



TOWN OF TAOS, NM

REQUEST FOR QUALIFICATIONS

DESIGN-BUILD SOLAR DEVELOPER FOR PV PROJECT AT THE WASTEWATER TREATMENT PLANT

Control Number: RFQ 19-20-05

Issue Date: April 23, 2020

Pre-Response Conference: May 7th, 2020 at 10:00 a.m. local time. Interested Respondents should contact the Town's Chief Procurement Officer to register for the video conference at least 24 hours before the event.

Proposal Question Deadline: May 14th, 2020, at 10:00 a.m. local time

Response Deadline: May 21, 2020, at 12:00 p.m. local time

Response Submittal: Town of Taos' Online Bidding System (Vendor Registry). Proponents must register at: <https://vendorregistry.com/Vendor/Register/Signup>

Purchasing Contact: Sharon Voigt, Chief Procurement Officer
Finance Department-Purchasing Division
Phone: (575) 751-2025
Email: svoigt@taosgov.com

Introduction

The Town of Taos is requesting competitive sealed qualifications for the selection of a design-build (a.k.a. EPC¹) firm to develop two solar photovoltaic (PV) systems at the Town's wastewater treatment plant (WWTP): 1) a 1 megawatt (MW) AC PV system that will sell energy to the electric utility, Kit Carson Electric Cooperative (KCEC), under a Power Purchase Agreement (PPA); and 2) a smaller net metered PV project with battery storage, which will further offset the WWTP electric utility costs and help mitigate power quality issues at the WWTP. The Town of Taos' WWTP is located at 182 Los Cordovas Dr, Ranchos De Taos, NM 87557. This Request for Qualifications is part of the first phase of a two-phase procurement process, per the State's procurement code requirements (*13-1-119.1. Public works project delivery system; design and build projects authorized*):

1. In Phase I, the Request for Qualifications identifies the minimum qualifications, the scope of work, and schedule, the documents defining the project requirements, the composition of the selection committee, and a description of the Phase II requirements and subsequent management needed to bring the project to completion. Design-build qualifications of responding firms shall be evaluated, and a maximum of five firms shall be short-listed in accordance with technical and qualifications-based criteria; and

¹ EPC (Engineering, Procurement, and Construction)

2. In Phase II, short-listed firms will be invited to submit detailed specific technical concepts or solutions, costs, and scheduling. The short-listed firms will be required to present their Phase II proposals to the selection committee, followed by the interview by the selection committee. During the interview, the firms will respond to questions posed by the evaluation committee; the firms' responses will allow the selection committee to make final evaluations based on the Phase II evaluation criteria. After evaluation of these submissions, selection shall be made and the contract awarded to the highest-ranked firm.

Description

A copy of this RFQ can be obtained from the Town of Taos website at <https://www.taosgov.com/200/Purchasing> until the expiration date of this solicitation. It is incumbent upon the Respondent to check the website for additional information and/or addenda. RFQs can also be obtained from Sharon Voigt, Chief Procurement Officer, Town of Taos Purchasing Division, 400 Camino de la Placita - Room 202, Taos, NM 87571. Currently, the Town of Taos offices are open 10:00 AM to 2:00 PM, Monday through Thursday, closed Friday and legal holidays. If you have any questions, please call (575) 751-2025 or email svoigt@taosgov.com.

Written questions regarding the substance of the RFQ or scope of services must be submitted via e-mail to the purchasing contact listed above no later than the Proposal Question Deadline indicated above.

Due to the recent development of the COVID-19 virus in New Mexico, submission of Proposals will only be accepted electronically via the Town of Taos' Online Bidding System (Vendor Registry). Late responses will not be accepted.

Project Funding

This project is wholly or partially funded with United States Environmental Protection Agency funds, and therefore must comply with all federal cross cutter requirements. Neither the United States nor its department's agencies or employees is or will be party to this invitation for bids or any resulting contract. This procurement will be subject to regulations contained in 40CFR part 31 including the Davis Bacon Act requirements.

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

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

ENGINEER CERTIFICATION

This Request for Qualifications for the **DESIGN-BUILD SOLAR DEVELOPER FOR PV PROJECT AT THE WASTEWATER TREATMENT PLANT** was prepared pursuant to NMSA 13-1-119.1 by:

Souder, Miller & Associates
2904 Rodeo Park Drive East 100
Santa Fe, NM 87505
(505) 473-9211 or Fax (505) 471-6675

The technical material contained in the Request for Qualifications was prepared under the supervision and direction of Paul Kennedy, P.E., whose seal as a Professional Engineer licensed to practice in the state of New Mexico is affixed below.



4/17/20
Date

Paul Kennedy, P.E.
New Mexico PE License #20137

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.

TABLE OF CONTENTS

SECTION 1 - INSTRUCTIONS 5

SECTION 2 - SPECIFICATIONS AND SCOPE OF WORK 11

SECTION 3 - EVALUATION CRITERIA AND SUBMITTAL REQUIREMENTS 15

SECTION 4 –TERMS AND CONDITIONS OF CONTRACT 19

SECTION 5 – USEPA REGION 6 SUPPLEMENTAL CONDITIONS 21

SECTION 6 – REQUIRED TOWN OF TAOS FORMS 22

SECTION 1 - INSTRUCTIONS

1) COMMUNICATIONS

In an effort to create a more competitive and unbiased procurement process, the Town of Taos (Town) desires to establish a single point of contact throughout the procurement process. From the issue date of this RFQ, until a Successful Respondent(s) is selected, all requests for clarification or additional information regarding this RFQ or contacts with the Town personnel concerning this RFQ or the evaluation process must be solely to the contact person (or her designee) listed on the cover page of this RFQ.

A violation of this provision is cause for the Town to reject the Respondent's Response. If it is later discovered that a violation has occurred, the Town may reject any Response or terminate any contract awarded pursuant to this RFQ. No direct contact regarding this document with other Town employees, the Towns' contractors' or other entities working with the Town are permitted.

2) PRE-RESPONSE INFORMATION AND QUESTIONS

Each response that is timely received will be evaluated on its merit and completeness of all requested information. In preparing responses, Respondents are advised to rely only upon the contents of this RFQ, its accompanying documents and any written clarifications or addenda issued by the Town. If a Respondent finds a discrepancy, error, or omission in the RFQ package, or requires any written addendum thereto, the Respondent is requested to notify the Purchasing contact noted on the cover of this RFQ, so that written clarification may be sent to all prospective Respondents. THE TOWN IS NOT RESPONSIBLE FOR ANY ORAL INSTRUCTIONS. All questions must be submitted in writing to the Purchasing contact only before the Pre-Response Question Deadline indicated on the front of this document. No contact regarding this document with other Town employees is permitted. All answers will be issued in the form of a written addendum.

3) PRE-RESPONSE CONFERENCE

The Town will conduct a pre-response video conference meeting using Microsoft Teams (it is not necessary for Respondents to download/install Microsoft Teams to participate in the video conference). It is recommended that Respondents participate in the video conference to familiarize themselves with the site and the project. The date and time of the Pre-Response video conference is stated on the first page of this solicitation. Interested Respondents should contact the Town's Chief Procurement Officer to register for the video conference at least 24 hours before the event. A video conference link will be emailed to registered Respondents.

4) RFQ MODIFICATIONS

Clarifications, modifications, or amendments may be made to the RFQ at any time prior to the Response Deadline at the discretion of the Town. It is the Respondent's responsibility to periodically check the Town's website until the posted Response Deadline to obtain any issued addenda.

5) PRE-RESPONSE MEETING

The date, time and location of the meeting, if any, are indicated on the cover page of this RFQ. All Respondents are strongly encouraged to attend any scheduled meetings.

6) RESPONSE SUBMISSION

To be considered, the Response must be prepared in the manner and detail specified in this RFQ.

a. Due to the recent development of the COVID-19 virus in New Mexico, submission of Proposals will only be accepted electronically via the Town of Taos' Online Bidding System (Vendor Registry). Respondents must register to the online portal using the following link:

<https://vendorregistry.com/Vendor/Register/Signup>

The Town of Taos' Online Bidding System (Vendor Registry) utilizes the Internet and the World Wide Web which is comprised of systems that are completely out the Town's control including but not limited to: the Town, its employees, agents, and registered suppliers' respective Internet service providers. The Town, its employees and agents are not responsible for Internet outages, hardware failures, software failures, downtime, Internet slowness, acts of God, power failures, and or user errors. All bids/proposals must be submitted before the due date specified on page 1 regardless of your organization's ability to submit

proposals online. It is the Respondent's responsibility to ensure that their proposal is submitted before the due date and time. Respondents understand and agree that technical support may not be readily available the day of and or the hours/minutes prior to a bid closing time. Respondents also understand and agree that Internet access, browsers, and operating systems are not supported by the Town and/or its employees and agents. Respondents are strongly encouraged to review, create, and submit their electronic proposals several days in advance of the due date and time.

b. Responses sent by facsimile or email will not be considered.

c. Submission of a Response establishes a conclusive presumption that the Respondent is thoroughly familiar with the RFQ and specifications and terms of the Sample Contract, and the Town's Procurement Policy and that the Respondent understands and agrees to abide by each and all of the stipulations and requirements contained therein.

d. All prices and notations if applicable must be typed or printed in ink. No erasures are permitted. Mistakes may be crossed out and the person(s) signing the Response must initial corrections in ink.

e. All costs incurred in the preparation and presentations of the Response, as well as any resulting contract, are the Respondent's sole responsibility; no such costs will be reimbursed to any Respondent. All documentation submitted with the Response will become the property of the Town.

f. Responses are subject to public disclosure after the award in accordance with state law under the Freedom of Information Act (FOIA).

7) RESPONSE SIGNATURES

An authorized official must sign the Responses. Each signature represents binding commitment upon the Respondent to provide the goods and/or services offered to the Town if the Respondent is determined to be the most responsive and responsible Respondent.

8) CONTRACT AWARD

The Town reserves the right to withdraw the RFQ, to award to one Respondent, to any combination of Respondents, by item, group of items, or total RFQ. The Town may waive informalities if it is in the Town's interest. The award shall be made to the responsible respondent whose proposal is the most advantageous to the Town taking into consideration the evaluation factors set forth in the Request for Qualifications. Qualifications-based proposals are based on respondents' qualifications to perform the required scope of work and are not on price. Responses will be evaluated and assigned scores. The Respondent(s) to whom the recommendation to award is made will be notified at the earliest possible date. The Town will then negotiate a contract with the top ranked Respondent for a firm fixed price agreeable to both parties. If, for any reason, a contract is not executed with the selected Respondent within 14 days, then the Town may recommend the next most responsive and responsible Respondent. Award of this RFQ is contingent upon the availability of funds for this project, within the sole discretion of the Town. Acceptance of the Respondent's RFQ does not constitute a binding contract. There is no contract until the Town's policies have been fulfilled. The Town is not liable for performance costs until the successful Respondent has been given a fully executed contract. Failure to accept the terms and conditions of the Contract and the federally required Supplemental Conditions may deem the Respondent non-responsive.

9) RESPONSE MODIFICATIONS

Clarifications, modifications, or amendments to any Response that has been submitted, but prior to the Response Deadline Date, may be made only within the discretion and written approval of the Procurement Officer.

10) DUPLICATE RESPONSES

No more than one (1) Response from any Respondent, including its subsidiaries, affiliated companies and franchisees will be considered by the Town. In the event multiple Responses are submitted in violation of this provision, the Town will have the right to determine which Response will be considered, or at its sole option, reject all such multiple Responses.

11) WITHDRAWAL

Responses may only be withdrawn by written notice prior to the Deadline date set for the opening of Response. No Response may be withdrawn after the deadline for submission.

12) REJECTION

The Town reserves the right to reject any or all Responses, or to accept or reject any Response in part, and to waive any minor informality or irregularity in Responses received, if it is determined by the Procurement Officer or designee that the best interest of the Town will be served by doing so. The Town may reject any Response from any person, firm or corporation in arrears or in default to the Town on any contract, debt, or other obligation, or if the Respondent is debarred by the Town from consideration for a contract award, or if Respondent has committed a violation of the ethics or anti-kickback provisions of the Town's Procurement Ordinance which resulted in a termination of a contract or other material sanction within the two (2) years immediately preceding the date of issuance of this document.

13) PROCUREMENT POLICY

Procurement for the Town will be handled in a manner providing fair opportunity to all businesses. This will be accomplished without abrogation or sacrifice of quality and as determined to be in the best interest of the Town. The Town Manager has the vested authority to execute all Town contracts, subject to Council approval where required.

14) COMPLIANCE WITH LAWS

The Respondent must comply with all federal, state, and local laws and policies. The laws of the State of New Mexico shall govern this procurement and any agreement with Respondents that may result. In submitting a proposal, the Respondent represents that the Respondent understands the nature and extent of the RFQ dealing with federal, state, and local requirements that are part of this RFQ. The successful Respondent(s) shall perform work under the resultant Contract in strict accordance with the latest version of all State and local codes, ordinances, and regulations governing the work involved. All materials and labor necessary to comply with the rules, regulations and ordinances shall be provided by the successful Respondent(s). In the event of a conflict between various codes and standards, the more stringent shall apply.

15) NON-DISCRIMINATION

The Town will not contract with any person or firm that discriminates against employees or applicants for employment because of any factor not related to job performance. The Respondent must comply with all federal, state and local laws and policies that prohibit discrimination in employment contracts. The Respondent must include in its subcontracts provisions that prohibit subcontractors from discriminating in their employment practices.

16) NO RESPONSE

Businesses who receive this RFQ but who do not submit a Response should return a notice stating the reason(s) for not responding. Failure to return this may result in removal of the business' name from all bidder lists.

17) CONTRACT NEGOTIATION

All Responses must be firm for at least 120 days from the due date of the Response. If, for any reason, a contract is not executed with the selected Respondent within 30 days after notice of recommended award, then the Town may recommend the next most responsive and responsible Respondent. There is no contract until the Town's policies have been fulfilled.

18) DISQUALIFICATION OF RESPONDENTS

Any one or more of the following causes may be considered sufficient for the disqualification of a Respondent and the rejection of the Response:

- a. Evidence of collusion among Respondents.
- b. Lack of competency as revealed by either financial, experience, or equipment statements.
- c. Lack of responsibility as shown by past work.

d. Uncompleted work under other contracts which, in the judgment of the Town, might hinder or prevent the prompt completion of additional work if awarded.

19) DISCUSSIONS

Discussions may be conducted with responsible Respondents, in order to clarify and assure full understanding of, and conformance to, the solicitation requirements. Discussions may be conducted with Respondents who submit Responses determined to be reasonably susceptible of being elected for award, but Responses may be accepted without such discussions.

Respondents shall be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of Responses. Such revisions may be permitted after submission and prior to award for the purpose of obtaining best and final offers. If during discussions there is a need for any substantial clarification of or change in the RFQ, the RFQ shall be amended to incorporate such clarification or change. The Respondent shall reduce any substantial oral clarification of a Response to writing.

20) SUBCONTRACTORS

In an effort to promote supplier diversity, the Town encourages Respondents to identify and include qualified disadvantaged businesses as subcontractors when proposing to provide products and services to the Town.

The Contract will not be assignable to any other business entity without the Town's approval.

21) RESPONDENT RESPONSIBILITIES

The Respondent must be capable, either as a firm or a team, of providing all services as described under SECTION 2 – SCOPE OF WORK and to maintain those capabilities until notification of the fact that their Response was unsuccessful. Exclusion of any service for this Response may serve as cause for rejection. The Successful Respondent must remain capable of providing all services as described under SECTION 2 – SCOPE OF WORK and must maintain those capabilities until the agreement is successfully finished. The successful Respondent will be responsible for all services in this Response whether they are provided or performed by the Successful Respondent or Subcontractor(s). Further, the Town will consider the Successful Respondent to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the cost of any contract. The Successful Respondent must identify all Subcontractors and the Services they provide. The Successful Respondent is responsible for all payments and liabilities of all Subcontractor(s).

The Town reserves the right to approve or reject, in writing, any proposed Subcontractor. If the Town rejects any proposed Subcontractor in writing, the Successful Respondent shall be responsible to assume the proposed Subcontractor's responsibilities. The Successful Respondent may propose another Subcontractor if it does not jeopardize the effectiveness or efficiency of the contract. Nothing contained in the Response or in the contract shall create or be construed as creating any contractual relationship between any Subcontractor and the Town.

22) TOWN PARTICIPATION

The Town has hired a Project Manager to oversee all aspects of project development. The Project Manager acts on behalf of and at the direction of the Town of Taos.

23) DISCLOSURE OF CONTENTS

All information provided in the Response shall be held in confidence and shall not be revealed or discussed with competitors, until after award of the contract except as provided by law or court decision. All material submitted with the Response becomes the property of the Town and may be returned only at the Town's option.

Respondents must make no other distribution of their Responses other than authorized by this RFQ. A Respondent who shares cost information contained in its Response with other Town personnel or competing Respondent personnel shall be subject to disqualification.

Respondents shall not be provided any information about other Responses or prices or where the Respondent stands in relation to others at any time during the evaluation process. Any request for such information by a Respondent, its subcontractor or an affiliated party may be viewed as a compromise to the evaluation process and the requesting Respondent may be eliminated from further consideration.

24) PROPOSAL EVALUATION

The evaluation committee will perform the evaluation of Phase I proposals. Points will be allocated by each member. Each member's point totals will be translated into a numeric ranking of all proposals. The individual member rankings will be totaled together to determine the overall ranking of proposals. If fewer than three proposals are received the Evaluation Committee may recommend an award to the Governing Body for approval or direct that the RFQ be reissued.

The short-listed firms will be required to present their Phase II proposals to the selection committee, followed by the interview by the Evaluation Committee. During the interview, the firms will respond to questions posed by the Evaluation Committee; the firms' responses will allow the selection committee to make final evaluations based on the Phase II evaluation criteria. After evaluation of these submissions, selection shall be made and the contract awarded to the highest-ranked firm.

During Phase I or Phase II, the Town of Taos may initiate discussions with Respondents who submit responsive or potentially responsive proposals for the purpose of clarifying aspects of the proposals, but proposals may be accepted and evaluated without such discussion. Discussions SHALL NOT be initiated by the Respondents.

25) PROTESTS

Any protest by a Respondent must be timely and in conformance with Section 13-1-172 NMSA 1978 and applicable procurement regulations. Protests must be written and must include the name and address of the protestor and the request for proposals number. It must also contain a statement of grounds for protest including appropriate supporting exhibits, and it must specify the ruling requested from the Town of Taos. The protest must be delivered to the Town of Taos, Procurement Officer 400 Camino de la Placita Room 202, NM 87571 within 24 hours after the facts or occurrences giving rise thereto, but in no case later than 15 calendar days after the facts or occurrences giving rise thereto. Protests received after the 15-day period deadline will not be accepted.

In the event of a timely protest under this section, the Town of Taos shall not proceed further with procurement unless the Procurement Officer makes a determination that the award of Agreement is necessary to protect substantial interests of the Contracting Agency (13-1-173 NMSA 1978).

The Procurement Officer or designee shall have the authority to take any action reasonably necessary to resolve a protest of an aggrieved Respondent concerning procurement.

The Procurement Officer or designee shall promptly issue a determination relating to the protest.

The aggrieved Respondent has the right to judicial review of the determination pursuant to 13-1-183 NMSA 1978.

26) RESPONDENT QUALIFICATIONS

The Evaluation Committee may make such investigations as necessary to determine the ability of the Respondent to adhere to the requirements specified within this RFQ. The Evaluation Committee will reject the proposal of any Respondent who is not a responsible Respondent or fails to submit a responsive offer as defined in Sections 13-1-83 and 13-1-85 NMSA 1978.

27) RIGHT TO WAIVE MINOR IRREGULARITIES

The Evaluation Committee reserves the right to waive minor irregularities. The Evaluation Committee also reserves the right to waive mandatory requirements provided that all of the otherwise responsive proposals failed to meet the mandatory requirements and/or doing so does not otherwise materially affect the procurement. This right is at the sole discretion of the Evaluation Committee.

28) CHANGE IN CONTRACTOR REPRESENTATIVES

The Town of Taos reserves the rights to require a change in contractor representatives if the assigned representatives are not, in the opinion of the Town of Taos, meeting its needs adequately. If the contractor wishes to change its designated representative, that change must be approved by the Town of Taos.

29) NOTICE

The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and misdemeanor criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kick-backs.

30) TOWN OF TAOS RIGHTS

The Town of Taos reserves the right to accept all or a portion of a Respondent's proposal.

31) MULTIPLE AWARDS

The Town reserves the right to make multiple awards of the items, projects and/or sections of this RFQ.

32) RIGHT TO PUBLISH

Throughout the duration of this procurement process and contract term, potential Respondents, Respondents and contractors must secure from the Town of Taos written approval prior to the release of any information that pertains to the potential work or activities covered by this procurement or the subsequent contract. Failure to adhere to this requirement may result in disqualification of the Respondent's proposal or termination of the contract.

33) OWNERSHIP OF PROPOSALS

All documents submitted in response to this Request for Proposals shall become the property of the Town of Taos. However, any technical or user documentation submitted with the proposals of non-selected Respondents shall be returned after the expiration of the protest period. Unsuccessful Respondents may retrieve all but one copy of their proposal as soon as award is made. Any unsuccessful Respondent wishing to retrieve copies of their proposal must do so within two weeks after the award.

34) ELECTRONIC MAIL ADDRESS REQUIRED

A large part of the communication regarding this procurement will be conducted by electronic mail (e-mail). Respondent must have a valid e-mail address to receive this correspondence.

35) STATUS OF SUCCESSFUL RESPONDENTS.

The successful Respondent(s) is an independent contractor performing services for the Town and neither he/she nor his/her agents or employees shall, as a result of the resultant Contract, accrue leave, retirement, insurance, bonding authority, use of Town vehicles, or any other benefits, prerequisites or allowances normally afforded only to employees of the Town. The successful Respondent(s) acknowledges that all sums received under the resultant Contract are personally reportable by him/her for income, self-employment and other applicable taxes.

36) ASSIGNMENT/TRANSFER

Assignment or transfer of this contract without written consent of Town may be construed by the Town as a breach of contract sufficient to cancel this agreement at the discretion of the Town.

37) EXCISE AND SALES TAX

The prices herein must not include any Federal excise taxes or sales taxes imposed by any State or Municipal Government. Such taxes, if applicable, must be included by the Seller when submitting invoice for payment.

SECTION 2 - SPECIFICATIONS AND SCOPE OF WORK

1) INTRODUCTION

The Town of Taos is requesting competitive sealed qualifications for the selection of a design-build firm to develop two solar photovoltaic (PV) systems at the Town's wastewater treatment plant (WWTP): 1) a 1 megawatt (MW) PV system that will sell energy to the electric utility, Kit Carson Electric Cooperative (KCEC), under a Power Purchase Agreement (PPA); and 2) a smaller net metered PV project with battery storage, which will further offset the WWTP electric utility costs and help mitigate power quality issues at the WWTP.

The successful Firm will be required to execute a Design-Build Contract, (Town of Taos Terms & Conditions and Federal Requirements), a sample but not the actual document is part of the RFQ document. The Design-Build Contract will incorporate the selected Firm proposal, scope of services, and other pertinent requirements and details.

Through this Request for Qualifications (RFQ), the Town of Taos (Town) hereby invites entities who meet the qualifications and specifications set forth herein to submit responses for the Town of Taos RFQ 18-19-03 Design-Build Solar Developer for PV Project at the Wastewater Treatment Plant.

2) MINIMUM QUALIFICATIONS

The Town of Taos seeks to hire a design-build solar developer (a.k.a EPC) with the following minimum qualifications:

- a) As the design-builder, the firm shall have successfully completed and interconnected at least three (3) solar PV projects at least 1 MW AC in size each.
- b) As the design-builder, the firm shall have successfully completed and interconnected commercial-scale net metered solar PV projects (20-500 kW).
- c) As the design-builder, the firm shall have experience interconnecting solar PV projects with the local electric utility, Kit Carson Electric Cooperative, or equivalent.
- d) As the design-builder, the firm shall have a contractor properly licensed in New Mexico for the type(s) of work required.
- e) Either as the design-builder or with the support of a subconsultant, the firm shall have the capability to analyze multiple factors (electric loads, 3-phase electric data, utility rates, electrical component & facility-specific constraints, and available budget) to recommend, design, construct, and interconnect an appropriately sized solar PV system with battery capacity, for the purpose of addressing power quality issues and reducing demand charges.
- f) Either as the design-builder or with the support of a subconsultant, the firm shall have a New Mexico licensed engineer with relevant qualifications capable of approving (P.E. stamp & signature) engineering drawings and IEEE 1547.1 *Standard for Conformance Test Procedures for Equipment Interconnecting Distributed Energy Resources with Electric Power Systems and Associated Interfaces*.
- g) As the design-builder, the firm shall have successfully secured at least one (1) local municipal or county land use/zoning permit required for the development of a commercial-scale solar PV project.

