bidder's** anticipated profit, overhead costs, and other indirect costs.

Bid Opening. A public reading of the properly submitted **Bids**, on a date established by the **Advertisement**.

Bid Schedule. Listing or table of **Bid Items** containing the estimated quantities for which **Bid Item Unit Prices** are invited.

Borrow Pit. A **Contractor** selected source outside the **Roadway Prism** from where suitable **Material** is obtained.

Breakaway. The ability of a system to yield at a predetermined impact force.

Bridge. A **Structure** having a length — as measured along the center of the **Roadway** — of more than 20 ft between undercopings of abutments or extreme ends of openings for multiple boxes or extreme ends of openings for Culverts placed in series with a spacing between Culverts not exceeding $\frac{1}{2}$ the diameter, and carrying a pathway or **Roadway** over a depression or obstacle. It includes all appurtenances necessary to its proper use. The length of a **Bridge Structure** is the distance along the line of survey stationing back-to-back of backwalls of abutments, if present, or end-to-end of the **Bridge** floor, and in no case less than the total clear opening of the **Structure**. The **Bridge Roadway** width is that clear unobstructed width of **Bridge** deck available for vehicle use measured normal to the centerline of the **Bridge**.

Business Hours. **Business Hours** are the hours during the Day as established by the governing body of the **T/LPA** in which business is commonly conducted.

Calendar Day. Each and every **Day** shown on the calendar, beginning and ending at midnight. Also referred to as "**Day.**"

Certificate of Compliance. A certification, including a signature by a person having legal authority to act for the manufacturer, stating that the product, assembly, or **Material** to be incorporated into the **Project** was fabricated in accordance with and meets the applicable terms of the **Contract**.

Change Order. A **Change Order** is the only method authorized for changing the **Contract**. A written order, with or without the consent of the **Contractor**, implementing the **Contract** changes. A **Change Order** may consist of a **Supplemental Agreement** or **Field Sheet**.

Chief Engineer. The **Engineer** in charge of the design of **Projects**, acting either directly or through his duly authorized representatives, for the **T/LPA**.

Chief Procurement Officer. The person designated by the **T/LPA** who is responsible for the control of procurement of items of tangible personal property, services or construction. "**Chief Procurement Officer**" includes the **State** purchasing agent.

Chill Factor. The ambient temperature (in degrees Fahrenheit) minus wind velocity (in miles per hour).

Claim. A timely **Contractor** request or demand for a **Contract** adjustment, equitable adjustment, additional time or compensation and other contractual damages, **Delay** damages, an extension of **Contract Time**, certified pass-through **Subcontractor Claims**, or for any other remedy arising from a dispute, disagreement, or controversy concerning respective rights and obligations under the **Contract**.

Commercial Material Source. A **Material** source that has been utilized by a private producer in a commercial operation from which **Material** has been sold within the last 24 months before the date of the letting.

Completion Dates. Contracts may have the following **Completion Dates** as defined herein:

Substantial Completion Date;
Physical Completion Date; or
Mandatory Completion Date.

Construction Maintenance Easement (CME). A real property interest in land acquired by the **T/LPA** in conjunction with a **Highway, Street, or Road Project** to provide permanent access to private property to perform specific construction and maintenance functions.

Construction Liaison Engineer (CLE). An engineer employed by the **NMDOT** assigned to oversee each **T/LPA** administered **Project** to ensure compliance with Federal requirements throughout design and construction. The **CLE** will perform **Project** inspections on any/all **Project** files and will provide at a minimum a final inspection report on all **Projects**.

Construction Zone. The area within the **Right of Way** from the first traffic control sign announcing the **Road Work** to the last sign announcing the end of **Road Work** within which the **Contractor** shall perform construction activities.

Contract. The entire and integrated written agreement between the **T/LPA** and the **Contractor** setting forth the obligations of the parties, including, but not limited to, the performance of the **Work** and the **Basis of Payment**.

The **Contract** includes the **Advertisement, Required Documents for Bid Submittal, Standard Specifications, Supplemental Specifications, Special Provisions, Addenda, Notice To Contractors,** general and detailed **Plans, Standard Drawings,** and **Notice to Proceed** — also any **Change Orders** and agreements that are required to complete the construction of the **Work** in an **Acceptable** manner, including authorized extensions thereof, all of which constitute one (1) instrument.

Contract Bonds. The approved form of security executed by the **Contractor** and the **Contractor's Surety** or sureties. The performance bond guarantees complete execution of the **Contract** and all **Change Orders** pertaining thereto, and the payment bond guarantees payment of all legal debts pertaining to the construction of the **Project**.

Contractor. The individual, partnership, firm, corporation, or joint venture contracting with the **T/LPA** for performance of the **Work**.

Contract Time. The time specified in the **Advertisement** for completion of the **Contract**. This time may be defined as a specified fixed date(s), **Mandatory Completion Date**, a given number of **Working Days**, or a given number of **Calendar Days** or a combination of the

above. The **Contract Time** may be amended by a **Supplemental Agreement** to include authorized time extensions as the performance of the **Contract** requires.

County. The **County** in which the **Work** herein specified is to be done.

Cultural Resource. Any prehistoric or historic period artifact, site, building, **Structure**, material remains, or traditional use area resulting from, or associated with, human cultural activity. Historically important **Cultural Resources** are those eligible for inclusion on the National Register of Historic Places or placed on the New Mexico register of cultural properties either permanently or temporarily per NMSA 1978, Section 18-6-3 and the National Historic Preservation Act Section 106.

Cultural Resource Professional. An individual that is permitted to meet the requirements of the Cultural Properties Act, NMSA 1978, 18-6-1 through -17 and issued by the Cultural Properties Review committee with the concurrence of the **State** Archaeologist and the **State** historic preservation officer or appropriate tribal preservation officer, or federal land managing agency when applicable.

Culvert. Any **Structure** not classified as **Bridge** or casing that provides an opening under a **Roadway**.

Critical Path. The longest continuous sequence of activities through the **Project** schedule that establishes the minimum overall **Project** duration to **Substantial Completion**.

Critical Path Method Schedule. A network based method to represent the **Contractor's** plan for constructing the **Project**. The **Critical Path Method Schedule** consists of two primary components 1) Activities that represent the entire **Project** scope of **Work** and 2) logic relationships that connect the activities to one another to determine the sequence of **Work**.

Day. Calendar Day.

Delay. Any event, action, force or factor that negatively impacts the **Critical Path** on the **Project**, whether it be excusable, inexcusable, nonexcusable, concurrent, compensable or noncompensable.

Deleterious Material. Unacceptable **Material** detrimental to the final product.

Detour. A temporary route for traffic (vehicular or otherwise) around a closed portion of a **Project**.

Debarment. Any final order of the secretary of the New Mexico General Services Department - **State** Purchasing Division, that denies a **Contractor** the right to **Bid** or offer to enter into a **Contract**, other than a contract for **Professional Services**, with the **State** purchasing agent or any company (entity) or individual that has been declared ineligible to receive Federal **Contracts** or certain subcontracts and from certain types of Federal financial and

nonfinancial assistance and benefits that is listed in the System for Award Management (SAM) electronic roster.

District. The six **Highway** construction **Districts** established by the **NMDOT** for the purpose of executing the **NMDOT's** construction, maintenance, and administrative activities.

District Engineer. The **Engineer** in charge of a **NMDOT District**.

Embankment. The portion of a **Roadway** that is below the **Subbase**, **Base Course**, and **Surface Courses** and that is built up in layers consisting principally of soil and broken rock or a combination thereof.

Engineer. Whenever the word "**Engineer**" is used in these General Conditions is shall be understood as referring to the licensed professional **Engineer** in the **State** of New Mexico designated by the T/LPA to be in charge for the T/LPA, acting personally or through any assistants duly authorized by the **Engineer**.

Entrance Angle (EA). The angle between the reference axis and the axis of incident light (Counter-clockwise rotation of the reference axis relative to the axis of incident light is considered positive.)

Environmental Professional. An individual qualified to perform **Hazardous Material** investigations. This individual must possess the qualifications described in 40 C.F.R. Section 312 Subpart C, the USEPA's Standards and Practices for All Appropriate Inquiries.

Environmental Bureau Manager. The individual in charge of the Environmental Bureau of the **NMDOT**.

Environmental Geology Bureau Manager. The individual in charge of the Environmental Geology Bureau of the **NMDOT**.

Environmental Resource. The physical and biological components of the human and natural environment.

Environmental Specialist. An individual with at least four (4) years of full-time paid experience in environmental investigations, including analyzing and preparing documentation needed to meet the FHWA approval requirements for the National Environmental Policy Act and related legislation.

Equipment. All machinery, tools, and **Equipment**, together with the necessary supplies for upkeep and maintenance, necessary for the construction and completion of the **Contract**.

Extra Work. **Work** not provided for in the **Contract** but found by the **Project Manager** to be essential to the satisfactory completion of the **Contract** within its intended scope.

Fabricator. A **Supplier** that fabricates or supplies **Structural Steel** or other structural items.

Field Sheet. A type of **Change Order** that does not require a **Contractor's** signature.

Final Acceptance: The **T/LPA's** payment of the balance due on the final payment voucher.

Free Float: The amount of time identified in a specific activity that can be delayed without causing a delay to successor activities.

Total Float or Float: The amount of time that an activity can be **Delayed** without causing a **Delay** to the **Critical Path** or negatively impacting the **Project Completion Date**.

Force Account. The **Basis Of Payment** for the directed performance of **Work**, with payment based on the actual cost of labor, **Equipment**, and **Materials**, and including various constant additives.

Fractured Face. At least one-half of the projected particle area exhibits a rough, angular, or broken texture with well-defined edges.

General Office. The **T/LPA's** main place of business unless otherwise designated by the **T/LPA**.

Hazardous Materials. Any substance, product, waste, or other **Material** of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to all applicable laws all as amended, or any other federal, **State**, or local statute law, ordinance, resolution, code, rule, regulation, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic, or dangerous waste, substance, or **Material**.

Highway, Street, or Road. A general term denoting a public way for purposes of vehicular or pedestrian travel.

Holiday. Any day recognized as a paid legal **Holiday** for the employees of the **T/LPA**.

Independent Assurance. A construction management tool in which a third party, not directly responsible for process control or **Acceptance**, provides an independent assessment of the **Work, Materials**, or the reliability of test results obtained from process control and **Acceptance** testing.

Incentive/Disincentive Provision. Predetermined adjustments to the **Contract** price.

Incidental. Occurring or likely to occur at the same time or as a result of other items of **Work** as specified in the **Contract** for which no separate or additional payment will be made. Unless otherwise indicated in the **Contract**, **Incidental** costs shall be included in the **Contractor's**

Bid Item Unit Price for **Bid Item** 621000 Mobilization.

Indian Tribe. Any **Indian Tribe**, band, nation, or other organized group or community that is recognized by the United States as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Inspector. Individual assigned to make detailed inspections of **Contractor's Work**.

Job Mix Formula (JMF). The combined aggregate gradation and the percentage of each **Material** component in the mix.

Laboratory. A testing **Laboratory** of the **T/LPA, Contractor** or any other testing **Laboratory** that is AMRL Certified.

Landscape Architect. The individual designated to in charge of Landscape Architecture for the **T/LPA**.

Lighting and Signal Engineer. The **Engineer** in charge of the **T/LPA's** signal and lighting design.

Local Public Agency (LPA). A municipality, **City, County**, village, special authority or any other instrumentality of a local government sponsoring a federally funded transportation **Project** and determined to be qualified to assume the administrative responsibilities for such **Project** by the **NMDOT**.

Luminaire (Luminaries). A lighting device designed to illuminate the surface of a specific area from a mounting on a **Standard**, including the housing, optical control, lamps, and necessary ballasts.

Lump Sum. The price **Bid** by a **Contractor** as a single amount for a complete **Contract Item** as defined by the specifications, or price proposed by a **Contractor** as a single amount for the performance of **Extra Work**.

Major Contract Item. Any item, excluding mobilization, having a **Bid Item Price** of ten percent (10.0%) or more of the **Total Bid Amount** for the **Contract**, minus the amount **Bid** for mobilization.

Mandatory Completion Date. The date on which the **Project** shall be completed. This may be either **Substantial Completion** or **Physical Completion** as specified in the **Contract**. If neither is specified, it shall mean "**Substantial Completion**."

Materials. Any substances specified for use in the performance of the **Work**.

Median. That portion of a **Highway, Street or Road** separating the **Traveled Way** for traffic in

opposing directions.

Method of Measurement. The method in which a **Pay Item** is measured to conform with the **Pay Unit**.

NMDOT. The New Mexico Department of Transportation as constituted under the laws of the **State** for the administration of transportation **Work**. Per the Stewardship and Oversight Agreement between FHWA New Mexico Division and **NMDOT**, the **NMDOT** is responsible and accountable for T/LPA compliance with all applicable Federal laws and regulations.

Nominal Maximum Sieve. One (1) sieve size larger than the first sieve that retains ten percent (10%) or more of a given **Material**.

Non-Conformance. Contractor's failure to comply with the **Contract. Non-Conformances** are subject to a withholding of 25% of the **Progress Payment. Non-Conformance** withholdings will be paid at the subsequent **Progress Payment** following resolution of all **Non-Conformances**.

Notice of Preliminary Award of Contract. The **T/LPA's** written notification issuing preliminary **Award** that is provided before the **Contractor** and the **T/LPA** execute the **Contract**.

Notice to Proceed. Written notice to the **Contractor** to proceed with the **Contract Work** including the beginning date of **Contract Time**.

Notice to Contractors. An addition to the **Contract** made prior to Advertisement.

Observation Angle. The angle between the axis of incident light and the observation axis.

Partial Suspension. The suspension of **Work** on some, but not all **Contract Items**.

Pavement Structure. The combination of **Subbase, Base Course, and Surface Course** placed on a **Subgrade** to support and distribute the traffic load to the **Roadbed**.

Pay Adjustment. An adjustment to a payment for a specific portion of the **Work** based on the quality of the **Work** performed by the **Contractor** and **Accepted** by the **T/LPA**. Other **T/LPA** documents may refer to this term as disincentives, incentives, pay reductions, price adjustments, and/or price reductions.

Pay Unit. The unit of measurement for **Acceptable Work**.

Petrographer. Individual with credentials in the study of petrography.

Physical Completion. All the **Work** is physically completed on the **Project** and is **Accepted** by the **District Coordinator**. All documentation required by the **Contract** and by law shall be

furnished by this date.

Pit Agreement. An agreement between the **Contractor** and property owner to provide **Material**.

Plans. The Professional **Engineer** stamped and approved **Contract** drawings showing profiles, typical cross sections, that shows the location, character, dimensions, and general or specific details of the **Work** to be done or exact reproductions of the same.

Post Construction Plans. Final drawings reflecting **Work** and quantities performed under the **Contract**.

Pre-Bid Due Diligence. The **Bidder's** exercise of due diligence before submittal of a **Bid** which includes the careful, independent examination of the site of the proposed **Work**, including **Materials** pits and haul **Roads**, the **Bid Package**, all **Contract** documents including **Standard Specifications**, **Special Provisions**, **Supplemental Specifications**, and standard drawings and b which are representative of the condition at the precise location where each boring was made but conditions may vary between boring locations.

Pre-Cast Inspector. The **T/LPA's** authorized representative as indicated in the **Contract**.

Pre-Construction Conference. A meeting between the **T/LPA** and the **Contractor** prior to any **Work** taking place to review and discuss **Contract** requirements.

Pre-Deck Conference. A meeting between the **T/LPA** and the **Contractor** prior to the commencement of deck placement operations to review, discuss and coordinate the **Work** associated with the deck placement.

Pre-Drilled Shaft Conference. A meeting between the **T/LPA** and the **Contractor** prior to the commencement of drilling operation to review, discuss and coordinate the **Work**.

Pre-Fabrication Conference. A meeting between the **T/LPA** and the **Contractor** prior to any fabrication **Work** taking place.

Pre-Pave Conference. A meeting between the **T/LPA** and the **Contractor** prior to the commencement of paving operations to review, discuss and coordinate the **Work** associated with paving operations.

Pre-Pile Driving Conference. A meeting between the **T/LPA** and the **Contractor** prior to the commencement of pile driving operations to review, discuss and coordinate the **Work**.

Pre-Seeding Conference. A meeting between the **T/LPA** and the **Contractor** prior to the commencement of seeding operations to review, discuss and coordinate the **Work**.

Professional Service. Is a service provider that may or may not be a **Subcontractor**, who provides a specialized service requiring professional licensure by the **State** of New Mexico, e.g. Professional **Engineers**, Professional Surveyors and Attorneys. The **Professional Service** distinction in this **Contract** is separate from the professional service definition in the Department of Workforce Solutions regulations.

Profile Grade. The location of the **Profile Grade** will be designated by the **T/LPA** and shown on the **Plans**. The profile grade line is usually the centerline and elevation to which the **Roadway** will be built. The **Profile Grade** may be used to designate the gradient and elevation of other construction features such as tops of curb, channels, **Sidewalks**, etc.

Progress Payment. A monthly payment, including zero dollar (\$0.00), provided by the **T/LPA** to the **Contractor** for **Work**, subject to adjustment by the **T/LPA**.

Project. The specific section of property on which **Work** is to be performed as specified in the **Contract**.

Project Manager. Wherever the term “Project Manager” is used it shall refer to the person, or his designee, assigned by the T/LPA to facilitate the construction **Contract** for the T/LPA.

Project Limits. The beginning of the **Project** (BOP) to the end of the **Project** (EOP) as designated in the **Contract**.

Punch List. A list, prepared by the **Project Manager**, of corrective **Work** items not conforming with the **Contract** and to be completed by the **Contractor**. The final **Punch List** is provided after **Substantial Completion** but before **Contractor’s** request for final inspection. The **Punch List** is limited to items of the **Work** that are necessary to correct minor imperfections, deficiencies and deviations from the requirements of the **Contract** but which have no material or adverse effect on the full operability of the **Project** for its intended purpose and may be safely and effectively used by the public without **Delay**, disruption, or impediments.

Quality Assurance (QA). The **T/LPA’s** sampling, testing, inspection, and other activities to determine payment and make **Acceptance** decisions. Includes **Quality Control**, **Acceptance** by the agency, and use of qualified **Laboratories** by both parties.

Quality Control (QC). The **Contractor’s** actions and considerations necessary to assess production and construction processes so as to control the level of quality being produced in the end product. **Quality Control** includes sampling and testing by the **Contractor** to monitor and adjust its process. **Quality Control** does not include **Acceptance** sampling and testing by the **T/LPA**.

Quality Level Analysis (QLA). Is equivalent to **QC/QA**.

Required Documents for Bid Submittal. Those documents specified for Bid Submittal including,

but not limited to, **Advertisement, Bid Form, Bid Schedule, Bid Guaranty**, Bidder's List of Quoters, Non-Debarment Certification, Pay Equity Acknowledgment, Disadvantaged Business Enterprise Goal Form A-585, Subcontractor's Fair Practices Act Compliance.

Resource Loading. The **Contractor's** assigning of resources necessary to develop an **Acceptable Critical Path Method Schedule** for the **Project**. **Resource Loading** shall include personnel, production rates, **Contract** dollars earned, **Materials**, facilities and **Equipment** associated with each activity within the CPM.

Lowest Responsible Bidder. The **T/LPA** determined **Bidder** who submits the lowest adjusted and **Responsive Bid**. The **Bidder** shall also be responsible and when required furnish information and data to prove that its 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 as described in the **Advertisement**.

Responsive Bid. A **Bid** which conforms in all material respects to the requirements set forth in the **Advertisement** and the **Contract**. Material respects of a **Bid** include but are not limited to price, quality, quantity or delivery requirements.

Right of Way (ROW). A general term denoting land or property, or interest therein, usually in a strip, acquired for or devoted to transportation purposes.

Roadbed. The graded portion of the **Highway, Street or Road**, with top and side slopes prepared as a foundation for the **Subgrade, Pavement Structure**, and **Shoulders**.

Roadway. A general term denoting the **Traveled Way** and the **Shoulders**.

Roadway Prism. The **Roadway** construction limits within the outside limits of the side slopes.

Shop drawings. **Contractor, Supplier or Fabricator**-furnished drawings or sets of drawings typically required for **T/LPA** review and approval of **Work** components. **Shop Drawings** shall include detailed information to compare to the **Contract** for approval prior to fabrication.

Shoulder. The portion of the **Roadway** contiguous with the **Traveled Way** for accommodation of stopped vehicles, for emergency use, and for lateral support of **Base** and **Surface Courses**.

Sidewalk. That portion of the **Roadway** primarily constructed for use by pedestrians.

Signal Assembly. A housing containing the required illuminated **Traffic Signal** indications (vehicular and pedestrian) mounted on a **Standard**.

Special Provisions. Additions and revisions to the **Standard** and **Supplemental Specifications**

covering conditions applicable to an individual **Project**.

Specifications. A general term applied to all written provisions and requirements pertaining to performance of the **Work**.

Specific Intensity. Candlepower of the returned light at the chosen **Observation** and **Entrance Angles** for each lumen per square meter, foot-candle of illumination at the reflector on a plane perpendicular to the incident light.

Standard. In traffic lighting, a pole-type **Structure** that supports and positions signal and lighting devices, including arms, mounting hardware, and lowering and **Breakaway** devices as required by the **Contract**.

Standard Drawings. Detailed drawings for specific items of **Work** approved for repetitive use.

Standard Specifications. The **NMDOT's** book of **Specifications** approved for use in the construction of Public Works Projects.

State. The State of New Mexico acting through its authorized representatives.

State Geotechnical Engineer. The **Engineer** in charge of the **NMDOT's** Geotechnical Engineering/Exploration Section of the **State Materials Bureau**.

State Pavement Engineer. The **Engineer** in charge of the **NMDOT's** Pavement Management and Design Bureau.

Structures. Buildings, **Bridges**, **Culverts**, catch basins, drop inlets, retaining walls, cribbing, manholes, end-walls, sewers, service pipes, under drains, foundation drains, and other such features that may be encountered in the **Work**.

Structural Steel. Steel shapes, plates, H-piling, sheet piling, and any other items identified in the **Contract**.

Subbase. The layer or layers of specified **Material** thickness placed on a **Subgrade** to support **Surface Courses**.

Subcontractor. An individual, partnership, firm, corporation, or joint venture, at any tier, other than a **Trucker**, who is performing **Work** on the **Project**. A **Subcontractor** has no privity of **Contract** with the **T/LPA** and has no direct or indirect cause of action against the **T/LPA** for any **Claim** or cause of action, including nonpayment by the **Contractor**, arising out of the **Project**.

Subgrade. The portion of the **Roadbed** prepared as a foundation for the **Pavement Structure**.

Substantial Completion. The **Day** following the last charged **Day** and when all the following items are met:

1. All **Critical Path** activities on the **Project** have been completed and deemed **Acceptable**;
2. The **Project** is complete such that it can be safely and effectively used by the public;
3. The **Contractor** has requested a determination of **Substantial Completion** from the – **District Coordinator**; and
4. The **District Coordinator** has made a determination that the **Project** is **Substantially Complete**.

For safe and effective use by the public, it is the point at which all the following **Work** is complete (or as otherwise defined in the **Contract**):

- **Bridge deck**;
- **Pavement Structure**;
- **Shoulder**;
- Permanent signing;
- A minimum of one (1) application of striping;
- Traffic barrier;
- Signalization and Lighting; and
- Safety appurtenances.

Substructure. The **Bridge** below the bearings of simple and continuous spans, skewbacks of arches, and tops of footings of rigid frames, together with the backwalls, wingwalls, and wing protection railings.

Superintendent. The **Contractor's** agent authorized in writing to be in responsible charge of the **Project**.

Superstructure. The entire **Bridge** except the **Substructure**.

Supplemental Agreement. A type of **Change Order** that may require **Contractor** signature.

Supplemental Specifications. Approved additions and revisions to the **Standard Specifications**.

Supplier. Any individual, partnership, firm, corporation, or joint venture that manufactures, fabricates or supplies **Materials** to be incorporated into a construction **Project** but who performs no actual **Work** on the **Project** site.

Surety. The corporation, partnership, or individual, other than the **Contractor**, executing a bond furnished by the **Contractor**.

Surface Course. Layer or layers of a **Pavement Structure** designed to accommodate the traffic load, the top layer of which resists skidding, traffic abrasion, and the disintegrating effects

of climate.

Surfacing Pit. A source from which suitable **Material** for the production of **Surface Course** aggregate is obtained.

Temporary Construction Permit (TCP). A temporary interest in land acquired in conjunction with a **Project** to provide for the temporary use of private property for the duration of the **Project** to perform construction activities as designated in the **Contract**.

Technical Irregularity. A minor informality or irregularity that is not a material defect of a **Bid**, that is a matter of form that can be waived without prejudicing other **Bidders**, or result in a change to the order of **Bidders**.

Termini. A general term used to describe the **Project Limits**, and including the beginning and end of the **Project**, its **Right of Way**, pit sites, haul **Roads**, and temporary and permanent construction or maintenance easements.

Tribal/Local Public Agency (T/LPA). A Federally recognized **Indian Tribe**, a municipality, **City**, **County**, village, or other special authority sponsoring a federally funded transportation **Project** and determined to be qualified to assume the administrative responsibilities for such **Project** by the **NMDOT**.

T/LPA District Coordinator. **NMDOT** person assigned to coordinate and work directly with the **T/LPA** and the **NMDOT** Bureaus, Divisions, and Offices during construction.

T/LPA Region Coordinator. **NMDOT** person assigned to coordinate and work directly with the **T/LPA** and the **NMDOT** Bureaus, Divisions, and Offices during design.

Total Bid Amount. The sum of all the **Bid Item Prices** on the **Bid Form**. The **Total Bid Amount** represents the total cost of performing all the **Work** described in the **Contract** based upon estimated quantities.

Total Original Contract Amount. The total amount **Bid** as compensation for the **Contract**.

Town, City, County or District. Subdivisions of the **State** used to designate or identify the location of the proposed **Work**.

Traffic Lanes. See **Traveled Way**.

Traffic Services Engineer. The **T/LPA's** representative for traffic engineering.

Traffic Signal. The complete installation of a traffic control system at an intersection, including the illuminated signal indications, supports, electrical controls, and distribution system.

Traveled Way. The portion of the **Right of Way** designated for the movement of vehicles, exclusive of **Shoulders** and Auxiliary Lanes.

Trucker (Also called Trucking, Trucking Deliveries, Deliveries and Hauling). A **Trucker** is an individual, partnership, firm, corporation, or joint venture that transports or delivers **Materials** to and from the **Project** and does not perform **Work** on the **Project** site. A **Trucker** transports, but does not place, **Materials** (i.e. pit **Materials**, plant **Materials**, fabricated **Materials**, demolished and milled **Materials**, trash and waste **Materials**).

Unbalanced Bid. A **Bid** containing **Bid Item Unit Prices** that are unbalanced, to the potential detriment of the **T/LPA**. There are two types of **Unbalanced Bids**; (1) mathematically unbalanced and, (2) materially unbalanced. The mathematically **Unbalanced Bid** is a **Bid** containing **Lump Sum** or unit **Pay Items** which do not reflect reasonable actual costs plus a reasonable proportionate share of the **Bidder's** anticipated profit, overhead costs and other indirect costs but not necessarily to the detriment of the **T/LPA**. These costs should be related to the performance of the items in question. The materially **Unbalanced Bid** is a mathematically **Unbalanced Bid** which the **T/LPA** determines leaves reasonable doubt that **Award** will result in the lowest ultimate cost to the **T/LPA** or that **Award** is in the public interest.

Value Engineering Cost Proposal. A **Contractor**-provided form that details an alternative to the **Work** methods or **Materials** specified in the **Contract** that establishes a better or approved-equal product or result without affecting the functional purpose of the **Work** being revised, and that produce a net savings to the **T/LPA**.

Work. The providing of all documentation, supervision, labor, **Materials**, **Equipment**, transportation, and other **Incidentals** necessary for the successful completion of the **Project**, the successful completion of **Pay Items**, and the carrying out of the duties and obligations imposed by the **Contract**.

Working Day. Every **Day** except Saturdays, Sundays, and **Holidays**. Based on a review of weather conditions and the actual **Work** performed by the **Contractor**, the **Project Manager** will determine (between the end of the **Day** and noon of the next **Day**) if the **T/LPA** will charge a **Working Day**. If the **Contractor Works** for six (6) or more hours on a Saturday, Sunday, or **Holiday**, a **Working Day** will be charged.

Working Drawings. **Contractor**-furnished documents including, but not necessarily limited to:

1. Stress sheets;
2. Shop Drawings;
3. Bending diagrams for reinforcing steel;
4. Plans for erection, false **Work**, frames **Work**, cofferdams, and other items; and
5. Such other similar data required for the successful completion of the **Work**.

SECTION 102: BIDDING REQUIREMENTS AND CONDITIONS

102.1 RESERVED

102.2 PREQUALIFICATION

Prequalification of Bidders is a condition for submitting a Bid as authorized by the New Mexico Procurement Code, NMSA 1978, § 13-1-82 and 13-1-134 (1984, amended 2011).

Bidders shall be prequalified in accordance with 18.27.5 NMAC.

