

Chapter 1: Program Administration

Overview

Program administration is essential to the successful management and completion of New Mexico Community Development Block Grant Program (CDBG) projects. This chapter is designed to be used by the Grantee and covers the administrative requirements needed for compliance with the program, including a step-by-step process that will help ensure that the Grantee completes the tasks so critical to compliance, yet so frequently overlooked. We recommend that the Grantee reads this chapter thoroughly prior to project implementation.

CDBG Planning grant awardees also must comply with the program administration requirements in this chapter.

Program administration tasks include project file setup, financial management, pay requests, and reporting, as well as compliance with Federal requirements, such as Equal Employment Opportunity, Fair Housing, Citizen Participation, Residential Anti-Displacement and Relocation Assistance, Workforce Analysis, Section 3, and Contractor/Subcontractor Clearance.

This is a working document that is subject to change. Please contact your Local Government Division (LGD) Project Manager if you have any questions.

The 2018 CDBG Implementation Manual is also available at our website:

http://nmdfa.state.nm.us/CDBG_Implementation_Manual.aspx

Task Checklist

- ☐ Task #1 Grant Administration
- ☐ Task #2 Execute the Grant Agreement
- ☐ Task #3 Setup Files and Establish CDBG Accounting
- ☐ Task #4 Authority to Use Grant Funds
- ☐ Task #5 Maintain sound financial management
- ☐ Task #6 Maintain accounting records
- ☐ Task #7 Provide supporting source documentation
- ☐ Task #8 Follow procedures for financial management of CDBG accounts
- ☐ Task #9 Request Payments
- ☐ Task #10 Federal Requirements: Equal Employment Opportunity (EEO), Fair Housing, Citizen Participation, Residential Anti-Displacement and Relocation Assistance, Section 3
- ☐ Task #11 Procurement Policy
- ☐ Task #12 Grantee/Contractor/Subcontractor Clearance
- ☐ Task #13 HUD Applicant/Recipient Disclosure/Update Report

Task #1 Chose a Grant Administrator

A grantee may choose to perform grant administration task in-house or to contract professional administrative services. If a grantee pursues the latter option, it should consult Chapter 3: Procurement of Professional Services for guidance on the Community Development Bureau's requirements for selecting contractors.

When making the decision to take on grant administration in house, a grantee should consider its staff's capacity in delegating responsibly. CDBG administration can vary from 2-3 hours per week or up to 20 hours per week depending on the project phase. If a grantee's administrator is unable to manage this additional workload could result in stress, frustration, and a compromised project. Successful administrators have the latitude to proactively respond to deadlines and are assertive in seeking information or clearing up doubts with their project manager.

In the case a grantee elects to issues a request for proposals (RFP) for administrative services the grantee must use the LGD provided RFP template (Exhibit 3-A) and contract template. Doing so ensures compliance with State and Federal regulations. It is imperative that grantees use the CDBG approved Exhibit 3-A for the RFP of administrative services and CDBG approved (Exhibit 3-B) for the contract of those services. By doing so, grantees will automatically meet all State and Federal Procurement rules and regulations.

Task #2 Draft and execute the Grant Agreement

Upon receiving the CDBG award letter from the LGD, a grantee should provide its project manager with Project Description (**Exhibit 1-A**), Project Schedule (**Exhibit 1-B**), and Project Cost/Financing Summary (**Exhibit 1-C**). The project manager will then review these items for consistency with the CDBG application and feasibility. When a project manager and grantee reach agreement on the documents, the LGD will issue the Grant Agreement by sending two original copies to the grantee. The grantee's authoritative local official must sign and send back both copies for the LGD Director to sign, and effectively execute the grant agreement. The LGD will retain one original copy of the grant agreement and return one to the grantee. The following section explains critical information in the grant agreement:

CDBG Project Number. The Project Number is the identifying number for the Grantee's CDBG project and will be used on all correspondence, pay requests, and reports.

Duration of the Grant Agreement. The

From the Grant Agreement: "The term of this Agreement shall be effective upon execution by the Division [LGD]. It shall terminate on the date which is two (2) years after the date of execution by the Division..." **Amendments to grant agreement s will be approved on a case-by-case basis, and must be requested on Grantee letterhead in writing with a detailed, specific justification for a contract modification.**

Dollar Amount of the Grant Award

This is the maximum dollar amount the Grantee will receive from LGD upon completion of, and compliance with, all stated requirements in the Grant Agreement and submission of the Grantee's pay requests.

Official Grantee Representative

The Grantee representative is designated by the Grantee and is responsible for overall administration of the approved project. Name and contact information of this designee is listed in the Grant Agreement.

Signature Page

The page where the Grant Agreement is executed by the Grantee and LGD, with notarized signatures. The Grant Agreement is officially executed on the date that the LGD Director signs the contract and therefore expires 2 calendar years from that date.

Project Description (Exhibit 1-A)

The Project Description (**Exhibit 1-A**) of the Grant Agreement lists the Grantee name, project number, grant amount, description of approved scope of project work, national objective (total beneficiaries of the project and percentage that are low and moderate income (LMI), and cash match and leveraging.

The Project Description should be consistent as described in the Grant Application throughout the life of the Grant and Project Closeout. Once the Grant Agreement has been executed, the Grantee must adhere to the Project Description. ***Changes to the approved Project Description must be requested in writing and an amendment approved and executed by LGD. The Grantee is responsible for completing the project as awarded. Requests for Grant Agreement amendments as they pertain to reducing the project scope of work are indicative of poor planning and cost estimates, and will therefore be evaluated on a case-by-case basis.***

Project Schedule (Exhibit 1-B)

The "Project Schedule" (**Exhibit 1-B**) will be used to monitor the progress of the project. The goals established in the Project Schedule are used as milestones in the Progress Reports to assess projected versus actual progress. The Grantee must work with their LGD project manager to ensure realistic milestones.

Changes to the approved Project Schedule must be requested in writing and an amendment approved and executed by LGD. Requests for Grant Agreement amendments as they pertain to the Project Schedule will be evaluated on a case-by-case basis.

Project Cost/Financing Summary (Exhibit 1-C)

The Project Cost/Financing Summary (**Exhibit 1-C**), also known as the project budget, lists the

CDBG funds, cash match, and leveraging funds that will finance the project. The dollar amounts are allocated to specific project cost activities, including administration (contractual), architect/ engineer, other professional, inspection (testing), and construction. CDB Staff recommends that funds be distributed proportionately throughout cost activities to encourage proportionate spending. This allows grantees to utilize CDBG funds quicker, keeps grantees off the HUD Slow Spender List, and allows for a proportionate reversion of funds in the event the project is completed under budget. The approved budget must always match the Request for Payment/ Financial Status Report (**Exhibit 1-M**). ***Changes to the approved budget must be requested in writing and an amendment approved and executed by LGD. Requests for Grant Agreement amendments as they pertain to increased budgets will be evaluated on a case-by-case basis. Budget Amendments that increase the budget will be the sole financial responsibility of the Grantee, CDBG funds will never exceed the original Grant Amount.***

Due Dates of Progress and Final reports (**Exhibits 1-D, 1-D-1**)

Progress Reports (**Exhibit 1-D**) are due quarterly ***no later*** than twenty (20) days after the end of each quarter during the term of the Grant Agreement. The Progress Report Form is designed to help keep the project on schedule, identify achievements/milestones and address issues/delays before they become problematic.

<u>Timeframe</u>	<u>Due Date</u>
January – March	Due: April 20 th
April – June	Due: July 20 th
July – September	Due: October 20 th
October – December	Due: January 20 th

Progress reports are critical, since CDB must evaluate progress throughout the life of the grant and update the HUD National Database to reflect the hard work being done at the local level. It is in the best interest of Grantees to take time to properly fill out Progress Reports with accurate information. ***Even if no funds have been expended, a progress report is still due quarterly in accordance with the Grant Agreement.***

The Final Report (**Exhibit 1-D-1**) is due ***no later*** than twenty (20) days after termination of the Grant Agreement.

Task #3 Set up files and Establish CDBG Accounting

Grantee files should be set up according to the Monitoring and Closeout checklists in Chapter 5 to avoid inadvertently leaving out any important steps and documentation. The Grantee should take the checklist for each applicable chapter and check off each item as it is completed, placing the appropriate documentation in the order of the checklist. Files must be kept in a 3-ring binders with the subject dividers that are provided at the Implementation Workshop. This will help ensure Grantee compliance with federal and state requirements during project implementation. It will also facilitate the examination of project information during monitoring reviews by CDB project managers with the Grantee.

Organizing files may seem intuitive, but properly organized paperwork from the on-set of a project facilitates the successful completion. CDB staff recommends that grantees organize their files as early as the Implementation Workshop and no later than the grant execution date. Setting up files and establishing CDBG accounting is considered the completion and submission of the following documentation and should be accomplished in approximately 8 weeks:

- **Complete Application Checklist** – all of this information can be gathered from the application submitted for this project. Documentation contained in this section is important for HUD auditing purposes.
- **Financial Management “CDBG Accounting” Checklist** – the financial management is a very important part of the project, and starting it early on helps prevent unnecessary delays when the time comes to submit pay requests.
 - Depository/Authorized Signatories Designation Form (Exhibit 1-G). This form determines who will be signing the pay request forms. It can be up to 4 people, but a minimum of 2 is required. If the Grantee is required by DFA/LGD to obtain a fiscal agent, representatives from the fiscal agent must be authorized signatories in addition to those representing the Grantee. The checking account listed on this document must be non-interest bearing, failure to do so will result in the Grantee repaying the interest to the U.S. Department of the Treasury.

Two (2) originals must be submitted to LGD. Once approved, LGD will send one original back to Grantee for inclusion in the CDBG file. This form requires the Grantee to identify the depository institution where the project’s CDBG account is located and list the persons authorized to sign the “Request for Payment/Financial Status Report” (**Exhibit 1-M**).

- Witness certification, if applicable (Exhibit 1-H). If the authorizing official is other than the Chief Executive Officer, this form is required to designate that individual.
- Substitute W-9 (Exhibit 1-I). This form establishes the grantee in the DFA vendor system and associates a bank account with the CDBG project. Note: the form was updated in April 2016, please ensure the correct version is submitted.
- Fidelity Bond. This document is insurance for the authorized signatories associated

with this grant. It is acceptable to use the New Mexico Self-Insurer's Fund so long as the "Public Officials Errors and Omissions" are covered in the policy and the policy is renewed annually.

- **Procurement Checklist** – As a CDBG grant recipient, the Grantee must adopt by resolution a procurement code on annually to be compliant with the terms and conditions of the grant agreement. The Grantee can adopt the State of New Mexico's Procurement Code or may adopt the local Procurement Code, so long as it is equal to or more stringent than the State Procurement Code. It is the Grantee's responsibility to ensure the local Procurement Code meets this criteria. Non-compliance may result in a finding and/or reversion of funds.
- **Start Environmental Checklist** – the environmental assessment takes approximately 3 months to complete, thus it is important to get started quickly.
 - Environmental Assessment Determination (Exhibit 2-A). Fill out the boxes on the form as they pertain to the project. The form is then sent to the project manager and a determination is made as to which environmental review should be conducted.
 - Certifying Official Designation (Exhibit 2-A-1). This form designates an individual tasked with the overall responsibility for the environmental review process.
- **Federal Requirements Checklist**
 - Annual Requirements - Plan must be adopted by resolution throughout the life of the grant. The adopted resolution will expire after 1 year and need to be readopted (ex. if the plan was adopted by resolution on 7/1/2098, it needs to be readopted by 7/1/2099 to remain in compliance). The Federal Requirements Plan (**Exhibit 1-Z**) must be completed and adopted by resolution using the Annual CDBG Resolutions (**Exhibit 1-Y**). At the anniversary, the Grantee may readopt the same Plan using **Exhibit 1-Y**.
 - Additional Requirements
 - Fair Housing Self-Assessment (Exhibit 1-O-2). This assessment is completed by the grantee to help identify if there are any pre-existing or current issues in regards to fair housing.
 - Evidence of activity to further Fair Housing (1 per project).
 - Grantee Work Force Analysis or EEO-4 (**Exhibit 1-S**). This document reports on the employment statistics for the county or municipality and must be updated on an annual basis. This form identifies the full, temporary and new hires as they pertain to gender and ethnicity and can be found at <https://egov.eeoc.gov/eeo4/>. It is advised to contact your local Human Resources staff for this information.

Task #4 Authority to Use Grant Funds

It is important to note that a full environmental assessment takes approximately 3 months to complete, so it is imperative to get started early. The first reason why environmental takes a long time is because federal, state and tribal entities can vary in their response times to the consultation letters. The second reason is because of the 2 required waiting periods. Once a finding of no significant impact (FONSI) and notice of intent to request release of funds (NOI/RROF) are published, a waiting period of 15 days + 1 day is required (18+1 days if posted).

Once the environmental review has taken place, the Grantee will submit the packet in its entirety to the LGD project manager. Once deemed complete, LGD must conduct an additional 15 day public comment period. Once that is complete, LGD will issue the Authority to Use Grant Funds (**Exhibit 2-Q**). ***It is important to note that NO construction funds can be committed prior to the receipt of the Authority to Use Grant Funds (Exhibit 2-Q).*** Commitment of construction funds includes bid advertisement, notice of award, notice to proceed, etc. If construction funds are committed prior to the release of **Exhibit 2-Q**, reimbursements will not be made and the Grantee will be responsible for those incurred expenses.

Task #5 Maintain sound financial management

The Grantee is responsible for clearly tracking CDBG funds and providing supporting documentation for their CDBG project. To ensure compliance with state and federal regulations, the Grantee must maintain sound financial management practices and procedures and follow Generally Accepted Accounting Principles (GAAP).

The Grantee should have acceptable accounting procedures in place, including:

- Designate the Grantee representative as the person to ensure compliance with all internal financial controls.
- Designee for review and approval of financial transactions cannot be the same person as the finance officer who processes the transactions.
- Establish separate revenue and expenditure accounts or cost centers for each CDBG project. Separate accounts will eliminate conflicts with the community's ongoing system and will provide an adequate audit trail.

Often the individual responsible for program activities is also responsible for maintaining CDBG records. In this situation, it is particularly important to have acceptable internal controls. The concept of internal controls refers to those Grantee policies and procedures designed to safeguard assets such as cash, inventory, and equipment. The state requires that each Grantee establish a

system of internal controls that meet these six minimum requirements:

1. No one individual shall have complete control over all phases of significant transactions. This means, for example, that the same person cannot purchase materials, receive materials, authorize payment, and write checks.
2. Recordkeeping shall be separate from operations and the handling and custody of assets.
3. Monthly reconciliation and verification of cash balances with bank statements shall be made by employees who do not handle or record cash or sign checks.
4. Actual lines of responsibility shall be clearly established.
5. The person who prepares payrolls shall not handle the related paychecks.
6. All persons who handle financial transactions shall be bonded in accordance with state law. Evidence of a Fidelity Bond should be given to the LGD project manager and kept in the Grantee's project files for review.

Task #6 Maintain accounting records

Grantees must maintain a complete set of General Ledger and Subsidiary Accounts.

The Grantee may choose to use the local accounting system. However, the Grantee must ensure all accounting policies, procedures, and supporting documentation described in this task are included. Accounting must be conducted on the double entry basis. Books of original and final entry are an integral part of the required system. Books of original entry are the accounting records where information is first posted, and include the Cash Receipts Journal and Cash Disbursements Journal. Books of final entry are the General Ledger and Fixed Asset Ledger. Each is straightforward and described briefly below. Use the accounting policies and procedures of the political subdivision. The procedures included in this step may be used to supplement the local accounting system or can be used if the Grantee chooses not to use the local accounting system.

The Grantee's records should have the following:

Cash Receipts Journal

All receipts of cash deposited into the CDBG fund are recorded in this journal. Receipts may include contract payments from the state, receipts from the dispositions of land, etc. The general procedure for using this journal is to record every CDBG receipt in the date order it was received, entering from whom the money was received, account, receipt number, and date.

Cash Disbursements Journal

All expenditures are recorded in this journal. Records must show the date the check was issued, check number, payee, and amount.

As stated in the previous section, CDBG funds are normally distributed to Grantees by the

“Grantee pays first” method whereby CDBG budgeted expenses are reimbursed after receipt, review, and approval by the LGD project manager and DFA fiscal officers of valid invoices, requisitions, purchase orders, and canceled checks.

In cases of special need, as determined by LGD, the Grantee may request authorization to use the method of “Advanced payment” whereby the Grantee expends CDBG budgeted expenses as soon as administratively feasible, but **no later than three business days** after the funds are deposited in their bank non-interest bearing checking account. Advanced payment should be requested in writing by the Grantee after discussions with the LGD project manager. This method has historically been a significant burden to Grantees and requires significant effort from Grantees to comply. Failure to comply with this rule will result in a finding and will prevent the Grantee from applying for CDBG during the next funding cycle to which they would otherwise be eligible.

- For example, if a CDBG check is deposited on Friday, checks equal to the total amount must be written and disbursed by the close of business the following Wednesday.
- In order to comply with the Three-Day Rule, the Grantee must arrange to be notified by the bank of receipt of deposits.
- If for any reason you receive CDBG funds and are unable to disperse them within three days, contact the LGD project manager immediately to discuss the situation.

General Ledger

This ledger must show all accounts (asset, liability, income, expense). Each account must have a trail of debits and credits with sufficient documentation.

Fixed Asset Ledger

This ledger is a list of all fixed assets acquired using CDBG funds. Examples of fixed assets recorded in this ledger include equipment.

Task #7 Provide supporting source documentation

The Grantee must document and retain ALL project invoices, receipts, and expenditures, including CDBG, cash match, and leveraging funds. When a Grantee is reimbursed for payments made to vendors, copies of the Grantee’s canceled checks and invoices showing payment to the vendor must be documented and retained in the files. A copy of check (s) reimbursing the Grantee must also be retained. ***CDBG, cash match, and leveraging funds must be drawn down proportionately during the life of the project. (See also Task #10 below)***

In the Project Cost/Financing Summary (**Exhibit 1-C**) of the Grant Agreement, the amount of cash

Chapter 1: 2019 Program Administration

match, in-kind (if applicable), and leveraging funds (if applicable) are listed. The Grantee is responsible for providing all supporting documentation that these amounts have been incurred and expended, to include all cash match, leveraging and in-kind if applicable. This documentation should include, but is not limited to copies of invoices, purchase orders and copies of canceled checks paid to the vendor(s). Supporting documentation must be retained in the Grantee's project files for monitoring reviews and audits. This information is also provided on the Request for Payment/Financial Status Report (**Exhibit 1-M**). The Cash Match/Leveraging Tracking Sheet (**Exhibit 1-J**) and the In-Kind Tracking Sheet (**Exhibit 1-K**) should be used to track the amounts spent by the Grantee on cash match and leveraging funds, and expenses of donated in-kind goods or services.

The required cash match of either 5% for rural communities or 10% for non-rural is dependent on the CDBG grant award. Pay requests that do not match the approved budget cannot be processed for payment.

Task #8 Follow procedures for financial management of CDBG accounts

All project funds must be expended from the appropriate line items. If the Grantee wants to move funds from one line item to another, the request must be submitted on letterhead for approval.

Changes to the approved budget must be requested in writing and an amendment approved and executed by LGD. Requests for Grant Agreement amendments will be evaluated on a case-by-case basis.

Accounting records must be supported by source documentation. Invoices, purchase orders, requisitions, canceled checks, time sheets, and related documents must be submitted to verify expenditure of funds. Payments will not be processed without appropriate and complete supporting source documentation.

To track in-kind expenses, all employees paid in whole or in part from project funds must prepare time sheets indicating the hours worked on CDBG projects for each pay period. Based on these time sheets and the hourly payroll costs for each employee, a statement showing the distribution of payroll charges shall be prepared and placed in the appropriate files. An In-Kind Timesheet is provided as **Exhibit 1-L**.

Grantees must retain CDBG financial records for six (6) years after project closeout. Access to the records must be made available upon request.

Annual audits for each fiscal year in which CDBG funds are expended must be provided to LGD project managers for project closeout. All CDBG expenditures must be included in the Grantee's audits. Grantees must ensure that an audit is performed by an Independent Public Accountant (IPA)

in accordance with OMB Circular A-133. The audit must be submitted to the LGD project manager within 30 days of the date the audit was released by the Office of the State Auditor.

If total expenditures of federal funds from all sources exceed \$750,000, CDBG must be listed as a funding source on the audit.

Task #9 Request payments

Grantees may not draw on their CDBG funds until accounting has been established and approved.

CDBG and all other funds must be spent in proportionate amounts unless cash match and/or leveraging funds have been fully expended prior to the initial draw request. For example, if the total CDBG grant amount is \$500,000 and the Grantee draws down \$50,000 (10%) of the CDBG funds, 10% of the cash match and/or leveraging funds must also be drawn down. If the project comes in under budget, the savings will be realized by the Grantee as well as the CDBG program. The CDBG funds will be reverted and reallocated at the annual Community Development Council allocation meeting.

Supporting documentation must be submitted, verifying the expenditure of cash match and leveraging funds as the project progresses. Requests for payment may be withheld if, in the sole opinion of LGD, satisfactory progress on the project has not been accomplished. In such cases, requests for payment will be processed at the time the division determines that appropriate action has been taken by the Grantee. Nevertheless, ***the Grantee agrees that it alone is responsible to timely pay the contractor in compliance with the provisions of the Prompt Payment Act, Sections 57-28-5-NMSA 1978.*** LGD reserves the right to withhold 10% of the grant award until the project has been completed, closed, and cleared of any findings.

All payment requests must be submitted on the Request for Payment/Financial Status Report (**Exhibit 1-M**) with original signatures. If signatures do not match the Depository/Authorized Signatories Designation (**Exhibit 1-G**), payments cannot be processed.

The approved budget in the Request for Payment/Financial Status Report (**Exhibit 1-M**) must always match the Project Cost/Financing Summary (**Exhibit 1-C**) in the Grant Agreement.

The State of New Mexico's CDBG program operates on a reimbursement basis. Once the LGD project manager determines that an invoice or pay application is eligible for reimbursement, the Grantee may request reimbursement with the Request for Payment (**Exhibit 1-M**). This document must be signed by 2 people identified as authorized signatories on Exhibit 1-G. If a fiscal agent is required, a representative from that entity must sign along with a representative from the Grantee. To accompany the Request for Payment, the Grantee must submit supporting documentation such as the invoice/pay

application, proof of payment and any additional material relevant to the request.

If a Grantee intends to use the “Advanced payment” method of distribution (commonly referred to as the “3 Day Rule”), they must request that in writing to the LGD Division Director along with justification for that request. Staff will consult with the Budget Bureau, review the most recent quarterly/annual budgets and make a determination.

In either case, CDBG funds **must be** maintained in a **non-interest** bearing checking account. The Grantee must be able to track funds or cost centers within their accounting system. ***It is required that CDBG funds be kept in a separate account that is set up specifically for the project.***

Direct Deposit information Automated Clearing House (ACH) authorizes payments to be made directly to the Grantee’s bank account. This information must match the Depository/Authorized Signatories Designation Form (**Exhibit 1-G**). ***If there is a change in the depository institution or signatories designated, a new form must be submitted with the accurate information.***

Task #10 Federal Requirements

Equal Employment Opportunity (EEO)

CDBG requires that Grantees meet federal Equal Employment Opportunity requirements as part of their CDBG assurances. The Grantee must complete the EEO-4 Survey on <https://egov.eeoc.gov/eeo4/> and submit documentation to their project manager verifying its completion, see **Exhibit 1-S** for a description of job categories. The Grantee must also post EEO posters at the construction site and in a visible public location at the Grantee’s physical office. Posters can be picked up at the local New Mexico Department of Workforce Solutions.

Fair Housing Resolution, Proclamation, and Self-Assessment

Every Grantee is required to certify that it will affirmatively further fair housing. Annually, a Fair Housing Self-Assessment (**Exhibit 1-O-2**) must be completed in addition to the adoption of the Federal Requirements Plan (**Exhibit 1-Z**) and the Annual CDBG Resolutions (**Exhibit 1-Y**).

A Fair Housing Activity must be conducted for each project. Please contact your LGD project manager for examples of fair housing activities. Some activities to consider are coloring contests, community housing fairs, banners, and utility inserts on fair housing. In addition, a fair housing poster must be displayed for the public to view.

Fair Housing Month is April, which is typically when annual CDBG fair housing requirements are

completed.

Citizen Participation Plan

Developing a Citizen Participation Plan as included in the Federal Requirements Plan (**Exhibit 1-Z**) and the Annual CDBG Resolutions (**Exhibit 1-Y**) will ensure that citizens will be provided with reasonable notices and timely access to local meetings (Open Meeting NMSA 1978, Sections 10-15-1 to 10-15-4.)

At a minimum, the Grantee must hold three (3) public meetings: two prior to submission of application, and one at the final closeout meeting to notify the public of the accomplishments of the awarded project. However, conducting public meetings during the project is encouraged and may be given additional points during the ranking of a future application.

All Citizen Participation hearings must detail CDBG's three (3) national program objectives, who are eligible applicants, eligible activities and categories, common ineligible activities, program requirements, application requirements, current and past CDBG projects, answer any questions, and open the floor for citizen input. A comprehensive list is provided in the Public Meeting Requirements (**Exhibit 1-Q-1**).

Evidence of CDBG public meetings must include separate postings or publications, sign-in sheets, and meeting minutes for each hearing conducted. Sample Notices of Public Hearing in English and Spanish are included as **Exhibit 1-Q**. In accordance with the New Mexico Open Meetings Act, notices must be posted a minimum of ten (10) days prior to the public hearing. The Grantee must complete Evidence of Posting Notices (**Exhibit 2-M**) if not published.

CDBG public hearings cannot be conducted during regularly scheduled meetings. If held on the same day as a regularly scheduled meeting, the governing body must adjourn between meetings, and again have separate sign-in sheets, minutes, and notices that distinguish the CDBG hearing separate from any other meetings or hearings.

A new public hearing must be conducted to provide citizens with reasonable advance notice of, and opportunity to comment on, proposed activities in an application to the state and for grants already made, activities that are proposed to be added, deleted, or subsequently changed from the unit of general local government's application to the state. "Substantially changed" means changes made in terms of purpose, scope, location, or beneficiaries.

Residential Anti-Displacement and Relocation Assistance Plan

Whenever federal funds, such as CDBG, are used in a project involving the acquisition, rehabilitation, or demolition of real property, a Federal law known as the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) may apply. The purpose of the URA is to provide uniform, fair, and equitable treatment for persons whose real property is acquired or for persons displaced as a result of a CDBG-funded project or activity.

This plan must be adopted by resolution annually whether or not the Grantee is undertaking relocation activities. A Residential Anti-Displacement and Relocation Assistance Plan as included in the Federal Requirements Plan (**Exhibit 1-Z**) and the Annual CDBG Resolutions (**Exhibit 1-Y**) will ensure that Grantees are compliant in this respect.

Section 3 Plan and Report

Section 3 is a provision of the HUD Act of 1968 that helps foster local economic development, neighborhood economic improvement, and individual self-sufficiency. The Section 3 program requires that recipients of certain HUD financial assistance, to the greatest extent feasible, provide job training, employment, and contracting opportunities for low or very low income residents in connection with projects and activities in their community. There are numerous requirements that must be followed by CDBG grantees and their contractors to ensure Section 3 compliance:

- Each CDBG Grantee is required annually adopt a Section 3 Plan as included in the Federal Requirements Plan (**Exhibit 1-Z**) and the Annual CDBG Resolutions (**Exhibit 1-Y**) to ensure that Grantees are compliant in this respect. This completed, signed plan must also include Section 8 income limits for the project area included in Exhibit 1-Y.
- Each CDBG Grantee is required to complete and submit a Section 3 Summary Report, HUD #60002 (**Exhibit 1-U**) to the project representative at time of grant execution. Section 3 Summary Reports must be updated annually. *The annual updates are due with the first quarterly report of the calendar year for every year following grant execution.*
- The Section 3 Contractor Certification (**Exhibit 1-V**) is completed by construction and/or non-construction contractors who self-certify that they meet the criteria for a Section 3 Business.
- The Section 3 Contractor must have the new hire(s) that are Section 3 Residents fill out a Section 3 Resident Certification (**Exhibit 1-W**).

Task #11 Procurement Policy

The Grantee is required to adopt and adhere to a procurement policy by resolution annually for CDBG projects. Chapters 3 and 4 discuss procurement in more detail.

Again, we recommend updating and adopting the procurement policy annually with other federal requirements.

Task #12 Grantee/Contractor/Subcontractor Clearance

To comply with HUD requirements, the Grantee must assure that any and all parties under contract on CDBG projects (this includes the Grantee and any administrative, professional, and construction service providers) maintain an active registration on the federal System for Award Management (SAM), which must be available for public search. Registration on SAM (<https://beta.sam.gov/>) is free and required

for all grantees, subgrantees, contractors and subcontractors prior to contract award for work on federally-funded projects.

The Grantee must submit a completed Contractor/Subcontractor Clearance form (**Exhibit 1-X**) to LGD for verification and approval of active SAM registration. LGD will verify this registration at least once per year. Chapters 3 and 4 discuss federal SAM registration in more detail.

Once a Grantee has entered into an administrative and/or professional services contract, the Grantee must submit the Contract-Subcontract Activity Report (**Exhibit 1-E**). Instructions for properly completing the form can be found in **Exhibit 1-E-1**. Once submitted, this information is then relayed to HUD at the national level. Additionally, when a Grantee has entered into a construction contract, the Contract-Subcontract Activity Report (**Exhibit 1-E**) must be updated to include all contractors and subcontractors associated with the project and submitted to LGD.

Task #13 HUD Applicant/Recipient Disclosure/Update Report

The Applicant/Recipient Disclosure/Update Report (**Exhibit 1-F**) was submitted at the time of application. A second and final **Exhibit 1-F** is due once the project has been completed, and is submitted with the Final Report (**Exhibit 1-D-1**). This HUD required form is used to report additional funds of any source and type that are used to support the costs of the CDBG project. This includes and is not limited to cash match dollars from the Grantee's general fund, state legislative grants, federal grants, and state or federal loans.

**EXHIBIT 1-A
PROJECT DESCRIPTION**

EXHIBIT 1-A

PROJECT DESCRIPTION

GRANTEE NAME _____

PROJECT NUMBER _____

GRANT AMOUNT _____

PROJECT DESCRIPTION

Include Grantee name, project purpose, scope of work to be performed, physical address, latitude, and longitude. Be detailed and specific. Avoid vague language such as "other miscellaneous items to the extent funds are available."

NATIONAL OBJECTIVE (from DFA/LGD approved survey)

This project will benefit _____ total beneficiaries of which _____% are Low and Moderate Income (LMI).

CASH MATCH and LEVERAGING (from CDBG Application)

_____ **Grantee Name** _____ will provide a _____% Cash Match of \$ _____
in addition to \$ _____ in leveraging.

EXHIBIT 1-B PROJECT SCHEDULE

EXHIBIT 1-B

PROJECT SCHEDULE

Grantee Name	Project Start Date		Project Completion Date									
CDBG Project Number												
Project Description	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter								
ADMINISTRATION/PROFESSIONAL SERVICES Year:												
Milestones: 1. Organize and Set Up Files 2. Set Up CDBG Accounting 3. Complete Environmental Review Record 4. Prepare RFP/Notice for Professional Services 5. LGD Review/Approval of Engineering Agreement and Related Documents	J	F	M	A	M	J	J	A	S	O	N	D
DESIGN Year:												
Milestones: 6. Complete Plans/Specs and Bid Documents 7. LGD Review/Approval of Plans/Specs and Bid Documents 8. Publish Bid Notice and Award Prime Contract 9. LGD Review/Approval of Prime Contract & Related Documents												
CONSTRUCTION/CLOSEOUT Year:												
Milestones: 10. Pre-Construction Conference 11. Issue Notice to Proceed 12. Construction 13. Final Inspection/Closeout												

EXHIBIT 1-C
PROJECT COST/FINANCING SUMMARY

Exhibit 1-C

Project Cost/Financing Summary

Entity Name: <input style="width: 150px;" type="text"/>		<input type="checkbox"/> Grant Agreement		CDBG Amount: <input style="width: 100px;" type="text"/>	
CDBG Project Number: <input style="width: 150px;" type="text"/>		<input type="checkbox"/> Grant Amendment		Other Amount: <input style="width: 100px;" type="text"/>	

Project Cost Activities	Project Funding Sources					Total Project Cost
	CDBG Funds	Other Sources (identify other local, state, federal, or private)				
		Cash Match	Leverage			
Administration (Contractual)						\$ -
Architect/Engineer						\$ -
Other Professional						\$ -
Inspection (Testing)						\$ -
Property Acquisition						\$ -
Property Rehabilitation						\$ -
Construction						\$ -
						\$ -
						\$ -
						\$ -
						\$ -
						\$ -
						\$ -
Totals	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -

EXHIBIT 1-D

QUARTERLY PROGRESS REPORT

Grantee Name: _____ CDBG Grant Number: _____

Grant Execution Date: _____ Grant Expiration Date: _____

1. Quarterly Accomplishments

CDBG Grantee's are required to report progress on their respective projects throughout the life of their grant (grant execution through closeout). Grantees must report on a quarterly basis and reports must be submitted within 20 days of the end of the quarter.

Reporting Deadlines:

<u>Quarters</u>	<u>Due Date</u>
Q1: January – March	April 20 th
Q2: April – June	July 20 th
Q3: July – September	October 20 th
Q4: October – December	January 20 th

A. The reporting period for this report is _____, 20____

B. Describe Tasks/Goals/Milestones accomplished during this quarter (include dates):

C. Describe any problems encountered or delays experienced during this quarter (if applicable). Also describe actions needed to resolve this (these) issue(s):

2. **Quarterly Contracting Activity**

CDBG Grantee's are also required to submit timely reports regarding contracts paid for (whole or in part) using federal funds, which include CDBG). This requirement is accomplished by submitting the "Contractor/Subcontractor Activity Report (Exhibit 1-E)". The document must be completed (or updated) after each subsequent contract. If a contract is executed during the quarter, Exhibit 1-E must be submitted with its corresponding progress report. Instructions for completing can be found in Exhibit 1-E-1.

A. The reporting period for this report is _____, 20__

B. Were any of the following contracts executed during this period?:

Yes No N/A

- a. Administrative Services
- b. Architect/Engineer Services
- c. Construction
- d. Construction (Subcontractors if applicable)

C. If "Yes" to any of the above? (If "No" or "Not applicable", proceed to "3.")

Yes

Yes No

a. Exhibit 1-E submitted with progress report?

No (Proceed to "3.")

3. **Quarterly Federal Spending Activity**

Federal spending demonstrates project progress both to DFA/LGD and HUD, so Grantees should utilize federal funds on a regular basis throughout the life of the grant. Projects not containing financial activity are considered "Slow Spenders" in the federal database which can jeopardize funding. To avoid being a Slow Spender, Grantees should not go more than 9 consecutive months without federal spending at any time during the project.

A. Grant Execution Date: _____

B. Has the Grantee expended CDBG dollars within 9 months of the grant execution?

Yes

No

Not Applicable

a. If "Yes", how many months have passed since grant execution? _____ months
(If "No" or "Not applicable", proceed to "C.")

C. Has more than 9 months passed since the most recent reimbursement for federal dollars?

Yes

No

Not Applicable

a. If "Yes", how many months have passed since last pay request? _____ months
(If "No" or "Not applicable", proceed to "4.")

4. Quarterly Local Spending Activity

Local spending also demonstrates project progress at the local level as well as DFA/LGD, however, HUD does not recognize these expenses until the project has been closed. Nevertheless, it is important to capture local spending activity during the reported quarter. Two documents are used to capture local spending during the quarter:

- *“Request for Reimbursement/Financial Status Report” (Exhibit 1-M)*

Used to request reimbursement as well as report local spending (Exhibit 1-Ms submitted without a request for reimbursement are assumed to be a “Financial Status Report”).

- *“Cash Match/Leveraging Tracking Sheet” (Exhibit 1-J)*

Used to recognize and chronologically organize local expenditures. This document can be considered the “cover page” and should be accompanied by supporting financial documentation (invoices, pay applications, proof of payment, etc.)

A. Has the Grantee expended any non-CDBG dollars during this quarter?

Yes

Yes No

a. Exhibit 1-M submitted with progress report?

b. Exhibit 1-J submitted with progress report?

No (If "No", proceed to "5")

5. Section 3

The Section 3 Summary Report (HUD 60002 / Exhibit 1-U) is required to be submitted with the Q4 quarterly report (October-December, due January 20 of the following year). Section 3 reports on economic opportunities for low- and very-low income persons as the result of federal funding. CDBG Grantees must complete this form as it pertains to the Grantee’s hiring of Section 3 residents and businesses resulting from this CDBG project. The form consists of hiring and training Grantee employees, contracts awarded to businesses and Grantee efforts made toward benefiting economically disadvantaged persons (page 3 of the document has step-by-step instructions).

A. Is this report covering Q4 (October-December)?

Yes

Yes No

a. HUD 60002 / Exhibit 1-U submitted with progress report?

No (If "No", proceed to "6")

6. Overview of Project Progress

Deadlines for completion of the project have been identified in the CDBG grant agreement. The purpose of comparing scheduled completion dates and action completion dates are to keep the project on schedule and identify opportunities for improvement.

Grantee Project Overview	Scheduled	Completed
Adopt federal and procurement plan requirements		
Set up CDBG accounting (Authorized signatories, CDBG bank account, fidelity bond)		
Environmental determination by LGD		
Environmental completed and submitted to LGD		
LGD issues "authority to use grant funds" (after 15 day public comment period)		
Submit RFP for professional services to LGD for approval		
LGD approves RFP		
Collect RFPs for professional services		
Execute contract with architect/engineer; submit to LGD		
LGD concurrence on architect/engineer contract		
Design project, complete plans, specs and bid docs		
Submit plans, specs and bid docs to project-specific agencies		
Submit plans, specs and bid docs to LGD with agency approval(s)		
LGD approves plans, specs and bid docs		
Collect construction bids and award contract		
Pre-construction conference and notice to proceed		
Construction start date		
% of construction work complete	%	
Construction completion date		
LGD closeout monitoring review and on-site inspection		
Complete closeout checklist and submit final pay request		

Certification

I hereby certify that the information contained in this progress report is correct and true to the best of my knowledge.

Signature of Grantee Representative

Signature of Grantee Authorized Signatory

Date

Date

EXHIBIT 1-D-1

EXHIBIT 1-D-1 FINAL REPORT

CDBG Final Report

1. List other public/private funds used in conjunction with this project:

Public Private In-Kind

2. State/national objectives the project addresses:

If project addresses multiple objectives explain:

3. Indicate Project Impact by providing the following information, if applicable:

	Projected	Actual
Number of Housing Units Rehabilitated	<input type="text"/>	<input type="text"/>
Number of Jobs Created	<input type="text"/>	<input type="text"/>
Number of Jobs Retained	<input type="text"/>	<input type="text"/>
Number of Persons Served by Community Facilities	<input type="text"/>	<input type="text"/>

a. Type of Facility

b. Number of Facilities

4. a. Provide the total number of direct beneficiaries of this project:

Projected # Actual #
Projected Minorities (if available) # Actual Minorities (if available) #

- b. Indicate the number of low/moderate income persons benefiting from this project:

Total LMI beneficiaries =
Total Minority LMI beneficiaries (if available) =

- c. Indicate the percentage of low/moderate income persons benefiting from this project:

(total # LMI beneficiaries / actual # beneficiaries) =
[(total # minority beneficiaries / actual # beneficiaries), if available] =

- d. Indicate the dollar amount of funds directly benefiting low/moderate income persons:

(total amount of CDBG funding X percentage of LMI beneficiaries) = \$
[(total amount of CDBG funding X percentage of minority LMI beneficiaries), if available] =
\$

Rev 10-18

CDBG Final Report

4. e. Total number of direct beneficiaries:

1. Ethnicity:

- | | | |
|----------------------------|---|----------------------|
| (a) Hispanic or Latino | # | <input type="text"/> |
| (b) Not Hispanic or Latino | # | <input type="text"/> |

2. Race:

- | | | |
|--|---|----------------------|
| (a) American Indian or Alaskan Native | # | <input type="text"/> |
| (b) Asian | # | <input type="text"/> |
| (c) Black or African American | # | <input type="text"/> |
| (d) Native Hawaiian or
Other Pacific Islander | # | <input type="text"/> |
| (e) White | # | <input type="text"/> |
| (f) American Indian or
Alaska Native <u>and</u> White | # | <input type="text"/> |
| (g) Asian <u>and</u> White | # | <input type="text"/> |
| (h) Black or African American
<u>And</u> White | # | <input type="text"/> |
| (i) American Indian or Alaska Native
<u>And</u> Black or African American | # | <input type="text"/> |

3. Gender:

- | | | |
|------------------------------|---|----------------------|
| (a) Male | # | <input type="text"/> |
| (b) Female | # | <input type="text"/> |
| (c) Female-Head of Household | # | <input type="text"/> |

5. Indicate the amount of CDBG money used in the following categories.

	Projected	Completed
Community Infrastructure	<input type="text"/>	<input type="text"/>
Housing Rehabilitation	<input type="text"/>	<input type="text"/>
Public Service Capital Outlay	<input type="text"/>	<input type="text"/>
Economic Development	<input type="text"/>	<input type="text"/>
Administration (Planning Technical Assistance)	<input type="text"/>	<input type="text"/>

CDBG Final Report

6. Based on the applicable national objective(s) identified in question #2, how did this project meet this requirement? Describe the need and impact of this project on the community as a whole and specifically on the LMI beneficiaries. Attach additional sheets if necessary.

7. Did any wage and/or overtime violations occur at any time during the grant?

☐

Yes

☐

No (skip to #8)

1. If "Yes", have all documents pertaining to wage/overtime violations been submitted to DFA/LGD?

☐

- Final Wage Compliance Report (Exhibit 4-R)

☐

- Employee Restitution Receipt(s) (Exhibit 4-R-1)

☐

- Federal and State Wage Violation Tracking Sheet (Exhibit 4-R-2)

☐

- UPDATED Contractor and Subcontractor Activity Form (Exhibit 1-E)

☐

- Overtime Violation Report (Exhibit 4-Q) [if applicable]

8. Grant Monitoring

Was an annual monitoring conducted by DFA/LGD for this project?

Yes

☐

N/A

☐

Was a closeout monitoring conducted by DFA/LGD for this project?

Yes

☐

No

☐

Certification

Under penalty of law, I hereby certify that to the best of my knowledge and belief that the information contained in this report is correct and true.

Signature of Grantee Representative

Signature of Chief Elected Official

Date

Date

EXHIBIT 1-E **CONTRACT/SUBCONTRACT ACTIVITY REPORT**

EXHIBIT 1-E

Contract and Subcontract Activity Report															
1. Grantee Name:										2. Grant #:					
3. Category of Project:										4. Grantee Contact Person/Phone Number:					
5. Contractor Name, Street Address, City, State, Zip	6. Contractor Contact Name (First and Last) and Phone Number	7. Contractor IRS # (Tax ID)	8. System of Award Management (beta.SAM.gov) Expiration Date (mm/dd/yyyy)	9*. Type of Contract	10**. Type of Trade	11***. Business Racial/Ethnic Code	12. Women Owned Business Y or N	13. Section 3 Y or N	14. Contract Execution Date (mm/dd/yyyy)	15****. Federal Reporting Period	16. Davis Bacon Wages Y or N	17a. Federal Wage Decision Number	17b. State Wage Decision Number	18. \$ Dollar amount of contract (CDBG Portion Only)	19. Wage Violation Reported Y or N

- | | | | |
|-----------------------------|----------------------------------|-----------------------------------|---------------------------------|
| 9*. Type of Contract | 10**. Type of Trade Codes | 11***. Racial/Ethnic Codes | 15****. Reporting Period |
| P = Professional | 1 = New Construction | 1 = White Americans | 1 = Executed October-March |
| C = General Contractor | 2 = Substantial Rehab | 2 = Black Americans | 2 = Executed April-September |
| S = Subcontractor | 3 = Repair | 3 = Native Americans | |
| | 4 = Service | 4 = Hispanic Americans | |
| | 5 = Project Management | 5 = Asian/Pacific Americans | |
| | 6 = Professional | 6 = Other | |
| | 7 = Tenant Services | | |
| | 8 = Education/Training | | |
| | 9 = Arch/Eng Appraisal | | |
| | 0 = Other | | |

Rev 10-19

EXHIBIT 1-E-1 INSTRUCTIONS FOR ACTIVITY REPORT (1-E)

Rev 10-19

The Exhibit 1-E must be used by Grantees to report all CDBG funded contracting activities to include administrative service providers, professional service providers, construction contractors and all subcontractors/subcontractors.

Grantees must complete Exhibit 1-E once a contract has been executed by all parties. This document must be submitted with the upcoming progress report (Exhibit 1-D). For example, if a professional service contract was executed on January 1st, Exhibit 1-E is due with the progress report during which it occurred or April.

- Q1(Jan-Mar) is due in April
- Q2(Apr-Jun) is due in July
- Q3(Jul-Sep) is due in October
- Q4(Oct-Dec) is due in January

Updates to the Exhibit 1-E are required if any changes occur; see **Exhibit 1-E Update Instructions** below.

Administrative Service Contracts: Upon execution of a contract, the Grantee must complete the activity report with all applicable information. Grantees must complete numbers 1-15 and 18. Numbers 16 and 19 will be "N", 17a and 17b will be "N/A". If an Administrative Service Contract was in place prior to the execution of the CDBG grant, this report must be submitted to DFA/LGD as soon as possible following project start-up. Upon completion of the contract, no updates to this form (for administrative services) will be necessary unless the portion of CDBG dollars (#18) increases or decreases by project closeout.

Professional Services Contracts: Upon execution of a contract, the Grantee must complete the activity report with all applicable information. Grantees must complete numbers 1-15 and 18. Numbers 16 and 19 will be "N", 17a and 17b will be "N/A". If a Professional Service Contract was in place prior to the execution of the CDBG grant, this report must be submitted to DFA/LGD as soon as possible following project start-up. Upon completion of the contract, no updates to this form (for professional services) will be necessary unless the portion of CDBG dollars (#18) increases or decreases by project closeout.

Construction Contracts: Grantees must initiate and submit this report to DFA/LGD at the conclusion of the pre-construction conference, but no later than the commencement of construction activities, in order to acquire all contractor and subcontractor information. Grantees must complete numbers 1-18 after the execution of the contract. Upon completion of the contract, number 19 on the form will need to be updated in addition to any change in the portion of CDBG dollars (#18) increase or decrease by project closeout.

Subconsultants and Subcontractors: For subconsultants (service providers), complete form following professional service instructions (above). For subcontractors (construction), complete form following construction contracts (above).

Exhibit 1-E is required as part of both the professional services checklist as well as the construction checklist. Grantees are encouraged to update the existing Exhibit 1-E rather than create have multiple versions (administrative, professional service, construction, etc.).

EXHIBIT 1-E INSTRUCTIONS

1. **Grantee Name:** Enter name of the unit of government that is the recipient of the CDBG grant.
2. **Grant #:** Enter CDBG project Identifier Number (e.g., 20-C-NR-I-01-G-12).
3. **Category of Project:** Enter type of CDBG project (e.g., water improvements, street improvements, sewer system improvements, public facility, economic development, housing, planning, etc.).
4. **Contact Person/Phone No.:** Enter the name and phone number of the Grantee representative completing the report.
5. **Contractor Information:** Enter the company/firm name, street address, city, state and zip code.
6. **Contractor Point of Contact:** (first and last name) as well as a phone number. This must be completed for each firm receiving a contract.
7. **Contractor IRS #:** Enter Employer (IRS) or Tax ID number for each contractor.
8. **Expiration Date:** System of Award Management (<https://beta.sam.gov/>).
- 9*. **Type of Contract:** *Contract types listed at bottom of Exhibit 1-E.
- 10**. **Type of Trade:** **Trade types listed at bottom of Exhibit 1-E.
- 11***. **Business Racial/Ethnic Code:** Racial/Ethnic codes listed at bottom of Exhibit 1-E. *Business racial/ethnic code is used to designate the racial/ethnic character of the business entity receiving a contract or subcontract. To be classified in a particular racial/ethnic category, a business entity must be 51% or more owned and controlled by the racial/ethnic group members of the category. When a business is not 51% or more owned and controlled by a single racial/ethnic group, enter the code for the group which seems most appropriate.*
12. **Women-Owned Business:** Enter “Y” if 51% of the ownership of the contracting firm is legally owned by a woman. *For women-owned businesses: A business entity must be 51% or more owned and controlled by women.*
13. **Section 3:** Enter “Y” if the contractor is a Section 3 Contractor. (If Y, please include a copy of the Contractor Certification (Exhibit 1-V) with this form).
14. **Contract date:** Enter the date the contract was fully executed.

15. **Federal Reporting Period:** The federal fiscal year is October 1st–September 30th. Enter “1” if the contract was executed during the first half of the fiscal year (October-March). Enter “2” if the contract was executed during the second half of the fiscal year (April-September).

16. **Davis Bacon:** Enter “Y” for construction activity-related contracts, enter “N” for administrative or professional service contracts.

17a. **Federal Wage Rate:** For construction activity-related contracts, enter the decision number received from DFA/LGD for **Federal** Wage Rates. For administrative or professional service contracts, enter “N/A”.

17b. **State Wage Rate:** For construction activity-related contracts, enter the decision number received from New Mexico Department of Workforce Solutions (NMDWS) for **State** Wage Rates. For administrative or professional service contracts, enter “N/A”.

18. **CDBG Dollar Amount:** Enter dollar amount of the contract that will be financed solely with CDBG funds.

When CDBG is funding 100% of the contact:

- If the Budget line item from Exhibit 1-C is 100% CDBG, enter full contract amount

Example: CDBG budget is \$600,000, contract is \$598,000. Enter: \$598,000

- For subcontractors, enter the amounts listed in the bids. Then subtract those amounts from the prime contractor.

Example: CDBG budget is \$600,000, contract is \$598,000 with 2 subcontractors (\$20,000 and \$80,000 respectively). Enter:

Subcontractor #1	\$20,000
Subcontractor #2	\$80,000
<u>Prime Contractor</u>	<u>\$498,000</u>
Total	\$598,000

When CDBG is not funding 100% of the contact:

- If the Budget line item from Exhibit 1-C is a combination of CDBG and matching/leverage funds, enter CDBG portion only.

Example: CDBG budget is \$400,000, matching funds are \$200,000, contract is \$598,000. Enter: \$400,000.

- For subcontractors, enter the amounts listed in the bids. Then subtract those amounts from the prime contractor for CDBG funds only.

Example: CDBG budget is \$400,000, matching funds are \$200,000, contract is \$598,000 with 2 subcontractors (\$20,000 and \$80,000 respectively).

Enter:	Subcontractor #1	\$20,000
	Subcontractor #2	\$80,000
	Prime Contractor	<u>\$300,000</u>
	Total	\$400,000

19. **Wage Violation:** Upon completion of the construction, Enter “Y” if there was a wage violation during the reporting period. (If “Y”, submit the Final Wage Compliance Report (4-R); Employee Restitution Receipt (4-R-1); and Employee Restitution Summary (4-R-2), with this form.). Enter “N” for all administrative or professional service contracts.

EXHIBIT 1-E UPDATE INSTRUCTIONS

Update Exhibit 1-E and submit to DFA/LGD to report the following changes:

- Updating existing Exhibit 1-E (from admin or professional service providers) to include construction contracts
- Adding Subcontractor data
- Updating CDBG amount of contracts as a result of change orders, grant amendments, cost savings, etc.
- Reporting Wage Violations

Contact your LGD project manager if you have any questions regarding this form.

EXHIBIT 1-F

HUD APPLICANT DISCLOSURE REPORT

Applicant/Recipient Disclosure/Update Report		U.S. Department of Housing and Urban Development	OMB Approval No. 2510-0011 (exp. 12/31/2015)
Instructions . (See Public Reporting Statement and Privacy Act Statement and detailed instructions on page 2.)			
Applicant/Recipient Information		Indicate whether this is an Initial Report <input type="checkbox"/> or an Update Report <input type="checkbox"/>	
1. Applicant/Recipient Name, Address, and Phone (include area code) <div style="background-color: #e0e0ff; height: 20px; width: 100%;"></div>	2. Social Security Number or Employer ID Number: <div style="background-color: #e0e0ff; height: 20px; width: 100%;"></div>		
3. HUD Program Name <div style="background-color: #e0e0ff; height: 20px; width: 100%;"></div>	4. Amount of HUD Assistance Requested/Received <div style="background-color: #e0e0ff; height: 20px; width: 100%;"></div>		
5. State the name and location (street address, City and State) of the project or activity. <div style="background-color: #e0e0ff; height: 20px; width: 100%;"></div>			
Part I Threshold Determinations			
1. Are you applying for assistance for a specific project or activity? These terms do not include formula grants, such as public housing operating subsidy or CDBG block grants. (For further information see 24 CFR Sec. 4.3). <input type="checkbox"/> Yes <input type="checkbox"/> No		2. Have you received or do you expect to receive assistance within the jurisdiction of the Department (HUD) , involving the project or activity in this application, in excess of \$200,000 during this fiscal year (Oct. 1 - Sep. 30)? For further information, see 24 CFR Sec. 4.9 <input type="checkbox"/> Yes <input type="checkbox"/> No.	
If you answered "No" to either question 1 or 2, Stop! You do not need to complete the remainder of this form. However, you must sign the certification at the end of the report.			
Part II Other Government Assistance Provided or Requested / Expected Sources and Use of Funds. Such assistance includes, but is not limited to, any grant, loan, subsidy, guarantee, insurance, payment, credit, or tax benefit.			
Department/State/Local Agency Name and Address	Type of Assistance	Amount Requested/Provided	Expected Uses of the Funds
(Note: Use Additional pages if necessary.)			
Part III Interested Parties. You must disclose:			
1. All developers, contractors, or consultants involved in the application for the assistance or in the planning, development, or implementation of the project or activity and 2. any other person who has a financial interest in the project or activity for which the assistance is sought that exceeds \$50,000 or 10 percent of the assistance (whichever is lower).			
Alphabetical list of all persons with a reportable financial interest in the project or activity (For individuals, give the last name first)	Social Security No. or Employee ID No.	Type of Participation in Project/Activity	Financial Interest in Project/Activity (\$ and %)
(Note: Use Additional pages if necessary.)			
Certification Warning: If you knowingly make a false statement on this form, you may be subject to civil or criminal penalties under Section 1001 of Title 18 of the United States Code. In addition, any person who knowingly and materially violates any required disclosures of information, including intentional non-disclosure, is subject to civil money penalty not to exceed \$10,000 for each violation. I certify that this information is true and complete.			
Signature:		Date: (mm/dd/yyyy)	
X			
<div style="background-color: #e0e0ff; height: 100px; width: 100%;"></div>			
Form HUD-2880 (3/13)			

EXHIBIT 1-G
AUTHORIZED SIGNATORIES DESIGNATION FORM

EXHIBIT 1-G
DEPOSITORY/AUTHORIZED SIGNATORIES DESIGNATION FORM

Grantee: Grantee Name CDBG Contract No.:

Grantee Address:

The financial lending institution listed will serve as the depository for the New Mexico CDBG contract funds:

Name of Lending Institution

Lending Institution Mailing Address

Lending Institution Physical Address

City, State, Zip Code

CDBG Account Number:

Routing Number:

DUNS #: TIN #:

The account identified above has been established with this bank (*or treasury as applicable*). All necessary documentation, including a power of attorney where necessary, which will legally enable this depository to receive US Government checks directly from the US Treasury Department without the payee's endorsement have been received and are in this depository's custody. This depository's deposits are federally insured by: FDIC. The Depository hereby agrees to immediately notify the Recipient Organization when a deposit is made in the above account.

(Title of Authorized Bank Officer) (Signature of Authorized Bank or Treasury Officer) (Date)

The individuals listed below are designated as authorized signators for drawing on the cited letter of credit.
 (At least two (2) signatures are required).

Name

Name

Title

Title

 (Signature)

 (Signature)

Name

Name

Title

Title

 (Signature)

 (Signature)

I CERTIFY THAT THE SIGNATURES ABOVE ARE OF THE
 INDIVIDUALS AUTHORIZED TO DRAW PAYMENT
 VOUCHERS CITED LETTER OF CREDIT.

 DATE AND SIGNATURE OF AUTHORIZING OFFICIAL
 (Recipient)

LGD APPROVAL:

 DATE AND SIGNATURE OF AUTHORIZING OFFICIAL (LGD Use)

EXHIBIT 1-H
WITNESS CERTIFICATION

[GRANTEE LETTERHEAD]

WITNESS CERTIFICATION FORM

(If authorizing official is other than Chief Executive Officer
To be submitted on Grantee letterhead)

CERTIFICATION

This is to certify that the signature below is the signature of

_____, _____, of
Name Title
_____, and that s/he is
(Name of Grantee)

Authorized to certify the signatures appearing on the Depository/Authorized Signatories Form
(Exhibit 1-G).

Signature of Authorizing Official

Signature of Chief Elected Official

OFFICIAL SEAL

Signature of Witness

Typed Name of Witness

Title of Witness

Date

CASH MATCH/ LEVERAGING

[illegible]

EXHIBIT 1-K

IN-KIND TRACKING SHEET

In-Kind Tracking

Entity Name: _____

GDBG Project No.: _____

CDBG Grant Amount: _____

Project Name: _____

[illegible]

EXHIBIT 1-L IN-KIND TIMESHEET

EXHIBIT 1-L																			
IN-KIND TIMESHEET																			
Timesheet																			
Name:				Dates:				to		Department:									
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15		Hours	\$ Amt	
	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	Worked	Posted	
CDBG																			
Regular																			
Vacation/ Holiday																			
Total																			
I hereby certify that the above information is true and correct										Amount Paid:									
X										Check No.									
Employee Signature										Date Paid:									
Received and Approved Supervisor Signature										For Finance Use only:									

EXHIBIT 1-M

REQUEST FOR PAYMENT/FINANCIAL STATUS REPORT

NEW MEXICO COMMUNITY DEVELOPMENT BLOCK GRANT Request for Payment/Financial Status Report Exhibit 1-M									
						Payment Request Number:			
I. A. Grantee: _____ B. Bank Name: _____ Bank Address: _____ (Physical & Mailing): _____ C. Grantee Phone Number: _____ D. Account No.: _____ E. Routing No.: _____ F. Grant No.: _____				II. Payment Computation: A. Grant Award: _____ \$0.00 B. Funds Received to Date: _____ \$0.00 C. Requested this Payment: _____ \$0.00 D. Grant Balance: _____ \$0.00					
						III. Report Period Ending: _____			
Budget Categories	Approved Budget			Expenditures This Request			Expenditures to Date		
	Grant Funds	Match Funds	Total Budget	Grant Funds	Match Funds	Total Expenditures	Grant Funds	Match Funds	Total Expenditures
Administration (Contractual)			\$0.00			\$0.00			\$0.00
Architect/Engineer			\$0.00			\$0.00			\$0.00
Other Professional			\$0.00			\$0.00			\$0.00
Inspection (Testing)			\$0.00			\$0.00			\$0.00
Property Acquisition			\$0.00			\$0.00			\$0.00
Property Rehabilitation			\$0.00			\$0.00			\$0.00
Construction			\$0.00			\$0.00			\$0.00
TOTALS:	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
IV. CERTIFICATION: Under penalty of law, I hereby certify that to the best of my knowledge and belief, the above information is correct, expenditures are properly documented, required matching funds have been spent/obligated in the reported amount, and that copies of all required documentation attached for this payment request are true and correct copies of the originals.									
Authorized Signatory _____ Date _____				Authorized Signatory _____ Date _____					
Print or Type Name _____				Print or Type Name _____					
* Both local level signatures must match depository/signature card. ** Authorizing official is not authorized to sign Request for Payment/Financial Status Report.									
(DFA Local Government Division Use Only)									
Division Fiscal Officer _____ Date _____				Division Project Representative _____ Date _____					

Aug-14

EXHIBIT 1-O-1 FAIR HOUSING PROCLAMATION

EXHIBIT 1-O-1 FAIR HOUSING PROCLAMATION WITH REQUIRED ELEMENTS

Proclamation

WHEREAS, *fair and equal housing is a right guaranteed to all Americans; and*

WHEREAS, *the principle of fair and equal housing is a fundamental human entitlement;*
and

WHEREAS, *all citizens have the right to live where they choose within their financial means; and*

WHEREAS, *people must not be denied housing because of race, color, religion, sex, national origin, handicap or familial status; and*

WHEREAS, *we must, as individuals, assure equal access to housing for all in our communities; and*

WHEREAS, Community Name acknowledges the importance of assuring fair and equal treatment to all citizens;

NOW, THEREFORE I, Elected Official Name, Official Title, do hereby
proclaim Month and Date, 2016 as:

“Fair Housing Day”

Dated this 31 day of Month, 2016

Elected Official Name, Official Title

EXHIBIT 1-Q
CDBG PUBLIC HEARING NOTICE WITH REQUIRED ELEMENTS

The County/Municipality of Grantee Name, New Mexico, wishes to inform all interested parties that a public hearing will be held:

Date	Time	AM <input type="checkbox"/> PM <input type="checkbox"/>	Location	Address

The Community Development Block Grant (CDBG) Program was established under Title I of the Housing and Community Development Act of 1974, as amended, in order to assist communities in providing essential community facilities, providing decent housing for residents, promoting economic development and maintaining a suitable living environment. The State of New Mexico estimates the 2011 appropriation of \$15,000,000 (check with project manager for updated figure) to be distributed statewide on a competitive basis.

- 1) An activity identified as principally benefiting persons of low and moderate income;
- 2) Aid in the prevention and elimination of slums and blight;
- 3) Meet other community development needs of recent origin having a particular urgency because existing conditions pose a serious and immediate threat to the health and welfare of the community where other financial resources are not available to meet such needs.

Eligible activities and categories will be described. All interested parties are invited to attend, to submit project ideas, to provide supporting data and testimony, and other pertinent information.

Those unable to attend the public hearing may send written comments to:

CDBG Grant Program Requests
Grantee Representative
Street Address
City/State/Zip

EXHIBIT 1-Q

CDBG PUBLIC HEARING NOTICE IN SPANISH

EXHIBIT 1-Q

CDBG PUBLIC HEARING NOTICE IN SPANISH WITH REQUIRED ELEMENTS

NOTICIA AL PÚBLICO

County/Municipality de Grantee Name, Nuevo Mexico, desea anunciar sobre las juntas publicas para informar a los interesados en le proceso de solicitud del program de CDBG del año 2010. Las juntas serán los siguientes dias:

Fecha	Tiempo	AM <input type="checkbox"/>	Localización	Dirección
		PM <input type="checkbox"/>		

Esta junta considerará propuestas de proyectos para aplicación de 2011 fondos del Community Development Block grant (CDBG). El estado de Nuevo Mexico ha recibido fondos en la cantidad de \$15,000,000.(compruebe con el encargado de proyecto para saber si hay la figura actualizada)

El programma de Community Development Block Grant fue establecido en 1974 bajo el Title I/Housing & Community Development Act para asistir

- 1) A comunidades y a residentes de pocos o moderados recursos,
- 2) Ayudar a eliminar barrios bajos, sucios y manchados
- 3) Y tambien estos fondos se pueden usar an condiciones de emergencia que pongan en peligro inmediato a la salud y bienestar de la gente.

El programa esta administrado por el estado de Nuevo Mexico, Department of Finance and Administration, Local Government Division. El público esta invitado a hacer presentaciones, peticiones y recomendaciones al consejo acerca de los proyectors que se quieran aplicar para el proximo ciclo de CDBG fondos. El maximo total por cada aplicación es \$500,000, excepto aplicaciones en la categoria de un plan de proyecto que tienen limite fijo de \$50, 000.

Si usted o su organizacion tienen un proyecto que pueda ser elegible para coinsideración, usted esta invitado a hacer su presentación y petición en esta reunión pública. Para los residentes que no hablan ingles, y requierer un interprete, contacten a la oficina de administración, una semana antes de la reunión.

Para la gente que no puede atender la reunión pública, sus comentarios se recibiran el la siguiente dirección:

CDBG Grant Program Requests

Grantee Representative

Street Address

Qty/State/Zip

EXHIBIT 1-Q-1

CDBG PUBLIC HEARING DESCRIPTION WITH REQUIRED ELEMENTS

Program Objectives

- Benefit principally low and moderate income families.
- Aid in the prevention of slum or blight.
- Meet urgent community development needs where an existing condition poses a threat to the health and welfare of the community and other financial resources are not available.
- (\$___ previous amount of funding awarded) was available for the past Fiscal Year.