3) SCOPE OF SERVICES:

The successful design-build firm shall provide a "turnkey" project including all necessary analysis, design, equipment, materials, manufacturing, installation, and utility interconnection services for the completion of the project, consisting of two PV systems:

1. The 1 MW AC PV system will be constructed on approximately 6 acres in a vacant field to the west and directly adjacent to main WWTP facility. The 1 MW PV system will use a ground mounted racking system, either as fixed-tilt or single-axis tracking. The PV system will consist of solar PV modules (panels) arranged in strings, utilizing string inverters. The string inverters will be connected to a single AC disconnect switch, transformer, switchgear, and the electric meter that records the energy delivered to the grid. The PV system will be integrated with the WWTP SCADA system for the purpose of real-time monitoring of PV system performance.

2. The net metered PV system with battery capacity will be located within the fenced area of the main WWTP, near the MBR building. An existing net metered 79 kW solar PV system is located on the roof of the MBR building. The purpose of the battery capacity is to provide consistent power quality to blowers located in the MBR building, and to reduce peak electrical loads and associated demand charges assessed to the Town under KCEC's rate tariff. The exact net metered PV system size and battery capacity will be determined based on technical and cost proposals from the solar developers for both projects, as part of the Town's design-build procurement. Based on preliminary analysis of electric loads at the MBR facility, and in consideration of available budget, the Town of Taos will be able to develop a net metered PV system approximately 80 kW in size with approximately 100 kWh of battery storage, which will provide substantial WWTP electric utility costs savings for the Town. The net metered solar PV system will be integrated with the existing 79 kW solar PV system, to the extent practicable. The net metered PV system will use a ground mounted racking system, either as a fixed-tilt or single-axis tracking. The PV system will consist of solar PV modules (panels) arranged in strings, utilizing string inverters. The string inverters will be connected to a single AC disconnect switch, transformer, switchgear, and the bi-directional electric meter that records MBR facility energy use and energy delivered to the grid. The battery system will either be installed in the MBR building or near the MBR building on a concrete pad within a weatherproof enclosure. The PV system will be integrated with the WWTP SCADA system for the purpose of real-time monitoring of PV system performance.

The successful firm will be responsible for securing all necessary project permitting and authorizations, including but not limited to NPDES Construction General Permit (SWPPP), New Mexico Construction Industries Division building code, electrical code, and solar energy code compliance, and Taos County Special Use Permit. As part of project planning, the Town of Taos has completed some of the elements required for the Taos County Special Use Permit, which will be summarized for proponents in the second phase of this procurement. In addition to the elements required for the Taos County Special Use Permit, the Town of Taos has obtained other analysis necessary for project development, including a geotechnical analysis for the 1 MW project site.

4) SCHEDULE

The town of Taos anticipates the following schedule for the procurement of the design-build firm, permitting (including Taos County Special Use Permit), electric utility interconnection, and construction:

Project Phase	Approximate Completion
Phase I Procurement of design-build firm	May 2020
Phase II Procurement of design-build firm	June 2020
Town of Taos contracting with design-build firm	July 2020
Permitting	August 2020
KCEC authorization to proceed with construction	September 2020
Construction	October 2020

5) DOCUMENTS DEFINING PROJECT REQUIREMENTS

Aside from this Request for Qualifications and the United States EPA Region 6, New Mexico Environment Department Construction Programs Bureau Supplemental Conditions for Federally Assisted Storm Water and/or Wastewater Infrastructures under the Clean Water State Revolving Loan Fund (revised January 2020), there are other documents that define project requirements, including:

- Power purchase agreement (PPA) between the Town of Taos and KCEC
- Geotechnical analysis for the project site
- MBR facility electric usage records
- WWTP 3-phase electric data
- KCEC rate tariffs
- NM Construction Industries Division requirements
- U.S. EPA NPDES Construction General Permit requirements
- IEEE 1547.1 Standard for Conformance Test Procedures for Equipment Interconnecting Distributed Energy Resources with Electric Power Systems and Associated Interfaces

- State of New Mexico Wage Determination
- Federal Davis-Bacon Wage Determination

The Town of Taos will provide these documents to proponents during Phase II of this procurement, with the exception of the wage determinations. State of New Mexico and Federal wage rates are attached to this Request for Qualifications.

6) CONTRACT TERM

The Town of Taos intends to enter into a one (1) year contract with the successful Respondent for the services contemplated by this Request for Qualifications. Any such contract will be subject to approval by the Town of Taos Council, availability of funds and other terms and conditions.

7) SELECTION COMMITTEE

The selection committee for this project will be comprised of

- Francisco Espinoza, Director, Town of Taos Public Works / Utilities
- Sharon Voight, Chief Procurement Officer, Town of Taos Finance Department-Purchasing Division
- Dale Lyons, Souder, Miller and Associates
- Richard Sanchez, Taos County

8) STANDARD CONSTRUCTION PRACTICES FOR ENVIRONMENTAL CONTROLS

While the project is not expected to have significant negative impacts on ambient air quality, the successful firm will be required to meet New Mexico Environment Department (NMED) Air Quality Bureau regulations. All asphalt, concrete, quarrying, crushing, and screening facilities contracted in conjunction with the proposed project must have current and proper air quality permits. For more information on air quality permitting and modeling requirements, please refer to 20.2.72 NMAC. If air quality permits are required for the proposed action, permits will need to be administered by the New Mexico Environment Department (NMED).

Potential exists for temporary increases in dust and emissions from earthmoving, construction equipment, and other vehicles, however the increases should not result in non-attainment of air quality standards. Dust control measures should be taken to minimize the release of particulates due to vehicular traffic and construction. Areas disturbed by the construction activities, within and adjacent to the project area should be reclaimed to avoid long-term problems with erosion and fugitive dust.

To further ensure air quality standards are met, applicable local or county regulations requiring noise and/or dust control must be followed; if none are in effect, controlling construction-related air quality impacts during projects should be considered to reduce the impact of fugitive dust and/or noise on community members. Generators, light towers, and other equipment powered by diesel, gasoline, or natural gas engines may require registration or an air quality permit if the emissions of any criteria air pollutant will exceed 10 pounds per hour and 10 tons per year. If the proposed project includes this type of equipment, please contact the NMED Air Quality Bureau Permitting Section to determine if a permit is required. For more information on air quality permitting and modeling requirements, please refer to 20.2.72 NMAC.

While the project is not expected to have significant negative impacts on surface water quality, the successful firm will be required to meet New Mexico Environment Department (NMED) Surface Water Quality Bureau regulations. If the potential for a construction project exists for impacts to Waters of the United States, then the U.S.EPA requires NPDES permit coverage for storm water discharges from construction projects (common plans of development) that will result in the disturbance (or re-disturbance) of one or more acres (most recent updates effective as of February 16, 2012) including expansions, of total land area.

The NPDES Storm Water permit requires that a Storm Water Pollution Prevention Plan (SWPPP) be prepared for the site and that appropriate Best Management Practices (BMPs) be installed and maintained both during construction and after construction to prevent, to the extent practicable, pollutants (primarily sediment, oil & grease and construction materials from construction sites) in storm water runoff from entering waters of the U.S. This permit also requires that permanent stabilization measures (revegetation,

paving, etc.) and permanent storm water management measures (storm water detention/retention structures, velocity dissipation devices, etc.) be implemented post construction to minimize, in the long term, pollutants in storm water runoff from entering these waters.

EPA requires all “operators” (see Federal Register/Vol. 63, No. 128/Monday, July 6, 1998 pg 36509) obtain NPDES permit coverage for construction projects. Generally, this means that at least two parties will require permit coverage. The owner/developer of this construction project who has operational control over project specifications and the general contractor who has day-to-day operational control of those activities at the site, which are necessary to ensure compliance with the storm water pollution plan and other permit conditions, and possibly other “operators” will require appropriate NPDES permit coverage for this project.

If construction activity or disturbances were to take place in a river, including the river banks and wetlands a 404 dredge and fill permit issued by the US Army Corps of Engineers would be required. Additionally a state Water Quality Certification would be required under Section 401 for activities regulated under Section 404 of the Federal Clean Water Act by the U.S. Army Corps of Engineers (USACE). The NMED has issued conditional certification to use Nationwide Permits in ephemeral surface water (<http://www.nmenv.state.nm.us/swqb/WPS/NMEDSection401WQCEphemeralBlanketNWP2007.pdf>).

A project-specific Section 401 Water Quality Certification is required for activities regulated under an Individual Section 404 permit, or for discharges regulated by Nationwide Permits to intermittent and perennial surface water, or wetlands defined in 20.6.4.7 NMAC; and Outstanding National Resource Waters (ONRW) designated in 20.6.4.9 NMAC.

9) WAGE DETERMINATION

This project is subject to State of New Mexico Wage Determination and Federal Davis-Bacon Wage Determination. The successful firm will be required to pay the higher of the two wage rates.

SECTION 3 - EVALUATION CRITERIA AND SUBMITTAL REQUIREMENTS

Per NMSA 13-1-119.1, design-and-build projects shall be awarded after a two-phase procedure has been completed. Phase I is completed with the release of this Request for Qualifications. Phase II requires evaluation of design-build qualifications and the choice of at maximum five firms for a short list in accordance with technical and qualifications-based criteria. During Phase II, the short-listed firms are invited to submit specific detailed technical concepts or solutions, costs, and scheduling. Based upon review of the criteria and requirements defined in this section, selection will be made and the contract awarded to the highest-ranking firm.

1) PHASE I EVALUATION: All Responses received will be evaluated by the Evaluation Committee. The following factors will be considered in making the selection of the qualified Respondents with maximum possible points:

- a) **Specialized Design and Technical Competence** - Provide information about the firm's specific technical experience with similar design-build projects that demonstrate competence to successfully complete the project. Indicate the relevance of previous design-build projects to the anticipated scope of work. Demonstrate the successful aspects of past design-build projects and the corresponding applications to the proposed scope of work. **20 points**
- b) **Capacity and Capability** - Provide information about the firm that demonstrates the ability to provide sufficient professional and technical competence, meet time schedules, accommodate cost considerations and project administration requirements. Indicate the relationship of the work in this solicitation to the firm's other current projects. Indicate proposed work schedules and milestones, with completion methods and strategies. Indicate key project team members, including subconsultants (if any), and their specific roles, experience and background. Demonstrate or indicate project team organization and working relationships. Other items could include references from financial institutions and insurance carriers. **20 points**
- c) **Past Record of Performance** - Demonstrate through historical documentation that the firm has the ability to meet the project technical requirements, adhere to schedules and budgets. Describe the firm's administration, project management, and QA/QC practices and procedures employed for identified similar design-build projects. Describe how these practices and procedures helped adhere to planned budgets and schedules for the identified similar design-build projects. Include information regarding owner budgets, construction estimates, bidding and completed project cost including change order information. Include four (4) past client references for completed projects (client name, descriptive project name, point of contact & phone number, project start and end date, and initial contract value & final contract value). **25 points**
- d) **Proximity to or Familiarity with Site Location** - Demonstrate through narrative, graphics or maps the firm's ability to respond quickly to on and off-site requirements for design, construction and administration of the project. Indicate previous knowledge or experience regarding the project location, and any current work or associated consultants who could enhance the firm's ability to provide timely responses or special expertise to project needs. **10 points**

- e) **Volume of Work Previously Done for the Town of Taos** - Firms shall be scored on any project that has been previously awarded and is, on the date of the submittal, less than 75% complete (see definitions for clarification of “75% complete”). Information on the status of past project awards shall be included in the “Project Listing Form” as a requirement of this solicitation. The following formula on fees for projects awarded that are less than 75% complete shall be utilized in assessing scores:

\$ 00,00	to	\$25,000	5 points
\$ 25,000	to	\$35,000	4 points
\$ 35,001	to	\$ 50,000	3 points
\$ 50,001	to	\$100,000	2 points
\$100,001	to	\$150,000	1 points
\$150,001	and over		0 points

- f) **Evidence of Understanding of the Scope** - Describe in detail the design-build development approach for the project. Include information about the project site, project administration, scheduling, budget and programmatic user requirements. The proposal should demonstrate competent knowledge of project constraints as well as any applicable discussion of possible options for design-build approaches or techniques. Respondents are not encouraged to provide specific design solutions or financial projections for the project. Without completion of programming activities, any specific design proposals could be inappropriate and may result in a reduction in scoring. This would not preclude discussion of project parameters that may affect design decisions, concept approaches, or design philosophies. **10 points**
- g) **Ability to Secure Permits and Authorizations** - The selected firm will be responsible for obtaining the applicable Taos County land use authorizations, approval from the electric utility, and other permits required for the project. Short-listed firms will be evaluated on their understanding of the project permitting requirements and experience securing permits and authorizations for other projects. **10 points**

2) PHASE II EVALUATION

The most highly qualified respondents submitting responsive proposals will be selected in accordance with the Phase I evaluation criteria described above. The short-listed respondents (maximum of five firms) will then be invited to submit detailed specific technical concepts or solutions, costs, and scheduling. As part of Phase II, the following factors will be considered in making the selection of the highest-ranked firm with maximum possible points:

- a) **Technical Concepts/Solutions** – Technical concepts/solutions will be evaluated to determine if they meet the Town’s objectives, apply current solar industry technology, exhibit an understanding of the site and the Town’s facilities, and have a realistic development approach. **40 points**
- b) **Fee/Cost** – Cost proposals will be evaluated to determine the best value for the Town of Taos, while meeting project objectives. Final price shall be determined by negotiations related to scope of work following ranking of the proposals received (NMSA 13-1-115). **30 points**
- c) **Schedule** – Proposed schedules will be evaluated to determine if they are realistic and meet the Town’s project timeframe. **30 points**

Each response submitted to this solicitation shall focus on the above criteria. The Evaluation Committee also may consider past performance of the Respondent on other contracts with the Town or other entities. Responses will be evaluated equally and fairly; no preference will be given to any Respondent based solely on previous experience with the Town or to an incumbent thereof. The Town reserves the right to make additional inquiries and may request the submission of additional information.

Respondents to whom award of an Agreement is under consideration shall submit upon request, as a component of Phase II of selection, information and data to prove that their financial resources, production of service facilities, personnel, and service reputation and experience are adequate to make satisfactory delivery of the services described in the Request for Proposals (13-1-82 NMSA 1978).

A serious deficiency in any one category may be grounds for rejection of the proposal regardless of the overall score.

Interview: The short-listed firms will be required to present their Phase II proposals to the selection committee, followed by the interview by the selection committee. During the interview, the firms will respond to questions posed by the evaluation committee; the firms' responses will allow the selection committee to make final evaluations based on the Phase II evaluation criteria. After evaluation of these submissions, selection shall be made and the contract awarded to the highest-ranked firm.

During this time, the Town of Taos may initiate discussions with Respondents who submit responsive or potentially responsive proposals for the purpose of clarifying aspects of the proposals, but proposals may be accepted and evaluated without such discussion. Discussions SHALL NOT be initiated by the Respondents.

RESIDENT BUSINESS PREFERENCE OR RESIDENT VETERAN BUSINESS PREFERENCE

This contract is not subject to the New Mexico Resident Contractor provisions as the contract is funded in whole or in part by federal aid or funds (13-1-21J NMSA 1978).

3) PHASE I GENERAL SUBMITTAL REQUIREMENTS:

- a) **RESPONSE FORMAT:** Each Response should be prepared simply and economically. Responses shall be in the same order as the requirements listed below and in the following section.
- b) **RESPONSE CONTENT:** The Respondent must include the following items, or the Response may be deemed non-responsive and rejected without any further evaluation.
 - i) All forms contained or listed in Sections 5 and 6 in this solicitation, fully completed:
 - ii) Evidence showing that the Respondent meets each of the MINIMUM QUALIFICATIONS listed in the Scope of Work of this solicitation.
 - iii) A complete response to each of the EVALUATION CRITERIA listed in this solicitation.

Proposal Organization

The proposal must be organized and indexed in the following format and must contain, as a minimum, all listed items in the sequence indicated.

- Transmittal Letter
- Table of Contents
- Response to Minimum Qualifications
- Response to Evaluation Criteria a. through g.
- References (minimum of 4)
- Required Forms
- Other Supporting Material, if applicable

Within each section of their proposal, Respondents should address the items in the order in which they appear in this RFQ. All forms provided in the RFQ must be thoroughly completed and included in the appropriate section of the proposal. Cost is not a factor in the evaluation process. Any proposal that does not adhere to these requirements may be deemed non-responsive and rejected on that basis.

Respondents may attach other materials that they feel may improve the quality of their responses. However, these materials should be included as items in Other Supporting Material.

TRANSMITTAL LETTER

The Respondent shall submit a formal transmittal letter on *official company letterhead* that contains the following:

Statement of Interest - This statement shall indicate your firm's general interest and capability to perform the project. It shall also include a brief summary of any information that you feel might be especially important to the Town of Taos.

Statement of Response Life - The proposal must have a *response life* of at least one hundred twenty (120) calendar days from the solicitation due date. This shall represent the minimum time during which the response is a firm offer and a contract may be entered into based upon it.

Statement of Acceptance - This statement shall state acceptance of all terms and conditions of the Town of Taos RFQ and Town of Taos terms or conditions not accepted and the reasons for non-acceptance and/or proposed changes or additional Terms and Conditions. Responses taking exception to any language in the Form of Contract or federal requirements and Supplemental Conditions may be rejected as nonresponsive,

Contact Person - Please include the name, title, address, telephone number, fax number and e-mail of the key contact person for any questions regarding your proposal. Include also the location of the office from which service will be provided, with the hours of operation at that location.

Signature of Authorized Representative - An authorized representative of the firm must sign the transmittal letter.

4) PHASE II GENERAL SUBMITTAL REQUIREMENTS

Phase II submittal requirements will be provided to short-listed firms following evaluation of the Phase I proposals, evaluation, and selection of the short-listed firms. To avoid confusion, the Phase II submittal requirements are not included in this RFQ, however, evaluation criteria for the Phase II submittals are described above in 2) PHASE II EVALUATION.

SECTION 4 –TERMS AND CONDITIONS OF CONTRACT

Including:

- Agreement between Owner and Design-Builder
- Standard Form of General Conditions of Contract between Owner and Design-Builder
- Supplementary Conditions
- State of New Mexico Wage Determination
- Federal Davis-Bacon Wage Determination

(Intentionally Blank Page)

TOWN OF TAOS

AGREEMENT BETWEEN OWNER AND DESIGN BUILDER

RFP NO. _____

Agreement entered into this _____ day of _____, 2020, by and between the parties as follows:

OWNER:

DESIGN-BUILDER:

The Town of Taos
400 Camino del Pueblo Sur
Taos, New Mexico 87544

OWNER'S CONSULTANT:

Souder, Miller and Associates

FOR THE FOLLOWING PROJECT:

Design and construction of the following: Two solar photovoltaic (PV) systems at the Town’s wastewater treatment plant (WWTP): 1) a 1 megawatt (MW) AC PV system that will sell energy to the electric utility, Kit Carson Electric Cooperative (KCEC), under a Power Purchase Agreement (PPA); and 2) a smaller net metered PV project with battery storage, which will further offset the WWTP electric utility costs and help mitigate power quality issues at the WWTP. The Town of Taos’ WWTP is located at 182 Los Cordovas Dr, Ranchos De Taos, NM 87557.

RECITALS

WHEREAS, the _____ ; and

WHEREAS, the _____ ; and

WHEREAS, the Owner has let this contract according to the NM Procurement Code and the Town of Taos Purchasing Manual and Regulations; and

The OWNER and the DESIGN-BUILDER agree as set forth below:

ARTICLE 1

THE CONTRACT DOCUMENTS

The Contract Documents consist of the following:

Design-Builder’s Proposal	
This Agreement	Conditions of the Contract (General, Supplementary, and Other Conditions)
Performance Bond	Owner’s Project Criteria distributed in Phase 2 of RFP
Labor and Material Payment Bond	Basis of Design Documents
Agent's Affidavit	Design Builder’s Deviation List contained in Proposal
Certificate of Insurance	Design Builder's Best and Final Response
Assignment of Antitrust Claims	All Addenda Issued Prior to, and all Modifications Issued after Execution of this Agreement
Notice of Award	
Notice to Proceed	

These documents form the Contract, and all are as fully a part of the Contract, as if attached to this Agreement, or repeated herein. An enumeration of the Contract Documents appears in Article 7. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

ARTICLE 2

THE WORK

The Design-Builder shall perform all design and construction services/work required by the Contract Documents for the following:

Design-Builder shall complete all Work as specified or indicated in the Contract. The Work is generally described as the design and construction of the following: Two solar photovoltaic (PV) systems at the Town’s wastewater treatment plant (WWTP): 1) a 1 megawatt (MW) AC PV system that will sell energy to the electric utility, Kit Carson Electric Cooperative (KCEC), under a Power Purchase Agreement (PPA); and 2) a smaller net metered PV project with battery storage, which will further offset the WWTP electric utility costs and help mitigate power quality issues at the WWTP. The Town of Taos’ WWTP is located at 182 Los Cordovas Dr, Ranchos De Taos, NM 87557.

ARTICLE 3

TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

The Work to be performed under this Contract shall commence no later than ten (10) consecutive calendar days after the date of written “Notice to Proceed”. Substantial Completion shall be achieved not later than _____ calendar days after the date of written “Notice to Proceed”, except as hereafter extended by valid written Change Order, by the Owner. All of the dates set forth in this Article 5 shall be subject to adjustment in accordance with the General Conditions of Contract. The Owner and Design-Builder mutually agree that time is of the essence with respect to the times set forth in the Contract Documents.

Interim milestones and/or Substantial Completion of identified portions of the Work shall be achieved as follows:

XXXXXXXXXXXXXXXXXX

Final Completion of the Work shall be achieved not later than thirty (30) days after Substantial Completion.

Should the Design-Builder neglect, refuse, or otherwise fail to complete the Work within the time specified in this article, the Design-Builder agrees, in partial consideration for the award of this Contract, to pay to the Owner the following amounts per consecutive calendar day, not as a penalty, but as liquidated damages for such breach of this Contract: (1) The Design-Builder shall pay Owner \$600.00 for each day that expires after the time (as duly adjusted pursuant to the Contract) for Substantial Completion until the Work is substantially complete; (2) After Substantial Completion, if the Design-Builder shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Design-Builder shall pay Owner \$1,200 for each day that expires after such time until the Work is completed and ready for final payment; and (3) liquidated damages for failing to timely attain Substantial Completion, final completion, and Milestones (if applicable) are not additive, and will not be imposed concurrently. Liquidated damages for failing to attain Substantial Completion shall take precedence.

It is recognized by the Owner and the Design-Builder that the injury to the Owner which could result from a failure of the Design-Builder to complete on schedule is uncertain and cannot be construed as a penalty.

ARTICLE 4

CONTRACT SUM

The Owner shall pay the Design-Builder in current funds for the performance of the Work, subject to additions and deductions by Change Order as provided in the Contract Documents, the Contract Sum of _____, (including or exclusive) of New Mexico Gross Receipts Tax (NM grt).

The Contract sum is determined as follows:

Lump Sum	\$
[GNM grt @ %]	\$]
Contract Sum	\$

ARTICLE 5

PROGRESS PAYMENTS

Based upon Applications for Payment submitted to the Owner by the Design-Builder, the Owner shall make progress payments on account, of the Contract Sum, to the Design-Builder as provided in the Contract Documents for the period ending the last day of the month as follows:

Notice of Extended Payment Provision - This Contract allows the owner to make payment within forty-five (45) days after submission of an undisputed request for payment.

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 Sum properly allocable to labor, materials, and equipment incorporated in the Work, and one hundred percent (100%) of the portion of the Contract Sum properly allocable to materials and equipment suitably stored at the site or some other location agreed upon in writing for the period covered by the Application for Payment, less the aggregate of previous payments made by the 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 Sum, less such amounts as the Owner 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 Sum, shall be paid by the Owner to the Design-Builder within forty-five (45) days after notification of the Owner, by the Design-Builder 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 Design -Builder. In addition, the Design-Builder shall provide to the Owner a certified statement of Release of Liens and Consent of Surety

ARTICLE 7

GENERAL AND SPECIAL PROVISIONS

- 7.1 This Agreement shall be governed exclusively by the provisions hereof, and by the applicable ordinances of the Town of Taos and the laws of the State of New Mexico, as the same from time to time exist.
- 7.2 Terms used in this Agreement, which are defined in the Conditions of the Contract, shall have the meanings designated in those Conditions.
- 7.3 As between the parties to this Agreement: As to all acts or failures to act by either party to this Agreement, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the relevant Date of Substantial Completion of the Work; and as to any acts or failures to act occurring after the relevant Date of Substantial Completion, not later than the date of the Owner's approval of the Final Certificate of Payment.
- 7.4 The Design-Builder 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 Design-Builder.
- 7.5 This Agreement shall not become effective until:
 - A. Approved by the Governing Body of the Town of Taos; and
 - B. Signed by all parties which are required to sign this Agreement.
- 7.6 The Design-Builder and its agents and employees are independent Design-Builders, and are not employees of the Town of Taos. The Design-Builder and his agents and employees shall not accrue leave, retirement, insurance, bonding, use of State vehicles, or any other benefits afforded to employees of the Town of Taos, as a result of this Agreement.