102.3 SUSPENSION AND DEBARMENT

The T/LPA may suspend, debar, reject a Bid as non-responsive, prohibit from the performance of Work, or terminate a Contract with any Bidder, Contractor, Subcontractor, at any tier, Suppliers, individual officers, directors in accordance with NMSA 1978, § 13-1-177 to 13-1-180 (1984, as amended 2011) and 1.4.7 NMAC or local ordinance. If an Indian Tribe or a LPA exempted from the Procurement Code pursuant to Section 13-1-98.K NMSA 1978 are authorized to do so under applicable law, the entity may suspend, debar, reject a Bid as non-responsive, prohibit from the performance of Work, or terminate a Contract with any Bidder, Contractor, Subcontractor, at any tier, Suppliers, individual officers, directors.

102.4 REQUIRED DOCUMENTS FOR BID SUBMITTAL

The T/LPA will make available to prospective Bidders the Required Documents for Bid Submittal. The Project's Required Documents for Bid Submittal are those specified in the Contract's Index of Required Documents for Bid Submittal.

102.5 REJECTION OF BIDS

102.5.1 Mandatory Rejection of Bids

The T/LPA reserves the right to reject any or all Bids, to waive technicalities, or to advertise for new Bids if, in the judgment of the T/LPA, the best interests of the public and the T/LPA would be promoted thereby. The T/LPA will reject Bid(s) for the following reasons:

1. A Bidder is not Prequalified;
2. A Bidder is determined to be a non-Responsible Bidder;
3. A Bidder fails to comply with any requirement in the Contract documents;
4. A Bidder omits any portion of the Required Documents for Bid Submittal when submitting its Bid;
5. A Bidder adds provisions reserving its right to Accept or reject an Award, or reserving its right to refuse to enter into a Contract after an Award;
6. A Bidder defaults under a previous Contract, including Contracts with other public entities;

7. The Bidder or its principals, individual officers or corporate directors are presently suspended, debarred, declared ineligible, or voluntarily excluded from bidding;
8. The T/LPA issued a notice of proposed Suspension or Debarment to the Bidder and the Bidder failed to timely respond to the notice of proposed Suspension or Debarment;
9. A Bidder submits more than one (1) Bid for the same Project control number;
10. A Bid Item Unit Price results in an Unbalanced Bid. The T/LPA may require the Apparent Low Bidder to detail and justify in writing how its prices were determined;
11. A Bidder contacts or communicates with any member of the T/LPA's governing body or any T/LPA personnel responsible for Bid review or the Award of the Contract in relation to the Bid review or Award process before the T/LPA's execution of the Contract, except for a response to an inquiry from the T/LPA's Chief Procurement Officer; or
12. A Bidder is subject of a judgment or verdict imposing a civil or criminal penalty under either the Federal False Claims Act or the New Mexico Fraud against Taxpayers Act.

102.5.2 Discretionary Rejection of Bids

The T/LPA may reject Bid(s) for the following reasons:

1. A Technical Irregularity exists;
2. A Bid Item Unit Price or Total Bid Amount differs significantly from the Engineer's Estimate or from other Bids;
3. A Bidder is responsible for uncompleted Work that might reasonably be expected to hinder or prevent the prompt completion of additional Work;
4. A Bidder fails to timely pay, satisfactorily settle, or provide security for the payment of Claims for labor, Equipment, Materials, supplies, or services legally due on previous or ongoing Contracts;
5. A Bidder performs previous Work unsatisfactorily, or fails to comply with Section 108.4, "Unsatisfactory Progress of Work;"
6. The T/LPA issues a notice of proposed Suspension or Debarment to the Bidder;
7. Evidence exists of collusion among Bidders or prospective Bidders; If the T/LPA becomes aware of an error in the quantity of a Bid Item shown in the Bid Schedule, Plans, or other Contract documents which may call into question the T/LPA's ability to determine which Bid will result in the lowest ultimate cost to the T/LPA;
8. To redesign the Project or change the Contract;
9. A potential benefit to the public or the T/LPA exists if the Contract is re-advertised; or when it is in the best interests of the public or the T/LPA.

102.6 INTERPRETATION OF QUANTITIES

The quantities appearing in the Contract are approximate only and are prepared for the comparison of Bids. Payment to the Contractor shall be made only for the actual quantities of Work performed and Accepted, or Materials furnished, or as otherwise specified (e.g., Computed Quantities) in the Contract.

102.7 EXAMINATION OF CONTRACT, SITE OF WORK, AND REQUESTS FOR CONTRACT INTERPRETATION

1. The submission of a Bid shall be considered conclusive evidence that the Bidder has exercised Pre-Bid Due Diligence and Accepts the conditions to be encountered in performing the Work and Accepts the provisions and requirements of the Contract.
2. When available, subsurface investigation records related to the Project will be provided by the T/LPA with the Bid package. When a log of test borings is included in the subsurface investigation record, the data shown in the individual log of each test boring apply only to that particular boring and are not intended to be conclusive as to the character of any Material between or around test borings. If Bidders use this information in preparing a Bid, it is used at its own risk, and Bidders are responsible for all conclusions, deductions, and inferences drawn from such information. If the Bidder requires additional information other than what the T/LPA furnished the Bidder may, at its own expense, and with T/LPA approval perform its own site investigation. The T/LPA providing subsurface investigation information does not relieve the Bidder from considering geotechnical data from previous Projects performed by the Bidder in the vicinity of the Project, and determining how subsurface conditions may affect the means, methods and cost of the Work. "The Bidder shall carefully study and compare all Contract documents and shall immediately report to the Chief Procurement Officer any error, inconsistency or omissions that may be discovered."

102.7.1 Requests for Contract Interpretation

1. Requests for Contract interpretation shall be in writing, addressed to the Chief Procurement Officer and must be received by the Chief Procurement Officer at least 72 hours before the Bid Opening time in the Advertisement in order to receive a written response to the request. Questions received after the designated period may not be considered. The T/LPA will not be bound by any statement or representation concerning the Work unless it is included in the Contract. The Bidder shall only rely on written responses from the Chief Procurement Officer and oral responses, explanations, interpretations, or instructions given before the Bid Opening by the T/LPA, its employees or agents, are not binding. Any response made by the T/LPA will be provided in writing to all Bidders by Addendum. It is the responsibility of each Bidder to obtain a copy of any Addendum issued by the T/LPA by monitoring the T/LPA's website. Written responses from the Chief Procurement Officer will be posted on the T/LPA's website. Written responses will be provided, whenever practicable, no later than twenty-four (24) hours prior to Bid Opening.
2. The Bidder shall take no advantage of any error or omission in the Contract. In the event the Bidder discovers an error or omission, the Bidder shall notify the Chief Procurement Officer in writing. The Bidder also agrees that it will make no Claim because of misinterpretation or misunderstanding of the Contract or because of lack of information; and,

3. If a written response by the T/LPA to a request for Contract interpretation is not provided, the Bidder shall Bid the Contract according to the Contract documents.

102.8 PREPARATION OF BID

1. Submit the Bid as provided in the Advertisement;
2. Specify a Bid Item Unit Price for each Bid Item, except when a Bid Item Unit Price is established by the T/LPA;
3. Show the amounts for the respective Bid Item Unit Prices to a maximum of three (3) decimal places. Round additional decimal places in excess of three (3);
4. Exclude the applicable State GRT, local option tax, Indian business tax, TERO tax, and other tax imposed by a tribal government. The T/LPA will pay the applicable tax or increase in the applicable tax effective after the Contract is executed by the T/LPA;

If no Bid Item appears on the Bid Schedule for any Work or Materials required or specified by the Contract, such Work and Materials shall be Incidental to the Contract and the cost of such Work shall be included in any Bid Item(s) related to or associated with such Work. For the convenience of the Contractor, some Contract documents may specify Work which is incidental; identification of such incidental items of Work is not all-inclusive.

102.9 INNOVATIVE INCENTIVE/DISINCENTIVE PROVISIONS

The T/LPA reserves the right and may include innovative Incentive/Disincentive Provisions in the Contract.

102.10 RESERVED

102.11 BID GUARANTY

A Bidder shall submit with the Bid, a Bid Guaranty in the amount of five percent (5%) of the Total Bid Amount. The requirement of the Bid Guaranty is to ensure that the Bidder will promptly execute the Contract in accordance with the Advertisement and in the manner and form required by the Contract Documents and that the Bidder will furnish good and sufficient Contract Bonds and required insurance. The Bid Guaranty shall be in the form in the Required Documents for Bid Submittal. The Bid Guaranty will remain in force up to 30 Days after Bid Opening, or until Award of Contract as it may be extended by the T/LPA, notice of which extension(s) to the surety is hereby waived.

102.12 RESERVED

102.13 RESERVED

102.14 WITHDRAWAL OF BIDS

102.14.1 Bidder

A Bidder may withdraw its Bid before Bid Opening. A Bid containing a mistake discovered before Bid Opening may be modified or withdrawn by a Bidder prior to the time set for Bid Opening by delivering written or telegraphic notice to the location designated in the Invitation for Bids as the place where Bids are to be received.

Once a Bid Opening has commenced at the date, time and place designated in the Advertisement Bids may not be withdrawn and no modifications in Bid prices or other provisions of Bids shall be permitted. After Bid Opening, a Low Bidder alleging a material mistake of fact which makes his Bid nonresponsive may be permitted to withdraw its Bid if:

1. the mistake is clearly evident on the face of the Bid document; or
2. the Bidder submits evidence which clearly and convincingly demonstrates that a mistake was made.

102.14.2 Procurement Officer

Any decision by a procurement officer to permit or deny the withdrawal of a Bid on the basis of a mistake contained therein shall be supported by a determination setting forth the grounds for the decision.

102.15 RESERVED

102.16 RESERVED

SECTION 103: AWARD AND EXECUTION OF CONTRACT

103.1 CONSIDERATION OF BIDS

The Chief Procurement Officer shall review, evaluate Bids and make recommendations for rejection or issuance of the Notice of Preliminary Award. The Chief Procurement Officer will review the Bid Item Unit Pricing to determine if the Bid Item Unit Pricing is responsive, unbalanced either materially or mathematically, or any other abnormalities exist. The T/LPA reserves the right to request justification from the Bidder for any aspect relating to its Bid and the Bidder shall respond to the request. The results of the completed analysis will be available to the public after the T/LPA issues the Notice of Preliminary Award of Contract letter.

If two (2) Contractors submit identical lowest Total Bid Amounts, the T/LPA shall Award by lottery to one of the identical Low Bidders or reject all Bids and resolicit Bids. An Invitation for Bids 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 T/LPA. A determination containing the reasons for cancellation shall be made part of the procurement file. If no Bids are received or if all Bids received are rejected, then new invitations for Bids shall be requested. Any or all Bids may be rejected when it is in the best interest of T/LPA at any time prior to execution of the Contract. A determination containing the reasons for cancellation shall be made part of the procurement file. If all Bids are rejected the T/LPA may issue a new Advertisement.

103.2 NOTICE OF PRELIMINARY AWARD OF CONTRACT

Except as described in Section 103.3, "Bidding Dispute Resolution Procedures," the T/LPA will issue the Notice of Preliminary Award of the Contract within 30 Days after Bid Opening to the Lowest Responsible Bidder. Bidders may agree to a later Notice of Preliminary Award time if requested to do so by the T/LPA, failure to agree to a later Notice of Preliminary Award time as requested by the T/LPA will be deemed the Bidder's withdrawal of its Bid. The Notice of Preliminary Award letter, if it is mailed within 30 Days of the Bid Opening, shall bind the Lowest Responsible Bidder to Accept the Contract or to reject the Contract and forfeit the Bid Guaranty it has provided.

103.3 BIDDING DISPUTE RESOLUTION PROCEDURES

103.3.1 Right to Protest

Any bidder who is aggrieved in connection or Award of a contract may protest to the Chief Procurement Officer. The protest shall be submitted in writing within fifteen Calendar Days after knowledge of the facts or occurrences giving rise to the protest. Upon the filing of a timely protest, the Chief Purchasing Officer shall give notice of the protest to the Bidder if Award has been made or, if no Award has been made, to all Bidders who appear to have a substantial and reasonable prospect of receiving an Award if the protest is denied.

103.3.2 Authority to Resolve Protests

The Chief Procurement Officer shall have the authority to resolve protests. the authority to take any action reasonably necessary to resolve a protest of an aggrieved bidder. The Chief Procurement Officer shall have the authority to take any action reasonably necessary to resolve a protest of an aggrieved Bidder. This authority shall be exercised in accordance with regulations promulgated by the T/LPA but shall not include the authority to Award money damages or attorneys' fees.

103.3.3 Protest Determination

The Chief Procurement Officer shall promptly issue a determination relating to the protest. The determination shall:

1. state the reasons for the action taken; and
2. inform the protestant of the right to judicial review of the determination pursuant to Section 156 [13-1-183 NMSA 1978] of the Procurement Code.

A copy of the determination shall immediately be mailed to the protestant and other Bidders involved in the procurement.

103.4 CANCELLATION OF AWARD

The T/LPA may reject all Bids, rescind the Notice of Preliminary Award of Contract, and cancel the Award of any Contract at any time prior to the execution of the Contract by all parties without incurring liability where such cancellation is deemed by the T/LPA to be in the best interests of the T/LPA. No Bidder has a contractual, equitable, implied, or any other right to the Contract until executed by both parties.

103.5 RESERVED

103.6 CONTRACTOR EXECUTED CONTRACT

The T/LPA will provide the Contract to be executed by the Contractor and returned to the T/LPA. The Contractor shall return the signed Contract with Contract Bonds and other documents required by the Notice of Preliminary Award letter within the 15 Days from the date of the letter. The Contract Bonds shall become binding upon Contract execution.

The value of each bond shall equal the Total Original Contract Amount.

All Contract Bonds shall be procured from Sureties with an A.M. Best Company financial strength rating level of A- or better, Class VII or better, unless otherwise approved in writing by the T/LPA. In no event shall the T/LPA approve the use of a Surety with an A.M. Best Company financial strength rating level of B or worse.

103.7 FAILURE TO EXECUTE CONTRACT

Failure by the Lowest Responsible Bidder to return the signed Contract, Contract Bonds and other documents required by the Notice of Preliminary Award letter within 15 Days of receiving the letter shall constitute just cause for rescinding the Notice of Preliminary Award of Contract and the forfeiture of the Bid Guaranty which shall become the property of the T/LPA, not as a penalty but as liquidation of reasonable damages sustained. The Bid Guaranty remains in effect until the T/LPA has fully executed the Contract. The T/LPA may then issue the Notice of Preliminary Award of the Contract to the next Lowest Responsible Bidder or take other actions as the T/LPA may decide.

103.8 EXECUTION OF CONTRACT

If the T/LPA fails to execute the Contract within 30 Days of receiving the signed Contract, Contract Bonds, and other documents required by the Notice of Preliminary Award Letter from the successful Bidder, the Bidder may withdraw its Bid without penalty. No Contract shall be effective until it has been fully executed by the T/LPA and the Contractor. In no event shall the Contractor commence Work until after execution of the Contract by all parties.

SECTION 104: SCOPE OF WORK

104.1 INTENT OF THE CONTRACT

The intent of the Contract is to provide for the construction and completion of the Work to the satisfaction of the T/LPA. The Contractor shall furnish experienced supervision and labor and all Materials, Equipment, tools, transportation and supplies required to complete the Work in accordance with the Plans, Specifications and terms of the Contract.

Unless otherwise specified in the Contract, the Contractor is vested with the discretion and is wholly and solely responsible for selecting and managing the means and methods for performing the Work.

104.1.1 Contract Modifications

No modifications, limitations, waivers or discharge of the Contract or any of its terms shall bind the T/LPA unless made in a written Change Order signed by the Project Manager. A course of performance or course of dealing on this Contract or any other contract between the T/LPA and a Contractor shall not constitute a modification or waiver of the Contract and shall not give rise to any Claim including any cause of action based upon promissory estoppel, estoppel, waiver, or detrimental reliance.

104.2 EXTRA WORK

The T/LPA reserves the right to modify the Contract at any time. Such revisions shall neither invalidate the Contract nor release the Surety. The Contractor agrees to complete the Contract as revised. The Contractor shall perform Work at the T/LPA's written direction defining the scope of the Work and in accordance with the Specifications.

The Contractor shall provide to the Project Manager its proposal associated with the Work before starting the Work. The submission of the proposal shall not be considered Accepted by the T/LPA until the Acceptance of the cost proposal is in writing from the T/LPA. If the proposal is Accepted by the T/LPA, then the T/LPA will issue a Change Order and allow the Contractor three (3) Days to review and sign the Change Order. If, after the expiration of three (3) Days, the Contractor has failed to sign the Change Order the T/LPA may process the Change Order unilaterally.

104.2.1 Significant Changes in the Character of the Work

The Project Manager reserves the right to make, in writing, at any time during the Work, modifications in quantity and alterations to the Work as are necessary to satisfactorily complete the Project. "Significant change" applies only to modifications or alterations that:

1. Materially changes, in kind or nature, the character of the Work including the Critical Path from that which was previously involved or included in the original proposed

construction. When the character of the Work is materially changed in kind or nature then the Project Manager and the Contractor shall agree upon the adjustment prior to the Contractor's performance of the Work. If an agreement is reached, the Project Manager will make an adjustment to the Contract which excludes anticipated profit. If an agreement is not reached, the Project Manager will direct the Contractor to perform the Work. The Project Manager and the Contractor will track the costs in accordance with 109.6, "Force Account."

2. A Major Item of Work, as defined elsewhere in the Contract, has increased in excess of 125 percent or decreased below 75 percent of the original contract quantity. The Project Manager and the Contractor may negotiate adjustments to the Contract when it is discovered that a Major Contract Item of Work, as defined elsewhere in the Contract, has increased in excess of 125 percent or decreased below 75 percent of the original contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 125 percent of original Contract Item quantity. In the case of a decrease below 75 percent, the allowance will apply to the actual amount of work performed. For quantities below 75 percent, before an adjustment is made, the Contractor shall provide documents, including invoices, to the Project Manager justifying the requested adjustment price. If the final quantities are reestablished to be within the thresholds of 75% to 125% of the original item quantity then the original Bid Item Price applies.
3. Affects Work performed under a Subcontract, as solely determined by the Project Manager. The Project Manager will make adjustments if the Contractor demonstrates that the change adversely affects the Subcontractor's Work.

The T/LPA shall not consider customary increases or decreases in quantities necessary to complete the Work changed by the Contractor's schedule of operations, the Contractor's planning of the Work, or unscheduled mobilizations.

104.2.2 Differing Site Conditions

The Contractor shall carefully study and compare the foundation reports and geotechnical reports and Contract documents and shall immediately report to the Project Manager any error, inconsistency, or omission that it discovers. If the Contractor does not understand information in the foundation report and geotechnical report, it shall immediately seek clarification from the Project Manager. The Contractor and the Project Manager shall provide, immediately upon discovery written notice of the following conditions encountered on the Project during the progress of the Work:

1. Present but not visible physical conditions differing materially from those shown in the Contract; or,
2. Unknown conditions of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in the Work.

The Project Manager will decide, within a, two (2) Working Days, after written notification, whether the conditions materially differ and cause an increase or decrease in the cost or time required to perform the Work.

The Project Manager will notify the Contractor of this decision and the Contractor shall not proceed with Extra Work until the Project Manager provides direction.

The Project Manager will adjust the Contract for differing site conditions in accordance with Section 109.5, "Payment for Extra Work," and will include the costs of Delays but exclude anticipated profit in accordance with Section 109.11, "Compensation for Claims." Conditioned upon obtaining District Engineer approval with concurrence from the CLE, the T/LPA may grant time extensions only to the extent that the activities on the Critical Path of the Baseline Schedule in effect at the time of the Delay are impacted. No Contract adjustment which results in a benefit to the Contractor will be allowed if a differing site condition could have been discovered or anticipated by the Contractor through the exercise of Pre-Bid Due Diligence.

104.2.3 T/LPA Ordered Work

The T/LPA shall pay for T/LPA ordered Work in accordance with Section 109.5, "Payment for Extra Work."

Conditioned upon obtaining District Engineer prior approval and concurrence from the CLE, the T/LPA may grant time extensions only to the extent that the activities on the Critical Path of the Baseline Schedule in effect at the time of the Delay are impacted.

104.3 RESERVED

104.4 RESERVED

104.5 MAINTENANCE OF TRAFFIC

The Contractor shall furnish traffic control devices, take protective and safety measures, and complete the Work. If the Contractor fails to do so, the Project Manager will notify the Contractor in writing of the deficiency and the Contractor shall take corrective action within the time frame specified by the Project Manager. Failure by the Contractor to take the corrective action as directed by the Project Manager shall result in the T/LPA assessing to the Contractor the incurred costs for the corrections plus an additional 10% for administrative costs.

The Contractor shall not endanger the traveling public when moving Equipment on or across the ROW and Roadway. The Contractor's Equipment shall enter and leave the ROW and Roadway in the direction of the Traveled Way, except with the written approval of the Project Manager.

The Project Manager may direct the Contractor to maintain the pavement surface. The T/LPA will pay for this Work in accordance with Section 109.5, "Payment for Extra Work."

The T/LPA is responsible for snow removal on sections of Roadway open to the traveling public unless some other agency has responsibility for its removal. The Project Manager will coordinate snow removal with the Contractor and the maintenance patrol.

The Contractor shall furnish warning devices, take protective and safety measures, and complete Shoulder Work, drainage Structures, or other features of the Work. If the Contractor fails to do so, the Project Manager will notify the Contractor in writing of the deficiency and the Contractor shall take corrective action within the time frame specified by the Project Manager.

The Contractor shall provide reasonable vehicular and pedestrian ingress and egress to adjoining properties during the duration of the Contract. The Contractor shall advise and schedule access modifications with local business owners and residences and the Project Manager at least 24 hours in advance.

The Contractor shall not open partially completed sections of the Traveled Way unless directed or approved by the Project Manager. If the Traveled Way is opened at the Contractor's request, the Contractor remains liable for costs associated with the opening until Final Acceptance of the Project. The Project Manager will provide written instructions approving any sections which are to be opened. Such an opening shall not constitute a full or partial Acceptance of the Work or a waiver of any Contract provisions.

104.6 RIGHTS IN AND USE OF MATERIALS FOUND ON THE WORK

The Contractor may use Materials found in the excavation for completing Pay Items other than the Work in Standard Specification Section 203. Payment will be made for both the excavation of such Materials at the corresponding Contract Unit Price and for the Pay Item for which the excavated Material is used.

If the excavated Material would have been used to construct Embankments or Bridge approaches or for other purposes, any of which would have been required to complete the Contract, the Contractor shall replace the excavated Material with Acceptable Material at no additional cost to the T/LPA. The T/LPA will not charge the Contractor for the use of the excavated Material. The Contractor shall obtain written authorization from the Project Manager before excavating Material that is within the Right of Way but outside the grading limits, as shown by the slope and grade lines. Prior to granting approval, the Project Manager will verify that the requirements of Section 107, "Legal Relations, Environmental Requirements, and Responsibility to the Public," have been met. If not previously cleared environmentally, meeting these requirements will be the responsibility of the Contractor.

Unless otherwise provided, the Contractor may temporarily use the Material from existing Structures in the erection of a new Structure but shall not, without the approval of the Project Manager, cut or otherwise damage such Materials.

104.7 FINAL CLEANUP

Pits located on State or federal land are governed by the appropriate requirements of their agency. The requirements of this Section do not apply to a commercial source.

Before Final Acceptance all areas occupied by the Contractor or in connection with the Work shall be cleaned of all Deleterious Material, rubbish, excess Materials, temporary Structures and Equipment, and all parts of the Work shall be left in a condition Acceptable to the Project Manager or otherwise required by the Contract. To avoid the requirement of removal of Equipment from private property before Final Acceptance, the Contractor shall make appropriate arrangements with private property owners and provide documentation of the arrangement to the Project Manager.

The Contractor shall not allow Borrow Pits and Surfacing Pits to change the general pattern of existing drainage. Unless Borrow Pits or Surfacing Pits are suitable to develop as ponds or lakes and the property owner has notified the T/LPA in writing that such development is planned, the Contractor shall where practicable leave all pits well drained.

The Contractor shall, when excavation is complete, contour grade pits, except quarry pits, to blend with the natural topography of the surrounding area or in accordance with the Contract or agreements with the property owners.

104.8 VALUE ENGINEERING COST PROPOSAL (VECP)

The T/LPA under no circumstances will reimburse the Contractor for the costs of developing the VECP that is rejected or is not Accepted by the T/LPA. The Contractor shall submit its VECP on the T/LPA provided form only. Exempted from Value Engineering Cost Proposals are mix designs and traffic control. Any decision about whether to Accept a VECP shall be in the sole discretion of the T/LPA. A VECP shall not be considered Accepted until the T/LPA approves a Change Order implementing the VECP. VECPs are reviewed on a case by case basis and apply only to the ongoing Contracts referenced in the VECP proposal and become the property of the T/LPA upon approval of the Change Order. VECPs shall contain no restrictions imposed by the Contractor on their use or disclosure. The T/LPA has the right to use, duplicate and disclose in whole or in part any data necessary for the utilization of the VECP. The T/LPA retains the right to utilize any Accepted proposal or part thereof on other Projects without obligation or compensation to the Contractor.

The Contractor's share of the VECP is fifty percent (50%) of the net savings. In no event shall the Contractor be entitled to an extension of Contract Time for the T/LPA's consideration a VECP, the refusal to Accept or approve such a proposal, or any other matter connected with a VECP.

The T/LPA will rely exclusively upon the accuracy of the engineering data upon which the VECP is based and will not be required to perform additional investigations, crosschecks, or site examinations. The T/LPA's Acceptance or adoption of a VECP shall not be construed to alleviate or reduce the Contractor's full and absolute liability if the implementation of the proposal fails to satisfactorily perform.

SECTION 105: CONTROL OF WORK

105.1 RESPONSIBILITY AND AUTHORITY OF THE T/LPA

105.1.1 T/LPA Authority

The T/LPA has the authority to:

1. Administer the Contract;
2. Alter the Contract;
3. Enforce and terminate the Contract as expressly provided in other Sections of the Standard Specifications;
4. Wholly or Partially Suspend the Work for cause; and
5. Take actions as determined to be in the public's best interest.

If the Work is suspended by the Project Manager in writing for an unreasonable time (not originally anticipated, customary, or inherent to the construction industry), the Contractor may submit to the Project Manager a Notice of Intent to Claim in accordance with Section 105.19, "Notice of Intent to Claim," which must be accompanied by a proposed revised schedule pursuant to Section 108.3, "Schedule."

105.1.2 Contractor Convenience

The Contractor shall be wholly responsible and liable for any costs or time associated with any requests made for the Contractor's convenience and approved by the T/LPA.

105.2 PLANS, WORKING DRAWINGS

The Plans may be supplemented by Working Drawings as are necessary for the Work. The Contractor shall have the sole responsibility for verifying pertinent dimensions in the field before submitting such Working Drawings to the Project Manager. Working Drawings shall be submitted by the Contractor and Accepted by the Project Manager before beginning Work covered by the drawings. The Project Manager will review the Working Drawings although the Project Manager's review does not relieve the Contractor of the responsibility for the satisfactory completion of the Work or compliance with the Contract. The Contractor shall not alter or amend such drawings without the prior written approval of the Project Manager. The furnishing of all Working Drawings is Incidental.

The Contractor's Baseline Schedule of Work shall show the submittal of any Working Drawing as a milestone thirty (30) Days before the commencement of Work covered by the drawings. Unless otherwise indicated in the Contract, or approved by the Project Manager in writing, the Project Manager will have no longer than thirty (30) Days for Acceptance of the Working Drawings. If the Working Drawings are not Acceptable, the Working Drawings shall be resubmitted by the Contractor and the timeframe for Acceptance starts over. All time required for review of Working

Drawings and other Contractor submittals shall be Incidental and shall not be the basis for any Claim for Contract Time extension or additional compensation.

105.2.1 Submittals

Anything that requires approval is considered a submittal by the T/LPA. Any submittal required, other than the Critical Path Method or Bar Graph Schedules, shall be submitted to the T/LPA thirty (30) Days before the Work related to the submittal is performed. The Project Manager will have no longer than thirty (30) Days for Acceptance of the submittal, unless otherwise specified in the Contract.

105.3 COMPLIANCE WITH PLANS AND SPECIFICATIONS

The Contractor shall perform the Work and provide the Materials in substantial compliance with the lines, grades, cross sections, dimensions, and Material requirements as specified by the Contract. The T/LPA's failure to discover or reject Work or Materials not in substantial compliance with the Contract during the Work shall not be considered an Acceptance of the Work or Materials, or a waiver of defects. The T/LPA's failure to properly perform inspections or tests shall not relieve the Contractor from its obligation to perform the Work and provide Materials in substantial compliance with the Contract and shall not be considered the T/LPA's Acceptance of the Work or Materials.

If the Project Manager determines that Work or Materials are unacceptable, the Contractor shall remove, replace and correct the Work or Materials at no additional cost to the T/LPA. The Project Manager's determination that the Work or Materials are unacceptable shall not form the basis of a Claim for additional Contract Time or additional compensation.

If Work does not comply or substantially comply with the Contract, the T/LPA may determine the Work is nonetheless Acceptable. Such a determination is subject to the approval of the District Coordinator. If Accepted the Project Manager will, by Change Order, provide an adjustment for Work or Materials.

105.4 COORDINATION OF CONTRACT DOCUMENTS

In case of a discrepancy, the Contract documents will govern in the following order of importance:

1. Addenda;
2. Required Documents for Bid Submittal;
3. Notices to Contractors;
4. Advertisement;
5. Special Provisions;
6. Plans;
7. Supplemental Specifications;
8. Standard Specifications; and,

9. Standard Drawings.

Dimensions given on the Plans or that can be calculated govern over scaled dimensions.