Eligible Applicants

- All counties/incorporated municipalities except the cities of Albuquerque, Las Cruces, Santa Fe, Farmington, and Rio Rancho.
- Water and mutual domestic associations may apply for a planning grant through their county; sanitation districts, public nonprofit groups, etc. cannot apply directly for assistance but may apply through an eligible municipality or county.
- Indian Pueblos and tribes receive funding directly from HUD.

Eligible Activities/Categories

- **COMMUNITY INFRASTRUCTURE:** Water and sewer systems; street improvements consisting of roads, streets, curbs, gutter, sidewalks, traffic control devices; municipal utilities.
- **HOUSING:** Real property acquisition; rehabilitation; clearance; provision of public facilities to increase housing opportunities; code enforcement; historic preservation activities; a maximum of \$65,000 in CDBG funds per home can be used on rehab/repair activities.
- **PUBLIC SERVICE CAPITAL OUTLAY:** Community centers; senior citizen centers; community facilities designed to provide health, social, recreational and other services to residents.
- **ECONOMIC DEVELOPMENT:** Assists communities in creating or retaining jobs for low and moderate income persons; creation or retention of businesses owned by community residents.
- **EMERGENCY:** Addresses life threatening situations resulting from disasters or threats to health and safety; must have appropriate state agency concurrence; local resources must be non-existent or unavailable.
- **PLANNING:** Grant assistance must be used for a comprehensive plan if there has not been a current or updated plan within the last five years; feasibility studies; base mapping, aerial photography, GIS systems; development of codes and ordinances; limit of \$50,000.
- **COLONIAS:** Communities must be within 150 miles of the U.S. - Mexico border and be designated by the county or municipality where it is located. The criteria necessary to qualify are lack of potable water supply, inadequate sewage system and lack of decent, safe, and sanitary housing.

Ineligible Activities

- City halls or county courthouses; general operation and maintenance expenses of public facilities; (the only exception is if Courthouses are not ADA compliant)
housing allowance payments and mortgage subsidies; expenditures for political purposes; costs involved in preparing applications and securing funding.

Program Requirements

- Applicants must conduct at least one public hearing prior to selecting a project to advise citizens of estimated CDBG funds available; types of projects available; obtain recommendations from citizens regarding community development and housing needs. A minimum of three hearings is recommended.
- Citizen participation must be encouraged with emphasis on low and moderate income persons by publishing public hearing notices in English and Spanish, and using other means such as media or posting flyers in an effort to reach the public.
- Recommendations from the public are to be considered and the project is selected at an official regularly scheduled meeting of the governing body.
- Each CDBG application must address at least one of the three national objectives: 1) activities must benefit low and moderate income persons 2) prevention of slum and blight 3) must meet urgent or life threatening community development need.

Application Requirements

- Application requests are limited to \$500,000 (Planning grants - \$50,000). You may also submit a phased request.
- Applicant must meet threshold requirements: Any grantee with one or more active grants in the infrastructure, public service, capital outlay categories, and Colonias projects, cannot apply for additional funding until the current project is fully closed.
- Rural applicants (3,000 or less population) must provide a minimum 5% cash match; Non-Rural applicants must provide a 10% cash match.
- Applicants may request a waiver of the matching requirements in the absence of local resources or apply for a loan to meet the matching requirement at appropriate interest rates.
- Applications are scored by rating certain criteria such as description and need; benefit to low and moderate income persons; leveraging; citizen participation; planning; feasibility and readiness; user fees and revenues; and cost benefit. The Community Development Council (CDC) also will take into consideration current economic situations, if the entity was funded last year and application presentation.

EXHIBIT 1-Q-2
EXAMPLE CDBG PUBLIC HEARING AGENDA WITH REQUIRED
ELEMENTS

CDBG PUBLIC HEARING
AGENDA

- 1. Welcome**
- 2. Purpose and History of Community Development Block Grant Program**
 - Program Objectives
 - Eligible Applicants
 - Eligible and Ineligible Activities
 - Program Requirements
 - Application Requirements
- 3. Current and Past CDBG Projects**
- 4. Questions**
- 5. Citizen Input**
- 6. Adjourn**

EXHIBIT 1-S
WORKFORCE ANALYSIS FORM EEO-4

FULL TIME EMPLOYEES											
Job Category	Total # (all columns)	Male					Female				
		Non-Hispanic Origin		Hispanic	Asian or Pacific Islander	American Indian or Alaskan Native	Non-Hispanic Origin		Hispanic	Asian or Pacific Islander	American Indian or Alaskan Native
		White	Black				White	Black			
1. Officials and Administrators											
2. Professionals											
3. Technicians											
4. Protective Service											
5. Para-professionals											
6. Administrative Support											
7. Skilled craft											
8. Service Maintenance											

OTHER FULL TIME EMPLOYEE (Including temporary employees)											
Job Category	Total # (all columns)	Male					Female				
		Non-Hispanic Origin		Hispanic	Asian or Pacific Islander	American Indian or Alaskan Native	Non-Hispanic Origin		Hispanic	Asian or Pacific Islander	American Indian or Alaskan Native
		White	Black				White	Black			
1. Officials and Administrators											
2. Professionals											
3. Technicians											
4. Protective Service											
5. Para-professionals											
6. Administrative Support											
7. Skilled craft											
8. Service Maintenance											

NEW HIRES DURING FISCAL YEAR (Permanent full time only July 1-June 30)											
Job Category	Total # (all columns)	Male					Female				
		Non-Hispanic Origin		Hispanic	Asian or Pacific Islander	American Indian or Alaskan Native	Non-Hispanic Origin		Hispanic	Asian or Pacific Islander	American Indian or Alaskan Native
		White	Black				White	Black			
1. Officials and Administrators											
2. Professionals											
3. Technicians											
4. Protective Service											
5. Para-professionals											
6. Administrative Support											
7. Skilled craft											
8. Service Maintenance											

EXHIBIT 1-S-1 DESCRIPTION OF JOB CATEGORIES

Exhibit 1-S-1 Description of Job Categories

- a. **Officials and Administrators:** Occupations in which employees set broad policies, exercise overall responsibility for execution of these policies, or direct individual departments or special phases of the agency's operations, or provide specialized consultation on a regional, district or area basis. Includes: department heads, bureau chiefs, division chiefs, directors, deputy directors, controllers, wardens, superintendents, sheriffs, police and fire chiefs and inspectors, examiners (bank, hearing, motor vehicle, warehouse), inspectors (construction, building, safety, rent-and-housing, fire, A.B.C. Board, license, dairy, livestock, transportation), assessors, tax appraisers and investigators, coroners, farm managers, and kindred workers.
- b. **Professionals:** Occupations which require specialized and theoretical knowledge which is usually acquired through college training or through work experience and other training which provides comparable knowledge. Includes personnel and labor relations workers, social workers, doctors, psychologists, registered nurses, economists, dietitians, lawyers, systems analysts, accountants, engineers, employment and vocational rehabilitation counselors, teachers or instructors, police and fire captains and lieutenants, librarians, management analysts, airplane pilots and navigators, surveyors and mapping scientists, and kindred workers.
- c. **Technicians:** Occupations which require a combination of basic scientific or technical knowledge and manual skill which can be obtained through specialized post-secondary school education or through equivalent on-the-job training. Includes: computer programmers, drafters, survey and mapping technicians, licensed practical nurses, photographers, radio operators, technical illustrators, highway technicians, technicians (medical, dental, electronic, physical sciences), police and fire sergeants, inspectors (production or processing inspectors, testers and weighers), and kindred workers.
- d. **Protective Service Workers:** Occupations in which workers are entrusted with public safety, security and protection from destructive forces. Includes: police patrol officers, firefighters, guards, deputy sheriffs, bailiffs, correctional officers, detectives, marshals, harbor patrol officers, game and fish wardens, park rangers (except maintenance), and kindred workers.
- e. **Paraprofessionals:** Occupations in which workers perform some of the duties of a professional or technician in a supportive role, which usually require less formal training and/or experience normally required for professional or technical status. Such positions may fall within an identified pattern of staff development and promotion under a "New Careers" concept. Includes: research assistants, medical aides, child support workers, policy auxiliary welfare service aides, recreation assistants, homemakers aides, home health aides, library assistants and clerks, ambulance drivers and attendants, and kindred workers.
- f. **Administrative Support (Including Clerical and Sales):** Occupations in which workers are responsible for internal and external communication, recording and retrieval of data and/or information and other paperwork required in an office. Includes: bookkeepers, messengers, clerk-typist, stenographers, court transcribers, hearing reporters, statistical clerks, dispatchers, license distributors, payroll clerks, office machine and computer operators, telephone operators, legal assistants, sales workers, cashiers, toll collectors, and kindred workers.
- g. **Skilled Craft Workers:** Occupations in which workers perform jobs which require special manual skill and a thorough and comprehensive knowledge of the process involved in the work which is acquired through on-the-job training and experience or through apprenticeship or other formal training programs. Includes: mechanics and repairers, electricians, heavy equipment operators, stationary engineers, skilled machining occupations, carpenters, compositors and typesetters, power plant operators, water and sewage treatment plant operators, and kindred workers.
- h. **Service Maintenance:** Occupations in which workers perform duties which result in or contribute to the comfort, convenience, hygiene or safety of the general public or which contribute to the upkeep and care of buildings, facilities or grounds of public property. Workers in this group may operate machinery. Includes: chauffeurs, laundry and dry cleaning operatives, truck drivers, bus drivers, garage laborers, custodial employees, gardeners and groundkeepers, refuse collectors, construction laborers, park rangers (maintenance), farm workers (except managers), craft apprentices/trainees/helpers, and kindred workers.

Part II: Contracts Awarded

1. Construction Contracts:

A. Total dollar amount of all contracts awarded on the project	\$	
B. Total dollar amount of contracts awarded to Section 3 businesses	\$	
C. Percentage of the total dollar amount that was awarded to Section 3 businesses		%
D. Total number of Section 3 businesses receiving contracts		

2. Non-Construction Contracts:

A. Total dollar amount all non-construction contracts awarded on the project/activity	\$	
B. Total dollar amount of non-construction contracts awarded to Section 3 businesses	\$	
C. Percentage of the total dollar amount that was awarded to Section 3 businesses		%
D. Total number of Section 3 businesses receiving non-construction contracts		

Part III: Summary

Indicate the efforts made to direct the employment and other economic opportunities generated by HUD financial assistance for housing and community development programs, to the greatest extent feasible, toward low- and very low-income persons, particularly those who are recipients of government assistance for housing. (Check all that apply.)

- ☐ Attempted to recruit low-income residents through: local advertising media, signs prominently displayed at the project site, contracts with the community organizations and public or private agencies operating within the metropolitan area (or nonmetropolitan county) in which the Section 3 covered program or project is located, or similar methods.
- ☐ Participated in a HUD program or other program which promotes the training or employment of Section 3 residents.
- ☐ Participated in a HUD program or other program which promotes the award of contracts to business concerns which meet the definition of Section 3 business concerns.
- ☐ Coordinated with Youthbuild Programs administered in the metropolitan area in which the Section 3 covered project is located.
- ☐ Other; describe below.

Public reporting for this collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB number.

Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u, mandates that the Department ensures that employment and other economic opportunities generated by its housing and community development assistance programs are directed toward low- and very-low-income persons, particularly those who are recipients of government assistance housing. The regulations are found at 24 CFR Part 135. The information will be used by the Department to monitor program recipients' compliance with Section 3, to assess the results of the Department's efforts to meet the statutory objectives of Section 3, to prepare reports to Congress, and by recipients as self-monitoring tool. The data is entered into a database and will be analyzed and distributed. The collection of information involves recipients receiving Federal financial assistance for housing and community development programs covered by Section 3. The information will be collected annually to assist HUD in meeting its reporting requirements under Section 808(e)(6) of the Fair Housing Act and Section 916 of the HCDA of 1992. An assurance of confidentiality is not applicable to this form. The Privacy Act of 1974 and OMB Circular A-108 are not applicable. The reporting requirements do not contain sensitive questions. Data is cumulative; personal identifying information is not included.

EXHIBIT 1-V
SECTION 3 CONTRACTOR CERTIFICATION

EXHIBIT 1-V
SECTION 3 CONTRACTOR CERTIFICATION

This is to certify that:
Business Name

is a Section 3 Business as defined below:

- ☐ Is 51 percent or more owned by section 3 residents; or

- ☐ Has permanent, full-time employees at least 30 percent of whom are currently Section 3 residents, or within three years of the date of first employment with the business concern were Section 3 residents; or

- ☐ Has a commitment to subcontract in excess of percent of the dollar award of all subcontracts to be awarded to such businesses described above.

Contractor's Signature

Date

Rev 6-16

EXHIBIT 1-W
SECTION 3 RESIDENT CERTIFICATION FORM

EXHIBIT 1-W
SECTION 3 RESIDENT CERTIFICATION

This is to certify that:

_____ Resident's Name

is a Section 3 Resident as defined below:

- ☐ Lives within the metropolitan area or non-metropolitan county, and
- ☐ Income does not exceed 80% of the median (refer to HUD's Low Moderate Income Limits); or
- ☐ Is a Public Housing Resident.

Resident's Signature

Date

Rev 6-16

EXHIBIT 1-X
CONTRACTOR/SUBCONTRACTOR CLEARANCE FORM

**EXHIBIT 1-X
CONTRACTOR/SUBCONTRACTOR CLEARANCE FORM**

Clearance must be granted by the Local Government Division (LGD) prior to contract award. Complete one form for each firm/individual's contractual service.

Check appropriate box:

Contracted Grant Administration	<input type="checkbox"/>	Contractor	<input type="checkbox"/>	Subcontractor
Architectural	<input type="checkbox"/>	Contractor	<input type="checkbox"/>	Subcontractor
Engineering	<input type="checkbox"/>	Contractor	<input type="checkbox"/>	Subcontractor
Construction	<input type="checkbox"/>	Contractor	<input type="checkbox"/>	Subcontractor
Other _____	<input type="checkbox"/>	Contractor	<input type="checkbox"/>	Subcontractor

To receive clearance completed this form and mail to: LGD Administrative Assistant, Camille Baca and LGD/CDB Project Manager, Department of Finance and Administration / Local Government Division, Bataan Memorial Building, 407 Galisteo Street, Room 202, Santa Fe, New Mexico 87501; Office# (505) 827-8051

or completed this form and email to: Camille.Baca@state.nm.us; cc: LGD/CDB Project Manager

CDBG Project #: _____ Grantee: _____

Contact Person: _____ Phone #: _____

Job Description of Work (Exhibit "I-A" of Grant Agreement):

Name of Firm/Individual: _____ DUNS #: _____

Name of Principal/Owner/Partner: _____ Contract Amount: _____

Submitted By: _____ Date: _____

Send Clearance to:

Name: _____ Fax #: _____ Phone #: _____

Address: _____

To be completed by DFA/Local Government Division:

FEDERAL: Active SAM registration ☐ Yes ☐ No

STATE: Labor Enforcement Fund ☐ Yes ☐ No ☐ N/A

Registration #: _____ Registration Date: _____ Expiration Date: _____

Approved: _____ Date: _____
DFA/Local Government Division

Rev 10-19

EXHIBIT 1-Y

Grantee Name: _____

CDBG Project Number: _____

RESOLUTION # _____

ADOPTION OF REQUIRED COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) ANNUAL CERTIFICATIONS AND COMMITMENTS

WHEREAS, municipalities, counties or other entities that accept Community Development Block Grant (CDBG) funds must adopt certain required federal regulations; and

WHEREAS, the _____ (hereinafter referred to as the Grantee) wishes to ensure compliance with federal regulations by adopting the following required certifications and commitments:

Citizen Participation	certifies its commitment to citizen participation by preparing and adopting a Citizen Participation Plan that includes ways to encourage public input using various methods to reach the public and assures that citizens are provided reasonable notice and timely access to local meetings, per the Open Meetings Act (NMSA 1978, Chapter 10, Article 15)
Fair Housing	certifies its commitment to the Fair Housing Act of 1968 to affirmatively further fair housing, which prohibits discrimination in the sale, rental, leasing and financing of housing or land to be used for the construction of housing on the basis of race, color, religion, sex, disability, familial status, or national origin
Residential Anti-Displacement & Relocation Assistance	certifies its compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, whose purpose is to provide uniform, fair, and equitable treatment for persons whose real property is acquired or for persons displaced as a result of a CDBG-funded project or activity
Section 3	certifies its commitment to Section 3, a provision of the Housing and Urban Development (HUD) Act of 1968, which requires recipients of certain HUD financial assistance, to the greatest extent feasible, provide job training, employment, and contracting opportunities for low and very low income residents in connection with projects and activities in their community. Attached is the Grantee Section 3 hiring information.
Procurement	certifies its compliance with federal procurement code (24 CFR Part 85.36) and New Mexico Procurement Code (§13-1-120 NMSA 1978) by adopting a procurement policy annually for CDBG projects

GRANTEE SECTION 3 PLAN CHART

- Chart for Section 3 Plan **MUST** be filled out for job classifications that result from this CDBG funding. If this project will not create jobs, this chart will not be applicable. Attach additional job classifications as necessary.

_____ ANTICIPATED/ACTUAL HIRES				_____ HIRING YEAR	
PLANNED			ACTUAL		
Job Classification	# of Positions to be Filled	# of Positions to be Filled by Lower Income _____ Residents	# of Positions Filled	Positions Filled by Lower Income _____ Residents	

NOW, THEREFORE, BE IT RESOLVED, that the Grantee adopts the above CDBG certifications and commitments that must be adopted annually.

PASSED, APPROVED, SIGNED, AND ADOPTED at a duly called and convened regular meeting of the governing body of the _____ this _____ day of _____, 20____.

SIGNED: _____
_____, Chief Elected Official

ATTEST:

(Name and Title)

EXHIBIT 1-Z

CDBG FEDERAL REQUIREMENTS

CITIZEN PARTICIPATION REQUIRED ELEMENTS

In accordance with the 1987 revisions to the Housing and Community Development Act and in an effort to further encourage citizen participation, _____ has prepared and adopted this Citizen Participation Plan.

Objective A

_____ will provide for and encourage citizen participation within its area of jurisdiction, with particular emphasis on participation by persons of low and moderate income. *Action items:*

1. *Adopt and circulate an Open Meetings Resolution which provides citizens with reasonable notice of county/municipality upcoming meetings, actions and functions.*
2. *Develop press releases on county/municipality meetings, actions and hearings, and circulate to newspapers, radio and television media.*
3. *Develop and maintain listing of groups and representative of low and moderate income persons, and include on mailing lists of announcements, notices, press releases, etc.*

Objective B

_____ will provide citizens with reasonable and timely access to local meetings, information and records relating to the proposed and actual use of CDBG funds. *Action items:*

1. *Public notices, press releases, etc., should allow for a maximum length of notice to citizens.*
2. *Appropriate information and records relating to the proposed and actual use of CDBG funds must be available upon request to all citizens. Personnel and income records may be exempted from these requirements.*
3. *Meetings, hearing, etc., should be conducted at times and locations conducive to public attendance, e.g., evenings, Saturdays.*

Objective C

_____ will provide technical assistance to groups and representatives of low and moderate income persons that request assistance in developing proposals. *Note: the level and type of assistance is to be determined by the county/municipality. Action items:*

1. *Low and moderate income groups should be advised that technical assistance, particularly in the area of community development, is available from the county/municipality upon request.*
2. *Document technical assistance provided to such groups and has documentation available for review.*

Objective D

_____ will provide a minimum of two public hearings to obtain citizen participation and respond to proposals and questions at all stages of the Community Development Block Grant Program. *Action items:*

1. *Advise citizens of the CDBG program objectives, range of activities that can be applied for and other pertinent information.*
2. *Conduct a minimum of two public hearings:*
 - a. *One public hearing will be held to advise citizens of the program objectives and range of activities that can be applied for, and to obtain the citizen's views on community development and housing needs, to include the needs of low and moderate income people. This hearing will take place prior to the selection of the project to be submitted to the state for CDBG funding assistance.*
 - b. *A second public hearing will be held to review program performances, past use of funds and make available to the public its community development and housing needs, including the needs of low and moderate income families, and the activities to be undertaken to meet such needs.*
3. *Publish public hearing notices in the non-legal section of newspapers or in other local media. Evidence of compliance with these regulations will be provided with each CDBG application, i.e., hearing notice minutes of public meetings, list of needs and activities to be undertaken, etc. Amendments to goals, objectives and applications are also subject to public participation.*

Objective E

_____ will provide timely written answers to written complaints and grievances within 15 working days where practical. *Action items:*

1. *Adopt complaint handling procedures or policies to insure that complaints or grievances are responded to within 15 days, if possible.*
2. *Allow for appeal of a decision to a neutral authority.*
3. *File a detailed record of all complaints or grievances and responses in one central location with easy public access.*

Objective F

_____ will identify how the needs of non-English speaking residents will be met in the case of public hearings where a significant number of residents can be reasonably expected to participate. *Action items:*

1. *Identify areas where large majorities of non-English speaking persons reside and make appropriate provisions when issues affecting these areas are to be discussed at public meetings, hearings, etc. Appropriate provisions will include having interpreters available at the meeting and having briefing material available in the appropriate language.*
2. *Maintain records/rosters of public hearing attendees and proceedings to verify compliance with this objective.*

FAIR HOUSING REQUIRED ELEMENTS

A resolution of the _____ of the _____ of _____, adopting a fair housing policy, making known its commitment to the principle of fair housing, and describing actions it shall undertake to affirmatively further fair housing.

WHEREAS; the Housing and Community Development act of 1974 as amended requires that all applicant for Community Development Block Grants funds certify that they shall affirmatively further fair housing; and

WHEREAS; the Civil Rights Act of 1968 (commonly known as the Federal Fair Housing Act) and the Fair Housing Amendments Act of 1988 declare a national policy to prohibit discrimination in the sale, rental, leasing and financing of housing or land to be used for the construction of housing or in the provision of brokerage services, on the basis of race, color, religion, sex, disability, familial status or national origin; and

WHEREAS; fairness is the foundation of the American system and reflects traditional American values; and

WHEREAS; discriminatory housing practices undermine the strength and vitality of America and its people;

NOW, THEREFORE, BE RESOLVED THAT the _____ of the _____ of _____ hereby wish all persons living, working, doing business in or traveling through this _____ to know that: discrimination in the sale, rental, leasing, and financing of housing or land to be used for construction of housing, or in the provision of brokerage services on the basis of race, color, religion, sex, handicap, familial status or national origin is prohibited by Title VIII of the Fair Housing Act Amendments of 1988; and that it is the policy of the _____ of _____ to implement programs, within the constraints of its resources, to ensure equal opportunity in housing for all persons regardless of race, color, religion, sex, handicap, familial status or national origin; and within available resources the _____ of _____ will assist all persons who feel they have been discriminated against in housing issues on the basis of race, color, religion, sex, handicap, familial status or national origin to seek equality under existing federal and state laws to file a complaint with the New Mexico Attorney General's Office or the U.S. Department of Housing and Urban Development; and that the _____ of _____ shall publicize this Resolution and thereby encouraging owners of rental properties, developers, builders and others involved with housing to become aware of their respective responsibilities and rights under the Fair Housing Amendments Act of 1988 and any applicable state or local laws or ordinances; and that the _____ of _____ shall undertake the following actions to affirmatively further fair housing:

(List all such actions to include: mailing copies of this resolution to the real estate community, banks, developers, community organizations and local media; posting copies of this resolution at identified locations; distributing flyers; sponsoring schools)

RESIDENTIAL ANTI-DISPLACEMENT AND RELOCATION ASSISTANCE REQUIRED ELEMENTS

I. Background/Introduction

Section 104(d) of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5304(d)(4)), Section 105(b)(16) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12705(b)(16)), and implementing regulations at 24 CFR Part 42, specify that a grantee under the Community Development Block Grant (CDBG) must certify that it has in effect and is following a “residential Anti-displacement and relocation assistance plan” (Plan). As a CDBG grantee, _____ must certify to State of New Mexico Department of Finance and Administration Local Government Division that it has and is following such a Plan.

The Plan must include three components: 1) one-for-one replacement requirements for lower-income housing units, 2) relocation assistance, and 3) a description of the steps _____ will take to minimize displacement.

II. Activities Covered by the Plan

All activities involving the use of CDBG funds that cause displacement as a direct result of demolition or conversion of a lower-income dwelling are subject to the requirements specified in the Plan. Activities for which funds are first obligated on or after September 30, 1988 are subject to the requirements specified in the Plan, without regard to the source year of the funds.

III. Uniform Relocation Act

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) govern displacement that directly results from acquisition, rehabilitation, or demolition of real property when federal funds are used. _____’s Residential Anti-displacement and Relocation Assistance Plan is in no way intended to supersede the URA. CDBG assisted activities may still be subject to the requirements of the URA.

IV. One-for-One Replacement Units

All occupied and vacant occupiable lower-income dwelling units that are demolished or converted to a use other than as lower-income dwelling units in connection with an assisted activity must be replaced with comparable lower-income units. Replacement lower-income dwelling units may be provided by any governmental agency or private developer and must meet the following requirements:

- A. The units must be located within _____ to the extent feasible, the units shall be located within the same neighborhood as the units replaced

- B. The units must be sufficient in number and size to house no fewer than the number of occupants who could have been housed in the units that are demolished or converted. The number of occupants who could have been housed in the units shall be in accordance with applicable local housing occupancy codes. The units may not be replaced with smaller units (e.g., a 2-bedroom unit with two 1-bedroom units), unless _____ has provided information demonstrating that such a proposed replacement is consistent with the needs assessment contained State of New Mexico Department of Finance and Administration Local Government Division HUD-approved Consolidated Plan.
- C. The units must be in standard condition and must at a minimum meet Section 8 Program Housing Quality Standards. Replacement lower-income units may include units brought from a substandard condition to standard condition if: 1) no person was displaced from the unit; and 2) the unit was vacant for at least 3 months before execution of the agreement between _____ and the property owner.
- D. The units must initially be made available for occupancy at any time during the period beginning 1 year before the recipient makes public the information required under Section F below and ending 3 years after the commencement of the demolition or rehabilitation related to the conversion.
- E. The units must be designed to remain lower-income dwelling units for at least 10 years from the date of initial occupancy. Replacement lower-income dwelling units may include, but are not limited to, public housing or existing housing receiving Section 8 project-based assistance
- F. Before _____ enters into a contract committing it to provide CDBG funds for any activity that will directly result in the demolition of lower-income dwelling units or the conversion of lower-income dwelling units to another use, _____ must make public and submit in writing to State of New Mexico Department of Finance and Administration Local Government Division the following information:
- 1 A description of the proposed assisted activity;
 - 2 The location on a map and number of dwelling units by size (number of bedrooms) that will be demolished or converted to a use other than for lower-income dwelling units as a direct result of the assisted activity;
 - 3 A time schedule for the commencement and completion of the demolition or conversion;
 - 4 The location on a map and the number of dwelling units by size (number of bedrooms) that will be provided as replacement dwelling units. If such data is not available at the time of the submission to State of New Mexico Department of Finance and Administration Local Government Division, the submission shall identify the general location on an area map and the approximate number of dwelling units by size, and information identifying the specific location and number of dwellings units by size shall be submitted and disclosed to the public as soon as it is available;
 - 5 The source of funding and time schedule for the provision of replacement dwelling units;
 - 6 The basis for concluding that each replacement unit will remain a lower-income dwelling unit for at least 10 years from the date of initial occupancy; and
 - 7 Information demonstrating that any proposed replacement of dwelling units with smaller dwelling units is consistent with the needs assessment contained in

the State of New Mexico Department of Finance and Administration Local
Government Division Consolidated Plan.

- G. The one-for-one replacement requirements may not apply if HUD determines, based on objective data, that there is an adequate supply of vacant lower-income dwelling units in standard condition available on a non-discriminatory basis within _____. In making such a determination, State of New Mexico Department of Finance and Administration Local Government Division will consider such factors as vacancy rates, numbers of lower-income units in _____ and the number of eligible families on the Section 8 waiting list.

V. Relocation Assistance

Each lower-income person who is displaced as a direct result of CDBG assisted demolition or conversion of a lower-income dwelling shall be provided with relocation assistance.

Relocation assistance includes advisory services and reimbursement for moving expenses, security deposits, credit checks, other moving expenses, including certain interim living costs, and certain replacement housing assistance.

Displaced persons have the right to elect, as an alternative to the benefits described in this Plan, to receive benefits under the URA, if they determine that it is in their best interest to do so. The following relocation assistance shall be available to lower-income displacement persons:

- A. Displaced lower-income persons will receive the relocation assistance required under 49 CFR 24, Subpart C (General Relocation Requirements) and Subpart D (Payment for Moving and Related Expenses) whether the person elects to receive assistance under the URA or the assistance required by CDBG regulations. Relocation notices must be distributed to the affected persons in accordance with 49 CFR 24.203 of the URA;
- B. The reasonable and necessary cost of any security deposit required to rent the replacement dwelling unit and for credit checks required to rent or purchase the replacement dwelling unit;
- C. Actual reasonable out-of-pocket costs incurred in connection with temporary relocation, including moving expenses and increased housing costs, if:
 - 1. The person must relocate temporarily because continued occupancy of the dwelling unit constitutes a substantial danger to the health or safety of the person or the public; or
 - 2. The person is displaced from a lower-income dwelling unit, none of the comparable replacement units to which the person has been referred qualifies as a lower-income dwelling unit, and a suitable lower-income dwelling unit is scheduled to become available through one-for-one replacement requirements
- D. Replacement Housing Assistance. Displaced persons are eligible to receive one of the following two forms of replacement housing assistance:
 - 1. Each person shall be offered rental assistance equal to 60 times the amount necessary to reduce the monthly rent and estimated average monthly cost of

utilities for a replacement dwelling to the "Total Tenant Payment", as determined under 24 CFR 813.107. All or a portion of this assistance may be offered through a certificate or housing voucher for rental assistance under the Section 8 program. Where Section 8 assistance is provided to the displaced person,

_____ must provide the person with referrals to comparable units whose owners are willing to participate in Section 8 program to the extent that cash assistance is provided, it will be provided in installments.

2. In lieu of the housing voucher, certificate or cash assistance described above, the person may elect to receive a lump sum payment allowing them to secure participation in a housing cooperative or mutual housing association. This lump sum payment shall be equal to the capitalized value of 60 monthly installments of the amount that is obtained by subtracting the

"Total Tenant Payment", as determined under 24 CFR 813.107, from the monthly cost of rent and average monthly cost of utilities at a comparable replacement dwelling unit. To compute the capitalized value, the installments shall be discounted at the rate of interest paid on passbook savings in a federally insured financial institution conducting business within _____.

Displaced lower-income tenants shall be advised of their right to elect relocation assistance pursuant to the URA and the regulations at 49 CFR 24 as an alternative to the relocation assistance available under CDBG regulations.

VI. Eligibility for Relocation Assistance

A lower-income person is eligible for relocation assistance if they are considered to be a "displaced person" as defined in 24 CFR 42.305. A displaced person means a lower-income person who, in connection with an activity assisted under the CDBG program, permanently moves from real property or permanently moves personal property from real property as a direct result of demolition or conversion of a lower-income dwelling.

For purposes of this definition, a permanent move includes a move made permanently and:

- A. After notice by the owner to move from the property, if the move occurs on or after the date of the submission of a request to _____ for CDBG assistance that is later approved for the requested activity; or
- B. After notice by the owner to move from the property, if the move occurs on or after the date of the initial official submission to HUD of the consolidated plan under 24 CFR Part 91 describing the assisted activity; or
- C. Before the dates described in A & B above, if _____ or State of New Mexico Department of Finance and Administration Local Government Division determines that the displacement was a direct result of conversion or demolition in connection with a CDBG assisted activity; or
- D. By a tenant-occupant of a dwelling unit, if any one of the following three situations occurs:
 1. The tenant moves after execution of the CDBG agreement covering the acquisition, rehabilitation or demolition and the move occurs before the tenant is

provided written notice offering the tenant the opportunity to lease and occupy a suitable, decent, safe and sanitary dwelling in the same building/complex upon completion of the project under reasonable terms and conditions, including a monthly rent and estimated average monthly utility costs that do not exceed the greater of the tenant's monthly rent before such agreement, or the total tenant payment as determined under 24 CFR 813.107 if the tenant is lower-income, or 30 percent of gross household income if the tenant is not lower-income.

2. The tenant is required to relocate temporarily, does not return to the building/complex, and either is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, or other conditions of the temporary relocation are not reasonable.
3. The tenant is required to move to another dwelling unit in the same building/complex but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move, or other conditions of the move are not reasonable.

If the displacement occurs on or after the appropriate date described in A & B above, the lower-income person is not eligible for relocation assistance if:

- A. The person is evicted for cause based upon a serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable federal, State or local law, or other good cause, and the _____ determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;
- B. The person moved into the property on or after the date described in A & B above after receiving written notice of the expected displacement; or
- C. _____ determines that the displacement was not a direct result of the CDBG assisted activity and the State of New Mexico Department of Finance and Administration Local Government Division concurs with this determination.

VII. Minimizing Displacement

The CDBG regulations regarding the demolition or conversion of lower-income dwelling units are designed to ensure that lower-income persons are provided with adequate, affordable replacement housing. Naturally, involuntary displacement should be discouraged whenever a reasonable alternative exists. Involuntary displacement is extremely disruptive and disturbing, especially to lower-income persons who do not have the means to locate alternative housing.

There are various ways that displacement can be minimized. The following are steps that will be taken to minimize the involuntary displacement of lower-income persons when CDBG funds are involved:

- A. Screening of Applications All CDBG applications will be reviewed to determine whether involuntary displacement is likely to occur. Those applications involving displacement will receive a lower priority recommendation for funding unless it can be shown that alternatives are not available.
- B. Acquisition of Property Applicants who apply for CDBG funds to acquire property for the

development of lower-income housing will be encouraged to purchase vacant land. In the case of in-fill and other projects where this is not feasible and the project involves potential displacement, the applicant shall agree to allow the displaced lower-income person(s) to occupy the new housing at an affordable rent.

Applicants who utilize CDBG funds to rehabilitate or convert a lower-income unit to a non-residential use will be required to supply replacement housing consistent with paragraph IV, as well as relocation assistance.

- C. Cost of Relocation Assistance The cost of any required relocation assistance and the provision of replacement housing will be borne by the applicant and may be paid for out of CDBG funds awarded to the project.

VIII. Definitions

- A. "Comparable replacement dwelling unit" means a dwelling unit that:
 - 1 Meets the criteria of 49 CFR 24.2(d)(1) through (6); and
 - 2 Is available at a monthly cost for rent plus estimated average monthly utility costs that does not exceed the "Total Tenant Payment" determined under 24 CFR 813.107 after taking into account any rental assistance the household would receive.
- B. "Lower-income dwelling unit" means a dwelling unit with a market rental (including utility costs) that does not exceed the applicable Fair Market Rent (FMR) for existing housing and moderate rehabilitation established under 24 CFR Part 888.
- C. "Standard condition" means units that at a minimum meet the Existing Housing Quality Standards of the Section 8 rental subsidy program.
- D. "Substandard condition suitable for rehabilitation" means units with code violations that can be brought to Section 8 Housing Quality Standards within reasonable monetary amounts.
- E. "Vacant occupiable dwelling unit" means a dwelling unit that is in a standard condition; a vacant dwelling unit that is in substandard condition, but is suitable for rehabilitation; or a dwelling unit in any condition that has been occupied (except by a squatter) at any time within the period beginning 3 months before the date of execution of the agreement by _____ covering the rehabilitation or demolition.

IX. Grievances

The _____ will provide timely written answers to written complaints and grievances within 15 working days where practical. Action items:

- A. Adopt complaint handling procedures or policies to insure that complaints or grievances are responded to within 15 days, if possible.
- B. Allow for appeal of a decision to a neutral authority.
- C. File a detailed record of all complaints or grievances and responses in one central location with easy public access.

SECTION 3 PLAN REQUIRED ELEMENTS

The _____ is committed to comply with Section 3 of the Housing and Urban Development Act of 1968. This Act encourages the use of small local businesses and the hiring of low income residents of the community.

The _____ has appointed _____ as the Section 3 Coordinator, to advise and assist key personnel and staff on Section 3, to officially serve as focal point for Section 3 complaints, and as the on-site monitor of prime contractors and sub-contractors to insure the implementation and enforcement of their Section 3 plans. The approval or disapproval of the Section 3 plan is the ultimate responsibility of the _____. Documentation of efforts will be retained on file for monitoring by the state.

Therefore, the _____ shall:

1. Hiring
 - a. Advertise for all _____ positions in local newspapers
 - b. List all _____ job opportunities with the State Employment Service
 - c. Give preference in hiring to lower income persons residing in the _____. This means that if two equally qualified persons apply and one is a resident of the _____ and one is not, the resident will be hired
 - d. Maintain records of _____ hiring as specified in the Annual CDBG Resolutions (Exhibit 1-Y). Note: Chart for Section 3 Plan MUST be filled out in its entirety and updated on an annual basis.

2. Contracting

- a. The _____ will compile a list of businesses, suppliers and contractors located in the _____.
- b. These vendors will be contacted for bid or quotes whenever the _____ requires supplies, services or construction.
- c. Preference will be given to small local businesses. This means if identical bids/quotes are received from a small business located within the _____ and one from outside the _____, the contract will be awarded to the business located within the community.

3. Training

The _____ shall maintain a list of all training programs operated by the _____ and its agencies and will direct them to give preference to _____ residents. The _____ will also direct all CDBG sponsored training to provide preference to _____ residents.

4. CDBG Contracts

All CDBG bid proposals and contracts shall include the following Section 3 language.

- a. The work to be performed under this contract is on a project assisted under a program providing direct federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that the greatest extent feasible, opportunities for training and employment be given lower income residents of the project areas, and contracts for work in connection with the project be awarded to business concerns residing in the project area.
- b. The parties to this contract will comply with the provision of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR and all applicable rules and orders of the Department issued there-under prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.
- c. The contractor will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under the Section 3 clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
- d. The contractor will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for, or recipient of federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR 135. The contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR 135, and will not let any subcontract unless the subcontractor has first provided it with the requirements of these regulations.
- e. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR 135, and all applicable rules and orders of the Department, issued thereunder prior to the execution of the contract, shall be a condition of the federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors and assigns to those sanctions specified by the grant or loan agreement or contract through which federal assistance is provided, and to such sanctions as are specified by 24 CFR 135.

The _____ shall require each contractor to prepare a written Section 3 plan as a part of their bids on all jobs exceeding \$100,000. All Section 3 plans shall be reviewed and approved by the City's Equal Opportunity Section 3 Compliance Officer and retained for monitoring by the state.

The _____ will maintain all necessary reports and will insure that all contractors and subcontractors submit required reports.

LOWER INCOME CLARIFICATION

A family who resides in _____ and whose income does not exceed the income limit for the size of family as per the attached Section 8 Income Limit for _____. Information contained in our Section 3 Plan reflects the status of the _____ employees regarding lower income considerations based on their salary paid by the _____.

Certification

This Federal Requirements Plan hereby incorporates all of the State of New Mexico CDBG requirements to include Citizen Participation, Fair Housing, Residential Anti-Displacement & Relocation as well as Section 3. The _____ herewith certifies to follow the CDBG Federal Requirements Plan described above and adopt the plan by resolution annually.

PASSED AND ADOPTED BY THE _____ of the _____
of _____ on this _____ day of _____.

ATTEST:

APPROVED AS TO FOR:

Clerk

Attorney

Plan Adoption Date: _____

Adoption Instrument: _____

Certified By: _____

Date

Copy to Local Government Division with attachments

Chapter 2: Environmental Review

Overview

This chapter covers the federal Environmental Review (ER) requirements that apply to the State of New Mexico CDBG program administered by the LGD. It outlines the responsibilities of the Grantee, the levels of EA, the submission and publication, certification & notices, the request for the release of funds, documentation of compliance, procedures by activity, and compliance with other environmental laws and authorities such as State Historic Preservation Office (SHPO) requirements and Floodplain determination.

The National Environmental Policy Act (NEPA) was enacted in 1969 to ensure that federal agencies consider and address any environmental impacts that result from the activities and projects they sponsor. As a result, the U.S. Department of Housing and Urban Development (HUD) developed its own set of regulations that implement NEPA. These regulations apply to HUD-funded programs such as the CDBG Program. HUD enforces these regulations to ensure that projects do not pose a negative impact on the environment or create environmental conditions that would negatively impact the persons served by the project. Recipients of HUD funds are required to determine how to mitigate any negative impacts as a result of a federally-funded project. This determination is made through conducting an EA, in accordance with the provisions of HUD's regulations at 24 CFR Part 58.

While LGD must monitor compliance with HUD and the CDBG EA requirements, particular responsibilities related to the release of funds fall on the Grantee. A basic understanding of HUD and CDBG EA requirements is crucial. Failure to comply with these requirements may jeopardize the project as well as the Grantee's ability to apply for future funds and/or result in disallowed costs.

Grantees are responsible for completing their EA and the "Request for Release of Funds" (RROF) (**Exhibit 2-L**) before:

- Any commitment of CDBG funds for activities other than those that are specifically exempt from the EA; and
- Any commitment of Federal or State funds that would have an adverse environmental impact or limit the choice of alternatives.

A key factor in performing an EA is the fact that the EA process must consider the ultimate effect of a proposed project. That is, the effects of both the CDBG and related project activities must be considered. For example, if CDBG funds are being used to acquire a site for a new construction project, the ultimate effect of the project is not solely the acquisition of the site, but also the construction of the project, including infrastructure. Therefore, the EA must address the impacts of both the CDBG-funded land acquisition and the privately-financed construction of the project. The scope of considerations of an EA should be presented with this definition of a project in mind. The EA process should focus on the determination of the impacts of a project on the environment. In this regard, the review should include

the measurable preparation of documentation regarding the mandatory evaluation of physical, social, and economic impacts of proposed activities.

Maintain Records

It is critical that the Grantee maintain an ERR to document compliance with Federal and State requirements. EA compliance is monitored through audit review by the designated LGD project manager. All of the above listed documents must be kept in the ERR. NOTE: Because most Exempt activities funded through LGD are planning grants, the designated project manager will not conduct a site visit, but will desk audit the ERR.

(The remainder of this page was left intentionally blank.)

Task Checklist

- ☐ Task #1 Designate Certifying Official (CO)
- ☐ Task #2 Complete and Submit the “Environmental Assessment Determination”
- ☐ Task #3 Submit Documentation for Finding of Exemption, if applicable
- ☐ Task #4 Agency Consultations and Reviews
- ☐ Task #5 Floodplains Management
- ☐ Task #6 Compliance with Environmental Laws and Authorities
- ☐ Task #7 Assemble Environmental Review Record
 - 7.1 Procedures for Categorical Exclusion
 - 7.2. Procedures for Environmental Assessment
- ☐ Task #8 Submit Environmental Review Record to DFA

Task #1 Designate a Certifying Official (CO)

Grantees must designate a Certifying Official (CO) to assume overall responsibility for the environmental review process. The CO must:

- Have legal authority to speak for the county or municipality
- Be able to make legal commitments on behalf of the entity
- Be able to represent the entity in federal courts

The CO is responsible for:

- Resolving findings and signing required certifications.

Typically the Mayor, Commission Chair, or City Manager are designated as the CO, but anyone who satisfies the criteria above is eligible. A CO designation must be issued for each grant. **The individual designated as the CO and Chief Elected Official (CEO) must sign the “Certifying Official Designation” (Exhibit 2-A-1).** Exhibit 2-A-1 must be included in the Environmental Review Record (ERR).

Task #2 Complete and Submit the Environmental Review Determination

The DFA determines the level of EA for CDBG projects: exempt, categorically excluded Subject to 24 CFR 58.6, or environmental assessment. The DFA makes this determination based on the grantee's completion and submission of **Exhibit 2-A** “Environmental Review Determination” as per 24 CFR 58.6. Each level of EA is explained below:

Exempt

Activities that do not affect the human or physical environment are exempt from EA requirements of NEPA and the "Laws & Authorities Checklist for All Projects Not Exempt" (**Exhibit 2-N**). Exempt activities also do not require public notice or a Finding of No Significant Impact (FONSI). Exempt activities are **not**, however, exempt from 24 CFR 58.6 - Other Requirements. Some of these requirements include the Flood Disaster Protection Act of 1973 and National Flood Insurance Reform Act of 1994. (See 24 CFR for a full list of other requirements). Examples of exempt activities are:

- Disaster or imminent threat improvements
- 40-year water plans
- Wastewater master plans
- Comprehensive plans
- Feasibility and engineering studies

Please see 24 CFR Part 58.34(a)(1) thru (a)(12) for a complete list of allowable exempt activities.

Categorically Excluded Subject To 24 CFR 58.6 (CEST)

Activities that do not have a significant effect on the environment, either individually or cumulatively, as cited in 24 CFR 58.35(c), are categorically excluded and do not require an EA or Environment Impact Statement (EIS).

Categorically excluded activities typically involve work to rehabilitate or repair existing structures or facilities that can change in size or capacity up to 20%. Examples of categorically excluded activities

may include:

- Repairs to an existing water or sewer line with no location or capacity changes
- Street repairs with no location or capacity changes (additional width can be deemed a capacity change)
- Rehabilitation of existing housing

Categorically excluded projects must comply with Federal laws, statutes and regulations and the ERR must document this compliance. For a full list of CEST activities, see 24 CFR 58.35(a)(1) thru (6) and 24 CFR 58.35 (b)(1) thru (7).

Environmental Assessment (EA)

When a project or activity is not exempt under 24 CFR Part 58.34 or CE under 24 CFR Part 58.35 and will change the physical environment, at a minimum an EA is required. To complete the EA, the Grantee must analyze the project's impact on the human environment and comply with the review required by the Federal laws cited in 24 CFR 58.5 and 58.6. The requirements of an EA are contained in 24 CFR 58 Subpart E and the ERR must document compliance with these requirements. If the Assessment supports a finding that the activity will not have a significant impact on the environment, no further review is needed. The distinction between the requirements of the categorically excluded activities and those which require an environmental assessment are minor.

Environmental Impact Statement (EIS)

An EIS is required when an EA indicates that a proposed project or activity will significantly impact the human environment, as defined in 24 CFR 58.37. The EIS is a detailed written statement describing, analyzing and assessing any alteration of environmental conditions or creation of a new set of environmental conditions, adverse or beneficial, caused or induced by the proposed action and alternatives to the proposed action. It is unlikely that any CDBG activity will trigger an EIS. In the rare event a Grantee finds itself involved with this level of review, they should contact their Project Manager immediately.

Reuse of a previous EA

In order to request the use of an existing EA, the grantee must submit documentation of the following to LGD in a formal letter signed by the CEO and CO.

- The project area remains unchanged from the original EA.
- No significant change in the area within the last 5 years.
- Consultation with SHPO (**Exhibit 2-J**) to confirm compliance with Section 106 and 110 compliance review under the provisions of the National Historic Preservation Act. NOTE: If the proposed project directly or indirectly affects a listed or eligible for listing historic property that is more than 45 years old, or it is located within a listed historic district, then the 5-year EA allowance will not apply.
- No change to the Laws and Authorities checklist (**Exhibit 2-N**) conducted by the initial EA that would initiate correspondence with the appropriate regulatory agency or a response

from that agency.

- “Authority to Use Grant Funds” (**Exhibit 2-Q**) from the original EA was signed within the last 5 years

Along with meeting these conditions, the following documentation will need to be submitted for the current project:

- “Environmental Review Determination” (**Exhibit 2-A**)
- “Certifying Official Designation” (**Exhibit 2-A-1**)
- “Request for Release of Funds” (**Exhibit 2-L**)
- A complete copy of the EA being reused

Environmental Determination Change

If the Grantee does not agree with the LGD’s level of environmental determination, it must request this change from the LGD in writing. The LGD staff will review the written request and render a decision.

Task #3 Submit Documentation for Finding of Exemption, if applicable

If the project is determined to be Exempt, the Grantee does not have to comply with the environmental requirements of 24 CFR Part 58 (with the exception of 24 CFR Part 58.6) or undertake any EA, consultation, or other action under NEPA.

In order to fulfill the Exempt requirements, the Grantee must submit the following documents:

- “Transmittal Letter for Finding of Exempt Projects” (**Exhibit 2-B**)
- “Certification of Exemption for CDBG Projects” (**Exhibit 2-B-1**)
- “Compliance Documentation Checklist” (**Exhibit 2-B-2**)
- “Request for Release of Funds” (**Exhibit 2-L**)

Once LGD has determined the above listed documents are complete and accurate, an “Authority to Use Grant Funds” (**Exhibit 2-Q**) will be issued. At this point the EA for exempt activities is complete.

Task #4 Agency Consultations and Reviews

A critical piece of an environmental review is consultations with agencies that can review the how the project may impact the environment, or how the environment may impact the project. Agency consultations are necessary to ensure compliance federal and state law. Below the steps to conducting the agency consultations:

- 1) Use **Exhibit 2-E** to determine which agencies must be consulted for review
- 2) Go to TDAT (<https://egis.hud.gov/TDAT/>) and look up the county where the project will take place to determine which Native American must be consulted.
- 3) With the exception of the State Historical Preservation Office (SHPO) and the Local/ County

Floodplain manager, the grantee may use **Exhibit 2-I** as template to draft for the Agency consultation notices.

- a. The notices must be on grantee letter head and signed by the Certifying Officer,
 - b. Grantees should use **Exhibit 2-J** as template to draft the notice to SHPO. The letter to SHPO should also include picture and maps of the project location.
 - c. Grantees should use **Exhibit 2-F** for the notice to the Local/County Floodplain manager
- 4) Send the notices to the agencies listed on **Exhibit 2-E** and the Native American tribes listed on **TDAT**. Grantees may send the notices via mail or email.
 - a. Grantees must keep a copy of each notice sent to include with their EA materials.
 - b. As grantees receive responses from the agencies they must keep copies of the responses with their EA materials.
- 5) After a period of two weeks to 30 days has passed from the date grantee sent the initial consultation letter, grantees must make a second consultation attempt. The DFA prefers this second attempt be made via mail or email. While contracted administrators (like engineers) may provide technical assistance with this duty, the local entity should conduct the second attempt for agency review.
- 6) Grantees must also make a copy of the second attempt correspondence to include in their EA materials. If grantees believe a second attempt would be more successful by making a phone call, they may do so if they have appropriate documentation. In lieu of including a copy of a second attempt letter grantees must keep a log that includes the name of the agency and person contacted, date and time the phone call was made, and who made the phone call. Grantees are encouraged to make additional attempts, as some agencies may not answer until the third try.
- 7) In some cases the agencies consulted will require follow-up activities. The most common are:
 - a. SHPO requires a Cultural Resources Survey for the site. If this determination is made, it is the Grantee's responsibility to contract a SHPO approved archaeologist to perform the survey.
 - b. The local/county flood plains manager indicates the project will be located in a floodplain, the grantee will have to complete a floodplain review. Specifics of the floodplain review requirements appear in the following section.

When an agency consulted indicates anything other than that the project will have no significant impact, the grantee should contact its project manager to determine how to proceed.
- 8) Responses are required from SHPO, the Flood Plain Manager and the New Mexico Environmental Department. If the Grantee does not receive responses from other agencies, the Grantee must document all good faith efforts made to contact them by completing "Agency Response Letter Certification" (**Exhibit 2-I-1**).

Task #5 Floodplains Management

To comply with floodplain management requirements, grantees must complete the HUD-prescribed process:

1. Determine if the project is located in a 100-year or 500-year floodplain or wetland.

Determination is done using an NFIP floodplain map.

- a. The local/county floodplain manager must be consulted and provide independent verification of the determination.
 - b. For projects that involve acquisition of or construction in any “area having special flood hazards” designated by FEMA shall not be approved in communities identified by FEMA as eligible for flood insurance but which are not participating in the National Flood Insurance Program. “Flood Insurance Coverage” (**Exhibit 2-F-1**) explains dollar amount and duration of insurance coverage for projects.
 - c. If the local/county floodplains manager determines that the proposed activity is in a floodplain, the grantee must comply with the HUD-prescribed process. If not, there no additional floodplain requirements for the environmental assessment.
2. If the project is in a floodplain, the affected and interested public must be provided the opportunity for early public review. This consists of publishing a **“Floodplains and Wetlands Early Public Review Notice” (Exhibit 2-G)** in a local newspaper to make the public aware of the project intent. This Notice must provide a 15-day comment period. Copies of each published Notice should be sent to interested parties (Federal, State and Local) and a copy of a separate distribution list for each Notice as well as copies of transmittal letters are to be kept in the ERR.
3. Identify and evaluate practicable alternatives to locating in the base floodplain. Alternatives to be considered include:
 - Carrying out the proposed activity at a location outside the base floodplain (alternative sites)
 - Other means of accomplishing the same purpose as the proposed activity (alternative activities)
 - No action (the “no action” alternative must be considered)
4. Identify the adverse impacts of the proposed activity. Three basic types of impacts that must be addressed are:
 - Positive and negative impacts
 - Concentrated and dispersed impacts
 - Short and long-term impacts
5. If the proposed activity will result in an identifiable impact, this impact must be minimized and natural and beneficial floodplain values must be restored and preserved.
6. Re-evaluate the proposed alternative, considering whether the activity is still feasible. If not, consider limiting the activity to non-floodplain sites. If neither is acceptable, the alternative is no action.
7. A decision of No Practicable Alternative must be explained to the public by publishing a “Floodplains and Wetlands Notice of Explanation” (**Exhibit 2-H**) in a local newspaper. This notice must also provide a 7-day comment period and must be published separately from the “EPRN”. Copies of each published notice should be sent to interested parties and a copy of a separate distribution list for each notice as well as copies of transmittal letters are to be kept in the ERR.

8. Implement the proposed activity with the appropriate mitigation measures, if required.

Task #6 Compliance with Environmental Laws and Authorities

A Grantee's ERR must evidence and provide assurances of compliance with all other applicable environmental laws and authorities as outlined in this section by completing the "Laws & Authorities Checklist for All Projects Not Exempt" (**Exhibit 2-N**). This document should provide specific references and citations from the responses received during the agency consultation process, detailed in the subsequent section.

The "**Laws & Authorities Checklist for All Projects Not Exempt**" (**Exhibit 2-N**) should include maps, online references, and citations from the agency consultation notices should be detailed in the exhibit. At a minimum, the Grantee must document who responded to the inquiry, when the response was received and what the contents of the response letter stated.

If project mitigation is required or suggestions listed in the agency response letters, then this information needs to be included on the exhibit. If the project will affect or be affected by any of these laws and authorities, the Grantee should initiate correspondence with the appropriate regulatory agency. The "**Laws & Authorities Checklist for All Projects Not Exempt**" (**Exhibit 2-N**) lists most of these agency contacts and their addresses. For clarification about complying with any of these laws, the Grantee should contact their designated LGD Project Manager.

In order to complete the "Laws & Authorities Checklist for All Projects Not Exempt" (**Exhibit 2-N**), the grantee should rely on the responses from its agency consultation notices.

Task #7 Assemble Environmental Review Record (ERR)

7.1 Procedures for Categorical Exclusion

Complete Written Finding of Categorical Exclusion. The Grantee must complete a written Finding of Categorical Exclusion that cites the subsection of 24 CFR 58.35(a) by which the activities or projects funded are Categorically Excluded from the requirements of 24 CFR Part 58. A sample format for the written finding can be found in **Exhibit 2-C-1**. **Exhibit 2-D** is a "Sample Transmittal Letter for Categorical Exclusion".

Publish/Post Public NOI/RROF. Once the Grantee has verified compliance with Laws and Authorities (**Exhibit 2-N**) it must publish or post the NOI/RROF. The CDBG project number, a sufficient description of the project and its location must be included in the NOI/RROF.

- If the Grantee posts, it must provide "**Evidence of Posting Notices**" (**Exhibit 2-M**). A "Sample NOI/RROF" is included as **Exhibit 2-K**. Note: Grantees must comply with locally-established Open Meetings Act Resolutions, regarding publications. The Grantee must provide the public

with at least ten calendar days to comment on the Notice (i.e. Exhibit 2-K) following the date of posting.

- If the Grantee chooses to post the NOI/RROF instead of publishing, the notice must be displayed in a prominent public place, within the project area, e.g. Post Office, City Hall, County Courthouse, Community Center, etc. In addition, the notice must also be mailed to the agencies listed in the “Contact/Distribution List” (**Exhibit 2-E**).
- If the Grantee publishes the NOI/RROF, it must provide appropriate documentation (i.e. affidavit of publication.) The Grantee must provide the public with at least seven calendar days to comment on the NOI/RROF.
- The first day of a public comment period starts at 12:01 a.m. on the day following the day of publication, mailing, or posting.

Prepare RROF and Certification. After the public comment period has expired and all comments, if any, are addressed, the Grantee’s Chief Elected Official shall complete the “Request for Release of Funds” (**Exhibit 2-L**). *This form cannot be signed prior to the end of the public comment period.*

7.2 Procedures for Environmental Assessment

Complete the Environmental Impact Checklist (Exhibit 2-O.) The nature, magnitude, and extent of all environmental impacts should be identified using the “Environmental Assessment Impact Checklist” (**Exhibit 2-O**). Each project should be evaluated based on its potential impact on the environment and how the environment will affect the project. Sources and documentation for the evaluations should be identified in the space provided on the exhibit. This checklist must be completed prior to issuing a FONSI or FOSI. Guidance questions for completing the “Environmental Assessment Impact Checklist” are included as **Exhibit 2-O**. In order to adequately and accurately complete **Exhibit 2-O**, use the responses to the agency consultation notices.

If the “Environmental Assessment Impact Checklist” (**Exhibit 2-O**) shows that an area may be adversely affected, the Grantee must identify and document possible alternatives and mitigation methods, and contact its project manager. The Grantee’s CO should determine if the adoption of feasible alternatives to the project would eliminate or minimize environmental impacts. The effects of an alternative project scope and design, location and of the no-action alternative should be considered. The second page of **Exhibit 2-O** provides space to summarize the environmental conditions and to discuss alternatives and mitigation measures.

The Grantee can make one of the appropriate environmental findings:

- A FONSI in which the Grantee determines that the project is not an action that may or will significantly affect the quality of the human environment

- A FOSI in which the project is deemed to be an action that may significantly affect the quality of the human environment. **In this event, the Grantee should contact the LGD Project Manager immediately for further assistance.**

The second page of **Exhibit 2-O** provides space to make the conclusion and findings and to list the reasons for the decision. This list of reasons is a part of the FONSI public notice, discussed next. The last page of the “Environmental Assessment Impact Checklist” consists of the actual FONSI/FOSI.

Publish/Post Public Notices and Comment Periods. Once the 2-O is completed and a FONSI is determined, follow the federal requirements for notices, comment periods and clearance procedures must be followed:

1. Prepare and distribute “Notice of FONSI and NOI/RROF” (**Exhibit 2-P**) to
 - Local news media
 - Individuals and groups known to be interested in its activities
 - Appropriate local, State, and Federal agencies. See “Contact/Distribution List” (**Exhibit 2-E**).
2. Provide evidence of posting Exhibit 2-P, if not published, as **Exhibit 2-M** with EA materials.
 - “Notice of FONSI and NOI/RROF” (**Exhibit 2-P**):
3. Allow for a local Public Comment Periods prior to taking further action pursuant to the following notices, the following minimum time periods for comments shall be adhered to:
 - If the Exhibit 2-P is published, allow 15 days
 - If the Exhibit 2-P is posted, 18 days
 - The Grantee must take into account the comments received in response to the **Exhibit 2 - P** before proceeding with completing the RROF and Certification form. Failure to address public comments will delay the environmental clearance and the start of project construction.
4. State Public Comment Period
 - LGD cannot provide an authorizing signature **Exhibit 2-Q** prior to the State’s 15 day public comment period. The clock starts after “completed document” is received, reviewed and approved by LGD.

Complete RROF and Certification. After the local public comment period has expired and all comments, if any, are resolved, the Grantee's CO shall complete the “Request for Release of Funds” (**Exhibit 2-L can be found at <https://www.hudexchange.info/resources/documents/HUD-Form-701515-Request-Release-Funds-Certification.pdf>**). Because this form certifies that the dates of the comment periods have expired, this form should not be signed prior to the end of the public comment period.

Prepare RROF and Certification. After the public comment period has expired (if required) and all

comments, if any, are addressed, the Grantee's Chief Elected Official shall complete the "Request for Release of Funds" (**Exhibit 2-L**). *This form cannot be signed prior to the end of the public comment period.*

Task #8 Submit Environmental Review Record

Upon completion of the ERR, it should be submitted to LGD for approval. Refer to the checklists in the Chapter 5 (Monitoring and Closeout). Following a complete and accurate submission of an ERR, DFA will review, approve, and have another 15-day public comment period. ***Expect Exhibit 2-Q after*** the 15 day public comment period expires.

Exhibit 2-A

Environmental Review Determination

ENTITY INFORMATION

Entity Name: _____ Certifying Official: _____
CDBG Project Number: _____ Project Name: _____

PROJECT INFORMATION

Section 1

Please answer all questions in this section.

Yes No

- | | | |
|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | Is it a Preliminary Engineering Report (PER)? |
| <input type="checkbox"/> | <input type="checkbox"/> | Is it a Comprehensive Plan? |
| <input type="checkbox"/> | <input type="checkbox"/> | Is it a Project Plan? |
| <input type="checkbox"/> | <input type="checkbox"/> | Is it a Specific Element Plan (e.g., traffic study, water study, etc.)? |

*If you answered "Yes" to **any** of the previous questions, the project is "Exempt" from an Environmental Review and you do not need to answer any additional questions. If you answered "No" to **all** of the previous questions, please continue with the next section.*

Section 2

*If you answered "No" to **all** questions in Section 1, please answer all questions in this section.*

Yes No

- | | | |
|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | Is it support services? |
| <input type="checkbox"/> | <input type="checkbox"/> | Is it operating cost assistance? |
| <input type="checkbox"/> | <input type="checkbox"/> | Is it economic development activity that is not associated with construction or expansion of existing operations? |
| <input type="checkbox"/> | <input type="checkbox"/> | Is it homebuyers' assistance to purchase dwellings? |
| <input type="checkbox"/> | <input type="checkbox"/> | Is it housing predevelopment? |
| <input type="checkbox"/> | <input type="checkbox"/> | Is it tenant-based rental assistance? |
| <input type="checkbox"/> | <input type="checkbox"/> | Is it supplemental assistance? |

*If you answered **any** of the previous questions "Yes", the project is "Categorically Excluded" from an Environmental Review and you do not need to answer any additional questions. If you answered "No" to **all** of the previous questions, please continue with the next section.*

Section 3

*If you answered "No" to **all** questions in Section 2, please answer all questions in this section.*

Yes No

- | | | |
|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | Is new ground being disturbed? |
| <input type="checkbox"/> | <input type="checkbox"/> | Is the purpose of the project changing (e.g., currently a community center but changing to become a fire station)? |
| <input type="checkbox"/> | <input type="checkbox"/> | Will the size or capacity increase by more than 20%? |
| <input type="checkbox"/> | <input type="checkbox"/> | Have all agency consultation notices sent out? |
| <input type="checkbox"/> | <input type="checkbox"/> | Have all agency consultation notices returned? |
| <input type="checkbox"/> | <input type="checkbox"/> | Have you made at least two (2) attempts to contact agencies who have not returned their notices? |
| <input type="checkbox"/> | <input type="checkbox"/> | Is there any significant impact anticipated by consulting agencies? |

Signature of Certifying Official

Date

Exhibit 2-A
Environmental Review Determination

For agency use only

APPROVAL

Approved Environmental Review Method

- ☐ Environmentally Exempt
- ☐ Categorically-Excluded, Subject To 24 CFR 58.35 (CEST)
- ☐ Environmental Assessment (EA)
- ☐ Environmental Impact Statement (EIS)

LGD/DFA Signature

Scott Wright

LGD/DFA Name (Print)

Date

Exhibit 2-B Sample Transmittal Letter for Finding of Exempt Projects with Required Elements

Date _____

Director, DFA/Local Government Division
Bataan Memorial Building, Suite 201
Santa Fe, New Mexico 87501

Entity Name _____ Grant Amount _____
CDBG Project No. _____ Description _____

Dear Director:

This letter is to notify the CDBG Staff of the Local Government Division that the Entity Name, in assuming authority for local grantee compliance with the National Environmental Policy Act of 1969 regulations, has made a determination of environmental review exemption regarding its **Water System Improvements project**. This was submitted to the Local Government Division under the Small Cities/CDBG program. We have determined that all project activities proposed in our request for funding are exempt from the environmental assessment process, according to US Department of Housing and Urban Development regulations. The specific activities to be carried out are classified as such under 24 CFR Part Sec. 58.34 (a) (10), Exempt Activities. That the section states the following:

Eligible interim assistance activities "... for imminent threats to health and safety, if the assisted activities do not alter environmental conditions and are for temporary or permanent improvements limited to protection, repair, or restoration actions necessary only to control or arrest the effects of imminent threats or physical deterioration."