- 7.7 The Design-Builder, upon final payment of the amounts due under this Agreement, releases the Owner, his officers and employees, and the Town of Taos from and against 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 Design-Builder may incur.
- 7.8 The Design-Builder agrees not to purport to bind the Town of Taos to any obligation not assumed herein by the Town of Taos unless the Design-Builder has express written authority to do so, and then only within the strict limits of that authority.
- 7.9 **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:

The Town of Taos
400 Camino del Pueblo Sur
Taos, New Mexico 87544

THE DESIGN-BUILDER:

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.

- 7.10 **Gender, Singular/Plural.** Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context requires otherwise.
- 7.11 **Captions and Section Headings.** The captions and section headings contained in this Agreement are for convenience of reference only, and in no way limit, define, or enlarge the terms, scope, and conditions of this Agreement.
- 7.12 This document shall be executed in no less than five (5) counterparts, each of which shall be deemed an original.
- 7.13 **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.
- 7.14 **Separability.** If any clause or provision of this Agreement is illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, then and in that event it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby.
- 7.15 **Waiver.** No provision of this Agreement shall be deemed to have been waived by either party unless such waiver be in writing signed by the party making the waiver and addressed to the other party; nor shall any custom or practice which may evolve between the parties in the administration of the terms hereof be construed to waive or lessen the right of either party to insist upon performance by the other party in strict accordance with the terms hereof. Further, the waiver by any party of a breach by the other party of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition thereof.

- 7.16 **Entire Agreement.** This Agreement represents the entire contract between the parties and, except as otherwise provided herein, may not be amended, changed, modified, or altered without the written consent of the parties hereto. This Agreement incorporates all of the conditions, agreements, and understandings between the parties concerning the subject matter of this Agreement, and all such conditions, understandings, and agreements have been merged into this written Agreement. No prior condition, agreement, or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this written Agreement.
- 7.17 **Interchangeable Terms.** For purposes of all provisions within this Agreement and all attachments hereto, the terms "Agreement" and "Contract" shall have the same meaning and shall be interchangeable.
- 7.18 **Words and Phrases.** Words, phrases, and abbreviations, which have well-known technical or trade meanings used in the Contract Documents shall be used according to such recognized meanings. In the event of a conflict, the more stringent meaning shall govern.
- 7.19 **Relationship of Contract Documents.** The Contract Documents are complementary, and any requirement of one contract document shall be as binding as if required by all.
- 7.20 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.
- 7.21 The Contract Documents, which constitute the entire Agreement between the Owner and the Design-Builder, are listed in Article 1, and except for Modifications issued after execution of this Agreement, are enumerated as follows:

7.21.1 The following documents are found in the RFP dated _____, 2020:

DOCUMENTS

PAGES

- RFP Phase One, dated _____
- Appendices A- ____
- Agreement between Owner and Design-Builder
- Performance Bond
- Labor and Material Payment Bond
- Agent's Affidavit
- Certificate of Insurance
- Assignment of Antitrust Claims
- Notice of Award
- Notice to Proceed

SPECIFICATIONS

- Basis of Design Documents
- Appendix A, C and D

7.21.2 The Design-Builder's Phase One proposal, dated _____ and Finalist Phase Two proposal dated _____:
Best and Final Offer, dated _____

7.21.3 Amendments and other RFP Postings

Phase One: Description: Pre-proposal Sign-in Sheets/ Wage Decision

Phase Two: Description: Question & Answers/ Basis of Design/Floor Plans

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

7.23 **Design-Builder's Representatives:** The Design-Builder designates the individual listed below as Senior Representative is responsible and has the authority to avoid and resolve disputes under Section 10 of the General Conditions and is responsible and has the authority for duties described in Section 2 of the General Conditions: _____.

7.24. **Owner's Representative:**

Francisco Espinoza
Public Works Director
1030 Dea Lane
Taos, NM 87571
fespinoza@taosgov.com
575-751-2047

END OF ARTICLE 7

OWNER - THE TOWN OF TAOS:

Date

Approved as to form:

Town Attorney

Date

Finance Department

Finance Director

Date

DESIGN-BUILDER:

(signature and title)

Date

TOWN OF TAOS

Standard Form of General Conditions of Contract Between Owner and Design-Builder

Table of Contents

Article 1: General.....2

Article 2: Design-Builder’s Services and Responsibilities.....3

Article 3: Owner’s Duties and Responsibilities.....7

Article 4: Differing Site Conditions.....8

Article 5: Insurance and Bonds.....9

Article 6: Payment.....11

Article 7: Indemnification.....14

Article 8: Time.....15

Article 9: Changes to the Contract Price and Time.....16

Article 10: Disputes.....18

Article 11: Stop Work and Termination for Cause/Convenience.....19

Article 12: Miscellaneous.....21

Article 1 General

1.1 Mutual Obligations

1.1.1 Owner and Design-Builder commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents.

1.2 Basic Definitions

1.2.1 *Agreement* refers to the executed contract between Owner and Design-Builder.

1.2.2 *Day or Days* shall mean calendar days unless otherwise specifically noted in the Contract Documents.

1.2.3 *Design Consultant* is a qualified, *licensed* design professional who is not an employee of Design-Builder, but is retained by Design-Builder, or employed or retained by anyone under contract with Design-Builder or Subcontractor, to furnish design services required under the Contract Documents. This can be a licensed Architect or Engineer.

1.2.3.1 *Design-Builder* is a person, a legal entity, a consortium of experts, a joint venture, a team of persons who, though partnership, general or limited or other legal entity, corporation, association, other organizations, or any combination thereof, formally organized to enter into a contract for a design and build project delivery system with a Using Agency/Owner. No distinction is made between formally organized design/build firms and a project-specific design/build firm.

1.2.3.2 *Design-Builder Representative* is the person designated by the Design-Builder as the individual who has the authority and responsibilities set forth in Section 2.

1.2.3.3 *Design-Builder Senior Representative* is the person designated by the Design-Builder as the individual who has the authority and responsibility for avoiding and resolving disputes under Section 10.

1.2.4 *Hazardous Conditions* are any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements.

1.2.5 *General Conditions of Contract* refer to this document.

1.2.6 *Legal Requirements* are all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

1.2.7 *Owner's Project Criteria* are developed by or for Owner to describe Owner's program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Design-Builder's performance of the Work. Owner's Project Criteria may include conceptual documents, design criteria, performance requirements and other Project-specific technical materials and requirements.

1.2.7.1 *Owner* as defined in the Agreement Between Owner and Design/Builder shall be the Town of Taos, a municipal corporation organized and existing under the Laws of the State of New Mexico.

1.2.8 *Site* is the land or premises on which the Project is located.

1.2.9 *Subcontractor* is any person or entity retained by Design-Builder as an independent Design-Builder to perform a portion of the Work and shall include material, men and suppliers.

1.2.10 *Sub-Subcontractor* is any person or entity retained by a Subcontractor as an independent Design-Builder to perform any portion of a Subcontractor's Work and shall include material, men and suppliers.

1.2.11 *Substantial Completion* is the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete so that Owner can occupy and use the Project or a portion thereof for its intended purposes.

1.2.12 *Work or Scope of Work* is comprised of all Design-Builder's design, construction and other services required by the Contract Documents, including procuring and furnishing all materials, equipment, services and labor reasonably inferable from the Contract Documents.

1.2.13 *Certifiable* is performance of the Work of the project along with documentation as required by the USGBC which will allow the Town of Taos to submit for Silver certification at a later date if this Work is required by the Agreement.

1.2.14 *Substantiation* is any form of evidence that is used to predict whether the design will comply with the requirements or to verify that the construction based on the design actually does comply. During Preliminary Design, Design Development, and Construction Documents, requirements to submit substantiation are primarily intended to forestall use of designs or constructions that will not comply. At any time before completion of construction, substantiation is presumed to be only a prediction and may subsequently be invalidated by actual results.

Article 2 **Design-Builder's Services and Responsibilities**

2.1 General Services

2.1.1 Design-Builder's Representative shall be reasonably available to Owner and shall have the necessary expertise and experience required to supervise the Work. Design-Builder's Representative shall communicate regularly with Owner and shall be vested with the authority to act on behalf of Design-Builder. Design-Builder's Representative may be replaced only with the mutual agreement of Owner and Design-Builder.

2.1.2 Design-Builder shall provide Owner with a weekly status report detailing the progress of the Work, including whether (i) the Work is proceeding according to the Owner-approved schedule, (ii) discrepancies, conflicts, or ambiguities which exist in the Contract Documents that require resolution, (iii) health and safety issues which exist in connection with the Work, and (iv) other items which require resolution so as not to jeopardize Design-Builder's ability to complete the Work for the Contract Price and within the Contract Time(s).

2.1.3 Design-Builder shall prepare and submit, at least three (3) days prior to the meeting contemplated by Section 2.1.4 hereof, a schedule for the execution of the Work for Owner's review and approval. The schedule shall indicate the dates for the start and completion of the various stages of Work, including the dates when Owner information and approvals are required to enable Design-Builder to achieve the Contract Time(s). The schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve Design-Builder of its obligations to complete the Work within the Contract Time(s), as such dates may be adjusted in accordance with the Contract Documents. Owner's review of and approval of the schedule shall not be construed as relieving Design-Builder of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.

2.1.4 The parties will meet within seven (7) days after execution of the Agreement to discuss issues affecting the administration of the Work and to implement the necessary procedures, including those relating to submittals and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents.

2.2 Design Professional Services

2.2.1 Design-Builder shall, consistent with applicable state licensing laws, provide through qualified, licensed design professionals employed by Design-Builder, or procured from qualified, independent licensed Design

Consultants, the necessary design services, including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Design-Builder to complete the Work consistent with the Contract Documents. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Design Consultant.

2.3 Standard of Care for Design Professional Services and Construction

2.3.1 The standard of care for all design professional services performed to execute the Work shall be the care and skill ordinarily used by members of the particular design profession practicing under similar conditions at the same time and locality of the Project.

2.3.2 The Design-Builder shall be responsible to the owner for the acts and omissions of his team members, employees, subcontractors, and their agents and employees and other persons performing any of the Work under this contract.

2.4 Design Development Services

2.4.1 Design-Builder and Owner shall, consistent with any applicable provision of the Contract Documents, agree upon any interim design submissions that Owner may wish to review, which interim design submissions may include design criteria, drawings, diagrams and specifications setting forth the Project requirements. Within 5 days of the time of the scheduled submissions, Design-Builder and Owner shall meet and confer about the submissions, with Design-Builder identifying during such meetings, among other things, the evolution of the design and any significant changes or deviations from the Contract Documents, or, if applicable, previously submitted design submissions. Minutes of the meetings will be maintained by Design-Builder and provided to all attendees for review. Following the design review meeting, Owner shall review and approve the interim design submissions in a reasonable time.

2.4.2 Design-Builder shall submit to Owner Construction Documents setting forth in detail drawings and specifications describing the requirements for construction of the Work. The Construction Documents shall be consistent with the latest set of approved interim design submissions, as such submissions may have been modified in a design review meeting. The parties shall have a design review meeting to discuss, and Owner shall review and approve, the Construction Documents in accordance with the procedures set forth Section 2.4.1 above. Design-Builder shall proceed with construction in accordance with the approved Construction Documents and shall submit four printed full sized sets of approved Construction Documents to Owner prior to commencement of construction. They shall also submit an electronic autoCAD copy of the documents.

2.4.3 Owner's review and approval of interim design submissions and the Construction Documents is for the purpose of mutually establishing a conformed set of Contract Documents compatible with the requirements of the Work. Neither Owner's review nor approval of any interim design submissions and Construction Documents shall be deemed to transfer any design liability from Design-Builder to Owner.

2.4.4 With the Owner's approval and to the extent not prohibited by the Contract Documents or Legal Requirements, Design-Builder may prepare interim design submissions and Construction Documents for a portion of the Work to permit construction to proceed on that portion of the Work prior to completion of the Construction Documents for the entire Work. No work shall commence until the Owner has approved the said Construction Documents.

2.5 Legal Requirements

2.5.1 Design-Builder shall perform the Work in accordance with all Legal Requirements and shall provide all notices applicable to the Work as required by the Legal Requirements.

2.5.2 The Contract Price and/or Contract Time(s) shall be adjusted to compensate Design-Builder for the effects of any changes in the Legal Requirements enacted after the date of the Agreement affecting the performance of the Work, or if a Guaranteed Maximum Price is established after the date of the Agreement, the date the parties agree upon the Guaranteed Maximum Price. Such effects may include, without limitation, revisions Design-Builder is

required to make to the Construction Documents because of changes in Legal Requirements.

2.5.3 By appropriate agreement, the Design/Builder shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Design/Builder by terms of the Contract Documents, and to assume toward the Design/Builder all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Design/Builder, by these Documents, assumes toward the Owner. Each subcontract agreement shall preserve and protect the rights of the Owner under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Design/Builder that the Design/Builder, by the Contract Documents, has against the Owner. Where appropriate the Design/Builder shall require each Subcontractor to enter into similar agreements with Sub-Subcontractors. The Design-Builder shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-Subcontractors.

2.6 Government Approvals and Permits

2.6.1 Except as identified in an Owner's Permit List attached as an exhibit to the Agreement, Design-Builder shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees required for the prosecution of the Work by any government or quasi-government entity having jurisdiction over the Project. Required certificates of inspection, testing or approval shall be secured by the Design-Builder and copies given to the Owner.

2.6.2 Design-Builder shall provide reasonable assistance to Owner in obtaining those permits, approvals and licenses that are Owner's responsibility.

2.6.3 The Design-Builder shall secure all building permits from the Construction Industries Division (CID) of the State of New Mexico. The Owner shall provide reasonable assistance to Design-Builder in obtaining those permits, approvals and licenses that are Design-Builder's responsibility.

2.6.4 The Design-Builder will be responsible for the payment of connection charges, participation fees, plant investment fees, development fees, local impact fees or other such fees to cover the capital expense charges of the utility companies and other entities. Included are the utility company's mains, trunks or laterals necessary to reach the point where the tap is made. The Design-Builder will be responsible for the electrical after the transformer, domestic water after the meter, fire service water at and after the detector check vault and gas after the meter.

2.7 Design-Builder's Construction Phase Services

2.7.1 Unless otherwise provided in the Contract Documents to be the responsibility of Owner or a separate Design-Builder, Design-Builder shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit Design-Builder to complete construction of the Project consistent with the Contract Documents.

2.7.2 Design-Builder shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. Design-Builder shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction. The Design-Builder shall supervise and direct the Work, using his best skill and attention.

2.7.3 Design-Builder shall employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Owner may reasonably object to Design-Builder's selection of any Subcontractor, provided that the Contract Price and/or Contract Time(s) shall be adjusted to the extent that Owner's decision impacts Design-Builder's cost and/or time of performance. If the Owner has reasonable objection to any

proposed subcontractor, the Design-Builder shall submit a substitute to whom the Owner has no reasonable objection, and the Contract sum shall be increased or decreased by the difference in cost occasioned by such substitution and an appropriate Change Order shall be issued.

2.7.4 Design-Builder assumes responsibility to Owner for the proper performance of the Work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

2.7.5 Design-Builder shall coordinate the activities of all Subcontractors. If Owner performs other work on the Project or at the Site with separate Design-Builders under Owner's control, Design-Builder agrees to reasonably cooperate and coordinate its activities with those of such separate Design-Builders so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

2.7.6 Design-Builder shall keep the Site reasonably free from debris, trash and construction wastes to permit Design-Builder to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, Design-Builder shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit Owner to occupy the Project or a portion of the Project for its intended use.

2.8 Design-Builder's Responsibility for Project Safety

2.8.1 Design-Builder recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and (iii) all other property at the Site or adjacent thereto. Design-Builder assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work. Design-Builder shall, prior to commencing construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, Design-Builder's Safety Representative shall be an individual stationed at the Site who may have other responsibilities on the Project in addition to safety. The Safety Representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with Design-Builder's personnel, Subcontractors and others as applicable.

2.8.2 Design-Builder, Subcontractors and Sub-Subcontractors shall comply with all Legal Requirements relating to safety, as well as any Owner-specific safety requirements set forth in the Contract Documents, provided that such Owner-specific requirements do not violate any applicable Legal Requirement. Design-Builder will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to Owner's Representative and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.

2.8.3 Design-Builder's responsibility for safety under this Section 2.8 is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injury, losses, damages or accidents resulting from their performance of the Work.

2.9 Design-Builder's Warranty

2.9.1 Design-Builder warrants to Owner that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment. Design-Builder's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work by persons other than Design-Builder, his agents, Subcontractors or anyone for whose

acts Design-Builder may be liable. Nothing in this warranty is intended to limit any manufacturer's warranty which provides Owner with greater warranty rights than set forth in this Section 2.9 or the Contract Documents. Design-Builder will provide Owner with all manufacturers' warranties upon Substantial Completion.

2.10 Correction of Defective Work

2.10.1 Design-Builder agrees to correct any Work that is found to not be in conformance with the Contract Documents, including that part of the Work subject to Section 2.9 hereof, within a period of one year from the date of Substantial Completion of the Work or any portion of the Work, or within such longer period to the extent required by the Contract Documents.

2.10.2 Design-Builder shall, within seven (7) days of receipt of written notice from Owner that the Work is not in conformance with the Contract Documents, take meaningful steps to commence correction of such nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If Design-Builder fails to commence the necessary steps within such seven (7) day period, Owner, in addition to any other remedies provided under the Contract Documents, may provide Design-Builder with written notice that Owner will commence correction of such nonconforming Work with its own forces. If Owner does perform such corrective Work, Design-Builder shall be responsible for all reasonable costs incurred by Owner in performing such correction. If the nonconforming Work creates an emergency requiring an immediate response, the seven (7) day periods identified herein shall be deemed inapplicable.

2.10.3 The one-year period referenced in Section 2.10.1 above applies only to Design-Builder's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies Owner may have regarding Design-Builder's other obligations under the Contract Documents. The establishment of the time period of one year after the Date of Substantial Completion or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Contract Documents relates only to the specific obligation of the Design-Builder to correct the Work and has no relationship to the time within which his obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to his obligations other than specifically to correct the Work.

2.10.4 If the Owner prefers to accept defective or non-conforming Work, he may do so instead of requiring its removal and correction, in which case a Change Order will be issued to reflect a reduction in the contract Sum where appropriate and equitable. Such adjustment shall be effected whether or not the final payment has been made.

2.11 Uncovering of Work

2.11.1 If any portion of the Work should be covered contrary to the request of the Owner or to the requirements specifically expressed in the Contract Documents, it must, if required in writing by the Owner, be uncovered for the Owner's observation and shall be replaced at the Design-Builder's cost.

Article 3

Owner's Duties and Responsibilities

3.1 Duty to Cooperate

3.1.1 Owner shall, throughout the performance of the Work, cooperate with Design-Builder and perform its responsibilities, obligations and services in a timely manner to facilitate Design-Builder's timely and efficient performance of the Work and so as not to delay or interfere with Design-Builder's performance of its obligations under the Contract Documents.

3.1.2 Owner shall provide timely reviews and approvals of interim design submissions and Construction Documents consistent with the turnaround times set forth in Design-Builder's schedule.

3.2 Furnishing of Information

3.2.1 Unless expressly stated to the contrary in the Contract Documents, Owner shall provide, at its own cost and expense, for Design-Builder's information and use the following, all of which Design-Builder is entitled to rely upon in performing the Work:

- .1 Surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;
- .2 Geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site;
- .3 Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the Project and enable Design-Builder to perform the Work;
- .4 A legal description of the Site;
- .5 To the extent available, as-built and record drawings of any existing structures at the Site; and
- .6 To the extent available, environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Conditions, in existence at the Site.

3.2.2 Owner is responsible for securing and executing all necessary agreements with adjacent land or property owners that are necessary to enable Design-Builder to perform the Work. Owner is further responsible for all costs, including its own attorneys' fees, incurred in securing these necessary agreements.

3.3 Financial Information

3.3.1 At Design-Builder's request, Owner shall promptly furnish reasonable evidence satisfactory to Design-Builder that Owner has adequate funds available and committed to fulfill all of Owner's contractual obligations under the Contract Documents. If Owner fails to furnish such financial information in a timely manner, Design-Builder may stop Work under Section 11.3 hereof or exercise any other right permitted under the Contract Documents.

3.3.2 Design-Builder shall cooperate with the reasonable requirements of Owner's lenders or other financial sources. Notwithstanding the preceding sentence, after execution of the Agreement, the Design-Builder shall have no obligation to execute for Owner or Owner's lenders or other financial sources any documents or agreements that require Design-Builder to assume obligations or responsibilities greater than those existing obligations Design-Builder has under the Contract Documents. If the Design-Builder commences any Work outside of the Contract Documents that has not been approved in writing on the appropriate Change Order forms, he does so at his own risk.

3.4 Owner's Representative

3.4.1 Owner's Representative shall be responsible for providing Owner-supplied information and approvals in a timely manner to permit Design-Builder to fulfill its obligations under the Contract Documents. Owner's Representative shall also provide Design-Builder with prompt notice if it observes any failure on the part of Design-Builder to fulfill its contractual obligations, including any errors, omissions or defects in the performance of the Work.

3.5 Government Approvals and Permits

3.5.1 Owner shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees set forth in the Owner's Permit List attached to the Agreement as an exhibit.

3.6 Owner's Separate Design-Builders

3.6.1 Owner is responsible for all work performed on the Project or at the Site by separate Design-Builders under Owner's control. Owner shall contractually require its separate Design-Builders to cooperate with and coordinate their activities so as not to interfere with, Design-Builder in order to enable Design-Builder to timely complete the Work consistent with the Contract Documents.

Article 4 **Differing Site Conditions**

4.1 Differing Site Conditions

4.1.1 Concealed or latent physical conditions or subsurface conditions at the Site that (i) materially differ from the conditions indicated in the Contract Documents or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work are collectively referred to herein as "Differing Site Conditions." If Design-Builder encounters a Differing Site Condition, Design-Builder may be entitled to an adjustment in the Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance are adversely impacted by the Differing Site Condition.

4.1.2 Upon encountering a Differing Site Condition, Design-Builder shall provide prompt written notice to Owner of such condition, which notice shall not be later than two (2) days after such condition has been encountered. Design-Builder shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered.

Article 5 **Insurance and Bonds**

5.1 Design-Builder's Insurance Requirements

5.1.1 Design-Builder is responsible for procuring and maintaining from insurance companies authorized to do business in the state in which the Project is located, and with a minimum rating set forth in the Agreement, the following insurance coverages for certain claims which may arise from or out of the performance of the Work and obligations under the Contract Documents:

- .1** Coverage for claims arising under workers' compensation, disability and other similar employee benefit laws applicable to the Work;
- .2** Coverage for claims by Design-Builder's employees for bodily injury, sickness, disease, or death;
- .3** Coverage for claims by any person other than Design-Builder's employees for bodily injury, sickness, disease, or death;
- .4** Coverage for usual personal injury liability claims for damages sustained by a person as a direct or indirect result of Design-Builder's employment of the person, or sustained by any other person;
- .5** Coverage for claims for damages (other than to the Work) because of injury to or destruction of tangible property, including loss of use;
- .6** Coverage for claims of damages because of personal injury or death, or property damage resulting from ownership, use and maintenance of any motor vehicle; and
- .7** Coverage for contractual liability claims arising out of Design-Builder's obligations.

5.1.2 Design-Builder's liability insurance required by Section 5.1.1 above shall be written for the coverage amounts set forth in the Agreement and shall include completed operations insurance for the period of time set forth in the Agreement.

5.1.3 The Town of Taos requires the following addition to the specifications regarding insurance coverage: "The Contractor shall have the Town of Taos named as an additional insured on the Comprehensive General Liability form or Commercial Liability form furnished by the Contractor. The certificate of insurance shall state that the coverage provided under the policy is primary over any other valid and collectible insurance".

5.1.4 Design-Builder's liability insurance set forth in Sections 5.1.1.1 through 5.1.1.7 above shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project.

5.1.5 To the extent Owner requires Design-Builder or any Design Consultant to provide professional liability insurance for claims arising from the negligent performance of design services by Design-Builder or the Design Consultant, the coverage limits, duration and other specifics of such insurance shall be as set forth in the Agreement. Any professional liability shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project. Such policies shall be provided prior to the commencement of any design services hereunder.

5.1.6 Prior to commencing any construction services hereunder, Design-Builder shall provide Owner with certificates evidencing that (i) all insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect for the duration required by the Contract Documents and (ii) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days prior written notice is given to Owner.

5.2 Owner's Liability Insurance

5.2.1 Owner shall procure and maintain from insurance companies authorized to do business in the state in which the Project is located such liability insurance to protect Owner from claims which may arise from the performance of Owner's obligations under the Contract Documents or Owner's conduct during the course of the Project.