If a Contract discrepancy is discovered after the Award of the Project, the Contractor shall, upon discovery, promptly notify in writing the Project Manager. The Contractor shall take no advantage of any discrepancy or errors or omissions in the Contract. The Project Manager will resolve the discrepancy in writing before the Contractor proceeds further with performance of the affected Work.

105.5 CONTRACTOR RESPONSIBILITIES

The Contractor shall monitor the Work at all times, select and manage the means and methods for performing the Work.

105.5.1 Duties of Superintendent

The Contractor shall have on the Project at all times during the course of the Work, a competent and qualified Superintendent who:

1. Reads and understands the Contract documents; and
2. Possesses substantial experience in the type of Work being performed.

The Contractor and its Superintendent shall communicate with the Project Manager as the T/LPA's contact for all matters relating to the Project and promptly submit all documentation or notice required by the Contract to the Project Manager.

105.6 COOPERATION WITH UTILITIES

The Contractor shall comply with the Notice to Contractors regarding Cooperation with Utilities for relocations, adjustments, and installations of utilities. The Contractor's responsibility is to adequately coordinate, notify, or comply with the Contract and failure to do so shall not form the basis for an extension of Contract Time or additional compensation.

The Contractor shall copy the Project Manager on all communications with utilities. For telephonic communications a summary of the communication shall be provided to the Project Manager monthly.

The Contractor shall be responsible for complying with the New Mexico Excavation Law, NMSA 1978, Section 62-14-1 through -10 which provides the procedures and requirements related to the performance of Project excavation Work.

Failure by the utility owner to relocate, adjust, or install the utility in accordance with the Contract may result in the Project Manager issuing written direction to the Contractor directing that the Contractor shall relocate, adjust, or install the utility per Section 104.2, "Extra Work."

The Contractor shall terminate operations in the immediate area of a utility conflict not identified in the Contract and encountered during the Work. The Contractor shall immediately provide written notice to the Project Manager of the conflict. The Contractor shall continue Work in other areas. The Project Manager shall provide written notification to the Contractor when Work may commence in the area of terminated operations. The Contractor shall make requests for additional Contract Time or compensation per Section 104.2.2, "Differing Site Condition." Where utility conflicts not identified in the Contract are present, the Contractor shall provide the Project Manager, on a weekly basis, evidence of adequate coordination and cooperation with utilities. Neither additional Contract Time nor compensation will be provided where the Contractor fails to provide the Project Manager, on a weekly basis, evidence including a telephonic log of communications concerning the Contractor's continued cooperation and coordination activities with utilities.

105.7 COOPERATION BETWEEN CONTRACTORS

The T/LPA reserves the right at any time to Contract for and have performed other Work on or near the Project.

When separate Contracts are let within the limits of any one Project, each Contractor shall conduct the Work without interfering or hindering the progress or completion of the Work being performed by other Contractors. Contractors working on the same Project shall cooperate with each other as directed.

Each Contractor involved shall assume all liability, financial or otherwise, in connection with the Contract and shall protect and hold harmless the T/LPA for all damages or Claims as per Section 107.19, "Responsibility for Third Party Claims and Duty to Defend."

If the Contractor and one (1) or more other Contractors are unable to agree upon the sequence of Work or other matters, the Contractor(s) shall request that the Project Manager provide a written decision on the issue. The Project Manager will allow a reasonable time for all parties to respond and, after reviewing the information received, will issue a decision binding on all parties within seven (7) Days of receiving such information.

105.8 AUTHORITY AND DUTIES OF THE PROJECT MANAGER

105.8.1 Project Manager Authority

The Project Manager is a designee of the T/LPA and has the following responsibilities:

1. Interpretation and administration of the Contract;
2. Immediate charge of the details of the Project;
3. Authority to reject Work and Material;

4. Authority to wholly or Partially Suspend the Work for reasons beyond the control of the Contractor or not connected to the construction of the Project when the Project Manager deems such a suspension to be in the best interests of the public and the T/LPA; and,
5. Authority to concur with the Contractor's request to Partially Suspend or wholly suspend the Work.

At no cost to the T/LPA, the Project Manager may also wholly or Partially Suspend the Work for cause, including but not limited to, the Contractor's failure to:

- a. Correct unsafe conditions;
- b. Comply with any term or condition of the Contract;
- c. Observe and comply with any Federal or State law or regulation;
- d. Carry out directions of the Project Manager;
- e. Manage its personnel and Subcontractor and its personnel; or,
- f. Perform satisfactory Work.

105.8.2 Contractor Inquiries to Project Manager

The Contractor shall submit all correspondence to the Project Manager. The Contractor shall submit in writing a request for information for any Project issues, including but not limited to discrepancies in the Contract, to the Project Manager who will resolve the issues.

The determination of the Project Manager will be in writing and delivered to the Contractor's Superintendent as soon as reasonably practicable.

105.9 DUTIES OF THE INSPECTOR

105.9.1 Inspector Authority

The T/LPA authorizes its Inspectors to:

1. Inspect the Work;
2. Inspect the preparation, fabrication or manufacture of Materials; and,
3. Notify the Contractor of non-conforming Work, reject non-conforming Materials, and suspend portions of the Work for safety reasons only.

The Contractor shall refer questions at issue to the Project Manager for a decision.

105.9.2 Inspector Authority Limitations

The T/LPA does not authorize its Inspectors to:

1. Alter or waive any provision of the Contract;
2. Issue instructions contrary to the Contract; or
3. Provide direction, superintendence or guidance to the Contractor, Subcontractors or Suppliers;

Any action or inaction of the Inspector does not waive the T/LPA's right to pursue any and all legal remedies for defective Work or Work performed by the Contractor in an unworkmanlike manner.

105.10 INSPECTION OF WORK

The Contractor shall provide the Project Manager with 48 hour notice for inspection of the Work. Failure by the Contractor to provide the proper notice may result in the T/LPA directing the Work performed without inspection to be removed at no cost to the T/LPA.

The Contractor shall provide the T/LPA or its representative access to the Work and provide all information, Equipment, and assistance requested or required to make a complete and detailed inspection of the Work. All Materials and each part or detail of the Work shall be subject to inspection by the T/LPA.

The Project Manager may direct the Contractor to remove or uncover portions of the finished Work, at any time before Final Acceptance of the Work. The Contractor shall restore the portions of the Work to the standard required by the Contract after the Project Manager's examination. If the examined Work is Acceptable, the T/LPA will pay for the removal and restoration as Extra Work under Section 104, "Scope of Work," and Section 109.5, "Payment for Extra Work." However, if the examined Work is unacceptable, the Contractor shall remove and restore the Work at no additional cost to the T/LPA.

Action or inaction by a T/LPA Inspector shall not relieve the Contractor from any responsibility under the Contract for Acceptable Work in conformity with the Contract. The failure to properly perform inspections, tests or approvals by the T/LPA shall not relieve the Contractor from its obligation to perform the Work in strict conformance with the Contract.

105.11 REMOVAL OF UNACCEPTABLE AND UNAUTHORIZED WORK

Work that does not conform to the requirements of the Contract shall be unacceptable, unless it is determined by the Project Manager to be Acceptable under the provisions of Section 105.3, "Compliance with Plans and Specifications."

Should any defective Work or Material be discovered, before Final Acceptance, the T/LPA will issue a Non-Conformance in accordance with Section 109.8.2, "Non-Conformance."

Prior to T/LPA Acceptance, the Contractor shall replace or repair Materials damaged in transit or during handling at no additional cost to the T/LPA.

The Contractor shall remove unacceptable Work resulting from causes existing before the Final Acceptance of the Work and replace in an Acceptable manner at no additional cost to the T/LPA. The Project Manager will set the time limit for the replacement Work.

The T/LPA shall not pay for the following under the provisions of the Contract:

1. Work performed contrary to the Project Manager's direction or as provided in the Contract;
2. Work performed beyond the lines and grades on the Plans; or,
3. Work performed without authority.

Upon failure of the Contractor to comply with the removal and replacement of unacceptable or unauthorized Work within the time specified by the Project Manager, the Project Manager shall have authority to cause unacceptable Work to be removed and replaced. The Project Manager will then deduct from the monies due or that become due to the Contractor the cost of removing or replacing the unacceptable or unauthorized Work.

105.12 LOAD RESTRICTIONS

The Contractor shall observe legal load restrictions when hauling Equipment or Material on public Roads outside of the Project or on Roadways within the Project. The Project Manager may approve exceptions, in writing, provided the Contractor has obtained the proper oversize and overweight permits. The Contractor is liable for damage that may result from moving Equipment, even with the issuance of a special permit.

The Contractor shall not use Equipment or haul loads that will cause damage to Structures, Roadway, or any other construction, regardless of legal load allowances.

If the Project Manager determines that anticipated hauling operations may cause damage to existing Roadways or Structures, the Project Manager will issue a written notice to the Contractor. Within seventy two (72) hours of the notice, the Project Manager will elect one (1) or more of the following solutions:

1. Change the haul route; or
2. Reduce the allowable load limit.

If the Project Manager determines that hauling operations are causing damage to existing Roadways or Structures, the Project Manager will issue a written notice to stop operations causing the damage. Within seventy two (72) hours of the notice, the Project Manager will issue written direction to the Contractor to repair the damage or the Project Manager will elect one(1) or more of the following solutions:

1. Change the haul route;
2. Reduce the allowable load limit;
3. Allow the operations to continue with the requirement that the Contractor repair all damaged areas at $\frac{1}{2}$ Unit Bid prices. In the absence of a Unit Bid price, the current published average unit Bid prices shall be used.

105.12.1 Corrective Actions and Methods of Payment

105.12.1.1 Change in Haul Route

If the Project Manager changes the haul route, the T/LPA will modify the Contractor's payment per the following equation:

$$P = R \times t \times (d_1 - d_0) \quad (1)$$

Where,

P is the payment modification (in dollars)

R is the rate (in dollars per ton mile determined in accordance with Section 109, "Measurement and Payment.")

t is the weight of Material hauled from the new stockpile area (in tons)

d_0 is the original haul distance measured from the Roadway access point to the original stockpile area

d_1 is the new haul distance measured from the Roadway access point to the new stockpile area

105.12.1.2 Change in Allowable Load Limit

If the Project Manager reduces the allowable load limit, the T/LPA will pay the Contractor in accordance with the following equation:

$$P = \frac{QF \times R \times d \times (LA - LR)}{LA} \quad (2)$$

Where,

P is the additional payment (in dollars)

R is the rate (in dollars per ton mile determined in accordance with Section 109, "Measurement and Payment.")

QF is the total quantity of Material hauled at the reduced load limit (in tons)

LA is the allowable load limit (in tons)

LR is the reduced load limit (in tons)

d is the haul distance (in miles)

If the Project Manager allows operations to continue or because of damage to an existing Roadways or Structures, the T/LPA will pay the Contractor for the Material used to make the repairs at the ½ of the Bid Item Unit Price, or in accordance with Section 109, "Measurement and Payment." If an item is not part of the Contract, the T/LPA will negotiate a new unit price. If a Structure or existing Roadway must be repaired, the T/LPA may pay the Contractor for hauling repair Materials using a rate requested and justified by the Contractor and approved by the Project Manager.

105.13 RESERVED

105.14 RESERVED

105.15 MAINTENANCE DURING CONSTRUCTION

The Contractor shall maintain the Work during construction and until the T/LPA Accepts the Work, except as otherwise provided in Section 104.5, "Maintenance of Traffic," and Section 105.18, "Acceptance." This maintenance shall consist of continuous, daily Work with adequate Equipment and forces so that the Roadway and Structures are kept in satisfactory condition. The Contractor shall be responsible for maintaining the Project free and clear of Deleterious Materials including debris, weather related remnants, snow, loose Materials and trash. The T/LPA will be responsible for snow removal operations on travel lanes open and utilized by the public unless some other entity is responsible for its removal.

The Contractor shall maintain the previous course and Subgrade when the Plans require the Contractor to place traffic on the unfinished Roadway.

All maintenance Work during construction and before the Project is Accepted shall be Incidental. The T/LPA shall not pay the Contractor an additional amount for this Work except in accordance with Section 104.5, "Maintenance of Traffic," and Section 105.18, "Acceptance."

105.16 FAILURE TO MAINTAIN ROADWAY OR STRUCTURE

If the Contractor fails to maintain the Project in accordance with Section 105.15, "Maintenance During Construction," the Project Manager shall notify the Contractor in writing of the failure. If the Contractor does not take corrective action in timeframe specified by the Project Manager, the Project Manager may issue a written notice per 109.8.2 "Non-Conformance" or notice of the Contractor's apparent default per Section 108.9, "Default of Contract."

If the Contractor does not begin maintenance after notice from the Project Manager, the Project Manager may begin maintenance of the Project. For corrective actions implemented by the Project Manger the Contractor shall reimburse the T/LPA for T/LPA incurred costs of such maintenance plus an additional ten percent (10%) for administrative costs.

105.17 RESERVED

105.18 ACCEPTANCE

105.18.1 Partial Acceptance

The Contractor may request in writing that the Project Manager inspect a portion of the Project (e.g., a Structure, a section of Road, etc.) at any time during the Work. If the Project Manager finds that portion to be in accordance with the Contract, subject to the concurrence of the District Coordinator, the Project Manager may Accept that portion as complete, and, without waiving the provisions in Section 105.3, "Compliance with Plans and Specifications," Section 107.26, "No Waiver of Legal Rights," and Section 109.10, "Project Closure," the Contractor may be relieved of further responsibility for that portion unless the T/LPA discovers latent defects before Final Acceptance of the Work. Such partial Acceptance does not void or alter the Contract.

The T/LPA will Accept permanent traffic safety and control devices installed in accordance with the Contract (with all ancillary components) and being used by the public upon installation but before completion of the remaining Work.

Permanently installed items Accepted on this basis are limited to the following:

1. Guardrail;
2. Impact attenuators;
3. Traffic Signals;
4. Signs;
5. Lighting;
6. Raised pavement markers;
7. CWB;
8. Concrete Bridge parapet;
9. Bridge railing;
10. Post and cable barrier ;
11. Guardrail anchorages;
12. Permanent pavement markings; and
13. Fence.

All required performance tests and guarantees shall remain applicable.

The Contractor shall repair or replace any damage, theft, or vandalism to these items after Acceptance in accordance with Section 104.2, "Extra Work." The Contractor shall repair or replace items damaged due to the Contractor's negligence or as a result of the Contractor's failure to protect the Work per Section 107.20, "Contractor's Responsibility to Protect the Work," at no additional cost to the T/LPA.

The Contractor shall erect these items in a logical construction sequence. The T/LPA shall not Accept prematurely constructed items until they may be used for their intended purposes.

105.18.2 Final Acceptance

The T/LPA will make the Final Acceptance in accordance with 109.10.8 "Physical Completion, Final Payment and Final Acceptance."

105.19 NOTICE OF INTENT TO CLAIM

Notice of intent to Claim shall be given in order that the T/LPA can assess the situation, make an initial determination as to the causes of the intent to Claim, institute appropriate changes or procedures to resolve the matter, document issues related to the intent to Claim, track costs and possible Delay, and facilitate resolution of the intent to Claim. The failure of the Contractor to provide a timely and complete Notice of Intent to Claim form, a contemporaneous statement of estimated damages or Delay, and to comply with the other requirements of this Section shall constitute a waiver or abandonment of the Claim.

The Contractor's submission of the Notice of Intent to Claim form and the Project Manager's actions related to the Notice of Intent to Claim shall not be construed to prove or validate the Claim or be construed as an admission of liability.

1. Unless otherwise specified by the Contract, the Contractor shall only make Claims in accordance with the exclusive administrative remedy and procedures set forth in this Section and Section 105.20, "Administrative Remedy."
2. The Contractor shall submit to the Project Manager its notice of intent to Claim on the T/LPA's current Notice of Intent to Claim form. The Notice of Intent to Claim form and documents or information submitted with the same shall constitute the Contractor's intent to make a Claim. The notice of intent to Claim shall provide a contemporaneous statement of estimated damages or Delay before beginning the Work on which the Claim is based, but, in no event shall notice be given later than seven (7) Days of the Contractor discovering the condition or issue giving rise to the Claim, or within seven (7) Days of receipt of a notice of a differing site condition from the Project Manager. A notice of intent to Claim shall include, when relevant to the intended Claim (e.g., when the Contractor intends to seek a Contract adjustment for time, Delay damages, or reduction in Liquidated Damages, etc.), a revised schedule that identifies the impacts pursuant to Section 108.3.2, "Schedule Format;" failure to include a revised schedule shall render the notice of intent to Claim incomplete. This Section and the deadlines stated herein do not modify any of the deadlines for submitting revised schedules as provided in Section 108.3, "Schedule."
3. If the Contractor submits a timely Notice of Intent to Claim Form the Project Manager may, without admitting liability for the Claim, direct the Contractor to keep a complete and accurate account, in detail, of the cost of doing the Work on a Force Account basis per Section 109.6, "Force Account." Failure to maintain records on a Force Account basis when so directed by the Project Manager shall waive any associated Claim by the Contractor.
4. The Contractor shall provide the Project Manager proper facilities to keep account of the actual cost associated with the notice of intent to Claim; the Contractor waives the right to assert a Claim if the Project Manager is not afforded proper facilities to keep account of actual cost. The Project Manager may, in the Project Manager's discretion, in writing, waive this requirement to keep account of actual cost upon a showing of adequate justification by the Contractor.
5. If the Project Manager finds that the notice of intent to Claim is justified the Project Manager will process a Supplemental Agreement to resolve the notice of intent to Claim.
6. If the notice of intent to Claim is unresolved then the Contractor shall comply with Section 105.20, "Administrative Remedy."

105.20 ADMINISTRATIVE REMEDY

This Section governs the administrative remedy procedure to resolve all Claims, unless otherwise specified in the Contract. The administrative remedy procedure is the sole Contractual

procedure to resolve Claims. No Claim shall be accorded any level of review unless the procedure below is followed sequentially. The sequential steps of the process are as follows:

- Step I. Notice of Intent to Claim;
- Step II. Submittal of the Claim to the Project Manager;
- Step III. T/LPA's review, which may include referral to Claims Board for an informal hearing, and T/LPA's decision;
- Step IV. Service of Request for Arbitration or Service of Summons and Complaint in State District Court.

The Contractor shall not proceed to the subsequent step without a written determination from the preceding step.

The complete terms of a resolved Claim, regardless of the level of the administrative remedy, shall be documented and memorialized via a Change Order executed by the Contractor and the T/LPA. The executed Change Order shall represent a final agreement to the total additional compensation and time due for any and all Work and items pertaining to the Work associated with the Change Order. Unless otherwise provided in the terms of the Change Order, the executed Change Order shall operate as an accord and satisfaction of the Claim and shall operate as a bar to any further Claim by the Contractor. Each party shall bear its own attorneys' fees, costs, and expert fees.

Step I. Notice of Intent to Claim, See Section 105.19, "Notice of Intent to Claim."

The T/LPA shall dismiss a Contractor's Claim for failure to comply with the time limitations, requirements and procedures set forth in this Section and Section 105.19, "Notice of Intent to Claim."

105.20.1 Submittal of the Claim to the Project Manager

Step II. Submittal of the Claim to the Project Manager

The Contractor shall submit its Claim on the T/LPA's Claim Form. The Project Manager retains the right to request additional information and documents from the Contractor to support the Claim. The Contractor shall provide the requested additional information and documents.

1. A Claim shall be rejected and it shall constitute a waiver or abandonment of the Claim and a failure to exhaust its administrative remedy for the Contractor's failure to comply with the following conditions:
 - a. The Claim shall be in writing;
 - b. The Claim shall be submitted on the T/LPA's Claim Form;
 - c. The Claim shall be submitted within 30 Days of the date that the Work associated with the Claim has been completed;
 - d. The Claim shall be submitted only once;
 - e. The Claim shall include all required supporting documentation and information; and

- f. A Contractor's, Subcontractor's or Supplier pass-through Claim shall be certified by the Contractor as the Contractor's Claim on the T/LPA's current approved forms.
2. The Contractor has the burden of fully justifying and documenting the Claim and shall provide to the Project Manager the following supporting documentation and information in support of the Claim. The following supporting documentation shall also be updated from those documents submitted with the Notice of Intent to Claim:
 - a. Description of the issue upon which the Claim is based;
 - b. Location where the issue arose;
 - c. The dates impacted including the time and date the issue arose;
 - d. Clear explanation of why the issue requires additional compensation or time or a change to the Contract, including references to the relevant portions of the Contract;
 - e. Copies of all written communications including correspondence and emails related to the issue;
 - f. A detailed compilation of the amount of additional compensation sought and a breakdown of the amount sought as follows: documented additional job site labor expenses; documented additional cost of Materials and supplies; a list of additional Equipment costs claimed, including each piece of Equipment and the Blue Book rental rate claimed for each; any other additional direct costs or damages and the documents in support thereof;
 - g. Where a Claim seeks additional time, time and compensation for Delay, adjustment of Contract Time, or the reduction or elimination of liquidated damages, previously submitted Baseline Schedule and revised schedules that comply with the requirements of Section 108.3, "Schedule;"
 - h. Invoices identifying the labor, Materials, and Equipment used or proposed to be used;
 - i. Project Cost Reports. If the amount claimed by the Contractor exceeds \$100,000.00, Project cost reports for the time periods relevant to the Contract and the performance of the Work;
 - j. Bid Documents. If the amount claimed by the Contractor exceeds \$100,000.00, or if required by the Contract the Contractor shall make the Contractor's documents available for inspection by the Project Manager at the Contractor's project office. This includes information and calculations used to prepare and determine its Bid for the Contract prior to submission of the Bid. The required Bid preparation documents, as maintained by the Contractor, to be produced shall include: clear itemization of the costs for each Pay Item broken down into components sufficient to allow a detailed cost estimate; the costs allocated to each component broken down into the Contractor's usual estimate categories such as direct labor, Equipment, Materials, and Subcontractor cost; indirect costs, including the indirect cost allocations made to each Bid Item; quantity takeoffs; the construction and progress schedule and any conceptual schedules upon which the Bid was based; rates of production and progress; marked up Plans, sheets and Working Drawings ; calculations, copies and quotes from Subcontractors and Suppliers; memoranda, narratives, and all other information used by the Contractor to arrive at all of the prices contained in the Bid. The Project Manager may waive this requirement;
 - k. Total amount of the Claim in terms of time and compensation; and

- I. Certification of Claim. The Contractor shall submit a Certification of Claim form with the Claim.

105.20.2 T/LPA Review

Step III: T/LPA Review and Decision

The T/LPA has 30 Days from the date the Claim is received by the Project Manager, or additional time if agreed upon by both parties in writing, to review and render a decision. If the T/LPA does not make a written decision within the 30 Days, or the agreed upon additional time, the Claim is deemed denied by the T/LPA. The parties may engage in informal mediation to resolve the Claim prior to the expiration of the time in which the T/LPA may render a decision.

Once a Claim is submitted to the Project Manager, nothing in this Section shall be construed as permitting the Contractor to revive, modify, supplement, enlarge, or amend the Claim or the basis of entitlement other than providing additional documents and information in support of the Claim. All further proceedings shall be limited solely to the bases of entitlement and the amount of any compensation or time stated for any and all issues Claimed in the Contractor's written Claim submitted.

Additional Information. The T/LPA retains the right to request additional information from the Contractor to support the Claim, regardless of the Project Manager's previous waiver.

105.20.3 Arbitration

Step IV: Service of Request for Arbitration or Service of Summons and Complaint in State District Court

1. The Contractor and T/LPA may agree to arbitrate the Claim instead of proceeding to litigation in State District Court. Arbitration may only be had at the mutual agreement of the Contractor and the T/LPA. Arbitration shall be conducted in accordance with the New Mexico Uniform Arbitration Act (NMSA 1978, § 44-7A-1, et seq.) and this Section.
2. Service of the request to arbitrate the Claim by the Contractor shall only be made in the request for reconsideration. The T/LPA will issue a decision denying or agreeing to the request for arbitration in writing within ten (10) Days of the receipt of the request to arbitrate. If the T/LPA does not respond to the request to arbitrate then the request is deemed denied.
3. By the parties agreeing to arbitration, the Contractor waives the right to redress through litigation filed in State District Court. The Contractor's proceeding with arbitration shall operate as a waiver by the Contractor of recovery under any written decision issued by the T/LPA.
4. If the Contractor and T/LPA agree to arbitrate the Claim the arbitration panel shall consist of three (3) members.

5. Within 15 Days of the agreement to arbitrate the Claim, the Contractor shall submit the name of a panelist. The Contractor's panelist shall:
 - a. Not be an employee of the Contractor;
 - b. Have 15 years' experience in Highway construction management, methods, techniques, or law; or have an active professional license with the State of New Mexico as an Engineer, Surveyor or Attorney with ten (10) years' experience in Highway construction management, methods, techniques, or law;
 - c. Be either a resident of the State of New Mexico or identify New Mexico as the panelist's principal place of business; and,
 - d. Agree to serve on the panel;
6. Within 15 Days of receiving notice of the Contractor's panelist, the T/LPA shall submit the name of a panelist. The T/LPA's panelist shall:
 - a. Not be an employee of the T/LPA, but may include individuals contracted to provide services to the T/LPA;
 - b. Have 15 years' experience in Highway construction management, methods, techniques, or law; or have an active professional license with the State of New Mexico as an Engineer, Surveyor or Attorney with ten (10) years' experience in Highway construction management, methods, techniques, or law;
 - c. Be either a resident of the State of New Mexico or identify New Mexico as the panelist's principal place of business; and,
 - d. Agree to serve on the panel;
7. Within 30 Days after the T/LPA's panel appointment, the two (2) panelists will choose a third panelist. The third panelist shall:
 - a. Be a professional arbitrator who is a member or diplomat of a nationally recognized professional arbitration organization, such as the National Academy of Arbitrators or the American Arbitration Association; or is a retired federal or New Mexico District or appellate judge; or be a former employee of FHWA;
 - b. Not be an employee or a contractor of either the T/LPA or the Contractor; and
 - c. Agree to serve on the panel;
8. If the two (2) panelists are unable to agree, a District judge from the Judicial District where the Project is located shall choose the third panelist from a list of four (4) prospective panelists who meet the requirements of the preceding paragraph, two (2) each provided by the T/LPA and the Contractor. Application to the court for this appointment shall be made by either or both parties within 15 Days of the impasse; the parties may agree in writing to extend this deadline.
9. The panel shall hold the arbitration hearing in the County where the Project is located, unless otherwise approved by the T/LPA, no later than 90 Days after the panel is selected. If the panel fails to meet this deadline or if the parties agree to extend the deadline, the panel retains jurisdiction to hear and resolve the issues in dispute.
10. Each party will pay the expenses and fees of its chosen panelist and attorney. Both parties will share equally the expenses and fees of the third panelist. If both parties agree, they will share court reporter costs. If not, the party requesting the transcription will pay the full cost.

11. The proceedings and the decision of the panel will be in accordance with the New Mexico Uniform Arbitration Act, NMSA 1978, § 44-7A-1 et seq. The decision is final and binding and may be vacated, confirmed, or appealed only in accordance with the New Mexico Uniform Arbitration Act (NMSA 1978, § 44-7A-1 et seq.).

105.20.4 Litigation

If the Contractor does not Accept the T/LPA's decision the Contractor shall issue its notice of Public Works Mediation within three (3) Days of the T/LPA's decision. The Contractor shall provide no less than seven (7) Days' notice of the convening of a mediation session. The Public Works Mediation shall be conducted in accordance with of the New Mexico Public Works Mediation Act (NMSA 1978, § 13-4C-1, et seq.). The Contractor shall exhaust the mandatory mediation procedures of the New Mexico Public Works Mediation Act before seeking judicial relief in State District Court. Failure to timely notice and convene a mediation session and to timely file and serve a summons and complaint shall operate as a waiver and abandonment of Contractor's Claim, shall act as an Acceptance of the T/LPA's decision, and shall bar the Contractor from proceeding to litigate the Claim. The T/LPA may process a unilateral Change Order implementing the T/LPA's decision based on the Contractor's abandonment or waiver of its Claim.

SECTION 106: CONTROL OF MATERIALS

106.1 CONTRACTOR-FURNISHED AGGREGATE AND BORROW SOURCES

Exploration and development of Material sources by the Contractor including related GRT and Tribal Taxes shall be Incidental.

The Contractor shall notify the Project Manager in writing of the Materials source prior to delivery of aggregate or borrow Materials to the Project. The Contractor shall provide Acceptable Materials and shall provide the following documentation to the Project Manager:

1. Location of source;
2. Copies of lease agreements, purchase orders, or Pit Agreements the Contractor has made with the pit owner or Supplier.
3. Evidence of environmental acceptability, which includes the completed environmental and Cultural Resource requirements of Section 107.14.1, "Environmental and Cultural Resource Studies and Approvals." Such evidence shall, where appropriate include the completed and T/LPA Accepted recommendations for environmental and Cultural Resource management. Plans for restoration, including contouring and re-vegetation if necessary; and,
4. Testing results from a NMDOT Approved Testing Laboratory. http://dot.state.nm.us/content/dam/nmdot/Construction/Approved_Private_Testing_Laboratories.pdf

Upon request in writing from the Contractor, the Project Manager may approve Materials at the source prior to delivery. The Project Manager may reject sources, or specific areas within sources, due to failure to provide Acceptable Materials or due to environmental, social, or cultural concerns. If the Project Manager determines that the sources of previously Acceptable Materials do not produce Acceptable Materials, the Contractor shall provide Acceptable Materials from other sources, or make changes to the existing source to provide Acceptable Materials. No additional compensation or time shall be provided to the Contractor for unacceptable Materials or for developing alternate source locations.