All protection, repair, and restoration activities proposed by the Entity Name fall within the above category.

The Entity Name has also complied with other federal and state laws affecting the project. Here are the results:

1. Floodplains—the Entity Name is located, in part, in a 100-year floodplain. It is participating in the National Flood Insurance Program, authorized by the Flood Disaster Protection Act of 1973. Potential floodplain impacts have been addressed in this project.
2. Historic Preservation—The Entity Name has determined that none of the proposed activities will involve Historic Properties as defined by 36 CFR Part 800. We have consulted with the NM SHPO on this.

This letter will be retained in our Environmental Review Record.

Sincerely,

Exhibit 2-B-1

Certification of Exemption for CDBG funded projects

Determination of activities listed at 24 CFR 58.34(a)
May be subject to provisions of Sec 58.6, as applicable

Grant Recipient: _____

Project Name: _____

Project Description (Include all actions which are either geographically or functionally related):

Location: _____

Funding Source: CDBG

Funding Amount: _____

Grant Number: _____

I hereby certify that the abovementioned project has been reviewed and determined an Exempt activity per 24 CFR 58.34(a) as follows:

	1. Environmental & other studies, resource identification & the development of plans & strategies;
	2. Information and financial services;
	3. Administrative and management activities;
	4. Public services that will not have a physical impact or result in any physical changes, including but not limited to services concerned with employment, crime prevention, child care, health, drug abuse, education, counseling, energy conservation and welfare or recreational needs;
	5. Inspections and testing of properties for hazards or defects;
	6. Purchase of insurance;
	7. Purchase of tools;
	8. Engineering or design costs;
	9. Technical assistance and training;
	10. Assistance for temporary or permanent improvements that do not alter environmental conditions and are limited to protection, repair, or restoration activities necessary only to control or arrest the effects from disasters or imminent threats to public safety including those resulting from physical deterioration;
	11. Payment of principal and interest on loans made or obligations guaranteed by HUD;
	12. Any of the categorical exclusions listed in Sec. 58.35(a) provided that there are no circumstances that require compliance with any other Federal laws and authorities cited in Sec. 58.5.

If your project falls into any of the above categories, a Request for Release of Funds (RROF) is required, and no further environmental approval from DFA/LGD will be needed by the recipient for the draw-down of funds to carry out exempt activities and projects. The responsible entity must maintain this document as a written environmental review record undertaken under this part for each project.

By signing below the Responsible Entity certifies in writing that each activity or project is exempt and meets the conditions specified for such exemption under section 24 CFR 58.34(a). Please keep a copy of this determination in your project files.

Responsible Entity

Certifying Official Name

Certifying Official Title (please print)

Certifying Official Signature

Date

Exhibit 2-B-2
Compliance Documentation Checklist
24 CFR 58.6

Grantee: _____
Project Name: _____

Project Description (Include all actions which are either geographically or functionally related):

Level of Environmental Assessment Determination: _____

Select One: (1) Exempt per 24 CFR 58.34, or (2) Categorically Excluded not subject to statutes per § 58.35(b), or (3) Categorically Excluded subject to statutes per § 58.35(a), or (4) Environmental Assessment per § 58.36, or (5) EIS per 40 CFR 1500

STATUTES and REGULATIONS listed at 24 CFR 58.6

FLOOD DISASTER PROTECTION ACT

1. Does the project involve acquisition, construction or rehabilitation of structures located in a FEMA-identified Special Flood Hazard?

☐ No; Cite Source Document: _____

☐ If Yes:

- Community must participate in the National Insurance Program within 1 year of FEMA notification of Special Flood Hazards and;
- Flood Insurance under the National Flood Insurance Program must be obtained and maintained for the economic life of the project, in the amount of the total project cost (copy of the flood insurance policy declaration must be kept on file). (**Appendix I**)

Have both conditions been met?

☐ Yes

☐ No (**Federal assistance may not be used**).

COASTAL BARRIERS RESOURCES ACT

1. Is the project located in a coastal barrier resource area?

☐ No

☐ Yes (**Federal assistance may not be used in such an area**).

AIRPORT RUNWAY CLEAR ZONES AND CLEAR ZONES DISCLOSURES

1. Does the project involve the sale or acquisition of existing property within a Civil Airport's Runway Clear Zone or a Military Installation's Clear Zone?

☐ No; Source Documentation: _____

☐ Yes; **Disclosure statement must be provided** to buyer and a copy of the signed disclosure must be maintained in this Environmental Review Record (**Appendix II**) to comply with 24 CFR 51.303(a)(3).

Prepared by (name and title, please print): _____

Signature: _____

Date: _____

Exhibit 2-C

Example Finding of Categorical Exclusion with Required Elements

CDBG Project No. _____

It is the Finding of the (Municipality or County) that all activities proposed in its Small Cities/CDBG project referenced above are listed as categorically excluded from NEPA and other environmental review requirements because they are listed as categorically excluded activities in 24 CFR 58.35 and consist solely of:

Rehabilitation of individual family dwellings, and individual action on up to four dwelling units where there is maximum of four units on any one site. The units can be four one-unit buildings or one four unit building, An individual action on a project of five or more housing units developed on scattered sites when the sites are more than 2000 ft apart and there are not more than four housing units on any one site;

Acquisition, repair, improvement, reconstruction, or rehabilitation of public facilities and improvements when the facilities and improvements are in place and will be retained in the same use. Disposition of, or equity loans on an existing structure or acquisition of a vacant land provided that the structure or land acquired, financed, or disposed of will be retained for the same use;

Special projects directed to the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly and handicapped persons;

Construction of public facilities or infrastructure improvements that will replace or upgrade a substantially identical article without changing its use, size, capacity, or location [24 CFR 38.35 (a){1}];

Rehabilitation of buildings that will not increase density more than 20 percent, change use characteristics, or involve work worth 75 percent or more of the replacement cost of any unit after rehabilitation [24 CFR 58.35 (3)].

NOTE: These are examples of the specific authority most appropriate for the commonly funded categorically excluded projects which may consist of acquisition, construction, reconstruction, repairs, renovations, improvements and/or up-grading of an existing facility wherein only minimal change in the original use, size, capacity, density, or location will occur.

Compliance with the environmental requirements of other related federal authorities will be indicated in the Laws and Authorities Checklist for all Projects not Exempt (**Exhibit 2-N**).

CO Name (Print)

CO Signature

Date

Exhibit 2-C-1

Certification of Categorical Exclusion Subject to 24 CFR Part 58.5

Determination of activities listed at 24 CFR 58.35(a) (May be subject to provisions of Sec 58.6, as applicable)

Grant Recipient: _____

Project Name: _____

Project Description (Include all actions which are either geographically or functionally related): _____

Location: _____

Funding Source: CDBG

Funding Amount: _____

Grant Number: _____

I hereby certify that the abovementioned project has been reviewed and determined to be a Categorically Excluded activity (subject to 58.5) per 24 CFR 58.35(a) as follows:

1. Acquisition, repair, improvement, reconstruction, or rehabilitation of public facilities and improvements (other than buildings) when the facilities and improvements are in place and will be retained in the same use without change in size or capacity of more than 20 percent (e.g., replacement of water or sewer lines, reconstruction of curbs and sidewalks, repaving of streets);
2. Special projects directed to the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly and handicapped persons;
3. Rehabilitation of buildings and improvements when the following conditions are met: i. In the case of a building for residential use (with one to four units), the density is not increased beyond four units, the land use is not changed, and the footprint of the building is not increased in a floodplain or in a wetland; ii. In the case of multifamily residential buildings: (A) Unit density is not changed more than 20 percent; (B) The project does not involve changes in land use from residential to non-residential; and (C) The estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation. iii. In the case of non-residential structures, including commercial, industrial, and public buildings: (A) The facilities and improvements are in place and will not be changed in size or capacity by more than 20 percent; and (B) The activity does not involve a change in land use, such as from non-residential to residential, commercial to industrial, or from one industrial use to another.
4. (i) An individual action on up to four dwelling units where there is a maximum of four units on any one site. The units can be four one-unit buildings or one four-unit building or any combination in between; or (ii) An individual action on a project of five or more housing units developed on scattered sites when the sites are more than 2,000 feet apart and there are not more than four housing units on any one site (iii) Paragraphs (a)(4)(i) and (ii) of this section do not apply to rehabilitation of a building for residential use (with one to four units) (see paragraph (a)(3)(i) of this section).
5. Acquisition (including leasing) or disposition of, or equity loans on an existing structure, or acquisition (including leasing) of vacant land provided that the structure or land acquired, financed, or disposed of will be retained for the same use.
6. Combinations of the above activities.

The responsible entity must also complete and attach a **Statutory Checklist**. By signing below the Responsible Entity certifies in writing that each activity or project is Categorically Excluded (subject to 58.5) and meets the conditions specified for such exemption under section 24 CFR 58.35(a). Please keep a copy of this determination in your project files.

Responsible Entity

Certifying Official Name

Certifying Official Title (please print)

Certifying Official Signature

Date

DATE

Director
DFA/Local Government Division
Bataan Memorial Building, Suite 202
Santa Fe, New Mexico 87501

Entity Name:_____

Grant Amount:_____

CDBG Project No:_____

Description:_____

Dear Director:

This letter is to notify DFA/LGD that the Entity Name has made a local determination that its CDBG project is categorically excluded from the preparation of an Environmental Assessment. Enclosed is a Finding of Categorical Exclusion citing the appropriate section of 24 CFR Part 58.35 (a) and listing activities that have been determined to be Categorical Excluded.

Also enclosed is the Request for Release of Funds and Certification Form, the published newspaper page containing the Request for Release of Funds, and a Publisher's Affidavit certifying the date of publication. In addition, the Entity Name has complied with the regulations concerning the coordination and compliance of this project with all other Federal and State laws and authorities as specified in 24 CFR 58.5 and 58.6 and has documented this compliance in its Environmental Review Record.

This letter will be retained in our Environmental Review Record.

Sincerely,

Certifying Official

Exhibit 2-E

Minimum Required Contact/Distribution List

Department of Cultural Affairs
Historic Preservation Division
Bataan Memorial Building
407 Galisteo Street, Suite 236
Santa Fe, NM 87501

Office of the State Engineer
Bataan Memorial Building, Room 101
PO Box 25102
Santa Fe, NM 87504-5102

NM Game & Fish Department
PO Box 25112
Santa Fe, NM 87504

NM Department Workforce Solutions
<http://www.dws.state.nm.us/OfficeLocations.aspx>
To find the office nearest you

NM Children, Youth and Families Dept.
PO Drawer 5160
Santa Fe, NM 87502-5160

Soil & Water Conservation Districts
<http://www.nm.nrcs.usda.gov/partnerships/swcd.html>
click on Soil & Water Conservation

District 2 COG
North Central NM Economic Development Dist.
PO Box 5115
Santa Fe, NM 87502

District 4 COG
Eastern Plains Council of Governments
418 Main
Clovis, NM 88101

District 6 COG
Southeastern NM Economic Development Dist.
1600 SE Main-Suite D
Roswell, NM 88062

New Mexico Environment Department
Environmental Impact Review Coordinator
PO Box 5469
Santa Fe, NM 87502-6110

New Mexico NRCS State Office
6200 Jefferson NE Suite 305
Albuquerque, NM 87109

US Fish & Wildlife Service
New Mexico Ecological Services Field Office
2105 Osuna Road NE
Albuquerque, NM 87111

NM Department of Transportation
<http://dot.state.nm.us/en/Operations/Districts.html>
to find your district office

NM State Parks
1220 South St. Francis Drive
Santa Fe, NM 87505

District 1 COG
Northwest NM Council of Governments
409 S. Second Street
Gallup, NM 87301

District 3 COG
Mid Region Council of Governments
809 Copper Avenue, NW
Albuquerque, NM 87102-3009

District 5 COG
Southwest NM Council of Governments
1203 North Hudson St., PO Box 2157
Silver City, NM 88062

District 7 COG
South Central Council of Governments
600 Highway 195, Suite D
Elephant Butte, NM 87935

*In addition to contacting the above listed agencies, the following entities must also be sent consultation notices to adequately and accurately complete **Exhibits 2-N & 2-O**.

- Local/County Floodplain Manager
- Local School District
- Local Fire Department
- Local Police Department
- Regional Airport Manager
- Applicable Native American Tribes (<https://egis.hud.gov/TDAT/>)

Exhibit 2-F

Example Letter for Floodplain Determination with Required Elements

DATE:

Any County Flood Plain Manager
Address
City, State Zip

RE: Community of Anywhere (City of Anywhere, NM)
2010 CDBG Application
Project Description (Water Distribution System Improvements)
Project Location (Anytown MDWCA)

Dear Flood Plain Manager:

The City of Anytown has been awarded 2013 Community Development Block Grant (CDBG) Funds. The City/County proposes to construct a new 500,000 gallon water storage tank and replace 2,500 linear feet of 6" water distribution lines.

The current system was constructed in (year) to serve the residents of the community. This grant will allow the City/County to provide water system rehabilitation grant assistance to low/moderate income families in 15 owner-occupied, single-family houses, in which the project is targeted. The proposed project is located in the community of Anytown. Please refer to attachments. This project may be phased.

In accordance with environmental requirements of 24 CFR part 58 and the National Environmental Policy Act of 1969 (NEPA), the appropriate agencies must be consulted for their comments/review. Your comments can be as simple as checking off the appropriate box below, signing your name or placing your stamp, and mailing/faxing it back to me at the following address: _____ (Anywhere, _____ NM address) _____. Thank you for your prompt response.

Sincerely,

Certifying Official
City of Anytown

-
- ☐ No significant impact anticipated ☐ Project ***IS*** in a flood plain
- ☐ Project ***IS NOT*** located in a flood plain
- ☐ Significant impact anticipated due to the following reasons:

Signature

Title

Date

Exhibit 2-F-1

Insurance Coverage

Question:

What duration and amount of flood insurance coverage is required?

Answer:

The Flood Disaster Protection Act of 1973 ([42 U.S.C. 4001-4128](#)) as amended by the National Flood Insurance Reform Act of 1994 (Pub.L. 103-325, 108 Stat. 2160) prescribes the duration and dollar amount of flood insurance under Sections 3 and 102 of the Act.

Duration of Coverage:

The statutory period for such coverage may extend beyond project completion. For loans, loan insurance or guaranty, coverage must be continued for the term of the loan. For grants and other non-loan forms of assistance, coverage must be continued for the life of the property, regardless of transfer of ownership of such property. Section 582(c) of the Community Development and Regulatory Improvement Act of 1994 mandates that "...The requirement of maintaining flood insurance shall apply during the life of the property, regardless of transfer of ownership of such property." ([42 U.S.C. 5154a](#))

Dollar Amount of Coverage:

For loans, loan insurance or guaranty, the amount of coverage need not exceed the outstanding principal balance of the loan. For grants and other non-loan forms of assistance, the amount of coverage must be at least equal to the development or project cost (less estimated land cost, if any) or to the maximum limit of coverage made available by the Act with respect to the particular type of building involved (i.e., single family, other residential, or non-residential), whichever is less. The development or project cost is the total cost for acquiring, constructing, reconstructing, repairing, or improving the building. This cost must include both the Federally assisted and non-Federally assisted portion of the cost, including any machinery, equipment, fixtures, and furnishing. If the Federal assistance includes any portion of the cost of any machinery, equipment, fixtures or furnishing, the total cost of that item must be covered.

Exhibit 2-G

Example Floodplain and Wetlands Early Public Review Notice with Required Elements

Date _____

The City/County of Anywhere, New Mexico is considering _____ Project Description (consistent with Exhibit '1-A' of Grant Agreement) _____ as a CDBG project under the NM Small Cities Program for non-entitlement cities and counties. The project is located in the 100-year floodplain. The City/County is interested in discussing alternatives to this project, securing public perceptions of possible adverse impacts that could result from the project, and discussing possible measures to minimize any adverse impacts. A public hearing is scheduled on (Date)* to discuss the proposed project. Please extend or send written comments to: Mayor/Commission Chairman, City Hall/County Courthouse, Anytown, NM 12345. Comments will be received until (Date - 16 days from date of publication)

A more detailed description of the project and FEMA flood maps are available for citizen review at the City Hall/County Courthouse, Anytown, NM.

** A minimum of 3 days prior to end of Comment Period*

Certifying Official

Note: Notices should include the following:

- Statement of purpose for the proposed action and its description;
- A map of the general area clearly delineating the project and its relationship to its environs (the map is referenced since it is not practical or cost effective to include it in the publication);
- A statement that it has been determined to locate the project in the floodplain or wetlands;
- A statement that impacts will be mitigated where avoidance cannot be achieved; and
- Identification of the responsible official for receipt of comments and further information.

Exhibit 2-H

Example Floodplains and Wetlands Notice of Explanation with Required Elements

DATE _____

The City/County of Anywhere, NM intends to undertake (project description consistent with Exhibit '1-A' of the Grant Agreement) as a CDBG project under the NM Small Cities Program for non-entitlement cities and counties. The project is located in the 100-year floodplain. The proposed improvements cannot be undertaken in any other location as relocation costs would exceed available program resources. Failure to provide the rehabilitation assistance would result in the continued unsafe and unhealthy living conditions for the LMI beneficiaries. It is the City's/County's judgment that Executive Order 11988/11990 have considered in proceeding with this project for improvements to the existing structures. Please extend or send written comments to Mayor/Commission Chairman, City Hall/County Courthouse, Anytown, NM, 12345. Comments will be received until (Date - 8 days from date of publication)

Certifying Official

Exhibit 2-I

Example Agency Consultation Notice with Required Elements

(Letterhead must be consistent with government-to-government correspondence i.e. Municipality/County/Council of Governments etc.)

DATE:

Federal/State/Local Department
Specific Division
Address
City, State Zip

RE: (Municipality or County)
(20XX CDBG Project)
(Project Location)
(Brief Project Description)

Dear (Sir/Ma'am):

The (municipality of/county of) has been awarded 20XX Community Development Block Grant (CDBG) Funds. The scope of work as defined by Exhibit 1-A of the CDBG grant is as follows:
(Enter scope of work).

The proposed project is located in the community of (municipality/county). This grant will (Detail the existing conditions of the location and how this project will benefit the residents of the community, particularly those of low to moderate income). Please refer to attachments.

This project: ☐ will ☐ will not be phased.

In accordance with environmental requirements of 24 CFR part 58 and the National Environmental Policy Act of 1969 (NEPA), the appropriate agencies must be consulted for their comments/review. Your comments can be as simple as checking off the appropriate box below, signing your name or placing your stamp, and mailing/emailing it back to the following address: (Anywhere, NM address). Thank you for your prompt response.

Sincerely,

(Certifying Official Name)
(Municipality or County)

☐ No significant impact anticipated

☐ Significant impact anticipated due to the following reasons:

Signature

Title

Date

Exhibit 2-I-1

Example Agency Response Letter Certification with Required Elements

(Letterhead)

I (Certifying Official), hereby certify the Town of Anywhere has sent environmental assessment consultation letters to all interested parties as instructed in my CDBG Implementation Manual for project number XXXXXX. Letters were sent via (certified mail return receipt, email, fax, etc) on (Date). A written response **was not** received and additional attempts were made via (email, phone, fax, letter, etc) on (Dates). (List any other additional attempts here) After a total of ___attempts, responses were not received from the following interested parties:

(list the agencies who did not respond)

The Town of Anywhere has made a good faith effort to contact all interested parties, and will proceed with the Environmental Review process.

Certifying Official Name

Signature

Date

Exhibit 2-J

Example Historic Preservation Notice with Required Elements

(Letterhead must be consistent with government-to-government correspondence i.e. Municipality/County/Council of Governments etc.)

Date:

Department of Cultural Affairs
Historic Preservation Division
Bataan Memorial Building, Suite 236
407 Galisteo Street
Santa Fe, NM 87501

RE: Consultation under 36 CFR Part 800
(20XX CDBG Project)
(Project Location)
(Brief Project Description)

Dear Sir:

The (municipality of/county of) has been awarded 20XX Community Development Block Grant (CDBG) Funds. The scope of work as defined by Exhibit 1-A of the CDBG grant is as follows:
(Enter scope of work).

The proposed project is located in the community of (municipality/county). This grant will (Detail the existing conditions of the location and how this project will benefit the residents of the community, particularly those of low to moderate income). Please refer to attachments.

This project: ☐ will ☐ will not be phased.

In accordance with environmental requirements of 24 CFR part 58 and the National Environmental Policy Act of 1969 (NEPA), the appropriate agencies must be consulted for their comments/review. Your comments can be as simple as checking off the appropriate box below, signing your name or placing your stamp, and mailing/emailing it back to the following address: (Anywhere, NM address). Thank you for your prompt response.

Sincerely,

(Certifying Official Name)
(Municipality or County)

☐ No Historic Properties Affected

☐ Significant impact anticipated due to the following reasons:

Signature

Title

Date

Exhibit 2-K

Example NOI/RROF with Required Elements

Date _____

City/County of Anywhere
P. O. Box 1001
Anytown, New Mexico 12345

TO: All Interested Agencies, Groups and Persons:

On or about _____ (date), the _____ (City/County) will request the Local Government Division, Department of Finance and Administration (LGD/DFA) of the State of New Mexico to remove the environmental conditions and to release Small Cities Funds under Title 1 of the Housing and Community Development Act of 1974 (PL 93-383) for the following project.

New Mexico CDBG Project # _____

Brief Project Description _____

Name of Grantee _____

CDBG Grant Amount _____

An Environmental Review Record for the proposed project has been made by the City/County of Anywhere that documents the environmental review of the project. The Environmental Review Record is on file at the above address and is available for public examination and copying upon request.

Public Comments on Findings

All interested agencies, groups and persons, disagreeing with this decision are invited to submit written comments for consideration by the City/County to the address as set forth above. Such written comments must be received at the addressed specified within seven (7) days after this publication or within ten (10) days if the notice is posted and mailed. All such comments so received will be considered and the City/County will not request the release of funds or take administrative action on the project prior to the date specified in the proceeding sentence.

Release of Funds

The City/County of Anywhere will undertake the activities described above with Community Development Block Grant funds under Title I from its Program Year 200_ under grant numbered _____ from the Housing and Community Development Act of 1974. The City/County of Anywhere is certifying to LGD and HUD that Mr./Ms. Will B. True in his/her official capacity as Mayor/Commission Chairman, consents to accept the jurisdiction of the Federal Courts if an action is brought to enforce responsibilities in relation to environmental reviews, decision-making and action; and that these responsibilities have been satisfied. The legal effect of the certification is that upon its approval, the City/County of Anywhere may use the Block Grant funds and it will have satisfied its responsibilities under the National Environmental Policy Act of 1969. LGD will accept an objection to its approval only on one or more of the bases and the procedures described in 24 CFR Part 58.75. Objections are to be addressed to the LGD/DFA, Bataan Memorial Building, Suite 202, Santa Fe, NM 87502.

Objections to the release of funds on bases other than those stated above will not be considered by the LGD/DFA. No objections received later than twenty-five (25) days after this publication will be considered by LGD.

Will B. True, Mayor/Commission Chairman
P. O. Box 1001
Anytown, New Mexico 12345

Exhibit 2-L

Request for Release of Funds

REQUEST FOR RELEASE OF FUNDS AND CERTIFICATION

OMB No. 2506-0087

Department of Finance and Administration
Local Government Division
Community Development Bureau

This form is to be used by Responsible Entities and Recipients (as defined in 24 CFR 58.2) when requesting the release of funds, and requesting the authority to use such funds, for HUD programs identified by statutes that provide for the assumption of the environmental review responsibility by units of general local government and States. Public reporting burden for this collection of information is estimated to average 36 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number.

Part 1. Program Description and request for Release of Funds (to be completed by Responsible Entity)

1. Program Title(s)	2. HUD/State Identification Number (HUD GRANT NUMBER)	3. Recipient Identification Number (Optional)
4. OMB Catalog Number (s) CFDA 14.228	5. Name and address of responsible entity	
6. for Information about this request, contact (name & phone number)		
8. HUD or State Agency and office unit to receive request	7. Name and address of recipient (if different than responsible entity)	

The recipient(s) of assistance under the program(s) listed above requests the release of funds and removal of environmental grant conditions governing the use of the assistance for the following

9. Program Activity(ies)/Project Name(s)	10. Location (Street address, city, county, State)
--	--

11. Program Activity/Project Description (including grant amount)

Part 2. Environmental Certification (to be completed by responsible entity)

With reference to the above Program Activity(ies)/Project(s), I, the undersigned officer of the responsible entity, certify that:

1. The responsible entity has fully carried out its responsibilities for environmental review, decision-making and action pertaining to the project(s) named above.
2. The responsible entity has assumed responsibility for and complied with and will continue to comply with, the National Environmental Policy Act of 1969, as amended, and the environmental procedures, permit requirements and statutory obligations of the laws cited in 24 CFR 58.5; and also agrees to comply with the authorities in 24 CFR 58.6 and applicable State and local laws.
3. After considering the type and degree of environmental effects identified by the environmental review completed for the proposed project described in Part 1 of this request, I have found that the proposal did did not require the preparation and dissemination of an environmental impact statement.
4. The responsible entity has disseminated and/or published in the manner prescribed by 24 CFR 58.43 and 58.55 a notice to the public in accordance with 24 CFR 58.70 and as evidenced by the attached copy (copies) or evidence of posting and mailing procedure.
5. The dates for all statutory and regulatory time periods for review, comment or other action are in compliance with procedures and requirements of 24 CFR Part 58.
6. In accordance with 24 CFR 58.71(b), the responsible entity will advise the recipient (if different from the responsible entity) of any special environmental conditions that must be adhered to in carrying out the project.

As the duly designated certifying official of the responsible entity, I also certify that:

7. I am authorized to and do consent to assume the status of Federal official under the National Environmental Policy Act of 1969 and each provision of law designated in the 24 CFR 58.5 list of NEPA-related authorities insofar as the provisions of these laws apply to the HUD responsibilities for environmental review, decision-making and action that have been assumed by the responsible entity.
8. I am authorized to and do accept, on behalf of the recipient personally, the jurisdiction of the Federal courts for the enforcement of all these responsibilities, in my capacity as certifying officer of the responsible entity.

Signature of Certifying Officer of the Responsible Entity	Name & Title of Certifying Officer
	Date signed

X

Address of Certifying Officer

Part 3. To be completed when the Recipient is not the Responsible Entity

The recipient requests the release of funds for the programs and activities identified in Part 1 and agrees to abide by the special conditions, procedures and requirements of the environmental review and to advise the responsible entity of any proposed change in the scope of the project or any change in environmental conditions in accordance with 24 CFR 58.7 1(b).

Signature of Authorized Officer of the Recipient	Name & Title of Authorized Officer
	Date signed

X

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)



Department of Finance and Administration
Local Government Division/Community Development Bureau
407 Galisteo
Bataan Memorial Bldg. Rm 202
Santa Fe, NM 87501
www.cdbg.nmdfa.state.nm.us

Instructions for Completing the Request for Release of Funds and Certification [Form 2-L]

Part 1. Program Description and Request for Release of Funds (to be completed by Responsible Entity)

Block 1. Program Title(s): enter the HUD program name - e.g., Community Development Block Grant, HOME, Supportive Housing, Shelter Plus Care, Section 8 Moderate Rehabilitation Single Room Occupancy, Housing Opportunities for Persons with AIDS, etc.

Block 2. HUD/State Identification Number: enter the letters/numbers assigned to your program/project by HUD- e.g. Community Development Block Grant, 13-C-XX-X-XX-G-XX

Block 3. Data Universal Numbering System (DUNS) Number: The DUNS number is a unique nine character identification number provided by D&B.

Block 4. OMB Catalog Number(s): enter designated OMB letters/numbers - e.g., CFDA No 14.235, Supportive Housing Program; CFDA No. 14.2 28, Community Development Block Grant; CFDA No. 14.239, HOME; CFDA No. 14.246, Brownfields Economic Development Initiative; CFDA No. 14.247, Self-Help Homeownership Opportunity Program (SHOP); CFDA No. 14.866, HOPE VI Demolition/Revitalization Grants; etc. **NOTE:** The OMB Catalog is available on line at <http://www.cfda.gov/public/faprs.htm>; click on "By Agency," then on "Housing and Urban Development" to get to the HUD Programs listing.

Block 5. Name and Address of Responsible Entity: enter the name and address of the unit of government or the State Agency/Department responsible for the environmental review of the activity(ies)/project(s). It may be the same as the grant recipient implementing the project.

Block 6. For Information about this request, Contact (name & phone number): enter the name of person to contact concerning this Form 2-L and the environmental review(s) for the activity(ies)/project(s) listed on this form.

Block 7. Name and Address of Recipient (if different than responsible entity): enter the name of the private, public, quasi-governmental, profit or non-profit organization which received the grant directly from CDB but lacks the legal capacity to assume the environmental review responsibility for the activity(ies)/project(s). As such the recipient is not environmentally liable in federal courts for the project per HUD's environmental review procedures.

Block 8. HUD or State Agency and Office Unit to Receive Request: enter the name and address of the HUD Office (including the unit within that Office if known) or State Agency to whom Form 2-L will be submitted. For the CDB please enter:

Department of Finance and Administration
Local Government Division/Community Development Bureau
407 Galisteo
Bataan Memorial Bldg. Rm 202
Santa Fe, NM 87501

Block 9. Program Activity/Project Name: enter the activity(ies)/project name(s) for which this Form 2-L is submitted.

Block 10. Location (Street address, city, county, and State): enter the location of the activity/project.

Block 11. Program Activity/Project Description: enter a description of the activity/project for which this Form 2-L pertains.

Part 2. Environmental Certification (to be completed by responsible Entity)

Point 3: Check either the first or second box. The second box is usually checked.

Signature of Certifying Officer of the Responsible Entity:

Title of Certifying Officer:

Date Signed:

The Certifying Officer signs his/her name, title, and the date. The Certifying Officer is usually the chief elected official for the responsible entity/jurisdiction in which the project is located, or his/her designee. The Certifying Officer may also be a Governor, or a State Agency official, formally and legally designated by the Governor. The Certifying Officer is attesting to the responsible entity's compliance with CDB's environmental review procedures (24 CFR Part 58) as set forth in points 1 - 8 in Part 2.

If the responsible entity is also the grant recipient, the completed Form 2-L, along with a copy of the posted or published environmental Notice(s), is/are submitted to the appropriate CDB Project Manager. If the responsible entity is not also the grant recipient, the Form 2-L is then transmitted to the grant recipient, in accordance with 24 CFR Part 58.71(b), along with a copy of the completed signed and dated environmental review record, and the posted or published environmental Notices.

Part 3. To be completed when the Recipient is not the Responsible Entity

Signature of Authorized Officer of the Recipient:

Title of Authorized Officer:

Date Signed:

The recipient receives the completed Form 2-L from the responsible entity. It is to be signed and dated by the "Authorized Officer" of the recipient. The recipient then submits the completed Form 2-L along with a copy of the posted or published public Notice(s) to the appropriate CDB Project Manager cited in the above referenced environmental Notice(s). The recipient maintains the copy of the environmental review record for its official project file. **NOTE:** The recipient, by signing Form 2-L, agrees to implement any special environmental conditions resulting from the environmental review prepared by the responsible entity. The recipient also agrees to notify the responsible entity of any proposed change in scope of the project or any change in environmental conditions. It also agrees not to implement any of those changes without a prior concurrence from the responsible entity and, if deemed necessary by the responsible entity, a supplemental formal release of funds from CDB.

Exhibit 2-M

Example Evidence of Posting Notices with Required Elements

Grantee: _____ (*Village of Anytown*)

CDBG Project No.: _____ (*10-C-RS-I-1-G-13*)

CDBG Project Name: _____ (*Water System Improvements Project*)

_____ (*Name of Grantee*) has posted the following public notice(s) relative to the above referenced project:

_____ (*FONSI*)
_____ (*RROF*) _____ (*Combined Notice FONSI/RROF*)

The notice(s) have been posted at the following prominent public place(s), within close proximity to the project area:

_____ (*County Courthouse, bulletin board, 101 Main Street, Anytown, NM 12345*) _____ (*City Hall, bulletin board, 200 1st Street, Anytown, NM 12345*) _____ (*US Post Office, bulletin board, 300 West Street, Anytown, NM 12345*)

Date notice(s) were posted: _____

Number of days notice(s) were posted: _____

A copy of the Notice(s) is attached hereto.

Signature of Certifying Official

Date

SWORN TO AND SUBSCRIBED

before me on this _____ day

of _____, 20____

Notary Public _____

My Commission expires _____

Exhibit 2-N

Laws and Authorities Checklist For All Projects Not Exempt

GRANTEE _____

PROGRAM YEAR - 20_____

ACTIVITY/PROJECT _____

CERTIFYING OFFICIAL _____

DATE ____/____/____

ENVIRONMENTAL AREA (SEE PAGE 3 FOR QUESTIONS TO BE ANSWERED)	Not applicable to project	Consultation required & Completed	Review Required	Project consistent w/ applicable plans/standards	Conditions/safeguards/mitigation required	ALL DETERMINATIONS NEED EXPLANATION REFERENCE TO DOCUMENTATION, SOURCE NOTES, AN CORRESPONDENCE. (SEE REVERSE SIDE FOR QUESTIONS TO BE ANSWERED.)
1. Historic Properties						<i>Provide source notes from - State Historic Preservation Office</i>
2. Flood Hazard Protection/NFIP (National Flood Insurance Program)						<i>Provide source notes from - National Resource Conservation Service (NRCS) District Office; Local or County Floodplain Manager</i>
3. Executive Order 11988 – Floodplain Determination						<i>Provide source notes from - Steps described on page 12 of environmental review chapter</i>
4. Wetlands Protection						<i>Provide source notes from - NRCS District Office; Local or County Floodplain Manager</i>
5. Sole Source Aquifers						<i>Provide source notes from - New Mexico Environment Department</i>
6. Endangered/Threatened Species/Habitat						<i>Provide source notes from - New Mexico Game & Fish Dept. US Fish & Wildlife Service</i>
7. Water Quality						<i>Provide source notes from - New Mexico Environment Department</i>
8. Coastal Areas						<i>Provide source notes from - Certifying Official</i>
9. Air Quality						<i>Provide source notes from - New Mexico Environment Department</i>

ENVIRONMENTAL AREA (SEE PAGE 3 FOR QUESTIONS TO BE ANSWERED)	Not applicable to project	Consultation required & Completed	Review Required	Project consistent w/ applicable plans/standards	Conditions/safeguards/ mitigation required	ALL DETERMINATIONS NEED EXPLANATION REFERENCE TO DOCUMENTATION, SOURCE NOTES, AN CORRESPONDENCE. (SEE REVERSE SIDE FOR QUESTIONS TO BE ANSWERED.)
10. HUD Environmental Standards						----- -
a. Noise						<i>Provide source notes from - New Mexico Environment Department</i>
b. Solid Waste Disposal						<i>Provide source notes from - New Mexico Environment Department</i>
c. Thermal/Explosive Hazard						<i>Provide source notes from - New Mexico Environment Department</i>
d. Airport Clear Zones						<i>Provide source notes from - Certifying Official Local or Regional Airport Manager</i>
11. Farmlands Protection Policy Act						<i>Provide source notes from - NRCS District Office; US Soil Conservation Service</i>
12. Wild and Scenic Rivers						<i>Provide source notes from - National Park Service</i>
13. Lead-Based Paint						<i>Provide source notes from - New Mexico Environment Department</i>
14. State and Local Statutes, if applicable and Consultation with Native American Tribes						



Note: If this is a Categorically Excluded Project, your statutory requirements are complete. If the project requires an Environmental Assessment, the Impact Checklist (Exhibit 2-O) must also be completed to comply with additional statutory requirements.

Guidance for completing the “Laws and Authorities” checklist

1. **Historic: The responsible entity and SHPO agree that there are No Historic Properties Affected per 36 CFR 800.4, no adverse effect on historic properties per 800.5(b).**
Does the project affect local, state, federal or potential historic, architectural or archeological resources?
 - A. Solicit input of those with local historic interests
 - B. Solicit input of SHPO
 - C. Field screening review of project impact area.
 1. Site associated with events significant to our history?
 2. Site associated with the lives of persons significant in our past?
 3. Site embodies distinctive characteristics of a type, period, method of construction, or that represents the work of a master craftsman, or that possesses high artistic value? Is it architecturally distinctive?
 4. Site may be likely to yield information important in prehistory or history?
 5. Site is part of a district that possesses distinctive characteristics of integrity of location, design, setting, materials, workmanship, feeling and association?
 - D. Are there any archeological sites located in the project area?
2. **Flood Hazard Protection**
Is project affected by or may modify the base 100-year floodplain hazard area (**Zone A or V**) identified by FEMA maps? (Review flood hazard boundary map or flood insurance rate map). If FEMA has not published flood maps, the Entity must make a finding based on best available data. Is anchoring of the water or sewer lines necessary? If it appears applicable, contact New Mexico Environment Department (NMED). Is proposed activity in a 100-year floodplain? Is the jurisdiction participating in the NFIP? Have the proper steps been taken (i.e., insurance for housing rehabilitation, community centers), Are local floodplain boundary maps available on file locally for future monitoring purposes?
3. **Executive Order 11988**
Is proposed activity within a floodplain? Is it a publicly-occupied structure, private residential structure, a critical structure (e.g., water/sewer treatment plant)? Is there an alternate site? Can there be a minimization of harm to or within the floodplain resulting from this action? Is there a need to publish a notice to the general public and affected agencies siting in the floodplain is the only practicable alternative? Was there a public comments period? Complete the 8-step decision making process according to 24CFR Part 55.20 to document there are no alternatives to the proposal and to mitigate effects of the project in a floodplain.
4. **Wetlands Executive Order 11990**
Wetlands affected by project action? The project does not involve new construction within or adjacent to wetlands, marshes, wet meadows, mud flats or natural ponds per field observation and maps issued by US Fish & Wildlife Service or US Army Corps of Engineers. Complete the 8-step decision making process and if applicable, contact US Army Corps of Engineers. Also, a Corps of Engineers 404 permit may be necessary, if cut and fill occurs in a waterway, particularly if such work may affect wetlands.
5. **Sole Source Aquifer**
Is the project located within a US EPA-designated sole source aquifer watershed per EPA Ground Water Office? Does project affect aquifer recharge area that is a primary source of local drinking water? If applicable, contact NM Environment Department, US Geological Survey, Water Resources Division or Water Management Division of EPA.
6. **Endangered/Threatened Species/Habitat**
The responsible entity determines that the proposal will have no effect or likely to adversely affect any federally protected Threatened or Endangered Species, nor adversely modify critical habitats. This finding is to be based on contact made to the US Fish and Wildlife Service. Formal consultation with US Fish and

Wildlife is always required for federally funded "Major construction" activities and anytime a likely to adversely affect determination is made. Endangered species or wildlife habitat area impacted by project? If natural setting present, consult NM Game and Fish Department and/or US Fish and Wildlife Service.

7. Water Quality - Is the project located within a US EPA-designated sole source aquifer watershed per EPA Ground Water Office, Federal Water Pollution Control Act; Safe Drinking Water Act
8. Coastal Areas – Does the project involve the placement, erection or removal of materials, nor an increase in the intensity of use in the Coastal Zone per certified local coastal plan, secure concurrence from the Coastal Zone Commission, Coastal Zone Management Act; Coastal Barrier Resources Act
9. Air Quality
Is the project located within an "attainment" area, if not, does it conform with the EPA-approved State Implementation Plan, then negotiate suitable mitigation measures with the Air Quality Management District or Board, and obtain necessary Permits, then issue required notices (40 CFR 61.145[10 day notification]. Project conforms to latest approved State implementation plan regarding air quality? Would project induce air pollutant concentrations? If housing project, is project impacted by an aggregate of air pollutant sources, i.e., transit terminals, freeway and highways, large-scale parking lots and similar line and point sources? If applicable, contact NMED
10. HUD Environmental Standards
 - A. Project affected by or induces noise impacts on residential land uses in excess of HUD's exterior standard 65 DNL or interior level standard of 45 DNL? (Examine major roads within 1000 feet of project, railroad uses within 3000 feet and noise contours for airports. Also, examine large point sources as to potential impact on project, if appropriate to nature of project, i.e., large-scale parking lots, foundries, metal rendering plants, etc.)
 - B. Project Adversely affected by sanitary landfill area, toxic sites, abandoned dumps or other solid waste or hazardous waste disposal site? Processing plant storage or chemical or radioactive materials, toxic fumes?
 - C. Project affected by hazards of a flammable or explosive nature?
 - D. Aircraft Hazards?
11. Farmlands Protection Policy Act
Does the project include or convert prime or unique farmland as identified by the US Department of Agriculture, Natural Resources Conservation Service NRCS, or farmland of statewide or local importance to non-agricultural uses, or is it located in an area committed to urban uses.? If so, contact the District conservationist of the USDA Soil Conservation Service, or NRCS.
12. Wild and Scenic Rivers
Is the project located within one mile of a listed Wild and Scenic River, or the project will have no effects on the natural, free flowing or scenic qualities of a river in the National Wild and Scenic Rivers system. Consult with the US Department of Interior, National Park Service for impact resolution and mitigation.
13. Lead Based Paint
If this project includes any rehabilitation activities, the structure(s) must be inspected for the presence of lead-based paint.
14. State and Local Statutes
To be determined by Local Government.

Laws and Authorities Applicable to All Projects that Are Not Exempt

All Grantees (except those with Exempt Projects) must assume the environmental responsibilities for compliance with the applicable provisions and requirements of the Federal laws and authorities specified in 24 CFR 58.5 [below]. The Grantee must certify that it has complied with the requirements that would apply to HUD under these laws and authorities and must consider the criteria, standards, policies and regulations of these laws and authorities.

(a) Historic Properties

- (1) The National Historic Preservation Act of 1966 as amended (16 U.S.C. 470 *et. seq.*), particularly sections 106 and 110 (16 U.S.C. 470 and 470h-2), except as provided in §58.17 for Section 17 projects.
- (2) Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 FR 8921), 3 CFR 1971-1975 Comp., p. 559, particularly section 2(c).
- (3) Federal historic preservation regulations as follows:
 - (i) 36 CFR part 800 with respect to HUD programs other than Urban Development Action Grants (UDAG) and
 - (ii) 36 CFR part 801 with respect to UDAG.
- (4) The Reservoir Salvage Act of 1960 as amended by the Archeological and Historic Preservation Act of 1974 (16 U.S.C. 469 *et. seq.*), particularly section 3 (16 U.S.C. 469a-1).

(b) Floodplain management and wetland protection

- (1) Executive Order 11988, Floodplain Management, May 24, 1977 (42 FR 26951), 3 CFR, 1977 Comp., p. 117, as interpreted in HUD regulations at 24 CFR part 55, particularly section 2(a) of the order (For an explanation of the relationship between the decision-making process in 24 CFR part 55 and this part, see §55.10 of this subtitle A.)
- (2) Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961), 3 CFR, 1977 Comp., p. 121 particularly sections 2 and 5.

(c) Coastal Zone Management

- (1) The Coastal Zone Management Act of 1972 (16 U.S.C. 1451 *et. seq.*), as amended, particularly sections 307(c) and (d) (16 U.S.C. 1456(c) and (d)).

(d) Endangered species

- (1) The Endangered Species Act of 1973 (16 U.S.C. 1531 *et. seq.*) as amended, particularly section 7 (16 U.S.C. 1536)

(e) Wild and scenic rivers

- (1) The Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 *et. seq.*) as amended, particularly sections 7(b) and (c) (16 U.S.C. 1278(b) and (c)).

(f) Air quality

- (1) The Clean Air Act (42 U.S.C. 7401 *et. seq.*) as amended, particularly sections 176(c) and (d) (42 U.S.C. 7506(c) and (d)).
- (2) Determining Conformity of Federal Actions to State or Federal Implementation Plans (Environmental Protection Agency-40 CFR parts 6, 51, and 93).

(g) Farmlands protection

- (1) Farmland Protection Policy Act of 1981 (7 U.S.C. 4201 *et. seq.*) particularly sections 1540(b) and 1541 (7 U.S.C. 4201(b) and 4202).
- (2) Farmland Protection Policy (Department of Agriculture-7 CFR part 658).

(h) HUD environmental standards

- (1) Applicable criteria and standards specified in HUD environmental regulations (24 CFR part 51)(other than the runway clear zone and clear zone notification requirement in 24 CFR 51.303(a)(3))
- (2) HUD Notice 79-33, Policy Guidance to Address the Problems Posed by Toxic Chemicals and Radioactive Materials, September 10, 1979).

(i) Environmental justice

- (1) Executive Order 12898 of February 11, 1994—Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, (59 FR 7629), 3 CFR, 1994 Comp. p. 859.

Other requirements (also applies to Exempt activities)

See 24 CFR 58.6

Exhibit 2-O

ENVIRONMENTAL ASSESSMENT IMPACT CHECKLIST

Project Name: _____

CDBG Project Number: _____

IMPACT CATEGORIES	No Impact Anticipated	Potentially Beneficial	Potentially Adverse- Requires Documentation Only	Potentially Adverse- Requires More Study	Needs Mitigation	Requires Project Modification	All determinations need explanation. Reference to documentation, sources, notes, and correspondence (see following guidance pages for questions to be answered)
	1	2	3	4	5	6	
NATURAL FEATURES							
Water Resources							<i>Provide source notes from -NMED</i>
Surface Water							<i>Provide source notes from -NMED</i>
Watercourses							<i>Provide source notes from -NMED</i>
Unique Natural Features and Agricultural Lands							<i>Provide source notes from -NRCS District Office; State or National Parks Division; US Soil Conservation Service</i>
Vegetation and Wildlife							<i>Provide source notes from -NRCS; NM Game & Fish; US Fish & Wildlife</i>
SOCIO-ECONOMIC							
Demographic Character Changes							<i>Provide source notes from -District COG; Local or Regional Planners</i>
Displacement							<i>Provide source notes from -Local or Regional Dept. of Labor Office</i>
Employment and Income Patterns							<i>Provide source notes from -Local or Regional Dept. of Labor Office</i>
COMMUNITY FACILITIES AND SERVICES							
Educational Facilities							<i>Provide source notes from -Local Schools</i>
Commercial Facilities							<i>Provide source notes from -Local Chambers of Commerce; District COGs; Commercial Realtors</i>
Health Care							<i>Provide source notes from - Local Public Health Department or Children Youth and Families</i>
Social Services							<i>Provide source notes from - Children, Youth and Families Department</i>
Solid Waste							<i>Provide source notes from -NMED</i>
Wastewater							<i>Provide source notes from -NMED</i>
Storm water							<i>Provide source notes from -NMED</i>
Water Supply							<i>Provide source notes from - NMED</i>
Public Safety: Police							<i>Provide source notes from -Local</i>

							<i>Police Department</i>
Fire							<i>Provide source notes from -Local Fire Department</i>
Emergency/Medical							<i>Provide source notes from -Local EMS Office</i>
Open Space & Recreation: Open Space							<i>Provide source notes from -District COGs; Local Park, Recreation, Cultural and Art Authorities</i>
Recreation							<i>Provide source notes from -District COGs; Local Park, Recreation, Cultural and Art Authorities</i>
Cultural Facilities							<i>Provide source notes from -District COGs; Local Park, Recreation, Cultural and Art Authorities</i>
Transportation							<i>Provide source notes from -NMDOT; Local/regional transportation authorities</i>
LAND DEVELOPMENT							
Conformance with Comprehensive Plans & Zoning							<i>Provide source notes from -District COGs; Local, State, Regional planning and zoning experts</i>
Compatibility & Urban Impact							<i>Provide source notes from -District COGs; Local, State, Regional planning and zoning experts</i>
Slope Stability							<i>Provide source notes from - NRCS District Office; US Soil Conservation</i>
Erosion							<i>Provide source notes from - NRCS District Office; US Soil Conservation</i>
Soil Suitability							<i>Provide source notes from -NRCS District Office; US Soil Conservation</i>
Hazards and Nuisances, including site safety							<i>Provide source notes from -NMED</i>
Energy Consumption							<i>Provide source notes from -Local City/County Engineer; Local most authoritative personnel</i>
ENVIRONMENTAL DESIGN AND HISTORIC VALUES							
Visual Quality—coherence, diversity, compatible use and scale							<i>Provide source notes from -SHPO</i>
Historic, Cultural, and Archaeological Resources							<i>Provide source notes from -SHPO</i>
AIR QUALITY							
Effects of ambient air quality on project and contribution to community pollution levels							<i>Provide source notes from -NMED</i>

Summary of Environmental Conditions	Briefly identify the present environmental conditions of the project impact area:

Alternatives Considered	Identify alternatives to the project which have been considered:
Additional Studies Performed	(Attach Study or Summary) List additional studies:
Mitigation Measures Needed	Identify, if applicable, changes which need to be made in order to eliminate or minimize adverse environmental impacts:

1. Is project in compliance with applicable laws and regulations? ☐Yes ☐No

2. Is an EIS required? ☐Yes ☐No

3. A Finding of No Significant Impact (FONSI) can be made. ☐Yes ☐No
 Project will not significantly affect the quality of the human environment.

Basic Reasons Supporting Decision

Identify the major reasons for the decision of "no significant impact." These are to be included in the public notice.

(See next page for "sample" reasons).

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Prepared by: _____ Date: __ Name/Title

Environmental Assessment

Project Name and Identification No. _____

ENVIRONMENTAL REVIEW FINDING

On the basis of the environmental assessment of the above project, I have made the following finding.

	A FINDING OF NO SIGNIFICANT IMPACT
--	------------------------------------

I find that this project is not a major federal action which will have a significant effect on the human environment, and that a request to HUD for the release of project funds will not require an Environmental Impact Statement.

Date

Signature of Certifying Official

Title

Address of Certifying Official

	A FINDING OF SIGNIFICANT IMPACT
--	---------------------------------

I find that this project is a major federal action which may or will have a significant effect on the human environment and that a request to HUD for the release of project funds will require an Environmental Impact Statement.

Date

Signature of Certifying Official

Title

Address of Certifying Official

Guidance Questions for Impact Checklist

NATURAL FEATURES

Water Resources

Will project runoff affect local ground water resources or wells? High water tables should be considered during project construction. Possible subsidence problem due to over-reliance on wells or groundwater resource?

Surface Water

Seepage or springs on-site that may indicate potential drainage problems or problems of impacting a groundwater resource? Evidence of impoundment of water on project site? Will project significantly add to the impervious surface in its impact area and thereby increase demands on drainage facilities?

Watercourses

Will watercourses other than coastal zone be impacted as a result of project action? Will such impacts cause loss of natural drainage area? Or loss of riparian features amenable to recreation use in its natural state? Will project damage game and/or fish habitats or spawning grounds? Will cut and fill work alter the watercourse path or boundaries?

Unique Natural Features and Agricultural Lands

Will the project affect unique natural features such as, dunes, waterfalls, rock-outcroppings, special stands-of-trees or planting areas, natural landmarks or focal point? Natural pathways will be affected? Will unique or prime agricultural land areas be affected? Or, farmlands designated as important by State or local government?

Vegetation and Wildlife

Will the project damage or destroy existing remnant plant communities or habitat of wildlife or their food chain? Will the project create environmental conditions eliminating plant life without mitigation measures? Will it, conversely, create conditions favorable to the proliferation of pest species, i.e., rats, flies and mosquitoes?

SOCIO-ECONOMIC

Demographic Character Changes

Demographic (distribution of commonly identified segments of the population) characteristics can provide indicators to needs of various segments of the population. Questions such as the following can assist in identifying special population needs: Will project measurably alter tenant-owner status of area? Will special services be needed, i.e., relocation services, home-maintenance counseling or assistance? Will certain segments of the population become isolated by the project, i.e., elderly, low-income? What affect is project having on vacancy ratio? Will special social services be needed in the impact area of project, i.e., job counseling, youth services, elderly services, child-care, visiting nursing service created by population composition changes?

Displacement

Will the project displace individuals or families or businesses? If so, are relocation services available? If necessary, are appropriate relocation resources available for type of relocation anticipated?

Employment and Income Patterns

Will the project create conditions favorable or unfavorable to the continuation and/or expansion of commercial or industrial business lift? Will project area residents directly benefit? Will there be negative impacts on the project area's residential life? Will employment opportunities be available to the locally unemployed or under-employed? Will there be more entrepreneur opportunities available to local population? Will housing stock be affected if high number of new, outside employees are imported?

COMMUNITY FACILITIES AND SERVICES

Educational Facilities

Will project cause impact on schools? Is sufficient capacity available? Does project affect safety of access to existing schools? Has school been informed of project? Are special education services needed?

Commercial Facilities

Will project cause impact on commercial service facilities? Is there need for additional commercial services to assure project area residents have a full range of services at competitive prices? Do project beneficiaries have convenient and safe access to full-range of commercial services?

Health Care

Do project beneficiaries have any unrecognized health service needs, i.e., emergency medical services, ambulance service, visiting health service for elderly or homebound?

Social Services

Will project objectives be influenced by the availability or the lack of availability of special social services, i.e., children support groups, day-care centers, family counseling services, services for the elderly? Need for youth recreation centers?

Solid Waste

Will project generate substantial amounts of solid waste? Can the local disposal system adequately service the proposed development over its expected lifetime? Collection service adequate? Are there any local concerns as to potential health threats from collection practices or from the solid waste disposal facility? Recycling of project generated solid waste practicable?

Wastewater

If applicable, will existing waste water treatment system and facilities adequately service the proposed project? Will project cause design-capacity to be exceeded? Will project residents or beneficiaries be adversely affected by a waste water treatment facility? Is waste water treatment plant serving residents approved by appropriate health officials?

Storm Water

If applicable, will existing or planned storm water disposal and treatment system adequately service project or project beneficiaries? Will the project cause an overloading of the design capacity of the storm water facilities? Are project beneficiaries subject to temporary flooding or ponding impacts in terms of impairment of access to residence?

Water Supply

Is there a potable water supply available for project beneficiaries? Is it periodically inspected by health authorities?

Public Safety: Police, Fire, Emergency/Medical

Are project beneficiaries adequately serviced by police, fire and emergency services? Is there 24-hour police patrol service? Are special plans needed for added manpower or special project related security system? Is crime rate in project area characterized by any unique manifestations requiring special services, i.e., high teenage use of drugs, breaking and entering, street crimes?

Is access time of fire vehicles to project area in accord with local standard? Type of building materials in project area in compliance with local fire codes? Fire hydrant locations located in accord with local development criteria? Firefighting equipment shortage?

Emergency services appropriate to needs of project beneficiaries available? Access route for accessibility in compliance with local regulations? Will the project create any obstacles for emergency vehicles in meeting their responsibilities?

Open Space and Recreation

Is there an adequate degree of park and open space land for use by project area residents? Will project cause a lessening to the availability of service? Are park and recreation space conveniently accessible and usable to all resident groups in the project's impact area? Is there an unmet need to be filled by the CDBG program?

Transportation

If applicable to project objectives, is there adequate access to the locally recognized public transportation system? Is the service directly and conveniently available? Do any project beneficiaries need special transportation considerations due to inadequacy of convenient shopping services? Will the project serve to reduce mobility of any segment of the population?

LAND DEVELOPMENT

Conformance with Comprehensive Plans and Zoning

Is the proposal consistent with the completed components of local plans and the supporting zoning? If not and project is to continue, provide supporting discussion explaining decision basis. Identify areas project may conform to local planning objectives. Identify anticipated functional conflicts and plans for mitigations where necessary.

Compatibility and Urban Impact

Covers such concerns as incompatible land use relationships due to opposing functional needs or encroachment tendencies of one use upon another, i.e., overcrowding of buildings on the land, non-conforming land uses, non-conforming use of buildings, inducing excess traffic, creation of excess noise and similar day-to-day functional demands. If a project lacks water/sewer lines in a base flood hazard zone, will it induce development into such a hazardous area? Are secondary impacts occurring, such as encouraging urban sprawl prior to development of an applicable growth management plan and supportive zoning? Imposing new development into an existing neighborhood that would aggravate the transitional character of the neighborhood or increase new unwanted intrusions, i.e., introduction of off-street or on-street parking, introduction of lighting to a park to encourage night use of the park area where not previously found.

Slope Stability

If applicable, the following slope issues should be examined: (1) evidence of mud slides or other earth movement, (2) evidence of slump occurrences, (3) neighboring retaining walls tilting from possible past earth movement or that might indicate a new problem, (4) exposure of several strata of soil that might indicate conditions prone to sliding?

Erosion

Does the project involve development of an erosion sensitive area, i.e., near water channel, gullies or arroyos, in loosely consolidated soils, sands or silty soils, steep slopes present? Would project's cut and fill work cause silt to flow into natural waterways or arroyos?

Soil Suitability

Is there any visible evidence of possible soil problems, i.e., foundation cracking or settling in nearby buildings, sinkholes, ponding or limestone formation that might bring about subsidence? Loosely packed soils to a degree liquification may be a problem? Potential shrink-swell from high content of expansive clay in soil? Debris filled ground that might indicate potential for construction instability?

Hazards and Nuisances including Site Safety

Under the statutory checklist, an examination is requested as to potential danger to project beneficiaries from exposure to such hazards as, sanitary and hazardous waste landfills, toxic chemical dumps, uranium mill tailings and other radioactive materials in nearby lands. Explosive and flammable or fire-prone hazards are also to be examined as to potential threat to project beneficiaries. Other hazards include, presence of rodent infestation, nuisances from odors, glare, dust, vibration. Inadequate street lighting? Improperly screened drains or catchments? Abandoned/dilapidated buildings improperly boarded-up? Unscreened quarries or other excavation works? Dangerous intersections? Hazardous, unrepaired street conditions? Street ponding causing nuisance ingress and egress problems to project area and similar safety concerns.

Energy Consumption

Energy consumption is viewed in a twofold manner: first, energy consumed directly by the facility to be constructed as to heating and cooling, not water; and secondly, energy consumed indirectly or induced by the facility. Consumed chiefly in the transportation of people and goods to and from the project.

ENVIRONMENTAL DESIGN AND HISTORIC VALUES

Visual Quality: Coherence, Diversity, Compatible Use and Scale

Will project cause noticeable deterioration or physical alteration of natural landscape without comparable mitigation? Will there be intrusion of elements out of character, size or scale or setback? Will project alter established vistas and views, enclosed or open? Landmarks or focal-points become obscured by project proposal? Pathways, bikeways or trails that have been established impaired? Complimentary features established to existing distinguishing landmarks or development features in the impact area of the project? Unique building groups impaired visually by project?

Historic, Cultural and Archeological Resources

Is there a presence of historical/archeological sites in the area? Does the project impact on historical/archeological sites (destruction, reconstruction, enhancement)?

AIR QUALITY

Effects of Ambient Air Quality on Project and Contribution to Community Pollution Levels

What is the climatic description of wind/fog conditions? What is the extent of pollution (smog, dust, odors, smoke, hazardous emissions) in relation to local/state/federal (conditions peculiar to the site and immediate area)? Are there any nearby sources for localized pollution (industry, dump, traffic)?

Exhibit 2-P FONSI and NOI to RROF

US Department of Housing and Urban Development COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

NOTICE OF FINDING OF NO SIGNIFICANT IMPACT AND OF INTENT TO REQUEST A RELEASE OF GRANT FUNDS

Name, Address, Zip Code of Grant Recipient

NOTICE

Date of Publication: _____

Telephone Number

() _____ Application/Grant Number: _____

TO ALL INTERESTED AGENCIES, GROUPS AND PERSONS:

On or about *(minimum 15 days after date of publication or 18 days after posting)*

_____ the *(name of grantee)* _____

_____ will request the US Department of Housing and Urban Development to release federal funds under Title I of the Housing and Community Development Act of 1974 (PL 93-383) for the following project:

PROJECT TITLE OR NAME: _____

PURPOSE OR NATURE OF PROJECT: _____

LOCATION OF PROJECT: _____

(Street Address or Name of Neighborhood/District)

City, County, State

Census Tract(s)

ESTIMATED COST OF PROJECT: _____

PROJECT SUMMARY: _____

FINDING OF NO SIGNIFICANT IMPACT

An environmental review of the project has been made by the Grantee and is available for public examination and copying at the office noted above. Based on this review, the Grantee has determined that a request for release of project funds will not significantly affect the quality of the human environment and hence, an environmental impact statement will not be undertaken under the National Environmental Policy Act of 1969 (PL 91-910).

The reasons for the decision not to prepare an environmental impact statement are as follows:

Public Comment on Finding

All interested agencies, groups or persons disagreeing with these decisions are invited to submit written comments for consideration by the Grantee by *date*_____. All comments must clearly specify which decision they object to - The Finding of No Significant Impact or the Request for Release of Funds. All comments so received will be considered by the Grantee prior to its taking any administrative action or requesting release of funds on the date listed immediately above.

RELEASE OF GRANT FUNDS

The Grantee will undertake the project described above with Block Grant funds from the US Department of Housing and Urban Development (HUD), under Title I of the Housing and Community Development Act of 1974. The grantee is certifying to HUD that the _____ (*name of grantee*) and _____ (*name of Chief Elected Official*) in his/her official capacity, consent to accept the jurisdiction of the federal courts if an action is brought to enforce responsibilities in relation to environmental reviews, decision-making and action, and that these responsibilities have been satisfied. The legal effect of the certification is that upon its approval, the Grantee may use the Block Grant funds, and HUD will have satisfied its responsibilities listed in 24 CFR Part 58. HUD will accept an objection to its approval of the release of funds and acceptance of the certification only if it is on one of the following bases:

(a) that the certification was not in fact executed by the Chief Executive Officer or other officer of the Grantee **(b)** that the environmental review record for the project indicated omission of a required decision finding, or step applicable to the project in the environmental review process, or **(c)** another federal agency has submitted written comments pursuant to Section 309 of the Clear Air Act or Section 102(c) of NEPA. Objections must be prepared and submitted in accordance with the required procedure (24 CFR Part 58), and may be addressed to HUD or LGD/DFA, Room 202 Bataan Memorial Bldg., Santa Fe, NM 87501. Objections to the release of funds on bases other than those stated above will not be considered by HUD or LGD/DFA. No objection received after 15 days from the date of request for funds listed above will be considered by HUD or LGD/DFA.

Signature

Title

Address of Certifying Officer

Exhibit 2-Q

Authority to Use Grant Funds

AUTHORITY TO USE GRANT FUNDS

**Department of Finance and Administration
Local Government Division
Community Development Bureau**

To: (name & address of responsible entity)		Copy To: (name & address of (sub recipient)	
We have reviewed and approved a complete Environmental Assessment Package and your Request for Release of Funds and Certification, Exhibit 2-L, on:			
Your Request was for the following CDBG Project Number:			
All objections, if received, have been considered. And the minimum waiting period has transpired. You are hereby authorized to use funds provided to you under the above CDBG Project Number. File this form for proper record keeping, audit, and inspection purposes.			
CDBG Project Title:			
CDBG Project Amount:			
Typed Name of Authorizing Officer	Title of Authorizing Officer	Signature of Authorizing Officer	Date (mm/dd/yyyy)
Scott Wright	Bureau Chief		

Exhibit 2-R

Example Transmittal Letter for Environmental Assessment with Required Elements

NOTE: *This is a sample transmittal letter for Grantees that have completed the Full Environmental Assessment and all related requirements. It is recommended that Grantees follow this format.*

DATE

Director
DFA/Local Government Division
Bataan Memorial Building, Suite 201
Santa Fe, New Mexico 87502

RE: Community of Anywhere (City of Anywhere, NM)
2010 CDBG Application
Project Description (Water Distribution System Improvements)
Project Location (Anytown MDWCA)

Dear Director:

This letter is to advise the Local Government Division that the Municipality/County has completed an Environmental Assessment of its CDBG project and has determined that the release of funds for program activities is not an action that would significantly affect the quality of the environment and no Environmental Impact Statement is required. This conclusion is the result of observations by (project engineers, NM SHPO, NM Environment Department, local Council of Governments, local Natural Resource Conservation Office, and the Municipality or County). The consensus opinion of these persons is that the (implementation of project activity X and Y) will correct (a long standing health and safety problem or other need) that has existed in the (Municipality or County). This project will not negatively affect existing land use or other environmental concerns.