5.3 Owner's Property Insurance

5.3.1 Unless otherwise provided in this Contract, the Owner shall maintain builder's risk insurance or self-insurance, or a combination of insurance and self-insurance, upon the Work at the site for at least the actual cash value thereof. The builder's risk insurance shall cover the interests of the Owner, the Design-Builder, the Subcontractors, and the SubSubcontractors in the Work. The insurance shall insure against at least the following perils: fire, extended coverage, vandalism, and malicious mischief; provided that such coverage shall not extend to theft of building materials, which risk of loss shall be borne by the Design-Builder. If the Owner does not intend to purchase such insurance for at least the actual cash value of the Work, he shall inform the Design-Builder of such fact in writing prior to commencement of the Work. The Design-Builder shall then obtain builder's risk property insurance to protect the interests of the Owner, the Design-Builder, and his Subcontractors and SubSubcontractors in the Work; and the cost of such insurance shall, by appropriate change order, be charged to the Owner. If the Design-Builder is damaged by the Owner's failure to maintain at least the minimum insurance or self-insurance required by this Subparagraph 5.3.1 and the Owner has not notified the Design-Builder pursuant to the previous sentence, the Owner shall bear all reasonable costs arising from such failure. The Design-Builder shall maintain property insurance covering at least the perils stipulated above on portions of the Work stored off the site or in transit when such portions of the Work are to be included in an Application for Payment under Subparagraph 6.2.2.

5.3.2 [Intentionally omitted]

5.3.3 Any insured or self-insured loss under Subparagraph 5.3.1 is to be adjusted with the Owner and made payable to the Owner as trustee for the insureds, as their interests may appear, subject to the requirements of any applicable mortgagee clause. The Owner shall deposit the proceeds in a separate account and shall

distribute them in accordance with such agreement as the parties in interest, including the Owner, may reach. The Design-Builder shall pay each Subcontractor a just share of any insurance proceeds which the Design-Builder receives and shall require by written agreement signed by the Subcontractor that the Subcontractor make payments to his SubSubcontractors in a similar manner. If after such loss no other special agreement is made, replacement of damaged work shall be covered by an appropriate change order.

- 5.3.4** To the extent permitted under their respective property insurance policies, the Owner and the Design-Builder hereby waive all rights, each against the other, for damages caused by fire or other perils to the extent covered by insurance obtained pursuant to this Article or any other property insurance applicable to the Work, except such rights as they may have to the proceeds of such insurance held by the Owner as trustee. The Owner or the Design-Builder, as appropriate, shall require the Architect/Engineer, other Design-Builders, Subcontractors, and SubSubcontractors to similarly waive rights of subrogation of property insurance.
- 5.3.5** If the Owner finds it necessary to occupy or use any portion of the Work prior to Substantial Completion, such occupancy or use shall not commence prior to the time mutually agreed to by the Owner and the Design-Builder and, if required by the applicable insurance or self-insurance coverage, not prior to the time the builder's risk property insurer has consented to such occupancy or use. The Design-Builder's consent to such occupancy or use shall not be unreasonably withheld.

5.4 Bonds and Other Performance Security

- 5.4.1** If Owner requires Design-Builder to obtain performance and labor and material payment bonds, or other forms of performance security, the amount, form and other conditions of such security shall be as set forth in the Agreement.
- 5.4.2** The Design-Builder shall post a one hundred percent (100%) Performance Bond and a one hundred percent (100%) Labor and Material Payment Bond, with amount payable conforming to the terms of the Contract. Unless modified otherwise by the contract documents, the 100% bond requirement shall equal the accepted bid amount, excluding gross receipts tax. Surety shall be a company licensed to do business in the State of New Mexico and acceptable to the Owner. Said bonds must comply with the requirements of Chapter 109, Laws of 1987.
- 5.4.3** Special attention is called to the requirements of Sections 13-4-18 through 13-4-20, NMSA 1978, regarding a Design-Builder who does not have his principal place of business in the State of New Mexico, for all taxes due arising out of construction services rendered under the Contract.
- 5.4.4** The right to sue on this Bond accrues only to the Owner and the parties to whom Sections 13-4-18 through 13-4-20, NMSA 1978 grant such right; and any such right shall be exercised only in accordance with the provisions and limitations of said statutes.

Article 6 **Payment**

6.1 Schedule of Values

- 6.1.1** Within ten (10) days of execution of the Agreement, Design-Builder shall submit for Owner's review and approval a schedule of values for all of the Work. The Schedule of Values will (i) subdivide the Work into its respective parts, (ii) include values for all items comprising the Work and (iii) serve as the basis for monthly progress payments made to Design-Builder throughout the Work.
- 6.1.2** The Design/Builder shall include on his Pay Application a line item for close-out requirements. Final payment of the close-out line item will be made upon completion of all final close-out documents as outlined within Paragraph 6.7.2.

6.2 Monthly Progress Payments

6.2.1 On or before the date established in the Agreement, Design-Builder shall submit for Owner's review and approval its Application for Payment requesting payment for all Work performed as of the date of the Application for Payment. The Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents and/or established at the meeting required by Section 2.1.4 hereof.

6.2.2 The Application for Payment may request payment for equipment and materials not yet incorporated into the Project, provided that (i) Owner is satisfied that the equipment and materials are suitably stored at either the Site or another acceptable location, (ii) the equipment and materials are protected by suitable insurance and (iii) upon payment, Owner will receive the equipment and materials free and clear of all liens and encumbrances. The off-site materials must be in a separate designated area, insured and bonded and available for inspection by the Owner's representative.

6.2.3 The Application for Payment shall constitute Design-Builder's representation that the Work has been performed consistent with the Contract Documents, has progressed to the point indicated in the Application for Payment, and that title to all Work will pass to Owner free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project, or upon Design-Builder's receipt of payment, whichever occurs earlier.

6.3 Withholding of Payments

6.3.1 On or before the date established in the Agreement, Owner shall pay Design-Builder all amounts properly due. If the Owner receives an improperly completed Pay Application, the Owner shall notify the sender within seven (7) days of receipt in what way it is improperly completed, and the Owner has no further duty to pay on the improperly completed Pay Application until it is resubmitted as complete. If Owner determines that Design-Builder is not entitled to all or part of an Application for Payment, it will notify Design-Builder in writing at least five (5) days prior to the date payment is due. The notice shall indicate the specific amounts Owner intends to withhold, the reasons and contractual basis for the withholding, and the specific measures Design-Builder must take to rectify Owner's concerns. Design-Builder and Owner will attempt to resolve Owner's concerns prior to the date payment is due. If the parties cannot resolve such concerns, Design-Builder may pursue its rights under the Contract Documents, including those under Article 10 hereof. The Owner may reject part of the Certificate for Payment to such extent as may be necessary to prevent loss because of:

- .1 defective Work not remedied,
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims,
- .3 failure of the Design-Builder to make payments properly to Subcontractors or for labor, materials or equipment,
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum,
- .5 damage to the Owner or another contractor,
- .6 reasonable evidence that the Work will not be completed within the Contract time,
- .7 persistent failure to carry out the Work in accordance with the Contract Documents.

When the above grounds in Subparagraph 6.3.1 are removed, payment shall be made for the amounts withheld because of them.

6.3.2 Notwithstanding anything to the contrary in the Contract Documents, Owner shall pay Design-Builder all undisputed amounts in an Application for Payment within the times required by the Agreement.

6.4 Interest

6.4.1 If Owner fails to pay Design-Builder any amount that becomes due within the time allotted by Statute, all payments due and unpaid shall bear interest at the rate set forth in the Agreement.

6.5 Design-Builder's Payment Obligations

6.5.1 Design-Builder will pay Design Consultants and Subcontractors, in accordance with its contractual obligations

to such parties, all the amounts Design-Builder has received from Owner on account of their work. Design-Builder will impose similar requirements on Design Consultants and Subcontractors to pay those parties with whom they have contracted. Design-Builder will indemnify and defend Owner against any claims for payment and mechanic's liens as set forth in Section 7.3 hereof.

6.6 Substantial Completion

6.6.1 Design-Builder shall notify Owner when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work, is substantially complete. Within five (5) days of Owner's receipt of Design-Builder's notice, Owner and Design-Builder will jointly inspect such Work to verify that it is substantially complete in accordance with the requirements of the Contract Documents. If such Work is substantially complete, Design-Builder shall prepare and issue a Certificate of Substantial Completion that will set forth (i) the date of Substantial Completion of the Work or portion thereof, (ii) the remaining items of Work that have to be completed before final payment, (iii) provisions (to the extent not already provided in the Contract Documents) establishing Owner's and Design-Builder's responsibility for the Project's security, maintenance, utilities and insurance pending final payment and (iv) an acknowledgment that warranties commence to run on the date of Substantial Completion, except as may otherwise be noted in the Certificate of Substantial Completion.

6.6.2 Owner, at its option, may use a portion of the Work which has been determined to be substantially complete, provided, however, that (i) a Certificate of Substantial Completion has been issued for the portion of Work addressing the items set forth in Section 6.6.1 above, (ii) Design-Builder and Owner have obtained the consent of their sureties and insurers, and to the extent applicable, the appropriate government authorities having jurisdiction over the Project, and (iii) Owner and Design-Builder agree that Owner's use or occupancy will not interfere with Design-Builder's completion of the remaining Work.

6.7 Final Payment

6.7.1 After receipt of a Final Application for Payment from Design-Builder, Owner shall make final payment by the time required in the Agreement, provided that Design-Builder has completed all of the Work in conformance with the Contract Documents.

6.7.2 At the time of submission of its Final Application for Payment document, Design-Builder shall provide the following information with 4 original copies:

- .1** an Affidavit of Payments, certifying that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect Owner's interests;
- .2** a general release executed by Design-Builder waiving, upon receipt of final payment by Design-Builder, all claims, except those claims previously made in writing to Owner and remaining unsettled at the time of final payment;
- .3** consent of Design-Builder's surety, if any, to final payment;
- .4** Certificate of Final Completion, Town of Taos document;
- .5** all Maintenance & Operations manuals, warranties and other deliverables required by the Contract Documents; and
- .6** certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents.
- .7** submit certified copy of architect's Substantial Completion inspection list of items to be completed or corrected (punch list), endorsed and dated by Architect. The certified copy of the list shall state each item has been completed or otherwise resolved for acceptance.

- .8 instruct Owner's personnel in operation, adjustment, and maintenance of products, equipment and systems.
- .9 prepare and submit Project Record Documents, ie. as-built drawings.
- .10 deliver tools, spare parts, extra materials, and similar items to the location designated by Owner.
- .11 re-inspection: Request re-inspection when the Work identified in previous inspections as incomplete is completed or corrected. Results of completed inspection will form the basis for Final Completion.

6.7.3 The making of final payment shall constitute a waiver of all claims by the Owner except those arising from: (i) Unsettled liens or claims, or Design-Builder's failure to satisfy its payment obligations, if such failure affects Owner's interests, (ii) failure of the Work to comply with the requirements of the Contract Documents, including defects or faulty work appearing after Substantial Completion and (iii) the terms of any special warranties required by the Contract Documents.

Article 7 **Indemnification**

7.1 Patent and Copyright Infringement

7.1.1 Design-Builder shall defend any action or proceeding brought against Owner based on any claim that the Work, or any part thereof, or the operation or use of the Work or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. Owner shall give prompt written notice to Design-Builder of any such action or proceeding and will reasonably provide authority, information and assistance in the defense of same. Design-Builder shall indemnify and hold harmless Owner from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against Owner or Design-Builder in any such action or proceeding. Design-Builder agrees to keep Owner informed of all developments in the defense of such actions.

7.1.2 If Owner is enjoined from the use of the Work, or any part thereof, as the result of any patent or copyright suit, claim, or proceeding, Design-Builder shall at its sole expense take reasonable steps to procure the right to operate or use the Work. If Design-Builder cannot so procure such right within a reasonable time, Design-Builder shall promptly, and at Design-Builder's expense, (i) modify the Work so as to avoid infringement of any such patent or copyright or (ii) replace said Work with Work that does not infringe or violate any such patent or copyright.

7.1.3 The obligations set forth in this Section 7.1 shall constitute the sole agreement between the parties relating to liability for infringement of violation of any patent or copyright.

7.2 Payment Claim Indemnification

7.2.1 Design-Builder shall indemnify, defend and hold harmless Owner from any claims or mechanic's liens brought against Owner or against the Project as a result of the failure of Design-Builder, or those for whose acts it is responsible, to pay for any services, materials, labor, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Work. Within three (3) days of receiving written notice from Owner that such a claim or mechanic's lien has been filed, Design-Builder shall commence to take the steps necessary to discharge said claim or lien, including, if necessary, the furnishing of a mechanic's lien bond. If Design-Builder fails to do so, Owner will have the right to discharge the claim or lien and hold Design-Builder liable for costs and expenses incurred, including attorneys' fees.

7.3 Design-Builder's General Indemnification

7.3.1 Design-Builder shall indemnify, hold harmless and defend Owner, its officers, directors, employees and agents from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for bodily injury,

sickness or death, and property damage or destruction to the extent resulting from the negligent acts or omissions of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable.

7.3.2 If an employee of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable has a claim against Owner, its officers, directors, employees, or agents, Design-Builder's indemnity obligation set forth in Section 7.3.1 above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Design-Builder, Design Consultants, Subcontractors, or other entity under any employee benefit acts, including workers' compensation or disability acts.

Article 8 **Time and Schedule**

8.1 Project Schedule

8.1.1 Design-Builder shall submit a final project schedule as described in Article 2.1. The progress schedule shall be revised by the Design-builder at least monthly to reflect all changes in contract Work and adjustments in time, money, or both that are approved by the Owner. The schedule shall show the date of commencement of work on each pertinent phase or item of construction, percentage of scheduled completion at the end of each fifteen (15) days, and the date of completion of each phase or item of work. The progress schedule shall indicate labor, materials, and equipment actually incorporated in the Work (construction in place). No progress shall be indicated for materials and equipment on the site but not incorporated into the Work. The schedule shall be submitted each month with the Pay Request, in duplicate. No payment will be made without the progress schedule.

8.2 Obligation to Achieve the Contract Times

8.2.1 Design-Builder agrees that it will commence performance of the Work and achieve the Contract Time(s) in accordance with Article 3 of the Agreement.

8.2.1 Liquidated Damages: It is expressly understood and agreed by and between the Owner and the Contractor that the Contract Time set forth is a reasonable time for completion of the Work, taking into consideration the average climatic range and usual industrial conditions prevailing in the locality of the Project. The Owner will suffer financial loss if the Project is not Substantially Complete within the Contract Time. Therefore, in partial consideration for award of the Work, if the Contractor should fail to achieve Substantial Completion within the Contract Time or proper extension thereof, the Contractor (and the Surety) agrees to pay the Owner the amount stated (if any) in the Owner-Contractor agreement as Liquidated Damages (not as a penalty).

8.3 Delays to the Work

8.3.1 If Design-Builder is delayed in the performance of the Work due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom Design-Builder is responsible, the Contract Time(s) for performance shall be reasonably extended by Change Order. By way of example, events that will entitle Design-Builder to an extension of the Contract Time(s) include acts or omissions of Owner or anyone under Owner's control (including separate Design-Builders), changes in the Work, Differing Site Conditions, Hazardous Conditions, wars, floods, labor disputes, unusual delay in transportation, epidemics abroad, earthquakes, adverse weather conditions not reasonably anticipated, and other acts of God.

8.3.2 In addition to Design-Builder's right to a time extension for those events set forth in Section 8.2.1 above, Design-Builder shall also be entitled to an appropriate adjustment of the Contract Price provided, however, that the Contract Price shall not be adjusted for those events set forth in Section 8.2.1 above that are beyond the control of both Design-Builder and Owner, including the events of war, floods, labor disputes, earthquakes, epidemics, adverse weather conditions not reasonably anticipated, and other acts of God.

8.3.3 Any claim for an extension of time shall be made in writing to the Owner not more than twenty days after the commencement of the delay; otherwise it shall be waived. In the case of a continuing delay, only one claim is necessary. The Design-Builder shall provide an estimate of the probable effect of such delay on the progress of the Work.

Article 9 **Changes to the Contract Price and Time**

9.1 Change Orders

9.1.1 A Change Order is a written instrument issued after execution of the Agreement signed by Owner and Design-Builder, stating their agreement upon all of the following:

- .1** The scope of the change in the Work;
- .2** The amount of the adjustment to the Contract Price; and
- .3** The extent of the adjustment to the Contract Time(s).

9.1.2 All changes in the Work authorized by applicable Change Order shall be performed under the applicable conditions of the Contract Documents. Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for such changes.

9.2.2 Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for the Work Change Directive. Upon reaching an agreement, the parties shall prepare and execute an appropriate Change Order reflecting the terms of the agreement.

9.3 Minor Changes in the Work

9.3.1 Minor changes in the Work do not involve an adjustment in the Contract Price and/or Contract Time(s) and do not materially and adversely affect the Work, including the design, quality, performance and workmanship required by the Contract Documents. Design-Builder may make minor changes in the Work consistent with the intent of the Contract Documents, provided, however that Design-Builder shall promptly inform Owner, in writing, of any such changes, obtain the Owner's approval and record such changes on the documents maintained by Design-Builder.

9.4 Contract Price Adjustments

9.4.1 By submission of a Bid, the Design-Builder agrees and binds himself to the following method of calculating change order costs. The Owner also agrees to the following method of calculating the cost of any changes to the Contract. With each proposal for a change in the amount of the contract, the Design-Builder shall submit an itemized breakdown of all increases or decreases in the cost of the Design-Builder's and all Subcontractors' or SubSubcontractors' work to include at least the following detail in the general order listed:

9.4.1.1 Material quantities and unit costs;

9.4.1.2 Labor amounts and hourly rates (identified with specific items of material to be placed or operation to be performed) and labor burden (FICA, FUTA, SUTA, Pension, Worker's Compensation Insurance, General Liability & Group Insurance if any:

9.4.1.3 Costs inherent in the use of equipment owned by the Design-Builder, the Subcontractors, and/or the Sub Subcontractors: Attach a itemizes list of equipment and vehicles with license plate numbers.

9.4.1.4 Equipment rental, if any;

9.4.1.5 A maximum of 1% mark-up for Bonds

9.4.1.6 A maximum of 1% mark-up for Insurances

9.4.1.7 NM gross receipts tax (Design-Builder only)

9.4.1.8 General administration, overhead, supervision, project insurance, and profit, based on the following schedule (subtotal before applying the percentage shown):

NOTE: “General administration, Overhead and Supervision” include but are not limited to the following: Superintendent(s), Asst. Superintendent(s), Project Engineer(s), Project Manager(s), Scheduler(s), Estimator(s), Vehicles and the cost of operating vehicles listed in 12.1.6.3, Drafting or Detailing, Small Tools (replacement value not to exceed \$300.00) Office Expenses including staff, materials and supplies, On-site or Off-site trailers and storage rental and expenses, Site Fences Utilities including gas, electricity, sewer, telephone, fax and copier equipment, Data processing personnel and equipment. (These are not to be included in the “cost of work” because they are part of the markup agreed to and indicated in the chart below.)

	<i>\$500 and Less</i>	<i>\$501 to 5% of Contract</i>	<i>Over 5% of Contract Negotiable</i>
Design-Builder for Work performed by his own forces	10%	8%	negotiable
Design-Builder for Work performed by Subcontractor	10%	8%	negotiable
Subcontractor for Work performed by his own forces	10%	8%	negotiable
Subcontractor for Work performed by SubSubcontractor	10%	8%	negotiable
SubSubcontractor for Work performed by his own forces	10%	8%	negotiable

9.4.2 If Owner and Design-Builder disagree upon whether Design-Builder is entitled to be paid for any services required by Owner, or if there are any other disagreements over the scope of Work or proposed changes to the Work, Owner and Design-Builder shall resolve the disagreement pursuant to Article 10 hereof. As part of the negotiation process, Design-Builder shall furnish Owner with a good faith estimate of the costs to perform the disputed services in accordance with Owner's interpretations. If the parties are unable to agree and Owner expects Design-Builder to perform the services in accordance with Owner's interpretations, Design-Builder shall proceed to perform the disputed services, conditioned upon Owner issuing a written order to Design-Builder (i) directing Design-Builder to proceed and (ii) specifying Owner's interpretation of the services that are to be performed.

9.4.3 The quotation for Work under a change order shall be binding for sixty (60) days from the date submitted by the Contractor.

9.5 Emergencies

9.5.1 In any emergency affecting the safety of persons and/or property, Design-Builder shall act, at its discretion, to prevent threatened damage, injury or loss.

Article 10 **Disputes**

10.1 Dispute Avoidance and Resolution

10.1.1 The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Design-Builder and Owner each commit to resolving such disputes or disagreements in an

amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.

10.1.2 Design-Builder and Owner will first attempt to resolve disputes or disagreements at the field level through discussions between Design-Builder's Representative and Owner's Representative.

10.1.3 If a dispute or disagreement cannot be resolved through Design-Builder's Representative and Owner's Representative, Design-Builder's Senior Representative and Owner's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement. Prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement.

10.2 Duty to Continue Performance

10.2.1 Unless provided to the contrary in the Contract Documents, Design-Builder shall continue to perform the Work and Owner shall continue to satisfy its payment obligations to Design-Builder, pending the final resolution of any dispute or disagreement between Design-Builder and Owner.

10.3 CONSEQUENTIAL DAMAGES

10.3.1 NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY (EXCEPT AS SET FORTH IN SECTION 10.3.2 BELOW), NEITHER DESIGN-BUILDER NOR OWNER SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL LOSSES OR DAMAGES, WHETHER ARISING IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO LOSSES OF USE, PROFITS, BUSINESS, REPUTATION OR FINANCING.

10.3.2 The consequential damages limitation set forth in Section 10.3.1 above is not intended to affect the payment of liquidated damages, if any, set forth in Article 3 of the Agreement, which both parties recognize has been established, in part, to reimburse Owner for some damages that might otherwise be deemed to be consequential.

Article 11 **Stop Work and Termination**

11.1 Owner's Right to Stop Work or Terminate for Convenience

11.1.1 Owner may, without cause and for its convenience, order Design-Builder in writing to stop and suspend the Work.

11.1.2 The Agreement may be terminated by the Owner without cause upon written notice delivered to the Design-Builder at least 10 days prior to the intended date of termination. By such termination, the Owner may not nullify obligations already incurred for performance or failure to perform prior to the date of termination. In such event, Owner shall pay the Design-Builder for all work executed, reasonable costs and expenses attributable to such termination, including demobilization costs.

11.1.3 Design-Builder is entitled to seek an adjustment of the Contract Price and/or Contract Time(s) if its cost or time to perform the Work has been adversely impacted by any suspension of stoppage of work or termination for convenience by Owner.

11.2 Owner's Right to Perform and Terminate for Cause

11.2.1 If Design-Builder persistently fails to (i) provide a sufficient number of skilled workers, (ii) supply the materials required by the Contract Documents, (iii) comply with applicable Legal Requirements, (iv) timely pay, without cause, Design Consultants or Subcontractors, (v) prosecute the Work with promptness and diligence to ensure that the Work is completed by the Contract Time(s), as such times may be adjusted, or (vi) perform material

obligations under the Contract Documents, then Owner, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth in Sections 11.2.2 and 11.2.3 below.

11.2.2 Upon the occurrence of an event set forth in Section 11.2.1 above, Owner may provide written notice to Design-Builder that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Design-Builder's receipt of such notice. If Design-Builder fails to cure, or reasonably commence to cure, such problem, then Owner may give a second written notice to Design-Builder of its intent to terminate within an additional three (3) day period. If Design-Builder, within such second three (3) day period, fails to cure, or reasonably commence to cure, such problem, then Owner may declare the Agreement terminated for default by providing written notice to Design-Builder of such declaration.

11.2.3 Upon declaring the Agreement terminated pursuant to Section 11.2.2 above, Owner may enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which Design-Builder hereby transfers, assigns and sets over to Owner for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items. In the event of such termination, Design-Builder shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, if the unpaid balance of the Contract Price exceeds the cost and expense incurred by Owner in completing the Work, such excess shall be paid by Owner to Design-Builder. Notwithstanding the preceding sentence, if the Agreement establishes a Guaranteed Maximum Price, Design-Builder will only be entitled to be paid for Work performed prior to its default. If Owner's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then Design-Builder shall be obligated to pay the difference to Owner. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by Owner in connection with the re-procurement and defense of claims arising from Design-Builder's default, subject to the waiver of consequential damages set forth in Section 10.5 hereof.

11.2.4 If Owner improperly terminates the Agreement for cause, the termination for cause will be converted to a termination for convenience in accordance with the provisions of 11.1.1.

11.2.5 Appropriations: The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, this Agreement shall terminate upon written notice being given by the Owner to the Design-Builder. The Owner's determination that sufficient appropriations are not available shall be accepted by the Design-Builder and shall be final.