The Project Manager will notify the Contractor in writing within ten (10) Days if its Material source is Acceptable.

106.2 SUPPLIER PLANT INSPECTION

The T/LPA may inspect Materials at the Supplier's plant. In this event, the Contractor shall:

1. Cooperate and ensure the cooperation of its Materials Supplier;
2. Guarantee unrestricted entry (at reasonable times) to areas where the relevant Material is being manufactured or produced;
3. Arrange for the necessary facilities to be adequately inspected for the production or fabrication of the Material; and,
4. Ensure adequate safety measures are implemented for the inspection.

The T/LPA may retest Materials, before or during use in the Work, and reject Materials that, when retested, do not meet the requirements of the Contract, even if the Materials were tested and Accepted at the plant.

106.3 SAMPLES, TESTS, AND CITED SPECIFICATIONS

The T/LPA will perform tests in accordance with standards, methods, or Specifications, of the Project's Contract. Unless otherwise specified in the Contract, the T/LPA will take samples and perform tests at its own expense. Unless otherwise specified in the Contract, the T/LPA will provide test results to the Contractor.

106.4 CERTIFICATES OF COMPLIANCE

The Contractor shall submit a Certificate of Compliance to the Project Manager before installing or incorporating Material in the Work using the NMDOT's current approved Certificate of Compliance form. Any additional documentation required to verify the information required by the Certificate of Compliance form shall be submitted contemporaneously with the completed Certificate of Compliance form.

The Contractor may provide Material purchased in bulk or left over from previous Projects by submitting Certificates of Compliance forms for those Materials.

Unless otherwise stated in the Contract, Materials not permanently incorporated into the Work will not require a Certificate of Compliance form.

Unless requested in writing by the Project Manager, electric items meeting UL approval and underground utility Materials meeting ASTM or AWWA Specifications that are so certified or stamped will not require a Certificate of Compliance form.

106.5 FOREIGN MATERIALS

Unless otherwise specified in the Contract, the Contractor shall deliver Materials manufactured outside the United States to approved locations within the State, where they shall remain until sampling and testing are complete. The Contractor shall arrange for testing that the T/LPA is not able to perform, at no additional cost to the T/LPA, and shall test foreign Materials within the State in the presence of the T/LPA.

The Contractor shall provide a Certificate of Compliance for each lot of foreign Material in accordance with Section 106.4, "Certificates of Compliance;" and, if required, provide with the Certificate of Compliance, certified MTRs for each lot, and clearly identify to which lot they apply.

For structural Material, the T/LPA will only Accept Material from foreign and domestic manufacturers that have established adequate in-plant Quality Control to the satisfaction of the

Project Manager. The T/LPA will not Accept structural Materials that do not have Certificates of Compliance and MTRs.

The Project Manager may inspect the plant or require the Contractor to submit detailed written proof of adequate Quality Control.

106.6 STORAGE OF MATERIALS

The Contractor shall request from the Project Manager written approval to store Equipment or Materials within the ROW for the adequate execution of the Work. The Contractor shall store Equipment and Materials to preserve quality and fitness, to protect against vandalism or theft, and to facilitate inspection. The Contractor shall be responsible for the replacement or repair of Materials affected by inadequate protection.

106.7 HANDLING AND TRANSPORTING MATERIALS

The Contractor shall handle Materials in a manner that preserves the Acceptability for the Work. The Contractor shall ensure the transportation of Materials is in accordance with State and federal regulations, and prevent leakage of, scattering of, or damage to Materials. Materials damaged or lost in transportation shall be deemed unacceptable and are not subject to payment by the T/LPA.

106.8 T/LPA-PROVIDED MATERIALS

Material provided by the T/LPA will be made available to the Contractor as specified in the Contract. The Contractor will be held responsible for all T/LPA supplied Material when it takes physical possession of the Materials and until such time that the Materials are incorporated into the Work and Accepted.

106.9 MATERIALS DESIGNATED BY TRADE NAME

The Contract may require Materials or Equipment by trade or manufacturers' names. The T/LPA will not Accept the substitution of Materials or Equipment when the Contract requires Materials or Equipment of specific trade or manufacturers' names.

106.10 EQUIPMENT AND MATERIAL GUARANTEES AND WARRANTIES

Obtain and assign to the T/LPA manufacturer and producer guarantees or warranties for Materials and Equipment. Warrant, for six (6) months after Material or Equipment is installed and operational, that mechanical and electrical Equipment without a manufacturer or producer guarantee are free from defects or imperfections in workmanship and Materials. Repair malfunctions or defects that develop during the six-month period.

Supply manuals for Equipment incorporated in the Work providing the following

information:

1. Operational procedures;
2. Complete nomenclature;
3. Wiring diagrams;
4. Schematics showing test voltage and procedural methods;
5. Functional description of circuits;
6. Parts lists;
7. Cross-references to standard part numbers;
8. Names and addresses of sources for testing procedures where appropriate
9. Flow diagrams; and
10. Other relevant data.

106.11 SAFETY DATA SHEETS (SDS)

The Contractor shall submit to the Project Manager the most current SDSs for all Materials that require SDSs upon delivery of the Materials to the Project. The SDS shall conform to current Federal requirements in 29 C.F.R. § 1910.1200 (g).

106.12 BUY AMERICA REQUIREMENTS

The Contractor shall provide Materials in accordance with the Buy America Requirements in 23 C.F.R. § 635.410 on federal-aid Projects.

The Contractor shall bear the burden of proof and the cost to show the origin and place of manufacture of iron and steel products and Materials.

SECTION 107: LEGAL RELATIONS, ENVIRONMENTAL REQUIREMENTS, AND RESPONSIBILITY TO THE PUBLIC

107.1 LAWS TO BE OBSERVED

Before the start of Work, the Contractor shall be fully informed and make the necessary contacts with local governments and State agencies concerning obligations related to all applicable federal and State laws, all local laws, ordinances and regulations, and all orders and decrees of bodies or tribunals having jurisdiction or authority. The Contractor, Subcontractors, and Suppliers shall at all times observe and comply with all such laws, ordinances, regulations, orders, and decrees; and protect and indemnify the T/LPA and its officers, employees and agents against all Claims or liability arising from or based on the violation of such laws, ordinances, regulations, orders, or decrees, by the Contractor, its officers, employees or agents, Subcontractors or Suppliers.

107.2 PERMITS, LICENSES, AND TAXES

The Contractor shall procure all permits and licenses; pay charges, fees, royalties, and appropriate taxes; and give notices necessary and incidental to the lawful performance of the Contract.

Prior to beginning Work the Contractor shall furnish to the T/LPA a written list of all permits required for the proper completion of the Contract. The list shall clearly identify the type of permit or permits that must be obtained before Work can be started. Copies of fully executed permits shall be furnished to the T/LPA upon request.

107.2.1 Compliance with Payment of Taxes

The Contractor shall pay all lawful taxes imposed by the State of New Mexico or other political entities.

The successful Bidder, after receiving the Notice of Preliminary Award of Contract, shall provide to the T/LPA both the Bidder's Taxation and Revenue Department tax identification number and the Bidder's Motor Transportation Division account number. If either of these numbers is unavailable, the Contractor shall submit a letter of explanation. A Notice to Proceed will not be issued until the Contractor submits both numbers or a satisfactory letter of explanation.

107.2.2 Gross Receipts, Indian Business Activity, and Tribal Employment Rights Organization Taxes

107.2.2.1 New Mexico Gross Receipts Tax

The T/LPA will pay the Contractor for applicable New Mexico GRT and local option tax (including tax increases or decreases effective after the Contract date), and the Contractor shall

pay applicable taxes to New Mexico Taxation and Revenue Department. The Contractor shall show the GRT and local option tax as a separate amount added to each request for payment.

The T/LPA shall be promptly reimbursed or repaid for any tax, including GRT, that is refunded to the Contractor, including any refund received by the Contractor after final payment, to the extent such tax was paid by the T/LPA to the Contractor. The Contractor shall keep and maintain all documents, applications for tax refund, and forms filed with, submitted to, received from, or required by the New Mexico Taxation and Revenue Department which relate to the payment or refunding of any tax paid pursuant to this Section for five (5) years following final payment. All of the above material shall be made available to the T/LPA, the NMDOT or FHWA for review, audit, inspection, and copying and shall be produced, upon request, at the address directed by the T/LPA.

107.2.2.2 Tribal Taxes

All Bids submitted shall exclude any tribal business tax, TERO tax, and other tax imposed by a tribal government. The T/LPA will either pay the tax or may challenge the tribal government's authority to impose the tax. If the T/LPA challenges the tribal government's authority to impose the tax, the T/LPA will reimburse the Contractor for such tax only if a court of competent jurisdiction rules the tribe has authority to impose the tax. The T/LPA will be subrogated to the rights of the Contractor to Claim a refund of, or to contest, any such tax imposed on the Work to the extent any alleged obligation of the Contractor or the T/LPA to pay such tax arises under this Section or through the Contractor's performance of this Contract.

The T/LPA will reimburse the Contractor for payment of any Tribal Tax directly related to the performance of the Work within the Project imposed by a tribe upon tribal verification that the tax was paid by the Contractor.

107.3 RESERVED

107.4 RESERVED

107.5 PATENTED DEVICES, MATERIALS, AND PROCESSES

The Contractor's Bid Item Unit Price shall include the cost of all royalties and costs from patents, trademarks and copyrights needed to complete the Work.

If the Contractor employs any design, device, Material, or process covered by letters of patent, copyright or trademark, the Contractor shall secure approval for its use from the patentee or owner. The Contractor and the Surety shall indemnify and save harmless the T/LPA from all Claims (including costs, expenses, and damages the T/LPA may be obligated to pay) for infringement by reason of its use. The Contractor and Surety shall also indemnify and save harmless any affected third party and any political subdivision from all Claims for infringement by reason of its use.

107.6 RESTORATION OF SURFACES OPENED BY UTILITY PROVIDERS

The T/LPA reserves the right to allow utility service providers with valid utility permit or an easement to enter the Project and perform utility Work.

When directed by the T/LPA the Contractor shall make all necessary repairs. If directed by the T/LPA, the repairs will be subject to the same requirements as the original Work performed. The T/LPA will pay for such repairs in accordance with Section 109.5, "Payment for Extra Work."

The T/LPA will address time extension requests due to Work by utility service providers in accordance with Section 108.6, "Determination and Extension of Contract Time."

107.7 FEDERAL AID PROVISIONS

When the FHWA or other federal agency will be reimbursing the costs for all or any portion of the cost of a Project, the Contractor shall observe and be subject to federal law applicable to such reimbursement. In such situations, federal requirements supersede conflicting provisions of State and local laws, rules, or regulations. The Work shall be subject to inspection and oversight by the appropriate federal agency. Such inspection or oversight shall not make the U.S. Government a party to this Contract, nor shall the U.S. Government interfere with the rights of the Contract parties.

107.8 SANITARY, HEALTH, AND SAFETY PROVISIONS

The Contractor shall provide and maintain sanitary accommodations for use by Contractor and T/LPA employees, in accordance with State and local boards of health, or other legal entity with jurisdiction.

The Contractor shall admit to the Project credentialed Inspectors from OSHA or other agencies responsible for health and safety administration.

107.8.1 State and Federal Land Managing Agencies

While working within or adjacent to State or federal lands and forests, the Contractor shall comply with all regulations of the State or federal authority having jurisdiction governing the protection of these areas, and observe all sanitary laws and regulations. The Contractor shall keep the areas in an orderly condition, dispose of all refuse, and obtain permits for the construction and maintenance of all construction camps, stores, warehouses, residences, latrines, cesspools, septic tanks, and other Structures in accordance with applicable federal or State regulations.

107.9 PUBLIC CONVENIENCE AND SAFETY

The Contractor shall provide for the convenience and safety of the general public, for reasonable access by local residents and businesses, and for the protection of persons and property, in accordance with Section 104.5, "Maintenance of Traffic."

107.10 RAILROADS

If the Project affects railroad lines, the Contractor shall observe the requirements of the following Sections and the insurance requirements in accordance with Section 107.25, "Insurance Requirements."

For the purpose of this Section, the term "agreement" means the contract between the Contractor and railroad that defines the rights and responsibilities of both the Contractor and railroad for the Project. The term "immediate construction site" shall mean the area of the Project defined as having impacts on the railroad in the agreement.

107.10.1 Reserved

107.10.2 Notice to the Railroad

Unless otherwise stated in the Contract, the Contractor shall not begin Work in railroad-owned Right of Way before entering into an agreement with the railroad."

107.10.3 Cooperation with Owner of Railroad Right of Way

The T/LPA is not liable for any additional costs or expenses of the Project resulting from the railroad's reallocation of its labor forces assigned to complete railroad Work in the event of an emergency when the owner of the railroad ROW believes such reallocation is necessary to provide for the immediate restoration of the railroad operations or to protect persons or property on or near any other property owned by the railroad.

107.10.4 Reserved

107.10.5 Reserved

107.10.6 Reserved

107.10.7 Reserved

107.11 ENVIRONMENTAL AND CULTURAL RESOURCES APPROVAL, HAZARDOUS MATERIALS

The T/LPA will obtain the environmental and Cultural Resource approvals for the Project before construction. The T/LPA will describe in the Contract any environmental and Cultural Resource requirements developed to protect resources.

The T/LPA will describe in the Contract any Hazardous Materials identified and the Contractor shall observe the requirements of Sections 107.1, 107.2, 107.8 and the applicable paragraphs of 107.14.

107.12 ENVIRONMENTAL, CULTURAL RESOURCE AND HAZARDOUS MATERIALS DISCOVERIES

The Contractor shall terminate operations and provide written notification per Section 104.2.2, "Differing Site Conditions," when it discovers environmental, Cultural Resources or Hazardous Materials not identified in the Contract. The T/LPA will coordinate with appropriate regulatory authorities during this time, the Contractor shall continue Work in other unaffected areas. The Project Manager shall provide written notification to the Contractor when Work may commence in the area of terminated operations.

107.13 CONTRACTOR'S RESPONSIBILITY FOR DAMAGE TO ENVIRONMENTAL AND CULTURAL RESOURCES

The Contractor shall restore or mitigate all damage to environmental or Cultural Resources caused by the Contractor's failure to abide by requirements included in the Contract as well as those areas covered under Section 107.14, "Contractor's Responsibility for Environmental and Cultural Resource Protection," at no additional cost to the T/LPA. The T/LPA, in coordination with regulatory authorities, will determine the extent of restoration or mitigation. The Contractor shall pay any fine imposed on the T/LPA by a regulatory agency for a regulatory violation caused by the Contractor. The Project Manager may suspend the Work in areas where environmental or Cultural Resource violations occur.

107.14 CONTRACTOR'S RESPONSIBILITY FOR ENVIRONMENTAL AND CULTURAL RESOURCE PROTECTION

107.14.1 Environmental and Cultural Resource Studies and Approvals

The Contractor shall obtain new certifications for any Contractor located activity outside the Project Limits or for expansions or additions to existing previously certified areas. If the Contractor purchases Material from a Material source established for another Project by another Contractor working under Contract to the T/LPA, and if the Material source must be expanded beyond the area where environmental and Cultural Resource approvals have previously been obtained pursuant to Section 107.14.1, "Environmental and Cultural Resource Studies and Approvals," then the requirements for environmental acceptability shall apply to the additional area and requirements of Section 107.14.1, "Environmental and Cultural Resource Studies and Approvals," must be completed by the Contractor.

Before beginning soil-disturbing activities (in accordance with Section 106.1, "Contractor-Furnished Aggregate and Borrow Sources"), the Contractor shall notify the Project Manager in

writing of the proposed studies to be performed. After the Project Manager's concurrence with the Contractor's studies the Contractor shall employ an Environmental Specialist and a Cultural Resource Professional to conduct the approved studies. The Contractor shall ensure that the studies meet the standards of the NMDOT, the State historic preservation officer, and any State, tribal, or federal land-managing agency or entity with jurisdiction. The Contractor shall ensure that the resource studies are in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. § 4321 et seq.), the National Historic Preservation Act (16 U.S.C. § 470 et seq.), and the New Mexico Cultural Properties Act (NMSA 1978, § 18-6-1 to 18-6-17), or any other successor statutes. The studies may extend, but are not limited to, the following locations:

1. Camp sites;
2. Plant sites;
3. Crusher sites;
4. Stockpile sites;
5. Equipment yards;
6. Borrow Pits;
7. Surfacing Pits; and,
8. Water sources.

The Contractor shall obtain the environmental and Cultural Resource approvals regardless of land ownership. For the environmental approval, the Contractor shall use the NMDOT -furnished checklist Categorical Exclusion form (or equivalent form furnished by the NMDOT), which shall be signed by the Contractor and the Environmental Specialist.

For Cultural Resource reports, use the standard site investigation forms approved by the New Mexico Historic Preservation Division and the New Mexico Cultural Properties Review Committee.

The Contractor may use previously-completed environmental and Cultural Resource studies, provided all other requirements of this Section are met.

The Contractor shall submit the documentation prepared for the environmental and Cultural Resource approvals to the Project Manager. Contractor located activities on State land, or privately owned land, may take 45 Days or more for approval after the Contractor delivers the resource studies to the Project Manager. Contractor located activities on federal land have no defined period for approval. The T/LPA will not approve requests for additional Contract Time or compensation related to Contractor Located Activities.

The Contractor shall comply with all conditions and commitments for protection of resources contained in resource agency requirements and in the environmental and Cultural Resource approvals. The environmental approval is the FHWA-approved checklist categorical exclusion, or its equivalent. The Cultural Resource approval is the concurrence letter signed by the State historic preservation officer, or its equivalent.

The Contractor shall repair at the Contractor's expense all damage to environmental or Cultural Resources caused by the Contractor's failure to meet the requirements for environmental

acceptability or abide by T/LPA directives issued to protect resources identified during the environmental and Cultural Resource evaluation. The nature and extent of such repairs shall be determined after consultations between the Contractor, T/LPA and NMDOT representatives, and the regulatory authorities with management jurisdiction over the subject resources.

107.14.1.1 Commercial Material Sources

Environmental acceptability requirements do not apply to Commercial Material Sources. Upon request of the Project Manager, the Contractor shall submit copies of its Commercial Sources Air Quality Permit, Groundwater Permits, and Business License.

107.14.2 Parking and Cleaning of Equipment

For Projects that have received environmental and Cultural Resource approvals through programmatic categorical exclusions (e.g., pavement preservation and rehabilitation, guardrail replacements, Bridge deck replacements, signalization upgrades, etc.), environmental and Cultural Resource studies will not have been completed outside the existing paved areas by the T/LPA. These Projects will be noted as such in the Contract. For these Projects, the Contractor shall take special care when parking and cleaning Equipment, as outlined in the following requirement.

The intent of the following requirement is to ensure the protection of sensitive environmental and Cultural Resources that may be present within the Right of Way and to encourage the Contractor to avoid damaging these resources when parking and cleaning Equipment. The Contractor shall ensure that parking and cleaning of Equipment within the Right of Way does not damage environmental and Cultural Resources, in one (1) or a combination of the following manners:

1. Park and clean Equipment in previously disturbed areas only;
2. Identify all parking and cleaning locations in previously undisturbed areas, prior to construction, and complete the environmental and Cultural Resource approvals as described in Section 107.14.1, "Environmental and Cultural Resource Studies and Approvals;" or
3. Park and clean Equipment in previously undisturbed areas without completing the environmental and Cultural Resource approvals as described in Section 107.14.1, "Environmental and Cultural Resource Studies and Approvals," and assume all risk and liability for any damage to environmental or Cultural Resources resulting from these actions.

107.14.3 Clean Water Act

The Contractor shall comply with the New Mexico Water Quality Act (NMSA 1978, § 74-6-1 et seq.) and applicable permits and regulations in accordance with the federal Clean Water Act (33 USC § 1251 et seq.).

The T/LPA will apply for and obtain permits and certifications required for construction involving “waters of the United States” as defined by the U.S. Army Corps of Engineers. The Contractor shall comply with the terms of the permit obtained and shall be fully liable for consequences resulting from its failure to comply. The T/LPA will provide a copy of the permits and certifications in the Contract.

107.14.4 Minimization of Soil Disturbance

The Contractor shall minimize damage to or removal of vegetation and trees, except as approved in Section 104.6, “Rights in and Use of Materials Found on the Work.” The Contractor shall not clear, grub, disturb, or excavate land beyond what is authorized by the Contract. The Contractor shall remediate or replace vegetation due to an unauthorized clearing or damage, at no additional cost to the T/LPA.

107.14.5 Air Quality Requirements and Dust Abatement

The Contractor shall perform dust abatement on the Project and as directed by the Project Manager. The Contractor shall ensure any operations which produce particulate matter comply with State and federal air quality regulations, as administered by the Air Pollution Control Bureau of the NMED, applicable local air quality regulations, and the federal Clean Air Act (42 USC § 7401 et seq.).

107.14.6 Noise Abatement

The Contractor shall not operate Equipment that emits noise above 70 dbA, measured at a distance of 50 ft, in urban or populated rural areas during the hours specified in the Contract, and shall comply with County or municipal ordinances if they are more stringent than the requirements in the Contract.

107.14.7 Disposal of Materials

Unless otherwise specified in the Contract, the Contractor shall be solely responsible for disposal of Materials. In the disposal of Material the Contractor shall comply with all federal, State and local regulations. The Contractor shall not dispose of Material within the Project Limits without written approval from the Project Manager.

107.14.8 Disposal of Other Materials and Debris

The Contractor shall move items designated for removal without salvage, unsuitable construction Materials, and debris from clearing and grubbing to an environmentally suitable disposal site secured and coordinated with the appropriate regulatory agencies. The Contractor shall not place any items in wetland areas or areas that may impact endangered species or Cultural Resources. The Contractor shall obtain an environmental and Cultural Resource

approval in accordance with Section 107.14.1, “Environmental and Cultural Resource Studies and Approvals.”

107.14.9 Prime Coat, Tack Coat, and Soil Sterilants

The Contractor shall not contaminate soils outside the Roadway Prism when applying prime coat, tack coat and soil sterilants. The Contractor shall not contaminate arroyos, irrigation supplies (acequias and ditches), wetlands, water impoundments, and live streams.

107.14.10 Noxious Weed Prevention

To avoid the spread of noxious weeds, all prime and Subcontractor construction Equipment (including but not limited to trucks, excavators, bulldozers, loaders, scrapers, backhoes, trailers, tractors, hydro-seeders, drill-seeders, straw-blasters, compost-spreaders, bobcats, and disks) shall be pressure-washed to remove all visible mud, soil, and debris prior to entering the Project Limits.

107.15 HAZARDOUS MATERIALS

The T/LPA will describe in the Contract, all known Hazardous Materials within the Project Limits.

107.15.1 Hazardous Material Discoveries

During construction, should Material be encountered which is or the Contractor believes to be hazardous or contaminated, the Contractor shall immediately: terminate operations in the immediate area, notify the Project Manager in writing per Section 104.2.2, “Differing Site Conditions,” and the appropriate regulatory authority, and continue Work in other areas. The Project Manager, District Coordinator, Environmental Geology Bureau Manager, and environmental regulatory authorities shall investigate to determine the nature and extent of the Hazardous Material or contamination within the Right of Way. If the Contractor is not qualified, as determined by experience and/or licensure, to undertake a clean-up action, the Contractor shall retain the services of a qualified firm. Any adjustments shall be made in accordance with Section 109.5, “Payment for Extra Work.”

Should the Contractor fail to notify the Project Manager of Hazardous Material discoveries and/or fail to respond in accordance with all applicable environmental regulations or any part of these Specifications, the Contractor shall pay, at no cost to the T/LPA, any fine or penalty imposed for regulatory violations.

107.16 PREVENTION OF FOREST AND GRASS FIRES

The Contractor shall prevent forest and grass fires. The Contractor shall notify appropriate officials at the earliest possible moment of the location and extent of any fire. The Contractor shall

comply with fire regulations applicable to the area of Work, and furnish and maintain firefighting Equipment and tools required in the Contract. The Contractor shall suspend fire-hazardous operations when necessary at the direction of the Project Manager.

If performing Work within or adjacent to State or National Forests, the Contractor shall comply with all regulations of the USDA Forest Service, State Forestry Division, New Mexico Department of Energy, Minerals and Natural Resources, or other authority having jurisdiction, governing the protection of forests and the performance of Work within forests. The Contractor shall keep the areas in an orderly condition, dispose of all refuse, and obtain permits for the construction of field offices and other Structures in accordance with the requirements of the Forest Supervisor.

The Contractor shall take all reasonable precautions to prevent and suppress forest fires and shall require employees and Subcontractors to take all reasonable measures within their power to prevent and suppress forest fires. The Contractor shall make every possible effort to notify a Forest official at the earliest possible moment of the location and extent of a fire.

107.17 USE OF EXPLOSIVES

The Contractor shall exercise extreme care when use of explosives is necessary for the prosecution of the Work. The Contractor shall be responsible for all damage resulting from the use of explosives. The Contractor shall not endanger life or property, including new Work. The Contractor shall use, handle, load, transport, and store explosives and blasting agents in accordance with applicable laws and ordinances, as well as title 29 CFR Part 1926 Safety and Health Regulations for Construction (OSHA) and 30 CFR Part 15.32 whichever is more restrictive. The Contractor shall clearly mark explosives and store them securely. If no local laws or ordinances apply, the Contractor shall store explosives not closer than 600 feet from Roads, buildings, camping areas, or places of human occupancy. Unless otherwise required by an agreement between the Contractor and public utility or owner of railroad ROW, the Contractor shall provide five (5) Days' notice to any public utility and owner of railroad ROW having Structures or facilities near the Project, of the intention to use explosives, so that they may take steps to protect their property before detonation.

107.18 PROTECTION AND RESTORATION OF PUBLIC AND PRIVATE PROPERTY

The Contractor shall preserve public and private property including land, governmental survey monuments, and property markers from disturbance or damage until the Project Manager has witnessed or otherwise referenced their location, and directed their removal.

The Contractor shall restore public or private property damaged and pay fines directly or indirectly caused by the Contractor through any act, omission, neglect, or misconduct in the execution of the Work, or by defective Work or Materials, or by non-prosecution of the Work. The Contractor shall return such property to a condition equal to that existing before such damage or injury was done, by repairing, rebuilding, or otherwise restoring as directed by the Project Manager. The Contractor shall maintain responsibility for damage until the Work is completed and

Accepted. The contractor shall provide the T/LPA with the information to update the control sheet records once a reference mark has been reestablished by the Contractor.

107.18.1 Public and Private Reference Marks

Unless otherwise specified in the Plans, the Contractor shall not disturb or damage any public or private reference marks. If the Contractor directly or indirectly by any act, omission, neglect, or misconduct in the execution of the Work disturbs or damages public or private reference marks the Contractor shall be solely responsible for any restoration of the reference marks in accordance with Section 801, "Construction Staking by the Contractor." If the restoration of the public or private reference mark is done improperly then the Contractor shall be solely responsible for a fine of \$2,000.00 per improper reference mark. Delays, costs or impacts associated with the improper restoration of a reference mark shall be the sole responsibility of the Contractor.

107.19 RESPONSIBILITY FOR THIRD PARTY CLAIMS AND DUTY TO DEFEND

The Contractor shall indemnify and hold harmless the T/LPA and its officers, employees and agents from and against any and all Claims and suits, liability, damages, losses or expenses, including attorney fees and costs, to the extent that they arise out of or are in any way connected with any act or omission of the Contractor, or its officers, employees or agents. The Contractor agrees, at its own expense, and upon written request by the T/LPA, to defend any suit, action or demand brought against the T/LPA on any Claim or demand covered herein.

The Contractor shall establish a local contact number (with area code) for filing Claims, and clearly post the number. In addition, post the name of the Contractor and telephone number at each approach and departure to the Project. The Contractor shall ensure that construction vehicles (Contractor, Subcontractor, and privately owned) working on the Project have clean, unobstructed license plates, and shall mark vehicles legibly with the appropriate company name.

The Contractor shall assign an individual by the date of the preconstruction conference, readily available during normal working hours, to respond to Claims from the public for losses alleged to have occurred within the Project, whether arising from Contractor or Subcontractor action or inaction. The Contractor shall provide claimants with a written outline of the Contractor's Claims procedure, along with a written copy of the Contractor's name, address, and telephone number together with the name and title of the individual assigned to handle Claims from the public and provide a copy of the same to the Project Manager. The Contractor shall maintain a status report of Claims filed, including the name, address, and telephone number of the claimant, the nature of the Claim, pertinent findings regarding the Claim, and a statement regarding the resolution of the Claim. The Contractor shall provide the status report to the Project Manager upon request.

107.20 CONTRACTOR'S RESPONSIBILITY TO PROTECT THE WORK

Until Final Acceptance of the Project by the Project Manager, the Contractor shall have the charge and care thereof and shall take every precaution against injury or damage to any part thereof, by the action of the elements or from other causes, whether arising from the execution or from the non-execution of the Work. The Contractor shall rebuild, repair, restore, and make good all injuries or damages to portions of the Work occasioned by the above causes before Final Acceptance and shall bear the expense thereof except as provided in Sections 104.5, "Maintenance of Traffic," and Section 105.18.1, "Partial Acceptance."