Also, enclosed you will find the (Municipality or County)'s Request for Release of Funds and Certification Form, a project description, the published newspaper page containing the combined notice of the Finding of No Significant Impact and the Notice to the Public of the Request for Release of Funds, and a Publisher's Affidavit certifying the date of publication. In addition, the (Municipality or County) has complied with the regulations concerning the coordination and compliance of this project with all other Federal and State laws and authorities as specified by 24 CFR 58.5 and has documented this compliance in its Environmental Review File.

Sincerely,

Certifying Official

Attachments

Chapter 3: Procurement of Professional Services

Overview

This chapter covers the requirements for procuring professional services for Community Development Block Grant (CDBG) projects. The chapter outlines the request for proposal (RFP) process and guidelines required by the State of New Mexico CDBG program. Each task is identified in the order of occurrence with detailed narratives. This chapter also includes state web sites for additional information and/or contacts.

Procurement for professional services must follow HUD federal procurement regulations (24 CFR Part 85.36) and New Mexico Procurement Code (§13-1-120 NMSA 1978), whichever are more stringent. The New Mexico Procurement Code requires agencies to perform Request for Proposals (RFP) based procurement for the services of architects, engineers, or landscape architects (1.4.1.16, A,10; 1-4.1.31 and 1.4.52,A NMAC).

Use the approved New Mexico CDBG templates.

Resources for information on federal and state procurement include:

- **24 CFR Part 85.36 Procurement**
<http://www.gpo.gov/fdsys/pkg/CFR-2011-title24-vol1/pdf/CFR-2011-title24-vol1-sec85-36.pdf>
- **State Purchasing Division**
<http://www.generalservices.state.nm.us/statepurchasing/>
- **1.4.1 NMAC State Procurement Code Regulations**
<http://www.generalservices.state.nm.us/uploads/files/SPD/Presentations/1%204%201%20NMAC.pdf>
- **New Mexico Procurement Code**
<http://public.nmcompcomm.us/nmpublic/gateway.dll/?f=templates&fn=default.htm>

Task Checklist

- ☐ Task #1 Review Procurement Policy
- ☐ Task #2 Select and Follow a Procurement Procedure
- ☐ Task #3 Procurement of Professional Administrative Services
- ☐ Task #4 Prepare a Request for Proposals of Professional (Design) Services
- ☐ Task #5 Procurement of Professional (Design) Services
- ☐ Task #6 Obtain Contractor/Subcontractor Clearance for Professional Services
- ☐ Task #7 Negotiate Contract, if required
- ☐ Task #8 Complete and Submit Contract/Subcontract Report (**Exhibit 1-E**)
- ☐ Task #9 Contract Amendments
- ☐ Task #10 Maintain Procurement File

Task #1 Review Procurement Policy

Procurement Policy

The Grantee's designated purchasing officer responsible for procurement of services, supplies, equipment or construction obtained with CDBG funds shall review all proposed procurement actions to ensure compliance with the Grantees own policies and procedures. This individual is also responsible for the determination and adherence to the most stringent of the federal, state and local procurement policies.

The purchasing officer shall take affirmative steps to assure that small and minority firms, and women's business enterprises, are solicited whenever they are potential qualified sources. The purchasing officer shall also consider the feasibility of dividing total requirements into smaller tasks or quantities so as to permit maximum participation by small and minority firms, and women's business enterprises. Where permitted by regulations, delivery schedules should be developed which could include participation by such businesses. Where possible, Request for Proposal evaluation criteria should include a factor with an appropriate weight for these firms.

The Grantee shall also adhere to the following provisions:

1. Invitations for Bids or Requests for Proposals shall be clearly written and shall fully describe the technical requirements or services.
2. The method of contracting (fixed price, cost plus fixed fee, purchase orders, etc.) shall be appropriate to the specific procurement. Cost plus percentage of cost contracts are specifically prohibited if CDBG funds are involved.
3. Construction procurements above \$20,000 shall be advertised in accordance with state law. Contracts shall be awarded to the lowest responsive and responsible bidder (§13-1-82 NMSA 1978). Bids may be rejected when it is in the best interest of the Grantee.

CODE OF CONDUCT

No employee, officer or agent of the Grantee shall participate in the selection or in the award or administration of a contract supported by CDBG funds if a conflict of interest, real or apparent, would be involved. Such a conflict could arise if the employee, officer or agent; any member of his/her immediate family; his/her partner; or an organization which employs or is about to employ any of the above has a financial or other interest in the firm selected for award. Language should include the statement, "elected officials, staff or agents, are prohibited from personally benefitting from CDBG procurement".

No officer, employee, or agent of the Grantee shall solicit or accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to sub-agreements, except where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value.

Any alleged violations of these standards of conduct shall be referred to the District Attorney. Where violations appear to have occurred, the offending employee, officer or agent shall be subject to disciplinary action, including but not limited to: dismissal or transfer; when violations or infractions

appear to be substantial in nature, the matter may be referred to appropriate officials for criminal investigation and possible prosecution.

For each contract awarded, a “Campaign Contribution Form” must be included. This form applies to prospective contractors with the state or a local public body pursuant to the requirements of §13-1-112 NMSA 1978. A prospective contractor subject to this procurement shall disclose all campaign contributions given by the prospective contractor or a family member or representative of the prospective contractor to an applicable public official (member of the governing body) of the state or a local public body during the two years prior to the date on which a proposal is submitted or, in the case of a sole source or small purchase contract, the two years prior to the date on which the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor or a family member or representative of the prospective contractor to the public official exceeds \$250 over the two year period.

Task #2 Select and Follow a Procurement Procedure

Grantees must use one of the following three procurement procedures. Upon completion of procurement process, the grantee must submit all documentation to the Project Manager **regardless of funding source.**

Small Purchases (§13-1-125 NMSA 1978)

- A. A central purchasing office shall procure professional services, construction or items of tangible property having a value not exceeding twenty thousand dollars (\$20,000), in accordance with the applicable small purchase rules adopted by the secretary, a local public body or a central purchasing office that has the authority to issue regulations.
- B. Notwithstanding the requirements of Subsection A of this section, a central purchasing office may procure professional services having a value not exceeding thirty thousand dollars (\$30,000), excluding applicable state and local gross receipts taxes, except for the services of landscape architects or surveyors for state public works projects or local public works projects, in accordance with professional services procurement rules promulgated by the department of finance and administration, the general services department or a central purchasing office with the authority to issue rules.
- C. Notwithstanding the requirements of Subsection A of this section, a state agency or a local public body may procure services, construction or items of tangible personal property having a value not exceeding five thousand dollars (\$5,000), excluding applicable state and local gross receipts taxes, by issuing a direct purchase order to a contractor based upon the best obtainable price.
- D. Procurement requirements shall not be artificially divided so as to constitute a small purchase under this section.

Additionally, DFA/LGD requires that Grantees obtain price/rate quotations either by phone or in writing from a minimum of three (3) sources. Grantees must document and submit for approval the scope of work, all businesses contacted as well as the prices quoted.

Competitive Sealed Qualifications-Based Proposals (§ 13-120 NMSA 1978)

- Competitive means that entities are competing against each other for the right to the proposed activity/contract.
- Sealed indicates that the proposals are to be received in a sealed package, not open to the public and confidential in nature.
- Qualifications-based means that entities submitting proposals are being evaluated on a variety of factors. Although price cannot be the sole factor in a qualifications-based evaluation, it can be taken into consideration during the evaluation process. Doing so can help to increase the cost effectiveness of administrative and design professional services without compromising the quality of service.

The Grantee must also prepare and execute a contract formalizing, at a minimum, the Scope of Work (Exhibit 1-A), delivery schedule and the terms of compensation. It is critical that the Scope of Work, as defined by Exhibit 1-A, is utilized to procure professional services because upon completion of the project, success will be evaluated based on the Scope of Work in the grant agreement. The professional service provider must know exactly what the metrics of the successful project are so that nothing is overlooked.

For each proposed state public works project, local public works project or construction management contract, the architect, engineer, landscape architect, construction management and surveyor selection committee, state highway and transportation department selection committee or local selection committee, as appropriate, shall evaluate statements of qualifications and performance data submitted by at least three businesses in regard to the particular project and may conduct interviews with and may require public presentation by all businesses applying for selection regarding their qualifications, their approach to the project and their ability to furnish the required services. (Please refer to 13-120 NMSA 1978 B, C, and D for the selection process).

The evaluation of proposals received must be qualification-based, and not be evaluated based solely on price. The evaluation criteria qualification factors include, but are not limited to:

- ✓ Specialized design and technical competence
- ✓ Capacity and capability
- ✓ Past record of performance
- ✓ Familiarity with contracting agency
- ✓ Current volume of work with the contracting agency not 75% complete
- ✓ Specialized construction management experience
- ✓ Ability to perform work within the owner's timeframe

DFA/LGD requires the utilization of the Agreement between Owner and Engineer (Exhibit 3-D), the Agreement between Owner and Architect (Exhibit 3-E) or the Agreement between Owner and Planner (Exhibit 3-G) to ensure that all components of CDBG requirements be properly addressed. The advantage of utilizing these contracts is the expeditious nature of the review/approval process. Failure to use these contracts will result in delays from various reviews from state agencies, federal agencies, legal counsel and other interested parties. Opportunities to modify contractual language are identified in these exhibits, so there is no reason to use any other contracts.

Competitive Sealed Bids (§ 13-1-102 to 110 NMSA 1978)

Competitive sealed bids are not to be used for obtaining professional services. Because bidding is associated based on cost rather than qualifications-based, it is not appropriate to use a bidding process for professional services. Competitive sealed bids are initiated for procurements over \$20,000 by publishing an Invitation for Bids (§ 13-1-103 NMSA 1978) and are more commonly used in the construction bidding phase of the project.

Task #3 Procurement of Professional Administrative Services

If the Grantee requires the use of a Consultant to assist with the administrative portion of the CDBG program, the Grantee must follow New Mexico Procurement Code (§13-1-111 NMSA 1978) in obtaining these services. Grantees should be aware that Councils of Government (COGs), Architect and Engineering firms, and other service providers can perform professional administrative services. **Exhibit 3-A** is the “Request for Proposals for Administrative Services.” Once If the Grantee elects to hire an architect or engineering firm to conduct administrative services, the Grantee must issue an RFP, selected the most advantageous proposal, negotiate and utilize the **“Contract for Administrative Services” (Exhibit 3-B).**

The “Contract for Administrative Services” (**Exhibit 3-B**) can also be used for housing rehabilitation consultant services when coupled with the “Housing Rehabilitation Scope of Services” “Request for Proposals” (**Exhibit 3-A**).

Task #4 Prepare a Request for Proposals (RFP) for Design Services

DFA/LGD Approval

Competitive sealed qualification-based proposals are typically used for any professional service contract. The process requires that a request for proposals (RFP) is submitted to DFA/LGD **prior** to publishing the advertisement or posting the notices. DFA/LGD requires the “RFP for Design Professional Services” (Exhibit 3-C) be used.

PTAB Approval

The New Mexico Procurement Code (Section 13-1-117.2) states that if the local public body does not have licensed professional staff, e.g. engineers, architects, surveyors, etc., a professional technical advisor may be appointed by the appropriate New Mexico professional society. The Professional Technical Advisory Board (PTAB) was created for this reason. Their website is <http://www.ptabnm.org/>. **Note: all of the DFA/LGD exhibits for RFP and professional service contracts have been reviewed and approved by PTAB, so the utilization of these exhibits does not require PTAB review.**

PTAB is made up of professionals from:

- American Consulting Engineers Council of New Mexico (ACEC);
- National Society of Professional Engineers/Professional Engineers in Private Practice;
- American Institute of Architects, (AIA) Albuquerque Chapter;
- New Mexico Society of Architects;
- New Mexico Professional Surveyors; and
- American Society of Landscape Architects, New Mexico Chapter.

PTAB serves as a clearinghouse to receive requests for assistance from communities throughout New Mexico. Once a request is received, a Professional Technical Advisor (PTA) is assigned to the community to educate and provide assistance with Qualification-Based Selection and Requests for Proposals. ***A community must allow sufficient time for the PTA assignment process to be completed.*** A minimum of four weeks prior to the advertising date is suggested. This allows for the selection of the appropriate PTA for a specific project. Remember, all PTAs are professionals who are volunteering their time and whose firms are excluded from proposing on the project because of their role as the PTA.

The “Request for Proposals for Planning Professional Services” (**Exhibit 3-F**) should be used if the procurement is for planning services only. DFA/LGD must approve the RFP prior to publishing. Once the RFP has been approved, the grantee must advertise once per week for a period of 2 weeks (or fourteen calendar days) to provide sufficient response times as per HUD procurement regulations.

At a minimum, all RFPs should include the following:

1. Scope of work (as defined by Exhibit 1-A of the grant agreement);
2. Proposal receipt deadline;
3. Contact name and telephone number;
4. Types of services required;
5. Number of copies required;
6. Evaluation criteria to be used, including that required by statute (excluding resident/veteran preference); and
7. The relative weight to be given to each factor based on the importance of each item to the Grantee.

The following is a list of evaluation criteria that must be included in the RFP per §13-1-120 paragraphs B, C, and D NMSA 1978. The Grantee may add additional evaluation factors based on the complexity of the project.

1. Specialized Design and Technical Competence
2. Capacity and Capability
3. Past Record of Performance
4. Familiarity with the Contracting Agency
Proximity to or familiarity with the area in which the project is located
5. Amount of design work to be done in New Mexico ***(not allowable for CDBG)***.

6. Current Volume of Work with the Contracting Agency not 75% Complete

The volume of work previously done for the entity requesting proposals, which is not 75% complete with respect to basic professional design services.

NOTE: If a Grantee has a current General Services Agreement (on-call) with an engineering and/or architectural firm for professional design services, the Grantee may use the services under this Agreement for the CDBG project if all the following conditions are met:

1. Contract term must not exceed 4 years including all extensions and renewals
2. The Request for Proposal (RFP) included that the proposed project was identified in the Project Description
3. The Grantee submits the General Services Agreement to the LGD Project Manager for concurrence
4. The RFP did not contain geographical preferences in the evaluation process (i.e. work to be done in New Mexico, New Mexico resident business preference, New Mexico resident-veteran preference, etc.)

The contract must be amended to include all CDBG and federal requirements, and the CDBG project specific Scope of Work using the applicable DFA/LGD exhibits. Contracts must be approved by the governing body. Notice, sign in sheet, and copy of minutes of award must be provided to your LGD project manager.

Task #5 Procurement Phase of Professional (Design) Services

Once the grantee has received approval of the RFP from DFA/LGD (and PTAB if applicable), the RFP can be published or posted to attract prospective proposers. State law requires that bids be advertised once, not less than ten days prior to bid opening. Ten days, however, is a relatively short time frame for prospective design service providers to complete and respond to a RFP. Historically it has reduced the number of proposals submitted and the procurement therefore becomes less competitive. DFA/LGD recommends 21 days between the publishing/posting of the Request for Proposals and the final date that proposals will be accepted. As stated previously, the project description must match the Scope of Work as defined by Exhibit 1-A of the grant agreement.

Proposal Submittal Procedures

The Grantee can decide the quantity and type of documents to be submitted by offerors. All proposals must be submitted in a sealed envelope with the "SEALED PROPOSAL ENCLOSED" notation. The Grantee must clock in/time stamp all proposals upon receipt, which must be received prior to the collection time specified. Oral, telephonic or telegraphic proposals will not be accepted. DFA/LGD highly recommends that grantees conduct a pre-proposal conference. This allows grantees the opportunity to answer questions in a public forum.

Consideration of Proposals

Proposals received on-time will be opened publically or in the presence of one or more witnesses. The name and address of each offeror will be read aloud. For classification purposes, proposals may be classified as acceptable, potentially acceptable or unacceptable. The Grantee has the right to waive technical irregularities in the proposals.

An evaluation committee shall be selected by the Grantee so that the proposals may be evaluated. This committee will individually evaluate each proposal and convene after their individual reviews have taken place.

The Grantee must publically announce the business selected for the award, notify that awardee as well as the unsuccessful offerors and provide a notice of award to the successful business.

Task #6 Obtain Contractor/Subcontractor Clearance for Professional Services

All parties involved with the CDBG project (i.e. Grantee, State of New Mexico, administrative service providers, Architects/Engineers, sub consultants, construction contractors and subcontractors) must be eligible to receive federal funding. That means they must not be disbarred, delinquent in federal debt and active in SAM (the federal database). All parties must maintain an active registration on the federal System for Award Management (SAM) throughout the life of the project, which must be available for public search at all times. Registration on SAM (<https://beta.sam.gov/>) is free and required for work on all federally-funded projects. Including SAM registration as part of the RFP is highly encouraged. SAM registration is not limited to professional service providers, the Grantee must also be actively registered in SAM to receive CDBG funding in any capacity.

The Grantee must submit Contractor/Subcontractor Clearance (**Exhibit 1-X**) to LGD for verification and approval of active SAM registration. LGD will return an eligibility confirmation to the Grantee once verification has been completed. LGD will also verify this registration at least once per year.

Task #7 Negotiate Contract, if required

After selecting a firm, the Grantee may begin contract negotiations with the highest qualified offeror. In making the decision to negotiate, a fee determination as to what is fair and reasonable should be based on the estimated value of services, scope of work, complexity and professional nature of services. If the negotiation is unsuccessful, the Grantee has the right to negotiate with the second highest qualified offeror. Once agreement on the scope of services and compensation has been reached, the Grantee and the design professional must sign a written agreement. Three standard contract agreements are provided for your use and are also acceptable to other funding agencies. Please review other agency guidelines before accepting these agreements as your own.

The “Agreement between Owner and Engineer”, (**Exhibit 3-D**);

The “Agreement between Owner and Architect”, (**Exhibit 3-E**);

And “Agreement between Owner and Planner”, (**Exhibit 3-G**).

NOTE: The “Agreement between Owner and Engineer” (**Exhibit 3-D**), “Agreement between Owner and Architect” (**Exhibit 3-E**), or “Agreement between Owner and Planner” (**Exhibit 3-G**) must be used.

Task #8 Complete and Submit Contract/Subcontract Report (Exhibit 1-E)

After a contract has been executed, Grantees must complete and submit the Contract/Subcontract Report (**Exhibit 1-E**). The Contract/Subcontract Report must be completed to capture data for HUD reporting and tracks CDBG funded contracts for professional services, contractors or sub-contractors. The report lists the Contractor and Subcontractor(s) name and address, Federal Tax ID #, Type of Contract, Trade Codes, and details of the business including Race/Ethnicity, Women Ownership, and Section 3 status. Also included is the Date of Contract Execution, Davis Bacon information and both State and Federal wage decision numbers, and finally, the amount of the contract to be paid with CDBG funds. A copy of this report should be submitted to your LGD Project Manager within 30 days of entering contract.

Task #9 Contract Amendments

All amendments to the contract must be approved by the LGD Director.

The changes must fall within the original grant agreement, which includes Project Description **Exhibit 1-A**, Project Schedule **Exhibit 1-B**, and Project Cost/Financing Summary **Exhibit 1-C**. If not, a request to amend the grant agreement must be submitted in writing signed by the chief elected official to the LGD Director. The request and approval must be prior to the alterations of the contracts and/or proposed work initiated.

Task #10 Maintain Procurement Files

Procurement files must be maintained for all contracts and, at a minimum, must include the documents described in Chapter 5 – Monitoring and Closeout Checklist to document that the procurement was open and competitive. Documents must be provided to the LGD Project Manager upon execution of the contract.

EXHIBIT 3-A
RFP FOR ADMINISTRATIVE SERVICES

Exhibit 3-A
Request for Proposals for Administrative Services

REQUEST FOR PROPOSALS
FOR
ADMINISTRATIVE SERVICES

[to be used for CDBG Management and Administrative Services]

RFP No. _____

Packet No. _____



Project Name _____
Contracting Agency _____
Address _____
Telephone _____ 505- _____
Date _____
Procurement Manager _____

Rev. 5-07

3A - 1

NOTICE OF REQUEST FOR PROPOSALS

Competitive sealed proposals for Administrative Services will be received by the Contracting Agency, _____ for RFP No. _____. The proposals are for CDBG management and administrative professional services for (insert Project Name and Location) _____, Project No. CDBG # _____.

Proposals will be received at _____ until _____, 20__ a.m. /p.m.

Copies of the Request for Proposals can be obtained in person at the office of the _____ at _____ or will be mailed upon written or telephone request to _____ at 505- ____ - _____.

A Pre-Proposal Conference ☐ will ☐ will not be held on _____, 20__ at _____, _____ a.m./p.m.

PURCHASING AGENT:

Date: _____

[For Contracting Agency Use Only]

Newspaper: _____	Publish: _____	P.O. No. _____
Newspaper: _____	Publish: _____	P.O. No. _____
Newspaper: _____	Publish: _____	P.O. No. _____
_____	_____	_____

Note: This Notice is issued pursuant to the requirements of §13-1-104 NMSA 1978 and must be published not less than 10 calendar days prior to the date set for the receipt of proposals (§13-1-113) and published in a newspaper of general circulation in the area.

(This page intentionally left blank)

ADMINISTRATIVE SERVICES REQUEST FOR PROPOSALS

[CDBG Management and Administrative Services]

Introduction

The _____ is
(Name of Grantee)
accepting proposals from consultants for management and administrative services for implementation of the Community Development Block Grant program funded by the state of New Mexico.

Part One. Management and Administration

The Scope of Services which the consultant must provide is:

- A. With the assistance of the Grantee, assist in the of conduct public hearings. This includes, but is not limited to, tasks such as assisting with public hearings, preparing public notices, and documenting citizen input.
- B. Prepare Environmental Review Record for all activities. Responsibilities include making a recommendation to the local governing body as to a finding of the level of impact, preparation of all required public notices, preparation of the Request for Release of Funds, and obtaining adequate backup documentation. For activities which are not exempt from environmental assessments, an environmental assessment will be prepared. For activities which are exempt or categorically excluded from environmental assessments, a written Finding of Exemption will be prepared, which should identify the project or activity, and under which category of exemption it falls. Documentation of compliance with the requirements of historic preservation, flood plains and wetlands, and other applicable authorities must also be included.
- C. Coordinate requests for payment with the grantee to insure consistency with the letter of credit procedures established for the CDBG program.
- D. Insure that the grantee has an acceptable financial management system for the CDBG program. An acceptable system includes, but is not limited to, cash receipts and disbursement journal and accompanying ledgers, and should conform to generally accepted principles of governmental

accounting.

E. Establish grantee project files. These must be maintained in compliance with all applicable state, local and federal regulations. Monitor project files throughout the program to insure they are complete and that all necessary documentation is being retained in the grantee's files.

F. If applicable, assist grantee in complying with regulations governing land acquisition (real property, easements, rights of way, donation of property, etc.).

G. Obtain contractor and subcontractor clearances from the state.

H. Check weekly payrolls to insure compliance with wage decisions. Conduct on-site interviews and compare the results with appropriate payrolls.

I. Monitor construction to insure compliance with Equal Opportunity and Labor Standards Provisions.

J. Make progress inspections and certify partial payment requests.

K. Accompany design professional on final inspection and issue a final certificate of payment.

L. Prepare close-out documents to include Project Completion Report, Final Wage Compliance Report, and Certificates of Completion.

Part Two. Proposal

Proposals will be received at the date, time and place shown on the cover page of this RFP. Grantee reserves the right to reject any or all proposals. All proposals shall be sealed and marked on the outside, Name of Grantee, **CDBG Administrative Services Proposal [CDBG Management & Administrative Services]**. Proposals submitted late will be returned unopened and will not be evaluated.

All proposals received on time will be ranked, with the highest rated consultant being awarded

the contract. Consultants on the consolidated list of debarred contractors are ineligible for consideration.

The proposal must contain four parts:

- **Technical** -- Describe the approach to be taken in addressing the scope of work. This includes delineation of specific tasks to be undertaken.
- **Management and Staffing** -- Describe the management plan to be used and staffing configuration. This includes a project schedule showing start and completion dates for all major tasks, and a staff loading by task chart showing individuals' allocated time by task, and resumes of proposed personnel.
- **Prior Related Experience** -- Provide a brief description of the firm's related experience including contact person and phone number for each referenced job.
- **Cost and Pricing** -- Complete and submit the Cost and Price Detail form.

Part Three. Evaluation Criteria

	Recommended Weights	Weights Used
Technical Approach/ Understanding of Problems	25	_____
Work Management Plan	20	_____
Experience of Proposed Personnel	20	_____
Similar Experience	20	_____
Familiarity with Local Conditions	15	_____
Total	100	100

Proposals will be reviewed by grantee's selection committee. Telephone interviews may be conducted.

Address questions concerning this RFP to the Procurement Manager noted on the cover page of this RFP.

Proposals will be evaluated on the basis of written materials and interviews, if deemed appropriate. It is not necessary that the consultant attend the meeting at which proposals are considered. Only one copy of the proposal and required supplemental information is required.

GENERAL TERMS AND CONDITIONS

1. GOVERNING LAW

The Agreement shall be governed exclusively by the laws of the state of New Mexico as the same from time to time exist.

2. INDEPENDENT CONTRACTORS

The Consultant and his agents and employees are independent Contractors and are not employees of the Grantee. The Consultant and his agents and employees shall not accrue leave, retirement, insurance, bonding, use of Grantee vehicles, or any other benefits afforded to employees of the Grantee as a result of the Agreement.

3. BRIBES, GRATUITIES AND KICKBACKS

Pursuant to ~§13-1-191 NMSA 1978, reference is hereby made to the criminal laws of New Mexico (including ~§§30-14-1, ~ 30-24-2, and ~30-41-1 through ~30-41-3 NMSA 1978) which prohibit bribes, kickbacks, and gratuities, violation of which constitutes a felony. Further, the Procurement Code, §§~ 13-1-28 through ~13-1-199 NMSA 1978, imposes civil and criminal penalties for its violation.

4. STANDARD FORM OF AGREEMENT BETWEEN GRANTEE AND CONSULTANT

The form of agreement required by the funding agency or issued by the Grantee will be used for this project. Copies are available and may be reviewed upon request.

5. FEES

A lump sum fixed fee will be negotiated with the Consultant selected.

6. FUNDING

This solicitation is subject to the availability of funds to accomplish the work.

7. CAMPAIGN CONTRIBUTION DISCLOSURE AND PROHIBITION

7.1 A prospective contractor subject to the provisions of §13-1-191.1 NMSA 1978 shall disclose all campaign contributions given by the

prospective contractor or a family member or representative of the prospective contractor to an applicable public official (governing body) of the Grantee during the two years prior to the date on which a proposal is submitted or, in the case of a sole source or small purchase contract, the two years prior to the date on which the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor or a family member or representative of the prospective contractor to the public official exceeds two hundred fifty dollars (\$250) over the two-year period. See Exhibit A – Campaign Contribution Disclosure Form.

7.2 The form shall be filed with the Grantee as part of the competitive sealed proposal, or in the case of a sole source or small purchase contract, on the date on which the contractor signs the contract.

7.3 A prospective contractor submitting a disclosure statement pursuant to this section who has not contributed to an applicable public official, whose family members have not contributed to an applicable public official or whose representatives have not contributed to an applicable public official shall make a statement that no contribution was made.

7.4 A prospective contractor or a family member or representative of the prospective contractor shall not give a campaign contribution or other thing or value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or during the pendency of negotiations for a sole source or small purchase contract.

7.5 A solicitation or proposed award for a proposed contract may be canceled pursuant to ~§13-1-181 NMSA 1978 or a contract that is executed may be ratified or terminated pursuant to ~§13-1-181 NMSA 1978 if:

A. A prospective contractor fails to submit a fully completed disclosure statement pursuant to this section; or

B. A prospective contractor or family member or 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.

7.6 As used in this section:

A. *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;

B. *Family member* means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law;

C. *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;

D. *Prospective contractor* means a person who is subject to the competitive sealed proposal process set forth in the Procurement Code, §13-1-28 NMSA 1978, or is not required to submit a competitive sealed proposal because that person qualifies for a sole source or small purchase contract; and

E. *Representative of the 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.

8. **OTHER INSTRUCTIONS TO OFFERORS**
(If none, write none)

COST AND PRICE DETAIL

Consultant Address _____		Date of Proposal _____	
State Tax ID No. _____	Federal ID No. _____	Total Price	\$

A. Direct Labor (specify personnel by name)

	<u>Estimated # of Days</u>	<u>Daily Rate</u>	<u>Estimated Cost</u>
1. _____	_____	_____	\$ _____
2. _____	_____	_____	\$ _____
3. _____	_____	_____	\$ _____
4. _____	_____	_____	\$ _____
5. Total Direct Labor			\$

B. Overhead/ Indirect Cost

	<u>Rate</u>	<u>Base</u>	<u>Estimated Cost</u>
_____	_____	_____	\$

C. Other Direct Costs

			<u>Estimated Cost</u>
1. Transportation - _____ # of on-site visits			\$ _____
2. Per Diem _____ # of days @ \$ _____		/day	\$ _____
3. Reproduction _____ # of pages @ \$ _____		/page	\$ _____
4. Other (specify) _____			\$ _____
Total Other Direct Costs			\$

D. Subcontracts

	<u># of days of effort</u>	<u>Estimated Cost</u>
1. _____	_____	\$ _____
2. _____	_____	\$ _____
3. Total Subcontractors		\$
Total Estimated Costs (Line A5 + B + C5 + D3)		\$ _____
Profit @ _____ %		\$ _____
Total Price		\$

SUGGESTED SCOPE OF SERVICES FOR REHABILITATION PROGRAM

Administrative Tasks of Housing Rehabilitative Program

This scope of services will be helpful in defining areas of responsibility for local staff in the administration of a CDBG housing rehabilitation program. If an engineer, architect, or other consultant will administer the program, this scope of services, or parts of it, can be used to draft an appropriate scope of work.

1. Assist with the planning and formulation of program policies and standards. This includes program goals and objectives, financial mechanisms, target population, general applicant eligibility criteria, eligible rehab activities, selection procedures, application processing, unit eligibility, etc.
2. Hold public hearings to explain the scope and intent of the rehab program, and perform any other activities which are necessary to fulfill the public hearing guidelines.
3. Prepare all required reports and forms to be submitted to the state and assist in the preparation of draw down requests on the contract reservation fund.
4. Develop and maintain all files and records necessary for compliance with state and federal regulations. Develop all forms and documents necessary to administer a housing rehabilitation program (e.g., application forms, work write-ups, lead based paint certification, etc.).
5. Interview and advice grant applicants on the design and objectives of the rehab program, the availability and benefits of a rehab program, and the specific conditions under which a rehab grant is made.
6. Take applications, rate and rank applicants in accordance with selection criteria set forth in the rehab program, and advice applicants of the disposition of their application.
7. Obtain verification of income, ownership, etc from applicant.
8. Prepare rehabilitation grant award for approval by local officials. Review conditions of grant with homeowner and obtain homeowner's signature on all necessary documents.
9. Coordinate preliminary work write-ups, formal work write-ups and cost estimates.
10. Recruit contractors to work with the program and orient them on the policies and regulations governing the program.
11. On behalf of the homeowner, request, receive and review all bids from contractors for rehabilitation construction work.
12. Assist in selecting an acceptable contractor from bids submitted.
13. Prepare construction contract documents in accordance with CDBG provisions.
14. Inspect rehabilitation work on a regular basis to see that all code violations are rectified, and check on the quality of materials and workmanship.
15. Arbitrate disputes and complaints arising between contractors and homeowners regarding work to be performed, underway or completed.
16. Prepare change orders, if necessary, and obtain approval of the homeowner, contractor and grantee.
17. Make final inspection of rehabilitation work and issue final acceptance of work completed, signed by both the housing rehabilitation inspector and the homeowner.
18. Obtain manufacturers' and suppliers' warranties from the contractor prior to final payment.

(This Page Intentionally left blank)

Rev. 5-07

3A-10

EXHIBIT A

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

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

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

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

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

The following definitions apply:

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

"Campaign Contribution" means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official's behalf for the purpose of electing the official to statewide or local office. "Campaign Contribution" includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

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

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

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

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

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

DISCLOSURE OF CONTRIBUTIONS BY PROSPECTIVE CONTRACTOR:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Date Contribution(s) Made: _____

Amount(s) of Contribution(s) _____

Nature of Contribution(s) _____

Purpose of Contribution(s) _____

(Attach extra pages if necessary)

Signature

Date

Title (position)

--OR--

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

Signature

Date

Title (Position)

EXHIBIT 3-B
CONTRACT FOR ADMINISTRATIVE SERVICES

Exhibit 3-B
CONTRACT FOR ADMINISTRATIVE SERVICES

Project

Contract N° __ Project N° __



Distribution to :

- ☐ Owner
- ☐ Consultant
- ☐ LGD
- ☐ Other

Community Development Block Grant Program

This Agreement entered into this __ day of __, 20 __, by and between
the **"Grantee"** and the **"Consultant"**



[This document was prepared to be used with Community Development Block Grant and state funded projects. This document has important legal consequences; consultation with an Attorney is encouraged with respect to its completion or modification]

Rev 6-16

PART I -- AGREEMENT

This Agreement for professional services is by and between _____,
name of grantee
(hereinafter called the "Grantee" or "Owner") and _____ a corporation
name of consultant
organized under the laws of the State of New Mexico, (hereinafter called the "Consultant").

WITNESSETH THAT:

WHEREAS, Grantee has entered into an agreement with the State of New Mexico for the implementation of the Community Development Block Grant (CDBG) Program pursuant to Title 1 of the Housing and Community Development Act of 1974; and,
WHEREAS, Grantee desires to engage Consultant to render certain administrative services in connection with its CDBG Program;

NOW, THEREFORE, the parties do mutually agree as follows:

1. Employment of Consultant

Grantee agrees to engage Consultant, and Consultant agrees to satisfactorily perform the following scope of services:

2. Scope of Services

- A. With the assistance of the grantee, help conduct public hearings. This includes, but is not limited to, tasks such as assisting with public hearings, preparing public notices, and documenting citizen input.
- B. Prepare Environmental Review Record for all activities. Responsibilities include making a recommendation to the local governing body as to a finding of the level of impact, preparation of all required public notices, preparation of the Request for Release of Funds, and obtaining adequate backup documentation. For activities which are not exempt from environmental assessments, an environmental assessment will be prepared. For activities which are exempt or categorically excluded from environmental assessments, a written Finding of Exemption will be prepared, which should identify the project or activity, and under which category of exemption it falls. Documentation of compliance with the requirements of historic preservation, flood plains and wetlands, and other applicable authorities must be included.
- C. Coordinate requests for payment with the grantee to insure consistency with the letter of credit procedures established for the CDBG program.

3B-2

Rev6-16

- D. Insure that the grantee has an acceptable financial management system for the CDBG program. An acceptable system includes, but is not limited to, cash receipts and disbursement journal and accompanying ledgers, and should conform to generally accepted principles of municipal accounting.
- E. Establish grantee project files. These must be maintained in compliance with all applicable state, local and federal regulations. Monitor project files throughout the program to insure they are complete and that all necessary documentation is being retained in the grantee's files.
- F. If applicable, assist grantee in complying with regulations governing land acquisition (real property, easements, rights of way, donation of property, etc.).
- G. Obtain contractor and subcontractor clearances from the state.
- H. Check weekly payrolls to insure compliance with wage decisions. Conduct on-site interviews and compare the results with appropriate payrolls.
- I. Monitor construction to insure compliance with Equal Opportunity and Labor Standards Provisions.
- J. Make progress inspections and certify partial payment requests.
- K. Accompany design professional on final inspection and issue a final certificate of payment.
- L. Prepare close-out documents to include Project Completion Report, Final Wage Compliance Report, and Certificates of Completion.

Services in each of the task areas above shall be performed at the direction of the Director, Department of Community Development, or his designated representative.

3. Time of Performance

The Consultant shall commence work on [REDACTED], and shall continue providing services in the sequence appropriate to Grantee's CDBG project. All services shall be completed no later than twenty four months from the date of this Agreement.

4. Access to Information

It is agreed that all available information, data, reports, records and maps shall be furnished to Consultant by Grantee and its agencies. No charge will be made to Consultant for such information, and Grantee and its agencies will cooperate with Consultant to facilitate the performance of the work described in this Agreement.

5. Compensation and Method of Payment

The maximum amount of compensation and reimbursement to be paid hereunder shall not exceed [REDACTED] for all services, including travel, per diem and other expenses. All work will be performed on a time and materials basis. Consultant time

for principal and staff will be provided at their respective rates of pay times for direct personal expense. Ten percent (10%) of the total contract amount shall be retained by Grantee until formal closeout of the project by the state.

Travel at the lowest practicable class of common carrier and per diem costs at the amount set in Grantee's mileage and per diem regulations for food, lodging and incidental expenses are INCLUDED in the maximum contract amount.

For payments due, Consultant shall submit monthly invoices to Grantee for costs incurred in that period. Invoices shall itemize the tasks completed, person-days provided, and shall list the travel and per diem costs incurred in performing the tasks. The invoice shall be payable to the Consultant within 20 days of receipt by Grantee.

The Consultant agrees to keep accurate records of all time and expenses allocated to the work. Such records shall be kept in the office of the Consultant and shall be made available to Grantee for inspection and copying upon reasonable request.

6. Ownership of Documents

All documents and data produced are the property of the Grantee. Consultant may retain reproducible copies.

7. Indemnification

Consultant shall comply with the requirements of all applicable laws, rules, and regulations, and shall assume full responsibility for payment of federal, state, and local taxes or contributions imposed or required under Social Security, Workman's Compensation, and income tax laws. Consultant shall hold Grantee harmless with respect to any damages, expenses, or claims arising from or in connection with any negligent acts, errors or omissions performed by Consultant under this Agreement. This shall not be construed as a limitation of Consultant's liability under this Agreement, or as otherwise provided by law.

8. Expert Testimony

Grantee agrees to pay for additional staff time, at the contract hourly billing rates, plus expenses at cost, that might be required for expert testimony or court appearances, including preparation time and legal costs that might arise because of Consultant's involvement in this assignment, whether subpoenaed by the Grantee or any other party.

9. Terms and Conditions

This Agreement is subject to the provisions titled "Part II, Federal Terms and Conditions for Professional Services" consisting of six (6) pages, attached hereto and incorporated herein by reference.

10. Address for Notices and Communications

Grantee:

Consultant:

11. Captions

Each paragraph of this Agreement has been supplied with a caption only to serve as a guide to the contents. The caption does not control the meaning of a paragraph or in any way determine its interpretation or application.

ATTEST:

Grantee:

By:

Title:

Date:

Consultant:

By:

Title:

Date:

PART II

FEDERAL TERMS AND CONDITIONS FOR PROFESSIONAL SERVICES

State administered Community Development Block Grant monies are federal funds. Section 13-1-30B NMSA 1978 of the Procurement Code stipulates: "When a procurement involves the expenditure of federal funds, the procurement shall be conducted in accordance with mandatory applicable federal law and regulations. When mandatory applicable federal law or regulations are inconsistent with the provisions of the Procurement Code, compliance with federal law or regulations shall be compliance with the Procurement Code." The applicable governing federal procurement standards are defined in OMB Circular A-102, Attachment O. When federal and state procurement policies are different, the more restrictive policies apply so long as they are consistent with Circular A-102 standards.

1. **Termination of Contract for Cause** - If, through any cause, the Consultant shall fail to fulfill in timely and proper manner his obligations under this Contract, or if the Consultant shall violate any of the covenants, agreements, or stipulations of this Contract, the Owner shall there-upon have the right to terminate this Contract by giving written notice to the Consultant of such termination and specifying the effective date thereof, at least five days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys and reports prepared by the Consultant under this Contract shall, at the option of the Owner, become its property and the Consultant shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder.

Notwithstanding the above, the Consultant shall not be relieved of liability to the Owner damages sustained by the Owner by virtue of any breach of the Contract by the Consultant, and the Owner may withhold any payments to the Consultant for the purpose of set-off until such time as the exact amount of damages due the Owner from the Consultant is determined.

2. **Termination for Convenience of the Owner** - The Owner may terminate this contract at any time by giving at least ten (10) days notice in writing to the Consultant. If the Contract is terminated by the Owner as provided herein, the Consultant will be paid for the time provided and expenses incurred up to the termination date. If this Contract is terminated due to the fault of the Consultant, paragraph 1 hereof relative to termination shall apply.
3. **Changes** - The Owner may, from time to time, request changes in the scope of the services of the Consultant to be performed hereunder. Such changes, including any increase or decrease in the amount of the Consultant compensation, which are mutually agreed upon by and between the Owner and the Consultant, shall be incorporated in written amendments to this contract.
4. **Personnel** -
 - a. The Consultant represents that he has, or will secure at his own expense, all personnel required in performing the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the Owner.
 - b. All of the services required hereunder will be performed by the Consultant or

under his supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state and local law to perform such services.

- c. None of the work or services covered by this contract shall be subcontracted without the prior written approval of the Owner. Any work or services subcontracted hereunder be specified by written contract or agreement and shall be subject to each provision of this Contract.
5. **Assignability** - The Consultant shall not assign any interest on this Contract, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the Owner thereto: Provided, however, that claims for money by the Consultant from the Owner under the Contract may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment or transfer shall be furnished promptly to the Owner.
6. **Reports and Information** - The Consultant, at such times and in such forms as the Owner may require, shall furnish the Owner such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Contract, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Contract.
7. **Records and Audits** - The Consultant shall maintain accounts and records, including personnel, property and financial records, adequate to identify and account for all costs pertaining to the Contract and such other records as may be deemed necessary by the Owner and to assure proper accounting for all project funds, both federal and non-federal shares. These records will be made available for audit purposes to the Owner or any authorized representative, and will be retained for six (6) years after the expiration of this Contract unless permission to destroy them is granted by the Owner and the funding agency.
8. **Findings Confidential** - All of the reports, information, data, etc., prepared or assembled by the Consultant under this Contract are confidential and the Consultant agrees that they shall **not** be made available to any individual or organization without the prior written approval of the Owner.
9. **Copyright** - No report, maps, or other documents produced in whole or in part under this Contract shall be the subject of an application for copyright by or on behalf of the Consultant.
10. **Compliance with Local Laws** - The Consultant shall comply with all applicable laws, ordinances and codes of the State and the Owner, and the Consultant shall save the Owner harmless with respect to any damages arising from any tort done in performing any of the work embraced by this Contract.
11. **Equal Employment Opportunity** - During the performance of this Contract, the Consultant agrees as follows:
 - a. The Consultant will not discriminate against any employee or applicant for employment because of race, creed, sex, color or national origin. The Consultant

will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, sex, color 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 Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Owners setting forth the provisions of this non-discrimination clause.

- b. The Consultant will, in all solicitation or advertisements for employees placed by or on behalf of the Consultant, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex, or national origin.
- c. The Consultant will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Contract so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.
- d. The Consultant will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.
- e. The Consultant will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the Owner's representative, the funding agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- f. In the event of the Consultant's non-compliance with the equal opportunity clauses of this Agreement or with any of such rules, regulations or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the Consultant may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- g. The Consultant will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Consultant will take such action with respect to any subcontract or purchase order as the Owners's representative may direct as a means of enforcing such provisions including sanctions for non-compliance. Provided, however, that in the event the Consultant becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such

direction by the Owner, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

12. **Civil Rights Act of 1964** - Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

13. **Section 109 of the Housing and Community Development Act of 1974**

No person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

14. **"Section 3" Compliance in the Provision of Training, Employment and Business Opportunities**

- a. The work to be performed under this contract is on a project assisted under a program providing direct federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the project.
- b. The parties to this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.
- c. The Consultant will send to each labor organization or representative or workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
- d. The Consultant will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135. The Consultant will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to

comply with the requirements of these regulations.

- e. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued hereunder prior to the execution of the contract, shall be a condition of the federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors and assigns to those sanctions specified by the grant or loan agreement or contract through which federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.
15. **Interest of Members of the Owner** - No member of the governing body of the Owner and no other officer, employee, or agent of the Owner who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this contract; and the Consultant shall take appropriate steps to assure compliance.
16. **Interest of other Local Public Officials** - No member of the governing body of the Owner and no other public official of the Owner, who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this Contract; and the Consultant shall take appropriate steps to assure compliance.
17. **Interest of Consultant and Employees** - The Consultant covenants that he presently has no interest and shall not acquire interest, direct or indirect, in the study area or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his services hereunder. The Consultant further covenants that in the performance of this Contract, no person having any such interest shall be employed.
18. **Access to Records** - The State funding (grantor) agency, the Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the Engineer which are directly pertinent to this specific contract, for the purpose of audits, examinations, and making excerpts and transcriptions.

All records connected with this contract will be maintained in a central location by the Owner and will be maintained for a period of six (6) years from the official date of close-out of the grant.

EXHIBIT 3-C
RFP FOR DESIGN PROFESSIONAL SERVICES

Exhibit 3-C
REQUEST FOR PROPOSALS
FOR
DESIGN PROFESSIONAL SERVICES

RFP No.

Packet No.



Project Name	<input type="text"/>
Contracting Agency	<input type="text"/>
Address	<input type="text"/>
	<input type="text"/>
Telephone	<input type="text"/>
Date	<input type="text" value="08/08/2018"/>
Procurement Manager	<input type="text"/>

This form was prepared by the Local Government Division, Department of Finance and Administration, and is endorsed by the Professional Technical Advisory Board [composed of the Consulting Engineers Council of New Mexico, New Mexico Society of Professional Engineers, the American Institute of Architects of New Mexico, the New Mexico Society of Surveyors and Mappers, and the New Mexico Society of Landscape Architects].

NOTICE OF REQUEST FOR PROPOSALS

Qualifications-based competitive sealed proposals for design professional services will be received by the Contracting Agency, _____

for RFP No. _____.

The Contracting Agency is requesting proposals for professional

- ☐ architectural services¹
- ☐ surveying services²
- ☐ planning services

- ☐ engineering services¹
- ☐ landscape architectural services²

For: (insert Project Name and Location): _____

Project No. _____ Proposals will be received at _____

until _____ at _____ Time _____ <a.m. or p.m.> ▾

Copies of the Request for Proposals can be obtained in person at the office of: _____ at _____

or will be mailed upon written or telephone request to _____ at _____

A Pre-Proposal Conference ☒ will ☐ will not be held on _____

20 _____ at _____ Time _____ <a.m. or p.m.> ▾

PURCHASING AGENT:

Date: _____

[For Contracting Agency Use Only]

Newspaper: _____	Publish: _____	P.O. No. _____
Newspaper: _____	Publish: _____	P.O. No. _____
Newspaper: _____	Publish: _____	P.O. No. _____

[Note: This Notice is issued pursuant to the requirements of §13-1-104 NMSA 1978 and must be published not less than 10 calendar days prior to the date set for the receipt of proposals (§13-1-113 NMSA 1978) and published in a newspaper of general circulation in the area.]

¹ RFP required if over \$50,000 in basic design fees excluding taxes or as prescribed by local regulation.

² RFP required if over \$10,000 in basic design fees excluding taxes or as prescribed by local regulation.

1. **PROJECT DESCRIPTION** (as defined by Exhibit "1-A")



2. **SCOPE OF WORK**

The Offeror shall perform the following professional services:

2.1 Provide standard **Basic Design Services**, consisting of:

Architects/Landscape Architects

- ☐ Programming Phase
- ☐ Schematic Phase
- ☐ Design Development Phase
- ☐ Construction Documents Phase
- ☐ Bidding and Negotiations Phase
- ☐ Construction Administration Phase
- ☐ Post-Construction Phase

Surveyors

- ☐ Property Boundary Survey
- ☐ Topographic Survey
- ☐ Easement Survey
- ☐ Right-of-Way Survey
- ☐ Inspection Report

Additional Services

- ☐ Environmental Documentation
- ☐ Permitting
- ☐ Grant Administration
- ☐ Right-of-Way Acquisition

Engineers

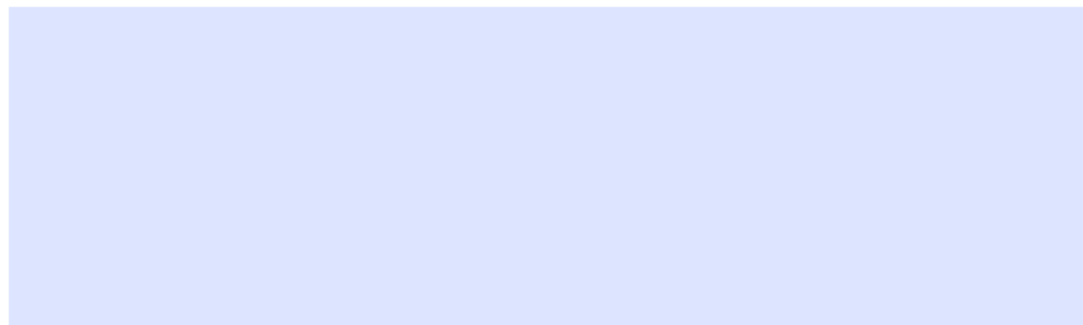
- ☐ Study and Report Phase
- ☐ Preliminary Design Phase
- ☐ Final Design Phase
- ☐ Bidding and Negotiations Phase
- ☐ Construction Phase
- ☐ Operational Phase

Planning Studies

- ☐ Comprehensive Plan
- ☐ Strategic (i.e. issue specific) Plan
- ☐ Mapping and/or Zoning
- ☐ Other Planning Tasks

2.2 ☒ **Periodic** or ☐ **Full-time** on-site observation during construction.

2.3 Other (list):



INSTRUCTIONS TO OFFERORS

1. DEFINITIONS AND TERMS

1.1 **Addendum:** a written or graphic instrument issued prior to the opening of Proposals which clarifies, corrects, or changes the Request for Proposals. Plural: Addenda.

1.2 **Consultant:** means the Successful Offeror awarded the Agreement/Contract.

1.3 **Determination:** means the written documentation of a decision of the procurement officer including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains (§13-1-52 NMSA 1978).

1.4 **Offeror:** means any person, corporation, or partnership legally licensed to provide design professional services in this state, who chooses to submit a proposal in response to this Request for Proposals.

1.5 **Procurement Manager:** means the person or designee authorized by the Contracting Agency to manage or administer a procurement requiring the evaluation of proposals.

1.6 **Request for Proposals:** or "RFP" means all documents, including those attached or incorporated by reference, used for soliciting proposals (§13-1-81 NMSA 1978).

1.7 **Responsible Offeror or Proposer:** means an offeror or proposer who submits a responsive proposal and who has furnished, when required, information and data to prove that his financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services described in the proposal (§13-1-83 NMSA 1978).

1.8 **Responsive Offer or Proposal:** means an offer or proposal which conforms in all material respects to the requirements set forth in the request for proposals. Material respects of a request for proposals include, but are not limited to, price, quality, quantity or delivery requirements (§13-1-85 NMSA 1978).

1.9 The terms **must, shall, will, is required, or are required**, identify a mandatory item or factor. Failure to comply with a mandatory item or factor

will result in the rejection of the offeror's proposal.

1.10 The terms **can, may, should, preferably, or prefers** identify a desirable or discretionary item or factor.

2. REQUEST FOR PROPOSAL DOCUMENTS

2.1 COPIES OF REQUEST FOR PROPOSALS

A. A complete set of the Request for Proposals may be obtained from the Contracting Agency (unless another issuing office is designated in the RFP).

B. A complete set of the Request for Proposals shall be used in preparing proposals; the Contracting Agency assumes no responsibility for errors or misinterpretations resulting from the use of an incomplete set of the Request for Proposals.

C. The Contracting Agency in making copies of Request for Proposals available on the above terms, does so only for the purpose of obtaining proposals on the Project and does not confer a license or grant for any other use.

D. A copy of the RFP shall be made available for public inspection and shall be posted at the Administration Building of the Contracting Agency.

2.2 INTERPRETATIONS

A. All questions about the meaning or intent of the Request for Proposals shall be submitted to the Procurement Manager of the Contracting Agency in writing. Replies will be issued by Addenda mailed or delivered to all parties recorded by the Contracting Agency as having received the Request for Proposals. Questions received less than five days prior to the date for opening of proposals will not be answered. Only questions answered by formal written addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

B. Offerors should promptly notify the Contracting Agency of any ambiguity, inconsistency, or error which they may discover upon examination of the Request for Proposals.

2.3 ADDENDA

A. Addenda will be mailed by certified mail with return receipt requested, by facsimile or hand delivered

to all who are known by the Contracting Agency to have received a complete set of Request for Proposals.

B. Copies of Addenda will be made available for inspection wherever Request for Proposals are on file for that purpose.

C. No Addenda will be issued later than 5 days prior to the date for receipt of Proposals, except an Addendum withdrawing the Request for Proposals or one which includes postponement of the date for receipt of Proposals.

D. Each Offeror shall ascertain, prior to submitting the Proposal, that the Offeror has received all Addenda issued, and shall acknowledge their receipt in the Proposal transmittal letter.

3. PROPOSAL SUBMITTAL PROCEDURES

3.1 NUMBER, FORM AND STYLE OF PROPOSALS

A. Offerors shall provide copies of their proposal to the location specified on the cover page on or before the closing date and time for receipt of proposals.

B. All proposals must be typewritten on standard 8 1/2" x 11" paper and bound on the left-hand margin;

C. A maximum of [redacted] pages, including title, index, etc., not including front and back covers and divider pages.

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

- 1) Letter of Transmittal, if any;
- 2) Response to Specialized Design and Technical Competence;
- 3) Response to Capacity and Capability;
- 4) Response to Past Record of Performance;
- 5) Response to Familiarity with the Contracting Agency;
- 6) Response to Work to be done in New Mexico [cannot to be used for federally funded projects];
- 7) Response to Current Volume of Work with the Contracting Agency not 75% Complete;

- 8) List of Subconsultants;
- 9) Campaign Contribution Disclosure form; and
- 10) Other supporting or resource material.

E. Any proposal that does not adhere to this format, and which does not address each specification and requirement within the RFP may be deemed non-responsive and rejected on that basis.

F. Offerors may request in writing nondisclosure of confidential data. Such data should accompany the proposal and should be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal. A request that states that the entire proposal is kept confidential will not be acceptable. Only matters which clearly are of a confidential nature will be considered.

G. Any cost incurred by the Offeror in preparation, transmittal, presentation of any proposal or material submitted in response to this RFP shall be borne solely by the Offeror.

3.2 SUBCONSULTANTS

A. The Offeror shall list and state the qualifications for each Subconsultant the Offeror proposes to use for all subcontracted Work.

B. The Offeror is specifically advised that any person or other party, to whom it is proposed to award a subcontract under this proposal, must be acceptable to the Contracting Agency after verification by the Contracting Agency of the current eligibility status, including but not limited to suspension or debarment by the Contracting Agency.

3.3 PREQUALIFICATION PROCESS

A business may be prequalified by the Purchasing Agent as an Offeror for particular types of service. Mailing lists of potential Offerors shall include but shall not be limited to such prequalified businesses (§ 13-1-134 NMSA 1978). For purposes of this RFP, if prequalification is utilized, special instructions will be attached as an exhibit to this RFP.

3.4 DEBARRED OR SUSPENDED CONTRACTORS

A business (contractor, subcontractor or supplier) that has either been debarred or suspended pursuant to the requirements of § 13-1-77 through § 13-1-180, and § 13-4-11 through § 13-4-17 NMSA 1978,

as amended, shall not be permitted to do business with the Contracting Agency and shall not be considered for award of the contract during the period for which it is debarred or suspended with the Contracting Agency.

3.5 SUBMITTAL OF PROPOSALS

A. Proposals shall be submitted at the time and place indicated in the Notice of Request for Proposals and shall be included in an opaque sealed envelope marked with the Project title and name and address of the Offeror and accompanied by the documents listed in the Request for Proposals.

B. The envelope shall be addressed to the Purchasing Agent/Procurement Officer of the Contracting Agency. The following information shall be provided on the front lower left corner of the Bid envelope: Project Title, Project N^o, Request for Proposals number, date of opening, and time of opening. If the Proposal is sent by mail, the sealed envelope shall have the notation "**SEALED PROPOSAL ENCLOSED**" on the face thereof.

C. Proposals received after the date and time for receipt of Proposals will be returned unopened.

D. The Offeror shall assume full responsibility for timely delivery of proposals at the Purchasing Agent's office, including those proposals submitted by mail. Hand-delivered proposals shall be submitted to the Purchasing Agent or his designee and will be clocked in/time stamped at the time received, which must be prior to the time specified.

E. After the date established for receipt of proposals, a register of proposals will be prepared which includes the name of each Offeror, a description sufficient to identify the service, the names and addresses of the required witnesses and such other information as may be specified by the Purchasing Agent.

F. Oral, telephonic, or telegraphic proposals are invalid and will not receive consideration.

3.6 CORRECTION OR WITHDRAWAL OF PROPOSALS

A. A Proposal containing a mistake discovered before proposal opening may be modified or withdrawn by an Offeror prior to the time set for proposal opening by delivering written or telegraphic notice to the location designated in the

Request for Proposals as the place where Proposals are to be received.

B. Withdrawn Proposals may be resubmitted up to the time and date designated for the receipt of Proposals, provided they are then fully in conformance with the Request for Proposals.

3.7 NOTICE OF CONTRACT REQUIREMENTS BINDING ON OFFEROR

A. In submitting this proposal, the Offeror represents that the Offeror has familiarized himself with the nature and extent of the Request for Proposals dealing with federal, state and local requirements which are a part of these Request for Proposals.

B. Laws and Regulations. The Offeror's attention is directed to all applicable federal and state laws, local ordinances and regulations and the rules and regulations of all authorities having jurisdiction over the services of the Project.

3.8 REJECTION OR CANCELLATION OF PROPOSALS

This Request for Proposals may be canceled, or any or all proposals may be rejected in whole or in part, when it is in the best interest of the Contracting Agency. A determination containing the reasons therefor shall be made part of the project file (§13-1-131 NMSA 1978).

4. CONSIDERATION OF PROPOSALS

4.1 RECEIPT, OPENING AND RECORDING

A. Proposals received on time will be opened publicly or in the presence of one or more witnesses and the name of the Offeror and address will be read aloud.

B. The names of all businesses submitting proposals and the names of all businesses, if any, selected for interview shall be public information. After an award has been made, final ranking and evaluation scores for all proposals shall become public information. (§13-1-120 NMSA 1978). The contents of any proposal shall not be disclosed so as to be available to competing Offerors during the negotiation process (§13-1-116 NMSA 1978).

4.2 PROPOSAL EVALUATION

A. Proposals shall be evaluated on the basis of

demonstrated competence and qualification for the type of service required, and shall be based on the evaluation factors set forth in this RFP. For the purpose of conducting discussions, proposals may initially be classified as:

- 1) Acceptable,
- 2) Potentially acceptable, that is, reasonably assured of being made acceptable, or
- 3) Unacceptable (Offerors whose proposals are unacceptable shall be notified promptly).

B. The Contracting Agency shall have the right to waive technical irregularities in the form of the Proposal of the Offeror which do not alter the quality or quantity of the services (§131-132 NMSA 1978).

C. If an Offeror who otherwise would have been awarded a contract is found not to be a responsible Offeror, a determination that the Offeror is not a responsible Offeror, setting forth the basis of the finding, shall be prepared by the Purchasing Agent/Procurement Manager. The unreasonable failure of the Offeror to promptly supply information in connection with an inquiry with respect to responsibility is grounds for a determination that the Offeror is not a responsible Offeror (§13-1-133 NMSA 1978). Businesses which have not been selected shall be so notified in writing within twenty-one days after an award is made (§13-1-120 NMSA 1978).

D. Selection Process: (§13-1-120 NMSA 1978)

- 1) The evaluation of proposals will be performed by an evaluation committee composed of representatives selected by the Contracting Agency. The committee shall evaluate statements of qualifications and performance data submitted by at least three businesses in regard to the particular project and may conduct interviews with and may require public presentation by all businesses applying for selection regarding their qualifications, their approach to the project and their ability to furnish the required services.

- 2) If fewer than three businesses have submitted a statement of qualifications for a particular project, the committee may: a) rank in order of qualifications and submit to the local governing body for award those businesses which have submitted a statement of qualifications; or b) recommend termination of the selection process and sending out of new notices of the proposed procurement pursuant to §13-1-104 NMSA 1978.

4.3 NEGOTIATIONS (§13-1-122 NMSA 1978)

A. The Contracting Agency's designee shall negotiate a contract with the highest qualified business for the services contemplated under this RFP at compensation determined in writing to be fair and reasonable. In making this decision, the designee shall take into account the estimated value of the services to be rendered and the scope, complexity and professional nature of the services.

B. Should the designee be unable to negotiate a satisfactory contract with the business considered to be the most qualified at a price determined to be fair and reasonable, negotiations with that business shall be formally terminated. The designee shall then undertake negotiations with the second most qualified business. Failing accord with the second most qualified business, the designee shall formally terminate negotiations with that business.

C. The designee shall then undertake negotiations with the third most qualified business.

D. Should the designee be unable to negotiate a contract with any of the businesses selected by the committee, additional businesses shall be ranked in order of their qualifications and the designee shall continue negotiations in accordance with this section until a contract is signed with a qualified business or the procurement process is terminated and a new request for proposals is initiated.

E. The Contracting Agency shall publicly announce the business selected for award.

4.4 NOTICE OF AWARD

After award by the local governing body, a written notice of award shall be issued by the Contracting Agency after review and approval of the Proposal and related documents by the Contracting Agency with reasonable promptness (§ 13-1-100 and §13-1-108 NMSA 1978).

5. POST-PROPOSAL INFORMATION

5.1 PROTESTS

A. Any Offeror who is aggrieved in connection with a solicitation or award of a Agreement may protest to the Contracting Agency's Purchasing Agent and the Chief Administrator/Clerk in accordance with the requirements of the Contracting Agency's Procurement

Regulations and the state Procurement Code. The protest should be made in writing 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 (§13-1-172 NMSA 1978).

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

C. The Purchasing Agent or his designee shall have the authority to take any action reasonably necessary to resolve a protest of an aggrieved Offeror concerning a procurement. This authority shall be exercised in accordance with adopted regulations, but shall not include the authority to award money damages or attorneys' fees (§13-1-174 NMSA 1978).

D. The Purchasing Agent or his designee shall promptly issue a determination relating to the protest. The determination shall:

1) state the reasons for the action taken; and

2) inform the protestant of the right to judicial review of the determination pursuant to §13-1-175 NMSA 1978 shall immediately be mailed to the protestant and other Offerors involved in the procurement (§13-1-176 NMSA 1978).

5.2 EXECUTION AND APPROVAL OF AGREEMENT

The Agreement shall be signed by the Successful Offeror and returned within an agreed upon time frame after the date of the Notice of Award. No Agreement shall be effective until it has been fully executed by all of the parties thereto.

5.3 NOTICE TO PROCEED

The Contracting Agency will issue a written Notice to Proceed to the Consultant.

5.4 OFFEROR'S QUALIFICATION STATEMENT

Offeror to whom award of a Agreement is under consideration shall submit, upon request, information and data to prove that their financial resources, production or 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)

6. CAMPAIGN CONTRIBUTION DISCLOSURE AND PROHIBITION (§13-1-112 NMSA 1978)

6.1 A prospective contractor subject to the provisions of §13-1-191.1 NMSA 1978 shall disclose all campaign contributions given by the prospective contractor or a family member or representative of the prospective contractor to an applicable public official (governing body) of the Grantee during the two years prior to the date on which a proposal is submitted or, in the case of a sole source or small purchase contract, the two years prior to the date on which the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor or a family member or representative of the prospective contractor to the public official exceeds two hundred fifty dollars (\$250) over the two-year period. See Exhibit A – Campaign Contribution Disclosure Form.

6.2 The form shall be filed with the Grantee as part of the competitive sealed proposal, or in the case of a sole source or small purchase contract, on the date on which the contractor signs the contract.

6.3 A prospective contractor submitting a disclosure statement pursuant to this section who has not contributed to an applicable public official, whose family members have not contributed to an applicable public official or whose representatives have not contributed to an applicable public official shall make a statement that no contribution was made.

6.4 A prospective contractor or a family member or representative of the prospective contractor shall not give a campaign contribution or other thing or value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or during the pendency of negotiations for a sole source or small purchase contract.