11.3 Design-Builder's Right to Stop Work

11.3.1 Design-Builder may, in addition to any other rights afforded under the Contract Documents or at law, stop work for the following reasons:

- .1 Owner's failure to provide financial assurances as required under Section 3.3 hereof; or
- .2 Owner's failure to pay amounts properly due under Design-Builder's Application for Payment.

11.3.2 Should any of the events set forth in Section 11.3.1 above occur, Design-Builder has the right to provide Owner with written notice that Design-Builder will stop work unless said event is cured within seven (7) days from Owner's receipt of Design-Builder's notice. If Owner does not cure the problem within such seven (7) day period, Design-Builder may stop work. In such case, Design-Builder shall be entitled to make a claim for adjustment to the Contract Price and Contract Time(s) to the extent it has been adversely impacted by such stoppage.

11.4 Design-Builder's Right to Terminate for Cause

11.4.1 Design-Builder, in addition to any other rights and remedies provided in the Contract Documents or by law,

may terminate the Agreement for cause for the following reasons:

- .1 The Work has been stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, because of court order, any government authority having jurisdiction over the Work, or orders by Owner under Section 11.1.1 hereof, provided that such stoppages are not due to the acts or omissions of Design-Builder or anyone for whose acts Design-Builder may be responsible.
- .2 Owner's failure to provide Design-Builder with any information, permits or approvals that are Owner's responsibility under the Contract Documents which result in the Work being stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, even though Owner has not ordered Design-Builder in writing to stop and suspend the Work pursuant to Section 11.1.1 hereof.
- .3 Owner's failure to cure the problems set forth in Section 11.3.1 above after Design-Builder has stopped the Work.

11.4.2 Upon the occurrence of an event set forth in Section 11.4.1 above, Design-Builder may provide written notice to Owner that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Owner's receipt of such notice. If Owner fails to cure, or reasonably commence to cure, such problem, then Design-Builder may give a second written notice to Owner of its intent to terminate within an additional seven (7) day period. If Owner, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Design-Builder may declare the Agreement terminated for default by providing written notice to Owner of such declaration. In such case, Design-Builder shall be entitled to recover in the same manner as if Owner had terminated the Agreement for its convenience under Article 8 of the Agreement.

11.5 Bankruptcy of Design-Builder

11.5.1 If Design-Builder institutes or has instituted against it a case under the United States Bankruptcy Code (such party being referred to as the "Bankrupt Party"), such event may impair or frustrate the Bankrupt Party's ability to perform its obligations under the Contract Documents. Accordingly, should such event occur:

- .1 The Bankrupt Party, its trustee or other successor, shall furnish, upon request of the Owner, adequate assurance of the ability of the Bankrupt Party to perform all future material obligations under the Contract Documents, which assurances shall be provided within ten (10) days after receiving notice of the request; and
- .2 The Bankrupt Party shall file an appropriate action within the bankruptcy court to seek assumption or rejection of the Agreement within sixty (60) days of the institution of the bankruptcy filing and shall diligently prosecute such action.

If the Bankrupt Party fails to comply with its foregoing obligations, the Owner shall be entitled to request the bankruptcy court to reject the Agreement, declare the Agreement terminated and pursue any other recourse available to the Owner under this Article 11.

11.5.2 The rights and remedies under Section 11.5.1 above shall not be deemed to limit the ability of the Owner to seek any other rights and remedies provided by the Contract Documents or by law, including its ability to seek relief from any automatic stays under the United States Bankruptcy Code.

Article 12 **Miscellaneous**

12.1 Assignment

12.1.1 Neither Design-Builder nor Owner shall, without the written consent of the other assign, transfer or sublet any portion or part of the Work or the obligations required by the Contract Documents.

12.2 Successorship

12.2.1 Design-Builder and Owner intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

12.3 Headings

12.3.1 The headings used in these General Conditions of Contract, or any other Contract Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

12.4 Notice

12.4.1 Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given (i) if delivered in person to the individual intended to receive such notice, (ii) four (4) days after being sent by registered or certified mail, postage prepaid to the address indicated in the Agreement or (iii) if transmitted by facsimile, by the time stated in a machine generated confirmation that notice was received at the facsimile number of the intended recipient.

12.5 Amendments

12.5.1 The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

12.6 Ownership and Use of Documents

12.6.1 Original construction document drawings, designs, specifications, notes, project manuals, and/or related documents and other work developed in the performance of this Agreement by the Design-Builder shall become the sole property of the Owner whether the Project for which they are made is constructed or not, pursuant to Section 13-1-123, NMSA 1978. These documents shall be kept on file by the Owner. The Design-Builder may maintain a complete reproducible set of any and all record documents developed under this Agreement.

12.6.2 All documents, including drawings and specifications prepared by the Design-Builder pursuant to this Agreement are instruments of service in respect to the Project. They are not intended or represented to be suitable for reuse by the Owner on any other project.

12.6.3 The original drawings may be marked by the Owner or the Design-Builder to designate the restrictions of use of these documents set forth in Paragraph 12.6.2.

12.6.4 Copyright: No reports, maps, or other documents produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of the Design-Builder.

SUPPLEMENTARY CONDITIONS

MODIFICATION TO GENERAL CONDITIONS

None

ADDITIONAL CONDITIONS

1.0 Gross Receipts Tax Changes:

1.1 Any increase or decrease in New Mexico gross receipts tax enacted after the date of the Design-Build contract shall result in a similar increase or decrease in the Contract Sum by appropriate amendment.

2.0 Testing:

2.1 All testing required by the Contract Documents, and retesting required as a result of the failure of the first or subsequent tests, including but not limited to testing for job mix formulae and design mixes, shall be performed by a testing laboratory under the direct supervision of a Registered Professional Engineer licensed to practice in the State of New Mexico, and shall be paid for by the Design-Builder.

2.2 All sampling, transportation, and storage of samples, testing, and reporting shall be undertaken by representatives of the testing laboratory. No sampling, transportation, and storage of samples, nor testing, nor reporting shall be undertaken by the Owner, the Design-Builder, or the Subcontractors.

2.3 Two copies of all test reports shall be furnished directly to the Design-Builder by the testing laboratory, and one copy directly to the Owner. All test reports shall be numbered sequentially.

3.0 Insurance:

3.1 The limits of liability for the insurance required by Subparagraph 11.1.1 shall provide coverage for not less than the following amounts, or greater if required by law:

<i>Type of Coverage Required</i>	<i>Minimum Limits of Liability</i>
----------------------------------	------------------------------------

1.	Workman's Compensation (including accident and disease coverage)	Statutory
2.	Employer's Liability	\$100,000
3.	Comprehensive General Liability (including endorsements providing broad form property damage coverage, personal injury coverage, and contractual assumption of liability coverage for all liability the Design-Builder has assumed under this Contract)	Bodily Injury: \$300,000 per person / \$500,000 per occurrence, and Property Damage; or combined single limit coverage of \$500,000 per occurrence.
4.	Auto liability (including non-owned auto coverage)	Same limits as General Liability
5.	Umbrella	\$5,000,000
6.	Architect or Engineer's Errors & Omissions Policy	\$1,000,000

Change Orders: The following format shall be used when calculating change order costs.

CHANGE ORDER PROPOSAL WORK SHEET

CONTRACT CHANGE ORDER PROPOSAL NO. _____

DATE: _____

PROJECT _____

PROJECT NO: _____

DESCRIPTION OF PROPOSED WORK:

SUBCONTRACTOR'S COSTS (ATTACH SUBCONTRACTOR'S SUMMARY SHEET AND COST BREAKDOWNS)

- 1. Subcontractor's Labor Cost, including fringe benefits and labor burden @ _____%*: _____
- 2. Subcontractor's material (itemized worksheet must be attached): _____
- 3. Subtotal: _____
- 4. Subcontractor's profit: _____%*: _____
- 5. Subcontractor's total costs: _____

DESIGN-BUILDER'S COSTS (ATTACH WORKSHEETS)

- 6. General Design-Builder's/ AE Labor Cost, including fringe benefits and labor burden @ _____%*: _____
- 7. Material (itemized worksheet must be attached): _____
- 8. Construction equipment (Design-Builder owned): _____
- 9. Construction equipment (rental): _____
- 10. Outside Professional Fees: _____
- 11. Subtotal: _____
- 12. General Design-Builder's/AE Overhead and Profit on Subcontractor _____

- (_____) % off line 3): **
13. General Design-Builder's/AE Administration, Overhead and Profit,
supervision on work by General Design-Builder's forces
(_____ %of line 3):**
14. Subtotal (lines 5,11,12 13): _____
15. Bond (_____ %off line 14) _____
16. Subtotal (lines 14,15): _____
17. Gross receipts tax (_____ %)
18. TOTAL COST: _____
19. Number of days required to perform this work: _____

* Labor Burden, consisting of the following factors. Provide backup detail of labor burden percentage if required: Net Labor Burden = _____%

1. FICA
2. FUTA
3. SUTA
4. Pension
5. Worker's Compensation Insurance
6. General Liability
7. Group Insurance (if any)

** Percentage may not exceed those shown in Table of Allowable Percentages

The quotation for Work under a change order shall be binding for sixty (60) days from the date submitted by the Design-Builder

5.0 Equal Opportunity Compliance:

5.1 The Design-Builder, all Subcontractors, and all SubSubcontractors agree to abide by all federal and state laws and ordinances of the Town of Taos, pertaining to equal employment opportunity. In accordance with all such laws and ordinance, the Design-Builder agrees to assure that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, or, if the employer has fifty or more employees, spousal affiliation, or, if the employer has fifteen or more employees, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Design-Builder is found not to be in compliance with these requirements during the life of this Agreement, Design-Builder agrees to take appropriate steps to correct these deficiencies. The Design-Builder all Subcontractors, and all SubSubcontractors shall take affirmative action to ensure that applicants are employed and that employees are treated during employment in compliance with the equal opportunity clause above. Such action shall include, but not be limited to, the following:

Employment	Recruitment or Recruitment Advertising
Upgrading	Layoff or Termination
Demotion	Rates of Pay or Other Forms of Compensation
Transfer	Selection for Training (including apprenticeship)

The Design-Builder agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of nondiscrimination.

5.2 The Design-Builder, all Subcontractors, and all SubSubcontractors shall, in all solicitation or advertisement for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, or national origin.

6.0 Minimum Wage Rates

6.1 The Design-Builder warrants and agrees that it and all Subcontractors and SubSubcontractors will comply with all applicable provisions of the New Mexico Public Works Minimum Wage Act as outlined in the Contract Documents. Wage rates are not applicable to projects costing less than \$20,000. The Design-Builder and his Subcontractors shall deliver by mail copies of certified weekly payroll in accordance with the regulations under "Minimum Wage Rates" to the office of the State Labor Commission, Santa Fe, New Mexico 87501, address as stated in the Determination.

7.0 Contract Audit

The Owner shall be entitled to audit the books and records of a Design-Builder or any Subcontractor under any negotiated contract or subcontract other than a firm fixed-price contract to the extent that such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the Design-Builder for a period of three years from the date of final payment under the prime Contract and by the Subcontractor for a period of three years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing (13-1-16, NMSA 1978).

8.0 Debarred or Suspended Design-Builders or Contractor or Architect/Engineer

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

9.0 Bribes, Gratuities, and Kickbacks

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

9.2 Pursuant to Section 13-1-191, NMSA 1978, reference is hereby made to the Criminal Laws of New Mexico (including 30-24-1, 30-24-2, and 30-41-1 through 30-41-3, NMSA 1978), which prohibit bribes, kickbacks, and gratuities, and violation of which constitutes a felony. Further, the Procurement code (13-1-28 through 13-1-199, NMSA 1978) imposes civil and criminal penalties for its violation.

10.0 Nonresident Design-Builder's Requirements: Gross Receipts Tax Surety Bond

10.1 Section 7-1-55A, NMSA 1978 provides that any person (as defined in Section 7-1-3, NMSA 1978) engaged in the construction business who does not have his principal place of business in New Mexico and enters into a prime construction contract to be performed in this State shall, at the time such contract is entered into, furnish the Director of the Revenue Division, Taxation and Revenue Department, or his delegate with a surety bond or other acceptable security in a sum equivalent to the gross receipts tax to be paid under the contract multiplied by the applicable rate of the gross receipts tax imposed by Section

7-9-4, NMSA 1978 to secure payment of the tax imposed on the gross receipts from the Contract. He shall obtain a certificate from the Director of the Revenue Division, Taxation and Revenue Department, or his delegate that the requirements of this paragraph have been met.

10.2 If the total sum to be paid under the Contract is changed by ten percent (10%) or more after the date the surety bond or other acceptable security is furnished to the Director or his delegate, such person shall increase or decrease, as the case may be, the amount of the bond or security within fourteen (14) days after the change (7-1-55B, NMSA 1978).

10.3 In addition to the above requirements, the Design-Builder will be subject to all the requirements of Section 7-1-55, NMSA 1978.

11.0 Design-Builder's Gross Receipts Tax Registration

11.1 Section 7-10-4, NMSA 1978 provides that any person (as defined in Section 7-10-3, NMSA 1978) performing services for the state or any local public body, as those terms are used in the Gross Receipts and Compensating Tax Act (Sections 7-10-1 through 7-10-5, NMSA 1978), must be registered and be issued an identification number with the Revenue Division of the Taxation and Revenue Department to pay the gross receipts tax.

11.2 The identification number is needed to properly complete the approval process of the Contract; therefore, so as to cause no delay in the processing, the Design-Builder must register with the Division. For information, contact:

Revenue Division
Taxation and Revenue Department
Manuel Lujan Building
1200 St. Francis Drive
Santa Fe, New Mexico 87503
TELEPHONE; (505) 988-2290

11.4 If any person who performs services for the Town of Taos is not registered to pay the gross receipt tax, the Town shall withhold payment of the amount due until the person has presented evidence of registration with the Revenue Division to pay the gross receipts tax.

12.0 Assignment of Antitrust Claims

12.1 The Design-Builder agrees that any and all claims that the Design-Builder may have or that may inure to the Design-Builder for overcharges resulting from antitrust violations as to goods, services, and materials purchased in connection with this Bid are hereby assigned to the Town of Taos, but only to the extent that such overcharges are passed on to the Town. The Design-Builder further agrees to require each of its Suppliers, Subcontractors, and SubSubcontractors to assign any and all such claims for overcharges to the Town by executing an assignment on the form provided by the Owner for such purpose. The executed form (see _____) shall be submitted prior to the commencement of the Work or the supplying of any materials by the Supplier, Subcontractor, or SubSubcontractor. The submission of this executed form may be waived by the Owner upon a showing of a good-faith effort by the Design-Builder to obtain agreement in writing from his Supplier, Subcontractor, or SubSubcontractor. Waiver by the Owner may not unreasonably be denied.

12.2 It is agreed that the Design-Builder retains all rights to any such antitrust claims to the extent of any overcharges not passed on to the Town, including the right to any treble damages attributable thereto.

13.0 Contracts with Nonresident Persons or Partnerships or Unadmitted Foreign Corporations; Agent for Service of Process

Special attention of Bidders is called to requirements of Sections 13-4-21 through 13-4-24, NMSA 1978, whereby a public works contract with a nonresident person or partnership or foreign corporation not authorized to do business in the State shall contain a specific provision designating an agent resident within the State, and his address, upon whom process and writs in any action or proceeding against such business may be served in any action arising out of such contract.

14.0 Allowances

14.1 N/A

INSTRUCTIONS:

The State Minimum Wage Rate Determination and related documents issued for this specific project shall be inserted here. (CONTAINED IN CONTRACT DOCUMENTS)

CHANGE ORDER

PROJECT:

CONTRACT NO.

CHANGE ORDER NO:

CHANGE ORDER JUSTIFICATION (Provide definitive reason for proposed change order.)

You are directed to make the following changes in this Contract: (Provide a detailed description of the Scope of the Work.)

NOT VALID UNTIL SIGNED BY BOTH THE OWNER AND THE DESIGN-BUILDER. Signature of the Contractor indicates his agreement herewith, including any adjustment in the Contract Sum or Contract Time.

The Original Contract Sum was
Net change by previously authorized Change Orders
The Contract Sum prior to this Change Order was
The Contract Sum will be increased/decreased/unchanged
by this Change Order in the amount of.....
The new Contract Sum including this Change Order will be
The Contract Time will be increased/decreased/unchanged by days.
The date of Substantial Completion as of the date of this Change Order therefore is:

OWNER - THE TOWN OF TAOS:

_____ Date

Approved as to form:

_____ Date

Attorney for the Town of Taos

Finance Department

Finance Director

Date

DESIGN-BUILDER:

(signature and title)

Date

CERTIFICATE OF FINAL COMPLETION

AGREEMENT/ PROJECT NUMBER:

CONTRACT DATE:

PROJECT NAME:

SUBSTANTIAL
COMPLETION DATE:

FINAL COMPLETION is defined as the date certified by the OWNER when all the Work of the Project is fully complete, the Contract fully performed in accordance with the Contract Documents, and the Design-Builder entitled to final payment.

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

Architect: _____

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

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

- Application for Final Payment
- Affidavit of Payments
- Consent of Surety
- Release of Liens

DESIGN-BUILDER:

(signature and title)

Date

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

OWNER: The Town of Taos
 400 Camino de la Placita
 del Oro Taos, New
 Mexico. 87571

(signature)

Date



LABOR RELATIONS DIVISION

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

226 South Alameda Blvd
 Las Cruces, NM 88005
 Phone: 575-524-6195
 Fax: 575-524-6194

WWW.DWS.STATE.NM.US

1596 Pacheco St, Suite 103
 Santa Fe, NM 87505
 Phone: 505-827-6817
 Fax: 505-827-9676

Wage Decision Approval Summary

1) Project Title: Town of Taos Wastewater Treatment Plant Solar Project
 Requested Date: 02/05/2020
 Approved Date: 02/06/2020
 Approved Wage Decision Number: TA-20-0270-A

Wage Decision Expiration Date for Bids: 06/05/2020

2) Physical Location of Jobsite for Project:
 Job Site Address: 122 Los Cordovas Dr
 Job Site City: Ranchos de Taos
 Job Site County: Taos

3) Contracting Agency Name (Department or Bureau): Town of Taos
 Contracting Agency Contact's Name: Francisco Espinoza
 Contracting Agency Contact's Phone: (575) 751-2047 Ext.

4) Estimated Contract Award Date: 06/01/2020

5) Estimated total project cost: \$2,000,000.00
 a. Are any federal funds involved?: Yes - \$2,000,000.00
 b. Does this project involve a building?: No
 c. Is this part of a larger plan for construction on or appurtenant to the property that is subject to this project?: No
 d. Are there any other Public Works Wage Decisions related to this project?: No
 e. What is the ultimate purpose or functional use of the construction once it is completed?:
 Generation of renewable energy to offset electric utility costs of the Town of Taos WWTP

6) Classifications of Construction:

Classification Type and Cost Total	Description
Highway/Utilities (A) Cost: \$2,000,000.00	The proposed project will be located at the Towns WWTP (182 Los Cordovas Dr, Ranchos De Taos, NM 87557), on land owned by the Town of Taos located in Los Cordovas area within Taos County. The project will consist of two solar PV systems: <input checked="" type="checkbox"/> A 1 megawatt PV system will be constructed on approximately 7 acres in a vacant field to the southwest and directly adjacent to main WWTP facility. The field was previously used by the Town to landfarm sludge generated at the WWTP. <input checked="" type="checkbox"/> An 80 kW net metered PV system with battery capacity will be constructed on approximately 0.2 acre located within the fenced area of the main WWTP, near the MBR building.

The Town of Taos will hire a design-build solar developer to build both solar PV systems.



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
121 Tijeras Ave NE, Suite 3000
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, 2020

Trade Classification	Base Rate	Fringe Rate
Bricklayer/Block layer/Stonemason	24.46	8.81
Carpenter/Lather	24.63	11.24
Carpenter- Los Alamos County	27.80	13.19
Cement Mason	17.42	6.81
Ironworker	27.00	15.75
Painter- Commercial	17.00	6.88
Plumber/Pipefitter	30.76	11.62
Electricians- Outside Classifications: Zone 1		
Ground man	23.27	12.67
Equipment Operator	33.39	15.35
Lineman/ Technician	39.28	16.91
Cable Splicer	43.21	17.95
Electricians-Outside Classifications: Zone 2		
Ground man	23.27	12.67
Equipment Operator	33.39	15.35
Lineman/ Technician	39.28	16.91
Cable Splicer	43.21	17.95
Electricians-Outside Classifications: Los Alamos		
Ground man	23.94	12.85
Equipment Operator	34.35	15.60
Lineman/ Technician	40.41	17.21
Cable Splicer	44.45	18.28
Laborers		
Group I- Unskilled	12.26	6.22
Group II- Semi-Skilled	12.56	6.22
Group III- Skilled	12.96	6.22
Group IV- Specialty	13.21	6.22
Operators		



Group I	18.79	6.34
Group II	19.72	6.34
Group III	19.82	6.34
Group IV	19.93	6.34
Group V	20.03	6.34
Group VI	20.21	6.34
Group VII	20.37	6.34
Group VIII	20.66	6.34
Group IX	28.16	6.34
Group X	31.41	6.34
Truck Drivers		
Group I-IX	16.45	7.87

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.

"General Decision Number: NM20200009 01/24/2020

Superseded General Decision Number: NM20190009

State: New Mexico

Construction Type: Heavy

County: Taos County in New Mexico.

HEAVY CONSTRUCTION PROJECTS

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.80 for calendar year 2020 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.80 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2020. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/03/2020
1	01/24/2020

* ELEC0611-010 01/01/2020

	Rates	Fringes
ELECTRICIAN		
Zone 1.....	\$ 32.70	11.67

ZONE 1: Mileage calculated from the main post office in the following towns: Albuquerque-40 miles, Artesia-12 miles, Belen-12 miles, Carlsbad-12 miles, Carrizozo-12 miles, Clovis-12 miles, Espanola-14 miles, Farmington-6 miles, Gallup-10 miles, Hobbs-12 miles, Las Vegas-8 miles, Los Lunas-12 miles, Lovington-12 miles, Portales-12 miles, Raton-6 miles, Roswell-12 miles, Ruidoso-12 miles, Santa Fe-10 miles, Tucumcari-6 miles.

ZONE 2: Extending up to 20 miles beyond Zone 1, EXCEPT ALBURQUERQUE, shall receive 9% above Zone 1 rate.

ZONE 3: Extending up to 30 miles beyond Zone 1, EXCEPT ALBURQUERQUE, shall receive 15% above Zone 1 rate.

ZONE 4: Extending more than 30 miles beyond Zone 1, EXCEPT ALBURQUERQUE, shall receive 26% above Zone 1 rate.