Should the Contractor be Delayed in the prosecution or completion of the Work by Contractors on contiguous Projects, Acts of God such as fire, flood, earthquake, tornado, or other cataclysmic phenomena of nature, epidemic, quarantine restriction, strike, freight embargo, acts of public enemy, acts of governmental authorities or railroads other than the T/LPA, or documented national unavailability of construction Material, for which the Contractor is in no way responsible, then the Contractor may be entitled to an extension of Contract Time per Section 108.6, "Determination and Extension of Contract Time," but is not entitled to additional compensation or damages for such Delay. For physical damage to the Work resulting from the above unforeseeable causes beyond the control of and without the fault or negligence of the Contractor, the Contractor may be paid pursuant to Section 109, "Measurement and Payment." The Contractor shall not be entitled to non-allowable damages per Section 109.11, "Compensation for Claims."

In case of suspension of Work per Section 105.8.1, "Project Manager Authority," the Contractor shall be responsible, subject to the provisions of Section 104.5, "Maintenance of Traffic," for the Project and shall take such precautions as may be necessary to prevent damage to the Project.

107.21 CONTRACTOR'S RESPONSIBILITY FOR UTILITY PROPERTY AND SERVICES

The Contractor shall not begin Work in areas close to railroad, telecommunication, or utility company Right of Way or facilities, or other property where damage from the Work might result in expense, loss, or inconvenience to the owner, until arrangements are made with the Project Manager and the owner of the property for the protection of such property or facilities.

The Contractor shall promptly notify the Project Manager and affected utility or railroad owners of any interruption to services resulting from exposure, lack of support, or breakage. The Contractor shall provide continuous repair Work to restore water service if interrupted. The Contractor shall not perform Work near fire hydrants until provision for service has been approved by the local fire authority.

107.22 FURNISHING RIGHT OF WAY

The T/LPA will secure necessary Right of Way before construction, except as noted in the Contract.

107.23 PERSONAL LIABILITY OF PUBLIC OFFICIALS

T/LPA employees shall bear no personal liability in carrying out the provisions of the Contract or in exercising powers or authority granted to them by the Contract, it being understood that in such matters they act solely as agents and representatives of the T/LPA.

107.24 NO THIRD-PARTY LIABILITY

The T/LPA and the Contractor specifically agree that the provisions of this Contract do not make anyone, including any Subcontractor or Materials Supplier, a third-party beneficiary or authorize anyone not a party to this Contract to maintain an action for damages under this Contract.

107.25 INSURANCE REQUIREMENTS

The Contractor shall procure and maintain at no cost to the T/LPA insurance as detailed below, using an insurance company authorized to do business in New Mexico. Insurance shall cover operations under the Contract, whether performed by the Contractor, the Contractor's agents or employees, or Subcontractors. Contractor shall keep insurance in full force and effect for the entire period of the Work, up to and including Final Acceptance, and the removal of Equipment and employees, agents and Subcontractors. All insurance required in this Section shall be procured from insurance or indemnity companies with an A.M. Best Company financial strength rating level of A- or better, Class VII or better, unless otherwise approved in writing by the T/LPA. In no event shall the T/LPA approve the use of an insurance or indemnity company with an A.M. Best Company financial strength rating level of B or worse.

107.25.1 Liability Insurance

1. The Contractor shall obtain General Liability (Bodily Injury Liability and Property Damage Liability) insurance coverage applicable in full to the subject Project in the following minimum amounts:
 - a. Personal and Bodily Injury Liability: \$1,000,000.00 each person; \$2,000,000.00 each occurrence (annual aggregate); and,
 - b. Property Damage Liability: \$2,000,000.00 each occurrence; (annual aggregate);
2. The insurance coverage shall be documented on a Comprehensive General Liability form or Commercial General Liability form, which must include the following:
 - a. Coverage for liability arising out of the operation of independent Contractors;
 - b. Completed Operations Coverage; and,
 - c. Attachment of the Broad Form Comprehensive General Liability Endorsement;
3. If the Work includes the use of explosives, the Contractor's insurance must include coverage for injury to or destruction of property arising out of blasting or explosion;
4. If the Contract includes Work next to an existing building or Structure, the Contractor's insurance shall include coverage for injury to or destruction of property arising from the collapse of or structural injury to buildings or Structures due to the following:

- a. Excavation, including borrowing, filling, or backfilling in connection therewith;
 - b. Tunneling and cofferdam or caisson Work; and,
 - c. Moving, shoring, underpinning, razing, or demolition of buildings or Structures, or removal or rebuilding of structural supports thereof; and,
5. Coverage must include injury to or destruction of property arising out of damage to wires, conduits, pipes, mains, sewers or other similar property or any apparatus in connection therewith below the surface of the ground, if such injury or destruction is caused by or occurs during the use of mechanical Equipment for the purpose of excavating, digging, or drilling.

107.25.2 Automobile Liability Insurance

The Contractor shall provide or ensure that all vehicles used in performance of the Contract have liability insurance. The Contractor is not responsible for liability insurance for the T/LPA or its agents. The Contractor shall provide limits of liability for automobile liability insurance in the following amounts:

1. Personal and Bodily Injury Liability: \$1,000,000.00 each person; \$2,000,000.00 each occurrence; (annual aggregate); and,
2. Property Damage Liability: \$2,000,000.00 each occurrence; (annual aggregate).

107.25.3 Worker's Compensation Insurance

The Contractor shall carry worker's compensation insurance and otherwise fully comply with the New Mexico Worker's Compensation Act (NMSA 1978, § 52-1-1 et seq.) and the New Mexico Occupational Disease Disablement Law (NMSA 1978, § 52-3-1 et seq.).

107.25.4 T/LPA as Additional Insured

The Contractor shall name the T/LPA and any third party so designated in the Contract as an additional named insured on the comprehensive general liability form or commercial general liability form furnished by the Contractor in accordance with Section 107.25.1, "Liability Insurance." The certificate of insurance shall state that the coverage provided under the policy is primary over any other valid and collectible insurance. The additional insured endorsement shall conform to the most current version of the Insurance Services Office's CG 2010 or equivalent, Additional Insured Endorsement Form. The Contractor shall provide to the T/LPA a copy of the Contractor's standard commercial general liability policy showing the Additional Insured Endorsement before the T/LPA issues a Notice to Proceed.

107.25.5 Certificate of Insurance

The Contractor shall provide evidence of insurance coverage conforming to these Specifications with a certificate of insurance executed on the form provided by the NMDOT to be made part of the Contract. The certificate shall indicate compliance with these Specifications and shall certify that the coverage shall not be changed, canceled, or allowed to lapse without giving

the T/LPA 30 Days written notice. The Contractor shall provide a certificate of insurance to the T/LPA on renewal of a policy or policies as necessary during the term of the Contract. The T/LPA shall not issue a Notice to Proceed until the Contractor meets these requirements.

107.25.6 Umbrella Coverage

The insurance limits cited in this Section are minimum limits. The T/LPA does not intend that these Specifications define what constitutes adequate insurance coverage for the individual Contractor. The T/LPA will recognize excess coverage (Umbrella) as meeting the insurance requirements of Section 107.25.1, "Liability Insurance," if the limits of the Umbrella coverage meet the individual requirements of this Section.

107.25.7 Optimal Insurance

If required by the Contract, Contractor shall procure and maintain form and types of bailee theft insurance such as, but not limited to, builder's risk insurance, Contractor's Equipment insurance, and rigger's liability property insurance. If so required, the Contractor shall provide bailee theft insurance in an amount necessary to protect the T/LPA against Claims, losses, and expenses arising from the damage, disappearance, or destruction of property of others in the care, custody, or control of the Contractor, including property of others being worked upon by the Contractor, its agents, employees or Subcontractors.

107.25.8 Railroad Insurance

If the Work affects railroad property, in addition to the above requirements, unless otherwise specified in the Contract the Contractor shall obtain at its own cost a railroad protective liability policy in the name of the owner of the railroad Right of Way or railroad facilities involved. In addition, on those rails used by the National Railroad Passenger Corporation (NRPC), the Contractor shall obtain a railroad protective liability policy in the name of the NRPC.

Railroad liability insurance shall be in compliance with 23 CFR 646A. These limits of liability apply to the coverage as set forth in AASHTO's Railroad Protective Liability Endorsement form, subject to the terms, conditions, and exclusions found in the form. The policy must afford coverage as provided in the standard Railroad Protective Liability Endorsement.

107.26 NO WAIVER OF LEGAL RIGHTS

Upon completion of the Work the T/LPA will pay the final payment voucher. Payment of the final payment voucher shall not preclude the T/LPA from correcting any measurement, estimate, or certificate made before or after completion of the Contract, nor from recovering from the Contractor or surety or both, overpayments sustained because the Contractor failed to fulfill the obligations under the Contract. A waiver on the part of the T/LPA of any breach of any part of the Contract shall not be held to be a waiver of any other subsequent breach.

The lack of discovery or rejection of a defect shall not preclude, nor obligate the T/LPA to Accept the defect.

The Contractor, without prejudice to the terms of the Contract, shall be liable to the T/LPA for latent defects, fraud, or such gross mistakes as may amount to fraud, and for warranty and guaranty.

107.27 CONTRACTOR'S RESPONSIBILITY TO THE TRAVELING PUBLIC

The Contractor shall minimize hazards to the traveling public in the Construction Zone from the commencement of the Work until Final Acceptance. Minimizing hazards shall include:

1. Keep Equipment, Materials, and workers out of the travel lanes;
2. Remove hazardous construction debris deposited within the Project Limits;
3. Inspect and repair the travel lanes (Necessary repairs of damage not caused by the Contractor will be paid for in accordance with Section 109.5, "Payment for Extra Work."); and,
4. Remove obstacles deposited by the public as they transit the Project.

The Contractor shall immediately correct hazards reported by Project inspections, T/LPA employees, or the public. The Contractor shall maintain and publicly post a 24-hour contact number to initiate action quickly.

107.28 CONTRACTOR RECORDS

The Contractor, Subcontractors and all Suppliers shall keep and maintain all documents in a useable format, including communications, books, papers, records, files, accounts, tax records, cost records, reports, schedules, Bid documents with backup data, including electronic data, and all other material relating to the Contract, Project, Contract compliance, or any Claim for five (5) years following Physical Completion of the Work. Unless otherwise specified in the contract all of the above material shall be made available to the T/LPA and the NMDOT for review, audit, inspection and copying and shall be produced, upon request by an authorized representative of either party at a location designated by the requesting party. The Contractor shall insert the above requirement in each subcontract and shall also include in all subcontracts a clause requiring Subcontractors to include the above requirement in any lower-tier subcontract. The Contractor's failure to maintain and timely provide all requested documents to the T/LPA or the NMDOT waives any Claim the basis of which could have, either in whole or in part, been documented or rebutted by such documents.

Resource Loading documents, financial statements provided by the Contractor, and Escrowed Bid Documents which have been visibly marked by the Contractor as "Confidential Trade Secrets" shall be deemed confidential as trade secrets and not subject to inspection pursuant to the Inspection of Public Records Act, NMSA 1978, § 14-2-4. However, if a request is received for disclosure of data, for which the Contractor has marked as a Confidential Trade Secret, the T/LPA shall examine the requested data and make a written determination that

specifies which portions of the proposal should be disclosed. If it is determined that a Contractor's requested confidential data should be disclosed, the Contractor will receive reasonable notice in order to afford the Contractor the opportunity to take legal action to prevent the disclosure. Unless the Contractor takes legal action to prevent the disclosure, the data will be so disclosed. Such documents may be disclosed to the T/LPA and the NMDOT, including any Inspector, Project Superintendent, Project Manager, Claim consultant, investigator, or testifying or consulting expert, if necessary to perform their duties, or as otherwise required by law.

107.29 ASSIGNING OF CONTRACT

The Contractor may not assign the Contract or assign or delegate any contractual obligation or duty without the prior written consent of the T/LPA, the NMDOT, and the Surety. Contractor may not make any assignment, in connection with the Contract, including assignment of any payment due Contractor or any Claim, for the benefit of any creditor.

107.30 SEVERABILITY AND CONTRACT INTERPRETATION

If any provision of this Contract is held to be invalid or unenforceable, the remaining provisions, or the application of such provision to either party, shall remain in full force and effect and, if possible, the rights and obligations of the parties are to be construed and enforced as if the Contract did not contain that term.

If any provision of the Contract is found to be superseded by any applicable State or federal law or regulation or court order, in whole or in part, then both parties shall be relieved of all obligations under that provision only to the extent necessary to comply with the superseding law or ruling, provided however, that the remaining provisions of the Contract, or portions thereof, shall be enforced to the fullest extent permitted by law.

The Contractor agrees that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in the construction or interpretation of this Contract.

107.31 CHOICE OF LAW

This Contract is governed by and construed in accordance with the laws of the State of New Mexico.

SECTION 108: PROSECUTION AND PROGRESS

108.1 SUBCONTRACTING

Any individual, partnership, firm, corporation, or joint venture performing Work on the Project that is not an employee of the Contractor is a Subcontractor unless otherwise stated in the Contract.

A Supplier or Fabricator is not a Subcontractor unless Work is being performed within the Project Limits.

The Contractor shall perform with its own organization at least 40.0% of the Work based on the Total Bid Amount. The phrase, "its own organization" includes only workers employed and paid directly, inclusive of employees who are employed by a lease agreement Acceptable to the T/LPA and Equipment owned or rented or without operators and does not include employees or Equipment of the Subcontractor, assignee or agent of the Subcontractor. The Contractor is solely responsible and liable for the performance of all Work or any act by its Subcontractors, Truckers, and Suppliers on the Project. Liability of the Contractor and the Contractor's Surety under the Contract and the Contract Bonds shall not be waived or diminished by subcontracting or any other assignment of interest.

The Contractor shall submit to the Project Manager a request to Subcontract on the current NMDOT approved form. The form must be concurred to by the T/LPA and the NMDOT before the subcontracted Work begins. Unless otherwise approved by the Project Manager, the request to Subcontract shall be submitted no later than two (2) Working Days before the Subcontract Work is scheduled to begin. The Contractor shall not circumvent this requirement by placing a Subcontractor's employees on its payroll. If the Contractor does not perform at least 40.0% of the Work with its own organization requests for Subcontractor approval will be rejected. The T/LPA will treat a person or group generally operating as an independent contractor, as independent contractors for the purposes of this Section. An independent contractor is a person who is paid for Work by the Contractor who is not the Contractor's employee and is not performing Work within the Project Limits such as the Contractor's attorney or accountant.

The Contractor is responsible for ensuring that its Subcontractors are prequalified by the NMDOT and are also duly licensed for the Work to be performed on the Project, are registered with all of the State agencies as is required to do business in New Mexico and to perform Work on Public Works Projects including the New Mexico Taxation and Revenue Department and the New Mexico Department of Workforce Solutions or successor agencies, and are in compliance with all applicable State and federal laws and regulations including the New Mexico Public Works Minimum Wage Act. The Contractor shall comply with the New Mexico Subcontractor Fair Practices Act to the extent it is applicable to the Project. The Contractor shall update its list of Subcontractors and Suppliers submitted at the Pre-Construction Conference as the Work progresses.

A Trucker is not a Subcontractor unless the Contractor is using the Trucker to meet the DBE goal associated with the Project. A Trucker is an individual, partnership, firm, corporation, or joint venture that transports Materials to and from the Project and does not perform Work within the Project Limits. Transportation of Materials within the Project Limits is Work performed by the Contractor or a Subcontractor. Transportation of Materials on or off the Project site does not require a Subcontract.

The Contractor shall not construe the T/LPA's concurrence as an endorsement of the subcontract, the Subcontractor, or the Subcontractor's ability to complete the Work in a satisfactory manner. Subcontracting creates no Contract between the T/LPA and the Subcontractor. The Subcontractor gains no rights, and the T/LPA Accepts no responsibilities by reason of the Subcontractor's contract with the Contractor.

108.1.1 Prompt Payment

The Contractor shall promptly pay its Subcontractors and Suppliers for satisfactory performance of their contracts no later than seven (7) Days after receipt of Progress Payment for the Subcontractor's Work or Supplier's Materials by the T/LPA.

For purpose of this Section, a Subcontractor's and Supplier's portion of the Work is satisfactorily completed when the T/LPA processes a Progress Payment per Section 109.8, "Progress Payments." In no event shall the Contractor and its Subcontractors fail to promptly pay their Subcontractors and Suppliers the amounts due for undisputed Accepted Work within seven (7) Days of the Contractor receiving a Progress Payment from the T/LPA. The payment by the T/LPA to the Contractor is not a condition precedent for payment by the Contractor to any Subcontractor or Supplier. A zero dollar (\$0.00) Progress Payment by the T/LPA does not relieve the Contractor from paying the Subcontractor or Supplier for Accepted Work.

The Contractor's failure to make timely or prompt Subcontractor or Supplier payment may result in the T/LPA rejecting the Contractor's future Bids in accordance with Section 102.5, "Rejection of Bids." The Contractor's repeated failure to make timely Subcontractor payment may also lead to Suspension or Debarment in accordance with Section 102.3, "Suspension and Debarment."

108.2 NOTICE TO PROCEED AND PRE-CONSTRUCTION CONFERENCE

108.2.1 Notice to Proceed

The T/LPA may issue the Notice to Proceed within 30 Days after the T/LPA's Contract execution, unless otherwise agreed to by the parties. The Notice to Proceed will identify the timeframe the Contractor shall begin Work and when Contract Time shall begin. The Contractor's shall not commence Work without a Notice to Proceed.

108.2.2 Pre-Construction Conference

After the issuance of the Notice to Proceed, the Project Manager will provide written notice to the Contractor of the date, time and location of the Pre-Construction Conference. The Pre-Construction Conference will occur during the timeframe in the Notice to Proceed. If the Contract has ramp up time, the Pre-Construction Conference shall occur before the ramp up time commences.

The Contractor shall ensure the Project Superintendent or the individual who executed the Contract attends the Pre-Construction Conference. The Contractor's shall not commence Work without a Pre-Construction Conference and the items above are Accepted by the T/LPA. Commencing Work without a Pre-Construction Conference may result in a Non-Conformance. Contract Time shall commence as indicated in the Notice to Proceed and no additional Contract Time will be granted.

The Contractor shall provide the following at a minimum of ten (10) Days before Pre-Construction Conference. The Pre-Construction Conference will not be held until the required items are provided to the T/LPA:

1. Letters of assignment (official capacity) for Project;
 - a. Project Superintendent;
 - b. Company and Project Safety Officer;
 - c. Traffic Control Supervisor (include current certifications and copy of wallet card)
2. A list with samples of authorized signatures and assignments for Supplemental Agreements (Change Orders), Progress Payments, payrolls and related items ;
3. Baseline Schedule;
4. Additions, revisions deletions to the Traffic Control Plan;
 - a. Proposed changes to the Project;
 - b. Potential problems with the construction of the Project;
5. List of Subcontractors and Material Suppliers;
6. Lump Sum breakdowns;
7. Weighmasters / Deputy Weighmaster certifications (must be maintained throughout the duration of the Project);
8. Progress Payment cutoff date;
9. Company EEO policy statement;
10. Recruitments letters (attachments E-K of the EEO package);
11. Superintendent's indoctrination letter (attachment D of EEO package);
12. If applicable the on-the-job training letter (Attachment R of the EEO package);
 - a. The trainee classification letter must include the number of trainees to be trained, the training program to be used, the classification of each trainee and the approximate start date;
13. The completed Civil Rights / EEO Pre-Construction Report. Complete and sign the portions that are applicable;
14. Pre-Construction safety questionnaire;
15. VECP form; and
16. Other items and any other documents required by the Contract or as directed in the Project

Manager's notice of Pre Construction.

108.3 SCHEDULE

108.3.1 Baseline Schedule

The Project shall utilize a CPM format as the Baseline Schedule unless otherwise specified in the Contract.

The Project Manager will notify the Contractor in writing within ten (10) Days of the submittal of a Baseline Schedule if the schedule is "Accepted," "Accepted as noted," or is "rejected." For Baseline Schedules that are "rejected," the Project Manager shall communicate, in writing, to the Contractor all portions of the schedule that are not in compliance with the Contract requirements. The Contractor shall, within seven (7) Days of receipt of the reasons for rejection of the schedule, provide a new Baseline Schedule and all additional information necessary for the Project Manager to "Accept" the Baseline Schedule. The Project Manager will notify the Contractor in writing within seven (7) Days of the submittal of the corrected Baseline Schedule if the schedule is "Accepted," "Accepted as noted," or is "rejected." The Contractor's failure to provide a timely and Acceptable new Baseline Schedule in response to a rejected schedule waives any Claim the basis of which would have been documented by an Acceptable Baseline Schedule.

Unless otherwise specified in the Contract, the Contractor is wholly and solely responsible for construction means, methods or techniques, therefore the Project Manager's review of the Baseline Schedule will be for compliance with the Specifications and Contract requirements. Acceptance by the Project Manager shall not relieve the Contractor of any of its responsibilities for the accuracy or feasibility of the schedule. Any Baseline Schedule which exceeds the as let Contract Time may be "Accepted as noted" and does not revise the Contract Documents, including Contract Time, unless accompanied by a related Change Order. The T/LPA's Acceptance of a Baseline Schedule that exceeds as let Contract Time shall not operate as a waiver of the T/LPA's right to assess liquidated damages. A Baseline Schedule that reflects a Completion Date before the expiration of Contract Time does not revise the as let Contract Time and will be considered float for the exclusive use and benefit of the T/LPA. The Contractor shall not commence Work until the Project Manager Accepts a Baseline Schedule.

The T/LPA will use the Baseline Schedule to measure Project performance and for evaluation of changes to the Contract. Failure by the Contractor to include any element of Work required for performance of the Contract shall not excuse the Contractor from completing all Work within the required time.

108.3.1.1 CPM Baseline Schedule

Unless otherwise specified in the Contract the Contractor shall provide a CPM Baseline Schedule which clearly describes the following:

1. Created in the most current version of the scheduling software identified in the Contract;

2. Identifies the Project's Critical Path;
3. Includes all activities required to complete the Work, including but not limited to, engineering, surveying, permitting, submittals, approvals, procurement, fabrication, deliveries, crushing, utility Work and third party Work;
4. Includes milestones, interim Completion Dates, Substantial Completion Date, Physical Completion Date, and other key dates specified in the Contract;
5. Describe activities such that the Work is readily and identifiable. The activities shall provide the station or location of the Work;
6. Identifies the scheduled early and late start and finish dates for each activity;
7. Limits activity relationships to finish to start, start to finish, and finish to finish relationships. Use of leads and lags must be explained in the narrative;
8. Use only contractual date constraints, unless otherwise approved by the Project Manager;
9. Defines the Work calendar for each activity;
10. Narrative at a minimum including the plan for sequencing the Project;
11. Defines the duration of each activity;
12. Total Float and Free Float for each activity;
13. Workdays each week;
14. Contractor designated Holidays;
15. Number of shifts and Work hours per Day;
16. Anticipated weather events, based on historical data from the last seven (7) years;
17. Resource Loading that shows production rates; and
18. Cost loading that shall include the projected Project completion, measured in dollars and time, on a monthly basis or at each Progress Payment cut-off date.

108.3.2 Schedule Format

108.3.2.1 CPM Schedule Format

The Project shall utilize a CPM format as the Baseline Schedule unless otherwise specified in the Contract.

The Contractor shall prepare and submit one (1) electronic copy and two (2) time-scaled color prints of the CPM Baseline Schedule, updated monthly schedule, and revised schedules using a Project scheduling software as directed by the T/LPA that includes the following features:

1. Ability to display the schedule as a Gantt chart;
2. Ability to clearly display the Critical Path of scheduled activities apart from the non-critical scheduled activities;
3. Ability to calculate and display Total Float and Free Float for each activity;
4. Ability to clearly display the early start, late start, early finish and late finish dates for each activity; and,
5. Ability to easily store and transfer the schedule as a file (or files) from one computer to another.

108.3.2.2 Bar Graph Baseline Schedule

If required by the Contract the Contractor shall submit the Baseline Schedule in bar graph form. The Baseline Schedule shall list Contract features or Work activities in sufficient detail to show a reasonable and workable plan to complete the Project within the Contract Time. The Contractor shall show the following on the bar graph Baseline Schedule:

1. Each Work activity as a bar;
2. Each activity's planned start and Completion Dates;
3. Each activity's estimated cost and percent of Total Bid Amount;
4. The overall Project cost;
5. The planned Project Completion Date;
6. The monthly projected percent complete in time and dollars;
7. A plot of the monthly projected percent complete (in dollars) superimposed on the bar chart; and,
8. Any approved Project suspensions and time extensions.

108.3.3 Monthly and Revised Schedules

For this Section "schedule" refers to CPM or Bar Graph as required by the Contract. The T/LPA considers an updated monthly schedule as an update to the Accepted Baseline Schedule when no changes in activities have occurred except for the progression of planned Work. The T/LPA considers a revised schedule as a schedule that modifies the Accepted Baseline Schedule. If Accepted the revised schedule becomes the current Baseline Schedule.

Each activity in a monthly or revised schedule shall contain the same information required for the Baseline Schedule. Any updated or revised schedule that exceeds the as let Contract Time may be Accepted as Noted and does not revise the Contract Documents, including Contract Time, unless accompanied by a related Change Order. The T/LPA's Acceptance of an updated or revised schedule does not operate as a waiver of the T/LPA's right to assess liquidated damages.

The contractor shall submit an updated or revised schedule in accordance with 108.3.3.1, "Monthly Schedule Update." If the contractor fails to submit an Acceptable schedule, The T/LPA may take action in accordance with Section 109.8.2, "Non-Conformance." The Contractor's repeated failure to provide Acceptable monthly or revised schedules may lead to Suspension or Debarment in accordance with Section 102.3, "Suspension and Debarment." Failure to timely provide a monthly or revised schedule waives any Claim the basis of which would have been documented by an Acceptable monthly or revised schedule.

Float generated on Critical Path activities due to the acceleration of the Contractor's performance, at the written direction of the Project Manager, shall be for the exclusive use of the T/LPA; and, Float generated on Critical Path activities due to modification, reduction or elimination of items shall be for the exclusive use of the T/LPA. The float generated by a VECP may be split equally for the mutual use of the T/LPA and the Contractor.

Conditioned upon obtaining District Engineer prior approval with concurrence by the CLE, the

T/LPA may grant time extensions only to the extent that the activities on the Critical Path of the CPM Baseline Schedule in effect at the time of the Delay are impacted.

108.3.3.1 Monthly Schedule Update

The Contractor shall submit an updated schedule monthly by the Progress Payment cut-off date.

108.3.3.2 Contractor's Independent Duty to Provide Schedule Revisions

If it becomes apparent, or should have become apparent to the Contractor that the Contractor cannot complete the Work within the Contract Time, the Contractor shall provide a revised schedule and recovery plan to the Project Manager within five (5) Days. When the Critical Path changes, and when applicable, the Contractor shall provide a revised schedule and recovery plan to the Project Manager within five (5) Days.

If the Work falls behind schedule, the Contractor shall take such steps as may be necessary to mitigate damages and improve its progress including development of a recovery plan. For an excusable Delay, noncompensable Delay, concurrent Delay, as those terms are identified in Section 109.11, "Compensation for Claims," the Contractor shall take all reasonable steps to minimize the impact of the Delay once a Delay causing event is identified. Failure to do so may result in the rejection of all or part of the Delay Claim.

If the Delay cannot be mitigated, the Contractor shall promptly submit either a written request for an extension of the Contract Time pursuant to Section 105.19, "Notice of Intent to Claim," and Section 105.20, "Administrative Remedy," or request approval of a late completion schedule and shall be liable for liquidated damages.

For an inexcusable Delay or a nonexcusable Delay, as those terms are identified in Section 109.11, "Compensation for Claims," the Contractor shall consider as a minimum the following potential schedule mitigation techniques: increase the number of shifts, begin overtime operations, work extra Days including weekends and Holidays, or supplement its construction plant and submit, as provided in this Section, a revised schedule with a proposed recovery plan, as may be deemed necessary to demonstrate the manner in which the agreed rate of progress shall be regained, all at no cost to the T/LPA.

The revised schedule shall show Contract Time, Project Completion Date and all additional information necessary for the Project Manager to "Accept" the revised schedule. The Contractor's failure to provide a timely and Acceptable revised schedule waives any Claim the basis of which would have been documented by an Acceptable revised schedule. The Project Manager will provide the Contractor with a decision in writing within five (5) Days of receiving the revised schedule. The revised schedule shall become the current Accepted Baseline Schedule.

108.3.3.3 Schedule Revisions at Request of T/LPA

If it becomes apparent to the T/LPA that the Contractor cannot meet the schedule, the Project Manager may request a schedule revision and recovery plan from the Contractor. The Contractor shall, within five (5) Days of receipt of the request, provide a revised schedule. The Project Manager will provide the Contractor with a decision in writing within five (5) Days of receiving the revised schedule. The revised schedule shall become the current Accepted Baseline Schedule. The Contractor's failure to provide a timely and Acceptable response waives any Claim the basis of which would have been documented by an Acceptable revised schedule.