6.5 A solicitation or proposed award for a proposed contract may be canceled pursuant to §13-1-181 NMSA 1978 or a contract that is executed may be ratified or terminated pursuant to §13-1-181 NMSA

1978 if:

A. A prospective contractor fails to submit a fully completed disclosure statement pursuant to this section; or

B. A prospective contractor or family member or 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.

6.6 As used in this section:

A. *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;

B. *Family member* means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law,

C. *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;

D. *Prospective contractor* means a person who is subject to the competitive sealed proposal process set forth in the Procurement Code, §13-1-28 NMSA 1978, or is not required to submit a competitive sealed proposal because that person qualifies for a sole source or small purchase contract; and

E. *Representative of the 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.

7. OTHER INSTRUCTIONS TO OFFERORS
(If none, write none)

GENERAL TERMS AND CONDITIONS

1. GOVERNING LAW

The Agreement shall be governed exclusively by the laws of the state of New Mexico as the same from time to time exist.

2. INDEPENDENT CONTRACTORS

The Consultant (design professionals) and his agents and employees are independent Contractors and are not employees of the Contracting Agency. The Consultant and his agents and employees shall not accrue leave, retirement, insurance, bonding, use of Contracting Agency vehicles, or any other benefits afforded to employees of the Contracting Agency as a result of the Agreement.

3. BRIBES, GRATUITIES AND KICK-BACKS

Pursuant to §3-1-191 NMSA 1978, reference is hereby made to the criminal laws of New Mexico (including §30-14-1, §30-24-2, and §30-41-1 through §30-41-3 NMSA 1978) which prohibit bribes, kickbacks, and gratuities, violation of which constitutes a felony. Further, the Procurement Code, §13-1-28 through §13-1-199 NMSA 1978, imposes civil and criminal penalties for its violation.

4. STANDARD FORM OF AGREEMENT BETWEEN CONTRACTING AGENCY AND CONSULTANT (Design Professional)

The form of agreement required by the funding agency or issued by the Contracting Agency will be used for this project. Copies are available and may be reviewed upon request.

5. FEES

A lump sum fixed fee for Basic Service will be negotiated with the Offeror selected. Construction Observation will be calculated on a Payroll Cost times a multiplier³. Additional Services will be calculated on a Payroll Cost times a multiplier³. [Note: ³ or as appropriate or agreed upon]

6. FUNDING

This solicitation is subject to the availability of funds to accomplish the work.

7. DESIGN PROFESSIONAL REGISTRATION

All work shall be under the direction of the applicable design professional legally licensed and registered by the state.

8. PROFESSIONAL LIABILITY INSURANCE

The Offeror ☐ will ☐ will not be required to carry professional liability (errors and omissions) insurance. If required to carry such insurance, the amount of coverage will be ☐ \$250,000, ☐ \$500,000, ☐ \$1,000,000.

Note to Owner regarding Evaluation Criteria

The Request for Proposal must include each of the following evaluation criteria* as required by statute (13-1-120.B NMSA 1978). Each proposal submitted must address the required evaluation criteria. Based on the complexity of the project, the owner may add additional items of concern. The Owner must include a weight factor with each of the evaluation criteria to communicate to the Offerors the relative importance of each.

EVALUATION CRITERIA:

1. **Specialized Design and Technical Competence***

Specialized design and technical competence of the business, including a joint venture or association, regarding the type of services required.

2. **Capacity and Capability***

Capacity and capability of the business to perform the work, including any specialized services, within the time frame

3. **Past Record of Performance***

Past record of performance on contracts with government agencies or private industry with respect to such factors as control of costs, quality of work and ability to meet schedules.

4. **Familiarity with the Contracting Agency***

Proximity to or familiarity with the area in which the project is located.

5. **Work to be Done in New Mexico***

The amount of design work that will be produced by a New Mexico business within this state. Note that this criteria is not allowed for federally funded projects.

6. **Current Volume of Work with the Contracting Agency not 75% Complete***

The volume of work previously done for the entity requesting proposals which is not seventy-five percent complete with respect to basic professional design services [through bidding phase], with the objective of effecting an equitable distribution of contracts among qualified businesses and of assuring the interest of the public in having available a substantial number of qualified businesses is protected; however, that the principal of selection of the most highly qualified business is not violated.

Firm should indicate the volume of work they currently have underway with the Contracting Agency that is less than 75 percent complete. The purpose of this criteria is to help distribute projects among qualified firms. An example of how points can be assigned is provided below.

Value of work not yet completed on projects that are not 75% Complete	(Example) Points to be allowed for this item
None	10
\$1 to \$ 25,000	8
25,001 to 50,000	7
50,001 to 75,000	5
75,001 to 100,000	4
100,001 or more	0

7. **Other Contracting Agency Criteria**

The Owner may add additional elements of interest, such as ability to conduct public meetings, and assign points according to importance. Note: Price **cannot** be a factor.

The evaluation criteria listed on pages 11 and 12 may be modified to fit the Owner's needs. Insert N/A if not applicable or not used in this evaluation.

EVALUATION CRITERIA

Criteria and Point Values

Proposals must address each of the following criteria. Each proposal may be awarded points up to the amount listed.
 [Note: Price ~~cannot~~ be a factor]

RATING SHEET FOR:

Applicant _____

	Possible Points	Points this RFP
PLANNING & DESIGN SERVICES		
1. Specialized Design and Technical Competence*	[30]	_____
2. Capacity and Capability*	[25]	_____
3. Past Record of Performance*	[20]	_____
4. Familiarity with the Contracting Agency*	[10]	_____
5. Work to be Done in New Mexico*		
<input checked="" type="checkbox"/> This criteria is not allowed for federally funded projects.	[0]	<u> 0 </u>
6. Current Volume of Work with the Contracting Agency not 75% Complete *	[10]	_____
7. Other		_____
SUBTOTAL PLANNING & DESIGN SERVICES	[95]	_____

**Items required by statute (19-1-120.B.NMMSA 1978)*

RATING SHEET FOR:

Applicant _____

	Possible Points	Points this RFP
CONSTRUCTION SERVICES		
1. Specialized construction management experience.	[20]	_____
2. Specialized experience with start up assistance to the Owner of new facilities.	[15]	_____
3. Capacity and capability of the consultant to perform the work within the Owner's timeframe.	[15]	_____
4. History of past performance on the three similar projects itemized in PLANNING & DESIGN SERVICES in Item Number 1, including the record of bid amount versus final close out contract amount.	[10]	_____
5. History of claims on three similar construction projects and their resolution. The consultant should detail their claims avoidance approach and construction management philosophy.	[10]	_____
6. Other		_____
7. Other		_____
SUBTOTAL CONSTRUCTION SERVICES	[70]	_____
TOTAL SCORE	[170]	_____

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to Chapter 81, Laws of 2006, any prospective contractor seeking to enter into a contract with any state agency or local public body must file this form with that state agency or local public body. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars (\$250) over the two year period.

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

The following definitions apply:

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

“Campaign Contribution” means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official’s behalf for the purpose of electing the official to either statewide or local office. “Campaign Contribution” includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

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

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

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

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

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

“Representative of a prospective contractor” means an officer or director of a

corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

DISCLOSURE OF CONTRIBUTIONS:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Name of Applicable Public Official: _____

Date Contribution(s) Made: _____

Amount(s) of Contribution(s) _____

Nature of Contribution(s) _____

Purpose of Contribution(s) _____

(The above fields are unlimited in size)

Signature

Date

Title (position)

--OR--

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

Signature

Date

Title (Position)

EXHIBIT 3-D
AGREEMENT BETWEEN OWNER AND ENGINEER

3-D


AGREEMENT BETWEEN OWNER AND ENGINEER

Project

Contract No.

Project No.

Representative



Distribution to:

Owner

Engineer

LGD

Other

This Agreement entered into this day of , 20, by and between

the "Owner"

and

the "Engineer"

Telephone:

Fax:

Email:

Telephone:

Fax:

Email:

Professional and technical services shall be provided by the Engineer through the Project Engineer whose signature is contained on the signature page to this Agreement.

[This document was prepared to be used with Community Development Block Grant and incorporates the use of the standard Agreement for Engineering Services (Publicly Funded Project) used by other funding agencies including the New Mexico Environment Department and the New Mexico Finance Authority. **Additions to the standard agreement document include (SECTION A.22) MAXIMUM ALLOWABLE CONSTRUCTION COST and (SECTION A.23) FEDERAL TERMS AND CONDITIONS FOR PROFESSIONAL SERVICES.** This document has important legal consequences; consultation with an attorney is encouraged with respect to its completion or modification]

Rev 6-16

3D - 1

**AGREEMENTS FOR ENGINEERING SERVICES
(Publicly Funded Project)**

THIS Agreement, made this day of _____, 20____ by and between _____ hereinafter referred to as the OWNER, and _____ hereinafter referred to as the ENGINEER.

The OWNER intends to construct a Project consisting of

_____ in _____ County, State of New Mexico, which may be paid for in part with financial assistance from the United States of America acting through the United States Department of Agriculture – Rural Development, hereinafter referred to as USDA-RD; and/or through the United States Environmental Protection Agency, hereinafter referred to as EPA; and/or the New Mexico Environment Department, hereinafter referred to as NMED; and/or the New Mexico Finance Authority, hereinafter referred to as NMFA; and/or the New Mexico Department of Finance, hereinafter referred to as DFA; all collectively referred to as the Funding Agency. Neither the United States or the State of New Mexico nor any of its departments, agencies, or employees is or will be a party to this Agreement or any sub-agreement. The ENGINEER agrees to perform the various professional engineering services for the planning, design, and construction of said Project in accordance with the provisions of this Agreement.

CONTENTS

SECTION A - GENERAL PROVISIONS

1. General
2. Approvals
3. Responsibilities of the ENGINEER
4. Responsibilities of the OWNER
5. Changes
6. Termination of Contract
7. Payment
8. Time
9. Project Design
10. Audits and Access to Records
11. Subcontracts
12. Insurance
13. Environmental Conditions of Site
14. Mutual Waiver
15. Independent Contractor
16. Equal Employment Opportunity
17. Gratuities
18. Covenants Against Contingent Fees
19. Cost and Pricing Data on Federally Funded Projects

20. Remedies
21. Assurance Against Debarment
22. Maximum Allowable Construction Costs (CDBG)
23. Federal Terms and Conditions for Professional Services (CDBG)

SECTION B - ENGINEERING SERVICES

Engineer Services During the Planning Phase
Engineering Services During the Design Phase
Engineering Services During the Construction Phase
Engineering Services During the Operation Phase

**SECTION C - ADDITIONAL
ENGINEERING SERVICES**

SECTION D - SPECIAL PROVISIONS

Attachment I - Compensation for
Engineering Services During
the Planning Phase

Attachment II - Compensation for
Engineering Services During
the Design Phase

Attachment III - Compensation for
Engineering Services During
the Construction Phase

Attachment IV - Compensation for
Engineering Services During
the Operation Phase

SECTION A - GENERAL PROVISIONS

1. General

(a) This Agreement represents the entire and integrated Agreement between the OWNER and the ENGINEER for the Project and supersedes all prior negotiations, representations or agreements, either written or oral. In the event any provisions of this Agreement or any subsequent addendum shall be held to be invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provision, term, condition or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party. The General provisions of this Agreement supersede any conflicting SPECIAL PROVISIONS.

(b) OWNER and ENGINEER each is bound and the partners, successors, executors, administrators and legal representatives of OWNER and ENGINEER are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives of such other party, in respect of all covenants, agreements, and obligations of the Agreement. Neither OWNER nor ENGINEER may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in the Agreement without written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent of an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Unless expressly provided otherwise in this Agreement:

(1) Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by OWNER or ENGINEER to any Contractor, Contractor's subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them

(2) All duties and responsibilities undertaken pursuant to this Agreement will be for sole and exclusive benefit of OWNER and ENGINEER and not for the benefit of any other party.

(c) The ENGINEER will work closely with the Funding Agency, as necessary, for funding to be provided.

(d) The ENGINEER will attend conferences and public hearings with the OWNER, representatives of the Funding Agency, or other interested parties and provide assistance in connection with such undertakings as provided for in the scope of work detailed in the Attachments.

2. Approvals

(a) This Agreement shall not become effective until approved by the Funding Agency. Such approval shall be evidenced by the signature of a duly authorized representative of the Funding Agency in the space provided in the Attachments to this Agreement. The approval shall in no way commit the Funding Agency to render financial assistance to the OWNER. The Funding Agency is without liability for any payment hereunder, but in the event such assistance is provided, the approval shall signify that the provisions of this Agreement are consistent with the requirements of the Funding Agency.

(b) Review or approval of documents by or for the Funding Agency under this Agreement is for administrative purposes only and does not relieve the ENGINEER or OWNER of their responsibilities to design, construct and operate the Project as required under law, regulations, permits and good management practices.

3. Responsibilities of the ENGINEER

(a) The ENGINEER shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all design drawings, specifications, reports, and other services furnished by the ENGINEER under this Agreement. If this Agreement involves environmental measures or data generation, the ENGINEER shall comply with EPA quality assurance requirements that can be found on their website at <http://www.epa.gov/quality/index.html>. The ENGINEER shall keep the OWNER informed of the performance of the ENGINEER'S duties under this Agreement. The ENGINEER, shall promptly and without additional compensation, correct or revise any errors, omissions, or other deficiencies in the design drawings, specifications, reports, and other services provided by ENGINEER under terms of this Agreement.

(b) The ENGINEER shall perform the professional services necessary to accomplish the work specified in this Agreement, in accordance with this Agreement and applicable Funding Agency requirements in effect on the date of execution of any assistance agreement for this Project.

(c) The OWNER, or Funding Agency review or approval of design drawings, specifications, reports, and other services furnished hereunder shall not in any way relieve the ENGINEER of responsibility for the technical adequacy of the work. Neither the OWNER, nor Funding Agency review, approval or acceptance of, nor payment for any of the services shall be construed as a waiver of action arising out to the performance of this Agreement.

(d) The ENGINEER shall be and shall remain liable, in accordance with applicable law, for all damages to the OWNER caused by the ENGINEER's negligent performance of any of the services furnished under this Agreement, except for errors, omissions or other deficiencies to the extent attributable to the OWNER or OWNER-furnished data. The ENGINEER shall not be responsible for any time delays in the Project caused by circumstances beyond the ENGINEER'S control.

(e) ENGINEER'S opinions of probable Construction Cost are to be made on the basis of ENGINEER'S experience and qualifications and represent ENGINEER'S best judgment as an experienced and qualified professional generally familiar with the construction industry. However, since ENGINEER has no control over the cost of labor, materials, equipment, or services furnished by others, or over Contractor's methods of determining prices, or over competitive bidding or market conditions, ENGINEER cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by ENGINEER. If OWNER wishes greater assurance as to probable Construction Cost, OWNER shall employ an independent cost estimator.

(f) During the Construction Phase, the ENGINEER shall not at any time supervise, direct, or have control over Contractor's work, nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to the Contractor's work in progress, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work.

(g) The standard of care of all professional engineering and related services performed or furnished by ENGINEER under this Agreement will be the care and skill ordinarily used by members of subject profession practicing under similar circumstances at the same time and in the same locality. ENGINEER makes no warranties, expressed or implied, under this Agreement or otherwise, in

connection with ENGINEER'S services.

(h) The ENGINEER's obligations under this clause are in addition to the ENGINEER's other express or implied assurances under this Agreement or State law and in no way diminish any other rights that the OWNER may have against the ENGINEER for faulty materials, equipment, or work.

4. Responsibilities of the OWNER

(a) The OWNER shall designate in writing a person authorized to act as the OWNER's representative. The OWNER or its representative shall receive and examine documents submitted by the ENGINEER, interpret and define the OWNER's policies and render decisions and authorizations promptly in writing.

(b) OWNER shall be responsible for, and ENGINEER may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by OWNER to ENGINEER pursuant to this Agreement. ENGINEER may use such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement without responsibility for verifying accuracy of OWNER furnished data and information.

(c) The OWNER shall provide to the ENGINEER full and free access to enter upon all property required for the performance of the ENGINEER's services under this Agreement.

(d) The OWNER may make and retain copies of Documents for information and reference in connection with use on the Project by OWNER. Such Documents are not intended or represented to be suitable for reuse by OWNER or others on extensions of the Project or on any other project. Any such reuse or modification without written verification or adaptation by ENGINEER will be at OWNER's sole risk and without liability or legal exposure to ENGINEER. Any verification or adaptation as stated above, will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER.

5. Changes

(a) The OWNER may, at any time, with prior approval of the Funding Agency, by written order make changes within the general scope of this Agreement in the services or work to be performed. If such changes cause an increase or decrease in the ENGINEER's cost or time required to perform any services under this Agreement, whether or not changed by any order, the OWNER shall make an equitable adjustment and modify this Agreement in writing. The ENGINEER must assert any claim for adjustment under this clause in writing within thirty (30) calendar days from the date it receives the OWNER's notification of change, unless the OWNER grants additional time before the date of final payment.

(b) No services for which the ENGINEER will charge an additional compensation shall be furnished without the written authorization of the OWNER.

6. Termination of Contract

(a) This Agreement 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 Agreement through no fault of

the terminating party, provided that no such termination may be effected unless the other party is given (1) not less than fourteen (14) 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 before termination.

(b) This Agreement may be terminated in whole or in part in writing by the OWNER for its convenience, provided that the ENGINEER is given (1) not less than fourteen (14) calendar days written notice (delivered by certified, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the OWNER prior to termination.

(c) If termination for default is effected by the OWNER, an equitable adjustment in the price provided for in this agreement 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 ENGINEER at the time of termination may be adjusted to cover any additional costs to the OWNER because of the ENGINEER's default. If the ENGINEER effects termination for default, or if the OWNER effects termination for convenience, 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 ENGINEER for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by the ENGINEER 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 ENGINEER shall (1) promptly discontinue all affected work (unless the notice directs otherwise), and (2) deliver or otherwise make available to the OWNER within fourteen (14) calendar days copies of all data, design drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the ENGINEER in performing this Agreement, whether completed or in process.

(e) Upon termination under paragraphs (a) or (b) above, the OWNER may take over the work and may award another party an Agreement to complete the work under this Agreement.

(f) If, after termination for failure of the ENGINEER to fulfill contractual obligations, it is determined that the ENGINEER had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of the OWNER. In such event, adjustment of the Agreement price shall be made as provided in paragraph 9 of this clause.

7. Payment

(a) The ENGINEER will submit to the OWNER for services rendered an itemized bill showing charges for such services accompanied by any additional documentation requested by the OWNER. Such invoices are limited to no more than one per month. Compensation will be based on the lump sum or standard hourly rate with a maximum method of payment as detailed in the Attachments.

(b) The OWNER shall notify the ENGINEER of any disputed amounts in the invoices within fourteen (14) calendar days of receipt. If OWNER contests an invoice, OWNER may withhold only that portion so contested, and must pay the undisputed portion.

(c) Final Payment under this Agreement or settlement upon termination of this Agreement shall not constitute a waiver of the OWNER's claims against the ENGINEER under this Agreement.

(d) If OWNER fails to make any payment due ENGINEER within forty-five (45) calendar days after OWNER's receipt of ENGINEER's invoice, the amount due ENGINEER shall be increased at the rate of 1.5% per month from said forty-fifth day. In addition, after fourteen (14) calendar days prior written notice, the ENGINEER may suspend services under this Agreement until ENGINEER is paid in full. OWNER waives any and all claims against ENGINEER for any such suspension.

8. TIME

(a) PROGRESS AND COMPLETION

1. Time limits stated in this Agreement are of the essence. By executing the Agreement, ENGINEER confirms that the Contract Time(s) is (are) reasonable periods for performing each phase of the Work.
2. The ENGINEER shall proceed expeditiously, consistent with professional skills, with adequate forces to achieve completion within the Contract Time.
3. The OWNER shall not be liable to the ENGINEER for additional time or money if the ENGINEER submits a progress report expressing an intention to achieve completion of the Work prior to the Contract Time and then is not able to achieve intended accelerated schedule regardless of the reason.
4. If the ENGINEER is delayed at any time in the commencement or progress of the Work by an act or neglect of the OWNER, changes in the Work as directed by the OWNER in writing, or other causes beyond the ENGINEER'S control, then the Contract Time may be extended by OWNER per Section 5 of this Agreement. Extensions of time not associated with modifications or change to the Work shall not be allowed to increase the Contract amount for overhead or for any other reason and shall strictly apply toward liquidated damages.
5. The ENGINEER shall promptly notify OWNER in writing of any conditions that may delay delivery of work beyond the Contract Time.
6. OWNER shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the ENGINEER'S performance of its Services.

(b) CONTRACT TIME AND LIQUIDATED DAMAGES

1. The ENGINEER agrees that the Services being provided under this Agreement will be performed regularly, diligently and without interruption at such rate of progress as will ensure completion within the Contract Time. It is expressly understood and agreed, by and between ENGINEER and the OWNER, that the Contract Time is a reasonable time for completion of the Services, taking into consideration the usual conditions for performing the Services. ENGINEER agrees to promptly notify OWNER of delays in completing the services under this Agreement that are beyond ENGINEER's control and for which a Contract Time extension will be requested. If the ENGINEER neglects, fails or refuses to complete the Services within the Contract Time, including any time extension granted by the OWNER, then the ENGINEER agrees to pay the OWNER the

amount specified below, not as a penalty, but as liquidated damages.

2. The parties agree that the amount of the likely damages to the OWNER for such delay is difficult to ascertain at the time of execution of this Agreement, but that a reasonable estimate of such damages may be deducted from any monthly progress payments due to the ENGINEER or from other monies being withheld from the ENGINEER when a reasonable estimate of the expected date of completion can be determined by the OWNER.
3. Final accounting of Liquidated Damages shall be determined at completion and the ENGINEER shall be liable for any Liquidated Damages over and above unpaid balances held by the OWNER.
4. The OWNER and ENGINEER agree that as mutually agreeable, reasonable Liquidated Damages for delay (but not as a penalty), ENGINEER shall pay OWNER [REDACTED] dollars ([REDACTED]) for each calendar day that expires after the Contract Time specified in the Agreement until the Work is complete and accepted by the OWNER. OWNER shall have no more than ten (10) calendar days to accept or reject the Work.

9. Project Design

Unless otherwise approved by the OWNER and Funding Agency, the ENGINEER shall specify materials, equipment, and processes that are readily available through competitive procurement and consistent with State and Federal regulations.

10. Audits and Access to Records

(a) The ENGINEER shall maintain books, records, documents, and other evidence directly pertinent to performance on work under this Agreement in accordance with generally accepted accounting principles and practices consistently applied, and Funding Agency regulations in effect on the date of execution of this Agreement. The ENGINEER shall also maintain the financial information and data used by the ENGINEER in the preparation of support of the cost submission required under EPA regulations in effect on the date of execution for any negotiated agreement or amendment thereof and a copy of the cost summary submitted to the OWNER. The Funding Agency, the Comptroller General of the United States, the U.S. Department of Labor, OWNER, and the State water pollution control agency or any of their duly authorized representatives shall have access to such books, records, documents, and other evidence for inspection, audit, and copying during normal business hours. The ENGINEER will provide proper facilities for such access and inspection.

(b) The ENGINEER agrees to make paragraphs (a) through (f) applicable to all agreements it awards in excess of \$10,000, at any tier, and to make paragraphs (a) through (f) of this clause applicable to all amendments directly related to Project performance.

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

(d) The ENGINEER 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) upon their request.

ENGINEER during performance of services under this Agreement and for three (3) years from the date of final Federal/State assistance payment to the OWNER for the Project. In addition, those records which relate to any controversy arising under this 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 and made available by the ENGINEER until three (3) years after the date of resolution of such appeal, litigation, claim or exception.

(f) This right of access clause applies to financial records pertaining to all agreements (except formally advertised, competitively awarded, fixed price agreements) and all agreement amendments regardless of the type of agreement. In addition, this right of access applies to all records pertaining to all agreements and agreement amendments:

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

11. Subcontracts

(a) Any subcontractors and outside associates or consultants required by the ENGINEER in connection with services under this Agreement will be limited to such individuals or firms as were specifically identified and agreed to during negotiations of this Agreement. The OWNER must give prior approval for any substitutions, additions or deletions to such subcontractors, associates, or consultants.

(b) The ENGINEER may not subcontract services to subcontractors or consultants in excess of thirty (30) percent of the total phased compensation due ENGINEER and detailed in the Attachments without the OWNER's prior written approval.

12. Insurance

The ENGINEER agrees to obtain and maintain, at the ENGINEER's expense, such insurance as will protect the ENGINEER from claims under the Workman's Compensation Act and such comprehensive general liability and automobile insurance as will protect the OWNER and the ENGINEER from all claims for bodily injury, death, or property damage which may arise from the performance by the ENGINEER, or by the ENGINEER's employees, for the ENGINEER's functions and services required under this

Agreement. Such insurance shall be in an amount not less than [REDACTED] for injury to any one person and [REDACTED] on account of any one accident and in the amount of not less than [REDACTED] for property damage. The ENGINEER further agrees to procure and maintain professional liability (errors and omissions) insurance in an amount not less than [REDACTED] per claim and in the aggregate. Prior to commencement of any work, the ENGINEER shall furnish to the OWNER a certificate that complies with this paragraph. The certificate shall provide that the policy shall not be canceled until at least ten (10) calendar days prior written notice shall have been given to the OWNER. ENGINEER shall provide annual updates of the certificate to demonstrate the policy remains in effect for the duration of this Agreement.

13. Environmental Condition of Site

(a) Owner has disclosed to Engineer in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern located at or near the Site, including type, quantity, and location.

(b) Owner represents to Engineer that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at the Site.

(c) If Engineer encounters an undisclosed Constituent of Concern, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.

(d) It is acknowledged by both parties that Engineer's scope of services does not include any services related to Constituents of Concern. If Engineer or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (1) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.

(e) If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on 30 calendar days notice.

(f) Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

14. Mutual Waiver

To the fullest extent permitted by law, Owner and Engineer waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project.

15. Independent Contractor

Engineer will, at all times during the performance of this Agreement and in connection with the Services, be deemed to be an Independent Contractor. No relationship of employer-employee or agency or other fiduciary capacity is created by this Agreement or by Engineer's performance of the Services.

16. Equal Employment Opportunity

The ENGINEER shall comply with Executive Order 11246, entitled "Equal Employment Opportunity", as amended by Executive Order 11375, and as supplemented in Department of Labor regulations 41 CFR

17. Gratuities

(a) If the OWNER finds after a notice and hearing that the ENGINEER or any of the ENGINEER's agents or representatives offered or gave gratuities (in the form of entertainment, gifts, or otherwise), to any official, employee, or agent of the OWNER or the FUNDING AGENCY in an attempt to secure this Agreement, or favorable treatment in awarding, amending or making any determinations related to the performance of this Agreement, the OWNER may, by written notice to the ENGINEER, terminate this Agreement. The OWNER may also pursue other rights and remedies that the law or this Agreement provides. However, the existence of the facts on which the OWNER bases such findings shall be in issue and may be reviewed in proceedings under the Remedies clause of this Agreement.

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

18. Covenant Against Contingent Fees

The ENGINEER represents that no person or selling agency has been employed or retained to solicit or secure this Agreement 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 ENGINEER for the purpose of securing business. For breach or violation of this assurance the OWNER 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 fees.

19. Cost and Pricing Data on Federally-funded Projects (delete section if not applicable)

The ENGINEER and its subcontractor(s) assure that cost and pricing data submitted for evaluation with respect to negotiation of prices for negotiated agreements, lower tier subagreements, or amendments are based on current, accurate, and complete data supported by their books and records. If the OWNER, or Funding Agency determines that any price (including profit) negotiated in connection with this Agreement, any lower tier subagreement, or any 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 this Agreement shall be modified in writing to reflect such action. Failure to agree on a reduction shall be subject to the Remedies clause of this Agreement.

20. Remedies

Unless otherwise provided in this Agreement, all claims, counter-claims, disputes, and other matters in question between the OWNER and the ENGINEER arising out of or relating to this Agreement or the breach of it will be decided by non-binding mediation or arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the OWNER is located.

21. Assurance Against Debarment

The ENGINEER assures that neither it nor any of its subcontractors are suspended or debarred by EPA or USDA-RD.

22. Maximum Allowable Construction Cost (for CDBG funded projects)

(a) Evaluations of the Owner's Project budget, statements of probable construction cost, and detailed estimates of construction cost prepared by the Engineer represent the Engineer's best judgment as a design professional familiar with the construction industry. It is recognized, however, that the Engineer does not have control over the cost of labor, materials, or equipment; over the Contractor's methods of determining bid prices; or over competitive bidding, market, or negotiating conditions. Accordingly, the Engineer cannot and does not represent that bids or negotiated prices will not vary from the Project budget proposed, established, or approved by the Owner, or from any Statement of Probable Construction Cost or other cost estimate or evaluation prepared by the Engineer.

(b) The Maximum Allowable Construction Cost (MACC) is established, as a condition of this Agreement, as a fixed limit of Construction Cost for design and bidding purposes. The Engineer shall be permitted to determine what materials, equipment, component systems, and types of construction are to be included in the Bidding Documents to bring Construction Cost within the MACC. With the written consent of the Owner, the Engineer may also include in the Bidding Documents either additive or deductive alternate bids to adjust the Construction Cost to the fixed limit.

(c) The acceptance by the Owner at any time during Basic Services of a revised Statement of Probable Construction Cost in excess of the then established MACC will constitute a corresponding increase in the MACC to the extent indicated in the revised statement.

(d) The Owner shall provide a written response to the funding agency of their acceptance of the increased MACC. This written response shall identify the source of the additional funds (or other procedure for covering the cost).

(e) If bidding or negotiations with potential contractors have not commenced within two months after the Engineer submits Bidding Documents to the Owner, the Project budget and/or MACC shall be adjusted to reflect any change in the general level of prices in the construction industry between the date of submission of the Bidding Documents to the Owner and the date on which bids are sought.

(f) The MACC, therefore, is established as a condition of this Agreement. When it is exceeded by the lowest bona fide bid, the Owner with review by the funding agency may: a) give written approval of an increase in the MACC; b) authorize re-bidding the Project within a reasonable time, or c) cooperate with the Engineer in revising the Project scope and, as required to reduce the Probable Construction Cost.

(g) If the Owner elects to reduce the Probable Construction Cost, the Owner shall cooperate with the Engineer in revising the quality and scope of the Project; and the Engineer, without additional charge, shall modify the Drawings and Specifications as necessary to bring the Construction Cost within the MACC. The Engineer shall then assist the Owner through the Bidding process. When the cost estimate or an evaluation prepared by the Engineer indicates that the Project exceeds the MACC, the provisions outlined in this paragraph shall apply.

(h) The MACC shall not exceed _____ dollars (_____).

23. Federal Terms and Conditions for Professional Services (for CDBG funded projects)

State administered Community Development Block Grant monies are federal funds. Section 13-1-308 NMSA 1978 of the Procurement Code stipulates: "When a procurement involves the expenditure of federal funds, the procurement shall be conducted in accordance with mandatory applicable federal law and regulations. When mandatory applicable federal law or regulations are inconsistent with the provisions of the Procurement Code, compliance with federal law or regulations shall be compliance with the Procurement Code." The applicable governing federal procurement standards are defined in OMB Circular A-102, Attachment O. When federal and state procurement policies are different, the more restrictive policies apply so long as they are consistent with Circular A-102 standards.

(a) Termination of Contract for Cause. If, through any cause, the Engineer shall fail to fulfill in timely and proper manner his obligations under this Contract, or if the Engineer shall violate any of the covenants, agreements, or stipulations of this Contract, the Owner shall there-upon have the right to terminate this Contract by giving written notice to the Engineer of such termination and specifying the effective date thereof, at least five days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the Engineer under this Contract shall, at the option of the Owner, become its property and the Engineer shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder.

Notwithstanding the above, the Engineer shall not be relieved of liability to the Owner for damages sustained by the Owner by virtue of any breach of the Contract by the Engineer, and the Owner may withhold any payments to the Engineer for the purpose of set-off until such time as the exact amount of damages due the Owner from the Engineer is determined.

(b) Termination for Convenience of the Owner. The Owner may terminate this contract at any time by giving at least ten (10) days notice in writing to the Engineer. If the Contract is terminated by the Owner as provided herein, the Engineer will be paid for the time provided and expenses incurred up to the termination date. If this Contract is terminated due to the fault of the Engineer, paragraph 1 hereof relative to termination shall apply.

(c) Changes. The Owner may, from time to time, request changes in the scope of the services of the Engineer to be performed hereunder. Such changes, including any increase or decrease in the amount of the Engineer compensation, which are mutually agreed upon by and between the Owner and the Engineer, shall be incorporated in written amendments to this contract.

(d) Personnel.

1. The Engineer represents that he has, or will secure at his own expense, all personnel required in performing the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the Owner.

2. All of the services required hereunder will be performed by the Engineer or under his supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state and local law to perform such services.

3. None of the work or services covered by this contract shall be subcontracted without the prior written approval of the Owner. Any work or services subcontracted hereunder be specified by written contract or agreement and shall be subject to each provision of this Contract.

(e) **Assign ability.** The Engineer shall not assign any interest on this Contract, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the Owner thereto: Provided, however, that claims for money by the Engineer from the Owner under the Contract may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment or transfer shall be furnished promptly to the Owner.

(f) **Reports and Information.** The Engineer, at such times and in such forms as the Owner may require, shall furnish the Owner such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Contract, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Contract.

(g) **Records and Audits.** The Engineer shall maintain accounts and records, including personnel, property and financial records, adequate to identify and account for all costs pertaining to the Contract and such other records as may be deemed necessary by the Owner and to assure proper accounting for all project funds, both federal and non-federal shares. These records will be made available for audit purposes to the Owner or any authorized representative, and will be retained for six (6) years after the expiration of this Contract unless permission to destroy them is granted by the Owner and the funding agency.

(h) **Findings Confidential.** All of the reports, information, data, etc., prepared or assembled by the Engineer under this Contract are confidential and the Engineer agrees that they shall not be made available to any individual or organization without the prior written approval of the Owner.

(i) **Copyright.** No report, maps, or other documents produced in whole or in part under this Contract shall be the subject of an application for copyright by or on behalf of the Engineer.

(j) **Compliance with Local Laws.** The Engineer shall comply with all applicable laws, ordinances and codes of the state and the Owner, and the Engineer shall save the Owner harmless with respect to any damages arising from any tort done in performing any of the work embraced by this Contract.

(k) **Equal Employment Opportunity.** During the performance of this Contract, the Engineer agrees as follows:

1. The Engineer will not discriminate against any employee or applicant for employment because of race, creed, sex, color or national origin. The Engineer will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, sex, color 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 Engineer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Owners setting forth the provisions of this non-discrimination clause.

2. The Engineer will, in all solicitation or advertisements for employees placed by or on behalf of the Engineer, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex, or national origin.

3. The Engineer will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Contract so that such provisions will be binding upon each subcontractor, provided that

the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

4. The Engineer will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

5. The Engineer will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the Owner's representative, the funding agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

6. In the event of the Engineer's non-compliance with the equal opportunity clauses of this Agreement or with any of such rules, regulations or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the Engineer may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

7. The Engineer will include the provisions of paragraphs A through G in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Engineer will take such action with respect to any subcontract or purchase order as the Owner's representative may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that in the event the Engineer becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Owner, the Engineer may request the United States to enter into such litigation to protect the interests of the United States.

(l) Civil Rights Act of 1964. Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

(m) Section 109 of the Housing and Community Development Act of 1974. No person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

(n) "Section 3" Compliance in the Provision of Training, Employment and Business Opportunities

1. The work to be performed under this contract is on a project assisted under a program providing direct federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the project.

2. The parties to this contract will comply with the provisions of said Section 3 and the regulations

issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR 135, and all applicable rules and orders of the Department issued there under prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.

3. The contractor will send to each labor organization or representative or workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

4. The contractor will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135. The Contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

5. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued hereunder prior to the execution of the contract, shall be a condition of the federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors and assigns to those sanctions specified by the grant or loan agreement or contract through which federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.

(o) Interest of Members of the Owner. No member of the governing body of the Owner and no other officer, employee, or agent of the Owner, who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this contract; and the Engineer shall take appropriate steps to assure compliance.

(p) Interest of other Local Public Officials. No member of the governing body of the Owner and no other public official of the Owner, who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this Contract; and the Engineer shall take appropriate steps to assure compliance.

(q) Interest of Engineer and Employees. The Engineer covenants that he presently has no interest and shall not acquire interest, direct or indirect, in the study area or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his services hereunder. The Engineer further covenants that in the performance of this Contract, no person having any such interest shall be employed.

(r) Access to Records. The state funding (grantor) agency, the Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the Engineer which are directly pertinent to this specific contract, for the purpose of audits, examinations, and making excerpts and transcriptions.

(s) All records connected with this contract will be maintained in a central location by the Owner and will be maintained for a period of six (6) years from the official date of close-out of the grant.

SECTION B -ENGINEERING SERVICES

The ENGINEER shall furnish ENGINEERING SERVICES as follows in accordance with the GENERAL PROVISIONS of the Agreement and as authorized by the appropriate Attachment to this Agreement:

Engineering Services During the Planning Phase

1. The ENGINEER shall complete the ENGINEERING SERVICES described in EXHIBIT A – Planning Services scope of work and cost proposal within the time specified in Attachment I – Compensation for Engineering Services During the Planning Phase from the date of written authorization to proceed unless otherwise mutually agreed to in writing by both parties. Any supporting documentation or revisions regarding the ENGINEER's services under this Agreement necessary to obtain the approval of the Funding Agency and all State regulatory agencies will be provided promptly.

2. The ENGINEER shall, prior to completion of ninety (90) percent of the Planning Phase service, prepare and furnish to the OWNER an estimate for total compensation to be paid to the ENGINEER for providing the services to be performed in the Design Phase.

Engineering Services During the Design Phase

3. The ENGINEER shall complete the ENGINEERING SERVICES described in EXHIBIT B – Design Services scope of work and cost proposal and section B-3 through B-11 described herein within the time specified in Attachment II – Compensation for Engineering Services During the Design Phase from the date of written authorization to proceed unless otherwise mutually agreed to in writing by both parties. Any supporting documentation or revisions regarding the ENGINEER's services under this Agreement necessary to obtain the approval of the Funding Agency and all State regulatory agencies will be provided promptly.

4. The ENGINEER shall perform the necessary design surveys, accomplish the detailed design of the Project, prepare contract documents including design drawings, specifications and invitations for bids, and prepare a final opinion of probable Project costs based on the final design of the Project. The design drawings prepared shall be in sufficient detail to show the character and extent of the Project and to permit the actual location of the proposed improvements on the Project site. It is also understood that if subsurface explorations such as borings, or soil tests are required to determine amounts of rock excavation or foundation conditions, the ENGINEER will furnish coordination of said explorations as an Additional Engineering Service, and the costs incident to such explorations, no matter whether they are performed by the ENGINEER or by others shall be paid for by the OWNER as indicated in Section C and set out in Attachment II.

5. The ENGINEER shall review the Engineering Report prepared for this Project and, if necessary and upon consultation with and concurrence of the OWNER, Funding Agency or delegated State as appropriate, shall revise design criteria, design standards, treatment process sizing and other appropriate preliminary design information included in the Plan or other preliminary engineering reports in order to complete the final design for the Project in accordance with the performance standards and accepted engineering practices.

6. The ENGINEER shall assist the OWNER in obtaining necessary permits and approvals from appropriate Federal, State, and local regulatory agencies. The cost of obtaining such permits and approvals shall be borne by the OWNER. However, this shall not be construed as a guarantee that the ENGINEER can cause a permit or permit condition to be granted or further the OWNER's goals.

7. The Contract Documents furnished by the ENGINEER under Section B-4 shall utilize Funding Agency endorsed construction contract documents, as appropriate.

8. Prior to the advertisement for bids, the ENGINEER shall provide for each construction contract to be awarded by the OWNER, the number of copies specified in Attachment II of the detailed design drawings, specifications, and contract documents for use by the OWNER and appropriate Federal, State and local agencies from whom approval of the Project must be obtained. The ENGINEER shall provide additional copies of the above specified documents to the OWNER at the cost of reproduction. Originals of such items as documents, survey notes, and tracings, prepared by the ENGINEER are and shall remain the property of the ENGINEER, but this shall in no way infringe upon the OWNER's rights to such items under Section A-6(e).

9. The ENGINEER shall establish baselines for locating the work together with a suitable number of benchmarks adjacent to the work and show their location in the Contract Documents. This information and the Contract Documents will provide the contractor sufficient reference from which to execute the contract work. The ENGINEER is not obligated to set construction grade stakes for the construction of the Project.

10. The ENGINEER shall prepare and furnish to the OWNER three (3) copies of maps or drawings showing the approximate location of needed construction easements, permanent easements, rights-of-way and land to be acquired. Such maps or drawings shall be furnished promptly to enable the OWNER to initiate property and easement acquisitions.

11. The ENGINEER shall, prior to completion of ninety (90) percent of the Design Phase service, prepare and furnish to the OWNER an estimate for total compensation to be paid to the ENGINEER for providing the services to be performed in the Construction Phase and Operation Phase.

12. Section B-3 through B-11 and those ADDITIONAL ENGINEERING SERVICES designated for the Design Phase in Attachment II will take effect upon execution of Attachment II.

Engineering Services During the Construction Phase

13. ENGINEER shall complete the ENGINEER SERVICES described in EXHIBIT C – Construction Services scope of work and cost proposal and section B-13 through B-24 described herein, within the time specified in Attachment III – Compensation for Engineering Services During the Construction Phase from the date of written authorization to proceed unless otherwise mutually agreed to by both parties.

14. The ENGINEER shall attend the bid opening and tabulate the bid proposals, analyze the

responsiveness of the bidders, check references, and make recommendations for awarding the contract(s) for construction to the lowest responsible, responsive bidder.

15. Upon award of each construction contract, the ENGINEER shall furnish to the OWNER, for each contract, the number specified in Attachment III of the sets of the design drawings, specifications and contract documents for execution by the OWNER and contractor. The ENGINEER shall provide additional copies of such contract documents to the OWNER at the cost of reproduction.

16. The ENGINEER shall review and approve, for conformance with the design concept all shop drawings and other submittals required by the Contract Documents to be furnished by contractors.

17. The ENGINEER shall interpret the general intent of the design drawings and specifications to endeavor to protect the OWNER against defects and deficiencies in construction on the part of the contractors.

18. The ENGINEER shall provide general engineering review of the work of the contractors as construction progresses to ascertain that the contractors are conforming to the general design concept. Engineer shall, in connection with observations of Contractor's Work while it is in progress make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, but at least monthly, to observe as an experienced and qualified design professional the progress and quality of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of Contractor's Work in progress or to involve detailed inspections of Contractor's Work in progress beyond the responsibilities specifically assigned to Engineer in this Agreement and the Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.

19. The ENGINEER's undertaking hereunder shall not relieve the contractor of its obligation to perform the work in conformity with the Contract Documents and in a workmanlike manner; nor shall it make the ENGINEER an insurer of the contractor's performance. Engineer shall not at any time supervise, direct, or have control over Contractor's work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to the Contractor's work in progress, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work.

20. The ENGINEER shall review each contractor's applications for progress and final payments and submit sufficient copies of same to the OWNER with the ENGINEER's recommendation for approval or disapproval.

21. The ENGINEER shall prepare necessary contract change orders for approval of the OWNER, the Funding Agency and others as required. The ENGINEER shall make an independent assessment of the

Contractor's cost and time proposal and the impacts on the Contract Price and Contract Time as part of the review and recommendation process for each change order.

22. The ENGINEER shall make a site visit prior to issuing the certificate of substantial completion of all construction and submit a written report to the OWNER, the Funding Agency and others as required.

23. Prior to submission of recommendation for final payment on each contract, the ENGINEER shall submit a certificate of substantial completion of work done under that contract to the OWNER, the Funding Agency and others as required.

24. The ENGINEER shall provide the OWNER with record drawings as specified in the scope of work for Attachment III. Such drawings will be based upon the Resident Project Representative's construction data and the construction records provided by the contractor during construction and reviewed by the Resident Project Representative.

25. Section B-13 through B-24 and those ADDITIONAL ENGINEERING SERVICES designated for the Construction Phase in Attachment III will take effect upon execution of Attachment III.

Engineering Services During the Operation Phase

26. The ENGINEER shall complete the ENGINEERING SERVICES described in EXHIBIT D – Operational Services scope of work and cost proposal and section B-26 through B-31 within the time specified in Attachment IV – Compensation for Engineering Services During the Operation Phase from the date of written authorization to proceed unless otherwise mutually agreed to in writing by both parties.

27. The ENGINEER shall review the first year's operation of the Project and revise the operation and maintenance manual for the Project as necessary to accommodate actual operating experience.

28. The ENGINEER shall provide to the OWNER monthly operation reports on the performance of the Project.

29. The ENGINEER shall train operating personnel and prepare curricula and training material for operating personnel.

30. Eleven (11) months after the initiation of the Project operation, the ENGINEER shall advise the OWNER in writing whether the Project meets the project performance standards.

31. Section B-26 through B-30 and those ADDITIONAL ENGINEERING SERVICES designated for the Operation Phase in Attachment IV will take effect upon execution of Attachment IV.

SECTION C - ADDITIONAL ENGINEERING SERVICES

ADDITIONAL ENGINEERING SERVICES as detailed in the Attachments shall be provided by the

ENGINEER upon written authorization by the OWNER and concurrence of Funding Agency. Compensation for performing the designated ADDITIONAL ENGINEERING SERVICES will be included on Attachment I, Attachment II, Attachment III, or Attachment IV. ADDITIONAL ENGINEERING SERVICES could include such things as the following.

1. Provide Resident Project Observation. The ENGINEER shall, prior to the preconstruction conference, submit a resume of the Resident Project Representative's qualifications, anticipated duties and responsibilities for approval by the OWNER and the Funding Agency. Resident observation includes checking lines and grades, keeping records of full measurements and the contractor's activities, passing information between the ENGINEER and contractor, reviewing of contractor's request for progress payments, inspection of completed work for compliance with Contract Documents and keeping of a daily diary per Funding Agency requirements. Performance of this service will not guarantee the contractor's performance, but it endeavors to protect the OWNER against defects and deficiencies in the Project and verify compliance with the contract Documents. Period of service for calculating compensation will be as specified in the Attachments.
2. Prepare site, boundary, and topographic surveys for treatment works, dams, reservoirs, and other similar special surveys as may be required.
3. Conduct laboratory tests, well tests, borings, and specialized geological, soils, hydraulic, or other studies recommended by the ENGINEER.
4. Prepare property surveys, detailed descriptions of sites, maps, drawings, or estimates related thereto; assist in negotiating for land and easement rights.
5. Appear before courts or boards on matters of litigation related to the project.
6. Assist OWNER with developing a user charge system. Design a user charge system to produce adequate revenues required for the operation, maintenance and replacement of the Project that meets applicable EPA or other requirements.
7. Prepare an operation and maintenance manual.
8. Provide construction-staking services.
9. Prepare or review environmental assessments and impact statements; review and evaluate the effects on the design requirements for the Project of any such statements and documents prepared by others; and assist in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
10. Provide services resulting from significant changes in the scope, extent or character of the portions of the Project designed or specified by ENGINEER or its design requirements including, but not limited to, changes in size, complexity, OWNER's schedule, character of construction or method of financing; and revising previously accepted studies, reports, Drawings, Specifications or Contract

Documents when such revisions are required by changes in laws, rules, regulations, ordinances, codes, standards or orders enacted subsequent to the Effective Date of this Agreement or are due to any other causes beyond ENGINEER's control.

11. Provide services resulting from evaluation by ENGINEER during the Study and Report Phase at OWNER's request of alternative solutions in addition to those specified in Exhibit A to Attachment I.

12. Prepare for, coordinate with, participate in and respond to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering and constructability review requested by OWNER; and performing or furnishing services required to revise studies, reports, Drawings, Specifications or other Bidding Documents as a result of such review processes.

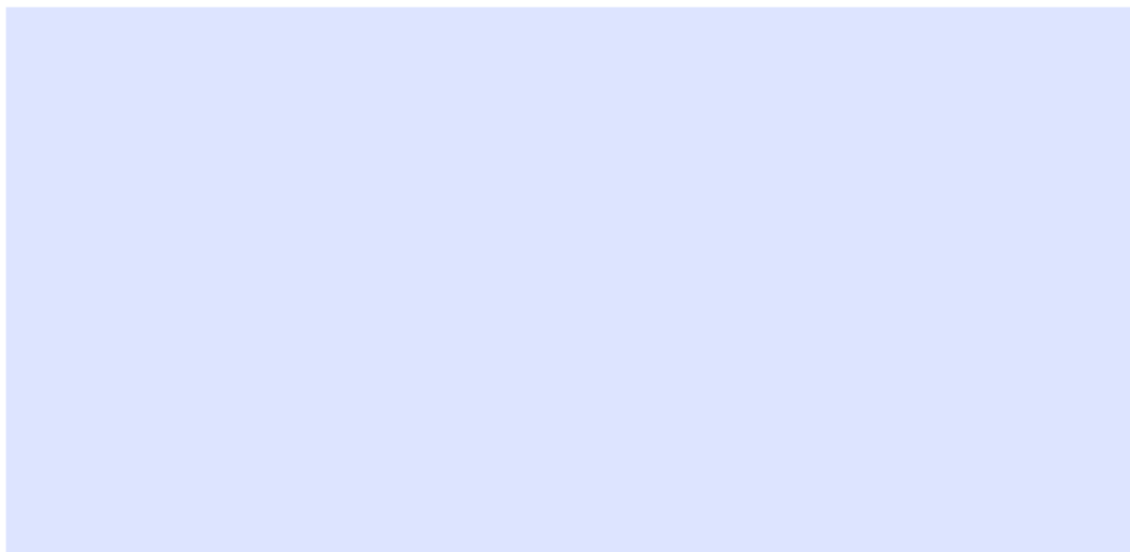
13. Provide services in connection with Work Change Directives and Change Orders to reflect OWNER-requested changes to the Drawings and Specifications.

14. Provide services in making revisions to Drawings and Specifications occasioned by the OWNER's acceptance of substitute materials or equipment other than "or-equal" items; and services after the award of the construction contract in evaluating and determining the acceptability of a substitution.

15. Provide additional or extended services during construction made necessary by (1) emergencies or acts of God endangering the Work, (2) work damaged by fire or other cause during construction, (3) a significant amount of defective, neglected or delayed work by Contractor, (4) acceleration of the progress schedule involving services beyond normal working hours, or (5) default by Contractor.

SECTION D - SPECIAL PROVISIONS OR MODIFICATIONS TO THE STANDARD LANGUAGE IN THIS AGREEMENT

(Describe, attach or indicate "None")



Rev 6-16

3D - 24

IN WITNESS THEREOF, the parties hereto have executed, or caused to be executed, by their duly authorized officials, this Agreement in triplicate on the respective dates indicated below. **The parties further certify by their signatures below that no modifications have been made to the standard language of this Agreement, other than those detailed in Section D.**

ATTEST: _____
Type Name _____
Title _____
Date _____

OWNER:
By _____
Type Name _____
Title _____
Date _____

ATTEST: _____
Type Name _____
Title _____
Date _____

ENGINEER:
By _____
Type Name _____
Title _____
Date _____

CONCURRENCE: FUNDING AGENCY
NAME: _____
By _____
Type Name _____
Date _____

- ☐ **ATTACHMENT I** - Compensation for Engineering Services During the Planning Phase
- ☐ **ATTACHMENT II** - Compensation for Engineering Services During the Design Phase
- ☐ **ATTACHMENT III** - Compensation for Engineering Services During the Construction Phase
- ☐ **ATTACHMENT IV** - Compensation for Engineering Services During the Operation Phase

1. As set forth in the AGREEMENT FOR ENGINEERING SERVICES dated the _____ day of _____, 20____ by and between the _____, the OWNER, and _____, the ENGINEER, the OWNER and ENGINEER agree this _____ day of _____, 20____ that the OWNER shall compensate the ENGINEER for services described in Section B and Section C and further described in

- ☐ **EXHIBIT A** – Planning Services scope of work and cost proposal
- ☐ **EXHIBIT B** – Design Services scope of work and cost proposal
- ☐ **EXHIBIT C** – Construction Services scope of work and cost proposal
- ☐ **EXHIBIT D** – Operational Services scope of work and cost proposal

2. Compensation for ENGINEERING SERVICES shall be by the **LUMP SUM** method of payment. The total amount of compensation for ENGINEERING SERVICES, as described in the appropriate EXHIBIT, shall not exceed _____, excluding gross receipt tax and reimbursables.

STANDARD HOURLY RATE WITH MAXIMUM method of payment. The total amount of hourly charges, excluding gross receipt tax and reimbursables, for ENGINEERING SERVICES as described in the appropriate EXHIBIT shall not exceed _____ without prior written approval of the OWNER, with Funding Agency concurrence.

3. Compensation for ADDITIONAL ENGINEERING SERVICES, shall be by the

☐ **LUMP SUM** method of payment. The total amount of compensation for ADDITIONAL ENGINEERING SERVICES, as described in the appropriate EXHIBIT, shall not exceed _____ gross receipt tax and reimbursables.

☐ **STANDARD HOURLY RATE WITH MAXIMUM** method of payment. The total amount of hourly charges, excluding gross receipt tax and reimbursables, for ADDITIONAL ENGINEERING SERVICES as described in the appropriate EXHIBIT shall not exceed _____ without prior written approval of the OWNER with Funding Agency concurrence.

4. The amount of compensation shall not change unless the scope of services to be provided by the ENGINEER changes and this Agreement is formally amended according to Section A-5. Contract Time under Section B. and for the purpose of Section A.8 shall be _____ calendar days (or as specified in the Attachments or Exhibits)

5. OWNER shall pay ENGINEER applicable gross receipt taxes and reimbursable expenses at the

rates set forth in the appropriate EXHIBIT. The amounts payable to ENGINEER for reimbursable expenses will be the project related internal expenses, such as mileage, per diem and reproduction, actually incurred or allocated by ENGINEER, plus all invoiced external reimbursable expenses, including consultants, allocable to the project, the latter multiplied by a factor of _____. Reimbursable expenses shall not exceed the estimate in the EXHIBIT without prior written approval of the OWNER, with Funding Agency concurrence.

6. The method for interim or partial payments, such as milestone or time & materials, shall be as detailed below:

7. Signatures

IN WITNESS THEREOF, the parties hereto have executed, or caused to be executed, by their duly authorized officials, this Agreement in triplicate on the respective dates indicated below.

ATTEST : _____
Type Name _____
Title _____
Date _____

OWNER:
By _____
Type Name _____
Title _____
Date _____

ATTEST : _____
Type Name _____
Title _____
Date _____

ENGINEER :
By _____
Type Name _____
Title _____
Date _____

CONCURRENCE : FUNDING AGENCY
NAME: _____
By _____
Type Name _____
Date _____

EXHIBIT 3-E
AGREEMENT BETWEEN OWNER AND ARCHITECT


Exhibit 3-E AGREEMENT BETWEEN OWNER AND ARCHITECT	
Project _____	
Contract N°. _____	Project N°. _____
	
Distribution to:	
<input type="checkbox"/> Owner	
<input type="checkbox"/> Architect	
<input type="checkbox"/> LGD	
<input type="checkbox"/> Other	
This Agreement entered into this _____ day of _____, 20____, by and between	
<u>the Owner</u>	and the Architect
┌	┐
└	┘
Professional and technical services shall be provided by the Architect through the Project Architect whose New Mexico Architect's seal and certificate number, and federal and state ID Numbers are shown on the signature page to this Agreement.	
[This document was prepared to be used with Community Development Block Grant and state funded projects. This document has important legal consequences; consultation with an Attorney is encouraged with respect to its completion or modification]	
REV 6-16	

TABLE OF CONTENTS

Article 1	Definitions
Article 2	Architect's Services and Responsibilities
Article 3	User Representative
Article 4	Owner's Responsibilities
Article 5	Construction Cost
Article 6	Reimbursable Expenses
Article 7	Payment to the Architect
Article 8	Architect's Accounting Records
Article 9	Ownership and Use of Documents
Article 10	Termination of Agreement
Article 11	General and Special Provisions
Article 12	Basis of Compensation
Article 13	Other Conditions or Services

RECITALS

WHEREAS, this project is funded in whole or in part by a federal or state grant or loan program administered by the Local Government Division, Department of Finance and Administration, state of New Mexico, hereinafter referred to as the "funding agency"; and

WHEREAS, the Architect was selected pursuant to Sections 13-1-119 through 13-1-122 NMSA 1978 and the Owner's Procurement Regulations; and

WHEREAS, the Owner is authorized to enter into a contract to design and construct the Project pursuant to Sections 13-1-100 NMSA 1978; and

WHEREAS, the Owner must hire a legal registered architect of New Mexico whenever any public work involves architectural services over \$100,000, pursuant to Section 61-23-26 NMSA 1978; and

WHEREAS, the Architect hereby represents that it employs the named Project Architect, and that such architect is a legal registered architect of New Mexico; and

WHEREAS, the Owner agrees to hire the Architect, and the Architect agrees to provide professional and technical services as required hereinafter for the Project in accordance with the terms and conditions set forth in this Agreement;

IT IS THEREFORE AGREED AS FOLLOWS:

ARTICLE 1 DEFINITIONS

For purposes of this Agreement, the following definitions shall apply throughout the contract and to all attachments incorporated herein, unless otherwise specified.

1.1 *Architect* means the firm named in this Agreement which employs a legal registered architect of New Mexico or an individual legal registered architect of New Mexico. In the instance of a firm the term "Architect" shall include the Project Architect.

1.2 *Central Purchasing Officer* means the designated Purchasing Agent/Central Purchasing Officer of the Owner.

1.3 *Codes* means the federal, state, and local codes applicable to the Project.

1.4 *Direct Salary* means the gross wages, which do not include costs of employer beyond the amounts of the paychecks.

1.5 *Governing Authority* means the local governing authority for the award of construction contracts is the governing body, and the governing authority for the execution of construction contracts is the mayor/county commission chairman.

1.6 *MACC* means Maximum Allowable Construction Cost is the total sum available for construction purposes, including applicable gross receipt and local option taxes, furnishings and equipment, but excluding professional fees, Owner's contingency funds and acquisition costs, and other costs which are the responsibility of the Owner as described in Article 5 and Article 6 of this Agreement.

1.7 *Owner* means the public corporation or association with whom the Architect has entered into the Agreement and for whom the Work is to be provided.

1.8 *Owner Representative* means for purposes of this Agreement, the Owner Representative shall be designated by the Owner and whose names shall be submitted in writing to the Architect. The Owner

Representative shall be responsible for administrative decisions and approvals and for contact with the Architect regarding contractual matters and Project execution.

1.9 *Project* means the Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part. The Project is further defined as follows in Paragraph 13.2.

1.10 *Project Architect* means the individual legal registered architect of the state of New Mexico who shall sign and affix his New Mexico Architect's seal to all plans, designs, drawings, specifications, and reports which involve the Project. The Project Architect shall be mutually agreed upon by Owner and Architect at the time this Agreement is entered into by the parties and shall be named herein.

1.11 *Reimbursable Expenses* means expenses in addition to the basic services compensation which shall include actual expenditures made by the Architect or its employees in the interest of the Project, while performing architectural services pursuant to this Agreement, and limited to those items listed in Article 6 of this Agreement and authorized in writing by the Owner.

1.12 *Site* means the physical location on which the Project is built, including all land acquired for the Project or associated with the Project, including all easements and right-of-way.

1.13 *Statement of Probable Construction Cost* means the Probable Construction Cost means the estimated cost to the Owner of those portions of the entire Project designed or specified by the Architect. Probable Construction Cost does not include Architect's compensation and expenses, the cost of land, rights-of-way, or compensation for or damage to properties, or Owner's legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project or the cost of other services to be provided by others to the Owner pursuant to Article 4 of this Agreement.

1.14 *User (or User Agency)* means the agency or department or designated entity for whose use the Project is being constructed. For purposes of this Agreement, see paragraph 13.3 for User designation.

1.15 *User Representative* means the individuals designated by the User as the principal contact regarding the Owner's requirements for the Project. Unless specifically designated by the Owner, the User Representative shall not have the authority to render administrative decisions or approvals. See also Article 3 herein. For purposes of this Agreement, the User Representative shall be designated by the Owner and whose names shall be submitted in writing to the Architect.

1.16 *Other Definitions* means the remaining definitions found in Article 1, Definitions, of the Conditions of the Contract for Construction, as provided as a part of Exhibit F hereto.

ARTICLE 2 ARCHITECT'S SERVICES AND RESPONSIBILITIES

2.0 Basic Services

2.0.1 General. The Architect's basic services shall consist of the following: a) Programming Phase; b) Schematic Design Phase; c) Design Development Phase; d) Construction Documents Phase; e) Bidding Phase; and f) Construction Phase. The services to be provided during each phase are listed below and shall include all consulting services required by the Architect to provide the service as listed on Exhibit C.

2.0.2 The Architect shall request from the User Representative the following:

A. Information sufficient for the Architect to develop program criteria including the User's goals, objectives, and needs, and the organizational chart of individuals and equipment that shall occupy the Project.

B. To the extent practicable and reasonable, the Architect shall incorporate the User Representative's requests into the documents for construction; however, the Architect is responsible solely to the Owner for the types of material incorporated into the construction, the size of the facilities constructed, and to design within the MACC in accordance with Article 5.

C. A list (by manufacturer and model number) of special equipment (other than 110 volt, 60HZ, requiring less than 10 amps) that requires utility services, including telecommunication equipment such as data transmission and computer lines.

2.0.3 Furnishings and Equipment. The Architect shall provide as a basic service all required work for design, selection, and preparation of contract documents, and bidding for the procurement of furniture, furnishings, and related equipment, unless otherwise noted in Article 13.

2.0.4 Project Legislation or Authorization. The Architect shall request from the Owner and the User copies of documents supporting the funding request which were presented to the funding entity or other regulatory agencies that provided funds for construction of the envisioned Project. These documents will be furnished for information only. The Owner will establish a budget for utilization by the Architect in the performance of the services.

2.0.5 Standard of Care. The standard of care for all professional architectural and related services performed or furnished by the Architect under this Agreement will be the care and skill ordinarily used by members of the Architect's profession practicing under similar conditions at the same time and in the same locality. The Architect makes no warranties, express or implied, under this Agreement or otherwise, in connection with the Architect's services.

2.1 PROGRAMMING PHASE

2.1.1 The program shall establish goals, collect facts, identify concepts, and determine functional needs necessary to complete the Project within the funding mandate. Based on the data provided by the User Representative and pursuant to adequate consultation with the User Representative, the Architect shall prepare a document that adequately defines the scope of the Project. The Architect shall prepare a Statement of Probable Construction Cost and provide a comparison to the limits of the MACC.

2.1.2 The Owner and the User Representative shall work with the Architect to ensure that the information required by the Owner is made available to the Architect. This information and other requests concerning organization of functions shall be provided in the form of written memoranda.

2.1.3 The Owner shall schedule a meeting with the Architect and the User Representative to define the relationship among these parties. The Architect shall advise the Owner, in writing, of any information he requires which has not been provided by the Owner and/or the User Representative, or any conflicts

between the established program requirements, the MACC, and the funding authorizing the Project.

2.1.4 The Architect shall obtain the approval of the Owner, in writing, of the Study and Report Phase before commencing work on the Schematic Design Phase.

2.1.5 The Architect shall identify and analyze requirements of governmental authorities having jurisdiction to approve the design of the Project and participate in consultation with such authorities.

2.1.6 The Architect shall request site survey data in accordance with Paragraph 4.4.

2.1.7 The responsibility for bringing the Project within the MACC and compliance with construction directives remains with the Architect, as elaborated in subparagraph 5.2.2. Should the Architect at any time conclude that the budget and the scope of work to be accomplished are incompatible; the Owner shall be notified immediately in writing, with proposed recommendations to reconcile the incompatibility.

2.2 SCHEMATIC DESIGN PHASE

2.2.1 From the approved program, the Architect shall prepare Schematic Design drawings and documents describing the general planning concepts, probable engineering systems, types of materials envisioned, a breakdown of the budget on current area, volume, or other unit costs, and the approximate dimensions of the programmed areas. The Architect shall obtain the written approval of the User Representative and the Owner of the Schematic Design drawings and documents before commencing work on the Design Development Phase. The current state or owner-adopted Uniform Building Code (UBC) and other applicable codes are incorporated into this Agreement by reference. Where applicable, the provisions of these documents shall apply. The Architect shall brief and obtain the written approval of the User Representative and the Owner of the Schematic Design drawings and documents.