 IRON0495-003 06/01/2019

	Rates	Fringes
IRONWORKER		
Structural and Reinforcing..	\$ 27.00	16.41

SUNM2009-003 09/14/2010

	Rates	Fringes
CARPENTER.....	\$ 22.26	6.20
LABORER: Common or General.....	\$ 13.26	0.35
LABORER: Flagger.....	\$ 10.90	0.00
OPERATOR: Backhoe.....	\$ 17.00	0.00
OPERATOR: Grader/Blade.....	\$ 18.79	2.35
OPERATOR: Loader (Front End)....	\$ 17.43	0.26
OPERATOR: Scraper.....	\$ 14.03	0.00
PLUMBER.....	\$ 26.27	7.69
TRUCK DRIVER: Dump Truck.....	\$ 11.90	0.00
TRUCK DRIVER: Water Truck.....	\$ 13.72	5.25

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

=====
 Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date

for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

=====

END OF GENERAL DECISION"

SECTION 5 – USEPA REGION 6 SUPPLEMENTAL CONDITIONS

FORMS INCLUDED IN THIS SOLICITATION DOCUMENT:

- XP-211 Certifications Regarding Contract under Equal Opportunity Clause & Non-Segregated Facilities
 - XP-215 MBW/WBE/SBRA Utilization Form along with proof of solicitation (i.e. newspaper advertisement, letters of solicitation)
 - XP-315 Davis Bacon Certification
 - 5700-49 Certification Regarding Debarment, Suspension & Other Responsibility Matters
 - 6100-2
 - 6100-3
 - 6100-4
 - AIS CWSRF 314
- Forms to be provided with every construction pay application:
- XP-214 Labor Standards Certification
 - AIS Material certification signed by supplier and/or manufacturer

Failure to complete and submit these forms with your Response may result in it being deemed non-responsive and rejected without further evaluation

*Download solicitations, addenda and forms at <https://www.taosgov.com/200/Purchasing>

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6**

**NEW MEXICO ENVIRONMENT DEPARTMENT
CONSTRUCTION PROGRAMS BUREAU**

**Supplemental conditions
for
Federally Assisted Storm Water and/or Wastewater
Infrastructure under the
Clean Water State Revolving Loan Fund
Revised January 2020**

REPRODUCTION OF THIS GUIDANCE
SHOULD BE ON COLORED PAPER,
PREFERABLY PINK

REQUIRED FEDERAL FORMS

Forms that must be submitted within bidder's proposal:

1. XP-211 Certifications Regarding Contract under Equal Opportunity Clause & Non-Segregated Facilities
2. XP-215 MBW/WBE/SBRA Utilization Form along with proof of solicitation (i.e. newspaper advertisement, letters of solicitation)
3. XP-315 Davis Bacon Certification (does not apply to non-point source projects)
4. 5700-49 Certification Regarding Debarment, Suspension & Other Responsibility Matters
5. NMED FORM DBE-3
6. NMED FORM DBE-4
7. AIS CWSRF 314 (does not apply to non-point source projects)

Form to be provided with every construction pay application:

8. XP-214 Labor Standards Certification (does not apply to non-point source projects)
9. AIS Pay Application Certification (does not apply to non-point source projects)

REFERENCES

- Copeland Anti-Kickback, 29 CFR Part 3
<https://www.ecfr.gov/cgi-bin/text-idx?rgn=div5&node=29:1.1.1.1.4>
- Suspension and Debarment, Subpart C of 2 CFR 180 and 1532
https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr180_main_02.tpl
<https://ecfr.io/Title-02/pt2.1.1532>
- Disadvantaged Business Enterprise, 40 CFR Part 33
https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title40/40cfr33_main_02.tpl
- Equal Employment Opportunity, 41 CFR Part 60
https://www.ecfr.gov/cgi-bin/text-idx?SID=ec3611532eacd5ad65ef7df6f322a31f&mc=true&node=pt41.1.60_61&rgn=div5
- Labor Standards, 29 CFR Part 4 & 6
<https://ecfr.io/Title-29/pt29.1.4>
<https://ecfr.io/Title-29/pt29.1.6>
- Nondiscrimination, 40 CFR Part 7
<https://ecfr.io/Title-40/pt40.1.7>
- Uniform Administrative Requirements, Cost Principles and Audit Requirements, 2 CFR Parts 200 and 1500
<https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=84eca2b8c00b167d252c25ba6eab0eeb&mc=true&n=pt2.1.200&r=PART&ty=HTML>
<https://www.ecfr.gov/cgi-bin/text-idx?SID=9dad727f830d7c452669df30fc406fee&node=pt2.1.1500&rgn=div5>
- NPDES General Permits for Storm Water Discharge from Construction Sites in Region 6
<https://www.epa.gov/npdes/epas-2017-construction-general-permit-cgp-and-related-documents>

Model Contract Clause – Attached

NPDES Bypass Policy – Attached

Federal Cross Cutters – https://ecfr.io/Title-40/se40.1.35_13575 see attached information also

Detailed Guidance on the American Iron and Steel Requirements can be found at:

<https://www.epa.gov/cwsrf/state-revolving-fund-american-iron-and-steel-ais-requirement>

Enhancing Public Awareness of SRF Assistance Agreements – memo dated 6/3/18 - Attached

XP-211

BIDDER'S CERTIFICATION*
In Compliance with Equal Employment Opportunity and Nonsegregated Facilities

Project Name _____ Project Number _____
Contract For _____

The following certifications must be completed by the bidder for each contract.

A. EQUAL EMPLOYMENT OPPORTUNITY:

- I have developed and have on file at my each establishment affirmative action programs pursuant to 41 CFR Part 60-2.
- I have participated in previous contract(s) or subcontract(s) subject to the equal opportunity clause under **Executive Orders 11246 and 11375**. I have filed all reports due under the requirements contained in 41 CFR 60-1.7.
- I have not participated in previous contract(s) subject to the equal opportunity clause under **Executive Orders 11246 and 11375**.
- I will obtain a similar certification from any proposed subcontractor(s), when appropriate.

B. NONSEGREGATED FACILITIES

- I certify that I do not and will not maintain any facilities provided for my employees in a segregated manner, or permit my employees to perform their services at any location under my control where segregated facilities are maintained; and that I will obtain a similar certification prior to the award of any federally assisted subcontract exceeding \$10,000 which is not exempt from the equal opportunity clause as required by 41 CFR 60-1.8.

I understand that a false statement on this certification may be grounds for rejection of this bid proposal or termination of the contract award.

Typed Name & Title of Bidder's Authorized Representative _____

Signature of Bidder's Authorized Representative _____ Date _____

Name & Address of Bidder

**CERTIFICATION BY CONTRACTOR
STATEMENT OF COMPLIANCE
WITH LABOR STANDARDS**

In accordance with Title 29, Subtitle A, Part 5, Section 5.6(a)(1), each monthly pay application must be accompanied by the following certification executed by each prime contractor employing mechanics and laborers at the site on work in which the New Mexico Environment Department Clean Water State Revolving Loan makes funds available to participate:

Pay Application No. _____ for period _____ to _____

Name of Project _____ Location _____

Contract No. _____ Date Contract Awarded _____

Project No. _____

I hereby certify that all of the contract requirements as specified under the applicable labor standards as set forth in the Davis-Bacon Act, the Copeland "Anti-Kickback" Act and the Contract Work Hours and Safety Standards Act, have been complied with by _____ as principal contractor and by each _____

(Name of Contractor)

subcontractor employing mechanics or laborers at the site of the work, or there is a substantial dispute with the respect to the required provisions. I also certify that I have submitted all weekly payroll to _____ (Name of grantee).

Typed Name & Title of Contractor's Authorized Representative

Signature of Contractor's Authorized Representative _____ Date

Owner/Grantee Certification

I hereby certify that the above is true to the best of my knowledge and that I have reviewed all certified payroll supplied by the prime contractor and certify that it meets all labor standards as set forth in the Davis Bacon Act.

Signature of Grantee Authorized Representative _____ Date

I understand that 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.

NOTE: The bidder shall complete the following Minority/Women’s/Small Business in Rural Area (MBE/WBE/SBRA) utilization information whenever they solicit sub contract construction work and/or services and purchase of equipment and supplies for the project.

1. Do you maintain and update qualified MBE, WBE, and SBRA on your solicitation lists for supplies, equipment, construction and/or service? Yes ___ No ___

If yes, when did you update your MBE/WBE/SBRA solicitation lists? _____

2. Do you maintain a list of minority, women and rural small business-focused publications that may be utilized to solicit MBEs or WBEs or SBRA’s? Yes ___ No ___

If yes, name the publications: _____

3. Do you use the services of outreach programs sponsored by the Minority Business Development Agency and/or the Small Business Administration to recruit bona fide MBE/WBE/SBRA firms for placement on your solicitation lists? Yes ___ No ___

4. Do you seek out Minority Business Development Centers to assist you in identifying MBEs/WBEs/SBRAs for potential work opportunities on your proposed bid for this project? Yes ___ No ___

5. Do you analyze the bid package or contract documents to identify portions of work that can be divided and performed by qualified MBEs, WBEs, and SBRA’s including the bonding range? Yes ___ No ___

If yes, please attach a brief description of portions of work you have identified for subcontracting.

6. Do you develop realistic delivery schedules which may provide for greater MBE/WBE/SBRA participation? Yes ___ No ___

7. Do you send a letter of solicitation to MBE/WBE/SBRA for this project? Yes ___ No ___

If yes, please attach a sample copy of each different solicitation letter and the name and address of each MBE/WBE/SBRA.

8. Do you advertise in general circulation, trade journals, State agency publications of identified MBEs/WBEs/SBRAs, minority or women or rural small business focused media, etc., concerning the subcontracting opportunities on your proposed bid for this project? Yes ___ No ___

If yes, please list the name of publication and dates of advertisement and attach a copy of each advertisement from each publication.

9. Do you conduct pre-bid, pre-solicitation, and post award conferences, meetings and follow-ups with interested MBE, WBE, and SBRA? Yes ___ No ___

If yes, please list person who attended conference as representative of MBE/WBE/SBRA

Name & Title of Person: _____

Name of MBE/WBE/SBRA: _____

Address: _____ Phone: _____

Date and Place of Conference: _____

Name & Title of Person: _____

Name of MBE/WBE/SBRA: _____

Address: _____ Phone: _____

Date and Place of Conference: _____

Name & Title of Person: _____

Name of MBE/WBE/SBRA: _____

Address: _____ Phone: _____

Date and Place of Conference: _____

10. Total dollar amount of the contract:

\$

11. Total dollar amount and percentage of MBE/WBE/SBRA participation:

MBE:	Construction	____%	Equipment	____%	Supplies	____%	Services	____%
	(\$)		(\$)		(\$)		(\$)	
WBE:	Construction	____%	Equipment	____%	Supplies	____%	Services	____%
	(\$)		(\$)		(\$)		(\$)	
SBRA:	Construction	____%	Equipment	____%	Supplies	____%	Services	____%
	(\$)		(\$)		(\$)		(\$)	

12. Name, address, phone number, contact person, type of construction subcontract, and dollar amount of subcontract.

MBE Subcontractor:

Address:

Phone:

Contact Person:

Type of Work:

Amount: \$

WBE Subcontractor:

Address:

Phone:

Contact Person:

Type of Work:

Amount: \$

SBRA Subcontractor:

Address:

Phone:

Contact Person:

Type of Work:

Amount: \$

MBE Subcontractor:

Address:

Phone:

Contact Person:

Type of Work:

Amount: \$

WBE Subcontractor:

Address:

Phone:

Contact Person:

Type of Work:

Amount: \$

SBRA Subcontractor:

Address:

Phone:

Contact Person:

Type of Work:

Amount: \$

MBE Subcontractor:

Address:

Phone:

Contact Person:

Type of Work:

Amount: \$

WBE Subcontractor:

Address:

Phone:

Contact Person:

Type of Work:

Amount: \$

SBRA Subcontractor:

Address:

Phone:

Contact Person:

Type of Work:

Amount: \$

MBE Subcontractor:

Address:

Phone:

Contact Person:

WBE Subcontractor:

Address:

Phone:

Contact Person:

SBRA Subcontractor:

Address:

Phone:

Contact Person:

Type of Work:

Type of Work:

Type of Work:

Amount: \$

Amount: \$

Amount: \$

MBE Subcontractor:

WBE Subcontractor:

SBRA Subcontractor:

Address:

Address:

Address:

Phone:

Phone:

Phone:

Contact Person:

Contact Person:

Contact Person:

Type of Work:

Type of Work:

Type of Work:

Amount: \$

Amount: \$

Amount: \$

I understand that a false statement on the above information may be grounds for rejection of this bid proposal or termination of the contract award.

Typed Name & Title of Authorized Representative

Signature of Bidder's Authorized Representative

Date

Davis-Bacon Act Certification

The Contractor acknowledges to and for the benefit of the Owner _____ ("Purchaser") and the State of New Mexico (the "State") that it understands the goods and services under this Agreement are being funded with monies made available by the New Mexico Environment Department Clean Water State Revolving Loan Fund and such law contains provisions commonly known as the Davis-Bacon Act that requires all contractors and subcontractors performing work on federal construction contracts or federally assisted contracts in excess of \$2,000 to pay their laborers and mechanics not less than the federal prevailing wage rates and fringe benefits for corresponding classes of laborers and mechanics employed on similar projects in the area as determined by the Secretary of Labor.

The Contractor hereby represents and warrants to and for the benefit of the Purchaser and the State that (a) the Contractor has reviewed and understands the Davis-Bacon Act, (b) as such has compensated all contractors and sub-contractors performing work on this project not less than the prevailing wage rate and fringe benefits for corresponding classes as determined by the Secretary of Labor, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, as may be requested by the Purchaser or the State. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Purchaser or State to recover as damages against the Contractor any loss, expense or cost (including without limitation attorney's fees) incurred by the Purchaser or State resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the State or any damages owed to the State by the Purchaser). While the Contractor has no direct contractual privity with the State, as a lender to the Purchaser for the funding of its project, the Purchaser and the Contractor agree that the State is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the State.

(Contractor Signature & Date)

(Owner Signature & Date)

EPA Project Control Number

United States Environmental Protection Agency
Washington, DC 20460

**Certification Regarding
Debarment, Suspension, and Other Responsibility Matters**

The prospective participant certifies to the best of its knowledge and belief that it and the principals:

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

I understand that a false statement on this certification may be ground for rejection of this proposal or termination of the award. In addition, under 18 U SC Sec. 10 01, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

Typed Name & Title of Authorized Representative

Signature of Bidder's Authorized Representative

Date

I am unable to certify to the above statements. My explanation is attached.

**Disadvantaged Business Enterprise (DBE) Program
DBE Subcontractor Participation Form**

An EPA Financial Assistance Agreement Recipient must require its prime contractors to provide this form to its DBE subcontractors. This form gives a DBE¹ subcontractor² the opportunity to describe work received and/or report any concerns regarding the EPA-funded project (e.g., in areas such as termination by prime contractor, late payments, etc.). The DBE subcontractor can, as an option, complete and submit this form to the EPA DBE Coordinator at any time during the project period of performance.

Subcontractor Name		Project Name	
Bid/ Proposal No.	Assistance Agreement ID No. (if known)	Point of Contact	
Address			
Telephone No.		Email Address	
Prime Contractor Name		Issuing/Funding Entity:	

Contract Item Number	Description of Work Received from the Prime Contractor Involving Construction, Services, Equipment or Supplies	Amount Received by Prime Contractor

¹ A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202.

² Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

**Disadvantaged Business Enterprise (DBE) Program
DBE Subcontractor Participation Form**

Please use the space below to report any concerns regarding the above EPA-funded project:

Subcontractor Signature	Print Name
Title	Date

**Disadvantaged Business Enterprise (DBE) Program
DBE Subcontractor Performance Form**

This form is intended to capture the DBE¹ subcontractor's² description of work to be performed and the price of the work submitted to the prime contractor. An EPA Financial Assistance Agreement Recipient must require its prime contractor to have its DBE subcontractors complete this form and include all completed forms in the prime contractor's bid or proposal package.

Subcontractor Name		Project Name	
Bid/ Proposal No.	Assistance Agreement ID No. (if known)	Point of Contact	
Address			
Telephone No.		Email Address	
Prime Contractor Name		Issuing/Funding Entity:	

Contract Item Number	Description of Work Submitted to the Prime Contractor Involving Construction, Services, Equipment or Supplies	Price of Work Submitted to the Prime Contractor
DBE Certified By: <input type="radio"/> DOT <input type="radio"/> SBA <input type="radio"/> Other: _____		Meets/ exceeds EPA certification standards? <input type="radio"/> YES <input type="radio"/> NO <input type="radio"/> Unknown

¹ A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202.

² Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

**Disadvantaged Business Enterprise (DBE) Program
DBE Subcontractor Performance Form**

I certify under penalty of perjury that the forgoing statements are true and correct. Signing this form does not signify a commitment to utilize the subcontractors above. I am aware of that in the event of a replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CFR Part 33 Section 33.302 (c).

Prime Contractor Signature	Print Name
Title	Date

Subcontractor Signature	Print Name
Title	Date

**Disadvantaged Business Enterprise (DBE) Program
DBE Subcontractor Utilization Form**

This form is intended to capture the prime contractor's actual and/or anticipated use of identified certified DBE¹ subcontractors² and the estimated dollar amount of each subcontract. An EPA Financial Assistance Agreement Recipient must require its prime contractors to complete this form and include it in the bid or proposal package. Prime contractors should also maintain a copy of this form on file.

Prime Contractor Name		Project Name	
Bid/ Proposal No.	Assistance Agreement ID No. (if known)	Point of Contact	
Address			
Telephone No.		Email Address	
Issuing/Funding Entity:			

I have identified potential DBE certified subcontractors	___YES	___NO	
If yes, please complete the table below. If no, please explain:			
Subcontractor Name/ Company Name	Company Address/ Phone/ Email	Est. Dollar Amt	Currently DBE Certified?

¹ A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202.

² Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

**Disadvantaged Business Enterprise (DBE) Program
DBE Subcontractor Utilization Form**

I certify under penalty of perjury that the forgoing statements are true and correct. Signing this form does not signify a commitment to utilize the subcontractors above. I am aware of that in the event of a replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CFR Part 33 Section 33.302 (c).

Prime Contractor Signature	Print Name
Title	Date

American Iron And Steel Certification

The Contractor acknowledges to and for the benefit of the (City, County, or other legal entity) of _____ (“Purchaser”) and the State of New Mexico (“State”) that it understands the goods and services under this Agreement are being funded with monies made available by the Clean Water State Revolving Fund or Drinking Water State Revolving Fund that have federal statutory requirements commonly known as “American Iron and Steel;” that requires all of the iron and steel products used in the project to be produced in the United States (“American Iron and Steel Requirement”) including iron and steel products provided by the Contractor pursuant to this Agreement. The Contractor hereby represents and warrants to and for the benefit of the Purchaser and the State that (a) the Contractor has reviewed and understands the American Iron and Steel Requirement, (b) all of the iron and steel products used in the project will be and/or have been produced in the United States in a manner that complies with the American Iron and Steel Requirement, unless a waiver of the requirement is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the American Iron and Steel Requirement, as may be requested by the Purchaser or the State. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Purchaser or State to recover from the Contractor any loss, expense, or cost incurred by the Purchaser or State resulting from any such failure, including loss of funding, whether in whole or in part, from the State or any resultant costs owed to the State by the Purchaser. The Contractor and the Purchaser agree that neither this paragraph nor any other provision of this Agreement necessary to give this paragraph force or effect shall be amended or waived without the prior written consent of the State.

Typed Name & Title of Contractor's Authorized Representative

Signature of Contractor's Authorized Representative

Date

American Iron And Steel Certification - Pay Application #

The Contractor acknowledges that it understands the goods and services being paid for under this Pay Application are being funded with monies made available by the Clean Water State Revolving Fund or Drinking Water State Revolving Fund that have federal statutory requirements commonly known as “American Iron and Steel,” that requires all of the iron and steel products used in the project to be produced in the United States (“American Iron and Steel Requirement”) including iron and steel products provided by the Contractor. The Contractor hereby represents and warrants to and for the benefit of the Purchaser and the State that: (a) the Contractor has reviewed and understands the American Iron and Steel Requirement, (b) all of the iron and steel products used in the project have been produced in the United States in a manner that complies with the American Iron and Steel Requirement, unless a waiver of the requirement is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the American Iron and Steel Requirement, as may be requested by the Purchaser or the State. Notwithstanding any other provision of th, any failure to comply with this paragraph by the Contractor shall permit the Purchaser or State to recover from the Contractor any loss, expense, or cost incurred by the Purchaser or State resulting from any such failure, including loss of funding, whether in whole or in part, from the State or any resultant costs owed to the State by the Purchaser. The Contractor and the Purchaser agree that neither this paragraph nor any other provision of this Agreement necessary to give this paragraph force or effect shall be amended or waived without the prior written consent of the State.

Typed Name & Title of Contractor's Authorized Representative

Signature of Contractor's Authorized Representative

Date

AIS Pay Application Certification

Sample Certifications for AIS compliance

The following information is provided as a sample letter of **step** certification for AIS compliance. Documentation **must be provided on company letterhead**.

Date

Company Name

Company Address

City, State Zip

Subject: American Iron and Steel Step Certification for Project (XXXXXXXXXXXX)

I, (company representative), certify that the (melting, bending, coating, galvanizing, cutting, etc.) process for (manufacturing or fabricating) the following products and/or materials shipped or provided for the subject project is in full compliance with the American Iron and Steel requirement as mandated in EPA's State Revolving Fund Programs.

List Items, Products and/or Materials:

1. XXXX
2. XXXX
3. XXXX

Such process took place at the following location:

If any of the above compliance statements change while providing material to this project we will immediately notify the prime contractor and the engineer.

Signed by company representative:

Name and Title

The following information is provided as a **sample letter of certification for AIS compliance**. Documentation **must be provided on company letterhead**.

Date

Company Name

Company Address

City, State Zip

Subject: American Iron and Steel Certification for Project (XXXXXXXXXXXX)

I, (company representative), certify that the following products and/or materials shipped/provided to the subject project are in full compliance with the American Iron and Steel requirement as mandated in EPA's State Revolving Fund Programs.

Item, Products and/or Materials:

1. XXXX
2. XXXX
3. XXXX

Such process took place at the following location:

If any of the above compliance statements change while providing material to this project we will immediately notify the prime contractor and the engineer.

Signed by company representative

Name and Title

Wage Rate Requirements

(DOES NOT APPLY TO NON-POINT SOURCE PROJECTS)

(1) Minimum wages.

(i) 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 (a)(1)(iv) 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 § 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 (a)(1)(ii) 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.

Subrecipients may obtain wage determinations from the U.S. Department of Labor's web site, www.dol.gov.

(ii)(A) The subrecipient(s), on behalf of EPA, 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

State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

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

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

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

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the subrecipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the subrecipient (s) to the State award official. The State award official will transmit the request, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the subrecipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the request and the local wage determination, including the views of all interested parties and the recommendation of the State award official, to the Administrator for determination. The request shall be sent to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) 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.

(iii) 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.

(iv) 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 subrecipient(s), shall upon written request of the EPA Award Official or 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 (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, 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.

(i) 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.

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the subrecipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the subrecipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls 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 the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the subrecipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, 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 subrecipient(s).

(B) 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:

(1) 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;

(2) 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;

(3) 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.

(C) 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 (a)(3)(ii)(B) of this section.

(D) 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.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA 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 Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, 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--

(i) Apprentices. 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.

(ii) Trainees. 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.

(iii) 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.

(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 in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may be appropriate, and also a clause requiring the subcontractors to include these clauses 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 Subrecipient(s), State, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) 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).

(ii) 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).

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

4. Contract Provision for Contracts in Excess of \$100,000.

(a) Contract Work Hours and Safety Standards Act. The subrecipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any 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 Item 3, above 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 (a)(1) of this section the contractor and any subcontractor responsible therefore 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 (a)(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 (a)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The subrecipient, upon written request of the EPA Award Official or an authorized representative of the Department of Labor, shall 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 (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(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 (a)(1) through (4) of this section.

(b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Subrecipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Subrecipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

5. Compliance Verification

(a) The subrecipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The subrecipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The subrecipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the subrecipient should conduct interviews with a representative group of covered employees within two weeks of each contractor or subcontractor's submission of its initial weekly payroll data and two weeks prior to the estimated completion date for the contract or subcontract. Subrecipients must conduct more frequent interviews if the initial interviews or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. Subrecipients shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

(c) The subrecipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates.

The subrecipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable, the subrecipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract . Subrecipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the subrecipient shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.

(d) The subrecipient shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) Subrecipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at <http://www.dol.gov/esa/contacts/whd/america2.htm>.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 6

MODEL CONTRACT CLAUSE

Recipients must ensure that, when appropriate, the following clauses or their equivalent are included in each contract.

1. SUPERSESION

The recipient and the contractor agree that this and other appropriate clauses in 40 CFR 31.36(i) apply to that work eligible for EPA assistance to be performed under this contract and that these clauses supersede any conflicting provisions of this contract.

2. PRIVITY OF CONTRACT

This contract is expected to be funded in part with funds from the U.S. Environmental Protection Agency. Neither the United States nor any of its departments, agencies or employees is, or will be, a party to this contract or any lower tier contract. This contract is subject to the applicable EPA procurement regulations in effect on the date of the assistance award for this project.

3. CHANGES

a. The following clause applies only to contracts for construction.

1. The recipient may at any time, without notice to any surety, by written order, make any change in the work within the general scope of the contract, including but not limited to changes:
 - i. In the specifications (including drawings and designs);
 - ii. In the time, method or manner of performance of the work;
 - iii. In the recipient-furnished facilities, equipment, materials, services or site, or
 - iv. Directing acceleration in the performance of the work.
2. A change order shall also be any other written order (including direction, instruction, interpretation or determination) from the recipient which causes any change, provided the contractor gives the recipient written notice stating the date, circumstances and source of the order and that the contractor regards the order as a change order.
3. Except as provided in this clause, no order, statement or conduct of the recipient shall be treated as a change under this clause or entitle the contractor to an equitable adjustment.
4. If any change under this clause causes an increase or decrease in the contractor's cost or the time required to perform any part of the work under this contract, whether or not changed by any order, the recipient shall make an equitable adjustment and modify the contract in writing. Except for claims based on defective specifications, no claim for any change under paragraph (a)(2) above shall be allowed for any costs incurred more than 20 days before the contractor gives written notice as required in paragraph (a)(2). In the case of defective specifications for which the recipient is responsible, the equitable adjustment shall include any increased cost the

contractor reasonably incurred in attempting to comply with those defective specifications.

5. If the contractor intends to assert a claim for an equitable adjustment under this clause, the contractor must, within 30 days after receipt of a written change order under paragraph (a)(1) or the furnishing of a written notice under paragraph (a)(2), submit a written statement to the recipient setting forth the general nature and monetary extent of such claim. The recipient may extend the 30-day period. The contractor may include the statement of claim in the notice under paragraph (2) of this changes clause.

6. No claim by the contractor for an equitable adjustment shall be allowed if made after final payment under this contract.

b. The following clause applies only to contracts for services.