108.3.3.4 Schedule Update and Revision Information

The Contractor's updated monthly and revised schedules shall conform to the requirements of Section 108.3.1, "Baseline Schedule," and shall show:

1. Actual start and finish dates of each activity;
2. Remaining duration of activities started but not yet completed;
3. Delays and changes resulting from the addition, deletion or revisions to activities due to the issuance of a Change Order, change to an activity duration, changes to relationship between activities or changes to the planned sequence of Work or the method and manner of its performance; and
4. Narrative report describing:
 - a. Processes during the month;
 - b. Shifts in the critical activities from the previous update;
 - c. Sources of Delay;
 - d. Weather Days;
 - e. Traffic switches;
 - f. Allocations of crews;
 - g. Work completed the previous month;
 - h. Potential problem areas;
 - i. Work planned for the next update period; and
 - j. Changes made to the schedule.
 - k. The Superintendent shall sign the narrative and provide certification statement stating that the progress shown on the schedule update accurately represents Work completed through the date indicated:

108.4 UNSATISFACTORY PROGRESS OF WORK

The Project Manager will issue a notice of unsatisfactory performance to the Contractor. The notice shall be sent by certified mail and identify the unsatisfactory performance

The progress of the Work is deemed unsatisfactory when:

1. The dollars earned by the Contractor on the Project are 15% less than the estimated dollars earned, as shown on the current Accepted baseline progress schedule;
2. When the start of an activity on the Critical Path, as shown on the current Accepted progress schedule, has exceeded its late start date by seven (7) Days;

3. When an activity on the Critical Path, as shown on the current Accepted progress schedule, has exceeded its original duration by ten (10) or more Days; or,
4. When the Project Manager determines that the progress of Work is unsatisfactory.

When the progress of the Work is deemed unsatisfactory the Project Manager and the Contractor shall meet to address the schedule within five (5) Days. The Contractor shall provide a revised schedule with a narrative addressing Project progress compliance or anticipated liquidated damages. The T/LPA's approval of a late completion schedule will not operate as a waiver of the T/LPA's right to assess liquidated damages. Failure by the contractor to address the unsatisfactory progress within five (5) Days after the meeting, will result in the Project Manager issuing a Notice of Apparent Default to the Contractor per Section 108.9, "Default of Contract."

108.5 CHARACTER OF WORKERS, METHODS, AND EQUIPMENT

108.5.1 Character of Workers

The Contractor shall provide the resources necessary to complete the Work as specified. The Contractor shall ensure workers have the experience and skills to perform assigned Work.

The Contractor shall remove employee(s) who perform the Work in an unskilled manner, is in eligible to perform the Work, or who is intemperate or disorderly. The Contractor shall allow these employees to return to the Project only with the Project Manager's written permission. If the Contractor or its employee(s) fail to comply with these requirements the Project Manager may suspend the Work at no cost to The T/LPA.

108.5.2 Methods and Equipment

The Contractor shall use methods and Equipment capable of performing the Work specified in the Contract. The Contractor shall ensure that the Equipment does not damage the Roadway, adjacent property or other Highways, Streets, or Roads.

The Contractor shall request permission of the Project Manager in writing to use methods or Equipment other than those specified in the Contract. The Contractor shall describe the proposed methods and Equipment to be used and the reasons for the change. The Contractor shall perform Work in accordance with the original Basis of Payment and Contract Time. The Contractor shall discontinue use of alternate methods or Equipment when Work does not meet Contract requirements. The Contractor shall remove and replace unacceptable Work or repair deficient Work at no cost to The T/LPA.

108.6 DETERMINATION AND EXTENSION OF CONTRACT TIME

The T/LPA will provide the Contract Time in the Advertisement, in Working Days, Days, or Mandatory Completion Date.

For Working Day Projects, the Project Manager will provide the Contractor with a weekly statement showing the Contract Time, the number of Working Days used, the accumulated Working Days charged, and the number of Working Days remaining to complete the Work. The Contractor shall have three (3) Days after receipt of the weekly statement to object in writing to the weekly statement, setting forth the specific dates and justifications for the objection. If the Project Manager finds that the Contractor's objection is valid, or if there is an error, then the Project Manager will issue corrected weekly statement(s). If the Project Manager determines that the objection is not valid the Project Manager will notify the Contractor in writing. If the Contractor continues to object to the weekly statement then the Contractor may file a Notice of Intent to Claim. If the Contractor fails to timely object, the weekly statement is deemed Accepted by the Contractor.

The Contractor is not entitled to a Partial Suspension, at its own request, when any of the conditions below apply:

1. Projects with a Bar Graph Schedule
2. Projects with a Mandatory Completion Date;
3. Projects that are Calendar Day;
4. When performing Work on the Critical Path;
5. When the Contractor has not provided proper justification and the Project Manager has not approved the request;
6. The Work obstructs the Traveled Way; or
7. For issues for which the Contractor is responsible.

Partial Suspension shall be lifted if the Contractor works on Critical Path activities and the Project Manager shall commence the Contract Time count.

If completion of the Contract requires Extra Work that impacts the Critical Path, the Contractor shall provide the T/LPA an updated progress schedule and narrative requesting additional Contract Time associated with the Extra Work. Upon submission of adequate justification by the Contractor the District Engineer for the NMDOT District where the Project is located will determine if any adjustment in Contract Time is warranted with concurrence by the CLE.

Any request for additional Contract Time shall be made in writing to the Project Manager. If the Project Manager rejects a time extension request, the Contractor may proceed pursuant to Section 105.19, "Notice of Intent to Claim."

108.7 Reserved

108.8 LIQUIDATED DAMAGES

The T/LPA is entitled to assess liquidated damages for failure of the Contractor to complete the Work within the Contract Time. A daily charge will be made against the Contractor not as a penalty, but as liquidated damages, for each Day for any Work that remains uncompleted after the lapse of Contract Time.

In suits involving the assessment or recovery of liquidated damages, the reasonableness of daily charges will be presumed and the amount assessed will be in addition to every other remedy enforceable at law, in equity, by statute, or under the Contract.

The T/LPA does not waive its rights to assess liquidated damages under the Contract by allowing the Contractor to finish the Work after the expiration of Contract Time.

The Contractor shall complete the Work within the Contract Time. The T/LPA's Contract administrative costs, including engineering, inspection, and supervision, will be increased as the time to complete the Work increases.

The Contractor agrees that the following schedule of liquidated damages, unless otherwise specified in the Contract, represents an amount sufficient to cover estimated average daily costs incurred by the T/LPA if the Contractor does not complete the Project within the Contract Time and does not operate as a penalty to the Contractor:

Schedule of Liquidated Damages	
Total Original Contract Amount (\$)	Charge (\$) per Day
≤100,000	500
>100,000–500,00	1,000
>500,000–1,000,000	1,500
>1,000,000–2,000,000	2,000
>2,000,000–4,000,000	2,500
>4,000,000–7,000,000	3,000
>7,000,000–10,000,000	4,000
>10,000,000	5,000

The T/LPA will deduct liquidated damages from the next Progress Payment due to the Contractor after Contract Time expires and will continue to assess liquidated damages each Progress Payment until the determination of Substantial Completion. If the T/LPA directs Extra Work after Substantial Completion, the T/LPA will rescind the determination of Substantial Completion and then assess Contract Time in accordance with Section 104.2, "Extra Work." If the amount of liquidated damages exceeds the monies due to the Contractor for that Progress Payment then the T/LPA will seek reimbursement for any liquidated damages exceeding the dollar amount withheld from the Contractor.

If the Contractor has been granted Substantial Completion, but has not satisfied the requirements of Section 109.10, "Project Closure," the T/LPA reserves the right to continue to assess liquidated damages until Physical Completion. Upon the completion of steps I through VII of Project Closure the District Coordinator shall provide a written determination of Physical

Completion to the Contractor which stops further assessment of liquidated damages.

108.9 DEFAULT OF CONTRACT

The T/LPA may declare the Contractor in default of the Contract if the Contractor:

1. Fails to perform the Work with sufficient resources (supervision, workers, Equipment, or Materials) to assure the completion of the Work;
2. Performs the Work unsuitably, or neglects or refuses to remove Materials or to correct rejected Work;
3. Fails to begin the Work within the time specified in the Notice to Proceed;
4. Discontinues the Work;
5. Fails to resume discontinued Work after the T/LPA issues a request to resume Work;
6. Becomes insolvent or is declared bankrupt, or files for reorganization under the bankruptcy code, or commits any act of bankruptcy or insolvency, either voluntarily or involuntarily;
7. Allows a final judgment, in a suit filed in connection with this Contract, to stand unsatisfied for 30 Days;
8. Makes an assignment, in connection with the Contract, for the benefit of its creditors;
9. Fails to carry on the Work in an Acceptable manner in accordance with the Contract;
10. Fails to comply with Contract requirements or willfully violates any term or condition of the Contract;
11. Fails to perform the Work or maintain the Project in compliance with Federal and New Mexico Occupational Health and Safety laws and regulations;
12. Fails to observe or comply with Federal and New Mexico laws and regulations, local laws and ordinances,
13. Is debarred or suspended in accordance with the Section 102.3, "Suspension and Debarment," or is suspended or debarred by any federal agency;
14. Communicates that the Contractor may not perform under the Contract;
15. Fails to promptly pay a Subcontractor or Supplier for undisputed Accepted Work in accordance with Section 108.1, "Subcontracting;" or

The complete default process is sequential and consists of the following steps:

1. Notice of Apparent Default;
2. Declaration of Default and Demand for Surety to Complete the Work; and,
3. T/LPA Completion of the Work;

108.9.1 Notice of Apparent Default

The Project Manager will provide written notice to the Contractor and the Contractor's Surety specifying the condition(s) in Section 108.9, "Default of Contract," that the Contractor violated and the corrective measures to be taken by the Contractor. If the Contractor or Surety does not proceed with the corrective measures within ten (10) Days of the date written notice, the T/LPA, has full power and authority, without violating the Contract, to declare the Contractor in default.

108.9.2 Declaration of Default and Demand for Surety to Complete the Work

The written declaration of default is separate from the notice of apparent default and will be addressed to both the Contractor and the Surety. The declaration of default is issued after time for the Contract to take corrective measures expires in Section 108.9.1, "Notice of Apparent Default." The declaration of default removes the corrective measures from the Contractor, and will demand compliance by the Surety of the terms, conditions, and obligations contained in the Performance Bond.

If the T/LPA determines that the Contractor is in default the Surety shall complete the Work at its own expense pursuant to the Contract and receive the balance of any funds owed to the Contractor.

108.9.3 T/LPA Completion of the Work

If the Surety fails to complete the Work, the T/LPA will complete the Work. The T/LPA will deduct costs and charges that the T/LPA incurs as a result of the default and the cost of completing the Work from Contract funds due to or which may become due to the defaulting Contractor or Surety. If the total costs for completing the Work exceeds the amount that would have been payable under the Contract, the defaulting Contractor and the Surety shall be jointly and severally liable for the excess costs.

If a default of the Contractor is later determined to be without cause, the default of the Contractor will revert to a Section 108.10, "Termination of Contract; No Fault of Contractor," and the Contractor is not entitled to recover damages other than those allowed by that Section.

108.10 TERMINATION OF CONTRACT; NO FAULT OF CONTRACTOR

The T/LPA may terminate, by written notice and order, all or part of the Contract, after determining the following:

1. That the Contractor is prevented from proceeding with or completing the Work as originally contracted for reasons beyond the control of the Contractor; or
2. That termination would be in the public interest.

Reasons for termination may include, but are not limited to, the following:

1. Executive orders of the President of the United States;
2. Executive orders of the Governor of the State of New Mexico;;
3. An emergency that creates a serious shortage of Materials, as deemed by the T/LPA
4. Orders from duly constituted authorities relating to energy conservation;
5. Restraining orders or injunctions obtained by third party citizen actions resulting from national or local environmental protection laws or where the issuance of the order or injunction is primarily caused by acts or omissions of persons or agencies other than the Contractor; or,
6. To correct any material errors or omissions or to correct any discrepancy or contradictions within the Contract discovered after execution of the Contract by both parties, the failure

of which to correct is likely to lead to Contractor Delay, a Claim for additional time, or a Claim for compensation which may exceed the costs recoverable under this Section.

108.10.1 Submittals and Procedures

When the T/LPA issues a notice and order for a Contract termination effective on a certain date the T/LPA will pay:

1. For the actual number of units or items of Work completed at the Bid Item Unit Price;
2. For items of Work started but not completed as negotiated and mutually agreed. Negotiated amount shall not exceed the Bid Item Unit Price;
3. For invoices to restock or for invoices for Material on hand for Work not yet started. Invoices shall be provided by the Contractor documenting both costs and T/LPA will make a determination on how to proceed, including delivery of the Material if needed. For the purposes of this Section, Materials on hand are Materials that are ordered and have been manufactured before the date notice and order of termination is issued.

After the Contractor receives the termination notice and order from the T/LPA, and no agreement or only a partial agreement is reached about the termination costs, then Contractor shall submit any Claim for damages or costs within 30 Days of the date of the notice and order of termination or shall waive such Claim. The Contractor shall submit the Claim in accordance with Sections 105.19, "Notice of Intent to Claim," and 105.20, "Administrative Remedy." The Claim shall be limited to the following cost items:

1. Actual and direct Bidding and Project investigative costs which are separate and excluded from home office overhead costs;
2. Actual and direct mobilization costs, mobilization paid by the T/LPA exceeding actual and direct mobilization costs may be subject to reimbursement by the Contractor;
3. If Work is stopped in advance of the termination date, idle Equipment time using standby-time rental rates at 50% of the Blue Book Equipment rental rate, without the operating cost;
4. If Work is stopped in advance of the termination date, idle labor costs;
5. Unpaid Supplier costs;
6. Accounting charges involved in Claim preparation;
7. Written and executed agreements for private land usage; and
8. An additional ten percent (10%) of the total of the above items 2, 3, 4, and 5 to cover home office overhead and salaried labor expenses.

The Contractor shall provide those records required by Section 105.20.1, "Submittal of the Claim to the Project Manager," to the T/LPA to determine the validity and amount of each Claim item. The Contractor shall not be entitled to recover anticipated loss of profits or any category of damages excluded pursuant to Section 109.11, "Compensation for Claims."

Full or partial Contract termination does not relieve the Contractor of its contractual responsibilities for the completed Work, nor will it relieve the Surety of its obligation for Claims arising out of the completed Work.

SECTION 109: MEASUREMENT AND PAYMENT

109.1 MEASUREMENT OF QUANTITY

The T/LPA will measure Pay Items in accordance with the Pay Unit listed in the Contract.

109.1.1 Pay Unit Terminology

Otherwise, the following terminology controls:

1. The distance between stations is 100 feet, measured longitudinally;
2. Longitudinal measurements are along and parallel to surfaces, not horizontal. For Pay Items measured by the square yard, the T/LPA will make no deduction for fixtures in the Work with areas less than one (1) square yard;
 - a. Transverse measurements for areas of Base Course and pavements are the neat line dimensions shown on the Plans based on the average width of the installed Material along the centerline of the Roadway;
 - b. Structures are measured according to the neat lines shown on the Plans or as provided by the T/LPA;
 - c. For Pay Items measured by the foot, measurements are parallel to the base or foundation;
3. The volume of excavation is calculated by using the average end area method at 25 foot intervals or other Project Manager approved methods;
4. A ton equals 2,000 lb; a "sack" equals 94 lb of cement;
5. Timber and lumber (permanently incorporated in the Project) is measured by the foot, and measured on nominal widths and thickness and the length of each piece. The T/LPA will Accept lumber and timber conforming to the American Lumber Standards for rough and dressed sizes, as specified in the Contract;
6. Standard manufactured items, identified by unit weight or section dimensions, are measured using nominal weights or dimensions. The T/LPA will Accept manufacturing tolerances established by the industries involved, unless otherwise stated in the Contract.
7. Asphalt Materials are measured by the ton or as designated in the Contract. The weight is based on net certified scale weights or weights calculated from certified volumes. The certified weights or volumes are subject to inspection and adjustment at the point of delivery.
8. Materials that are measured by weight shall be measured and proportioned by weight using certified and accurate scales that are within tolerances established by State law;
 - a. The Contractor shall provide scales or use commercial scales;
 - b. Scales shall be certified and sealed at least once every 12 months or each time the scales are relocated, or as directed by the Project Manager;
 - c. Weighmasters (including Deputy Weighmasters), provided by the Contractor and certified by the NMDA, shall operate the scales. The certified weighmasters shall perform their duties in accordance with the regulations of the New Mexico T/LPA of Agriculture statutes and regulations concerning the same. The cost of the certified

- weighmasters, weighmasters' scales, scale tickets, scale house, and verification of the scale's accuracy is Incidental to the weighed Material;
- d. Empty vehicles used to haul Material paid by weight shall be weighed at least twice daily, at a minimum once prior to initial Material delivery and once prior to final Material delivery. The Contractor shall ensure vehicles bear legible identification marks. On a daily basis the Contractor shall provide the Project Manager with a written list of delivery vehicles showing identification marks, number of axles, the distance between extreme axles and daily tare weights. The Contractor shall update this information before delivery of the Material and when the Contractor changes vehicles, combination vehicles, or axle length relationships;
 - e. The T/LPA may convert weight to volume, or volume to weight, for payment purposes. The Project Manager will determine the factor(s) for conversion using an Acceptable method;
 - f. The operator of each weighed vehicle shall obtain a scale ticket (certificate of correct weight) from the weighmaster and deliver the ticket to the Project Manager or designee at the point of delivery. The following information shall be included on the scale ticket:
 - i. Project number;
 - ii. Date;
 - iii. Ticket number;
 - iv. Truck / Trailer unit number;
 - v. Gross weight;
 - vi. Tare weight;
 - vii. Net weight;
 - viii. Material type;
 - ix. Certified weighmaster's name;
 - x. Signature of weighmaster; and
 - xi. Whether the driver was on or off the scale during weighing.

109.2 APPROVED EQUIPMENT RENTAL RATES

For machinery or Equipment owned or leased directly by the Contractor or its Subcontractor at any tier, the Contractor will be paid Equipment rental rates as designated in the Contract. The T/LPA will not compensate the Contractor or its Subcontractors at any tier for owned or leased small tools. Small tools are defined as any tool which would be valued less than \$2000.00 if purchased new.

The Blue Book rates shall be used for the actual time the Equipment is in operation calculated by using the Federal Highway Administration rate. The FHWA rate is equal to the monthly rate divided by 176 (hours/month) plus the hourly operating cost. The FHWA rate must also be adjusted for age and geographic region. Therefore, the "FHWA" rate in the Blue Book represents monthly rate/176 x age adjustments x regional adjustments plus hourly operating cost. The T/LPA may add a maximum of 10% only to the Equipment rental rates. The T/LPA will apply Equipment rental rates pursuant to the Blue Book and in accordance with the following criteria:

1. The manufacturer's identification plates on the Equipment will be used to identify the Equipment and its capacities. If the Equipment does not have these plates, the Contractor shall provide written statements certifying the Equipment identification and capacity as shown on the Contractor's Equipment inventory. The Contractor shall submit the type, capacity, and horsepower of each piece of Equipment, to correlate with the Blue Book schedule. The Blue Book reflects the maximum rates for Equipment of modern design and in good-working condition;
2. The Blue Book lists common pieces of Equipment. If the Blue Book does not list a piece of Equipment the use of the Blue Book rental rate for a comparable piece of Equipment shall be used as approved by the Project Manager. If no comparable piece of Equipment is identified in the Blue Book the Project Manager may negotiate a rental rate with the Contractor at a fair market rental rate;
3. If a piece of Equipment, not available on the Project, requires hauling onto the Project, the Contractor shall include the actual transportation cost (in and out). The T/LPA will pay the transportation cost for each piece of Equipment once. Under unusual circumstances the Contractor may provide to the T/LPA written justification for additional transportation costs;
4. The Contractor shall only be paid the operating rate for those hours the Equipment is actually in use. A standby rate for Equipment required to be at the Work site but not operating may be paid by the T/LPA if agreed to in writing in advance by the Project Manager in which case the T/LPA will pay for standby Equipment using standby-time rental rates at 50% of the Blue Book Equipment rental rate, without the operating cost.
5. The regional difference percentage, as described in the Blue Book does not apply. However, the factors in the Rate Adjustment Tables of the Blue Book do apply;
6. Overtime, as described in Blue Book does not apply. The T/LPA will pay for Equipment used on Extra Work at the regular hourly rate in accordance with the rate provided in the Blue Book.

109.3 SCOPE OF PAYMENT

The Contractor shall receive and accept compensation in accordance with the Bid for performing the Work in an Acceptable manner. The compensation associated with the Bid shall include the risks, losses, damages and expenses that, when considering the nature of the Work and having exercised Pre-Bid Due Diligence, should have been reasonably expected by the Contractor in prosecuting the Work.

The Contractor shall receive and accept compensation provided for in the Contract as full payment for furnishing all Materials and for performing all Work under the Contract in a complete and Acceptable manner subject to the provisions of Section 107.26, "No Waiver of Legal Rights." The Contractor's Bid Item Unit Price is presumed to be based on its exercise of Pre-Bid Due Diligence and considers all risk, loss, damage, or expense of whatever character arising out of the nature of the Work.

The T/LPA will pay for the approved actual quantities of Material incorporated into the Work unless otherwise provided in the Contract.

The T/LPA will only pay for Pay Items listed in the Contract in accordance with the "Basis of Payment" provisions. Items not included in the "Basis of Payment" provisions shall be considered Incidental, unless otherwise indicated in the Contract. The T/LPA will not pay separately for Work Incidental to the completion of a Pay Item, or pay for the Incidental Work under another Pay Item; except as provided in Section 104.6, "Rights in and Use of Materials Found on the Work."

Payment for any Pay Item shall be full compensation for all Work necessary to complete the Pay Item.

When a Contract Item Specification references another Specification(s) to complete the Work, Pay Items referenced in that Specification, the Pay Items referenced will not be measured or paid for separately. *For example, if the Specification for Contract Item "A" refers to Specification "B" the Pay Items in Specification "B" will not be paid for, unless specifically stated in the Contract. The Payment for Contract Item "A" will be full compensation for Work as described in the Specification for Contract Item "A".*

The Contractor shall not receive payment for corrective Work. Corrective work is Work required by the T/LPA to make previously unacceptable Work Acceptable.

The T/LPA may Accept portions of the Work at an adjusted price in accordance with the relevant Pay Adjustment provisions in the Contract. The adjusted price only applies to the specific Accepted portion of Work.

109.4 COMPENSATION FOR OVERRUN / UNDERRUN QUANTITIES

When the Project Manager determines the Work is Acceptable, the T/LPA will pay the Contractor in accordance with Basis of Payment section or Change Order. If the Accepted quantities of Work vary from the quantities in the Contract, the Contractor shall accept, as payment in full, payment based on the Bid Item Unit Price for the Accepted quantity.

109.5 PAYMENT FOR EXTRA WORK

The T/LPA will pay the Contractor for Extra Work resulting from significant changes in the character of the Work, differing site conditions or T/LPA ordered Work based on the following order of priority for payment:

1. Bid Item Unit Prices;
2. Negotiated unit prices;
3. Negotiated Lump Sum; or
4. Force Account.

For Items of Work performed by the Contractor, the negotiated unit price or negotiated Lump Sum price shall include all costs associated with the Work. If Subcontractors perform Work as Extra Work under items 2, 3 or 4, the T/LPA may only compensate the Contractor up to an

additional ten percent (10%) of the total actual cost of the subcontracted Work less than or equal to \$10,000.00 for indirect and administrative costs. If the total cost of the subcontracted Work is greater than \$10,000.00 then the T/LPA shall only compensate the Contractor \$1,000.00 plus 5% of the excess over \$10,000.00.

109.6 FORCE ACCOUNT

When the order of priority for payment is exhausted and Extra Work must be paid by Force Account, the T/LPA will pay the Contractor in accordance with the following Sections.

If the total cost of the subcontracted Work by Force Account is less than or equal to \$10,000.00, then the T/LPA shall only compensate the Contractor an additional ten percent (10%) of the total cost of the subcontracted Work for indirect and administrative costs. If the total cost of the subcontracted Work is greater than \$10,000.00 then the T/LPA shall only compensate the Contractor \$1,000.00 plus 5% of the excess over \$10,000.00.

109.6.1 Labor

The T/LPA will pay the wage rate for Force Account Work actually paid by the Contractor during the pay period ending before the Force Account Work commences. Such payment shall include Work by supervisors in direct charge of the Force Account Work. If there is no wage rate for a labor classification needed to perform the type of Work required, the T/LPA and Contractor will negotiate and document a new wage rate before beginning the Force Account Work.

Labor shall also include, and the T/LPA will reimburse for, the following actual reasonable costs paid to (or on behalf of) workers:

1. Subsistence and travel allowances that do not exceed the New Mexico Per Diem and Mileage Act or other T/LPA approved per diem rates;
2. Health and welfare benefits;
3. Retirement fund benefits;
4. Vacation benefits; and
5. Other benefits required by collective bargaining agreements or other employment Contract, applicable to the class of labor.

The T/LPA will pay an amount equal to 30 percent of the sum of the direct labor costs and fringe benefits. This payment is in compensation in the following increments: field office overhead (10 percent), home office overhead (10 percent), and profit (10 percent).

109.6.2 Bond, Insurance, and Tax

The T/LPA will pay the Contractor either:

Option 1

The actual cost of the following, plus six percent (6%):

1. Property damage, liability, and worker's compensation insurance premiums;
2. Unemployment insurance premiums or contributions;
3. Applicable payroll taxes (not including gross receipts taxes); and
4. Social Security taxes.

To recover actual costs, the Contractor shall provide actual invoice costs of the rate(s) it has paid for bonds, insurance, and taxes.

Option 2

In lieu of supplying the above evidence and recovering actual costs:

1. The Contractor shall receive payment at a rate representing 30% of the labor costs for labor burden; and
2. The Contractor shall also receive payment for the additional costs to Contract Bonds supported by invoice(s).

109.6.3 Materials

The T/LPA will pay the Contractor the actual cost of Materials Accepted by the Project Manager and incorporated into the Force Account Work, including transportation charges paid by the Contractor (exclusive of Equipment rentals), plus 15% of the Material cost.

109.6.4 Equipment

For special Equipment (other than small tools as defined by the Blue Book), including fuel and lubricants and transportation costs, the T/LPA will pay rental rates as determined in accordance with Section 109.2, "Approved Equipment Rental Rates," unless otherwise agreed in writing.

109.6.5 Miscellaneous

The T/LPA will not pay for other costs not specifically addressed in Section 109.6, "Force Account."

109.6.6 Documentation

The Project Manager will use forms approved by the NMDOT to track Force Account costs. The Contractor shall compare and reconcile records with the Project Manager daily, or as otherwise directed by the Project Manager, to determine the amount of Force Account Work completed by the Contractor.

109.6.7 Statements

The T/LPA will not pay for Force Account Work until the T/LPA verifies that the Force Account Labor, Material and Equipment forms are supported by the documents below. Contractor furnishes the Project Manager with itemized statements of the cost of the Force Account Work detailed as follows:

1. Name, classification, date, daily hours, total hours, rate, and extension for each laborer and foreman;
2. Attachments verifying Equipment brand, year of manufacture, operating Specifications, dates of use, daily hours, total hours, current Blue Book rental rate, and rate of applicable attachment for each piece of Equipment;
3. Quantities of Materials and prices; and,
4. Transportation of Materials.

Statements shall be supported by receipted invoices for all Materials used and for transportation charges. For in-stock Materials or Materials furnished by the Contractor, the Contractor shall provide an affidavit certifying that such Materials were taken from the Contractor's stock, that the quantity claimed was actually used, and that the price and transportation claimed represent the actual cost to the Contractor. This requirement does not waive the Contractor's responsibility to provide Certificates of Compliance per 106.4, "Certificates of Compliance."

The total payment made as provided above shall constitute full compensation for Force Account Work authorized in writing by the T/LPA.

109.7 ELIMINATED ITEMS

Should Pay Items contained in the Contract become unnecessary for the reasonable completion of the Work, the Project Manager may direct the Contractor, in writing, to eliminate Pay Items from the Contract. This written notification will not invalidate the Contract. The T/LPA will reimburse the Contractor for actual Work completed before the written notification at Bid Item Unit Price.

The total cost of return freight, handling and restocking for Materials associated with that eliminated Work will then be increased by 15%. If Materials cannot be returned, the T/LPA will pay for said Materials at Contractor's actual cost and take ownership.

109.8 PROGRESS PAYMENTS

The Contractor shall not construe any Progress Payment to be an Acceptance of any defective Work or improper Material.

The Acceptance of Work for the purposes of Progress Payments does not constitute Final Acceptance of the Work.

The T/LPA will make Progress Payments once each month. The Project Manager will prepare and post Progress Payments based on estimates of the value of the Work performed and

Materials complete-in-place, and in accordance with Section 109.9, "Stockpile," and minus price reductions within five (5) Days of the estimate cut-off date.

The T/LPA will include monies associated with an Accepted and fully executed change Order when the Work is Accepted with the next Progress Payment.

The Project Manager shall process a Progress Payment on a monthly basis regardless of the dollar amount, including zero dollar (\$0.00), owed the Contractor.

The T/LPA has the authority to withhold Progress Payments in part or in their entirety as part of a suspension.

109.8.1 Reserved

109.8.2 Non-Conformance

If the Contractor fails to comply with all material terms and conditions of the Contract the T/LPA may withhold an additional 25% as a Non-Conformance from each Progress Payment and subsequent Progress Payments. Release of Non-Conformance withholdings shall be processed at the next scheduled Progress Payment after the resolution of the Non-Conformance.