2.2.2 The Architect shall submit to the Owner for review and written approval a refined Statement of Probable Construction Cost at the completion of the Schematic Design Phase. Should the Architect conclude, at any time, that the budget and the scope of the work to be accomplished are incompatible the Owner shall be notified immediately in writing, with

proposed recommendations to reconcile the incompatibility. Should this Statement of Probable Construction Cost exceed the limits of the MACC, the procedures regarding adjustment of Project Scope and/or funding contained in Article 5 will be followed.

2.3 DESIGN DEVELOPMENT PHASE

2.3.1 From the approved Schematic Design Documents, the Architect shall prepare the Design Development Documents consisting of drawing, outline specifications, and other documents to fix and describe the size and character of the entire Project as to structural mechanical, and electrical systems materials, and such other design essentials as may be appropriate. Additionally, these documents shall identify design features, program modifications, the probable Project Schedule, equipment installed in the Project or furnishing s required, and a statement, which identifies the need for any additional data, surveys, or tests. The Architect shall acquire the approval, in writing, of the User Representative, the Owner and the Governor's Commission on Disability on all documents associated with the Design Development Phase before commencing work on the Construction Documents Phase.

2.3.2 The Architect shall submit to the Owner for review and written approval a refined Statement of Probable Construction Cost at the completion of the Design Development Phase. Should the Architect conclude, at any time, that the budget and the scope of work accomplished are incompatible the Owner shall be notified immediately in writing, with proposed recommendations to reconcile the incompatibility. Should this Statement of Probable Construction Cost exceed the limits of the MACC, the procedures regarding adjustment of Project Scope and/or funding contained in Article 5 will be followed.

2.4 CONSTRUCTION DOCUMENTS PHASE

2.4.1 From the approved Design Development Documents, the Architect shall prepare Bidding Documents setting forth in detail the requirements for the construction of the entire Project, which shall at a minimum include the requirements of state and federal laws and regulations and include bid forms, the Conditions of the Contract for Construction (General, Supplementary, and other Conditions of the

Contract), and the Standard Form of Agreement between Owner and Contractor. The Architect shall incorporate in the Bidding Documents the provision of Information Available to Bidders as provided as a part of Exhibit F and incorporated herein by reference. The Notice of and Invitation for Bid shall be prepared by the Architect. The Architect shall assist the Owner in filing the required documents for the approval of the funding agency, governmental and other authorities having jurisdiction over the Project. The Architect shall submit a copy of the Schematic Design Drawings for review and comment to the Governor's Commission on Disability, Lamy Building, Room 117, 491 Old Santa Fe Trail, Santa Fe, New Mexico, telephone 505-476-0412.

2.4.2 The Bidding Documents shall be based upon information contained in the Design Development Drawings and other documents previously approved by the Owner. Upon completion of the Bidding Documents, the Architect shall brief the User Representative and the Owner on the Bidding Documents, specifically addressing previously approved requirements contained in the Design Development Drawings and other documents.

2.4.3 The Architect shall submit to the Owner for review and written approval a refined Statement of Probable Construction Cost at the completion of the Construction Documents Phase. Should the Architect conclude, at any time, that the budget and the scope of work accomplished are incompatible the Owner shall be notified immediately in writing, with proposed recommendations to reconcile the incompatibility. Should this Statement of Probable Construction Cost exceed the limits of the MACC, the procedures regarding adjustment of Project Scope and/or funding contained in Article 5 will be followed.

2.4.4 The Architect shall furnish Bidding Documents to the Owner bearing the approval of the following:

☐ For Building-Type Projects:

- A. the state Construction Industries Division, Regulation and Licensing Department;
- B. If applicable, the state Occupational Health and Safety Bureau, Environmental Improvement Division, Environment Department; and
- D. If applicable, the state Food Quality Section, Environmental Improvement Division, Environment Department; and

☐ For Street, Sewer, and Water-Type Projects:

A. If applicable, the state Environment Department;

B. If applicable, the state Department of Transportation;

☐ Others – (list)

2.4.5 The Architect shall provide a signature-approval block on the front sheet of the drawings and specifications for a) User Agencies, b) Mayor/County Commission Chairman, Manager/Administrator, Owner Representative, and c) utility companies (as appropriate). Review and signatures of all shall be obtained by the Architect.

2.4.6 Only materials and systems available at the time of this Agreement or reasonably believed to become available prior to the expiration of the Construction Contract shall be specified in the Contract Documents. The Bidding Documents shall include a list of those items (or categories of items) for which shop drawings or submittals are required.

2.4.7 Project Wage Rate Determination(s): The Architect shall request from the state Department of Labor a minimum wage rate determination for the Project, if the project is over \$60,000, pursuant to Section 13-4-11 to 17 NMSA 1978 and from the Funding Agency a federal wage rate determination, if the project is over \$2,000, if federal funds are used. The Architect shall be required to call the Funding Agency no less than 10 days from bid opening date to verify that the latest federal wage rate determination is being used in the Bidding Documents. The Architect shall provide a description of the Project, an estimate of construction cost, an approximate bid opening date, and any other pertinent information required by the Labor Department. The Architect shall include the wage rate determination(s) in the Bidding Documents.

2.4.8 The Architect shall provide technical criteria, written description and design data for the Owner's use in filing application for permits with or obtaining approvals of such governmental authorities as have jurisdiction to approve the design of the Project, and assist the Owner in consultations with appropriate authorities.

2.5 BIDDING PHASE

2.5.1 The Architect, following the Owner's written approval of the Bidding Documents, shall assist the

Owner in obtaining bids and in awarding and preparing contracts for construction and attend pre-bid conferences. The finalized Notice of or Invitation for Bid shall be forwarded to the Owner by the Architect. The Owner shall issue a purchase order and advertise for the project.

2.5.2 The Architect shall provide sets of Bidding Documents as required to the Owner, sets as required by the reviewing agencies, and sets as appropriate to all prime Bidders requesting documents for bidding purposes; and maintain a record of prospective bidders to whom Bidding Documents have been issued and receive and process deposits for Bidding Documents.

A. Prime Bidders shall be defined as General Contractors, who will be allowed no more than three sets; major subcontractors as listed in the form; or other major suppliers. An additional number of documents shall be placed in plan rooms as well as in the Architect's office for review by prospective Bidders. The Architect shall also make sets available to other prospective parties as requested. The Architect may charge the cost of reproduction to the party requesting the documents.

2.5.3 The Architect shall clarify and answer any questions about the Bidding Documents during the bidding process and shall issue Addenda as required to all Bidders and the Owner.

2.5.4 The Architect shall attend the bid opening, prepare bid tabulation sheets and assist the Owner in evaluating bids.

2.5.5 The Bidding Phase will terminate and the services to be performed or furnished thereunder will be considered complete upon Owner's award or rejection of the Contract for Construction.

2.6 CONSTRUCTION PHASE- Administration of the Construction Contract

2.6.1 The Construction Phase will commence with the award of the Contract for Construction and ends with the final payment to the Contractor.

2.6.2 The Architect shall provide administration of the construction contract as required and defined in the Conditions of the Contract for Construction. The extent of the Architect's duties and responsibilities and the limitations of his authority thereunder shall not be modified without the Owner's written consent.

2.6.3 The Architect shall be the representative of the Owner during the Construction Phase and shall advise and consult the Owner. Instructions to the Contractor shall be forwarded only through the Architect. The Architect shall have authority to act on behalf of the Owner only to the extent provided in the Contract Documents and any amendments thereto.

2.6.4 The Architect shall at all times have access to the Work, whether it is in preparation or progress.

2.6.5 The Architect shall submit to the Owner, for approval, a list of critical inspection points based upon the construction schedule furnished by the Contractor. The Architect shall make periodic visits to the site at such other times as appropriate during the progress of the Work for the purposes of notifying the Owner on the progress and condition of the Work and to adequately represent the Owner. Additionally, the Architect shall familiarize himself with the progress and quality of the Work and determine if the Work is proceeding substantially in accordance with the Contract Documents. On the basis of on-site observations, the Architect shall endeavor to guard the Owner against defects and deficiencies in the construction. Should the Architect determine that any portion of the Work varies from the requirements of the Contract Documents, he shall immediately notify the Contractor and the Owner of the nature of the work required to correct such non-compliance. In addition, the Architect shall, eleven months after substantial completion, schedule a meeting with the Owner and User and Project Architects to evaluate the Project and its operations; if applicable observe architectural systems; and endeavor to discover defects in materials, equipment, and workmanship.

The Architect shall provide the minimum number of on-site observations during the construction phase as delineated in Paragraph 13.6 in an attempt to endeavor to guard the Owner against defects and deficiencies in the construction. The results of all observations shall be documented in field reports submitted to the Owner within seven days of each such observation.

2.6.6 The Architect shall not have control or charge of and shall not be responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, for the acts or omissions of the Contractor, subcontractors, or any other persons performing any of the Work, or for the failure of any

of them to carry out the Work in accordance with the Contract Documents.

2.6.7 The Architect shall determine, certify, and make recommendations to the Owner for payment of the amounts owing to the Contractor subject to the Owner's approval, based on observations at the site and on evaluations of the Contractor's Applications for Payment. The Architect shall issue Certificates for Payment in such approved amounts as provided in the Contract Documents.

2.6.8 The issuance of a Certificate and recommendation for payment shall constitute representation by the Architect to the Owner, based on the Architect's observations at the site as provided in Subparagraph 2.5.5 and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated; that the quality of the Work is substantially in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in the Certificate for Payment); and that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment shall not be a representation that the Architect has made any examination to ascertain how and for what purpose the Contractor has used the money paid on account of the Contract Sum.

2.6.9 The Architect shall render interpretations of the documents necessary for the proper execution or progress of the Work with reasonable promptness on written request of either the Owner or the Contractor, and shall render written decisions within a reasonable time on all claims, disputes, and other matters in question between the Owner and the Contractor relating to the execution or progress of the Work or the interpretation of the Contract Documents.

2.6.10 Interpretations and decisions of the Architect shall be consistent with the requirements and intent of the Contract Documents and shall be in written or graphic form.

2.6.11 The Architect's decisions in matters relating to artistic effect shall be final if consistent with the requirements of the Contract Documents.

2.6.12 The Architect shall have authority to reject Work which does not conform to the Contract Documents. Where rejected Work is not promptly corrected, the Architect shall recommend to the Owner that the Work shall stop. Whenever, in the Architect's professional opinion, it is necessary or advisable for the implementation of the intent of the Contract Documents, the Architect will have authority to require special inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work be then fabricated, installed, or completed.

2.6.13 The Architect shall review the Contractor's submittals, such as shop drawings, product data, and samples, but only for the conformance with the design concept of the Work and with the information given in the Contract Documents; and for each submittal, the Architect shall designate in writing that the Architect: a) Takes no exception to this submittal; b) Rejects the submittal; c) Requires corrections as noted by the Architect; d) Requires revisions and resubmittal to the Architect; e) Requires the Contractor to submit the specified item; or f) Takes no exception to this submittal as corrected.

Such action shall be taken with reasonable promptness. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

The Architect shall provide the Owner with a set of shop drawings or other related submittals at the completion of the Project.

2.6.14 All Change Orders, defined in the Conditions of the Contract for Construction, shall be prepared by the Architect. Such Change Orders shall not become effective or binding on the Owner or Contractor until signed by the Owner and reviewed by the funding agency. The Change Order shall be initiated by the party requesting a change. Approval in writing by the Owner of a completed Change Order modifies this Contract to the extent indicated. No Work which could reasonably be expected to alter the contract price or materially alter the Project shall be undertaken until the Owner has approved a completed Change Order, which outlines the desired change.

Any deviation from the above shall be considered a material breach of this Contract.

2.6.15 Upon prior notice to the Owner, the Architect shall conduct observations to determine the Dates of Substantial Completion and Final Completion. The Architect shall obtain and forward to the Owner for the Owner's review written warranties and related documents required by the Contract Documents and assembled by the Contractor. The Architect shall then issue a final Certificate for Payment.

2.6.16 The extent of the duties, responsibilities, and limitations of authority of the Architect as the Owner's representative during construction shall not be modified or extended without written consent of the Owner and the Architect.

2.6.17 Should the Architect, his staff, or his consultants direct the Contractor or his Subcontractors to undertake work for which additional compensation could reasonably be expected, and if such work is not: a) an emergency endangering life and property, b) required by the Contract Documents, or c) required by approved Change Orders (signed by the Architect, the Owner, and the Contractor), payment for such work, if accomplished without written authorization, shall not be borne by the Owner and shall constitute adequate grounds for dismissal or other action against the Architect.

2.6.18 As part of the Architect's Basic Services, the Architect shall modify the original reproducible drawings, delineating recorded built conditions of the Project or record documents compiled from the records of the Contractor and the Architect, showing changes in the Work. The Architect cannot verify the information provided by others and therefore does not verify the accuracy thereof.

2.7 PROJECT REPRESENTATION BEYOND BASIC SERVICES

2.7.1 Architect's Project Representative. If the Owner and the Architect agree that more extensive representation for inspection of the Site than that described in Subparagraph 2.5.5 shall be provided, the Architect shall, upon written authorization of the Owner and review by the funding agency, provide one or more Project Representatives to assist the Architect in carrying out such responsibilities at the site.

2.7.2 Subject to the Owner's approval, an Architect's

Project Representative shall be selected, employed, and directed by the Architect. The Architect shall be compensated therefore as mutually agreed between the Owner and the Architect as set forth in an approved amendment to this Agreement which shall, in addition, describe the duties, responsibilities, and limitations of authority of such Project Representative.

2.7.3 Through the observations of such Project Representative the Architect shall provide further protection for the Owner against defects and deficiencies in the Work to determine that the Work is carried out in conformance with the plans and specifications; but the furnishing of such project representation shall not diminish the rights, responsibilities, or obligations of the Architect as described in this Agreement.

2.7.4 The Owner reserves the right to designate an Owner Representative in lieu of an Architect's Project Representative to provide additional site representation for the Owner beyond that provided by the Architect. If the Owner elects to provide an Owner Representative in lieu of a Project Representative, this subsection shall not diminish the rights, responsibilities, or obligations of the Architect established in this Agreement. The Owner Representative's duties and limits of authority shall be established so as not to conflict with those of the Architect. The Architect shall cooperate with the Owner Representative in the performance of his duties.

2.8 ADDITIONAL SERVICES

The following Services shall be provided when authorized in advance in writing by the Owner and reviewed by the funding agency, and they shall be paid for by the Owner as provided in Paragraph 12.3. Attached as Exhibit D and incorporated into this Agreement by reference is a copy of the Architect Additional Services Proposal/Amendment form. These services are not included as part of Basic Services except to the extent otherwise provided in Article 13.

2.8.1 Preparation of applications and supporting documents, in addition to those furnished under Basic Services, for private or governmental grants, loans or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effect on the design requirements of the Project of any such

statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.

2.8.2 Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by the Owner.

2.8.3 Services resulting from evaluation by the Architect during the Study and Report Phase at the Owner's request of alternative solutions in addition to those specified in Article 13.

2.8.4 Services resulting from significant changes in the scope, extent or character of the portions of the Project designed or specified by the Architect or its design requirements including, but not limited to, changes in size, complexity, Owner's schedule, character of construction or method of financing; and revising previously accepted studies, reports, Drawings and Specifications or Contract Documents when such revisions are required by changes in laws, rules, regulations, ordinances, codes or orders enacted subsequent to the preparation of such studies, reports, Drawings and Specifications, or Contract Documents, or are due to any other causes beyond the Architect's control.

2.8.5 Preparing drawings, specifications, and supporting data and providing other services in connection with Change Orders provided that the adjustment in the Basic Compensation resulting from the adjusted Construction Cost is not for work which should have been provided pursuant to Basic Services and provided that such Change Orders are required because of causes not related to the actions or responsibilities of the Architect.

2.8.6 Services resulting from facts revealed about conditions:

A. which are different from information about such conditions that the Owner previously provided to the Architect and upon which the Architect was entitled to rely; or

B. as to which the Owner had responsibility to provide information if such information was not previously provided.

2.8.7 Providing renderings or models for the Owner's use.

2.8.8 Preparing documents for alternate bids requested by the Owner for Work which is not executed or documents for out-of-sequencing Work.

2.8.9 Undertaking investigations and studies including, but not limited to, detailed consideration of operations, maintenance and overhead expenses; the preparation of feasibility studies, cash flow and economic evaluations, rate schedules and appraisals; assistance in obtaining financing for the Project; evaluating processes available for licensing and assisting the Owner in obtaining process licensing; detailed quantity surveys of materials, equipment and labor; and audits or inventories required in connection with construction provided by the Owner.

2.8.10 Furnishing services of the Architect's consultants for other than Basic Services; and furnishing data or services when the Owner employs the Architect to provide such data or services in lieu of furnishing the same under Article 4.

2.8.11 Services attributable to a variation in the number of prime contracts from the number specified in Article 13 for Work designed or specified by the Architect.

2.8.12 Services during out-of-town travel required of the Architect other than visits to the site or Owner's office.

2.8.13 Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value architectural and constructability review requested by the Owner; and performing or furnishing services required to revise studies, reports, drawings or specifications, or Contract Documents as a result of such review processes.

2.8.14 Assistance in connection with bid protests, re-bidding or renegotiating contracts for construction, materials, equipment or services, except when such assistance is required to complete services called for in Article 13.

2.8.15 Providing field surveys for design purposes, architectural surveys and staking to enable Contractor to proceed with its Work, and any type of property surveys or related architectural services needed for the transfer of interests in real property; and providing

other special field surveys.

2.8.16 Preparation of operating, maintenance and staffing manuals to supplement Basic Services.

2.8.17 Preparing to serve or serving as a consultant or witness for the Owner in any litigation, arbitration or other legal or administrative proceeding involving the Project (except for assistance in consultations which is included as part of Basic Services).

2.8.18 Providing more extensive services required to enable the Architect to issue notices or certifications requesting by the Owner.

2.8.19 Other additional services performed or furnished by the Architect in connection with the Project, including services which are to be furnished by the Owner under Article 4, and services not otherwise provided for in this Agreement.

2.8.20 Services resulting from significant delays, changes or price increases occurring as a direct or indirect result of materials, equipment or energy shortages.

2.8.21 Additional or extended services during construction made necessary by a) Work damaged by fire or other cause during construction, b) a significant amount of defective, neglected or delayed work of the Contractor, c) acceleration of the progress schedule involving services beyond working hours, or d) default by the Contractor.

2.8.22 Services, other than Basic Services during the Operation Phase, in connection with any partial utilization of any part of the Project by the Owner prior to its Substantial Completion.

2.8.23 Evaluating an unreasonable claim or an excessive number of claims by the Contractor or others in connection with the Work.

2.9 TIME

2.9.1 The Architect shall perform Basic and Additional Services as expeditiously as is consistent with professional skill and care and the orderly progress of the Work. The Architect shall submit, for the Owner's approval and as a part of this Contract, a schedule for the performance of the Architect's

services and shall include allowances for periods of time required for the Owner's review and approval of submissions and for approvals of authorities having jurisdiction over the Project. This schedule, when approved by the Owner, shall not, except for reasonable cause not within the control of the Architect, be exceeded by the Architect, see Exhibit A, Time Schedule for Project Phases.

2.10 OPERATIONAL PHASE

During the Operational Phase, the Architect shall, when requested by the Owner:

2.10.1 Provide assistance in connection with the refining and adjusting of any equipment or system.

2.10.2 Assist the Owner in training the Owner's staff to operate and maintain the Project.

2.10.3 Assist the Owner in developing systems and procedures for control of the operation and maintenance of and record keeping for the Project.

2.10.4 In company with the Owner, visit the Project to observe any apparent defects in the completed Work, assist the Owner in consultations and discussions with the Contractor concerning correction of such defects, and make recommendations as to replacement or correction of defective Work.

2.10.5 Provide miscellaneous services as requested by the Owner in connection with Project closeout.

ARTICLE 3 THE USER REPRESENTATIVE

3.0 The Owner shall designate one or more departments of the Owner or a designated entity as a User, or User Agency. Such User, or User Agency, shall provide an individual User Representative to perform those functions required of the User Agency.

3.1 The User Representative(s) and the Owner shall provide the Architect with information required under Article 2 of this Agreement, as well as additional information required by the Architect for the purpose of defining the Scope of the Project and to assist the Architect and the Owner in the development and completion of the Project.

3.2 The User Representatives shall meet with the Architect and/or the Owner at times required by the

Owner. The User Representatives shall respond to all inquiries submitted by the Architect and/or the Owner within any reasonable time limits set forth in the inquiry.

3.3 Information submitted directly by the User Representative(s) to the Architect is subject to subsequent approval by the Owner.

ARTICLE 4 OWNER'S RESPONSIBILITIES

4.1 The Owner shall designate, in writing, an Owner Representative who has the authority to act on his behalf; however, authority for final approval of the Program and Drawings and Specifications, the Contract Documents, or any Change Order is retained by the Owner. The Owner and the Owner Representative shall examine documents submitted by the Architect and shall render decisions promptly to avoid unreasonable delay in the progress of the Architect's services. The Owner Representative, through coordination with the User Representative(s), shall provide information to the Architect regarding the User's requirements in the development of Program Documents for the Project.

4.2 The Owner shall provide all criteria and full information as to the Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expendability, and any budgetary limitations; and furnish copies of all design and construction standards which the Owner will require to be included in the Bidding and Contract Documents.

4.3 The Owner shall assist the Architect by placing at Architect's disposal all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project.

4.4 Furnish to the Architect, as requested by the Architect for performance of Basic Services or as required by the Contract Documents, the following:

4.4.1 Data prepared by or services of others, including without limitation explorations and tests of subsurface conditions at or contiguous to the site, drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site, or hydrographic surveys;

4.4.2 The services of an independent testing laboratory to perform all inspections, tests and approvals of samples, materials and equipment prior to and after installation, or to evaluate the performance of materials, equipment and facilities of the Owner, prior to specification, and during construction;

4.4.3 Appropriate professional interpretations of all of the foregoing;

4.4.4 Environmental assessments, audits, investigations and impact statements, and other relevant environmental or cultural studies as to the Project, the site and adjacent areas;

4.4.5 Field surveys for design purposes and property, boundary, easement, right-of-way, topographic and utility surveys or data, including relevant reference points;

4.4.6 Property descriptions;

4.4.7 Zoning, deed and other land use restrictions; and

4.4.8 Other special data or consultations not covered in Article 2.

The Owner shall be responsible for, and the Architect may rely upon, the accuracy and completeness of all reports, data and other information furnished pursuant to this paragraph. The Architect may use such reports, data and information in performing or furnishing services under this Agreement.

4.5 The Owner shall provide architectural surveys and staking to enable the Contractor to proceed with the layout of the Work, and other special field surveys.

4.6 The Owner shall arrange for access to and make all provisions for the Architect to enter upon public and private property as required for the Architect to perform services under this Agreement.

4.7 The Owner shall examine all alternate solutions, studies, reports, sketches, bidding and contract documents, proposals and other documents presented by the Architect (including obtaining advice of an attorney, insurance counselor and other consultants as the Owner deems appropriate with respect to such examination) and render in writing

decisions pertaining thereto.

4.8 The Owner will provide as required for the Project.

4.8.1 Accounting, bond and financial advisory, independent cost estimating and insurance counseling services;

4.8.2 Such legal services as the Owner may require or the Architect may reasonably request with regard to legal issues pertaining to the Project, including any that may be raised by the Contractor; and

4.8.3 Such auditing services as the Owner may require ascertaining how or for what purpose Contractor has used the moneys paid on account of the Contract Price.

4.9 Provide such observation or monitoring services by an individual or entity other than the Architect as the Owner may desire to verify: that the Contractor is complying with any law, rule, regulation, ordinance, code or order applicable to the Contractor's performing and furnishing the Work; or that the Contractor is taking all necessary precautions for safety of persons or property and complying with any special provisions of the Contract Documents applicable to safety.

4.10 The Owner shall advise the Architect of the identity and scope of services of any independent consultants employed by the Owner to perform or furnish services in regard to the Project, including, but not limited to, construction management, cost estimating, project peer review, value architectural, and constructability review. If the Owner designates a person or entity other than, or in addition to, the Architect to represent the Owner at the site, the Owner shall define and set forth in an exhibit that is to be mutually agreed upon and attached to and made a part of this Agreement before such services begin, the duties, responsibilities and limitations of authority of such other party and the relation thereof to the duties, responsibilities and authority of the Architect.

4.11 Prior to commencement of the Construction Phase, notify the Architect of any variations in the language of the Notice of Acceptability of Work, or of any notice or certification other than such notice that the Architect will be requested to provide to the Owner or third parties in connection with the financing or completion of the Project. The Owner and the Architect shall reach agreement on the terms of any such requested notice or certification and the Owner shall authorize such Additional Services as are

necessary to enable the Architect to provide the notice or certification requested under this paragraph.

4.12 If more than one prime contract is to be awarded for Work designed or specified by the Architect, designate a person or entity to have authority and responsibility for coordinating the activities among the various prime contractors, and define and set forth the duties, responsibilities and limitations of authority of such person or entity and the relation thereof to the duties, responsibilities and authority of the Architect in an exhibit that is to be mutually agreed upon and attached to and made a part of this Agreement before such services begin.

4.13 The Owner shall attend the pre-bid conference, conduct the bid opening, pre-construction conferences, construction progress and other job related meetings and Substantial Completion and final payment inspections.

4.14 The Owner shall give prompt notice to the Architect whenever the Owner observes or otherwise becomes aware of any development that affects the scope or time of performance or furnishing of the Architect's services, or any defect or nonconformance in the Architect's services or in the Work of any Contractor.

ARTICLE 5 MAXIMUM ALLOWABLE CONSTRUCTION COST

5.1 Maximum Allowable Construction Cost - See paragraph 13.7.

5.2 Responsibility for Construction Cost

5.2.1 Evaluations of the Owner's Project budget, statements of probable construction cost, and detailed estimates of construction cost prepared by the Architect represent the Architect's best judgment as a design professional familiar with the construction industry. It is recognized, however, that the Architect does not have control over the cost of labor, materials, or equipment; over the Contractor's methods of determining bid prices; or over competitive bidding, market, or negotiating conditions. Accordingly, the Architect cannot and does not represent that bids or negotiated prices will not vary from the Project budget proposed, established, or approved by the Owner, or from any Statement of Probable Construction Cost or other cost estimate or evaluation prepared by the Architect.

5.2.2 The MACC is established, as a condition of this Agreement, as a fixed limit of Construction Cost for design and bidding purposes. The Architect shall be permitted to determine what materials, equipment, component systems, and types of construction are to be included in the Bidding Documents to bring Construction Cost within the MACC. With the written consent of the Owner, the Architect may also include in the Bidding Documents either additive or deductive alternate bids to adjust the Construction Cost to the fixed limit.

5.2.3 The acceptance by the Owner at any time during Basic Services of a revised Statement of Probable Construction Cost in excess of the then established MACC will constitute a corresponding increase in the MACC to the extent indicated in the revised statement.

A. The Owner shall provide a written response to the funding agency of their acceptance of the increased MACC. This written response shall identify the source of the additional funds, or other procedure for covering the cost.

5.2.4 If bidding or negotiations with potential contractors have not commenced within two months after the Architect submits Bidding Documents to the Owner, the Project budget and/or MACC shall be adjusted to reflect any change in the general level of prices in the construction industry between the date of submission of the Bidding Documents to the Owner and the date on which bids are sought.

5.2.5 The MACC, therefore, is established as a condition of this Agreement. When it is exceeded by the lowest bona fide bid, the Owner with review by the funding agency may: a) give written approval of an increase in the MACC; b) authorize rebidding the Project within a reasonable time, or c) cooperate with the Architect in revising the Project scope and, as required to reduce the Probable Construction Cost.

If the Owner elects to reduce the Probable Construction Cost, the Owner shall cooperate with the Architect in revising the quality and scope of the Project; and the Architect, without additional charge, shall modify the Drawings and Specifications as necessary to bring the Construction Cost within the MACC. The Architect shall then assist the Owner through the Bidding process. When the cost estimate required by subparagraph 2.3.2 or an evaluation prepared by the Architect indicates that the Project exceeds the MACC, the provisions outlined in this paragraph shall apply.

ARTICLE 6 REIMBURSABLE EXPENSES

6.1 Reimbursable expenses are those above and beyond Basic Services compensation and are the actual expenditures made by the Architect or his employees in the interest of the Project. Reimbursable expenses shall be limited to the following:

6.1.1. Expenses of transportation when traveling in connection with the Project when specifically set out in Article 13. Such expenses are limited to per diem and mileage rates as set forth in the Owner's Travel Rule or Regulation.

6.1.2 Expense of fees paid for securing approvals of authorities having jurisdiction over the Project. Fees for approval by the permitting agency shall be paid directly by the Owner after submittal of the documents by the Architect to the permitting agency.

6.1.3 The Architect shall charge Bidders a deposit fee equal to the full cost of reproduction of drawings, specifications, and other documents required by the Owner to solicit bids and execute the Construction Contract. This fee shall be completely refunded if the documents are returned in usable condition within the time limits specified in the Invitation for Bid. All forfeited fees shall be returned to the Owner for use in this Project.

Construction documents and specifications will be printed by the Architect or a vendor designated by the Architect. All reproduction required may be approved in writing by the Owner prior to request. This expense shall be paid by the Owner. All other reproductions as may be required by the Owner's review or for the office use of the Architect and the Architect's consultants shall be provided as part of the Architect's Basic Compensation.

6.1.4 Applicable gross receipts taxes on reimbursable expenses or additional services received by the Architect under the provisions of this Contract. The Architect shall use and require the use of tax-exempt certificates by Consultants whenever allowed by law. In any event, the Architect shall not include taxes paid as a part of the base dollar amount upon which taxes are calculated. Payment pursuant to this provision does include payment for gross receipts taxes pursuant to Subparagraph 12.1.1.

ARTICLE 7 PAYMENTS TO THE ARCHITECT

7.1 Payments on Account of Basic Services

7.1.1 Payments for Basic Services shall be made monthly and shall be in proportion to services performed within each phase of services, on the basis set forth in Article 13.11.

7.1.2 When portions of the Project are deleted or otherwise not constructed, compensation for such portions of the Project shall be payable to the extent services are performed on such portions, in accordance with the schedule set forth in Subparagraph 13.1.2, based on: a) the lowest bona fide bid or negotiated proposal, or b) if no such bid or proposal is received, the most recent Statement of Probable Construction Cost for such portions of the Project.

7.2 Payment for Services And Costs

7.2.1 The Architect shall submit monthly a fully completed request for payment for all services and costs on the form provided as Exhibit E to this agreement.

7.2.2 Upon the Owner's request, the Architect shall submit, with his billings at the completion of the Project, certification that payment has been made or will be made upon receipt of payment to consultants, and others for materials and services required by this Agreement. At this time, the Architect shall notify the Owner of any disputes regarding payments by the Architect that may exist at the completion of the Project.

7.3 Payments Withheld

7.3.1 No deductions or withholdings shall be made from the Architect's compensation on account of penalty, liquidated damages, or other sums withheld from payments to Contractors, or on account of the cost of changes in the Work other than those for which the Architect may be legally liable and as required in Paragraph 2.8.

7.4 Project Suspension or Termination - Other Parties

7.4.1 In the event of termination or suspension of the Project due to the fault of parties other than the Architect, the Architect shall be compensated for services performed to termination date pursuant to Article 10.

ARTICLE 8 ARCHITECT'S ACCOUNTING RECORDS

8.1 Records of expenses by the Architect and his consultants pertaining to all services under this Agreement shall be kept on the basis of generally accepted accounting principles and shall be available at mutually convenient times to the Owner or the Owner's authorized representative. The Owner shall have the right to audit all such records and billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Owner to recover excessive or illegal payments.

8.2 Records of expenses shall be kept by the Architect and his consultants and shall be available to the Owner until all applicable statutes of limitations have run, and this provision shall survive and continue beyond the termination of other terms of this Agreement.

8.3 The review of "records of expenses" for Lump Sum Fixed Fee portions of the Architect's services shall be limited to those records that define the percentage of completion, except as otherwise required by federal regulation detailed in Exhibit H.

ARTICLE 9 OWNERSHIP AND USE OF DOCUMENTS

9.1 All documents including Drawings and Specification provided or furnished by the Architect, or the Architect's Consultants, pursuant to this Agreement are instruments of service in respect of the Project and the Architect, and the Architect's Consultants, as appropriate, shall retain an ownership and property interest therein (including the right of reuse by and at the discretion of the Architect, and the Architect's Consultants, as appropriate) whether or not the Project is completed. The Owner may make and retain copies for information and reference in connection with the use and occupancy of the Project by the Owner and others.

9.2 The Architect shall provide a reproducible copy of the original drawings to the Owner for archival purposes. The Architect shall provide language on this copy of the original drawings regarding reuse of the documents.

9.3 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 Architect.

9.4 The Owner agrees to hold the Architect harmless for damages arising from the use of drawings, specifications, and other work developed in the performance of this Agreement, and the Project included therein, when such drawings, specifications, and other work are used for purposes other than as base documents for subsequent additions, remodeling, or alterations to the Project. This section shall not apply in instances where the Architect is retained as the Architect of Record on any such subsequent project using the same drawings, specifications, and other work product from the Project, which is the subject of this Agreement.

ARTICLE 10 TERMINATION OF AGREEMENT

10.1 Termination of Agreement for Cause. If, through any cause, the Architect shall fail to fulfill in timely and proper manner his obligations under this Agreement, or if the Architect shall violate any of the covenants, agreements, or stipulations of this Agreement, the Owner shall there-upon have the right to terminate this Agreement by giving written notice to the Architect of such termination and specifying the effective date thereof, at least five days before the effective date of such termination. In such event, the Owner may make copies of all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the Architect under this Agreement, except for deliverable identified under this Agreement, which the Architect shall provide at no additional cost.

A. Notwithstanding the above, the Architect shall not be relieved of liability to the Owner damages sustained by the Owner by virtue of any breach of the Agreement by the Architect, and the Owner may withhold any payments to the Architect for the purpose of set-off until such time as the exact amount of damages due the Owner from the Architect is determined.

10.2 Termination for Convenience of the Owner. The Owner may terminate this Agreement at any time by giving at least ten (10) days notice in writing to the Architect. If the Agreement is terminated by the Owner as provided herein, the Architect will be paid for the time provided and expenses incurred up to the termination date. If this Agreement is terminated due to the fault of the Architect, paragraph 10.1 relative to termination shall apply.

ARTICLE 11 GENERAL AND SPECIAL PROVISIONS

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

11.2 Unless expressly provided otherwise, terms in this Agreement shall have the same meaning as those in the Conditions of the Contract for Construction, as provided in Exhibit F of this Agreement.

11.3 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.

11.4 The Owner and the Architect waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages covered and paid by any property insurance during construction as set forth in the Conditions of the Contract for Construction, as provided as a part of Exhibit F of this Agreement. The Owner and the Architect each shall require appropriate similar waivers from their contractors, consultants, and agents.

11.5 The Architect shall hold harmless and indemnify the Owner against injury, loss, or damage, including but not limited to court costs and reasonable attorney's fees - arising out of the negligent acts, errors, or omissions of the Architect.

11.6 This Agreement shall not become effective until signed by all parties required to sign this Agreement.

11.7 The Architect and his agents and employees are independent contractors performing professional and technical services for the Owner and are not employees of the Owner. The Architect and his agents and employees shall not as a result of this Agreement accrue leave, retirement, insurance, bonding, use of Owner vehicles, or any other benefits afforded to employees of the Owner.

11.8 The Architect's design shall be in compliance with applicable federal, state, and local codes and laws

related to the Work, including but not limited to provisions of the Civil Rights Act of 1964 and Executive Order 11246, Title VI, Section 3 and 109; the minimum handicapped accessibility as required by Section 60-13-44D, NMSA 1978; Section 306, New Mexico Uniform Building Code, which adopts ANSI A1 17.1, 1980; and parking requirements as required by Owner regulation. In all cases, the more restrictive code or statute adopted shall govern.

11.9 The Architect shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written consent of the Owner and review by the funding agency.

11.10 Whenever the Architect contracts for an additional Project Representative to be on the Project or enters into a joint venture to share the duties and responsibilities of the Architect under this Agreement, all such agreements require prior Owner approval and must outline the duties and responsibilities of the Architect and his representative, or joint venturer, or consultant; and a copy of such approved agreement shall be filed with the Owner. Such agreements shall be amendments to this Agreement.

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

11.12 The Architect affirms that he currently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. The Architect further affirms that, in the performance of this Agreement, no person having such interest shall be employed by the Architect. The Architect also agrees that neither he nor anyone employed by him shall have an interest, direct or indirect, in any company hired for the Project as Contractor, subcontractor, or supplier, except when the Project is a design-build project and/or the Owner provides inspections independent of the Architect.

11.13 Pursuant to Section 13-1-191 NMSA 1978, reference is hereby made to the criminal laws of New Mexico (including Section 30-14-1, 30-24-2, and 30-41-1 through 3, NMSA 1978) which prohibit bribes, kickbacks, and gratuities, violation of which constitutes a felony. Further, the Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978,

imposes civil and criminal penalties for its violation.

11.14 Professional Liability (Errors and Omissions) Insurance. If required in the Request for Proposals, the Architect shall obtain professional liability insurance and provide a certificate of coverage on the form designated herein as Exhibit B. See paragraph 13.9.

11.15 No work requiring the approval of the Owner shall be undertaken until the Owner's written approval has been requested and obtained. Any deviation from this requirement shall be considered a material breach of this Agreement and grounds for termination.

11.16 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 shown on the cover sheet to this Agreement.

11.16.1 Nothing herein contained shall preclude the giving of any such written notice by personal service. The address to which notices shall be mailed to either party may be changed by written notice given by such party to the other as hereinabove provided.

11.17 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.

11.18 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.

11.19 Labor-Management Relations. During the entire term of this Agreement, the Architect shall take good-faith steps necessary to further satisfactory labor-management relations to the end that the operations of the Architect and of the Owner shall not be affected by strikes, picketing, boycotts, or other labor activities.

11.20 This document shall be executed in at least two counterparts, each of which shall be deemed an original.

11.21 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.

11.22 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.

11.23 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 or any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or any term, covenant, or condition thereof.

11.24 Mergers, Dissolution, Successors, and Assigns. The Architect agrees that during the term hereof it will maintain its existing business structure and will not dissolve or otherwise dispose of all or substantially all of its assets and will not consolidate with or merge into another business structure or permit one or more other business structures to consolidate or merge into it, unless the surviving, resulting, or transferred business structure, as the case may be: a) assumes, is capable of, and agrees in writing to perform all of the obligations of the Architect hereunder; b) qualifies to do business in the state of New Mexico, including providing a legal registered architect of New Mexico as Project Architect; and c) the Owner approves the firm or individual architect, or new architect, if any, who is to proceed.

11.24.1 The terms and provisions hereof shall extend to and be binding upon and inure to the benefit of the successors and assigns of the respective parties hereto.

11.25 The Owner shall determine whether or not the Project Architect or the firm named as Architect in this Agreement shall continue to have all contract

rights under this Agreement and continue to represent the Owner under this Agreement in all instances where the Project Architect ceases to be associated with the firm names in this Agreement.

11.26 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 Agreement.

11.27 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.

11.28 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.

11.29 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.

11.30 Exhibits and Attachments incorporated by Reference. All exhibits, attachments, riders, and addenda referred to in this Agreement, including but not limited to the exhibits referred to in this Agreement, as well as those listed in Paragraph 11.31 below, are hereby incorporated into this Agreement by reference and made a part hereof as though set forth in full this Agreement to the extent they are consistent with its conditions and terms.

11.31 The following Exhibits are attached to and made a part of this Agreement:

- Exhibit A - Time Schedule for Project Phases**
- Exhibit B - Architect's Errors and Omissions Insurance Certificate, if applicable**
- Exhibit C - List of Consultants**
- Exhibit D - Architect Additional Services Proposal/ Amendment Form**

- Exhibit E - Architect Pay Request Form**
- Exhibit F - Boilerplate Bidding Documents and Conditions of the Contract for Construction (by reference)**
- Exhibit G - Resident Project Representative, if applicable**
- Exhibit H - Federal Terms and Conditions for Professional Services, if applicable**
- Exhibit I - HVAC & Mechanical Equipment Maintenance, if applicable**

ARTICLE 12 BASIS OF COMPENSATION

12.0 The Owner shall compensate the Architect for the Scope of Services provided in accordance with Article 7, Payments to the Architect, and other Terms and Conditions of this Agreement, as follows:

12.1 Compensation

12.1.1 For Basic Services, as described in Paragraphs 2.0 through 2.6, and other services included in Article 13 as part of Basic Services, the compensation is shown in paragraph 13.12.

12.1.2 Payments for Basic Services shall be made monthly in proportion to services performed so that the compensation at the completion of each phase, except when the compensation is on the basis of a Multiple of Direct Personnel Expense, shall equal the Compensation detailed in paragraph 13.12.

12.1.3 The applicable Gross Receipts and Local Option taxes and Total Compensation presented in 13.12 shall be modified by amendment to this Agreement if the tax rate changes during the term of this Agreement.

12.2 For Project Representation beyond Basic Services, as described in Paragraph 2.7, compensation shall be computed separately in accordance with Subparagraph 2.7.2., and included with additional services in paragraph 13.12.

12.3 Compensation for Additional Services, this includes all additional services, shall be computed as a lump sum amount as shown in paragraph 13.12, plus applicable gross receipts and local option taxes.

12.3.1 For Additional Services of the Architect, as described in Paragraph 2.8, and any other services included in Article 13 as part of Additional Services, but excluding additional services of consultants, compensation shall be computed as shown in paragraph 13.12, plus applicable gross receipts and local option taxes.

12.3.2 For Additional Services of Consultants, including but not limited to the additional structural, mechanical, and electrical architectural services and landscape architectural services a multiple of 1.10 times the amounts billed to the Architect for such services. The Architect shall provide the Owner with hourly rates for his consultants and their employees detailed by professional levels within the firm. Multiples applied to Direct Personnel Expenses, when approved by the Owner, shall be the basis for compensation for the additional services of the consultant.

12.3.3 For all Additional Services of the Architect and/or Consultant, as described in paragraphs 12.3.1 and 12.3.2, these services and lump sum amount directly related to such services shall be specifically identified here and included with the additional services as a lump sum amount as shown in paragraph 13.12.

Topographical Survey	\$ _____
Geotechnical (Soil Compaction Testing)	\$ _____
Property Boundary Survey	\$ _____
Easement Survey	\$ _____
Right-of-Way Survey	\$ _____
Additional Inspections	\$ _____

12.4 For Reimbursable Expenses, if allowed, as described in this Agreement at cost, compensation shall be computed as shown in paragraph 13.12, plus applicable gross receipts and local option taxes.

ARTICLE 13 OTHER TERMS AND CONDITIONS OR SERVICES

(For use with Community Development Block Grant projects only)

The following terms, condition or services apply to projects funded through the Community Development Block Grant program:

13.1. On page 3, paragraph 1.6 delete the words "furnishings and equipment" from line 2 and insert the words "furnishings and equipment" after the words

and comma "acquisition costs," on line 3.

13.2 Project Description. As defined in paragraph 1.9 the Project (insert description and location) is:

13.3 User Agency. As defined in paragraph 1.14 the User (or User Agency) is:

13.4 On page 4, subparagraph 2.0.3, add the following sentence: "For purposes of this Agreement, moveable furnishings and equipment are not allowed to be purchased with CDBG funds; therefore, the Owner will purchase these items with its own funds separate from the CDBG grant."

13.5 Bidding Documents. As required under subparagraph 2.3.4, bidding documents will be furnished by the Architect to (list):

13.6 On-Site Observation. The number of on-site observations included per subparagraph 2.6.5 is: _____.

13.7 MACC. Pursuant to paragraph 5.1 the Maximum Allowable Construction Cost (MACC) shall not exceed: _____ Dollars (\$ _____).

13.8 Additional Services. Pursuant to paragraph

<u>Position</u>	<u>Per Hour Rate</u>
Registered Architect Principals' time	\$ _____
Project Architects' time	\$ _____

Employees' time (other than Principals') shall be at the following hourly rates, which shall not exceed 2.5 times the employee's direct salary:

Project Manager	\$ _____
Design/Specification Writer	\$ _____
Drafting/CADD Operator	\$ _____
Clerical	\$ _____
Other (list):	\$ _____

13.9 REIMBURSEABLES: Pursuant to paragraph

6.1, the following budget is set for reimbursable expenses as defined herein:

6.1.1 Per Diem and Mileage	\$	_____
6.1.2 Fees for Securing Approvals	\$	_____
6.1.3 Reproduction of drawings and specifications	\$	_____
# of sets		_____
Applicable gross receipt taxes	\$	_____
TOTAL:	\$	_____

Final reimbursable expenses shall be determined prior to the final request for payment under this agreement and shall be adjusted by amendment upward or downward as necessary. The Architect is responsible for keeping the Owner informed if the budgeted amount is anticipated to be exceeded as the project progresses.

13.10 Professional Liability Insurance. Pursuant to paragraph 11.14, the Architect ☐ shall ☐ shall not obtain professional liability insurance and provide a certificate of coverage on the form designated herein as Exhibit B. Such insurance coverage shall be maintained in full force and effect at all times during the performance of Project services. Fees for such insurance shall be at the Architect's expense and of the limits of liability set forth as follows: Professional liability (errors and omissions) insurance, per claim and in the aggregate, of ☐ none required ☐ \$250,000 ☐ \$ 500,000 ☐ \$1,000,000, unless as otherwise provided in Article 13. Proof of compliance with this section shall be provided by the Architect to the Owner in each year insurance is required.

On the basis of a Fixed Fee of	\$	_____
Plus all applicable GRT @ ____%	\$	_____
TOTAL BASIC COMPENSATION	\$	_____
Total Reimbursable	\$	_____
TOTAL LUMP SUM CONTRACT AMOUNT	\$	_____

13.12 Compensation. Pursuant to paragraphs 12.1.2.3 and .4, payments for all services, including gross receipts taxes, shall be computed on:

Programming Phase	10%	\$	_____
Schematic Phase	15%	\$	_____
Design Development Phase	20%	\$	_____
Construction Document Phase	25%	\$	_____
Bidding or Negotiation Phase	3%	\$	_____

Construction Administration	25%	\$	_____
Acceptance of Project, Release of Liens, and Approval by Owner of As-Built Drawings	2%		_____
	100%		_____
Additional Services		\$	_____
Reimbursables		\$	_____
Total Architectural Fees			_____
Applicable gross receipt taxes @ ____%		\$	_____
Total Lump Sum Fixed Compensation		\$	_____

13.13 Federal Terms and Conditions. Exhibit H modifies the Terms and Conditions of this Agreement only to the extent delineated in Exhibit H.

OWNER/ARCHITECT PROFESSIONAL SERVICES AGREEMENT SIGNATURE PAGE

Contract No. _____

AGREED

Architect By: _____

Project Architect By: _____

NM Seal and Certificate Number: _____

NM Tax ID No: _____

Federal ID No. _____

REVIEWED AS TO BUDGETARY SUFFICIENCY

Finance Officer By: _____

☐ Approved ☐ Disapproved

REVIEWED AS TO LEGAL FORM AND SUFFICIENCY

Legal Counsel By: _____

APPROVED

OWNER: _____

By: _____

Attest: By: _____

Municipal/County Clerk

(This Page Left Blank)

3E - 23

TIME SCHEDULE FOR PROJECT PHASES

Project	Date/Day to be Completed
Programming Phase	_____
Programming Phase Review	_____
Schematic Design Phase	_____
Schematic Design Phase Review	_____
Design Development Phase	_____
Design Development Phase Review	_____
Construction Documents Phase	_____
Construction Documents Phase Review	_____
Bidding Phase	
Invitation for Bid	_____
Bid Opening	_____
Construction Phase Begins	_____
Acceptance of Project Release of Liens, and Approval by the Owner of As-Built Drawings required by Article 9 (Occupancy)	_____

(This Page Left Blank)

3E - 25

**PROFESSIONAL LIABILITY (ERRORS AND OMISSIONS) INSURANCE
CERTIFICATE**

Note: A copy of the Architect's Professional Liability (Errors and Omissions)
Insurance Certificate, if required, shall be attached hereto.

(This Page Left Blank)

3E - 27

LIST OF CONSULTANTS

	<u>Firm</u>	<u>Address</u>	<u>Phone/Fax No.</u>
Civil Engineer			
Landscape Architect			
Structural			
Mechanical			
Electrical			
Architectural			
Cost Estimating			
Other (list)			

(This Page Left Blank)

3E - 29

ARCHITECT ADDITIONAL SERVICES PROPOSAL/AMENDMENT

Project _____ Project No. 12-C-____-____-____-G-____

Architect: _____ Contract No. _____

Proposal/Amendment No. _____

Reason and Justification for Proposal: (use additional sheets, if necessary)

Requested or initiated by: User Agency, Owner, Architect, Other

In accordance with Article 2 and/or Article 13, where applicable, Additional Services to the Agreement between Owner and Architect, the Architect is authorized to provide the following described services (scope of services and upset maximum compensation).

The Original Contract Sum was	\$ _____
Net Change by previously authorized Contract Amendments	\$ _____
Net Change by previously authorized Additional Services	\$ _____
The Contract Sum prior to this request was	\$ _____
The Contract Sum will be, increased, decreased, unchanged	\$ _____
The new Contract Total including this proposal will be	\$ _____

Approved by the governing body at its meeting of _____

AGREED AND RECOMMENDED**APPROVED****ARCHITECT****OWNER**

By _____ By _____

Mayor/Chairperson

Title _____

Attest:

Municipal/County Clerk

(This Page Left Blank)

3E - 31

ARCHITECT PAY REQUEST

Architect: _____

Date: _____

Statement N°: _____

Purchase Order N°: _____

Project: _____

Project N°: _____

	Contract Sum	Completed to Date	Less Previous Payments	Amount this Request
Basic Services				
Programming Phase	\$	\$	\$	\$
Schematic Design Phase	\$	\$	\$	\$
Design Documents Phase	\$	\$	\$	\$
Construction Development Phase	\$	\$	\$	\$
Bidding or Negotiation Phase	\$	\$	\$	\$
Construction/Inspection Phase	\$	\$	\$	\$
Acceptance Phase	\$	\$	\$	\$
Eleven Month Inspection	\$	\$	\$	\$
Additional Services **	\$	\$	\$	\$
Reimbursables **	\$	\$	\$	\$
Gross Receipt Taxes	\$	\$	\$	\$
Total Lump Sum Fixed Amount	\$	\$	\$	\$

TO DATE: \$ _____

TOTAL AMOUNT DUE:

\$ _____

** All Additional Services and Reimbursables other than what has been shown in paragraph 13.12 must be authorized by Contract Amendment.

CERTIFICATION

I do hereby certify that the work described herein has been performed and that no previous payment for the Total Amount due has been received.

By: _____ Title _____

OWNER USE ONLY

I certify that the above services were rendered as stated; that they were necessary and proper and that the amounts claimed are just and reasonable and that no part thereof has been paid.

By: _____ Title _____

BOILER PLATE BIDDING DOCUMENTS

**(Note: Replace this page with appropriate inset
regarding Bidding Documents and Conditions of
the Contract for Construction [by reference])**

RESIDENT PROJECT REPRESENTATIVE

EXHIBIT G

(Note: Replace this page with appropriate insert regarding
Resident Project Representative duties and responsibilities)

(This Page Left Blank)

3E - 35

FEDERAL TERMS AND CONDITIONS FOR PROFESSIONAL SERVICES

State administered Community Development Block Grant monies are federal funds. Section 13-1-30B NMSA 1978 of the Procurement Code stipulates: "When a procurement involves the expenditure of federal funds, the procurement shall be conducted in accordance with mandatory applicable federal law and regulations. When mandatory applicable federal law or regulations are inconsistent with the provisions of the Procurement Code, compliance with federal law or regulations shall be compliance with the Procurement Code." The applicable governing federal procurement standards are defined in OMB Circular A-102, Attachment O. When federal and state procurement policies are different, the more restrictive policies apply so long as they are consistent with Circular A-102 standards.

1. Termination of Contract for Cause. If, through any cause, the Architect shall fail to fulfill in timely and proper manner his obligations under this Contract, or if the Architect shall violate any of the covenants, agreements, or stipulations of this Contract, the Owner shall there-upon have the right to terminate this Contract by giving written notice to the Architect of such termination and specifying the effective date thereof, at least five days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the Architect under this Contract shall, at the option of the Owner, become its property and the Architect shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder.

1.1 Notwithstanding the above, the Architect shall not be relieved of liability to the Owner damages sustained by the Owner by virtue of any breach of the Contract by the Architect, and the Owner may withhold any payments to the Architect for the purpose of set-off until such time as the exact amount of damages due the Owner from the Architect is determined.

2. Termination for Convenience of the Owner. The Owner may terminate this contract at any time by giving at least ten (10) days notice in writing to the Architect. If the Contract is terminated by the Owner as provided herein, the Architect will be paid for the time provided and expenses incurred up to the termination date. If this Contract is terminated due to the fault of the Architect, paragraph 1 hereof relative to termination shall apply.

3. Changes. The Owner may, from time to time, request changes in the scope of the services of the Architect to be performed hereunder. Such changes, including any increase or decrease in the amount of the Architect compensation, which are mutually agreed upon by and between the Owner and the Architect, shall be incorporated in written amendments to this contract.

4. Personnel.

A. The Architect represents that he has, or will secure at his own expense, all personnel required in performing the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the Owner.

B. All of the services required hereunder will be performed by the Architect or under his supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state and local law to perform such services.

C. None of the work or services covered by this contract shall be subcontracted without the prior written approval of the Owner. Any work or services subcontracted hereunder be specified by written contract or agreement and shall be subject to each provision of this Contract.

5. Assignability. The Architect shall not assign any interest on this Contract, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the Owner thereto; provided, however, that claims for money by the Architect from the Owner under the Contract may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment or transfer shall be furnished promptly to the Owner.

6. Reports and Information. The Architect, at such times and in such forms as the Owner may require, shall furnish the Owner such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Contract, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Contract.

7. **Records and Audits.** The Architect shall maintain accounts and records, including personnel, property and financial records, adequate to identify and account for all costs pertaining to the Contract and such other records as may be deemed necessary by the Owner and to assure proper accounting for all project funds, both federal and non-federal shares. These records will be made available for audit purposes to the Owner or any authorized representative, and will be retained for six (6) years after the expiration of this Contract unless permission to destroy them is granted by the Owner and the funding agency.

8. **Findings Confidential.** All of the reports, information, data, etc., prepared or assembled by the Architect under this Contract are confidential and the Architect agrees that they shall not be made available to any individual or organization without the prior written approval of the Owner.

9. **Copyright.** No report, maps, or other documents produced in whole or in part under this Contract shall be the subject of an application for copyright by or on behalf of the Architect.

10. **Compliance with Local Laws.** The Architect shall comply with all applicable laws, ordinances and codes of the State and the Owner, and the Architect shall save the Owner harmless with respect to any damages arising from any tort done in performing any of the work embraced by this Contract.

11. **Equal Employment Opportunity.** During the performance of this Contract, the Architect agrees as follows:

A. The Architect will not discriminate against any employee or applicant for employment because of race, creed, sex, color or national origin. The Architect will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, sex, color 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 Architect agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Owners setting forth the provisions of this non-discrimination clause.

B. The Architect will, in all solicitation or advertisements for employees placed by or on behalf

of the Architect, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex, or national origin.

C. The Architect will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Contract so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

D. The Architect will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

E. The Architect will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the Owner's representative, the funding agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

F. In the event of the Architect's non-compliance with the equal opportunity clauses of this Agreement or with any of such rules, regulations or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the Architect may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

G. The Architect will include the provisions of paragraphs A through G in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Architect will take such action with respect to any subcontract or purchase order as the Owner's representative may direct as a means of enforcing such provisions including sanctions for non-compliance; provided, however, that in the event the Architect becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction

by the Owner, the Architect may request the United States to enter into such litigation to protect the interests of the United States.

12. Civil Rights Act of 1964. Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

13. Section 109 of the Housing and Community Development Act of 1974. No person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

14. "Section 3" Compliance in the Provision of Training, Employment and Business Opportunities

A. The work to be performed under this contract is on a project assisted under a program providing direct federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns, which are located in, or owned in substantial part by persons residing in the area of the project.

B. The parties to this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability, which would prevent them from complying with these requirements.

C. The contractor will send to each labor organization or representative or workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under this Section 3 clause and shall post copies of the notice in conspicuous places

available to employees and applicants for employment or training.

D. The contractor will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135. The contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

E. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued hereunder prior to the execution of the contract, shall be a condition of the federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors and assigns to those sanctions specified by the grant or loan agreement or contract through which federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.

15. Interest of Members of the Owner. No member of the governing body of the Owner and no other officer, employee, or agent of the Owner, who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this contract; and the Architect shall take appropriate steps to assure compliance.

16. Interest of other Local Public Officials. No member of the governing body of the Owner and no other public official of the Owner, who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this Contract; and the Architect shall take appropriate steps to assure compliance.

17. Interest of Architect and Employees. The Architect covenants that he presently has no interest and shall not acquire interest, direct or indirect, in the study area or any parcels therein or any other interest

which would conflict in any manner or degree with the performance of his services hereunder. The Architect further covenants that in the performance of this Contract, no person having any such interest shall be employed.

18. Access to Records. The State funding (Grantor) agency, the Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the Architect which are directly pertinent to this specific contract, for the purpose of audits, examinations, and making excerpts and transcriptions.

19. All records connected with this contract will be maintained in a central location by the Owner and will be maintained for a period of six (6) years from the official date of closeout of the grant.

HVAC & MECHANICAL EQUIPMENT MAINTENANCE, IF APPLICABLE

**(Note: Replace this page with appropriate insert regarding
HVAC & mechanical equipment maintenance, if applicable)**

EXHIBIT 3-F
RFP FOR PLANNING PROFESSIONAL SERVICES

Exhibit 3F
REQUEST FOR PROPOSALS
FOR
PLANNING PROFESSIONAL SERVICES

(Required for Professional Services over \$60,000 or as prescribed by local regulation)

RFP No. _____

Packet No. _____



Project Name _____
Contracting Agency _____
Address _____

Telephone _____
Date _____

Procurement Manager _____

NOTICE OF REQUEST FOR PROPOSALS

Competitive sealed proposals for planning professional services will be received by the Contracting Agency, _____ for RFP No. _____.

The Contracting Agency is requesting proposals for professional planning services for (insert Project Name and Location): _____, Project No. CDBG # _____.

Proposals will be received at _____ until _____, 20____ a.m./p.m.

Copies of the Request for Proposals can be obtained in person at the office of the _____ or will be mailed upon written or telephone request to _____ at 505-____-____.

A Pre-Proposal Conference ☐ will ☐ will not be held on _____, 20____ at _____ a.m./p.m.

PURCHASING AGENT: _____ Date: _____

[For Contracting Agency Use Only]

Newspaper: _____	Publish: _____	P.O. No. _____
Newspaper: _____	Publish: _____	P.O. No. _____
Newspaper: _____	Publish: _____	P.O. No. _____

Note: This Notice is issued pursuant to the requirements of §13-1-104 NMSA 1978 and must be published not less than 10 calendar days prior to the date set for the receipt of proposals (§13-1-13 NMSA 1978) and published in a newspaper of general circulation in the area.

1. PROJECT DESCRIPTION

Insert Project Description, Location, Desired Period Of Performance, and Schedule Of Work. Include an appendix for a more detailed project description and scope of work.

2. SCOPE OF WORK

2.1 The Offeror shall perform the following professional planning services:

Type of Planning Study:

- ☐ Comprehensive Plan ¹
- ☐ Strategic or Element Specific Plan
- ☐ Mapping
- ☐ Zoning or Other Land Use Regulation
- ☐ Infrastructure
- ☐ Other Planning

¹ See Exhibit B

INSTRUCTIONS TO OFFERORS

1. DEFINITIONS AND TERMS

1.1 *Addendum* means a written or graphic instrument issued prior to the opening of Proposals which clarifies, corrects, or changes the Request for Proposals. Plural: Addenda.

1.2 *Consultant* means the Successful Offeror awarded the Agreement/Contract.

1.3 *Determination* means the written documentation of a decision of the procurement officer including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains (§ 13-1-52 NMSA 1978).

1.4 *Offeror* means any person, corporation, or partnership that provides professional planning services in this state, which chooses to submit a proposal in response to this Request for Proposals.

The Lead Planner for the offeror must have at a minimum ten years experience in land use planning. A Master's degree in urban planning or equivalent and membership in American Institute of Certified Planners may be substituted for five years experience.

1.5 *Procurement Manager* means the person or designee authorized by the Contracting Agency to manage or administer a procurement requiring the evaluation of proposals.

1.6 *Request for Proposals or "RFP"* means all documents, including those attached or incorporated by reference, used for soliciting proposals (§ 13-1-81 NMSA 1978).

1.7 *Responsible Offeror or Proposer* means an offeror or proposer who submits a responsive proposal and

who has furnished, when required, information and data to prove that his financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services described in the proposal (§ 13183 NMSA 1978).

1.8 *Responsive Offer or Proposal* means an offer or proposal which conforms in all material respects to the requirements set forth in the request for proposals. Material respects of a request for proposals include, but are not limited to, price, quality, quantity or delivery requirements (§ 13-1-85 NMSA 1978).

1.9 The terms must, shall, will, is required, or are required, identify a mandatory item or factor. Failure to comply with a mandatory item or factor will result in the rejection of the offeror's proposal.

1.10 The terms can, may, should, preferably, or prefers identify a desirable or discretionary item or factor.

2. REQUEST FOR PROPOSAL DOCUMENTS

2.1 Copies of Request for Proposals

A. A complete set of the Request for Proposals may be obtained from the Contracting Agency (unless another issuing office is designated in the RFP).

B. A complete set of the Request for Proposals shall be used in preparing proposals; the Contracting Agency assumes no responsibility for errors or misinterpretations resulting from the use of an incomplete set of the Request for Proposals.

C. The Contracting Agency in making copies of Request for Proposals available on the above terms, does so only for the purpose of obtaining proposals on the Project and does not confer a license or grant for any other use.

D. A copy of the RFP shall be made available for public inspection and shall be posted at the Administration Building of the Contracting Agency.

2.2 Interpretations

A. All questions about the meaning or intent of the Request for Proposals shall be submitted to the Procurement Manager of the Contracting Agency in writing. Replies will be issued by Addenda mailed or delivered to all parties recorded by the Contracting

Agency as having received the Request for Proposals.

Questions received less than five days prior to the date for opening of proposals will not be answered. Only questions answered by formal written addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

B. Offerors should promptly notify the Contracting Agency of any ambiguity, inconsistency, or error which they may discover upon examination of the Request for Proposals.

2.3 Addenda

A. Addenda will be mailed by certified mail with return receipt requested, by facsimile or hand delivered to all who are known by the Contracting Agency to have received a complete set of Request for Proposals.

B. Copies of Addenda will be made available for inspection wherever Request for Proposals is on file for that purpose.

C. No Addenda will be issued later than 5 days prior to the date for receipt of Proposals, except an Addendum withdrawing the Request for Proposals or one which includes postponement of the date for receipt of Proposals.

D. Each Offeror shall ascertain, prior to submitting the Proposal, that the Offeror has received all Addenda issued, and shall acknowledge their receipt in the Proposal transmittal letter.

3. PROPOSAL SUBMITTAL PROCEDURES

3.1 Number, Form and Style of Proposals

A. Offerors shall provide copies of their proposal to the location specified on the cover page on or before the closing date and time for receipt of proposals.

B. All proposals must be typewritten on standard 8 1/2" x 11" paper and bound on the left-hand margin;

C. A maximum of ___ pages, including title, index, etc., not including front and back covers.

D. The firm's statement of qualifications must be organized and indexed in the following format and must contain, as a minimum, all listed items in the sequence indicated:

. Letter of transmittal, if any;

- . Firm's qualifications (including subconsultants);
- . Assigned personnel experience, and expertise on related projects;
- . References (minimum of three) on past record of performance;
- . Project understanding and familiarity with contracting community issues;
- . Work plan in response to scope of work (if attached as appendix to this RFP);
- . Work will be performed in New Mexico;
- . Ability and resources to effectively manage and complete the work on schedule;
- . Campaign Contribution Disclosure form;
- and . Other supporting or resource material.

E. Any proposal that does not adhere to this format, and which does not address each specification and requirement within the RFP may be deemed non-responsive and rejected on that basis.