1. The recipient may at any time, by written order and without notice to the sureties, make changes within the general scope of this contract in the services or work to be performed. If such changes cause an increase or decrease in the contractor's cost or time required to perform any services under this contract, whether or not changed by any order, the recipient shall make an equitable adjustment and modify this contract in writing. The contractor must assert any claim for adjustment under this clause in writing within 30 days from the date it receives the recipient's notification of change, unless the recipient grants additional time before the date of final payment.

2. No claim by the contractor for an equitable adjustment shall be allowed if made after final payment under this contract.

3. No services for which the contractor will charge an additional compensation shall be furnished without the written authorization of the recipient.

c. The following clause applies only to contracts for supplies.

1. The recipient may at any time, by written order and without notice to the sureties, make changes within the general scope of this contract in any one or more of the following:

- i. Drawings, designs or specifications where the supplies to be furnished are specifically manufactured for the recipient;
- ii. Method of shipment or packing; and
- iii. Place of delivery.

2. If any changes cause an increase or decrease in the cost or time required to perform any part of the work under this contract, whether or not changed by such order, the recipient shall make an equitable adjustment in the contract price or delivery schedule, or both, and modify the contract in writing. The contractor must assert any claim for adjustment under this clause within 30 days from the date the contractor receives the recipient's notification of change. If the recipient decides that the facts justify such action, the recipient may receive and act upon any such claim asserted at any time before final payment under this contract. where the cost of property made obsolete or excess as a result of a change is included in the contractor's claim for adjustment, the recipient has the right to prescribe the manner of disposition of such property. Nothing in this clause shall excuse the contractor from proceeding with the contract as changed.

3. No claim by the contractor for an equitable adjustment shall be allowed if made after final

payment under this contract.

4. DIFFERING SITE CONDITIONS

The following clause applies only to construction contracts.

- a. The contractor shall promptly, and before such conditions are disturbed, notify the recipient in writing of:
 - 1. Subsurface or latent physical conditions at the site differing materially from those indicated in this contract, or
 - 2. Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in this contract.
- b. The recipient shall promptly investigate the conditions. If it finds that conditions materially differ and will cause an increase or decrease in the contractor's cost or the time required to perform any part of the work under this contract, whether or not changed as a result of such conditions, the recipient shall make an equitable adjustment and modify the contract in writing.
- c. No claim of the contractor under this clause shall be allowed unless the contractor has given the notice required in paragraph (a) of this clause. However, the recipient may extend the time prescribed in paragraph (a).
- d. No claim by the contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.

5. SUSPENSION OF WORK

The following clause applies only to construction contracts.

- a. The recipient may order the contractor in writing to suspend, delay or interrupt all or any part of the work for such period of time as the recipient may determine to be appropriate for the convenience of the recipient.
- b. If the performance of all or any part of the work is suspended, delayed or interrupted for an unreasonable period of time by an act of the recipient in administration of this contract, or by the recipient's failure to act within the time specified in this contract (or if no time is specified, within a reasonable time), the recipient shall make an adjustment for any increase in the cost of performance of this contract (excluding profit) necessarily caused by such unreasonable suspension, delay or interruption and modify the subagreement in writing. However, no adjustment shall be made under this clause for any suspension, delay or interruption to the extent (1) that performance would have been so suspended, delayed or interrupted by any other cause, including the fault or negligence of the contractor, or (2) for which an equitable adjustment is provided for or excluded under any other provision of this contract.
- c. No claim under this clause shall be allowed (1) for any costs incurred more than 20 days before the contractor notified the recipient in writing of the act, or failure to act, involved (this requirement does not apply to a claim resulting from a suspension order), and (2) unless the amount claimed is asserted in writing as soon as practicable after the termination of such

suspension, delay or interruption, but not later than the date of final payment under the contract.

6. TERMINATION

The following clause applies only to contracts over \$10,000.

- a. This contract may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this contract through no fault of the terminating party, provided that no termination may be effected unless the other party is given (1) not less than ten (10) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination.
- b. This contract may be terminated in whole or in part in writing by the recipient for its convenience, provided that the contractor is given (1) not less than ten (10) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination.
- c. If termination for default is effected by the recipient, an equitable adjustment in the price provided for in this contract shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due to the contractor at the time of termination may be adjusted to cover any additional costs to the recipient because of the contractor's default. If termination for default is effected by the contractor, or if termination for convenience is effected by the recipient, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to the contractor for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by the contractor relating to commitments which had become firm prior to the termination.
- d. Upon receipt of a termination action under paragraphs (a) or (b) above, the contractor shall (1) promptly discontinue all affected work (unless the notice directs otherwise), and (2) deliver or otherwise make available to the recipient all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the contractor in performing this contract, whether completed or in process.
- e. Upon termination under paragraphs (a) or (b) above, the recipient may take over the work and may award another party a contract to complete the work under this contract.
- f. If, after termination for failure of the contractor to fulfill contractual obligations, it is determined that the contractor had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of the recipient. In such event, adjustment of the subagreement price shall be made as provided in paragraph (c) of this clause.

7. REMEDIES

This clause applies only to contracts over \$25,000.

Unless otherwise provided in this contract, all claims, counter-claims, disputes and other matters

in question between the recipient and the contractor arising out of, or relating to, this contract or the breach of it will be decided, if the parties mutually agree, by arbitration, mediation, or other alternative dispute resolution mechanism; or in a court of competent jurisdiction within the State in which the recipient is located.

8. PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA

NOTE - The following clause applies to (1) any contract negotiated between the recipient and its contractor in excess of \$100,000; (2) negotiated contract amendments or change orders in excess of \$100,000 affecting the price of a formally advertised, competitively awarded, fixed price contract, or (3) any lower tier contract or purchase order in excess of \$100,000 under a contract other than a formally advertised, competitively awarded, fixed price contract. This clause does not apply to contracts awarded on the basis of effective price competition.

- a. The contractor and subcontractor, where appropriate, assure that the cost and pricing data submitted for evaluation with respect to negotiation of prices for negotiated contracts, lower tier contracts and change orders is based on current, accurate and complete data supported by their books and records. If the recipient or EPA determines that any price (including profit) negotiated in connection with this contract, lower tier contract or amendment thereunder was increased by any significant sums because the data provided was incomplete, inaccurate or not current at the time of submission, then such price or cost or profit shall be reduced accordingly and the recipient shall modify the contract in writing to reflect such action.
- b. Failure to agree on a reduction shall be subject to the remedies clause of this contract.

NOTE - Since the contract is subject to reduction under this clause by reason of defective cost or pricing data submitted in connection with lower tier contracts, the contractor may wish to include a clause in each lower tier contract requiring the lower tier contractor to appropriately indemnify the contractor. It is expected that any lower tier contractor subject to such indemnification will generally require substantially similar indemnification for defective cost and pricing data submitted by lower tier contractors.

9. AUDIT; ACCESS TO RECORDS

- a. The contractor shall maintain books, records, documents and other evidence directly pertinent to performance on EPA funded work under this contract in accordance with generally accepted accounting principles and practices consistently applied, and the applicable EPA regulations in effect on the date of execution of this contract. The contractor shall also maintain the financial information and data used in the preparation or support of any cost submission required under applicable regulations for negotiated contracts or change orders and a copy of the cost summary submitted to the recipient. The United States Environmental Protection Agency, the Comptroller General of the United States, the United States Department of Labor, the recipient, and [the State] or any of their authorized representatives shall have access to all such books, records, documents and other evidence for the purpose of inspection, audit and copying during normal business hours. The contractor will provide proper facilities for such access and inspection.

b. If this is a fixed price contract awarded through sealed bidding or otherwise on the basis of effective price competition, the contractor agrees to make paragraphs (a) through (g) of this clause applicable to all negotiated change orders and contract amendments affecting the contract price. In the case of all other types of prime contracts, the contractor agrees to make paragraphs (a) through (g) applicable to all contract awards in excess of \$10,000, at any tier, and to make paragraphs (a) through (g) of this clause applicable to all change orders directly related to project performance.

c. Audits conducted under this provision shall be in accordance with generally accepted auditing standards and with established procedures and guidelines of the reviewing or audit agency(ies).

d. The contractor agrees to disclose all information and reports resulting from access to records under paragraphs (a) and (b) of this clause to any of the agencies referred to in paragraph (a).

e. Records under paragraphs (a) and (b) above shall be maintained by the contractor during performance on EPA assisted work under this contract and for the time periods specified in 40 CFR part 31. In addition, those records which relate to any controversy arising under an EPA assistance agreement, litigation, the settlement of claims arising out of such performance or to costs or items to which an audit exception has been taken shall be maintained by the contractor for the time periods specified in 40 CFR part 31.

f. Access to records is not limited to the required retention periods. The authorized representatives designated in paragraph (a) of this clause shall have access to records at any reasonable time for as long as the records are maintained.

g. This right of access clause applies to financial records pertaining to all contracts (except for fixed price contracts awarded through sealed bidding or otherwise on the basis of effective price competition) and all contract change orders regardless of the type of contract, and all contract amendments regardless of the type of contract. In addition this right of access applies to all records pertaining to all contracts, contract change orders and contract amendments:

1. To the extent the records pertain directly to contract performance;
 2. If there is any indication that fraud, gross abuse or corrupt practices may be involved;
- OR
3. If the subagreement is terminated for default or for convenience.

10. COVENANT AGAINST CONTINGENT FEES

The contractor assures that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee excepting bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business. For breach or violation of this assurance, the recipient shall have the right to annul this agreement without liability or, at its discretion, to deduct from the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

11. GRATUITIES

a. If the recipient finds after a notice and hearing that the contractor or any of the contractor's agents or representatives offered or gave gratuities (in the form of entertainment, gifts or

otherwise) to any official, employee or agent of the recipient, the State or EPA in an attempt to secure a contract or favorable treatment in awarding, amending or making any determinations related to the performance of this contract, the recipient may, by written notice to the contractor, terminate this contract. The recipient may also pursue other rights and remedies that the law or this contract provides.

b. In the event this contract is terminated as provided in paragraph (a), the recipient may pursue the same remedies against the contractor as it could pursue in the event of a breach of the contract by the contractor, and as a penalty, in addition to any other damages to which it may be entitled by law, be entitled to exemplary damages in an amount (as determined by the recipient) which shall be not less than three nor more than ten times the costs the contractor incurs in providing any such gratuities to any such officer or employee.

12. BUY AMERICAN

This clause applies only to construction contracts award under 40 CFR Part 35, Subparts E and I.

In accordance with Section 215 of the Clean Water Act (33 U.S.C. 1251 et. seq.) and 40 CFR 31.36(c)(5), the contractor agrees that preference will be given to domestic construction material by the contractor, subcontractors, materialmen and supplies in the performance of this contract.

13. RESPONSIBILITY OF THE CONTRACTOR

a. The following clause applies only to subagreements for services.

1. The contractor is responsible for the professional quality, technical accuracy, timely completion and coordination of all designs, drawings, specifications, reports and other services furnished by the contractor under this contract. If the contract involves environmental measurements or data generation, the contractor shall comply with EPA quality assurance requirements in 40 CFR 31.45. The contractor shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in his designs, drawings, specifications, reports and other services.
2. The contractor shall perform the professional services necessary to accomplish the work specified in this contract in accordance with this contract and applicable EPA requirements in effect on the date of execution of the assistance agreement for this project.
3. The owner's or EPA's approval of drawings, designs, specifications, reports and incidental work or materials furnished shall not in any way relieve the contractor of responsibility for the technical adequacy of his work. Neither the owner's nor EPA's review, approval, acceptance or payment for any of the services shall be construed as a waiver of any rights under this agreement or of any cause for action arising out of the performance of this contract.
4. The contractor shall be, and shall remain, liable in accordance with applicable law for all damages to the owner or EPA caused by the contractor's negligent performance of any of the services furnished under this contract, except for errors, omissions or other deficiencies to the extent attributable to the owner, owner-furnished data or any third party. The contractor shall not

be responsible for any time delays in the project caused by circumstances beyond the contractor's control.

5. The contractor's obligations under this clause are in addition to the contractor's other express or implied assurances under this contract or State law and in no way diminish any other rights that the owner may have against the contractor for faulty materials, equipment or work.

b. The following clause applies only to contracts for construction.

1. The contractor agrees to perform all work under this contract in accordance with this agreement's designs, drawings and specifications.
2. The contractor guarantees for a period of at least one (1) year from the date of substantial completion of the work that the completed work is free from all defects due to faulty materials, equipment or workmanship and that he shall promptly make whatever adjustments or corrections which may be necessary to cure any defects, including repairs of any damage to other parts of the system resulting from such defects. The owner shall promptly give notice to the contractor of observed defects. In the event that the contractor fails to make adjustments, repairs, corrections or other work made necessary by such defects, the owner may do so and charge the contractor the cost incurred. The performance bond shall remain in full force and effect through the guarantee period.
3. The contractor's obligations under this clause are in addition to the contractor's other express or implied assurances under this contract or State law and in no way diminish any other rights that the owner may have against the contractor for faulty materials, equipment or work.

14. FINAL PAYMENT

Upon satisfactory completion of the work performed under this contract, as a condition before final payment under this contract or as a termination settlement under this contract the contractor shall execute and deliver to the owner a release of all claims against the owner arising under, or by virtue of, this contract, except claims which are specifically exempted by the contractor to be set forth therein. Unless otherwise provided in this contract, by State law or otherwise expressly agreed to by the parties to this contract, final payment under this contract or settlement upon termination of this contract shall not constitute a waiver of the owner's claims against the contractor or his sureties under this contract or applicable performance and payment bonds.

15. 40 CFR part 33

The contractor 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 40 CFR part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. 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 other legally available remedies.

**United States Environmental Protection Agency
Region 6**

Policy for Bypass During Construction

It is a violation of an NPDES permit to bypass any part of a collection system or treatment plant. Such violations are subject to the enforcement provisions of Section 309 of the Clean Water Act. Under extreme circumstances, bypassing can sometimes be employed for short periods, but only after thorough review and authorization by the regulatory agency.

NPDES regulations and permits prohibit the diversion of wastes from any portion of the treatment facility unless:

- I. Bypass is unavoidable to prevent loss of life, personal injury, or severe property damage; or
2. There are no feasible alternatives to bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if the Permittee could have installed adequate backup equipment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
3. The Permittee submits prior notice of an anticipated bypass, if possible, at least ten days before the date of the bypass.

The regulatory agency may authorize an anticipated bypass after considering its adverse effects, if it determines that it will meet the above conditions.

-) The construction sequence must be such that wastes are provided a minimum of secondary treatment, or the equivalent for industrial treatment facilities during all phases of construction unless more stringent treatment levels are required by the state agency; or
- 2) The facility must maintain compliance with interim limitations set by the regulatory agency based on plant performance.
- 3) Disinfection is to be utilized if required to protect public health.

CROSS-CUTTING FEDERAL AUTHORITIES

Environmental Authorities

- National Environmental Policy Act, Pub. L. No. 91-190 (1970), 42 U.S.C. § 4321 *et. seq.*
- Executive Order 11593, Protection and Enhancement of the Cultural Environment
- Fish and Wildlife Coordination Act, Pub. L. 85-624, as amended
- Wilderness Act, Pub. L. 88-577, as amended

- **Historic Resources**
 - National Historic Preservation Act, Pub L. 89-665, as amended, 80 Stat. 917 (1966), 16 U.S.C. § 470 *et. seq.*
 - Archeological and Historic Preservation Act, Pub. L. 93-291 (1974), 16 U.S.C. § 469a-1

- **Environmentally Sensitive Lands**
 - Protection of Wetlands, Executive Order 11990 (1977), as amended by Executive Order 12608 (1997)
 - Floodplain Management, Executive Order 11988 (1977), as amended by Executive Order 12148 (1979)
 - Farmland Protection Policy Act, Pub. L. 97-98 (1981), 7 U.S.C. § 4201 *et. seq.*

- **Coastal Area Protection**
 - Coastal Zone Management Act, Pub. L. 92-583 (1972), as amended, 16 U.S.C. § 1451 *et. seq.*
 - Coastal Barriers Resources Act, Pub. L. 97-348, 96 Stat. 1653 (1982), 16 U.S.C. § 3501 *et. seq.*

- Wild and Scenic Rivers Act, Pub. L. 90-542, 82 Stat. 913 (1968), 16 U.S.C. § 1271 *et. seq.*
- Endangered Species Act, Pub. L. 93-205 (1973), as amended, 16 U.S.C. § 1531 *et. seq.*
- Essential Fish Habitat Consultation Process under the Magnuson-Stevens Fishery Conservation and Management Act, Pub. L. 94-265 (1976), as amended, 16 U.S.C. § 1801 *et. seq.*
- Clean Air Act Conformity, Pub. L. 95-95 (1977), as amended, 42 U.S.C. § 7401 *et. seq.*
- Safe Drinking Water Act, Pub. L. 93-523 (1974), as amended, 42 U.S.C. 300f *et. seq.*

Social Policy Authorities

Civil Rights Laws (i.e., Super Cross-Cutters)

- Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d
- Section 13 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. § 1251
- Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794
- The Drug-Free Workplace Act of 1988, Pub. L. 100-690
- The Age Discrimination Act of 1975, 42 U.S.C. § 6102

- Equal Employment Opportunity, Executive Order 11246 (1965)

Disadvantage Business Enterprise Provisions

- Promoting the use of Small, Minority, and Women-Owned Businesses, Executive Orders 11625, 12138 and 12432
- Section 129 of the Small Business Administration Reauthorization and Amendment Act of 1988, Pub. L. 100-590
- Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1993 Pub. L. 102-389

Economic and Miscellaneous Authorities

Prohibitions Relating to Violators of the Clean Air Act and the Clean Water Act with Respect to Federal Contracts, Grants, or Loans

- Executive Order No. 11738 (1973)
- Section 306 of the Clean Air Act, 42 U.S.C. § 7606, and
- Section 508 of the Clean Water Act, 33 U.S.C. § 1368
- Debarment and Suspension, Executive Order 12549 (1986)
- New Restriction on Lobbying, Section 319 of Pub. L. 101-121
- Demonstration Cities and Metropolitan Development Act, Pub. L. 89-754 (1966), as amended, 42 U.S.C. § 3331 *et. seq.*
- Uniform Relocation and Real Property Acquisition Policies Act, Pub. L. 91-646 (1971), as amended, 42 U.S.C. §§ 4601-4655
- Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects Executive Order 13202 (2001), as amended by Executive Order 13208 (2001)

Revised 02/18/2014



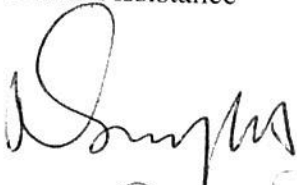
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

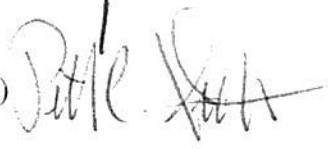
JUN - 3 2015

OFFICE OF WATER

MEMORANDUM

SUBJECT: Guidelines for Enhancing Public Awareness of SRF Assistance Agreements

FROM: Andrew D. Sawyers, Ph.D., Director
Office of Wastewater Management (4201M) 

Peter C. Grevatt, Director
Office of Ground Water and Drinking Water (4601M) 

TO: Water Management Division Directors
Regions I-X

Last year, the Environmental Protection Agency (EPA) implemented an agency-wide initiative to enhance public awareness of EPA assistance agreements nationwide. The Office of Water has developed guidelines to inform states how this initiative should be implemented in the State Revolving Fund (SRF) Programs.

The guidelines were developed with input from EPA and state SRF staff. The guidelines recognize that each of the state SRF programs and the projects they fund are different and that one implementation method will not work for everyone. Therefore, as a result of input from the states, the guidelines offer a number of options that can be used to enhance public awareness of SRF assistance agreements.

Implementation of these guidelines will begin with the awarding of the FY 2015 SRF capitalization grants. A term and condition on compliance with the guidelines is to be included in all new SRF grants.

Please have your staff provide copies of the guidelines to your states. Questions regarding the guidelines should be directed to Sheila Platt (202/564-0686) or Howard Rubin (202/564-2051).

Attachment

Enhancing Public Awareness of SRF Assistance Agreements

Introduction

The Environmental Protection Agency (EPA) is currently implementing an agency-wide initiative focused on signage to enhance public awareness of EPA assistance agreements nationwide. The intention of this effort is to communicate the positive impact and benefits of EPA funding around the country and increase awareness surrounding the improvements communities receive as a result of State Revolving Fund (SRF) assistance. Projects implemented with Clean Water State Revolving Fund (CWSRF) and Drinking Water State Revolving Fund (DWSRF) monies are included in this initiative, as many CWSRF and DWSRF assistance agreements have direct and tangible benefits to populations around the country.

EPA's Office of Water developed these guidelines as a way to inform states of this directive and how it should be implemented in the SRF programs. The primary objective is to enhance public understanding of the positive benefits of CWSRF and DWSRF funding to towns, cities, municipalities and water systems. To that end, states are presented with a range of options for implementing these guidelines. All of these options achieve the ultimate goal of communicating to a broad audience the positive role EPA funding of the state CWSRF and DWSRF programs plays in communities across the country.

The information in the guidelines was developed with input from EPA and state staff across the country as well as the members of the State-EPA Workgroup. The guidelines recognize the wide range of project types, varied locations and different institutional approaches among states and communities. Therefore, providing states and SRF assistance recipients maximum flexibility is optimal. The guidelines allow selection of the implementation method which best balances two goals. First, it should satisfy the overall objective of communicating EPA's role in funding assistance agreements that achieve positive benefit. Second, the implementation method should be practically and financially viable for states and communities and avoid any overly burdensome investment of time and resources. In some cases, it might be appropriate for a state to select a combination of options listed below, provided this does not result in excessive cost to communities.

Project Selection Requirements

Signage requirements will not be required to apply to all SRF projects. Signage will be considered an equivalency requirement for SRF programs. States should select a set of borrowers and/or projects totaling a funding amount equivalent to the amount of their federal capitalization grant to satisfy the signage requirement. There are no other requirements or restrictions on which projects should or should not participate in this initiative. Therefore, it is at the discretion of the state SRF program to select projects most able to efficiently and effectively comply in a way that

meets the intention to enhance public awareness without significant financial hardship to the state or its borrowers. This can be done either through the selection of specific projects or borrowers, or by setting a threshold within the state for which projects will be requested to meet signage requirements. States should note that they have the option of selecting different implementation options for different borrowers depending on the location, project type and available resources. Borrowers and/or projects complying with the signage requirement must ensure limited English proficient individuals have meaningful access to activities receiving EPA funds, consistent with Executive Order 13166 and EPA Order 1000.32.

In this regard, to increase public awareness of projects serving communities where English is not the predominant language, States should encourage recipients when implementing a particular signage option to translate the language used (excluding the EPA logo or seal) into the appropriate non-English language(s). The costs of such translation are allowable, provided the costs are reasonable.

Although the signage requirement does not apply to all SRF projects, we recommend that states encourage all borrowers/projects to notify the public of the benefits of the projects and the role of the SRF, using one of the options below.

Summary of Options

The guidelines present a number of options which communities can explore to implement EPA's signage policy. The option selected should meet all of the above basic requirements while remaining cost-effective and accessible to a broad audience. The guidelines describe the following strategies as acceptable options for communities to follow:

- Standard signage
- Posters or wall signage in a public building or location
- Newspaper or periodical advertisement for project construction, groundbreaking ceremony, or operation of the new or improved facility
- Online signage placed on community website or social media outlet
- Press release

Each of these options is described in more detail in the sections below.

Implementation Option: Standard Signage

EPA recommends that large projects that involve significant expansion or construction of a new facility elect to publicize through standard signage. This option should be selected for projects where the sign would be near a major road or thoroughfare or where the facility is in a location at which this would effectively publicize the upgrades. Some facilities will not find this an appropriate or cost-effective solution. For example, investing in a large road sign for a facility that is located in a rural area or where access is limited to a smaller service road would likely not be an optimal solution.

Signs can also be located away from the project site if there is another reasonable alternative. For example, a community may elect to place a sign advertising the project near a body of water that receives discharge from a particular facility.

States selecting projects that will implement this requirement through use of a traditional sign should ensure the following are included:

- The name of the facility, project and community
- Project cost
- The State Agency/SRF administering the program
- The EPA and State Agency logos (EPA logo may only be used on a sign)

If the EPA logo is displayed along with logos of other participating entities, the EPA logo must not be displayed in a manner that implies that EPA itself is conducting the project. Instead, the EPA logo must be accompanied with a statement indicating that the recipient received financial assistance from EPA for the project. As provided in the sign specifications from the EPA Office of Public Affairs (OPA), the EPA logo is the identifier for assistance agreement projects. States are required to ensure that recipients comply with the sign specifications provided by the OPA, available at http://www.epa.gov/ogd/tc/epa_logo_seal_specifications_for_infrastructure_grants.pdf. To obtain the appropriate EPA logo graphic file, the recipient should send a request directly to OPA and include the EPA Project Officer in the communication.

Implementation Option: Posters or Brochures

Smaller projects, projects located in rural areas, and other efforts may find that it is more cost-effective and practical to advertise efforts through creation of a poster or smaller sign. If the project involves nonpoint source or green infrastructure components, those can be described at the discretion of the state or community.