Nothing in this Section prevents the T/LPA from withholding application and certification for payment because of the following: unsatisfactory job progress, defective construction not remedied, disputed Work, third party Claims filed or reasonable evidence that a Claim will be filed, failure of the Contractor to make timely or prompt payments for labor, Equipment, and Materials, damage to the T/LPA, reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract,.

The Contractor is not entitled to late payment charges, including late payment charges pursuant to NMSA 1978, § 13-1-158, associated with any payment retained under this Section.

109.8.2.1 Automatic Non-Conformance

These items do not follow the Potential Non-Conformance process below. The failure to comply will automatically result in the issuance of a Non-Conformance and withholding of an additional 25% as a Non-Conformance from each Progress Payment. The following items shall be provided in the timeframes in their respective Section:

1. The Certificate of Compliance per Section 106.4, "Certificates of Compliance" for Materials that are required to be Buy America compliant per Section 106.12, "Buy America Requirements;"
2. Schedule submittals within the timeframes in Section 108.3, "Schedule;"
3. Prime Contractor's certified payrolls complete submittal within the timeframe in the "Federal Requirements" Notice to Contractors; and,
4. The Contractor's prompt payment to its Subcontractor for undisputed Accepted Work.

109.8.2.2 Potential Non-Conformance

For all other terms of the Contract, that the Contractor fails to comply with the T/LPA will issue a Notice of Potential Non-Conformance. The Notice of Potential Non-Conformance will be issued on a form similar to that used by the NMDOT and the Contractor shall have five (5) Days after the Progress Payment cutoff date to resolve the issues listed on the form.

If the Contractor resolves all issues on the Notice of Potential Non-Conformance within five Days after the Progress Payment cutoff date then no action to withhold the 25% Non-Conformance amount is taken by the T/LPA. If the Contractor does not resolve each issue on the Notice of Potential Non-Conformance within five Days after the Progress Payment cutoff date then the T/LPA will withhold an additional 25% as a Non-Conformance from each Progress Payment and subsequent Progress Payments until the Contractor fully complies with the Contract.

For Safety Items the T/LPA will include a timeframe to resolve the issue in the Notice of Potential Non-Conformance that may be other than five (5) Days after the Progress Payment cutoff date. If the Contractor fails resolve the safety issue in the Notice of Potential Non-Conformance in timeframe then the T/LPA will withhold an additional 25% as a Non-Conformance from each Progress Payment and subsequent Progress Payments until the Contractor fully complies with the Contract.

109.9 STOCKPILE

Only items identified in the Notice to Contractors titled "Stockpile" are eligible for Stockpile payment.

109.9.1 Stockpile Payment

After measurement, partial (stockpile) payments to the Contractor may be made for Items on hand not to exceed 50% of the Bid Item Price under the following conditions:

1. The Items will be incorporated in the Work;
2. The Items are delivered to the Project or to a storage place approved by the Project Manager;
3. The delivered Items meet the requirements of the Contract, including Certificates of Compliance per Section 106.4, "Certificates of Compliance;" and,
4. The Contractor submits paid invoices, certified by the Supplier or Fabricator, to the Project Manager.

109.10 PROJECT CLOSURE

- Step I. Contractor Notice of Projected Substantial Completion Date
- Step II. Completion Conference

- Step III. Termination of Contract Time
- Step IV. Project Inspection and Development of Punch List
- Step V. Notice of Punch List Completion and Request of Final Inspection
- Step VI. Final Inspection
- Step VII. Contractor Submittal of Final Documentation
- Step VIII. Physical Completion and Final Payment

109.10.1 Contractor Notice of Projected Substantial Completion Date

The Contractor shall provide written notification to the District Coordinator of the projected Substantial Completion Date. This notice shall be provided a minimum of 30 Days prior to the projected date unless otherwise approved by the Project Manager.

109.10.2 Completion Conference

Prior to the projected Substantial Completion Date, the District Coordinator and the Project Manager shall conduct a completion conference with the Contractor to review the Project and determine conformance with the Contract. The T/LPA and Contractor will address all outstanding Work needed for Substantial Completion. The T/LPA and Contractor will agree on the schedule for completion of all Work necessary for Project closure pursuant to Section 109.10, "Project Closure."

Within five (5) Days of the completion conference or as directed by the Project Manager the Contractor shall submit for approval by the Project Manager the Contractor's proposed updated schedule for Project closure.

109.10.3 Termination of Contract Time and Determination of Substantial Completion

After steps I and II of Project Closure are complete and the Contractor has determined it is ready to request Substantial Completion, the Contractor shall provide to the T/LPA a written request to determine Substantial Completion. Within two (2) Days of receipt of the request for Substantial Completion the T/LPA, upon obtaining NMDOT concurrence, will issue a determination of Substantial Completion, Contract Time or, if applicable, Liquidated Damages assessments will cease upon Substantial Completion.

109.10.3.1 Rescinding Substantial Completion

The T/LPA may rescind Substantial Completion by written notice when any of the conditions for Substantial Completion in the definition of Substantial Completion are no longer met. Substantial Completion may also be rescinded by the T/LPA when T/LPA Ordered Work per Section 104.2.3, "T/LPA Ordered Work," is required.

109.10.4 Project Inspection and Development of Punch List

The Project Manager shall inspect the Project to verify that all Work is complete or develop Punch List items upon the determination of Substantial Completion. The Project Manager shall provide the Contractor written notice that all Work is complete or shall provide a Punch List. Contract Time shall resume if the Contractor fails to provide Acceptable Work associated with the Punch List within the agreed upon schedule that shall not exceed thirty (30) Days and resumed Contract Time shall continue until all Punch List Work is Accepted.

109.10.5 Notice of Punch List Completion and Request of Final Inspection

The Contractor shall provide written notification to the Project Manager that the Punch List is complete and request final inspection.

109.10.6 Final Inspection

The final inspection by the Project Manager, District Coordinator and the CLE will be scheduled and conducted within fourteen (14) Days of the Contractor written request for final inspection. If the inspection reveals unacceptable or unsatisfactory Work, the Project Manager shall give the Contractor written instructions for correction and set the time limit for the Contractor to comply with these instructions. Upon the Contractor's correction of the Work, written notification shall be provided to the Project Manager, the Project Manager shall make an additional inspection and notify the Contractor within fourteen (14) Days of the findings.

If the Project Manager, District Coordinator and the CLE are satisfied that the Work is complete and Acceptable, that inspection shall constitute the final inspection. The Project Manager shall provide written notification of the final inspection Acceptance to the Contractor within four (4) Days.

The T/LPA will Accept the Project as soon as practicable after completion and inspection of the Work. Acceptance is final and conclusive, except for the following situations:

1. Latent defects;
2. Fraud;
3. Gross mistakes that amount to fraud; or
4. The T/LPA's warranty or guaranty rights.

109.10.7 Contractor Submittal of Final Documentation

The Contractor shall submit a schedule for submittal of the following documents required by the Contract including the Final Payment Voucher, Certificate of Payment of Claims, Summary to Contractor, Pit Release Letter, additional named insured Insurance Bonding Release, Affidavit of Wages Paid and Surety Release within five (5) Days of the date of the written notice of final inspection Acceptance. For the Pit Release Acceptance by the Project Manager of a letter of intent from the landowner for future use may exempt haul Roads or other areas from their vegetation requirements.

The Contractor shall furnish a completed Certificate of Payment of Claims form from persons or firms, including the Contractor, who have filed Claims for additional compensation, for labor performed, or for Material, supplies, or services furnished to the Contractor or its Subcontractors.

The T/LPA shall withhold final payment and no late payment interest shall be due for the withheld payments until the Contractor furnishes all documents required by the Contract.

109.10.8 Physical Completion, Final Payment and Final Acceptance

Upon the completion of steps I through VII of Project Closure the T/LPA, upon obtaining NMDOT concurrence, shall provide a written determination of Physical Completion to the Contractor. The T/LPA shall not release retained amounts until Physical Completion and when the Contractor fully complies with all Contract requirements.

Until Physical Completion of the Project, the Contractor shall have the charge and care thereof and shall take every precaution against injury or damage to any part thereof, by the action of the elements or from other causes, whether arising from the execution or from the non-execution of the Work.

The T/LPA shall prepare an estimate summary to contractor which is used for the proposed final payment voucher. The proposed final payment voucher shall correct all prior Progress Payments. The T/LPA shall withhold from the proposed final payment voucher liquidated damages and overpayments. The Contractor shall sign, approve and return the T/LPA's duly certified final payment voucher. Upon receipt of a signed and approved final payment voucher the T/LPA shall Accept the Work and pay the balance due on the final payment voucher. The T/LPA paying the balance due on the final payment voucher constitutes Final Acceptance.

If the Contractor disputes the final payment voucher, then the Contractor shall submit the Notice of Intent to Claim form within seven (7) Days of receipt of the final payment voucher. The Contractor shall not change or modify the final payment voucher. If a clerical error on the final voucher is discovered the Contractor shall notify the Project Manager in writing before the 7 day expiration. If the Project Manger agrees that there is clerical error, the Project Manager will correct the error and reissue the final payment voucher. If the Project Manager does not agree the Project Manager shall notify the Contractor in writing and the Contractor shall have 7 Days of receipt to sign the final payment voucher or submit a Notice of Intent to Claim. If the Contractor submits a Notice of Intent to Claim form or the timeframe to submit the Notice of Intent to Claim form expires, the T/LPA shall Accept the undisputed Work, pay the undisputed balance unilaterally due on the final payment voucher. A Claim is forever barred if the Claim is not timely and properly submitted pursuant to Section 105.19, "Notice of Intent to Claim," within seven (7) Days of receipt of the T/LPA's proposed final payment voucher. The T/LPA paying the balance due on the final payment voucher constitutes Final Acceptance.

Upon Final Acceptance the T/LPA will complete its administrative process to close the Project.

109.10.9 T/LPA Requests for Reimbursement or Refund

The Contractor shall reimburse or refund the T/LPA for any overpayment in response to a request for refund of overpayment within 30 Days of the T/LPA's request. Failure by the Contractor to comply may subject the Contractor to default and to rejection of the Contractor's Bids in accordance with Section 102.5, "Rejection of Bids," until such time that Contractor complies with this Section.

109.11 COMPENSATION FOR CLAIMS

The Contractor is not entitled to late payment charges, including late payment charges pursuant to NMSA 1978, § 13-1-158, associated with any Claim or disputed construction services and Materials. The T/LPA will pay the Contractor late payment charges as authorized by NMSA 1978, § 13-1-158 for construction services and Materials not the subject of a disputed Claim. The T/LPA will pay the Contractor late payment charges on undisputed, qualified, Delayed Progress Payments for certified, approved and Accepted Work in accordance with Section 109.8, "Progress Payments," that are not the subject of a disputed Claim.

The Contractor is barred from seeking a Claim, a remedy, compensation, time, cause of action, or any damages except as provided by Section 105.19, "Notice of Intent to Claim," and Section 105.20, "Administrative Remedy," and this Section.

The Contractor shall not be entitled to any consequential, indirect, punitive, exemplary, special, or Incidental damages. When the T/LPA determines entitlement the Contractor shall only receive additional compensation and time as specifically provided by the following Sections of these Specifications: Section 104.2.1, "Significant Changes in the Character of the Work;" Section 104.2.2, "Differing Site Conditions;" Section 104.2, "Extra Work;" Section 107.10.3, "Cooperation with Owner of Railroad Right of Way;" Section 107.20, "Contractor's Responsibility to Protect the Work;" Section 108.6, "Determination and Extension of Contract Time;" Section 108.10, "Termination of Contract; No Fault of Contractor;" Section 109, "Measurement and Payment;" and this Section.

Except as otherwise agreed to by the Contractor and the T/LPA in a written Change Order, all Claims and causes of action arising out of the performance and administration of the Contract shall be governed by this Section including: Claims for Delay, Claims for additional compensation and time, Contract adjustment, Claims seeking extension of Contract Time, Claims seeking Delay damages, pass-through Subcontractor Claims, causes of action for breach of Contract, promissory estoppel, equitable estoppel, waiver, detrimental reliance, bad faith breach of contract, breach of the covenant of good faith and fair dealing, or any other cause of action arising out of the performance of the Work or the Contract. The compensation, time and damages provided for in this Section are exclusive, complete, and apply regardless of whether such Claims are to be resolved pursuant to the procedures set forth in Section 105.20, "Administrative Remedy," or any other legal or administrative procedure, whether or not authorized herein, including arbitration, mediation, or appeal.

109.11.1 Non Critical Disruption

Non-critical Disruption is a disruption or interference with Contractor's performance, regardless of cause, that does not negatively impact the Critical Path of the Project and therefore does not meet the definition of a Delay and for which the Contractor will not be entitled to receive Delay compensation per Section 109.11.2.2 nor time.

109.11.2 Delay

"Delay," in this Section, does not include time extensions granted by the T/LPA by Change Order in accordance with Section 108.6, "Determination and Extension of Contract Time," that do not result in any additional compensation.

The Contractor's entitlement to compensation and time for a Delay is defined, limited to, and provided as follows:

1. Excusable Delay: A Delay which is beyond the Contractor's control that negatively impacts the Critical Path of the Project and is not caused, by the Contractor's fault or negligence and for which compensation and/or a time extension may be granted, based upon the following:
 - a. Excusable Compensable Delay: An excusable Delay that negatively impacts the Critical Path of the Project resulting from the neglect or default of the T/LPA or from a differing site conditions per the Section for differing site conditions. For such Delays, upon obtaining the approval of the District Engineer with concurrence from the CLE, the T/LPA may grant additional time and compensation. Examples of an excusable compensable Delay may include but are not limited to Delays attributable to design errors or a differing site condition not readily discovered through Pre-Bid Due Diligence, failure by the T/LPA to acquire Right of Way, and T/LPA-initiated design changes;
 - b. Excusable Noncompensable Delay: An unforeseen and unanticipated excusable Delay not caused by the fault of either the Contractor or the T/LPA that negatively impacts the Critical Path of the Project. For such Delays, the Contractor may receive an extension of time but not additional compensation. Examples of a noncompensable Delay may include but are not limited to those events described in Section 107.20, "Contractor's Responsibility to Protect the Work."
2. Inexcusable Delay or nonexcusable Delay: A Delay for which the Contractor is not entitled to compensation and/or time that was caused by: factors within the Contractor's control; the fault or responsibility of the Contractor; factors that could or should have reasonably been foreseen by the Contractor; Delays caused by an event that the Contractor could have foreseen and prevented but failed to do so; or failure to reasonably mitigate additional Delay after an excusable Delay has been identified. Examples of inexcusable or nonexcusable Delays may include but are not limited to those attributable to reasonably expected seasonal inclement weather events based on historical data, reasonable time periods necessary for reviews of Shop Drawings by the

T/LPA, inefficient operation by the Contractor or Subcontractor, inefficient or ineffective construction management by the Contractor or Subcontractor, failure to assign sufficient resources to the Project by the Contractor or its Subcontractor, failure by the Contractor to properly perform Pre-Bid Due Diligence, or failure by the Contractor, Subcontractor or Supplier to procure Materials in a timely manner.

3. Concurrent Critical Delay: Concurrent Delay only occurs when the Project has two separate Critical Paths that have two separate Delays which start and end on the same date, Delaying the Project for the same amount of time. For Delays that start on the same date but are resolved at different dates the Contractor is not entitled to any time or additional compensation for the duration when a nonexcusable or inexcusable Delay occurs on either of the Critical Paths. When an excusable compensable Delay and excusable noncompensable Delay are concurrent as defined above the Contractor shall only be entitled to Contract Time and not any additional compensation.

109.11.2.1 Additional Time for Delay

The T/LPA may only add Contract Time for an excusable compensable Delay or an excusable noncompensable Delay using the Accepted updated monthly or revised schedules current and in effect at the time the Delay occurred. Additional Contract Time must be approved by the District Engineer with concurrence by the CLE.

109.11.2.2 Compensation for Delay

The T/LPA may only compensate the Contractor for an excusable, compensable Delay as provided in this Section and in the following order of priority and no other methods of calculating compensation will be Accepted. In order to receive compensation for a excusable compensable Delay the Contractor shall document and provide costs resulting from the excusable compensable Delay using actual cost records, shall measure and provide expenses using generally accepted accounting principles, and shall comply with Section 108.3.2, "Schedule Format," and if an agreement about the extension of Contract Time cannot be reached then the Contractor shall comply with Section 108.6, "Determination and Extension of Contract Time."

1. The T/LPA reserves the right to use innovative Bidding approaches, as specified in the Contract, including requiring Bidders to Bid a daily overhead rate (cost / Working Day) as a Bid Item Unit Price. For example the Contract may require that the Contractor escrow its Bid documents, and the escrow Bid Documents may be considered in resolving Claims.
2. The compensation which the Contractor may recover for a Delay Claim is limited to:
 - a. Non-salaried labor expenses;
 - b. Material costs;
 - c. Equipment costs pursuant to Section 109.2, "Approved Equipment Rental Rates;"
 - d. Costs of extended job site overhead, including bonds; or,
 - e. An additional ten percent (10%) of the total of items 1, 2, 3, and 4 to cover home office overhead, salaried labor expenses, and profit.

3. If the source of the loss of productivity can be attributed to an excusable compensable Delay and cannot be isolated and priced separately, the method by which the T/LPA shall calculate the extent of an excusable compensable Delay caused by a production rate inefficiency shall be made in the following order of priority:
 - a. Measured Mile analysis by which the T/LPA shall compare actual efficiency (production rates) in an impacted area to actual efficiency in a comparable non-impacted area; or
 - b. Comparison of actual productivity to production rates in the Contractor's Baseline Schedule and timely submitted Acceptable updated monthly or revised schedules or in the escrow Bid Documents.

109.11.2.3 Non-Recoverable Damages

In no event shall the Contractor submit or be entitled to payment based on any of the following including but not limited to Eichleay formula, the Total Cost Method, original Contract period formula, fixed overhead formula, burden fluctuation method, and comparative absorption rates.

Regardless of the basis or cause of the Claim, the Contractor shall not recover and is not entitled to recover the following categories of damage:

1. Any compensation except as provided by Section 109.11.2.2, "Compensation for Delay;"
2. Loss of anticipated profit, incentives or bonuses;
3. Labor inefficiencies at the fault of the Contractor;
4. Home office overhead regardless of whether it is characterized as absorbed, unabsorbed, or extended exceeding that provided in Section 109.11.2.2, "Compensation for Delay;"
5. Any damages, costs or expenses that are indirect, special, Incidental or consequential, including, but not limited to, lost or impaired bonding capacity, loss of Bidding and contracting opportunities, loss of credit standing, cost of financing, interest paid, lost Material discounts, economic loss, loss of reputation, loss of other Work, loss of use, loss of business opportunity, loss of product or output, income, loss of profit or revenue, cost of capital, financing, and for loss of management or employee productivity or of the services of such persons, , and business devastation, bankruptcy, or insolvency. The T/LPA waives any entitlement to consequential damages from the Contractor but not general damages including but not limited to liquidated damages as provided in the Contract;
6. Acceleration costs and expenses. The Contractor shall only be entitled to acceleration costs and expenses if the T/LPA has expressly and specifically directed the Contractor in writing to accelerate the Work at the T/LPA's expense, the Contractor completes the Work within the time directed by the T/LPA, the Contractor actually incurs acceleration costs and expenses, and the Contractor provides verifiable documentation to support the acceleration costs and expenses;
7. Late payment charges, including late payment charges pursuant to NMSA 1978, § 13-1-158, associated with any Claim, or disputed construction services or Materials. The Contractor is also not entitled to late payment charges on any judgment or Award made to the Contractor. This provision does not affect the T/LPA's payment of late payment

charges on undisputed, qualified, Delayed Progress Payments for certified, approved and Accepted Work in accordance with Section 109.11, "Compensation for Claims," that are not the subject of a disputed Claim;

8. Prejudgment or post-judgment interest related to or arising from any disputed Claim or on any Award made to the Contractor; or,
9. Attorneys' fees and costs, Claim preparation expenses, and litigation or other costs related to or arising from any disputed Claim, or prosecution thereof.

SPECIAL PROVISIONS

PROJECT SPECIFIC SPECIAL PROVISIONS:

Item No. 618000 Traffic Control Management

STANDARD SPECIAL PROVISIONS:

SECT 423 (5-28-19) HOT MIX ASPHALT (HMA) (MAJOR PAVING)

SECT 701 (3-26-19) TRAFFIC SIGNS AND SIGN STRUCTURES

SECT 704 (12-23-19) PAVEMENT MARKINGS

SECT 902 (2-11-19) QUALITY CONTROL

SECT 904 (1-1-19) QUALITY LEVEL ANALYSIS (QLA)

SECT 906 MINIMUM TESTING REQUIREMENTS (MTR'S)

Special Provision for

Item No. 618000 Traffic Control Management

DESCRIPTION

This Work shall consist of providing and implementing an approved Traffic Control Plan (TCP), Traffic Control Devices (TCD), and Traffic Control Management (TCM) in strict compliance with the Manual on Uniform Traffic Control Devices (MUTCD), most current edition, including supervision of personnel and the installation, inspection, and maintenance of all traffic control devices. The Traffic Control Plan shall be designed by a licensed Professional Engineer registered in the State of New Mexico. Item No. 618000 shall be governed by Section 618 of the 2014 Edition of the NMDOT Standard Specifications for Highway and Bridge and Bridge Construction, except as modified herein.

Curry County shall be Curry County Engineer or his designated representative. The Project Engineer is the representative from Souder, Miller and Assoc.

The Contractor shall submit his proposed Traffic Control Plan to Curry County and the Project Engineer for review and approval at least two (2) weeks prior to the Notice to Proceed date.

The Contractor shall furnish all materials, tools, labor, equipment and all other appurtenances necessary to complete and maintain the work. The materials shall include, all interim and temporary signing, construction signing, steel posts, base posts, portable sign supports, barricades, drums, sequential arrow displays, and flaggers as necessary to complete the traffic control detailed in the Traffic Control Plan or modifications to the plan details approved by Curry County, including all setups and resetting of devices. (refer to Method of Payment and Measurement below)

For all Traffic Control that is required to be in place for more than an eight (8) hour period, the Contractor shall submit a Traffic Control Plan to Curry County for approval. Traffic Control required that is to be in place less than eight (8) hours shall comply with the current MUTCD.

For construction requiring Traffic Control for more than a twenty-four (24) hour period, the Contractor shall have a certified Traffic Control Supervisor (TCS) on staff, or sub-contract Traffic Control management for the Project. A registered Professional Engineer may also serve as the TCS. The Contractor may assign more than one (1) TCS to provide traffic control management for the project.

RESPONSIBILITIES

The TCS shall provide management and supervision services at the Project site.

The TCS shall prepare any revisions to the Traffic Control Plan and submit the new Traffic Control Plan to Curry County and the Project Engineer for approval.

Curry County recognizes that the Contractor does not have direct control over the Traffic Control operations of the utility companies. The coordination provided by the

TCS when dealing with utility companies is for the purpose of coordinating concurrent utility Traffic Control with any other construction Traffic Control to avoid conflicts.

The TCS shall coordinate all Project activities with the appropriate individual Traffic Control law enforcement and fire control agencies.

The TCS shall prepare and submit statements concerning road closures, delays, and other Project activities to the news media, as necessary. News releases shall be submitted to Curry County for review and approval prior to the Contractor's submittal to the news media. (This work is included in Item No. 618011 – Public Awareness).

The TCS shall be responsible for notifying Curry County of all accidents related to the Project. The time and date of any accidents shall be documented, as well as any other pertinent information.

The TCS shall be responsible for the maintenance, cleanliness, and replacement of Traffic Control devices of the Traffic Control plan during working and non-working hours.

Inspection of Traffic Control

The TCS shall inspect Traffic Control devices every calendar day that Traffic Control devices are in use. The TCS shall provide for the immediate repair, cleaning, or replacement of Traffic Control devices not functioning as required to ensure the safety of the public and construction personnel.

Inspections of the Traffic Control devices shall be conducted at the beginning and end of each work day.

Traffic Control devices in use longer than seven (7) days shall be inspected at least once a week during nighttime periods.

AVAILABILITY OF TCS

Traffic control management shall be provided under the supervision and direction of the TCS on a twenty-four (24) hour-per-day basis throughout the duration of the Project.

The TCS (or approved representative) shall be available on every working day – on call at all times – and available upon Curry County Engineer's request during normal working hours and during other-than-normal working hours.

The provisions for availability of the TCS shall also be met during times of partial or full Project suspension.

COMPLIANCE

Curry County may suspend all or part of the CONTRACTOR's operation(s) for failure to comply with the approved Traffic Control Plan or failure to correct unsafe traffic

conditions within a reasonable period of time after such notification is given to the CONTRACTOR in writing.

In the event that the CONTRACTOR does not take appropriate action to bring the deficient Traffic Control into compliance with the approved Traffic Control Plan – or to correct the unsafe traffic conditions – Curry County may proceed with the corrective action using its own forces, and such shall be billed to the CONTRACTOR.

The CONTRACTOR shall not be relieved of the responsibility to provide Traffic Control safety to the traveling public when a project is under full or partial project suspension.

ENGINEER MODIFICATION

The provisions included in the Plans and Specifications for handling and controlling traffic during construction may be changed by Curry County due to actual field conditions encountered. Such changes will be made by written instruction to the Contractor and shall be considered an amendment to the Plans and Specifications as of the date of change.

METHOD OF MEASUREMENT

Traffic Control Management shall be measured by the Lump Sum and includes the Traffic Control Plan, revisions or alterations, and daily maintenance of the Traffic Control Devices.

BASIS OF PAYMENT

Payment for accepted Traffic Control shall be paid for by the Lump Sum and be paid for as outline in Section 618.5.1 Partial Payments.

Curry County will negotiate payment for additional Traffic Control Management resulting from an increase in Work beyond the scope of the Project.

SPECIAL PROVISIONS
MODIFYING
SECTION 423: HOT MIX ASPHALT (HMA) (MAJOR PAVING)

The 2019 Edition of the New Mexico Department of Transportation Standard Specifications for Highway and Bridge Construction shall apply in addition to the following:

Delete **Section 423.2.7: Reclaimed Asphalt Pavement (RAP)** in its entirety and replace with the following:

Unless otherwise specified in the Contract, the Contractor may use RAP removed under the Contract consisting of salvaged, milled, pulverized, broken, or crushed asphalt pavement. The Contractor may use RAP produced from outside sources provided the following is met: after the Contractor obtains sufficient quantities of RAP aggregate samples in accordance with AASHTO T 308; the Department will Accept RAP for which the coarse aggregate has a percent wear of 40.0 or less, at 500 revolutions, when tested in accordance with AASHTO T 96. The Contractor shall provide plus No. 4 RAP Material with a minimum of 75% Fractured Faces content (one (1) face). The Department will make no additional payment for the asphalt binder in the RAP or asphalt binder due to asphalt binder grade adjustment.

In the event the Contractor elects to use up to 15% RAP (by weight) or is specified as a maximum of 15% RAP by the Contract (by weight) in the production of HMA mixtures, the Contractor shall use the PG grade asphalt binder specified in the Contract.

For quantities greater than 15% and up to 25% RAP, the Contractor shall:

1. Either lower the asphalt binder's high and low temperature grades by one (1) grade (e.g. lower a PG 76-22 to a PG 70-28); or
2. Extract, recover, and combine the RAP's asphalt binder with a virgin asphalt binder per AASHTO M 323, Appendix A, ensuring the resultant binder meets the entire AASHTO M 320 (excluding direct tension) required Project PG asphalt binder properties indicated on the approved mix design.

For quantities greater than 25% and up to 35% RAP, the Contractor shall:

1. Extract, recover, and combine the RAP's asphalt binder with a virgin asphalt binder per AASHTO M 323, Appendix A; and
2. Ensure the resultant binder meets the entire AASHTO M 320 (excluding direct tension) required Project PG asphalt binder properties indicated on the approved mix design.

The Department will not allow the Contractor to use more than 35% RAP in the production of HMA mixtures.

For Projects of entirely new construction, the Contractor shall:

1. Limit the RAP to 15% in the top mat or extract, recover and combine the RAP's asphalt binder with a virgin asphalt binder per AASHTO M323, Appendix A; and
2. Ensure the resultant binder meets the entire AASHTO M320 (excluding direct tension) required Project PG asphalt binder properties indicated on the approved mix design.

If Plus Grades of PG asphalt binder is specified on the project, for quantities greater than 15% RAP, the Contractor shall extract, recover, and combine the RAP's asphalt binder with a virgin asphalt binder per AASHTO M 323, Appendix A. The Contractor shall ensure the resultant binder meets the entire AASHTO M 320 required Project PG asphalt binder properties indicated on the approved mix design including the additional Plus Grade requirements for Elastic Recovery and Solubility.

The Contractor shall:

1. Process RAP so that 100% passes a 1-1/2-inch sieve;
2. Maintain adequate stockpile management (i.e. sufficient quantities and shaping of the stockpiles);
3. Address in the Quality Control Plan how RAP will be controlled, such as which screen will be used to split into two (2) stockpiles, or by what method the RAP will be controlled to keep the resultant mix within Acceptable limits;
4. Account for the weight of the binder in the RAP when batching aggregates;
5. Provide RAP that is free of Deleterious Materials; and
6. Perform process control testing in accordance with Section 902, "Quality Control" requirements as RAP is produced and prepared for inclusion in the HMA.