F. Offerors may request in writing nondisclosure of confidential data. Such data should accompany the proposal and should be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal. A request that states that the entire proposal be kept confidential will not be acceptable. Only matters that clearly are of a confidential nature will be considered.

G. Any cost incurred by the Offeror in preparation, transmittal, presentation of any proposal or material submitted in response to this RFP shall be borne solely by the Offeror.

3.2 Subconsultants

A. The Offeror shall list and state the qualifications for each Subconsultant the Offeror proposes to use for all subcontracted Work.

B. The Offeror is specifically advised that any person or other party, to whom it is proposed to award a subcontract under this proposal, must be acceptable to the Contracting Agency after verification by the Contracting Agency of the current eligibility status, including but not limited to suspension or debarment by the Contracting Agency.

3.3 Prequalification Process

A business may be prequalified by the Purchasing Agent as an Offeror for particular types of service. Mailing lists of potential Offerors shall include but

shall not be limited to such prequalified businesses (§ 131134 NMSA 1978). For purposes of this RFP, if prequalification is utilized, special instructions will be attached as an exhibit to this RFP.

3.4 Debarred or Suspended Contractors

A business (contractor, subcontractor or supplier) that has either been debarred or suspended pursuant to the requirements of §§ 13-1-177 through 13-1-180, and §§ 13-4-11 through 13-4-17

NMSA 1978 as amended, shall not be permitted to do business with the Contracting Agency and shall not be considered for award of the contract during the period for which it is debarred or suspended with the Contracting Agency.

3.5 Submittal of Proposals

A. Proposals shall be submitted at the time and place indicated in the Notice of Request for Proposals and shall be included in an opaque sealed envelope marked with the Project title and name and address of the Offeror and accompanied by the documents listed in the Request for Proposals.

B. The envelope shall be addressed to the Purchasing Agent/Procurement Officer of the Contracting Agency. The following information shall be provided on the front lower left corner of the Bid envelope: Project Title, Project No., Request for Proposals number, date of opening, and time of opening. If the Proposal is sent by mail, the sealed envelope shall have the notation "**SEALED PROPOSAL ENCLOSED**" on the face thereof.

C. Proposals received after the date and time for receipt of Proposals will be returned unopened.

D. The Offeror shall assume full responsibility for timely delivery of proposals at the Purchasing Agent's office, including those proposals submitted by mail. Hand-delivered proposals shall be submitted to the Purchasing Agent or his designee and will be clocked in/time stamped at the time received, which must be prior to the time specified.

E. After the date established for receipt of proposals, a register of proposals will be prepared which includes the name of each Offeror, a description sufficient to identify the service, the names and addresses of the required witnesses, and such other information as may be specified by the Purchasing Agent.

F. Oral, telephonic, or telegraphic proposals are

invalid and will not receive consideration.

3.6 Correction or Withdrawal of Proposals

A. A Proposal containing a mistake discovered before proposal opening may be modified or withdrawn by an Offeror prior to the time set for proposal opening by delivering written or telegraphic notice to the location designated in the Request for Proposals as the place where Proposals are to be received.

B. Withdrawn Proposals may be resubmitted up to the time and date designated for the receipt of Proposals, provided they are then fully in conformance with the Request for Proposals.

3.7 Notice of Contract Requirements Binding on Offeror

A. In submitting this proposal, the Offeror represents that the Offeror has familiarized himself with the nature and extent of the Request for Proposals dealing with federal, state and local requirements that are a part of these Request for Proposals.

B. Laws and Regulations. The Offeror's attention is directed to all applicable federal and state laws, local ordinances and regulations and the rules and regulations of all authorities having jurisdiction over the services of the Project.

3.8 Rejection or Cancellation of Proposals

This Request for Proposals may be canceled, or any or all proposals may be rejected in whole or in part, when it is in the best interest of the Contracting Agency. A determination containing the reasons therefor shall be made part of the project file (§ 13131 NMSA 1978).

4. CONSIDERATION OF PROPOSALS

4.1 Receipt, Opening and Recording

A. Proposals received on time will be opened publicly or in the presence of one or more witnesses and the name of the Offeror and address will be read aloud.

B. The names of all businesses submitting proposals and the names of all businesses, if any, selected for interview shall be public information. After an award has been made, final ranking and evaluation scores for all proposals shall become public information. (§ 131120 NMSA 1978). The contents of any proposal shall not be

disclosed so as to be available to competing Offerors during the negotiation process (§ 131116 NMSA 1978).

4.2 Proposal Evaluation

A. Proposals shall be evaluated on the basis of demonstrated competence and qualification for the type of service required, and shall be based on the evaluation factors set forth in this RFP. For the purpose of conducting discussions, proposals may initially be classified as:

- 1) Acceptable,
- 2) Potentially acceptable, that is, reasonably assured of being made acceptable, or
- 3) Unacceptable (Offerors whose proposals are unacceptable shall be notified promptly).

B. The Contracting Agency shall have the right to waive technical irregularities in the form of the Proposal of the Offeror that do not alter the quality or quantity of the services (§ 131132 NMSA 1978).

C. If an Offeror who otherwise would have been awarded a contract is found not to be a responsible Offeror, a determination that the Offeror is not a responsible Offeror, setting forth the basis of the finding, shall be prepared by the Purchasing Agent/Procurement Manager. The unreasonable failure of the Offeror to promptly supply information in connection with an inquiry with respect to responsibility is grounds for a determination that the Offeror is not a responsible Offeror (§ 131133 NMSA 1978). Businesses not been selected shall be so notified in writing within twenty-one days after an award is made (§ 131120 NMSA 1978).

D. Selection Process: (§ 131120 NMS 1978)

1) The evaluation of proposals will be performed by an evaluation committee composed of representatives selected by the Contracting Agency. The committee shall evaluate statements of qualifications and performance data submitted by at least three businesses in regard to the particular project and may conduct interviews with and may require public presentation by all businesses applying for selection regarding their qualifications, their approach to the project and their ability to furnish the required services.

2) If fewer than three businesses have submitted a statement of qualifications for a particular project, the committee may:

- a) rank in order of qualifications and submit to the local governing body for award those businesses which have submitted a statement of qualifications; or
- b) recommend termination of the selection process and sending out of new notices of the proposed procurement pursuant to § 131104 NMSA 1978.

4.3 Negotiations (§ 131122 NMSA 1978)

A. The Contracting Agency's designee shall negotiate a contract with the highest qualified business for the services contemplated under this RFP at compensation determined in writing to be fair and reasonable. In making this decision, the designee shall take into account the estimated value of the services to be rendered and the scope, complexity and professional nature of the services.

B. Should the designee be unable to negotiate a satisfactory contract with the business considered most qualified at a price determined to be fair and reasonable, negotiations with that business shall be formally terminated. The designee shall then undertake negotiations with the second most qualified business. Failing accord with the second most qualified business, the designee shall formally terminate negotiations with that business.

C. The designee shall then undertake negotiations with the third most qualified business.

D. Should the designee be unable to negotiate a contract with any of the businesses selected by the committee, additional businesses shall be ranked in order of their qualifications and the designee shall continue negotiations in accordance with this section until a contract is signed with a qualified business or the procurement process is terminated and a new request for proposals is initiated.

E. The Contracting Agency shall publicly announce the business selected for award.

4.4 Notice of Award

After award by the local governing body, a written notice of award shall be issued by the Contracting Agency after review and approval of the Proposal and related documents by the Contracting Agency with reasonable promptness (§ 131100 and § 131108

NMSA 1978).

5. POST-PROPOSAL INFORMATION

5.1 Protests

A. Any Offeror who is aggrieved in connection with a solicitation or award of an Agreement may protest to the Contracting Agency's Purchasing Agent and the Chief Administrator/Clerk in accordance with the requirements of the Contracting Agency's Procurement Regulations and the state Procurement Code. The protest should be made in writing 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 (§ 131172 NMSA 1978).

B. In the event of a timely protest under this section, the Purchasing Agent and the Contracting Agency shall not proceed further with the procurement unless the Purchasing Agent makes a determination that the award of Agreement is necessary to protect substantial interests of the Contracting Agency (§ 131173 NMSA 1978).

C. The Purchasing Agent or his designee shall have the authority to take any action reasonably necessary to resolve a protest of an aggrieved Offeror concerning a procurement. This authority shall be exercised in accordance with adopted regulations, but shall not include the authority to award money damages or attorneys' fees (§ 131174 NMSA 1978).

D. The Purchasing Agent or his designee shall promptly issue a determination relating to the protest. The determination shall:

- 1) State the reasons for the action taken; and
- 2) Inform the protestant of the right to judicial review of the determination pursuant to § 131183 NMSA 1978.

E. A copy of the determination issued under § 131175 NMSA 1978 shall immediately be mailed to the protestant and other Offerors involved in the procurement (§ 131176 NMSA 1978).

5.2 Execution and Approval of Agreement

The Agreement shall be signed by the Successful Offeror and returned within an agreed upon time frame after the date of the Notice of Award. No Agreement shall be effective until it has been fully executed by all of the parties thereto.

5.3 Notice to Proceed

The Contracting Agency will issue a written Notice to Proceed to the Consultant.

5.4 Offeror's Qualification Statement

Offeror to whom award of a Agreement is under consideration shall submit, upon request, information to prove that their financial resources, production or service facilities, personnel, and service reputation and experience are adequate to make satisfactory delivery of the services described in the Request for Proposals (§ 13182 NMSA 1978).

6. CAMPAIGN CONTRIBUTION DISCLOSURE AND PROHIBITION

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

See Exhibit A – Campaign Contribution Disclosure Form.

6.2 The form shall be filed with the Grantee as part of the competitive sealed proposal, or in the case of a

sole source or small purchase contract, on the date on which the contractor signs the contract.

6.3 A prospective contractor submitting a disclosure statement pursuant to this section who has not contributed to an applicable public official, whose family members have not contributed to an applicable public official or whose representatives have not contributed to an applicable public official shall make a statement that no contribution was made.

6.4 A prospective contractor or a family member or representative of the prospective contractor shall not give 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 during the pendency of negotiations for a sole source or small purchase contract.

6.5 A solicitation or proposed award for a proposed contract may be canceled pursuant to §13-1-181 NMSA 1978 or a contract that is executed may be ratified or terminated pursuant to §13-1-181 NMSA 1978 if:

A. A prospective contractor fails to submit a fully completed disclosure statement pursuant to this section; or

B. A prospective contractor or family member or 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.

6.6 As used in this section:

A. *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;

B. *Family member* means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law;

C. *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;

D. Prospective contractor means a person who is subject to the competitive sealed proposal process set forth in the Procurement Code, § 13-1-28 NMSA 1978, or is not required to submit a competitive sealed proposal because that person qualifies for a sole source or small purchase contract; and

E. Representative of the 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.

7. OTHER INSTRUCTIONS TO OFFERORS

[Attach as Appendix. If None, write "None"]

GENERAL TERMS AND CONDITIONS

1. GOVERNING LAW

The Agreement shall be governed exclusively by the laws of the state of New Mexico as the same from time to time exist.

2. INDEPENDENT CONTRACTORS

The Consultant (planning professionals) and his/her agents and employees are independent Contractors and are not employees of the Contracting Agency. The Consultant and his agents and employees shall not accrue leave, retirement, insurance, bonding, use of Contracting Agency vehicles, or any other benefits afforded to employees of the Contracting Agency as a result of the Agreement.

3. BRIBES, GRATUITIES AND KICK-BACKS

Pursuant to §13-1-191 NMSA 1978, reference is hereby made to the criminal laws of New Mexico (including §30-14-1 §30-24-2, and §§30-41-1 through 30-41-3 NMSA 1978) that prohibit bribes, kickbacks, and gratuities, violation of which constitutes a felony. Further, the Procurement Code, §§13-1-28 through 13-1-29 NMSA 1978, imposes civil and criminal penalties for its violation.

4. STANDARD FORM OF AGREEMENT BETWEEN CONTRACTING AGENCY AND CONSULTANT

The form of agreement required by the funding agency or issued by the Contracting Agency will be used for this project. Copies are available and may be reviewed upon request.

5. FEES

A lump sum fixed fee for Basic Service will be negotiated with the Offeror selected. Construction Observation, if appropriate or required, will be calculated on a Payroll Cost times a multiplier. Additional Services will be calculated on a Payroll Cost times a multiplier, or as appropriate or agreed upon.

6. FUNDING

This solicitation is subject to the availability of funds to accomplish the work.

7. PROFESSIONAL LIABILITY INSURANCE

The Offeror will not be required to carry professional liability (errors and omissions) insurance.

Criteria and Point Values

	<u>Suggested Points</u>	<u>Points this RFP</u>
1 Firm qualifications	[25]	
Proposal addresses the qualifications of the firm and any proposed subconsultants.		
2 Planning Experience	[15]	
Assigned personnel experience and expertise on related projects.		
3 References and Past Record of Performance	[15]	
Three references and past record of performance with local governments such as control of costs, quality of work and ability to meet schedules.		
4 Familiarity with the Contracting Agency	[10]	
Proximity to or familiarity with the area in which the project is located.		
5 Work Plan*	[20*]	
Work plan in response to scope of work, attached as appendix to this RFP.		
6 Work to be Completed in New Mexico	[5]	
The amount of planning work that will be produced by a New Mexico business within this state.		
7 Project Management	[10]	
Ability and resources to effectively manage and complete the work on schedule		
Total Points = (without item 5, Work plan)	80	
(if item 5, Work plan is included in response to scope of work)	100	
The TOTAL BUDGET available for this project is		\$

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

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

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

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

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

The following definitions apply:

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

"Campaign Contribution" means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official's behalf for the purpose of electing the official to statewide or local office. "Campaign Contribution" includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

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

"Pendency of the procurement process" means the time period commencing with the

public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals.

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

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

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

DISCLOSURE OF CONTRIBUTIONS BY PROSPECTIVE CONTRACTOR:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Date Contribution(s) Made: _____

Amount(s) of Contribution(s) _____

Nature of Contribution(s) _____

Purpose of Contribution(s) _____

(Attach extra pages if necessary)

Signature

Date

Title (position)

—OR—

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

Signature

Date

Title (Position)

Comprehensive Plan Minimum Requirements

A Comprehensive Plan must include at a minimum the following elements:

Land Use, including:

- (1) an analysis and mapping of existing land patterns and an inventory of the amount, type and intensity of uses by land category;
- (2) an analysis of trends in the supply and demand of land by land use category, including a projection of the distribution, location and extent of future land uses by land use category over a twenty-year period;
- (3) goals, objectives and policies that address maintaining a broad variety of land uses, including the range of uses existing in the contracting agency when the plan is adopted or amended; and
- (4) specific actions and incentives that the contracting agency may use to promote planned development or otherwise encourage certain identified development patterns and the locations where such development patterns should be encouraged.

Economic Development, including

- (1) a description of existing job composition and trends by industry and locational characteristics, such as access to transportation or proximity to natural or human resources, that influence the economic development potential of the contracting agency;
- (2) goals, objectives and policies for promoting economic development; and
- (3) a description of the actions that the contracting agency will take to implement economic development goals, objectives and policies;

Infrastructure, including

- (1) a description and assessment of the location, type, capacity and condition of existing infrastructure, including emergency services, sewage, drainage, local utilities and other types of facilities;
- (2) goals, objectives and policies for promoting the efficient provision of infrastructure, including a description of proposed levels of service; and
- (3) a description and assessment of proposed facility expansion and improvements designed to support planned uses and implement infrastructure goals, objectives and policies;

Water, including

- (1) description and assessment of the sources of water supply;
- (2) the demand for water by residential, commercial, institutional, industrial and recreational sectors;
- (3) assessment of the unaccounted for water losses due to leaks, theft or other reasons;
- (4) goals, objectives and policies for promoting the efficient use of water and for managing periods of drought; and
- (5) an analysis of the demand for water that will result from future growth projected in the plan, when added to existing uses, and how the demand for water that will result from future projected growth will be served by current water supplies, water conservation, or a plan to obtain additional water supplies or increase water use efficiencies;

Transportation, including

- (1) description and assessment of the location, type, capacity and condition of existing transportation facilities, such as freeways, arterial and collector streets or other modes of transportation as may be appropriate;
- (2) goals, objectives and policies for encouraging safe, convenient, efficient and economical transportation, including facilities for bicyclists and pedestrians, and a description of proposed levels of service and funding mechanisms; and
- (3) a description and assessment of proposed location, type and capacity of proposed transportation facilities designed to implement transportation goals, objectives and policies and a description of funding mechanisms that will be used to fund proposed transportation improvements;

Housing, including

- (1) an analysis of existing housing supply and demand and forecasted housing needs;
- (2) goals, objectives and policies for the improvement of housing quality, variety and affordability and for provision of adequate sites for housing and housing opportunities for all segments of the community; and
- (3) a description of the actions that will be taken to implement housing goals, objectives and policies;

Hazards Mitigation, including

- (1) an analysis of the risks of wildfire, floods, extreme weather conditions, accidents, terrorism, and other hazards;
- (2) goals, objectives and policies for hazard mitigation; and
- (3) a description of the actions that will be taken to mitigate hazards; and

Implementation of the plan's goals, objectives, policies, standards, and/or guidelines

The lead planner for a comprehensive plan must have at a minimum ten (10) years experience in land use planning. A Master's degree in urban planning or equivalent and membership in the American Institute of Certified Planners (AICP) may be substituted for five (5) years experience.

EXHIBIT 3-G
AGREEMENT BETWEEN OWNER AND PLANNER


Exhibit 3-G AGREEMENT BETWEEN OWNER AND PLANNER	
Project _____	
Contract N°. _____	Project N°. _____
	
Distribution to:	
<input type="checkbox"/> Owner	
<input type="checkbox"/> Planner	
<input type="checkbox"/> Project Representative	
<input type="checkbox"/> Funding Agency	
<input type="checkbox"/> Other	
This Agreement entered into this _____ day of _____, 20____, by and between the Owner _____ and the Planner _____	
[Signature Line]	[Signature Line]
[Signature Line]	[Signature Line]
<small>[This document was prepared to be used with Community Development Block Grant and state funded projects. This document has important legal consequences; consultation with an Attorney is encouraged with respect to its completion or modification]</small>	
<small>Rev 6-16</small>	<small>3G - 1</small>

TABLE OF CONTENTS

Article 1	Definitions
Article 2	Planner's Services and Responsibilities
Article 3	User Representative
Article 4	Owner's Responsibilities
Article 5	Reimbursable Expenses
Article 6	Payment to the Consultant
Article 7	Planner's Accounting Records
Article 8	Ownership and Use of Documents
Article 9	Termination of Agreement
Article 10	General and Special Provisions
Article 11	Basis of Compensation
Article 12	Additional Terms and Conditions of Services

RECITALS

WHEREAS this project is funded in whole or in part by a federal or state grant or loan program administered by the Local Government Division, Department of Finance and Administration, state of New Mexico, hereinafter referred to as the "funding agency"; and

WHEREAS, the funding agency has funded the above referenced project pursuant to Title I of the Housing and Community Development Act of 1974 (PL 95-383) as amended; and

WHEREAS the Planner was selected pursuant to Sections 13-1-117 through 13-1-118 NMSA 1978 and the Owner's Procurement Regulations; and

WHEREAS the Owner agrees to hire the Planner, and the Planner agrees to provide professional and technical services as required hereinafter for the Project in accordance with the terms and conditions set forth in this Agreement;

IT IS THEREFORE AGREED AS FOLLOWS

ARTICLE 1 DEFINITIONS

For purposes of this Agreement, the following definitions shall apply throughout the contract and to all attachments incorporated herein, unless otherwise specified.

- 1.1 *Central Purchasing Officer* means the Central agreement of the owner.

- 1.2 *Codes* means federal, state, and local codes applicable to the project.

- 1.3 *Direct Salary* means the gross wages, which do not include costs of employer and beyond the amounts of the paychecks.

- 1.4 *Governing Authority* means the local governing authority for the award of planning contracts is the governing body, and the governing authority for the execution of planning contract is the mayor/county commission chairperson.

- 1.5 *Purchasing Office* is any division, office, branch, section, unit, or other organizational element charged with the functions of procuring supplies or services.

- 1.6 *Owner* means the public corporation or association with whom the Consultant has entered into the Agreement and for whom the Work is to be provided.

- 1.7 *Owner Representative* for purposes of this Agreement is the person designated by the Owner and whose names shall be submitted in writing to the Planner. The Owner Representative shall be responsible for administrative decisions and approvals and for contact with the Planner regarding contractual matters and Project execution.

- 1.8 *Project* means the total plan under the Scope of Services of which the Work performed under the Contract Documents may be the whole or a part. The Project is further defined as follows in Paragraph 12.1.

- 1.9 *Planner* means the individual who shall conduct all plans that involve the Project. The Project Consultant shall be mutually agreed upon by Owner and Planner at the time this Agreement is entered into by the parties and shall be named herein.

- 1.10 *Reimbursable Expenses* means expenses in addition to the basic services compensation which shall include actual expenditures made by the Planner or its employees in the interest of the Project (while performing consulting services pursuant to this Agreement) and limited to those items listed in Article 5 of this Agreement and authorized in

writing by the Owner.

- 1.11 *Site or area* means the physical location on which the planning project is to occur.
- 1.12 *User (or User Agency)* means the agency or department or designated entity for whose use the Project is being planned. For purposes of this Agreement, see paragraph 12.2 for User designation.
- 1.13 *User Representative* means the individuals designated by the User as the principal contact regarding the Owner's requirements for the Project. Unless specifically designated by the Owner, the User Representative shall not have the authority to render administrative decisions or approvals. See also Article 3 herein. For purposes of this Agreement, the User Representative shall be designated by the Owner and whose names shall be submitted in writing to the Planner.
- 1.14 *Other Definitions* means the definitions in the Federal Terms and Conditions for Professional Services, as provided in Exhibit E hereto.

ARTICLE 2 PLANNER'S SERVICES AND RESPONSIBILITIES

2 Basic Services

2.1 General. The Planner's basic services shall consist of the following: A) Initial Citizen Input Phase; B) Data Collection Phase; C) Study Phase; D) Secondary Citizen Input Phase; E) Final Report Phase; and F) Implementation Phase. The services to be provided during each phase are listed below and shall include all consulting services required by the Planner to provide the service as listed on Exhibit B.

2.2 The Planner shall request from the User Representative information sufficient for the Planner to develop program criteria including the User's goals, objectives, and needs, and the organizational chart of individuals and equipment that shall occupy the Project.

2.3 Project Legislation or Authorization. The Planner shall request from the Owner and the User copies of documents supporting the funding request which were presented to the funding entity or other

regulatory agencies that provided funds for planning of the envisioned Project. These documents will be furnished for information only. The Owner will establish a budget for utilization by the Planner in the performance of the services.

2.4 Standard of Care. The standard of care for all professional consulting and related services performed or furnished by the Planner under this Agreement will be the care and skill ordinarily used by members of the Planner's profession as proscribed by the American Institute of Certified Planners practicing under similar conditions at the same time and in the same locality. The Planner makes no warranties, express or implied, under this Agreement or otherwise, in connection with the Planner's services.

2.1 Planning Services

2.1.1 The study shall establish goals, collect facts, identify concepts, and determine functional needs necessary to complete the Project within the funding mandate. Based on the data provided by the User Representative and pursuant to adequate consultation with the User Representative, the Planner shall prepare a document that adequately defines the scope of the Project.

2.1.2 The Owner and the User Representative shall work with the Planner to ensure that the information required by the Owner is made available to the Planner. This information and other requests concerning organization of functions shall be provided in the form of written memoranda.

2.1.3 The Owner shall schedule a meeting with the Planner and the User Representative to define the relationship among these parties. The Planner shall advise the Owner, in writing, of any information he requires that has not been provided by the Owner and/or the User Representative, or any conflicts between the established program requirements and the funding authorizing the Project.

2.2 Time

2.2.1 The Planner shall perform Basic and Additional Services as expeditiously as is consistent with professional skill and care and the orderly progress of the Work. The Planner shall submit, for the Owner's approval and as a part of this Contract, a schedule for the performance of the Planner's

services. This schedule, when approved by the Owner, shall not, except for reasonable cause not within the control of the Planner, be exceeded by the Planner (see Exhibit A, Time Schedule for Project Phases).

2.3 Implementation Phase. During the Implementation Phase, the Planner shall, when requested by the Owner:

2.3.1 Provide assistance in connection with the refining and adjusting of any portion of the plan.

2.3.2 Assist the Owner in training the Owner's staff to implement and maintain the plan.

2.3.3 Provide miscellaneous services as requested by the Owner in connection with Project closeout.

ARTICLE 3 THE USER REPRESENTATIVE

3 The Owner shall designate one or more departments of the Owner or a designated entity as a User, or User Agency. Such User, or User Agency, shall provide an individual User Representative to perform those functions required of the User Agency.

3.1 The User Representatives and the Owner shall provide the Planner with information required under Article 2 of this Agreement, as well as additional information required by the Planner for the purpose of defining the Scope of the Project and to assist the Planner and the Owner in the development and completion of the Project.

3.2 The User Representatives shall meet with the Planner and/or the Owner at times required by the Owner. The User Representatives shall respond to all inquiries submitted by the Planner and/or the Owner within any reasonable time limits set forth in the inquiry.

3.3 Information submitted directly by the User Representatives to the Planner is subject to subsequent approval by the Owner.

ARTICLE 4 OWNER'S RESPONSIBILITIES

4.1 The Owner shall designate, in writing, an

Rev 6-16

Owner Representative who has the authority to act on his behalf; however, authority for final approval of the Plan and Drawings and Specifications, if applicable, the Contract Documents, or any Change

Order is retained by the Owner. The Owner and the Owner Representative shall examine documents submitted by the Planner and shall render decisions promptly to avoid unreasonable delay in the progress of the Planner's services. The Owner Representative, through coordination with the User Representatives, shall provide information to the Planner regarding the User's requirements in the development of Program Documents for the Project.

4.3 The Owner shall assist the Planner by placing at Planner's disposal all available information pertinent to the Project including previous plans and any other relevant data.

ARTICLE 5 REIMBURSABLE EXPENSES

5.1 Reimbursable expenses are those above and beyond Basic Services compensation and are the actual expenditures made by the Planner or his employees in the interest of the Project. Reimbursable expenses shall be limited to the following:

5.1.1 Expenses of transportation when traveling in connection with the Project when specifically set out in Article 12. Such expenses are limited to per diem and mileage rates as set forth in the Owner's Travel Rule or Regulation.

5.1.2 Expense of fees paid for securing approvals of authorities having jurisdiction over the Project. Fees for approval by the permitting agency shall be paid directly by the Owner after submittal of the documents by the Planner to the permitting agency.

5.1.3 The Planner shall charge Bidders a deposit fee equal to the full cost of reproduction of drawings, specifications, and other documents required by the Owner to solicit bids, if applicable, and execute the Planning Contract. This fee shall be completely refunded if the documents are returned in usable condition within the time limits specified in the Invitation for Bid. All forfeited fees shall be returned to the Owner for use in this Project.

All reproduction required may be approved in

3G - 4

writing by the Owner prior to request. This expense shall be paid by the Owner. All other reproductions as may be required by the Owner's review or for the office use of the Planner and the Planner's consultants shall be provided as part of the Planner's Basic Compensation.

5.1.4 Applicable gross receipts taxes on reimbursable expenses or additional services received by the Planner under the provisions of this Contract. The Planner shall use and require the use of tax exempt certificates by Planners whenever allowed by law. In any event, the Planner shall not include taxes paid as a part of the base dollar amount upon which taxes are calculated. Payment pursuant to this provision does include payment for gross receipts taxes pursuant to Subparagraph 13.1.1.

ARTICLE 6 PAYMENTS TO THE PLANNER

6.1 Payments on Account of Basic Services

6.1.1 Payments for Basic Services shall be made monthly (or quarterly) and shall be in proportion to services performed within each phase of services, on the basis set forth in Article 11.

6.1.2 When portions of the Project are deleted or otherwise not constructed, compensation for such portions of the Project shall be payable to the extent services are performed on such portions, in accordance with the schedule set forth in Subparagraph 11.1.2, based on the lowest bona fide bid or negotiated proposal.

6.2 Payment for Services and Costs

6.2.1 The Planner shall submit quarterly or as required by the funding agency or the Owner a fully completed request for payment for all services and costs on the form provided as Exhibit D to this agreement.

6.2.2 Upon the Owner's request, the Planner shall submit, with his billings at the completion of the Project, certification that payment has been made or will be made upon receipt of payment to consultants, and others for materials and services required by this Agreement. At this time, the Planner shall notify the Owner of any disputes regarding payments by the Planner that may exist at the completion of the

Project.

6.3 Payments Withheld

6.3.1 No deductions or withholdings shall be made from the Planner's compensation on account of penalty, liquidated damages, or other sums withheld from payments to Contractors, or on account of the cost of changes in the Work other than those for which the Planner may be legally liable and as required in Paragraph 2.8.

6.4 Project Suspension or Termination, Other Parties

6.4.1 In the event of termination or suspension of the Project due to the fault of parties other than the Planner, the Planner shall be compensated for services performed to termination date pursuant to Article 9.

ARTICLE 7 PLANNER'S ACCOUNTING RECORDS

7.1 Records of expenses by the Planner and his consultants pertaining to all services under this Agreement shall be kept on the basis of generally accepted accounting principles and shall be available at mutually convenient times to the Owner or the Owner's authorized representative. The Owner shall have the right to audit all such records and billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Owner to recover excessive or illegal payments.

7.2 Records of expenses shall be kept by the Planner and his consultants and shall be available to the Owner until all applicable statutes of limitations have run, and this provision shall survive and continue beyond the termination of other terms of this Agreement.

7.3 The review of "Records of Expenses" for Lump Sum Fixed Fee portions of the Planner's services shall be limited to those records that define the percentage of completion, except as otherwise required by federal regulation detailed in Exhibit E.

ARTICLE 8 OWNERSHIP AND USE OF DOCUMENTS

8.1 All documents including plans, drawings, maps and specifications provided or furnished by the Planner shall become the sole property of the Owner whether the Project for which they are made is completed or not. These documents shall be kept on file by the Owner. The Planner may maintain a complete reproducible set of any and all record documents developed under this Agreement.

8.2 The Planner shall provide a reproducible copy of the original plans, documents or drawings to the Owner and a copy on CD in MS WORD or "pdf" format for reproducible and archival purposes.

8.3 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 Architect.

ARTICLE 9 TERMINATION OF AGREEMENT

9.1 Termination of Agreement for Cause. If, through any cause, the Planner shall fail to fulfill in timely and proper manner his obligations under this Agreement, or if the Planner shall violate any of the covenants, agreements, or stipulations of this Agreement, the Owner shall thereupon have the right to terminate this Agreement by giving written notice to the Planner of such termination and specifying the effective date thereof, at least five days before the effective date of such termination. In such event, the Planner may make copies of all finished or unfinished documents, data, studies, drawings, maps, photographs, and reports prepared by the Planner under this Agreement, except for deliverable identified under this Agreement that the Planner shall provide at no additional cost.

9.1.1 Notwithstanding the above, the Planner shall not be relieved of liability to the Owner damages sustained by the Owner by virtue of any breach of the Agreement by the Planner, and the Owner may withhold any payments to the Planner for the purpose of set-off until such time as the exact amount of damages due the Owner from the Planner is determined.

9.2 Termination for Convenience of the Owner.

The Owner may terminate this Agreement at any time by giving at least ten (10) days notice in writing to the Planner. If the Agreement is terminated by the Owner as provided herein, the Planner will be paid for the time provided and expenses incurred up to the termination date. If this Agreement is terminated due to the fault of the Planner, paragraph 10.1 relative to termination shall apply.

ARTICLE 10 GENERAL AND SPECIAL PROVISIONS

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

10.2 Unless expressly provided otherwise, terms in this Agreement shall have the same meaning as those in the Conditions of the Contract for Planning, as provided in Exhibit E of this Agreement.

10.3 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.

10.4 The Planner shall hold harmless and indemnify the Owner against injury, loss, or damage, including but not limited to court costs and reasonable attorney's fees, arising out of the negligent acts, errors, or omissions of the Planner.

10.5 This Agreement shall not become effective until signed by all parties required to sign this Agreement.

10.6 The Planner and his agents and employees are independent contractors performing professional and technical services for the Owner and are not employees of the Owner. The Planner and his agents and employees shall not as a result of this Agreement accrue leave, retirement, insurance, bonding, use of Owner vehicles, or any other benefits afforded to employees of the Owner.

10.7 The Planner's plan shall be in compliance with applicable federal, state, and local codes and laws related to the Work, including but not limited to provisions of the Civil Rights Act of 1964 and Executive Order 11246, Title VI, Section 3 and 109. In all cases, the more restrictive code or statute adopted shall govern.

10.8 The Planner shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written consent of the Owner and review by the funding agency.

10.9 Whenever the Planner contracts for an additional Project Representative or enters into a joint venture to share the duties and responsibilities of the Planner under this Agreement, all such agreements require prior Owner approval and must outline the duties and responsibilities of the Planner and his representative, or joint venturer, or consultant; and a copy of such approved agreement shall be filed with the Owner. Such agreements shall be amendments to this Agreement.

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

10.11 The Planner affirms that he currently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. The Planner further affirms that, in the performance of this Agreement, the Planner shall employ no person having such interest. The Planner also agrees that neither he nor anyone employed by him shall have an interest, direct or indirect, in any company hired for the Project as Contractor, subcontractor, or supplier, except when the Project is a design-build project and/or the Owner provides inspections independent of the Planner.

10.12 Pursuant to Section 13-1-191 NMSA 1978, reference is hereby made to the criminal laws of New Mexico (including Section 30-14-1, 30-24-2, and 30-41-1 through 3, NMSA 1978) which prohibit bribes, kickbacks, and gratuities, violation of which constitutes a felony. Further, the Procurement Code,

Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and criminal penalties for its violation.

10.13 Professional Liability (Errors and Omissions) Insurance. The Planner is **not** required to obtain professional liability insurance and provide a certificate of coverage.

10.14 No work requiring the approval of the Owner shall be undertaken until the Owner's written approval has been requested and obtained. Any deviation from this requirement shall be considered a material breach of this Agreement and grounds for termination.

10.15 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 shown on the cover sheet to this Agreement.

Nothing herein contained shall preclude the giving of any such written notice by personal service. The address to which notices shall be mailed to either party may be changed by written notice given by such party to the other as hereinabove provided.

10.16 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.

10.17 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.

10.18 This document shall be executed in at least two counterparts, each of which shall be deemed an original.

10.19 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.

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

10.21 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 or any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or any term, covenant, or condition thereof.

10.22 Mergers, Dissolution, Successors, and Assigns. The Planner agrees that during the term hereof it will maintain its existing business structure and will not dissolve or otherwise dispose of all or substantially all of its assets and will not consolidate with or merge into another business structure or permit one or more other business structures to consolidate or merge into it, unless the surviving, resulting, or transferred business structure, as the case may be: A. assumes, is capable of, and agrees in writing to perform all of the obligations of the Planner hereunder; B. qualifies to do business in the state of New Mexico; and C. the Owner approves the firm or individual consultant, or new consultant, if any, who is to proceed. The terms and provisions hereof shall extend to and be binding upon and inure to the benefit of the successors and assigns of the respective parties hereto.

10.23 The Owner shall determine whether or not the Planner or the firm named as Planner in this Agreement shall continue to have all contract rights under this Agreement and continue to represent the Owner under this Agreement in all instances where the Project Planner ceases to be associated with the firm names in this Agreement.

10.24 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 Agreement.

10.25 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.

10.26 Words and Phrases. Words, phrases, and abbreviations that 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.

10.27 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.

10.28 Exhibits and Attachments Incorporated by Reference. All exhibits, attachments, riders, and addenda referred to in this Agreement, including but not limited to the exhibits referred to in this Agreement, as well as those listed in paragraph 10.29 below, are hereby incorporated into this Agreement by reference and made a part hereof as though set forth in full this Agreement to the extent they are consistent with its conditions and terms.

10.29 The following Exhibits are attached to and made a part of this Agreement:

- Exhibit A** - Time Schedule for Project Phases
- Exhibit B** - List of Consultants
- Exhibit C** - Planner Additional Services Proposal/Amendment Form
- Exhibit D** - Planner Pay Request Form
- Exhibit E** - Federal Terms & Conditions for Professional Services, if applicable

ARTICLE 11 BASIS OF COMPENSATION

11.0 The Owner shall compensate the Planner for the Scope of Services provided in accordance with Article 6, Payments to the Planner, and other Terms and Conditions of this Agreement, as follows:

11.1 Compensation

11.1.1 For Basic Services, as described in Paragraphs 2 through 2.3, and other services included in Article 12 as part of Basic Services, the compensation is shown in paragraph 12.4.

11.1.2 Payments For Basic Services shall be made monthly in proportion to services performed so that the compensation at the completion of each phase, except when the compensation is on the basis of a Multiple of Direct Personnel Expense, shall equal the Compensation detailed in paragraph 12.4.

11.1.3 Applicable Gross Receipts and Local Option Taxes and Total Compensation presented in 12.4 shall be modified by amendment to this Agreement if the tax rate changes during the term of this Agreement.

11.2 For Project Representation beyond Basic Services, compensation shall be computed separately and included with additional services in paragraph 12.5.

11.3 Compensation for Additional Services, this includes all additional services, shall be computed as a lump sum amount as shown in paragraph 12.5, plus applicable gross receipts and local option taxes.

11.3.1 For Additional Services of the Planner, as described in Paragraph 2.9, and any other services included in Article 12 as part of Additional Services, but excluding additional services of consultants, compensation shall be computed as shown in paragraph 12.5, plus applicable gross receipts and local option taxes.

11.3.2 For Additional Services of Consultants, a multiple of 1.10 times the amounts billed to the Planner for such services. The Planner shall provide the Owner with hourly rates for his consultants and their employees detailed by professional levels within the firm. Multiples applied to Direct Personnel Expenses, when approved by the Owner, shall be the basis for compensation for the additional services of the consultant.

11.3.3 For all Additional Services of the Planner, as described in paragraphs 11.3.1 and 11.3.2, these services and lump sum amount directly related to such services shall be specifically identified here and included with the additional services as a lump sum amount as shown in paragraph 12.5.

For Reimbursable Expenses, if allowed, as described in this Agreement at cost, compensation shall be computed as shown in paragraph 12.3, plus applicable gross receipts and local option taxes.

ARTICLE 12 OTHER TERMS AND CONDITIONS OR SERVICES

The following terms, condition or services apply to projects funded through the Community Development Block Grant program:

12.1 Project Description. As defined in paragraph 1.8 the Project (insert description and location) is:

12.2 User Agency. As defined in paragraph 1.12 the User (or User Agency) is:

12.3 Reimbursables. Final reimbursable expenses shall be determined prior to the final request for payment under this agreement and shall be adjusted by amendment upward or downward as necessary. The Planner is responsible for keeping the Owner informed if the budgeted amount is anticipated to be exceeded as the project progresses.

Per Diem and Mileage	\$	_____
Fees for Securing Approvals	\$	_____
Reproduction of plans,	\$	_____
drawings and specifications # of sets		_____
Applicable gross receipt taxes	\$	_____
TOTAL:	\$	_____

12.4 Compensation. Pursuant to paragraphs 12.1.2.3 and 4, compensation for all services, including basic, inspections, additional, reimbursables and gross receipts taxes shall be computed as follows:

On the basis of a Fixed Fee of \$ _____

Plus all applicable GRT @ _____ % \$ _____

TOTAL BASIC COMPENSATION \$ _____

Total Reimbursable \$ _____

TOTAL Lump Sum

CONTRACT AMOUNT \$ _____

12.5 Additional Services shall be computed as follows:

<u>Position</u>	<u>Per Hour Rate</u>
Planner Principals' time	\$ _____
Project Planners' time	\$ _____

Employees' time (other than Principals') shall be at the following hourly rates, which shall not exceed 2.5 times the employee's direct salary:

Design/Specification Writer	\$ _____
Drafting/CADD Operator	\$ _____
Clerical	\$ _____
Other (list):	\$ _____
	\$ _____

12.6 Federal Terms and Conditions. Exhibit E modifies the Terms and Conditions of this Agreement only to the extent delineated in Exhibit E.

PLANNER PROFESSIONAL SERVICES AGREEMENT SIGNATURE PAGE

Contract No. _____

AGREED

Planner _____ By: _____

Project Planner _____ By: _____

NM Tax ID No: _____

Federal Tax ID No. _____

REVIEWED AS TO BUDGETARY SUFFICIENCY

Finance Officer _____ By: _____
☐ Approved ☐ Disapproved

REVIEWED AS TO LEGAL FORM AND SUFFICIENCY

Legal Counsel _____ By: _____

APPROVED

Owner: _____ By: _____
(Owner's Name)

Attest: _____ By: _____
(Municipal/County Clerk)

Agency Concurrence _____ By: _____

Title: _____

TIME SCHEDULE FOR PROJECT PHASES

Project _____	Date/Day to be Completed _____
Begin Project	_____
Citizen Input Phase	_____
Study Phase	_____
Study Phase Review	_____
Preliminary Plan Phase	_____
Preliminary Plan Phase Review	_____
Final Plan	_____
Final Plan Review	_____

LIST OF CONSULTANTS

	<u>Firm</u>	<u>Address</u>	<u>Phone/Fax No.</u>
Planning			
Architectural			
Engineering			
Cost Estimating			
Other (list)			

PLANNER ADDITIONAL SERVICES PROPOSAL/AMENDMENT

Project: _____ Project N^o. _____
 Planner: _____ Contract N^o. _____
 _____ Proposal/Amendment N^o. _____

Reason and Justification for Proposal: (use additional sheets, if necessary)

Requested or initiated by: ☐ User ☐ Agency ☐ Owner ☐ Planner ☐ Other

In accordance with Article 2 and/or Article 13, where applicable, Additional Services to the Agreement between Owner and Planner, the Planner is authorized to provide the following described services (scope of services and upset maximum compensation).

The Original Contract Sum was	\$ _____
Net Change by previously authorized Contract Amendments	\$ _____
Net Change by previously authorized Additional Services	\$ _____
The Contract Sum prior to this request was	\$ _____
The Contract Sum will be, increased, decreased, unchanged	\$ _____
The new Contract Total including this proposal will be	\$ _____

Approved by the governing body at its meeting of

AGREED AND RECOMMENDED

APPROVED

PLANNER

OWNER

By _____ By: _____
 Mayor/Chairperson

Title _____ Attest: _____
 Municipal/County Clerk

PLANNER PAY REQUEST

EXHIBIT D

Planner: _____ Date: _____
Statement N°. _____
Purchase Order N°. _____

Project: _____ Project N°. _____
Completed to Date Less Previous Payments Amount this Request

Basic Services

	Contract Sum	Completed to Date	Less Previous Payments	Amount this Request
Initial Citizen Input Phase	\$	\$	\$	\$
Data Collection Phase	\$	\$	\$	\$
Study Phase	\$	\$	\$	\$
Secondary Citizen Input Phase	\$	\$	\$	\$
Final Report Phase	\$	\$	\$	\$
Implementation Phase	\$	\$	\$	\$
Additional Services **	\$	\$	\$	\$
Reimbursables **	\$	\$	\$	\$
Gross Receipt Taxes	\$	\$	\$	\$
Total Lump Sum Fixed Amount	\$	\$	\$	\$

TO DATE: \$ _____
\$ _____

TOTAL AMOUNT DUE:

** All Additional Services and Reimbursables other than what has been shown in paragraph 12 must be authorized by Contract Amendment.

CERTIFICATION

I do hereby certify that the work described herein has been performed and that no previous payment for the Total Amount due has been received.

By: _____ Title _____

OWNER USE ONLY

I certify that the above services were rendered as stated; that they were necessary and proper and that the amounts claimed are just and reasonable and that no part thereof has been paid.

By: _____ Title _____

FEDERAL TERMS AND CONDITIONS FOR PROFESSIONAL SERVICES

State administered Community Development Block Grant monies are federal funds. Section 13-1-30B NMSA 1978 of the Procurement Code stipulates: "When a procurement involves the expenditure of federal funds, the procurement shall be conducted in accordance with mandatory applicable federal law and regulations. When mandatory applicable federal law or regulations are inconsistent with the provisions of the Procurement Code, compliance with federal law or regulations shall be compliance with the Procurement Code." The applicable governing federal procurement standards are defined in OMB Circular A-102, Attachment O. When federal and state procurement policies are different, the more restrictive policies apply so long as they are consistent with Circular A-102 standards.

1. Termination of Contract for Cause. If, through any cause, the Planner shall fail to fulfill in timely and proper manner his obligations under this Contract, or if the Planner shall violate any of the covenants, agreements, or stipulations of this Contract, the Owner shall there-upon have the right to terminate this Contract by giving written notice to the Planner of such termination and specifying the effective date thereof, at least five days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the Planner under this Contract shall, at the option of the Owner, become its property and the Planner shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder.

1.1 Notwithstanding the above, the Planner shall not be relieved of liability to the Owner damages sustained by the Owner by virtue of any breach of the Contract by the Planner, and the Owner may withhold any payments to the Planner for the purpose of set-off until such time as the exact amount of damages due the Owner from the Planner is determined.

2. Termination for Convenience of the Owner. The Owner may terminate this contract at any time by giving at least ten (10) days notice in writing to the Planner. If the Contract is terminated by the Owner as provided herein, the Planner will be paid for the time provided and expenses incurred up to the termination date. If this Contract is terminated due to the fault of the Planner, paragraph 1 hereof relative to termination shall apply.

3. Changes. The Owner may, from time to time, request changes in the scope of the services of the Planner to be performed hereunder. Such changes, including any increase or decrease in the amount of the Planner compensation, which are mutually agreed upon by and between the Owner and the Planner, shall be incorporated in written amendments to this contract.

4. Personnel.

4.1 The Planner represents that he has, or will secure at his own expense, all personnel required in performing the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the Owner.

4.2 All of the services required hereunder will be performed by the Planner or under his supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state and local law to perform such services.

4.3 None of the work or services covered by this contract shall be subcontracted without the prior written approval of the Owner. Any work or services subcontracted hereunder be specified by written contract or agreement and shall be subject to each provision of this Contract.

5. Assignability. The Planner shall not assign any interest on this Contract, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the Owner thereto: Provided, however, that claims for money by the Planner from the Owner under the Contract may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment or transfer shall be furnished promptly to the Owner.

6. Reports and Information. The Planner, at such times and in such forms as the Owner may require, shall furnish the Owner such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Contract, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Contract.

7. Records and Audits. The Planner shall maintain accounts and records, including personnel, property and financial records, adequate to identify and account for all costs pertaining to the Contract and such other

records as may be deemed necessary by the Owner and to assure proper accounting for all project funds, both federal and non-federal shares. These records will be made available for audit purposes to the Owner or any authorized representative, and will be retained for six (6) years after the expiration of this Contract unless permission to destroy them is granted by the Owner and the funding agency.

8. Findings Confidential. All of the reports, information, data, etc., prepared or assembled by the Planner under this Contract are confidential and the Planner agrees that they shall not be made available to any individual or organization without the prior written approval of the Owner.

9. Copyright. No report, maps, or other documents produced in whole or in part under this Contract shall be the subject of an application for copyright by or on behalf of the Planner.

10. Compliance with Local Laws. The Planner shall comply with all applicable laws, ordinances and codes of the State and the Owner, and the Planner shall save the Owner harmless with respect to any damages arising from any tort done in performing any of the work embraced by this Contract.

11. Equal Employment Opportunity. During the performance of this Contract, the Planner agrees as follows:

11.1 The Planner will not discriminate against any employee or applicant for employment because of race, creed, sex, color or national origin. The Planner will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, sex, color 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 Planner agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Owners setting forth the provisions of this non-discrimination clause.

11.2 The Planner will, in all solicitation or advertisements for employees placed by or on behalf of the Planner, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex, or national origin.

11.3 The Planner will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Contract so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

11.4 The Planner will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

11.5 The Planner will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the Owner's representative, the funding agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

11.6 In the event of the Planner's non-compliance with the equal opportunity clauses of this Agreement or with any of such rules, regulations or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the Planner may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

11.7 The Planner will include the provisions of paragraphs 11.1 through 11.7 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Planner will take such action with respect to any subcontract or purchase order as the Owner's representative may direct as a means of enforcing such provisions including sanctions for non-compliance; provided, however, that in the event the Planner becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Owner, the Planner may request the United States to enter into such litigation to protect the interests of the United States.

12. Civil Rights Act of 1964. Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be

subjected to discrimination under any program or activity receiving federal financial assistance.

13. Section 109 of the Housing and Community Development Act of 1974.

131 No person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

14. "Section 3" Compliance in the Provision of Training, Employment and Business Opportunities.

14.1 The work to be performed under this contract is on a project assisted under a program providing direct federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the project.

14.2 The parties to this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.

14.3 The contractor will send to each labor organization or representative or workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

14.4 The contractor will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the

subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135. The contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

14.5 Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued hereunder prior to the execution of the contract, shall be a condition of the federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors and assigns to those sanctions specified by the grant or loan agreement or contract through which federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.

15. Interest of Members of the Owner. No member of the governing body of the Owner and no other officer, employee, or agent of the Owner, who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this contract; and the Planner shall take appropriate steps to assure compliance.

16. Interest of other Local Public Officials. No member of the governing body of the Owner and no other public official of the Owner, who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this Contract; and the Planner shall take appropriate steps to assure compliance.

17. Interest of Planner and Employees. The Planner covenants that he presently has no interest and shall not acquire interest, direct or indirect, in the study area or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his services hereunder. The Planner further covenants that in the performance of this Contract, no person having any such interest shall be employed.

18. Access to Records. The State funding (grantor) agency, the Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives,

shall have access to any books, documents, papers and records of the Planner which are directly pertinent to

this specific contract, for the purpose of audits, examinations, and making excerpts and transcriptions.

All records connected with this contract will be maintained in a central location by the Owner and will be maintained for a period of six (6) years from the official date of close-out of the grant.

Chapter 4: Construction Contract and Labor Standards

Overview

This chapter covers bidding, contracting, construction and labor standards of public improvement projects administered through the CDBG program. Although Grantees have likely hired an architect or engineer to represent them during this phase, there are numerous administrative tasks Grantees must undertake that are not included as part of most architect's or engineers' standard basic services. ***As the grant recipient, the ultimate responsibility for compliance with all state and federal laws and regulations remains with the Grantee.***

Grant funds awarded under this program are made available through a HUD Community Development Block Grant administered by the State of New Mexico, Department of Finance and Administration, Local Government Division. The task list in this chapter is a set of guidelines to provide the Grantee with a thorough understanding of the requirements for construction contracts and full compliance with labor standards procedures.

Task Checklist

- ☐ Task #1 Pre-Bid Submittal Preparation
- ☐ Task #2 Prepare Bidding and Contract Documents
- ☐ Task #3 Review Plans and Specifications; Bidding and Contract Documents; and Construction Cost Estimate
- ☐ Task #4 Solicit and Receive Bids
- ☐ Task #5 Accept Bids
- ☐ Task #6 Award Contract
- ☐ Task #7 Execute Contract
- ☐ Task #8 Complete Contract/Subcontract Report (Exhibit 1-E)
- ☐ Task #9 Conduct the Preconstruction Conference
- ☐ Task #10 Issue the Notice to Proceed
- ☐ Task #11 Monitor Construction
- ☐ Task #12 Monitor Labor Standards Compliance
- ☐ Task #13 Accept and Close-Out the Project; Make Final Payments
- ☐ Task #14 Maintain Files

Task #1 Pre-Bid Submittal Preparation

Secure Site Control

As part of the CDBG application process, prospective applicants are required to ensure that no land rights or use impediments are in place prior to pursuing the project as certified by the Chief Elected Official. In addition to the site certificate mentioned above, all other pertinent easements, rights of way, or specific use permits must be in place.

Obtain Authority to use grant funds from DFA.

LGD understands that the engineer is working on preparing the bidding documents (bid docs) for LGD to review and approve in order to expedite the bidding process, however, it is more crucial that the environmental review has been completed. Once the bidding process starts, contractors are understandably ready to start construction. Additionally, Grantees are required to give an awarded contractor a notice to proceed within a relatively short time frame. For these reasons, the bid docs will not be reviewed and approved until the Environmental Review has been completed and LGD has issued the “Authority to Use Grant Funds” (**Exhibit 2-Q**).

Under no circumstances will bid docs be approved by LGD if the Grantee does not have site control and received authorization to use grant funds.

Task #2 Prepare Bidding and Contract Documents

While a Grantee’s focus during the design phase is most frequently directed toward reviewing the design of the project to ensure that program requirements are met, the Grantee must also ensure that the bid and contract documents prepared by the Design Professional include all necessary documentation including required Federal and State laws that govern wages and working conditions for laborers and mechanics employed under construction contracts funded by New Mexico State CDBG funds. In an effort to prevent multiple revisions, Grantees can review receive approval from applicable agencies prior to submitting these documents to LGD for approval.

Applicable State and Federal Laws

Exhibit 4-A is the “Construction Bidding Document” that must be used for New Mexico CDBG Public Works Projects. The bidding and contract documents incorporate all of the rules and regulations governing the CDBG program. The purpose of labor standards legislation is to ensure fair and equitable treatment of laborers and mechanics by employers on federally assisted construction projects. Labor standards do not apply to work performed by managers or clerical personnel, only laborers and mechanics. Working supervisors are covered if they spend more than 20% of their time doing the work of a laborer or mechanic.

More information regarding the above federal laws may be found at the US Department of Labor website at <https://www.dol.gov/whd/govcontracts/dbra.htm>.

The Grantee must review the contract documents prior to bidding to ensure that documents contain the following labor standards requirements:

Wage Rate Decisions

Davis-Bacon Act requires that each worker receive the prevailing wage for any given job classification in

their locality. For example, an employee is working on a CDBG project as a “cement mason”. Cement mason would be his/her job classification. Both federal and state wages are issued for each work classification. The prevailing wage is simply the higher of the two wages.

Both state and federal wage rates will be included in the bid docs, so that prospective bidders will know exactly what they need to pay each employee for all job classifications throughout the life of the project. This allows prospective bidders to accurately anticipate labor costs and subsequently, more precise bids. ***It is the Grantee’s responsibility to ensure that the appropriate decision(s) are included in the contract documents.***

Obtaining Wage Rate Decisions

To obtain a wage rate decision, the Grantee must use the approved project scope (**Exhibit 1-A**) from the grant agreement. This project description is used to determine the appropriate worker classifications and rates. The CDBG contract project number and the county where the work will take place must be included.

A. State Wage Rate Decision

The Grantee must request these rates on-line at: www.dws.state.nm.us/PWAA

The New Mexico Department of Workforce Solutions (NMDWS) recommends that requests for a decision be made approximately 21 days before the start of bid advertising. State wage decisions are valid for 120 days, meaning that if the bids are not advertised and collected within that timeframe, wages will have to be requested again. Additionally, excessive time between the collection of bids and the award of the contract may require a subsequent wage request. For competitively bid projects, a wage decision is locked-in at bid opening.

B. Federal Wage Rate Decision

The federal wage rate must be requested twice. The requests will be completed on the “Request for Federal Wage Rate Determination/10-Day Call” (**Exhibit 4-C**) and submitted to DFA/LGD for processing. The only differences between the “initial” request and the “10 day call” is the box checked at the top of the form (Exhibit 4-C) and the timing of the requests. The initial request should be submitted between 3-5 weeks prior to the anticipated bid opening date. It is not acceptable to obtain directly from the Federal web site.

Once the form has been completed, it can be submitted by emailing to LGD Administrative Assistant, Camille Baca at Camille.Baca@state.nm.us and the DFA/LGD project manager, Office# (505) 827-8051 or by mailing to:

DFA Local Government Division,
Bataan Memorial Building, 407 Galisteo Street, Room 202, Santa Fe, NM 87501.

Additionally, within ten (10) days prior to the bid opening date, the Grantee must submit a request for the 10 Day Call (**Exhibit 4-C**). The purpose of this additional request is to determine if there have been any modifications or a rescission of the federal wage rate decision prior to the collection of bids. This “10 Day Call” is important because in recent months, multiple modifications have been made to the federal wage decisions.

If changes occur, the updated wages must be included in the bid docs for prospective bidders. Once the changes are obtained, the Grantee must ensure that they are distributed by addendum to all contractors

who received the original bidding documents. **Note: all addendums need to be reviewed and approved by LGD.**

The federal and state wage rate decisions must be a physical part of the bidding and contract documents. They cannot be incorporated by reference. Additionally, if a wage rate changes and the Grantee either fails to request them 10 days prior to the bid or does not include the wage change in the bid docs, the Grantee will be liable for the difference and receive a finding upon closeout of the project.

For competitively bid projects, a wage decision is locked-in at bid opening. In addition, the contract must be awarded within 90 days of bid opening. If the contract is awarded on the 91st day or later after the bid-opening date, the grantee is required to update the wage decision. If the wage decision has been modified, the new wage decision must be incorporated into the contract document. Failure to follow any of these requirements may result in DFA/LGD enforcement of a re-bid of the project, or grantee returning funds.

The importance of obtaining accurate wage rate information should be discussed at the Pre-Bid Conference for potential contractors and again at the Pre-Construction Conference for the selected contractor(s).

Important: Upon receipt of the federal and state wage rate decisions, the Grantee and/or Design Professional should review them, to determine:

- (a) if any additional classifications are required,
- (b) and verify the expiration dates.

In the event that a job classification(s) and corresponding base rate(s) and fringe benefit(s) are missing from the 10 day call federal wage rate determination, a procedure called wage conformance must be performed. The Grantee should immediately contact the LGD project manager if conformance is required.

LGD will request that the Grantee complete and submit "Standard Form 1444" request for Authorization of Additional Classification and Rate. Once received, LGD will sign, date and submit to the US Department of Labor (DOL). DOL response time can take 4-6 weeks, so if a wage conformance issue arises it is best to take action as quickly as possible.

1. ***Copeland "Anti-Kickback" Act*** requires that workers be paid at least once a week without any deductions or rebates, except permissible deductions. Permissible deductions include tax withholding, FICA, deductions the worker authorizes in writing, and those required by court processes.

The act also requires contractors to maintain payroll records, submit weekly payrolls with supporting documentation for all deductions and/or fringe benefits, and provide the original weekly Statement of Compliance to the contracting agency. It applies to all contracts covered by the Davis-Bacon Act. The contractor must review, certify and deliver or mail their payroll weekly within seven days after the regular payment date of the payroll period to the Labor Standards Officer (LSO) (Task #12). The LSO must review and certify the contractors certified pay roll and deliver monthly to LGD.

2. ***Contract Work Hours and Safety Standards Act*** requires that workers receive "overtime" compensation at the rate of one and one-half times their regular hourly wage after they have worked 40 hours in one week. This applies to all construction contracts issued under the CDBG program.

3. **Fair Labor Standards Act (FLSA)** provides for minimum wages, record keeping, overtime pay (forty hour work week), and child labor standards.
4. **Employment of Apprentices/Trainees clause** means that apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed 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 HUD.

5. **Equal Opportunity Requirements**

Grantees must ensure that the contract documents comply with Equal Employment Opportunity (EEO) requirements. The EEO provisions and contractor certifications required for inclusion in the contract documents are presented in the Contract Document Guide (**Exhibit 4-A**) and include:

- (a) Contractor's Certification regarding Equal Employment Opportunity
- (b) Contractor's Certification regarding Section 3 and Segregated Facilities
- (c) Subcontractor's Certification regarding Equal Opportunity
- (d) Subcontractor's Certification regarding Section 3 and Segregated Facilities
- (e) Executive Order 11246 Clause
- (f) Age Discrimination Act of 1975 Compliance
- (g) Rehabilitation Act of 1973 Compliance
- (h) Notice of Requirement for Affirmative Action to Ensure Equal Opportunity
- (i) Standard CDBG-assisted Equal Opportunity Construction Contract Specifications
- (j) Segregated Facilities Clause
- (k) Title VI of the Civil Rights Act of 1964
- (l) Section 109 of the Housing and Community Development Act of 1974
- (m) Written Section 3 Plan

The supplemental General Conditions of the "Construction Bidding Document Template" (**Exhibit 4-A**) includes minority and female goals. Minority goals are listed by county. These goals and contract conditions make written affirmative action plans unnecessary unless the U.S. Department of Labor determines that a specific contractor or group of contractors needs to establish higher goals in order to remedy the effects of past discriminatory behavior.

These goals apply to each construction craft and trade in the contractor's entire workforce working in an area covered by the goals and timetables, not just those jobs that are CDBG- assisted.

6. **Bond Requirements**

Bonding requirements are essentially insurance policies designed to protect the project (and the funds associated with it) against negligent and/or delinquent contractors. As part of these projects, contractors are required to obtain these bonds through a third party to protect against failure to meet bidding requirements, pay their employees and/or complete the project on-time and to the Grantee's satisfaction.

Section 13-1-146, NMSA 1978, requires bid security ("bid bond") for construction contracts procured by competitive sealed bid when the price is estimated by the procurement officer to exceed \$25,000. The bidding documents must require bid security in an amount equal to at least 5% of the amount bid in the

form of a bond provided by a surety company authorized to do business in the state, or the equivalent in cash or other form satisfactory to the state.

Section 13-4-18, NMSA 1978 requires performance and labor and material payment bonds when a construction contract is awarded in excess of \$25,000. The bonds shall be delivered to the Grantee and shall become binding on the parties upon the execution of the contract.

If a contractor fails to deliver the required performance and payment bonds, the bid shall be rejected, and the bid security enforced to the extent of actual damages. “Construction Bidding Document Template” (**Exhibit 4-A**) includes a rider to be added to standard bond forms. See Task #5 Bidding and Bonding - Surety Verification for more information.

7. Federal System for Award Management (SAM) Clearance

In order to do business with the Federal Government, the Grantee must assure all parties under contract with a CDBG project maintain an active registration on SAM, which must be available for public search at all times throughout the duration of the project. Registration on SAM (<https://www.sam.gov/SAM/>) is free and required for all contractors and subcontractors prior to contract award for work on federally-funded projects. The grantee, grant administrator, engineer/architect, contractors and subcontractors will need to provide a completed “Contractor/Subcontractor Clearance Form” (**Exhibit 1-X**) to LGD for verification and approval of active SAM registration.

Registration **expires on an annual basis** and it is the Grantee’s responsibility to ensure that all parties associated with the project are actively registered throughout their involvement. The **Exhibit 1-X** should be completely filled with:

Legal Business Name

DUNS Number

Name of Principal/Owner/Partner

Contract Amount.

Once the form has been completed, it can be submitted by emailing to LGD Administrative Assistant, Camille Baca at Camille.Baca@state.nm.us and the DFA/LGD project manager, Office# (505) 827-8051 or by mailing to:

DFA Local Government Division
Bataan Memorial Building
407 Galisteo Street, Room 202
Santa Fe, NM 87501

8. Record Keeping

A Labor Standards Compliance file must be established and maintained for each CDBG public improvements project. It should include contractor compliance as well as monitoring documentation. Labor standards and closeout procedures will be discussed at length in Tasks 12, 14 and 15 of this chapter.

Task #3 Review Plans and Specifications, Bidding and Contract Documents, and Construction Cost Estimate

Grantee Completeness Review

Grantees must review the plans and specifications to ensure that they provide a clear and accurate description of the technical requirements for the materials and products and/or services to be provided.

The plans and specifications must have the seal of an appropriately licensed Design Professional registered in New Mexico. The Grantee should ensure that the bid package contains all the relevant information that the bidders will need to respond adequately. The required documents are listed in the “Bidding and Contract Documents Index” (see **Exhibit 4-A**).

The completed copy of the bid package is sent to the Project Manager. A complete set includes the exact bid package that the bidders will receive. Include the following with this complete set of bid documents for LGD to review:

Agency Reviews

If the project falls under the jurisdiction of another state agency, the drawings and specifications must be reviewed by that agency prior to bidding. For example, all sewer and water projects must be reviewed by New Mexico Environment Department (NMED). With the required appropriate agency review, the Grantee’s files must include documentation of the review and approval. The Grantee must include the “Project Description” **Exhibit 1-A** of the Grant Agreement so that the reviewing Agency clearly understands the specific scope of work for the CDBG project. A copy of the agency approval letter must be sent to your LGD Project Manager as part of the complete set of bid document for review by LGD.

The Agencies that review plans, specs and bid docs are as follows: Environment Department (NMED), Department of Transportation (NMDOT), Construction Industries Division (CID), Regulation and Licensing Department (RLD), Department of Health (NMDOH), Children Youth and Families (CYFD) and Governor’s Commission on Disability (GDC) if project is subject to the American with Disabilities Act.