The poster or brochure and acknowledgement should be visible, as well as a website or other source of information for individuals that may be curious about the SRF program. The community could also implement this option as a short pamphlet or brochure that is placed in one of these locations for community members to read.

Posters or brochures should be placed in a public location that is accessible to a wide audience of community members. This can include, but is not limited to:

- Town or City Hall
- Community Center
- Locally owned or operated park or recreational facility
- Public Library
- County/municipal government facilities
- Court house or other public meeting space

Given the low cost for producing multiple copies of the same poster, pamphlet, or brochure, communities can explore options for displaying these posters in several locations simultaneously. This would achieve the overall objective of reaching a broad audience and publicizing the project.

States have the option of creating a template verbiage and layout to provide to borrowers, particularly smaller or disadvantaged communities. This could reduce the burden on small municipalities which may or may not have the staffing capacity to meet signage requirements on their own.

States selecting projects that will implement this requirement through use of posters or brochures should ensure the following are included:

- Name of facility, project and community
- State SRF administering the program
- Project is wholly or partially funded with EPA funding
- Brief description of project
- Brief description of the water quality benefits the project will achieve

Implementation Option: Newsletter, Periodical or Press Release

For communities where there is no suitable public space or where advertisement through signage is unlikely to reach community members effectively, projects can be advertised in a community newsletter or similar periodical. States can use guidelines from their standard public notice practices. For new construction, if a groundbreaking ceremony is to be held, an announcement could publicize or accompany publicity for this event.

In some cases, it may be appropriate for the state agency to issue a formal press release announcing construction of a new facility. Distributing a single prepared statement concisely summarizing the project purpose and the joint funding from EPA and state resources can reach a wide audience as the statement goes through multiple news outlets. Programs should consider whether or not this is an option that is likely to effectively publicize the CWSRF or DWSRF program in local news sources.

If a recipient decides on a public or media event to publicize the accomplishment of significant events related to construction as a result of EPA support, EPA must be provided with at least a ten working day notice of the event and provided the opportunity to attend and participate in the event.

States selecting projects that will implement this requirement through use of a newsletter, periodical or press release should ensure the following are included:

- Name of facility, project and community
- State SRF administering the program

- Project is wholly or partially funded with EPA funding
- Brief description of the project
- Brief listing of water quality benefits to be achieved

Implementation Option: Insert or Pamphlet in Water/Sewer Bill

Utilities can consider including a single-page insert within water and sewer bills that are mailed to residents and users in the area. This approach would effectively publicize the project to those individuals directly benefitting from the project. The flyer or insert could emphasize the interest rate and financial savings that the community achieved by taking advantage of SRF funds as well as the environmental and public health benefits to the community.

States selecting projects that will implement this requirement through use of an insert or pamphlet in water/sewer bill should ensure the following are included:

- Name of facility, project and community
- State SRF administering the program
- Project is wholly or partially funded with EPA funding
- Brief description of the project
- Brief listing of water quality benefits to be achieved

Implementation Option: Online & Social Media Publicity

Many communities are increasingly finding that the online forum is the most cost-effective approach to publicizing their SRF programs and reaching a broad audience of stakeholders. Online “signage” should follow the minimum information guidelines above and may appear on the town, community or facility website if available. In some cases, communities may be active on social media sites such as Facebook or Twitter. These can be used as an opportunity for publicizing projects and information about how SRF funds are being used in the community. These online announcements/notices may be appropriate for settings where physical signage would not be visible to a wide audience. They can be a more cost-effective option than traditional signs or publicity in print media outlets. This option may be most useful where the community’s website is a well-recognized source of information for its residents.

In the case of some projects, such as nonpoint source or sponsorship projects, there might be additional opportunities for online publicity through partner agencies or organizations. This could take place either on the organization’s website or again through social media outlets.

States selecting projects that will implement this requirement through use of online & social media publicity should ensure the following are included:

- Name of facility, project and community
- State SRF administering the program
- Project was wholly or partially funded with EPA funding
- Brief description of the project

- Brief listing of water quality benefits to be achieved

Suggested Language for Alternate Options

For any of the alternate implementation options listed above, SRF programs have discretion to structure their signage as they see appropriate. The language below is offered as an option for use in posters, pamphlets, brochures, press releases, or online materials. States may consider using the following:

“Construction of upgrades and improvements to the [Name of Facility, Project Location, or WWTP] were financed by the [Clean Water/Drinking Water] State Revolving Fund. The [CWSRF/DWSRF] program is administered by [State Agency] with joint funding from the U.S. Environmental Protection Agency and [State Name]. This project will (description of project) and will provide water quality benefits [details specifying particular benefits] for community residents and businesses in and near [name of town, city, and/or water body or watershed to benefit from project.] [CWSRF/DWSRF] programs operate around the country to provide states and communities the resources necessary to maintain and improve the infrastructure that protects our valuable water resources nationwide. “

For projects in certain areas, states should consider whether or not it is appropriate to include additional details about the projects. Specific benefits, such as reduction of CSO events, lessening of nutrient pollution, reducing contaminant levels or water pumping costs, or improvements to a particular water body, may be of interest to community residents. In these cases, including them would further serve to showcase positive efforts financed by the SRF programs. Additionally, for projects with components that meet Green Project Reserve (GPR) criteria, States may elect to detail these particular improvements. For example, the state could include quantitative improvements in energy efficiency or water conservation achieved by project upgrades. If the project includes green infrastructure components such as rain gardens and green roofs that have environmental and aesthetic benefits to the community, these can be described briefly as well. Again, this additional information can be included at the discretion of the state when it is appropriate, given the project type, location, and the type of signage or publicity effort selected.

Information on Requirements that Pass-Through Entities must “Flow Down” to Subrecipients

EPA is providing the following list of statutory, regulatory, and Executive Order requirements to assist recipients or “pass-through entities” who make subawards under the Uniform Grant Guidance (UGG) to identify potential Federal requirements that may apply to subrecipients on EPA funded projects per [2 CFR 200.331\(a\)\(2\)](#). The list is for informational purposes only and is not intended to be a comprehensive description of all requirements applicable to each EPA financial assistance award. How a specific requirement applies depends on the nature of the project and may require coordination between EPA and other Federal agencies. Pass-through entities should consult their EPA Project Officer for further advice if they believe any of these requirements impact a subaward.

Note that major EPA assistance programs involving construction such as the Clean Water State Revolving Fund (CWSRF) and Drinking Water State Revolving Fund (DWSRF) programs have their own regulations and guidance documents for complying with “Flow Down” requirements. Loans and similar transactions that CWSRF and DWSRF recipients enter into are not subawards for the purposes of the [2 CFR Part 200](#) UGG. The information below, therefore, does not apply to loans and similar transactions entered into by recipients of CWSRF and DWSRF capitalization grants.

1. Nondiscrimination Laws and Social Policies

These requirements, if applicable, apply to the organization receiving EPA financial assistance itself, rather than the project receiving EPA funding. Most EPA financial assistance recipients are subject to the laws and policies described below. This list of nondiscrimination and social policy requirements is for informational purposes only and is not intended to provide guidance on compliance in the context of a particular EPA assistance agreement. If it appears that one or more of these requirements may apply, pass-through entities should consult with their EPA Project Officer for advice.

a. Non-Discrimination Laws

Title VI of the Civil Rights Act of 1964, Section 13 of the Federal Water Pollution Control Act Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, The Age Discrimination Act of 1975. These four laws prohibit discrimination in the provision of services or benefits, on the basis of race, color, national origin, sex, disability or age, in programs or activities receiving federal financial assistance. Pursuant to EPA’s regulations on “*Nondiscrimination in Programs receiving Federal Assistance from the Environmental Protection Agency*,” in [40 CFR Part 5](#) and [40 CFR Part 7](#) the pass-through entity must agree, and require all subrecipients to agree, not to discriminate on the basis of race, color, national origin, sex, disability or age. The fact that the regulations do not address discrimination on the basis of age *does not* exempt recipients from compliance with the later-enacted Age Discrimination Act.

b. Executive Order 11246

Part III of Executive Order No. 11246 (September 24, 1965) as amended prohibits discrimination in Federally assisted construction activities. As provided in section 301 of the Executive Order, Pass-through entities must ensure that subrecipients include the seven clauses specified in section 202 of the Order in all construction contracts. Section 302 defines "Construction contract" as “any contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to real property.” Contracts less than \$10,000 are exempt from the requirements of the Order.

c. **Disadvantaged Business Enterprises**

EPA regulations at [40 CFR Part 33, “Participation by Disadvantaged Business Enterprises in U.S. Environmental Protection Agency Programs”](#) set forth requirements for making good faith efforts to ensure that Disadvantaged Business Enterprises, including Minority Business Enterprises and Women’s Business Enterprises receive a fair share of contracts awarded with funds provided by EPA financial assistance agreements. These requirements apply to subrecipients in accordance with [40 CFR 33.102](#) and the definition of “Recipient” in [40 CFR 33.103](#).

d. **Consultation with State and Local Officials**

The Demonstration Cities and Metropolitan Development Act and the Intergovernmental Cooperation Act instructed federal agencies to consult with local officials to ensure smoother coordination of their assistance programs and to ensure that projects funded under federal programs are consistent with local planning requirements. Similarly, Executive Order 12372 as amended (1983) established procedures for intergovernmental review of federal financial assistance projects. EPA has implemented these requirements in [40 CFR Part 29](#).

The [Catalogue of Federal Domestic Assistance](#) entry for the pass-through entity’s agreement with EPA will specify whether intergovernmental review requirements are applicable. If intergovernmental review is required, and neither EPA nor the pass-through entity complied with [40 CFR Part 29](#) prior to award because the location of subaward projects had not been determined, the pass-through entity must comply with intergovernmental review requirements after award. Intergovernmental review requirements vary among the states. As provided at [40 CFR 29.9\(d\)](#) if a state does not have a single point of contact for intergovernmental review, the recipient must offer directly affected State, area-wide, regional and local officials an opportunity to comment on the subrecipient’s proposed project.

e. **Clean Air Act and Clean Water Act**

Section 306 of the Clean Air Act (CAA) and section 508 of the Clean Water Act (CWA), as implemented by Executive Order 11738 (1973), prohibit performance of Federal assistance agreements at facilities disqualified due to certain violations of the CAA or CWA. Disqualified facilities are listed in the [System for Award Management](#). Pass-through entities must ensure that subrecipients are not disqualified and that they are aware of the requirement to check SAM, to determine if facilities that will be used to perform contracts or subawards are listed in SAM.

2. Financial Management Policies

These policies apply to transactions financed by EPA financial assistance funds and apply to both pass-through entities and subrecipients on the basis of either regulatory requirement or the [General Terms and Conditions](#) (T&C) of the pass-through entity’s agreement with EPA. Pass-through entities should consult with their EPA Project Officer for advice if they have questions regarding how these policies apply to a particular subaward.

a. **Federal Funding Accountability and Transparency Act**

As set forth in the General Condition of the pass-through entity’s agreement with EPA entitled “Reporting Subawards and Executive Compensation” the pass-through entity must ensure that subrecipients comply with Federal Funding Accountability and Transparency Act (FFATA) reporting requirements. Pass-through entities may use the terms of their subaward agreement or other effective means to meet their responsibilities.

b. **Suspension and Debarment**

The pass-through entities responsibilities are described at [2 CFR Part 180, Subpart C](#) and the “Debarment and Suspension” T&C of the pass-through entity’s agreement with EPA. These requirements, which

include checking [SAM](#) to ensure that potential contractors, subrecipients and their principals and agents are not suspended, debarred or otherwise ineligible to participate in Federal assistance programs also apply to subrecipients. It is important to note that in addition to being precluded from all first tier contracts and all contracts requiring EPA approval in accordance with [2 CFR 180.220](#) under [2 CFR 1532.220](#) suspended or debarred parties may not receive EPA funded contracts in excess of \$25,000 at any tier. Also, at [2 CFR 1532.995](#) EPA has identified activities that suspended or debarred parties may not perform as a “Principal” in EPA financial assistance agreements and subawards.

c. Limits on Fees Charged by Individual Consultants

EPA’s Fiscal Year 2009 Appropriation Act (Pub. L. 111-8) restricts the amount of EPA financial assistance that recipients may use to compensate individual consultants. EPA implements this requirement at [2 CFR 1500.9\(a\)](#) and the “Consultant Cap” T&C. Pass-through entities must ensure that subrecipients comply with the limitation on compensation for individual consultants through the terms of their subaward agreements or another effective means. Additional information regarding when the consultant fee limit applies is available at 69 Fed. Reg. 18380 (April 7, 2004).

d. Management Fees

EPA policy prohibits recipients and subrecipients from charging management fees or making similar arrangements to receive EPA financial assistance in excess of direct or Federally approved indirect cost rates. This prohibition is implemented by the Management Fees T&C. Pass-through entities must ensure that subrecipients comply with this requirement through the terms of their subaward agreements or another effective means.

e. New Restriction on Lobbying, 40 CFR Part 34

Pass-through entities must ensure that subawards in excess of \$100,000 require that subrecipients submit certification and disclosure forms required by [40 CFR 34.110](#) and the “Lobbying and Litigation” T&C.

f. Uniform Grant Guidance Requirements (UGG)

Subrecipients must comply with [2 CFR Part 200](#) requirements when they award procurement contracts, make subawards, and incur other costs borne by EPA financial assistance. Pass-through entities must ensure that subrecipients comply with this requirement through the terms of their subaward agreements or another effective means.

3. Environmental Authorities

These requirements typically apply when an EPA funded project involves construction, remediation of contamination in water, soil, or buildings, and similar activities which alter the physical environment. Other environmental laws may apply to a project independent of EPA funding. Financial assistance for research, training, technical assistance and related outreach, environmental education, program operations, or installation of pollution control equipment on vehicles or vessels, are generally not affected by these requirements. Note that this list of environmental authorities is for informational purposes only and is not intended to provide guidance on compliance in the context of a particular EPA assistance agreement. If it appears that one or more of these requirements may apply, pass-through entities should consult with their EPA Project Officer for advice.

a. National Environmental Policy Act

Where applicable, the National Environmental Policy Act (NEPA) requires federal agencies to conduct an environmental review of their proposed actions, with a view toward ensuring informed decision-making and public input. EPA’s NEPA regulations are at [40 CFR Part 6](#), and note that certain EPA actions are exempt from NEPA. Pass-through entities and subrecipients may be required to assist EPA with NEPA compliance, where appropriate.

b. Executive Order No. 12898 (1994)

This Executive Order (E.O.) directs federal agencies to “make achieving environmental justice part of its mission.” Each covered agency is required to identify and address, as appropriate, any “disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.” One vehicle for EPA’s efforts to address environmental justice concerns is a NEPA analysis. Considering environmental justice generally involves identifying potential adverse effects on minority populations and low-income populations, as well as encouraging early public participation and the development of alternative or mitigating options as appropriate. The terms and conditions of the EPA award may require pass-through entities and subrecipients to assist EPA in ensuring the requirements of the Executive Order are met.

c. National Historic Preservation Act

Section 106 of the NHPA requires federal agencies to take into account the effects of their undertakings on historic properties and to provide the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment on such undertakings. Under the ACHP’s regulations, consultations generally occur in the first instance with state and/or tribal historic preservation officials, with direct ACHP involvement in certain cases. EPA funded projects with the potential to affect historic properties – *i.e.*, properties listed in or eligible for listing in the National Register of Historic Places – may implicate this statute. This may include, for instance, EPA-funded projects that involve alteration of structures (*e.g.*, asbestos abatement) that are historic properties or construction/remediation on culturally sensitive lands. Pass-through entities should work with their Project Officer to ensure that subrecipients are available to work with EPA on any required consultation process with the State or Tribal Historic Preservation Office prior to commencing the project to ensure compliance with section 106 of the NHPA.

d. Archeological and Historic Preservation Act

This law applies if archeologically significant artifacts or similar items are discovered after an EPA funded construction project has begun, and compliance may be coordinated with the NHPA, discussed above. The AHPA requires federal agencies to identify relics, specimens, and other forms of scientific, prehistorical, historical, or archaeological data that may be lost during the construction of federally sponsored projects to ensure that these resources are not inadvertently transferred, sold, demolished or substantially altered, or allowed to deteriorate significantly. Pass-through entities must ensure that subrecipients performing construction projects are aware of this requirement and pass-through entities must notify EPA if the AHPA is triggered.

e. Protection of Wetlands, Executive Order 11990 (1973), as amended

EPA funded projects involving new construction in wetlands may implicate this Executive Order. The terms and conditions of the EPA assistance agreement may require pass-through entities to ensure that subrecipients assist EPA in determining whether a proposed project will be located in (or affect) a wetland, and if so, evaluating practicable alternative locations for the project or other mitigation.

f. Flood Plain Management, Executive Order 11988 (1977), as amended, and Executive Order 13690 (2015)

EPA funded projects that are in or will affect a flood plain are covered by these Executive Orders and Water Resources Council guidance. EPA assistance agreement terms and conditions may require pass-through entities to ensure that subrecipients work with EPA to evaluate practicable alternatives or other mitigation to reduce flood risks and protect flood plains.

g. Farmland Protection Policy Act

This statute requires EPA to use criteria developed by the Natural Resources Conservation Service (NRCS) to identify the potential adverse effects of Federal programs on farmland and its conversion to nonagricultural uses, to mitigate these effects, and to ensure that programs are carried out in a manner that is

compatible with the farmland preservation policies of state and local governments, and private organizations. Pass-through entities and their subrecipients may need to work with EPA or NRCS, as appropriate, to ensure compliance.

h. Coastal Zone Management Act

This statute requires EPA to ensure that Agency funded activities in coastal areas are consistent with state coastal zone management plans that have been approved by the Department of Commerce. Pass-through entities and subrecipients should consult directly with the state Coastal Zone Management agency during the planning stages to ensure that the EPA funded project will be consistent with the state's coastal zone management plan.

i. Coastal Barriers Resources Act

This statute restricts federal financial assistance that would encourage development in the Coastal Barriers Resources System, a collection of undeveloped and ecologically sensitive barrier formations along the Atlantic and Gulf Coasts of the United States, and the shore areas of the Great Lakes, and adjacent wetlands, marshes, estuaries, inlets, and near-shore waters. During the planning phase of a proposed project located in the Coastal Barriers Resources System, pass-through entities and subrecipients should consult with the state Coastal Zone Management agency to determine whether a proposed project will have an effect on the system, and if so, the alternative sites or mitigating measures that must be incorporated in the project's design.

j. Wild and Scenic Rivers Act

This statute prohibits federal assistance for water resource projects that would have direct and adverse effects on, invade, or unreasonably diminish, the special values of a congressionally designated wild and scenic river. Pass-through entities and subrecipients should consult with appropriate state or federal (National Park Service or Bureau of Land Management) agency to determine whether the project or any alternatives under consideration may affect a designated river.

k. Endangered Species Act (ESA)

This statute requires Federal agencies to ensure that their activities are not likely to jeopardize endangered species, adversely modify designated critical habitats, or incidentally take (injure or kill) endangered animals without authorization, in consultation with the appropriate federal wildlife agency (the U.S. Fish and Wildlife Service or National Marine Fisheries Service) as described in [50 CFR Part 402](#). The ESA consultation process is triggered when an action "may affect" ESA-protected species or critical habitat. Pass-through entities and subrecipients should coordinate with EPA to ensure consultation occurs where appropriate."

l. Magnuson-Stevens Fisheries Conservation and Management Act

Magnuson-Stevens Fisheries Conservation and Management Act as amended by The Sustainable Fisheries Act of 1996 is intended to manage and conserve Essential Fish Habitats (EFH). The National Marine Fisheries Service (NMFS) administers the Act. Pass-through entities and subrecipients must coordinate with NMFS to determine whether a proposed project may adversely affect an EFH. If an action may adversely affect an EFH, the subrecipient must complete an EFH consultation with NMFS.

m. Clean Air Conformity Act

This statute prohibits any Federal assistance for an activity within a non-attainment or maintenance area that fails to conform to an applicable State Implementation Plan. Pass-through entities and subrecipients should first consult with their state air program's web site to determine if an EPA funded activity is in a non-attainment or maintenance area. If the EPA funded activity is within a non-attainment or maintenance area the pass-through entity and subrecipient should consult with the state air program to determine conformity. Note that EPA regulations at [40 CFR 93.153\(c\)](#) exempt a number of activities including

planning, studies, technical assistance and remediation under the Comprehensive Environmental Response, Liability and Compensation Act (CERCLA).

n. **Safe Drinking Water Act**

Precludes the use of EPA financial assistance for projects that would contaminate sole source aquifers. Pass-through entities and subrecipients must contact state officials to determine whether a sole source aquifer is in the vicinity of the proposed project. If a sole source aquifer is in the project planning area, then the assistance recipient, in consultation with state ground water officials, must conduct investigations to determine if the aquifer could be contaminated by the project. If the project could potentially affect ground water supplies, the assistance recipient, in consultation with ground water officials, must elect an alternative site or devise adequate mitigating measures.

SECTION 6 – REQUIRED TOWN OF TAOS FORMS

FORMS INCLUDED IN THIS SOLICITATION DOCUMENT:

- 1) Response Form (blank form attached to this Request for Proposals)
- 2) Campaign Disclosure (blank form attached to this Request for Proposals)

Failure to complete and submit these forms with your Response may result in it being deemed non-responsive and rejected without further evaluation

*Download solicitations, addenda and forms at <https://www.taosgov.com/200/Purchasing>

RESPONSE FORM

Failure to complete this form shall result in your Response being deemed non-responsive and rejected without further evaluation.

TO: Town of Taos:

The Undersigned hereby offers and agrees to furnish the goods and/or services in compliance with all terms, scope of work, conditions, specifications, and addenda in the Request for Proposals.

ADDENDA:

The undersigned has read, understands and is fully cognizant of the Information to Respondents, Offer and Form of Contract, all Exhibits thereto, together with any written addendum issued in connection with any of the above. The undersigned hereby acknowledges receipt of the following addendum(s): _____, _____, _____, _____ (write "none" if none). In addition, the undersigned has completely and appropriately filled out all required forms.

OBLIGATION:

The undersigned, by submission of this Offer, hereby agrees to be obligated, if selected as the Contractor, to provide the stated goods and/or services to the Town, for the term as stated herein, and to enter into a Contract with the Town, in accordance with the Conditions, Scope and Terms, as well as the Form of Contract, together with any written addendum as specified above.

COMPLIANCE:

The undersigned hereby accepts all administrative requirements of the RFQ and will be in compliance with such requirements. By submitting this Response Form, the Respondent represents that: 1) the Respondent is in compliance with any applicable ethics or anti-kickback provisions of the Town's Procurement Ordinance, and 2) if awarded a contract to operate the Concession or provide the Services required in the RFQ, the Respondent will comply with the ethics and anti-kickback provisions of the Procurement Ordinance.

NONCOLLUSION:

The undersigned, by submission of this Response Form, hereby declares that this Response is made without collusion with any other business making any other Response, or which otherwise would make a Response.

PERFORMANCE GUARANTEE:

The undersigned further agrees that if awarded the Agreement, it will submit to the Town any required performance guarantee (i.e. performance and payment bond).

SUBMITTAL REQUIREMENTS:

The undersigned certifies it has attached a complete response to each of the submittal requirements listed in the Evaluation Criteria and Submittal Requirements section of this RFQ.

No Response shall be accepted which has not been manually signed in ink in the appropriate space below:

I certify, under penalty of perjury, that I have the legal authorization to bind the firm hereunder:

For clarification of this offer, contact:

Name:

Company Name

Title:

Address

Phone:

City State Zip

Fax:

Signature of Person Authorized to Sign

Email:

Printed Name

Title

Federal Tax ID

Acknowledged before me by _____ (name) as _____ (title)
of _____ (company) this ____ (day) of _____, 200__.

Notary Signature: _____

My Commission Expires: _____

Affix Seal

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to NMSA 1978, § 13-1-191.1 (2006), any person 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 shall void an executed contract or cancel a solicitation or proposed award for a proposed contract 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.

THIS FORM MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

The following definitions apply:

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

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

"Campaign Contribution" includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or Page 2 of 3 DFA Disclosure form/April, 2006 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.

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

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

"Prospective contractor" means a person who is subject to the competitive sealed proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person qualifies for a sole source or a small purchase contract.

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

DISCLOSURE OF CONTRIBUTIONS

MAYOR:

DANIEL R. BARRONE

COUNCIL MEMBERS:

NATHANIEL EVANS
DARIEN D. FERNANDEZ

GEORGE "FRITZ" HAHN
PASCUALITO M. MAESTAS

Contribution made by: _____

Relation to Prospective Contractor: _____

Name of Applicable Public Official: _____

Date Contribution(s) made: _____

Amount(s) of Contributions(s) _____

Nature of Contributions (s) _____

Purpose of Contributions(s) _____

Signature

Date

Title (position)

OR

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

Signature

Date

Title (position)