If problems with HMA consistency or compliance with Project Specifications occur, additional efforts taken to achieve Acceptable levels of consistency and compliance with Contract Specifications, at the Contractor's discretion (at no additional cost to the Department), include, but are not limited to:

1. Reduce the top size of the RAP from 1-1/2 inch to one (1) inch;
2. Fractionate the aggregates on a second screen, such as the 3/8 inch or 1/4 inch Screen so that the RAP is maintained in three (3) stockpiles, one being RAP larger than 1-1/2 inch to two (2) inches, Coarse RAP and the third being Fine RAP;
3. Ensure that the RAP used in the HMA mix design is representative of the RAP available on the Project;
4. Cover the RAP pile(s) so that ambient moisture is not absorbed; and
5. Process and maintain the stockpiles so that the RAP Material is equally and uniformly distributed throughout the entire stockpile(s) and is withdrawn such that uniform, non-segregated RAP is delivered to the hoppers.

March 26, 2019

SPECIAL PROVISIONS
MODIFYING
SECTION 701: TRAFFIC SIGNS AND SIGN STRUCTURES

The 2019 Edition of the New Mexico Department of Transportation Standard Specifications for Highway and Bridge Construction shall apply in addition to the following:

Delete the first paragraph of **Section 701.2.4.6: Inspection** and replace with the following:

Prior to fabrication, the Contractor shall provide the Project Manager all signing information, including text, for review and approval. The Department will inspect Material and finished signs before and after installation at the Project site.

**SPECIAL PROVISIONS
MODIFYING
SECTION 704: PAVEMENT MARKINGS**

The 2019 Edition of the New Mexico Department of Transportation Standard Specifications for Highway and Bridge Construction shall apply in addition to the following:

Delete the first paragraph of **Section 704.3.5: Rates and Tolerances for Painted Markings** and replace with the following:

The Contractor shall apply paint at a rate of 22 to 25 wet mills, (25.15 gal per mile of paint for a solid four (4) inch line and 6.31 gal per mile for a broken four (4) inch line) for permanent markings. The Contractor shall apply other permanent striping widths at appropriate multiples of these gal per mile rates, achieving 22 to 25 wet mills for solid and broken stripes.

Add the following to **Section 704.3.6: Dimension Tolerances**:

The Contractor shall contrast striping and symbols on concrete pavement with a black outline a minimum of two (2) inches in all directions.

Delete the second paragraph of **Section 704.4: Method of Measurement** and replace with the following:

The Department will measure permanent and Temporary Retroreflectorized Painted Markings for four (4) inch, six (6) inch, eight (8) inch, 12 inch, and 24 inch widths using multiples of the applicable standard four (4) inch or six (6) inch width to calculate a total length. Legends, symbols and specialty markings will be paid by each.

Delete the Pay Items from **Section 704.5: Basis of Payment** and replace with the following:

Pay Item	Unit
Retroreflectorized Painted Markings ____inch	Foot
Temporary Retroreflectorized Painted Markings	Foot
Retroreflectorized Painted Arrow, Type ____	Each
Retroreflectorized Painted Word (____)	Each
Retroreflectorized Painted Symbol, Type ____	Each
Retroreflectorized Painted Railroad Crossing	Each

February 11, 2019

**SPECIAL PROVISIONS
MODIFYING
SECTION 902: QUALITY CONTROL**

The 2019 Edition of the New Mexico Department of Transportation Standard Specifications for Highway and Bridge Construction shall apply in addition to the following:

Delete **Section 902.10: Basis of Payment** in its entirety.

SPECIAL PROVISIONS
MODIFYING
SECTION 904: QUALITY LEVEL ANALYSIS (QLA)

The 2019 Edition of the New Mexico Department of Transportation Standard Specifications for Highway and Bridge Construction shall apply in addition to the following:

904.1 Description Quality Level Analysis

Delete reference to Table 901.7:1, "Quality Level Analysis by the Standard Deviation Method Upper Quality Index QU or Lower Quality Index QL" from Equation(s) 6 and 7 and replace with the following:

Table 904.1:3 "Quality Level Analysis by the Standard Deviation Method Upper Quality Index QU or Lower Quality Index QL".

**SPECIAL PROVISIONS
MODIFYING
SECTION 906: MINIMUM TESTING REQUIREMENT'S (MTR'S)**

The 2019 Edition of the New Mexico Department of Transportation Standard Specifications for Highway and Bridge Construction shall apply in addition to the following:

Delete **Section 906: MINIMUM TESTING REQUIREMENT'S (MTR'S)** in its entirety and replace with the following:

906.1 DESCRIPTION

906.1.1 General

This work consists of Minimum Testing Requirement's (MTR's) for the T/LPA and Contractor which includes construction sampling, tests, and testing frequencies of materials incorporated into the Work for acceptance and quality control.

906.1.2 T/LPA Minimum Testing Requirements

Table 906.1.2:1 - EARTHWORK					
Item	Test Required	Sampling/ Testing Location	Agency Testing	Contractor Testing	Independent Assurance*
					Project Approach
Embankment, Unclassified Excavation (Section 203)	In-Place Density and Moisture	Roadway	1 per 2,000 C.Y.	N/A	1 per 50,000 C.Y. or minimum 1 per project
	Moisture/Density Tests (Proctor), Soils Classification	Stockpile / Roadway	1 per material type per 20,000 C.Y.		1 per 50,000 C.Y. or minimum 1 per project if less than 50,000 C.Y.
Borrow (Section 203.2.1.3)	AASHTO T-190 R-Value, Soils Classification	Borrow Pit	N/A	1 per 10,000 C.Y.	N/A

* Project Quantities less than the minimum Agency Testing requirement do not require IA Testing if Agency Testing is certified by the Construction Engineer of Record.

Table 906.1.2:1 - EARTHWORK					
Item	Test Required	Sampling/ Testing Location	Agency Testing	Contractor Testing	Independent Assurance*
					Project Approach
Road Bed Embankment (Section 203.3.5.1)	In-Place Density and Moisture	Roadway	1 per 2,500 S.Y.	N/A	Minimum 1 per project
	Moisture/ Density Tests (Proctor), Soils Classification		1 per material type		
Foundations / Backfill for Culverts and Minor Structures (Section 206)	In-Place Density and Moisture	Structure	See Table A	N/A	Minimum 1 per project
	Moisture/ Density Tests (Proctor), Soils Classification	Stockpile	1 per material type		
	Gradation		1 per 500 C.Y.	1 per material type	N/A
	Electrochemical, where specified.	N/A			
Subgrade Preparation (Section 207)	In-Place Density and Moisture	Roadway	1 per 3,000 S.Y.	N/A	1 per 30,000 S.Y. or minimum 1 per project if less than 30,000 S.Y.
	Moisture/ Density Tests (Proctor), Soils Classification		1 per material type		
Linear Grading and Blading and Re-shaping (Sections 208, 209)	In-Place Density and Moisture	Roadway	1 per half mile	N/A	1 per 5 miles
	Moisture/ Density Tests (Proctor), Soils Classification		1 per material type		

* Project Quantities less than the minimum Agency Testing requirement do not require IA Testing if Agency Testing is certified by the Construction Engineer of Record.

Table 906.1.2:1 - EARTHWORK					
Item	Test Required	Sampling/ Testing Location	Agency Testing	Contractor Testing	Independent Assurance*
					Project Approach
Backfill for Major Structures (Section 210)	In-Place Density and Moisture	Structure	See Table A	N/A	1 per 5,000 C.Y.
	Moisture/ Density Tests (Proctor), Soils Classification	Stockpile	1 per material type		Minimum 1 per project
	Gradation				
Treated Subgrade (Section 306)	In-Place Density and Moisture	Roadway	1 per 3,000 S.Y.	N/A	1 per 30,000 S.Y. or minimum 1 per project if less than 30,000 S.Y.
	Gradation				
	Moisture/ Density Tests (Proctor), Soils Classification		1 per material type		
	AASHTO T-290 Sulfate Testing	Borrow Pit	N/A	1 per 10,000 C.Y.	N/A
Backfill for Mechanical Stabilized Earth (MSE) Retaining Structures (Section 506)	In-Place Density and Moisture	Structure	See Table A	N/A	Minimum 1 per project
	Moisture/ Density Tests (Proctor)	Stockpile	1 per material type	1 per material type	
	Gradation, PI		1 per 500 C.Y.		
	Soils Classification Direct Shear, Electro Chemical		N/A		N/A
Foundations for Slope and Erosion Protection Structures (Section 602)	In-Place Density and Moisture	Structure	1 per structure	N/A	N/A
	Moisture / Density Tests (Proctor), Soils Classification	Foundation material location	1 per material type		

* Project Quantities less than the minimum Agency Testing requirement do not require IA Testing if Agency Testing is certified by the Construction Engineer of Record.

Table 906.1.2:1 - EARTHWORK					
Item	Test Required	Sampling/ Testing Location	Agency Testing	Contractor Testing	Independent Assurance*
					Project Approach
Backfill for Soil and Drainage Geotextiles (Section 604)	In-Place Density and Moisture	Roadway	1 per lift	N/A	N/A
	Moisture/ Density Tests (Proctor), Soils Classification	Stockpile	1 per material type		
Backfill for Drains (Section 605.3.4)	In-Place Density and Moisture	Roadway	1 per 1,000 L.F.	N/A	N/A
	Moisture/ Density Tests (Proctor), Soils Classification	Stockpile	1 per material type		
Foundations for Sidewalks, Drive Pads and Concrete Median Paving (Section 608)	In-Place Density and Moisture	Roadway	1 per 150 S.Y.	N/A	N/A
	Moisture/ Density Tests (Proctor), Soils Classification	Foundation material location	1 per material type		
Bed Course Material for Sidewalks, Drive Pads and Concrete Median Paving (Section 608)	In-Place Density and Moisture	Roadway	1 per 150 S.Y.	N/A	N/A
	Moisture/ Density Tests (Proctor), Soils Classification	Stockpile	1 per material type		
Foundations for Curb and Gutter (Section 609)	In-Place Density and Moisture	Roadway	1 per 500 L.F. or as site locations require	N/A	N/A
	Moisture/ Density Tests (Proctor), Soils Classification	Foundation material location	1 per material type		

* Project Quantities less than the minimum Agency Testing requirement do not require IA Testing if Agency Testing is certified by the Construction Engineer of Record.

Table 906.1.2:1 - EARTHWORK					
Item	Test Required	Sampling/ Testing Location	Agency Testing	Contractor Testing	Independent Assurance*
					Project Approach
Bed Course Material for Curb and Gutter (Section 609)	In-Place Density and Moisture	Roadway	1 per 500 L.F. or as site locations require	N/A	N/A
	Moisture/ Density Tests (Proctor), Soils Classification	Stockpile	1 per material type		
Foundations / Backfill for Cattle Guards (Section 610)	In-Place Density and Moisture	Structure	See Table A	N/A	N/A
	Moisture/ Density Tests (Proctor), Soils Classification	Stockpile	1 per material type		
Bedding Material for Cattle Guards (Section 610)	In-Place Density and Moisture	Structure	1 per structure	N/A	N/A
	Moisture/ Density Tests (Proctor), Soils Classification	Stockpile	1 per material type		
Foundations / Backfill for Drop Inlets and Junction Boxes (Section 623)	In-Place Density and Moisture	Structure	See Table A	N/A	N/A
	Moisture/ Density Tests (Proctor), Soils Classification	Foundation material location	1 per material type		
Foundations / Backfill for Utilities (Section 660)	In-Place Density and Moisture	Structure	See Table A	N/A	N/A
	Moisture/ Density Tests (Proctor), Soils Classification	Foundation material location	1 per material type		

* Project Quantities less than the minimum Agency Testing requirement do not require IA Testing if Agency Testing is certified by the Construction Engineer of Record.

Table 906.1.2:2 - TABLE A

STRUCTURE DEFINITIONS, FOUNDATION AND BACKFILL REQUIREMENTS FOR ACCEPTANCE

1. Transverse or skewed culvert or concrete box culvert (CBC), not connected to an underground drainage network, including end sections, wing walls if backfilled simultaneously, structural plate pipe, storm drains, and sewer lines (Note 1):

Foundation: One density per 100 linear feet. For pipe in a battery, up to 4 pipes may be considered as a unit for purposes of foundation density.

Backfill Density: 1 per 2 foot of fill per side* and to top of trench per 100 linear feet (Note 2).

* For a battery of pipes, the number of backfill densities required will be as follows:

One-Half (1/2) of the required densities for up to 4 pipes.

One-Third (1/3) of the required densities for more than 4 pipes.

2. End section or CBC wing wall if backfilled separately from culvert pipe or CBC (Note 2):

Backfill Density: 1 per 2 foot of fill per side.

3. Drop inlet (D.I.), junction box, cattle guard, light and signal base, manhole, etc.:

Foundation: 1 per structure.

Backfill Density: 1 per 2 foot of fill.

4. Underground drainage network including interruptions such as D.I., manhole, junction box, plug, service connection, slotted drain, etc., if backfilled simultaneously:

Foundation: One per 100 linear feet.

Backfill Density: 1 per 2 foot of fill per side and to top of trench per 100 linear feet (Note 2).

5. Retaining wall / MSE wall:

Foundation: One foundations density per 100 linear feet.

Backfill Density: 1 per 2 foot of fill per 100 linear feet.

6. Bridge abutment back wall, wing wall or approach slab:

Backfill Density: 1 per 6 inches of fill.

7. Pier footing:

Foundation: 1 per footing.

Backfill Density: 1 per 6 inches of fill.

8. Waterlines, electrical conduit, telephone cable or gas line, etc., within roadway prism (traveled area and shoulder) if trench width sufficient for density testing:

Foundation: One per 100 linear feet.

Backfill Density: 1 per 2 foot of fill per 100 linear feet.

9. Waterline, electrical conduit, telephone cable or gas line, ect. outside the roadway prism (traveled area and shoulders) *if trench width sufficient for density testing:*

Foundation: 1 per 300 linear feet.

Backfill Density: 1 per 2 foot of fill per 300 linear foot.

Notes:

1. All extensions will be considered increments and as such structure units.
2. Determination of Backfill Depths Governing Minimum Testing Criteria Requirements:
 - a. When backfill construction is performed in trench conditions, the depth of compacted backfill to be tested shall be measured from the foundation to the top of the trench.
 - b. When backfill construction is performed in non-trench conditions, the depth of compacted backfill to be tested shall be determined through the use of the appropriate NMDOT standard drawings.
 - c. When one type of material is used for multiple items, only one proctor will be required per material type.

Table 906.1.2:3 - BASE COURSE					
Item	Test Required	Sampling/ Testing Location	Agency Testing	Contractor Testing	Independent Assurance*
					Project Approach
Base Course (Section 303)	In-Place Density and Moisture	Roadway after compaction	1 per 2,000 tons	N/A	1 per 20,000 tons with Agency or minimum 1 per project
	Moisture/Density Tests (Proctor)	Stockpile	1 per material type		
	Gradations	Processed material from windrow or stockpile	1 per project		
	FF, LL, PI		1 per 4,000 tons		
	Thickness	Roadway after compaction	1 per 1,000 tons		

Table 906.1.2:4 - AGGREGATES					
Item	Test Required	Sampling/ Testing Location	Agency Testing	Contractor Testing	Independent Assurance*
					Project Approach
Processing, Placing and Compacting Existing Pavement (Section 302)	In-Place Density	Roadway	1 per 1,000 S.Y.	N/A	1 per 50,000 S.Y. or minimum 1 per project
	Gradation (Dry field sieve verification per TTCP)		1 per 5,000 S.Y.		
Rip Rap Material (Section 602)	LA Wear & Soundness (AASHTO T-96 AASHTO T-104)	Source	N/A	1 per year per pit	N/A

* Project Quantities less than the minimum Agency Testing requirement do not require IA Testing if Agency Testing is certified by the Construction Engineer of Record.

Table 906.1.2:5 - MINOR PAVING HOT MIX ASPHALT (HMA)/Warm Mix Asphalt (WMA)					
Item	Test Required	Sampling/ Testing Location	Agency Testing	Contractor Testing	Independent Assurance*
					Project Approach
HMA/WMA Minor Paving (Section 416)	Asphalt Content (Strap Method)	Asphalt Plant	N/A	1 per day	N/A
	Air Voids	Roadway	3 per lot	N/A	Minimum of 1 per project over 5,000 tons
	Roadway Compaction Nuclear Densometer *		10 per lot	Contractor to provide three (3) cores for Correlation of Densometer	N/A
	Thickness		1 per lot	Obtain Cores	
Open Graded Friction Course (Section 403)	Gradation, FF	Cold Feed	1 per 3,000 tons with a minimum of 1 per day	1 per 250 tons 1st 2,000 tons then 1 per 500 tons after 2,000 tons	Minimum 1 per project
		Crushing	N/A	1 per 1,000 tons	
	Performance Graded Asphalt Binder	From storage tank or Delivery Truck	1 sample consisting of three separate 1-quart increments per Project	Samples will be obtained by contractor personnel and observed by Department personnel	N/A

Table 906.1.2:6 - Asphalt Recycling					
Item	Test Required	Sampling/ Testing Location	Agency Testing	Contractor Testing	Independent Assurance*
					Project Approach
Hot In-Place Recycling (Remixing Method) (Section 412)	Roadway Density (Nuclear Densometer)	Roadway	1 per 3,000 S.Y.	N/A	N/A
Single-Machine Hot In-Place Surface Repaving (Section 413)	Roadway Density (Nuclear Densometer)	Roadway	1 per 3,000 S.Y.	N/A	N/A
	HMA/WMA	Windrow / Hopper	See Section 416 Minor Paving		

* Project Quantities less than the minimum Agency Testing requirement do not require IA Testing if Agency Testing is certified by the Construction Engineer of Record.

Table 906.1.2:6 - Asphalt Recycling					
Item	Test Required	Sampling/ Testing Location	Agency Testing	Contractor Testing	Independent Assurance*
					Project Approach
Pavement Surface Restoration (In- Situ) (Section 415)	Roadway Density	Roadway	1 per 3,000 S.Y.	N/A	N/A
	Bulk Specific Gravity		2 sets per day		
Performance Graded Asphalt Binder (Section 402)	If required in the Contract Documents	N/A	N/A	N/A	N/A

Table 906.1.2:7 - Asphalt Mineral Admixture Materials					
Item	Test Required	Sampling/ Testing Location	Agency Testing	Contractor Testing	Independent Assurance*
					Project Approach
Asphalt Emulsion (Section 402)	The manufacture's certificate of compliance will suffice for testing credits	N/A	N/A	N/A	N/A
Mineral Admixtures (Section 402)	The manufacture's certificate of compliance will suffice for testing credits	N/A	N/A	N/A	N/A

* Project Quantities less than the minimum Agency Testing requirement do not require IA Testing if Agency Testing is certified by the Construction Engineer of Record.

Table 906.1.2:8 - MAJOR PAVING (Sections 423/424 / 900's) HOT MIX ASPHALT (HMA), WARM MIX ASPHALT (WMA)					
Item	Test Required	Sampling/ Testing Location	Agency Testing	Contractor Testing	Independent Assurance*
					Project Approach
HMA/WMA Superpave (Section 423/424)	Asphalt Content, Gradation, Gmm, Gmb, Air Voids, VMA, VFA, DP	Roadway	1 per 5,000 tons. Gmm will be determined at least once per day.	1 per 2,000 tons. Gmm will be determined at least twice per day.	Minimum 1 per project
	Roadway Compaction (Cores)				
	Roadway Compaction (nuclear/non- destructive)	Cold Feed before addition of Mineral Admixtures	N/A	As needed	N/A
	FF, , SE, F&E, FAA, Moisture				
Performance Graded Asphalt Binder (Section 402)	If required in the Contract Documents	N/A	N/a	N/A	N/A
Asphalt Emulsion (Section 402)	The manufacture's certificate of compliance will suffice for testing credits	N/A	N/A	N/A	N/A
Mineral Admixtures (Section 402)	The manufacture's certificate of compliance will suffice for testing credits	N/A	N/A	N/A	N/A

Table 906.1.2:9 - Non QLA PORTLAND CEMENT CONCRETE Minor Structures, Curb & Gutter, Side Walks, etc. (509, 510, 511, 521)					
Item	Test Required	Sampling/ Testing Location	Agency Testing	Contractor Testing	Independent Assurance*
					Project Approach
Fine Aggregates	Gradation	Stockpile	1 per 2 weeks during concrete production	1 per week during concrete production	1 per project

* Project Quantities less than the minimum Agency Testing requirement do not require IA Testing if Agency Testing is certified by the Construction Engineer of Record.

Table 906.1.2:9 - Non QLA PORTLAND CEMENT CONCRETE					
Minor Structures, Curb & Gutter, Side Walks, etc. (509, 510, 511, 521)					
Item	Test Required	Sampling/ Testing Location	Agency Testing	Contractor Testing	Independent Assurance*
					Project Approach
Coarse Aggregates	Gradation	Stockpile	1 per 2 weeks during concrete production	1 per week during concrete production	1 per project
	FF, F&E		N/A	Minimum 1 per project per course aggregate type	N/A
Non-Shrink Mortar Aggregate	Manufacture's certificate of compliance will suffice for testing credits	N/A	N/A	NA	N/A
Project Acceptance Test	Compressive Strength Cylinders and Plastic Properties (Slump, Unit Weight, Calculated Air Content, Temperature)	See Table B	Each mix design per day of placement. Test the first three loads, with one randomly sampled for one set of cylinders. Sample for testing and cylinders, one random load from each subsequent 6 load subplot.	N/A	1 per project

Table 906.1.2:10 - Non QLA PORTLAND CEMENT CONCRETE					
Major Structures, Substructures, Drilled Shafts (502, 509, 510, 511, 521)					
Item	Test Required	Sampling/ Testing Location	Agency Testing	Contractor Testing	Independent Assurance*
					Project Approach
Fine Aggregates	Gradation	Stockpile	1 per 2 weeks during concrete production	1 per week during concrete production	1 per project

* Project Quantities less than the minimum Agency Testing requirement do not require IA Testing if Agency Testing is certified by the Construction Engineer of Record.

Table 906.1.2:10 - Non QLA PORTLAND CEMENT CONCRETE					
Major Structures, Substructures, Drilled Shafts (502, 509, 510, 511, 521)					
Item	Test Required	Sampling/ Testing Location	Agency Testing	Contractor Testing	Independent Assurance*
					Project Approach
Coarse Aggregates	Gradation	Stockpile	1 per 2 weeks during concrete production	1 per week during concrete production	1 per project
	F.F, F&E		N/A	Minimum 1 per project per coarse aggregate type	N/A
Non-Shrink Grout Aggregate	Manufacture's certificate of compliance will suffice for testing credits	N/A	N/A	N/A	N/A
Project Acceptance Test	Compressive Strength Cylinders, and Plastic Properties (Slump, Unit Weight, Calculated Air Content, Temperature)	See Table B	Each mix design per day of placement. Test the first three loads, with one randomly sampled for one set of cylinders. Sample for testing and cylinders, one random load from each subsequent 6 load subplot.	Each mix design per day of placement. Test the first three loads and one load from each 6 load subplot for plastic properties.	1 per project

* Project Quantities less than the minimum Agency Testing requirement do not require IA Testing if Agency Testing is certified by the Construction Engineer of Record.

Table 906.1.2:11 - Non QLA PORTLAND CEMENT CONCRETE PAVEMENT (509,451)						
Item	Test Required	Sampling/ Testing Location	Agency Testing	Contractor Testing	Independent Assurance*	State Materials Bureau
					Project Approach	
Fine Aggregates	Gradation	Stockpile	1 per 2 weeks during concrete placement	1 per week during concrete production	1 per project	N/A
	F.F., F&E		N/A	Minimum 1 per project per coarse aggregate type	N/A	
Coarse Aggregates	Gradation	Stockpile	1 per 2 weeks during concrete placement	1 per week during concrete production	1 per project	N/A
	F.F., F&E		N/A	Minimum 1 per project per coarse aggregate type	N/A	
Project Acceptance Test	Compressive Strength Cylinders, and Plastic Properties (Slump, Unit Weight, Air Content, Temperature)	See Table B	Each mix design per day of placement. Test the first three loads, with one randomly sampled for one set of cylinders. Sample for testing and cylinders, one random load from each subsequent 6 load subplot.	Each mix design per day of placement. Test the first three loads and one load from each 6 load subplot for plastic properties.	1 per 10,000 S.Y.	N/A
	Thickness	Roadway	1 per 300 cy	N/A	N/A	
Environmental Conditions	Evaporation Rate	Placement Site	N/A	Evaporation Potential determined at intervals not greater than 5 minutes until final curing system in place	N/A	N/A

* Project Quantities less than the minimum Agency Testing requirement do not require IA Testing if Agency Testing is certified by the Construction Engineer of Record.

Table 906.1.2:12 - Non QLA Superstructure Concrete (509, 510, 512)						
Item	Test Required	Sampling/ Testing Location	Agency Testing	Contractor Testing	Independent Assurance*	State Materials Bureau
					Project Approach	
Fine Aggregates	Gradation	Stockpile	1 per 2 weeks during concrete placement	1 per week during concrete production	1 per project	N/A
	F.F., F&E		N/A	Minimum 1 per project per coarse aggregate type	N/A	
Coarse Aggregates	Gradation	Stockpile	1 per 2 weeks during concrete placement	1 per week during concrete production	1 per project	N/A
	F.F., F&E		N/A	Minimum 1 per project per coarse aggregate type	N/A	
Project Acceptance Test	Compressive Strength Cylinders, and Plastic Properties (Slump, Unit Weight, Air Content, Temperature)	See Table B	Each mix design per day of placement. Test the first three loads, with one randomly sampled for one set of cylinders. Sample for testing and cylinders, one random load from each subsequent 3 load subplot.	Each mix design per day of placement. Test the first three loads and one load from each 3 load subplot for plastic properties.	1 per 300 cy	N/A
Environmental Conditions	Evaporation Rate	Placement Site	N/A	Evaporation Potential determined at intervals not greater than 5 minutes until final curing system in place	N/A	N/A

* Project Quantities less than the minimum Agency Testing requirement do not require IA Testing if Agency Testing is certified by the Construction Engineer of Record.

Table 906.1.2:13 - QLA PORTLAND CEMENT CONCRETE PAVEMENT (450)						
Item	Test Required	Sampling/ Testing Location	Agency Testing	Contractor Testing	Independent Assurance*	State Materials Bureau
					Project Approach	
Fine Aggregates	Gradation	Stockpile	1 per week during concrete production	1 per day per day of production	Minimum 1 per project	Referee Testing
Coarse Aggregates	Gradation, F.F., F&E	Stockpile	1 per week during concrete production	1 per day per day of production	Minimum 1 per project	Referee Testing
Project Acceptance Test	Compressive Strength Cylinders, and Plastic Properties (Slump, Unit Weight, Calculated Air Content, Temperature)	See Table B	1 per 500 C.Y.	One set of cylinders from one of the first three trucks. 1 set per 125 C.Y. thereafter	1 per 2,500 cy	Referee Testing
			1 per 500 C.Y.	For each of the first three trucks. 1 set per 125 C.Y. from the trucks selected for compressive strength testing thereafter.		
	Thickness	Roadway	1 per 5,000 S.Y.	1 per 2,500 S.Y.	N/A	
Environmental Conditions	Evaporation Rate	Placement Site	N/A	Evaporation Potential determined at intervals not greater than 5 minutes until final curing system in place	N/A	N/A

* Project Quantities less than the minimum Agency Testing requirement do not require IA Testing if Agency Testing is certified by the Construction Engineer of Record.

Table 906.1.2:14 - TABLE B

<u>Method of Placement</u>	<u>Sample Location</u>
Pumped	Point of discharge from pump into structure
Direct Discharge from Truck	At end of discharge chute of truck
Crane and Bucket	From discharge chute of bucket
Conveyor belt	From material on roadway after being discharged from conveyor
Slip Form (Curb and Gutter/Barrier Walls)	Point of discharge into extrusion machine
Slip Form Paver (PCCP)	From grade in front of paving machine
Drill Shafts	At end of discharge chute of truck

Table 906.1.2:15 - Tolerances for Comparison of Independent Assurance Sample Tests to Acceptance and Process Control Tests

<u>CHARACTERISTICS</u>	<u>TOLERANCES</u>
Moisture/Density Test (Proctor)	± 3.0 PCF*, ± 2 Units for Moisture
In Place Moisture/Density (Roadway)	± 3.0 PCF, ± 2 Units for Moisture
Plasticity Index (P.I.)	± 3 Units
*Only if proctors are run by both District and Project. If proctors are not run by both District and Project ± 5.0 PCF	
<u>GRADATION</u>	<u>TOLERANCES</u>
1 1/2" to 3/4"	± 6 Units
1/2" to No. 4	± 5 Units
No. 8 through No. 200	± 4 Units
Fractured Faces	± 5 Units
Flat & Elongated	± 5 Units
Fine Aggregate Angularity	± 3 Units
Sand Equivalent	± 4 Units
Aggregate Specific Gravity	± 0.020
<u>CONCRETE</u>	<u>TOLERANCES</u>
Slump	± 0.5 Inch
Unit Weight	± 2.0 PCF
Compressive Strength	Within-test coefficient of variation less than 5 %

HOT MIX ASPHALT (HMA)/ WARM MIX ASPHALT (WMA) **TOLERANCES**

Roadway Density (Cores from project, retained by Agency and Contractor Personnel)	± 0.025 Units
Density (Nuclear)	± 4 Units
VMA	± 1.0 Units
Asphalt Content (Ignition Burn Oven)	± 0.50
Bulk Specific Gravity at Ndes	± 0.025 Units
Maximum Specific Gravity	± 0.020 Units
Air Voids	± 1.5 Units