The following are examples of infrastructure projects and what agencies may need to review and approve bid docs:

Street & Drainage: NMDOT and GDC (if applicable)

Water/Wastewater: NMED

Public Facility: CID, RLD, NMDOH, GCD, CYFD (where applicable)

Utility Company Notification and Review

The Grantee must notify and coordinate with all utility companies, including gas, water, electric, telephone, cable TV, and drainage authorities (if any) that may have facilities within the project area. The notice must describe the project to be undertaken and its location, preferably by providing copies of the project plans, and inform the companies that they must provide a plat or diagram showing the location of any utility installations in the project right-of-way within 30 days. The notice should also state that failure to provide a plat or diagram within 30 days, or providing the Grantee with inaccurate information, will release the Grantee, Design Professional, and contractor from any liability resulting from utility damage, unless such damage is caused by negligence. A copy of any plans or diagrams received from utility companies must be made available to bidders for review.

Signature blocks should be provided on the cover sheet of the drawings, and each affected utility company should sign off on the final set of drawings that are submitted to LGD.

Construction Cost Estimate Review

If, based on the Design Professional’s construction cost estimate, the Grantee anticipates that bids will exceed, or be close to the budgeted construction funds, additive or deductive alternatives should be provided as a part of the bid documents. When alternates are provided, the bidding documents must clearly

describe the alternates and specify the order in which the alternates will be applied in determining the low bid. Drawings must also clearly show the scope of the alternates.

As an example, using deductive alternates, a project may include street construction, sidewalks, landscaping, street lighting, and replacement of sanitary sewer lines. The description of bid items indicates which items are to be bid as alternates and the order of priority in which items are to be deducted.

In this example, if landscaping and sidewalks are to be bid as deductive alternates and the order of priority for deducting is landscaping first and sidewalks second, and if all bids received exceed the budgeted amount, each bid must be re-evaluated (not just the lowest one) and the amount bid for landscaping subtracted from the total amount bid. Then the adjusted bids must be checked to see if any bids are “at” or “below” the budgeted amount. If they are, the Grantee may award the bid to the bidder with the lowest adjusted bid. If not, the process is repeated, this time deducting the amount bid for sidewalks from the adjusted bid of each bidder. Depending on the number of deductive alternates specified, the process can be repeated until one of the adjusted bids come in “at” or “below” the budgeted amount.

The desirability of using this method when the construction cost estimate is very close to the budgeted funds cannot be overstated. Failure to provide deductive alternates will require changing the bid documents and a repetition of the entire bid process, resulting in unnecessary and costly delays in the project.

ADA Compliance Certification

Once the preliminary drawings are complete, the Design Professional must have an ADA review performed by the Governor’s Commission on Disability, if applicable. When final drawings and contract documents are complete, the Design Professional must execute a certification that applicable standards of handicapped accessibility have been or will be satisfied, or specify the basis for exemption. This certification verifies that buildings and facilities are accessible to and usable by the physically handicapped. The certification must be co-signed by a Grantee official, filed in the contract file, and a copy sent to LGD. Refer to “Architects & Engineers Certification of Compliance” (**Exhibit 4-D**).

Other Bid Documents

Bid documents must include all CDBG-related special provisions. In addition to the labor standards and equal opportunity provisions previously discussed, the following special provisions must be included, as applicable:

1. Bonding and Insurance Requirements Clause
2. Conflict of Interest
3. Access to Records and Maintenance of Records
4. Clean Air/Water
5. Special Conditions Pertaining to Hazards, Safety Standards and Accident Prevention (including Lead Based Paint Prohibition)
6. Flood Insurance, if applicable

The bid documents must also include cost and pricing formats. Bid documents must not include costs for contingencies. Generally, civil engineering work such as streets, water, sewer, and utilities, as well as landscape projects, are unit price contracts. Construction or improvements to buildings utilizes a lump sum contract.

A clear description of bid items should be provided. For unit cost contracts, the bid form should delineate

each item, estimated quantity, unit price, and total cost. Unit prices should be provided in numbers and words, in the event that an entry is illegible.

Bid Contract Documents Approval

First, the contract documents should be reviewed in their entirety by the Grantee's attorney to ensure compliance with applicable state and local laws. The required documents are listed in the "Bidding and Contract Documents Index" (see **Exhibit 4-A**).

Once the bidding and contract documents have been fully reviewed for completeness and the plans and specifications reviewed, approved, and signed off by the Grantee, utility companies, all applicable state agencies, and LGD, bids may be solicited through a public advertising process. LGD will have the final review and approval prior to advertising the Invitation for Bid (IFB) for the construction of the project.

After the Grantee has ensured that the bid package contains all the relevant information, then they can submit the bid package to their Project Manager. The Project Manager will do a thorough review of the bid package to verify the scope, budget and schedule are tied to the executed grant agreement and that all the state and federal laws are included. Once LGD has reviewed and approved the bid package, the Project Manager will issue written documentation providing the Grantee specific documentation and Exhibits needed prior to the award of the contract (Task #6) and what documents are needed prior to the pre-construction conference (Task #9).

Grantee will be responsible for all costs incurred or committed if bids are solicited without approval of bid documents by DFA/LGD.

Task #4 Solicit and Receive Bids

State law requires that bids be advertised once, not less than ten days prior to bid opening. Ten days is typically insufficient time for contractors to prepare a response to the Invitation for Bid (IFB). It is recommended that the Grantee allow 21 to 30 days to allow prospective bidders adequate time to formulate more precise bids and ideally increase the pool of bidders. It is also recommended that the advertisement be placed in a non-legal section. The IFB must call the bidder's attention to the requirement for prevailing wages, as well as Section 3, Equal Opportunity, and other related federal requirements not traditionally associated with locally or state funded projects.

At least ten days before the scheduled bid opening, the Grantee and/or the Design Professional will conduct a mandatory Pre-Bid Conference at a location of the Grantee's choice. Information regarding the Pre-Bid Conference should be provided in the Invitation for Bid. The purpose of this conference is to provide an opportunity for contractors to tour the job site and to ask questions. The following items should be discussed during the Pre-Bid Conference:

1. Architect/Engineer of record should discuss technicalities of the project.
2. Proposed timeline.
3. Labor Enforcement Fund registration must be current with NMDWS at time of bid, and contractors must not be disbarred.
4. Registration with the federal System for Award Management (SAM) must be active at time of bid and maintained through the life of the project. (See Task #5) Contractor / Subcontractor Clearance and Labor Enforcement Fund.

5. Bonding and Surety requirements.
6. Labor Standards requirements, including prevailing wages, certified payroll, Section 3, EEO, etc.

If necessary, questions and answers should be documented in an addendum to all bidders of record. Questions will be sent to the Architect/Engineers associated with the project. The Grantee working with the Architect/Engineer is legally obligated to respond to all questions submitted in writing. Oral interpretations or clarifications will be without legal effect. Additionally questions received less than 7 calendar days before the bid opening need not be answered.

Addenda will be delivered by the Architect/Engineer to all known prospective bidders and be made available for inspections wherever bid docs are on file. Addenda will be issued no later than 4 days (96 hours) prior to the bid collection date, except an addendum withdrawing the request for bids or which includes postponement of the date for receipt of bids. All addenda must be reviewed and approved by LGD prior to issuance.

The bids received must be logged in with the time and date of receipt, name of bidder, and procurement identification. Bids received must remain sealed in a secure place until the bid opening.

At the date and time specified, a public bid opening should be conducted in a businesslike manner. Bids should be read aloud. Bids must be reviewed for both technical and legal responsiveness. In addition, the bidders must be evaluated as having the capacity to furnish the products and/or services required. Minutes of the bid opening along with a tabulation of bids should be placed in the Contract File. Refer to "Minutes of Bid Opening" (**Exhibit 4-E**).

LGD identifies what documents the Grantee needs to provide their Project Manager once the bidding and selection of their contractor takes place. The purpose of obtaining these documents at this point in the project is to verify the procurement of the contractor/subcontractor(s), ensuring that the contractors/subcontractor(s) are eligible to work on the project and to verify that the engineer believes the potential bid winner to be responsive, responsible and capable of completing the project successfully.

The following documents will need to be gathered and mailed to their Project Manager with a transmittal letter requesting to move forward with the award of the contract. (See Task #5).

- Approval of Plans/specs & Bid Documents by authoritative agencies.
- Approval by DFA/LGD of Plans/specs & Bid Documents.
- Affidavit of publication and/or tear sheet of the invitation/notice for bids.
- Solicitation list and copy of the transmittal letters of those contractors who may be solicited for bids, if applicable.
- NMDWS Wage Rate Decision #.
- Initial request Federal Wage Rates (**Exhibit 4-C**); Decision #.
- Copy of the Pre-Bid meeting minutes and sign in sheet.
- 10 (ten) day call Federal Wage Rates (**Exhibit 4-C**); Decision #.
- Copy of the Bid Opening meeting minutes and sign in sheet (**Exhibit 4-E**).
- Certified copy of the bid tabulation sheet(s).
- Verification the budget for Construction meets the construction contract.
- Certification of contractor/subcontractor(s) eligibility (**Exhibit 1-X**).
- Copy of the letter of recommendation from the engineer of record.

Grantee will be responsible for all costs incurred or committed to the project if approval by DFA/LGD of contract documents was not received prior to the award of the contract. Once LGD has reviewed the

procurement of the contractor, LGD will issue another letter for the Grantee to move forward with the award of the contract and request important documentation for review and approval **prior** to the pre-construction conference.

Task #5 Accept Bids

After the bid opening and acceptance of bids, the Grantee must award a contract with reasonable promptness. Many activities through multiple entities must occur in order to award the contract, so effective communication and cooperation are paramount to the award.

Most Responsive and Responsible Bidder

After reviewing bids, the Grantee must award a contract to the lowest, responsive, and responsible bidder if the bid is within the budgeted amount. If the contract is awarded to other than the low bidder, the Grantee must prepare a written statement explaining why each lower bidder was deemed non-responsive or not responsible.

To be responsive, the bidder must have submitted all required documentation for compliance with CDBG regulations (EEO, labor standards, etc.) and a written Section 3 plan, if the contract exceeds \$10,000.

Responsiveness criteria must be uniformly applied to all bidders. For example, if one bidder is rejected for failing to submit a Section 3 plan, all bidders failing to submit Section 3 plans must be rejected.

Correspondingly, if all bidders failed to submit the Section 3 plan, the ultimate fault lies with the Owner (Grantee) and all bids may be accepted assuming all other things equal.

The bidder may also be determined to not be responsible. If a bidder is deemed to be unable to fulfill their bid based on cost or previous working experience (as determined by the judgement of the Grantee, Grantee's attorney or Design Professional), the bid may be legally rejected. This may occur with unreasonably low bids, inexperienced contractors and/or contractors with poor historical performance. In any case, a written statement will be required.

Contractor/Subcontractor Clearance

Registration on SAM (<https://www.sam.gov/SAM/>) is free and required for all contractors and subcontractors prior to contract award for work on federally-funded projects.

The Grantee must submit a completed "Contractor/Subcontractor Clearance Form" (**Exhibit 1-X**) to LGD for verification and approval of active SAM registration. LGD must verify that the contractor and subcontractors are current with annual Labor Enforcement Fund payments. Please note that although a contractor may be aware of this requirement, it is very important that the contractor notify any subcontractors of this requirement as some may be unwilling or unable to fulfill this responsibility. LGD will verify and approve federal and/or state clearance with the written confirmation allowing the Grantee to proceed with the award.

Bidding and Bonding - Surety Verification

NMSA 13-1-146 is a requirement for bid security that must be included by the Contractor in his bid documents. This statute states that "Bid security shall be required of bidders for construction contracts procured by competitive sealed bid when the price exceeds twenty-five thousand dollars (\$25,000). Bid security in an amount equal to at least five percent of the amount of the bid shall be a bond or the equivalent in cash."

NMSA 13-4-18 refers to the construction contract performance and payment bonds and is obtained from

the contractor once the bid has been awarded. This statute states that “When a construction contract is awarded in excess of twenty-five thousand dollars (\$25,000), the following bonds or security shall be delivered, performance and payment bonds, in an amount equal to one hundred percent of the price specified in the contract”.

The Grantee must verify with the Office of the Superintendent of Insurance 1-855-427-5674 that the Contractor’s bidding and bonding agency (The Surety Company) listed on the Bid Bond is licensed/authorized to do business in the state of New Mexico. A copy of the surety verification must be placed in the project file.

If Bids Exceed the Budget

If the lowest bid, including alternates, exceeds the amount budgeted for construction, the Grantee may negotiate with the low bidder to bring the contract within the available funds, if the bid amount does not exceed 100% of available funds of construction or reduce the scope of work as defined by Exhibit 1-A of the CDBG grant agreement.

If the lowest bid does exceed the amount budgeted for construction, additional funds may be secured by the Grantee from non-CDBG sources to make up the difference between the amount budgeted for construction and the lowest bid. In this case, Grantees should contact their LGD Project Manager to initiate a grant amendment *prior to entering into a construction contract*.

If no additional funds are available, the Grantee may reject all bids and start the process over; or request a reallocation of CDBG funds from other line items. If the reallocation of CDBG funds is pursued, Grantees should contact their LGD Project Manager to initiate a grant amendment *prior to entering into a construction contract*.

Task #6 Award Contract

Once a responsive low bidder has been determined, LGD has reviewed the procurement of the contractor, and funds are determined to be sufficient for construction, LGD will issue a letter clearing the Grantee to move forward and Award the Contract. The letter will identify what the Grantee will need to provide LGD prior to the pre-construction conference.

The notice of award usually is sent to the low bidder a form provided by the Design Professional on Grantee letterhead. Notification must also be sent in writing to all unsuccessful bidders. In addition, the Grantee must send a “Notice of Contract Award” (**Exhibit 4-G**) to LGD within ten days of the award and prior to pre-construction conference. LGD requires the Grantee to mail the following documents along with a transmittal letter to their Project Manager prior to the pre-construction meeting:

- Copy of the minutes of the Council meeting when the award is made. *The award must be completed within 30 days or as specified in the bid documents or the bid must be rejected.*
- Copy of “Notice of Contract Award” (**Exhibit 4-G**) *within 10 days* of the award sent to LGD and New Mexico Department of Workforce Solutions.
- Copy of the notice of award sent to the lowest bidder.
- Copies of the written notification to all other unsuccessful bidders.

The contract must be awarded within 90 days of bid opening. If the contract is awarded on the 91st day or later after the bid-opening date, the grantee is required to update both the state and federal wage

decisions. If the wage decision has been modified, the new wage decision must be incorporated into the contract document.

Task #7 Execute Contract

Following award of the contract, the bonds and insurance certificate must be completed and the contract executed. Contract documents should include all the items contained in the bidding documents, as well as the executed contract, bid proposal, contractor certifications, and bond and insurance forms.

The Grantee's attorney should review the complete set of contract documents for sufficiency prior to executing the contract.

Once a contract is fully executed, the Grantee should return the bonds of the unsuccessful bidders.

LGD MUST CONCUR on all contracts, addendums, change orders and amendments throughout the span of the project.

Task #8 Complete Contract/Subcontract Report (Exhibit 1-E)

Grantees must initiate or update the Contract/Subcontract Report (**Exhibit 1-E**) within 30 days of the contract execution date. The Contract/Subcontract Report must be completed to capture data for HUD reporting and tracks CDBG funded contracts for professional services, contractors and sub-contractors. The purpose of this requirement is so that LGD can report to HUD about the percentage of CDBG dollars that benefit contractors and subcontractors that are Section 3, minority-owned businesses, women-owned businesses as well as whether any wage violations occurred during the project.

The report lists the Contractor and Subcontractor(s) complete contact information, contractor name, complete address, contact name (first and last), phone number, Federal Tax ID #, System of Award Management (beta.sam.gov) Expiration Date, Type of Contract, Trade Codes, and details of the business including Race/Ethnicity, Women Ownership, and Section 3 status. Also included is the Date of Contract Execution, Davis Bacon information and both State and Federal wage decision numbers, and finally, the amount of the contract to be paid with CDBG funds.

Task #9 Conduct the Pre-Construction Conference

If all the steps above are followed, a Pre-Construction Conference can be held immediately following or concurrent with the execution of the contract. LGD concurs with all copies of the executed contract and requires one for the file.

The pre-construction conference is to set up administrative procedures and schedules, and establish procedures for shop drawings and other submittals. Those present should include the Grantee; the Contractor and his foreman or construction superintendent and payroll clerk or the person on staff who prepares payroll; identified subcontractors; the Design Professional; and utility company representative(s) as well as DFA/LGD. It is important that all parties be present (or by phone if necessary), as it will be a rare occasion when all those involved in the project at the same place at the same time. This opportunity will be utilized to answer any questions and ultimately come to a mutual understanding of what exactly the project will entail. The Grantee will provide written advance notice to all invitees, including DFA/LGD and all other funding agencies involved with the project.

Outlined below is a checklist of items (excluding equal opportunity and labor standards compliance). The "Preconstruction Conference Minutes with Required Elements" (**Exhibit 4-L**) should be incorporated into

the Architect/Engineers agenda and/or meeting minutes:

1. Purpose of conference
2. Introduction of:
 - (a) Grantee representative
 - (b) Grantee compliance officer
 - (c) Design Professional's representative
 - (d) Project Engineer or Architect
 - (e) Resident Project Representative
 - (f) Contractor
 - (g) Utility company representative
3. Attendance roster
4. Utility company coordination
5. Review of contract documents for completeness, including:
 - (a) Contract
 - (b) Performance bond
 - (c) Payment bond
 - (d) Insurance certificate
6. Scope of work for award
7. Contractor progress schedule
8. Subcontractor listing [Table A in "Construction Bidding Document Template" (**Exhibit 4-A**)]
9. Subcontractors, equipment suppliers and material-men
10. Schedule of values submittal for partial payments on lump sum items
11. Shop drawings and job mix formulas submittal and review procedures
12. Stored materials
13. Submittal of contractor personnel authorized to execute payment applications, change orders, substantial completion and final pay applications, "Payroll Review Worksheet" (**Exhibit 4-U**)
14. Traffic handling (detour) plan
15. Job safety
16. Project communication
17. Survey and layout responsibilities
18. Testing responsibilities
19. Construction water
20. Job sign location
21. Permits
22. Procedures for payment applications
23. Procedures for change orders and determination of amount (Grantees should advise the Contractor that any change to the contract documents can **only** occur by means of an approved change order and DFA/LGD concurrence)
24. Special grantee or funding agency requirements
 - (a) "Contractor/Subcontractor Clearance" (**Exhibit 1-X**)
 - (b) "State/Federal Wage Rates" (**Exhibit 4-C**)
 - (c) "Contract/Subcontract Report" (**Exhibit 1-E**)
 - (d) "Section 3 Summary Report" (**Exhibit 1-U**)
 - (e) "Section 3 Contractor Certification" (**Exhibit 1-V**)
 - (f) "Notice to All Employees" (**Exhibit 4-H**)

- (g) "Record of Employee Interview" (**Exhibit 4-O**)
- 25. Affirmative action plan
- 26. Labor Standards and Equal Opportunity
- 27. Extra sets of contract documents needed by contractor
- 28. Expected date of notice to proceed
- 29. Groundbreaking or dedication ceremonies
- 30. Contractor questions
 - (a) Administrative
 - (b) Technical
- 31. Resident Project Representative comments

Equal Opportunity and Labor Standards Compliance

The Grantee must advise the contractor of all equal opportunity and labor standards responsibilities, as well as the Grantee's role in monitoring compliance. The Grantee must ensure that the following posters are displayed at the construction site by the Contractor:

- "Notice to All Employees" (**Exhibit 4-H**);
- "Employee Rights under the Davis-Bacon Act" (**Exhibit 4-H-1**);
- "Safe and Healthful Workplace Notice" (**Exhibit 4-I**);
- "Equal Opportunity is the Law Notice" (**Exhibit 4-J**);
- "Equal Opportunity is the Law Notice (Spanish)" (**Exhibit 4-J-1**); and
- A copy of the state wage decision
- A copy of the federal wage decision
- "Commonly Asked EEO Questions" (**Exhibit 4-K**) should also be posted on the construction site, distributed and discussed at the Pre-Construction Conference.

Additional labor standards and equal opportunity items that must be explained or discussed during the Pre-Construction Conference include:

1. The contractor must submit weekly payrolls with a weekly "Certified Payroll" (**Exhibit 4-P**) signed by an officer of the company to the state and Grantee. The Contractor is responsible for securing payrolls from all subcontractors. Payrolls must also be reviewed by the "Labor Standards Compliance Officer" as designated by (**Exhibit 4-N**). This person will also be required to submit weekly "Payroll Review Worksheets" (**Exhibit 4-U**) to ensure accuracy of the prevailing wage and identify any potential restitution issues prior to submitting the with the payrolls.
2. Wages paid must conform to those specified in the wage rate decision included in the contract documents. A copy of the wage rate decision and the wage rate poster must be posted at the job site. Employers must ensure that all wage classifications have been included in both the federal and state wage decisions. If additional wage classifications are required, they should be requested during this meeting or as soon as the absence of a wage class is noted.
3. Apprentice or trainee rates cannot be paid unless the apprentice or training program is certified by the NM Department of Labor Public Works Apprenticeship and Training program. If apprentices or trainees will be used, the contractor must provide Grantee with a copy of the state certification program.
4. Workers must be paid overtime if they work more than 40 hours in one week. Failure to pay workers at least time and a half each hour they work in excess of 40 hours in one week violates the Contract Work Hours and Safety Standards Act (CWHSSA) and, in addition to restitution, makes the

contractor liable for liquidated damages of \$27.00 a day for each time each worker worked more than 40 hours a week without being paid time and a half in addition to making restitution to any affected employee(s).

5. Payroll deductions cannot be made that are not specifically provided for in the wage rate decision or Section 3.5 of the Copeland Anti-Kickback provisions. Any deductions, other than these, are permissible only with the express consent of the U.S. Secretary of Labor. An unidentified payroll deduction is a method used by unethical contractors to get their workers to “kick-back” a portion of their pay. This is a particularly common problem in times of high unemployment and in areas of minority concentration. Unspecified payroll deductions should be treated as a serious discrepancy and should be resolved prior to contractor payments.
6. Describe the compliance review that the Grantee will undertake and indicate that discrepancies and underpayments discovered as a result of compliance monitoring must be resolved prior to making payment to the contractor. Labor standards provisions are as legally binding as the technical specifications. Failure to pay specified wages should result in contractor payments being withheld in the amount necessary to ensure payment of back wages and/or liquidated damages until discrepancies are resolved.
7. Correct any equal opportunity deficiencies such as outstanding Section 3 plans, certificates of compliance, etc. Explain the contractor and subcontractor responsibilities regarding equal opportunity, using the list of “Commonly Asked EEO Questions” as a guide (**Exhibit 4-K**). Explain the requirements for monthly submission of employment utilization reports, as well as equal opportunity monitoring procedures during site visits.

Pre-Construction Conference Minutes

At the conclusion of the Pre-Construction Conference, Grantees must prepare minutes of the meeting. “Sample Pre-Construction Conference Minutes” (**Exhibit 4-L**) address equal opportunity and labor standards. The minutes should also summarize the disposition of the items covered at the beginning of this section.

The minutes should be distributed to all attendees, with a request for comments by a specific date. Copies should be sent to the LGD Project Manager and placed in the Grantee’s project file.

Task #10 Issue the Notice to Proceed

At this point in the progress of the project, the Pre-Construction project documentation should be complete. The Grantee should ensure that all required documentation is present, including equal opportunity and labor standards forms, and construction contract.

The Grantee sends a “Notice to Proceed” (**Exhibit 4-M**) to the Contractor,” preferably certified, return receipt requested, with a copy to the LGD Project Manager and one in the Grantee’s project file. The notice should state the construction start date, scheduled completion date, wage decision number, and person responsible for equal opportunity and labor standards compliance. Provide LGD all fully executed construction contracts for concurrence.

Task #11 Monitor Construction

Grantees must monitor the construction work to ensure compliance with technical specifications and state and federal requirements. Grantees must also maintain adequate cost and budget controls, and process the necessary contract change orders to bring the project to satisfactory completion.

Construction Review

During construction, the Grantee is responsible for monitoring equal opportunity and labor standards requirements, as described previously. The Grantee is responsible for construction review, as well. This may also be done by the Design Professional. If so, it should be included in the scope of services of the professional services contract. Construction review includes observation of the Contractor's work to provide a greater level of assurance regarding the Contractor's compliance with the drawings and specifications. Written construction observation reports must be maintained for each project.

Construction review by a Design Professional and his Resident Project Representative can include:

1. Monitoring construction to alert the Grantee of the need for adjustments in design or scope as dictated by actual field conditions, and the need for contract amendments (All contract amendments affecting alignment and detail or dimensions shown on the drawings must include revised drawings.
2. Monitoring the specified tests, as necessary, to verify general conformance with the drawings and specifications;
3. Verification of in-place quantities;
4. Review of Contractor's pay estimate and supporting information;
5. Review of shop drawings, materials, submittals and schedules;
6. Preparing punch-lists of work requiring correction; and
7. Conducting job conferences and inspections.

An outline of "Duties, Responsibilities, and Limitations of the Resident Project Rep" is included as (**Exhibit 4-S**).

Pay Applications

The Contractor may submit monthly requests for partial or progress payments to the Grantee. Written field observation reports, copies of field measurement notes, and test results must also be submitted with progress payment requests.

Upon receipt of a progress payment request and the related documentation, the Grantee must check Equal Opportunity and Labor Standards Compliance files to ensure that all payrolls have been received and checked and any restitution paid, and that employee interviews have been conducted and all discrepancies corrected. The request for payment may then be submitted to the LGD Project Manager for processing, following the procedure outlined in Chapter 1.

Prompt Payment Act

All construction contracts shall provide that payment for amounts due shall be paid within 21 days after the owner receives an undisputed request for payment. If the owner fails to pay the contractor within 21 days, the owner shall pay interest to the contractor beginning on the 22nd day after payment was due, computed at 1-1/2% per month or fraction of a month until the payment is issued. DFA/LGD will only process pay requests if all supporting documentation is received, to include updated payrolls for the period covered in the pay application, and is not responsible for payments to contractors or any applicable interest incurred as a result of late payments.

Change Orders

Extra work that involves a change in cost or time requires a written change order. Change orders may be

initiated by the Grantee, Contractor, Resident Project Representative, or the Design Professional. Each change order must be accompanied by a supporting statement, which describes why the change is necessary, the estimated cost, and any related drawings and specifications. **All change orders must be approved** by the Grantee and the LGD Project Manager before the Contractor may undertake the work, unless the work was of an emergency nature and was required to alleviate an imminent threat to life or property. Change orders should be kept to an absolute minimum.

Task #12 Monitor Labor Standards Compliance

Labor Standards Officer

The Grantee must designate a Labor Standards Officer (LSO) with the responsibility of administration and enforcement of state and federal labor standards provisions. The LSO is also responsible for ensuring that the proper Davis-Bacon wage decision and contract clauses are incorporated in the contract for construction, monitoring labor standards compliance by conducting interviews with construction workers at the job site, and reviewing payroll reports. The Grantee must submit an individual "Appointment of Labor Standards Officer" (**Exhibit 4-N**) for each CDBG contract. This person is ultimately responsible for ensuring that all proper signage is posted at the construction site, conducting (or overseeing) monthly construction on-site interviews, reviewing all payrolls for accuracy and seeing that restitution is made in a prompt and efficient manner if applicable.

Labor Standards Compliance

Once construction is underway, the Grantee must obtain copies of all weekly certified payroll submittals with the original signature on the Statements of Compliance signed by an officer of the Contractor who has the authority to bind.

On-Site Interview

By means of the weekly payroll submittals, the Grantee must conduct on-site interviews using the "Record of Employee Interview" (**Exhibit 4-O**). The purpose of the interview is to ensure that employees are being paid the prevailing rate for the work actually being performed and for overtime as required; that unauthorized deductions or kickbacks are not occurring; and that all information provided about the employees on the weekly payroll reports is correct.

These interviews must include a sufficient sample of job classifications represented on the job to allow for a reasonable judgment as to compliance (approximately 10% of the each job classification working at the site). Onsite interviews should be conducted on a monthly basis throughout the course of construction.

The interview should take place on the job site and conducted privately (this is a one-on-one process).

The interviewer should observe the duties of workers before initiating interviews and document the work being done by the employee. Employees of both the prime contractor and subcontractors should be interviewed.

To initiate the interview, the authorized person shall:

1. Properly identify himself/herself
2. Clearly state the purpose of interview
3. Advise the worker that information given is confidential, and his/her identity will be disclosed to the employer only with the employee's written permission

When conducting employee interviews, the interviewer should pay particular attention to:

1. The employee's full name;
2. The employee's permanent mailing address;
3. The last date the employee worked on that project and number of hours worked on that day; the interviewer should make it clear that these questions relate solely to work on the project and no other work; and
4. The employee's hourly rate of pay. The aim is to determine if the worker is being paid at least the minimum required by the wage decision.

Commonly, persons being interviewed will report net earnings rather than gross income. If this is the case, please verify the payrolls to ensure the employee is being properly paid. In this event, the following should occur:

1. Ask for any records.
2. Arrange to re-interview the employee.
3. Report the worker's statement of job classification
4. Observed duties and tools used the worker's

If worker's statements and observations made by the interviewer indicate the individual is performing duties conforming to classification, indicate this on the Record of Employee Interview form.

If there are discrepancies, detailed statements are necessary.

1. Enter any comments necessary; and
2. Enter date interview took place.

The Employee Interview sheet must be compared to the corresponding contractor and subcontractor payroll information and applicable wage rate decision.

If no discrepancies appear, "None" should be written in the comment space of the Record of Employee Interview form and it should be signed by the appropriate person.

If upon review of the payroll, the Standards Labor Officer determines that the employee is being underpaid, LGD must be informed as quickly as possible. When necessary action has been completed, the results must be noted on the interview form.

If there are wage complaints, the interviewer should complete the Federal Labor Standards Complaint Intake Form (HUD Form 4731). The complaint must be investigated and resolved. Contact your LGD Project Manager if necessary.

The Grantee is also required to ensure that the project site is posted with the required posters and a copy of the wage decisions. Payment may be withheld from a Contractor as an inducement to comply with this process. Payment of restitution must be documented.

Payroll Review

Contractors are required to submit weekly payrolls and certifications to the Grantee. The Grantee will submit reviewed payrolls to LGD on a monthly basis.

Employees must be paid at least once a week. The weekly “Certified Payroll and Statement of Compliance” (**Exhibit 4-P**) submitted by the Contractor should include the name, address, classification and rate of pay; number of hours worked each day of straight time and overtime; total wages due; the sources and amount of any deductions; and net pay for each employee.

The prime/general contractor must also obtain weekly payrolls (including signed Statements of Compliance) from all subcontractors as they work on the project. Certified payroll reports should be submitted by the prime/general contractor to the grantee within a reasonable timeframe as to ensure compliance, typically no more than 10 working days following the end of the payroll period.

The payrolls should be reviewed by the general contractor to ensure there are no discrepancies or underpayments. The prime contractor is responsible for the full compliance of all subcontractors on the project and will be held accountable for any wage restitution that may be necessary. This includes restitution for underpayments and potentially liquidated damages that may be assessed for overtime violations.

Payrolls should be date stamped to indicate when they were received and initialed upon review. Payrolls must be examined promptly by the Grantee to ensure compliance with all labor standards and noted on “Payroll Review Worksheet” (**Exhibit 4-U**). Payrolls, payroll reviews and certifications must be submitted to your LGD Project Manager on a monthly basis at minimum.

If payroll information has not been forwarded to your LGD Project Manager and a request for payment is submitted for construction costs, LGD will not process your request until all payroll information is received and if necessary any outstanding issues resolved.

The following are some of the details that must be noted:

1. Workers are classified correctly.
2. The rate of pay for each employee should be checked against the federal and state wage decisions to ensure the worker is being paid the prevailing wage (higher of the two rates).
3. The number of hours worked should be checked to ensure that no less than time-and-a-half is being paid for all hours worked in excess of 40 per week.
4. Deductions should be reviewed to determine that they are permissible. Permissible deductions include FICA, withholding of federal or other state income taxes, health insurance, pensions, unemployment benefits, and life insurance. Deductions not required by law may be made only with the permission of the employee and must be documented in writing by the employee.
5. The “Certified Payroll and Statement of Compliance” (**Exhibit 4-P**) should also be checked to ensure that it is signed by the owner or officer of the firm.

Restitution

Where underpayments of wages have occurred, the employer will be required to pay wage restitution to the affected employees. Wage restitution must be paid promptly in the full amounts due, less permissible and authorized deductions.

There are 2 types of pay wages, they are the basic rate and the fringe rate. The basic rate is what is considered the “normal” hourly pay rate. The fringe rate account for benefits to which employees are entitled. These benefits can include health insurance, pensions, 401 K, dental, vision, etc. Contractors can elect to pay for these benefits (in addition to the basic rate) by contributing towards appropriate programs

for the benefit of the employee or by paying the employees cash in the same amount that would have gone towards the benefits program.

Wage restitution is simply the difference between the wage rate paid to each affected employee and the wage rate required on the wage decision for all hours worked where underpayments occurred. The difference in the wage rates is called the adjustment rate. The adjustment rate times the number of hours involved equals the gross amount of restitution due.

There are also 2 classification of working hours, standard and overtime (OT). Standard hours are calculated on a weekly basis and constitute hour worked up to 40/week. Overtime is considered any time worked in excess of 40 during the given work week. When employees work overtime, they are entitled to [(base rate x 1.5) + fringe rate].

Overtime pay example:

State wage is \$8/hr. + \$2 (fringe) = \$10/hr.; Federal wage is \$10/hr. + \$5 (fringe) = \$15/hr.

Prevailing wage is federal (\$15/hr.); Employee A works 50 hours during the week

Standard hours (40 hours @ \$15) = \$600

+ 10 OT hours @ ((10 x 1.5) + \$5)] = \$200

Employee A should have been paid \$800/week.

Grantees must notify the prime contractor in writing of any underpayments that are found during payroll or other reviews. The notification should describe the underpayments and provide instructions for computing and documenting the restitution to be paid. The prime contractor is allowed 30 days to correct the underpayments.

The employer is required to report the restitution paid on a correction certified payroll. The correction payroll will reflect the period of time for which restitution is due (e.g., payrolls #1 through #6; or a beginning date and ending date). The correction payroll must list:

1. Each employee to whom restitution is due and their work classification
2. The total number of work hours
3. The adjustment wage rate (the difference between the required wage rate and the wage rate paid)
4. The gross amount of restitution due
5. Deductions
6. The net amount to be paid

A signed Statement of Compliance must be attached to the corrected "Payroll" (**Exhibit 4-P**) and a copy of the cleared check(s) as evidence the employee received all payments.

The grantee should review the corrected payroll to ensure that full restitution was paid. The prime contractor shall be notified in writing of any discrepancies and will be required to make additional payments, if needed. Additional payments must be documented on a supplemental correction payroll within 30 days.

Sometimes, wage restitution cannot be paid to an affected employee because, for example, the employee

has moved and can't be located. In these cases, at the end of the project the prime contractor will be required to return the funds to the Grantee who in turn will return funds to LGD. At time of receipt LGD will place in an account the amount equal to the total amount of restitution that could not be paid because the employee(s) could not be located. The Grantee should continue to attempt to locate the unfound workers for three (3) years after the completion of the project. After three years (3), any amount remaining in the account for unfound workers will be forwarded to HUD.

Overtime Violations

One of the violations that might be discovered during a review of payrolls involves non-payment of overtime for employees who work in excess of 40 hours in a given week.

Grantees should be aware that it is important to review payrolls weekly and report underpayments in overtime violations as soon as they occur. Employee interviews must be conducted monthly. Failure to identify violations early may result in substantial liquidated damages being assessed. (29 CFR Part 5, §5.8)

Restitution pay example: (same state, federal and prevailing wages apply)

Employee A is paid incorrectly @ state rate (\$10) for 50 hours during the week

Standard hours (40 hours @ \$10) = \$400

+ 10 OT hours @ ((8 x 1.5) + \$2)] = \$160;

Employee was paid \$560/week

Standard hour adjustment rate = (\$15 - \$10) = \$5/hr.; Standard pay owed (\$5 x 40 hrs.) = \$200

OT pay owed (((\$10 x 1.5) + \$5) = \$20/hr.

OT paid (((\$8 x 1.5) + \$2) = \$14/hr.

OT adjustment rate = (\$20 - \$14) = \$6/hr.;

OT pay owed (\$6 x 10 hrs.) = \$60

Total owed = (Standard owed + OT owed) = \$260/week

Any violations or discrepancies must be resolved as soon as possible. If this occurs the following process must be initiated immediately:

Submit Overtime Violations Report. The Grantee must submit a copy of the completed "Overtime Violations Report"(Exhibit 4-Q) to their Project Manager. With help computing overtime, please reference the *Prevailing Wage Resource Book, Chapter 10. Overtime Pay on DBA/DBRA Contracts* located here at <https://www.dol.gov/whd/recovery/pwrb/toc.htm>

Mail Notice of Intent to Assess. In every case where overtime violations are disclosed, LGD shall notify the contractor/employer via certified mail the amount of liquidated damages computed at the rate of \$27.00 per day for each day such individual was required or permitted to work in excess of the standard 40 hours workweek without payment at the required overtime. The notice shall include the basis for the computations, and the Grantee's intent to assess damages. A copy of the notice shall be sent to the prime contractor when the employer involved is a subcontractor. The notice shall inform the contractor/employer

that it has 30 days to appeal.

Withholding of Funds. LGD must withhold sufficient funds for liquidated damages from the next payment to the Grantee.

Reduction or waiver of liquidated damages. The contractor/employer may request a reduction or waiver of liquidated damages. The only grounds for approving a reduction or waiver are where the computation of liquidated damages is incorrect or that the violation(s) occurred inadvertently notwithstanding the exercise of due care on the part of the contractor/employer. The contractor/employer's request must be made in writing within 30 days after the date of the notice and must explain the reason(s) why a reduction or waiver is warranted. A copy of this letter is also sent to the LGD.

Review contractor/employer request. LGD and Grantee will jointly review the contractor/employer request for reduction or waiver of liquidated damages. In cases involving liquidated damages of \$500 or less, LGD has the ability to reduce the amount of liquidated damages or release the contractor from the liability for liquid damages. In cases involving more than \$500, LGD will transmit their decision to HUD, who then forwards the recommendation to the U.S. Department of Labor (DOL) for final determination.

Should the Contractor not respond in the prescribed period; or LGD, HUD, or DOL not approve a waiver or reduction; liquidated damages shall be collected and paid to the U.S. Treasury.

Please Note: The Contractor is responsible for overtime payment to all employees. The contract requires that all subcontracts contain clauses imposing statutory overtime requirements. Where the required provisions do not appear in the subcontract, the contractor alone is responsible for any underpayments and liquidated damages.

Equal Opportunity Compliance

Grantees must visit the construction site to ensure that the project site is posted with the required EEO notices. This is usually done in conjunction with employee interviews for labor standards compliance.

Task #13 Accept and Close-Out the Project; Make Final Payments

Acceptance

When construction is complete, the Contractor must certify completion of the work and submit a final request for payment. The Grantee must then arrange for a final inspection and notify the LGD Project Manager of the date. The Grantee and the Design Professional should make the final inspection and prepare a written report prior to the issuance of a final certificate of payment.

Final Payment

Before making final payment (less ten percent), the Grantee must ensure that:

1. All Weekly Payrolls and Statements of Compliance have been received, checked, and discrepancies resolved;
2. All discrepancies from on-site interviews have been resolved;
3. All other required equal opportunity and labor standards provisions have been satisfied;
4. All contract submittals have been received;
5. All claims and disputes involving the contractor have been resolved; and
6. All files are complete including record (as-built) drawings.

Final Payment: The final 10% of the Grant Award will not be paid to Grantee until all required closeout documents have been received and approved by LGD.

The Grantee must also prepare the “Final Wage Compliance Report” (**Exhibit 4-R**), “Employee’s Restitution Receipt” (**Exhibit 4-R-1**), and “Employee Restitution Summary” (**Exhibit 4-R-2**) that summarize the contractor’s performance to the LGD Project Manager as part of the project closeout package and placed in the Labor Standards Compliance file.

Project Closeout

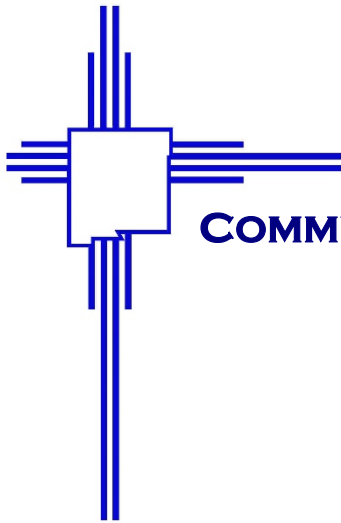
The project closeout package must contain the following items:

1. Progress/Final Report
2. Final Wage Compliance Report
3. Contract and Subcontract Activity Report
4. Engineer’s Letter of Certification and Final Acceptance
5. Final Adjusting Change Order with tabulations of cost over-runs and under-runs, if applicable
6. Owner’s Statement of Acceptance and occupancy permit
7. Design Professional and Contractor’s final billings
8. Final Drawdown Request to make final payment to the Design Professional and Contractor
9. Request for Payment/Financial Status Report
10. Contractor’s Affidavit of Compliance and all lien releases
11. A copy of record (as-built) drawings
12. Written consent of surety, if any, to final payment
13. Contractor’s letter stating that no subcontractors were employed, if applicable
14. Labor and Material Payment Bond with associated Power of Attorney
15. Performance Bond with associated Power of Attorney

Task #14 Maintain Files

The files required to be maintained are listed in Chapter 5 — Monitoring and Closeout. The Grantee may use “Construction Contract Checklist” (**Exhibit 4-T**) to crosscheck the content of contract documents before bidding, and to track required actions during construction.

EXHIBIT 4-A



Construction Bidding Document Template
for

NEW MEXICO COMMUNITY DEVELOPMENT BLOCK GRANT PUBLIC WORKS PROJECTS

[Instructions: to be replaced with cover page prepared by Architect/Engineer of Record.
As a minimum, the cover page should include the following information]

- ☐ ➤ The Project Name
- ☐ ➤ The Project Number, e.g. "CDBG No. _____"
- ☐ ➤ Location of the Project
- ☐ ➤ Designation of bidding package - number and type (if applicable)
- ☐ ➤ The Owner's name and logo or other artistic information of Project
- ☐ ➤ User Agency (if applicable)
- ☐ ➤ Architect/Engineer of Record (including address and telephone number)
- ☐ ➤ Acknowledgements (unless included on title page) of key Owner officials such as the governing body, manager or administrator, etc.
- ☐ ➤ Date of publication of documents by month and year

Note: These documents are issued by the Owner for use for Small Cities Community Development Block Grant construction projects and include pertinent federal and state procurement statutes and regulations. The document format promulgated by the Construction Specifications Institute, CSI Document MP-2-1 and was used as a guideline in formulating the organization of these documents. These documents have important legal consequences; consultation with an attorney is encouraged with respect to its modification or completion and approval by the Funding Agency with respect to its modification. Any approved modifications are to be included at the end of each section. This Document has been formatted and pages numbered so copies can be run on both sides (front and back).

[Instructions: this page to be replaced with page prepared by Architect/Engineer of Record.
At a minimum, this page should include the following information]

- ☐ Architect/Engineer of Record (including address and telephone number)
- ☐ ➤ Architect/Engineer Consultants (including address and telephone number) listed by profession of work performed
- ☐ ➤ Certification Seal and Signature, to read as follows:

The technical material and data contained in the specifications were prepared under the supervision and direction of the undersigned, whose seal as a Professional Architect/Engineer (delete one), licensed to practice in the state of New Mexico, is affixed below.

(seal) (signature) _____
Architect/Engineer of Record License No.

- ☐ ➤ Signature block for approval by the Owner and other Owner-designated entities.
- ☐ ➤ Acknowledgements (unless included on cover page).
- ☐ ➤ Statement to be included at the bottom of the page:

All questions about the meaning or intent of these documents shall be submitted only to the Architect/Engineer of Record, stated above, in writing. Refer to paragraph 3.2 of the Instructions to Bidders as to interpretations.

BIDDING AND CONTRACT DOCUMENTS INDEX

INDEX TO BIDDING DOCUMENTS
Section 00002

DIVISION 0 - BIDDING REQUIREMENTS

<u>Title</u>	<u>Section N°.</u>		
Title, Certification & Seals Page	00000	AGREEMENT FORMS	00500
Index to Bidding Documents	00002	Agreement between Owner & Contractor	00510
PRE-BID INFORMATION	00010	BONDS, CERTIFICATES & NOTICES	00600
Prequalification Form	00011	Performance Bond	00610
Debarred or Suspended Contractors	00012	Labor & Material Payment Bond	00620
Federal & State Laws & Regulations	00013	Rider to Bonds	00621
Registration of Contractors & Subs	00014	Agent's Affidavit	00622
Notice of Invitation for Bids	00021	Guaranty Bond/Maintenance Bond	00630
Invitation for Bids	00022	Certificate of Insurance	00650
INSTRUCTIONS TO BIDDERS	00100	Assignment of Anti-Trust Claims	00660
INFORMATION AVAILABLE TO BIDDERS	00200	Certificate of Owner's Attorney	00670
Geotechnical Investigation Report	00220	Table A Proposed Subcontracts Breakdown	
BID FORMS	00300	Table B Estimated Project Workforce Breakdown	
Bid Form	00310	GENERAL CONDITION OF THE CONTRACT	00700
SUPPLEMENTS TO BID FORMS	00400	<i>(See Index within General Conditions)</i>	
Bid Bond	00420	Modifications to General Conditions	00700
Bid Security Review Form	00421	SUPPLEMENTAL CONDITIONS	00800
Agent's Affidavit	00422	Supplemental General Conditions	00820
Subcontractor Listing & NMDWS		Modifications to Supplemental General Conditions	00830
Registration & Anti-Trust Claims	00430	Additional Conditions	00830
Certification of Bidder Regarding Equal Employment Opportunity	00440	Modifications to Additional Conditions	00830
Certification of Bidder Regarding Section 3 & Segregated Facilities	00441	Federal Labor Standards Provisions	
Contractor Section 3 Plan Format		Federal Wage Rate Determination	00851
Table A Proposed Subcontracts Breakdown		State Wage Rate Determination	00850
Table B Estimated Project Workforce Breakdown			
Other Supplements to Bid Forms			

TECHNICAL SPECIFICATIONS

[Instructions: this page(s) to be replaced by Architect/Engineer with Index pages of Technical Specifications, if additional pages are needed, label as pages 4A-4, 4B-4, etc.]

PRE-BID INFORMATION

PRE-BID INFORMATION
Section 00010

1.0 PREQUALIFICATION FORMS

Section 00011

[Authority for prequalification - §13-1-134 NMSA 1978, insert "Not Required" if not used for this project]

2.0 DEBARRED OR SUSPENDED CONTRACTORS

Section 00012

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

3.0 FEDERAL AND STATE LAWS AND REGULATIONS

Section 00013

3.1 State administered Community Development Block Grant monies are Federal funds. Section13-1-30B NMSA 1978 of the Procurement Code stipulates: "When a procurement involves the expenditure of federal funds, the procurement shall be conducted in accordance with mandatory applicable federal law and regulations. When mandatory applicable federal law or regulations are inconsistent with the provisions of the Procurement Code, compliance with federal law or regulations shall be compliance with the Procurement Code." The applicable governing federal procurement standards are defined in OMB Circular A-102, Attachment O. When federal and state procurement policies are different, the more restrictive policies apply so long as they are consistent with Circular A-102 standards.

3.2 For purposes of these Bidding Documents, the term "Grantee" means the Owner. The term "Funding Agency" means the Local Government Division, Department of Finance and Administration, Bataan Memorial Building, Suite 202, Santa Fe, New Mexico 87501, 505-827-8051.

4.0 REGISTRATION OF CONTRACTORS AND SUBCONTRACTORS

Section 00014

4.1 A contractor or subcontractor that submits a bid valued at more than \$60,000 for a public works project subject to the Public Works Minimum Wage Act shall be registered with the Labor and Industrial Division of the New Mexico Department of Workforce Solutions (NMDWS).

4.2 The contractor submitting a bid and all subcontractors must have a Dun and Bradstreet Number ([DUNS](#)) and registration with System of Awards Management ([SAM](#)).

4.3 A contractor or subcontractor that submits a bid regardless of the contract amount must be licensed and registered, and cannot be debarred. For any contracts \$60,000 and over the contractor or subcontractor must be current with annual Labor Enforcement Fund payments.

4.4 The Owner shall not accept a bid on a public works project from a Contractor that does not provide proof of required registration for itself (§13-4-13.1 NMSA 1978). Contractors, prime contractors and subcontractors shall be registered with the NMDWS.

4.5 See Bid Form and Subcontractor Listing form for Registration Numbers to be provided.

NOTICE OF INVITATION FOR BID

PRE-BID INFORMATION
Section 00021

Competitive sealed bids will be received by the Owner, for

_____ for IFB N°. _____ Project No.: **CDBG** _____

Project: _____

_____ at _____

until _____, _____ a.m./p.m. at which time bids will be opened and publicly read

aloud.

Complete sets of the bidding documents may be obtained at the office of the Architect/Engineer

. Prospective bidders must attend a Pre-Bid Conference which will be held at _____
on _____ at _____ a.m./p.m.

This Project is funded in whole or in part by a grant from the state of New Mexico Small Cities
Community Development Block Grant Program and is subject to requirements of the United States
Department of Housing and Urban Development and the funding agency.

Purchasing Agent:

_____ Date: _____

(FOR OWNER USE ONLY)

Newspaper:	_____	Publish:	_____
Newspaper:	_____	Publish:	_____
Newspaper:	_____	Publish:	_____

(Note: This Notice is issued pursuant to the requirements of 13-1-104 NMSA 1978)

INVITATION FOR BID

PRE-BID INFORMATION
Section 00022

Project: _____

Project No. □□□□ CDBG _____

INVITATION FOR BID CONSTRUCTION CONTRACT

Bid Number: _____

Architect/Engineer of Record:

Owner:

[insert Owner's name & address]

Sealed bids shall be submitted to:

Office of the Purchasing Agent
[insert Delivery Address]

Bids will be publicly opened after the Bid Deadline:

Date: _____, Time: _____

IMPORTANT: Bids must be submitted in a sealed envelope with the bid number and opening date clearly indicated on the bottom left-hand side of the front of the envelope.

Sealed Bids will be received until the above-specified date and local time, then publicly opened and read aloud. All hand-delivered bids must be received at the Office of the Purchasing Agent, address shown above.

This Bid is subject to the requirements of the Bidding Documents as defined in the "Instructions to Bidders," Section 00100. The Bid Form must be accompanied by a surety bond, subcontractor listing form, and documents specified in the "Instructions to Bidders."

Bidding Documents may be obtained at the office of the Architect/ Engineer of Record upon payment of \$_____ for each complete set. Checks should be made payable to _____. Incomplete sets will not be issued. The successful Bidder will receive refund of his deposit, and any unsuccessful Bidder who returns the Bidding Documents in good and complete condition within 15 days of the Bid Opening will also receive refund of this deposit.

No deposits will be returned after the 15 day period.

Proposed Bid Schedule:

Date Published: _____
Prebid meeting: _____
Bid Opening: _____

BIDDING DOCUMENTS MAY BE REVIEWED AT

[INSERT BID DOC LOCATION OR LINK]

Bids shall be presented in the form of a total Base Bid proposal under a Lump Sum Contract plus any additive or deductive alternates that are selected by the Owner. A bid must be submitted on all bid items and alternates; segregated bids will not be accepted. [Base Bid price shall not include state gross receipts or local options taxes. However, estimated tax shall be shown on the bid. In

submitting this bid, each Bidder must satisfy all terms and conditions of the Bidding Documents]

All work covered by this Invitation for Bid shall be in accordance with applicable state laws and is subject to the minimum wage rate determination issued by the office of the Labor Commissioner for this project.

Bid security in the form of a surety bond executed by a surety company authorized to do business in the state of New Mexico in the amount of **5%** of the total bid, or the equivalent in cash by means of a cashier's check or in a form satisfactory to the Owner, must accompany each bid in accordance with the Instructions to Bidders.

A 100% performance bond and a 100% payment and materials bond executed by a surety company authorized to do business in this state and said surety to be approved in federal circular 570 as published by the United States treasury department shall be required from the successful Bidder.

A completed Subcontractor Listing Form must accompany each bid.

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

No Bidder may withdraw his bid for ____ **days** after the actual date of the opening thereof. The Owner intends to award this Project to the lowest responsible Bidder. The Owner reserves the right to reject any and all bids, to waive technical irregularities, and to award the contract to the Bidder whose bid it deems to be in the best interest of the Owner.

The Bidder's attention is directed to the requirements of the Contract Documents for adherence to applicable federal, state and local statutes, regulations and ordinances; including but not limited to, requirements as to conditions of employment to be observed, minimum wage rates to be paid under the Contract, Section 3, Segregated Facilities, Section 109, Executive Order 11246, and bonding and insurance requirements.

This Project is funded in whole or in part by a grant from the state of New Mexico Small Cities Community Development Block Grant Program and is subject to requirements of the United States Department of Housing and Urban Development and the funding agency.

All potential bidders must attend a Pre-bid Conference which will be held on:

Date: _____ Time: _____

Location: _____

⌘ End of Invitation for Bid □

INSTRUCTIONS TO BIDDERS

INSTRUCTIONS TO BIDDERS

Section 00100

1.0 DEFINITIONS AND TERMS

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

1.1.1 *Addendum* means a written or graphic instrument issued prior to the opening of Bids which clarifies, corrects, or changes the Bidding Documents or Contract Documents. Plural: Addenda.

1.1.2 *Alternate Bid* means the amount stated in the Bid as the sum to be added from the amount of the Base Bid if the corresponding change in the project scope, materials, and/or methods of construction is awarded by the Owner.

1.1.3 *Base Bid* means the amount stated in the Bid as the sum for which the Bidder offers to perform the work, excluding alternate Bids.

1.1.4 *Bid* means the offer of the bidder submitted on the prescribed form setting forth the prices for the work to be performed in conformance with the Bidding Documents. This amount does not include gross receipts or local options taxes.

1.1.5 *Bid Lot* means a major item of work for which a separate quotation or proposal is requested.

1.1.6 *Bidder* means the one who submits a Bid directly to the Owner, as distinct from a subcontractor who submits a bid to a contractor.

1.1.7 *Bidding Documents* means the Bidding Requirements and the Contract Documents.

1.1.8 *Bid Form*. A form which shall include space in which the bid price shall be inserted and which the bidder shall sign and submit along with all other necessary submissions. A Bidder may submit a reasonable facsimile of the Bid Form. Oral, telephonic, and telegraphic bids are invalid and will not be considered.

1.1.9 *Bidding Requirements* means the Notice of Invitation for Bid, Pre-bid Information, Instructions to Bidders, Information Available for Bidders, the Bid Form, Supplements to the Bid Form, and portions of Addenda relating to any of these.

1.1.10 *Invitation for Bid (IFB)* means all documents including those attached or incorporated by reference or utilized for soliciting sealed bids.

1.1.11 *Responsible Bidder* means a Bidder who submits a Responsive Bid and who has furnished, when required, information and data to prove that his financial resources, production or service facilities, personnel, service reputation, and experience are adequate to make satisfactory delivery of the services, construction, or items of tangible personal property described in the Invitation for Bid.

1.1.12 *Responsive Bid* means a bid that conforms in all material respects to the requirements set forth in the Invitation for Bid.

1.1.13 *Successful Bidder* means the lowest responsible Bidder to whom the Owner, on the basis of the Owner's evaluation, makes an award. A Successful Bidder does not become the contractor until an agreement with the Owner is signed.

2.0 EXAMINATION OF BIDDING DOCUMENTS AND SITE

2.1 Before submitting a Bid, each Bidder must:

2.1.1 Examine the bidding Documents thoroughly;

2.1.2 Visit the site to familiarize himself with local conditions that may in any manner affects cost, progress, or performance;

2.1.3 Familiarize himself with federal, state, and local laws, ordinances, rules, and regulations that may in any manner affect cost, progress, or performance of the Work; and

2.1.4 Study and carefully correlate the Bidder's observations with the Bidding Documents.

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

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

2.4 The submission of a Bid will constitute an incontrovertible representation by the Bidder that he

has complied with every requirement of this Part and that the Bidding Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance of the Work.

3.0 BIDDING DOCUMENTS

3.1 Copies of Bidding Documents

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

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

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

3.2 Interpretations

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

3.2.2 Bidders and Subcontractor shall promptly notify the Architect/Engineer of any ambiguity, inconsistency, or error that they may discover upon examination of the Bidding Documents or of the site and local conditions.

3.3 Substitute Material and Equipment

3.3.1 The contract, if awarded, will be on the basis of material and equipment described in the Drawings or specified in the Specifications without consideration

of possible substitute or "or-equal" items. Whenever it is indicated in the Drawings or specified in the Specifications that a substitute or "or-equal" item of material or equipment may be furnished or used by the contractor if acceptable to the Architect/Engineer, application for such acceptance will not be considered by the Architect/Engineer unless submitted to the Architect/Engineer at least ten days prior to the date for opening Bids. Any allowance of substitutions will be published to all prospective Bidders via addendum. The procedure for submittal of any such application by the Contractor and consideration by the Architect/Engineer is set forth in the Contract Documents.

3.4 Addenda

3.4.1 Addenda will be mailed or delivered to all that are known by the Architect/Engineer to have received a complete set of Bidding Documents.

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

3.4.3 Addenda will be issued no later than four days prior to the date for receipt of Bids, except an addendum withdrawing the request for bids or one which includes postponement of the date for receipt of bids.

4.0 BIDDING PROCEDURES

4.1 Form and Style of Bids

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

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

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

4.1.4 The signer of the bid must initiate any interlineations, alteration, or erasure.

4.1.5 All requested additive or deductive alternate bids shall be bid. If no change in the Base Bid is required, enter "No Change."

4.1.6 Where there are two or more major items of work (identified as "Bid Lots") for which separate quotations are requested, the Bidder may, at his

discretion, submit quotations for any or all items, unless otherwise specified. Additionally, the Bidder may submit a lump sum price for all lots for which the Bidder has submitted separate quotations.

4.1.7 Each copy of the bid shall include the complete name of the bidder and a statement that the bidder is a sole proprietor, a partnership, a corporation, or some other legal entity. Each copy shall be signed by the person or persons legally authorized to bind the bidder to a contract. A Bid by a corporation shall further give the state of incorporation and have the applicable New Mexico Certificate of Incorporation number or Certificate of Authority number. The Bid shall include the current contractor's license number and type, and the current Contractor's preference number. A bid submitted by an agent shall have a current power of attorney attached certifying the agent's authority to bind the Bidder.

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

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

4.1.10 The project name and number, as well as the Owner's invitation to bid number, shall be clearly shown on the outside of the envelope in which the Bid is submitted.

4.2 Bid Security

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

4.2.2 The bid security shall be in the amount of 5% of the highest Bid amount submitted, unless otherwise stipulated, pledging that the Bidder will enter into a contract with the Owner on the terms stated herein and will furnish bonds covering the faithful performance of the contract and payment of all obligations arising

thereunder. Should the Bidder refuse to enter into such contract or fail to furnish bid security, the amount of the bid security shall be forfeited to the Owner as liquidated damages, not as a penalty.

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

A. The contract has been executed and performance and labor/material bonds have been furnished,

B. The specified time has elapsed so that Bids may be withdrawn, or

C. All Bids have been rejected.

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

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

4.2.6 The Owner may reduce bid security requirements authorized by the Procurement Code, §§13-1-28 to 13-1-199 NMSA 1978, to encourage procurement from small businesses. Reduction, if any, and the manner thereof will be stipulated in §7.0 of this section, Other Instructions to Bidders. Reduction of the amount of bid security, if any, shall in no way reduce requirements for performance, payment, or other bonds referenced in the Bidding Documents.

4.3 Pre-bid Conference

4.3.1 The Architect/Engineer shall conduct a pre-bid conference approximately 15 calendar days prior to the bid opening date stated in the Invitation for Bid.

4.3.2 The Architect/Engineer and his consultants, as applicable, shall be represented. Prospective Bidders, prospective Subcontractors, and prospective Vendors are encouraged to attend and should be prepared to ask questions regarding substitutions and/or to request clarification of the Bidding Documents.

4.3.3 Questions and requests for clarification are to be presented in written form. Responses will be written and issued as addenda. No verbal response shall be binding.

4.4 Resident Contractor's Preference

- Not used for federally funded projects

4.5 Subcontractors

4.5.1 The bidder shall list the Subcontractors he proposes to use for all trades or items on the Subcontractor Listing Form attached to the Bidding Documents.

4.5.2 *Definitions.* As used in this subpart 4.5, subcontractor listing shall be in compliance with the Subcontractors Fair Practices Act, the pertinent provisions of which are summarized in this subpart 4.5.

A. *Contractor* means the prime contractor on a public works construction project who contracts directly with the Owner (using agency);

B. *Subcontractor* is a person or entity often skilled in a specific type of construction work that enters into a contractual agreement with the prime contractor to perform part or all of the construction work.

C. *Listing threshold* means the dollar amount, stipulated in the bidding documents, above which subcontractors must be listed;

D. *Notice* means information, advice or a written warning intended to apprise a contractor or subcontractor of some proceeding in which his interests are involved or to inform him of some fact which is his right to know. Notice may be sent to a contractor or subcontractor by certified or registered mail and shall be deemed to be completed upon date of mailing; and

E. *Using Agency* means the Owner requiring services or construction.

4.5.3 Listing of Subcontractors, Requirements. The Owner shall provide in the bidding documents prepared for that project a listing threshold which shall be \$5,000 or one-half of one percent of the architect's or engineer's estimate of the total project cost, whichever is greater. Any person submitting a bid shall in his bid set forth:

A. The name location of the place of business of each subcontractor under subcontract to the contractor who will perform work or labor or render service to the contractor in or about the construction of the public works construction project in an amount in excess of

the listing threshold; and

B. The nature of the work which will be done by each subcontractor under the Subcontractor Fair Practices Act. The contractor shall list only one subcontractor for each category as defined by the contractor in his bid.

4.5.4 Substitution of Subcontractor

A. No contractor whose bid is accepted shall substitute any person as subcontractor in place of the subcontractor listed in the original bid, except that the using agency shall consent to the substitution of another person as a subcontractor in the following circumstances: (1) when the subcontractor listed in the bid, after having had a reasonable opportunity to do so, fails or refuses to execute a written contract, when such written contract, based upon the general terms, conditions, plans and specifications for the project involved and the terms of such subcontractor's written bid, is presented to him by the contractor; (2) when the subcontractor listed in the original bid becomes bankrupt or insolvent prior to execution of a subcontract; (3) when the using agency refuses to approve the subcontractor listed in the original bid, provided such approval has been reserved in the bidding documents; (4) when the subcontractor listed in the original bid fails or refuses to perform his subcontract; (5) when the contractor demonstrates to the using agency or its duly authorized officer that the name of the subcontractor was listed as the result of an inadvertent clerical error; (6) when a bid alternate accepted by the using agency causes the listed subcontractor's bid not to be low; (7) when the contractor can substantiate to the using agency that a listed subcontractor's bid is incomplete; (8) when the listed subcontractor fails or refuses to meet the bond requirements of the contractor; (9) when it is determined that the listed subcontractor does not have a proper license to perform the work and the contractor has submitted the name of the subcontractor along with proof that the subcontractor bid work for which he was not licensed by the construction industries division of the regulation and licensing department; or (10) when it is determined by the using agency, the prime contractor or the director of the labor and industrial division of the labor department that a listed subcontractor is not a registered subcontractor on the date bids are unconditionally accepted for consideration.

B. Prior to approval of the contractor's request for such substitution, the Owner shall give notice in

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

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

D. No contractor whose bid is accepted, other than in the performance of change orders causing changes or deviations from the original contract, shall sublet or subcontract any portion of the work in excess of the listing threshold as to which his original bid did not designate a subcontractor unless the contractor fails to receive a bid for a category of work. Under such circumstances, the contractor may subcontract. The contract shall designate on the listing form that no bid was received.

4.5.5 Subcontractor Bond, Requirements. As to subcontractor required performance and payment bond if requested by the contractor, see §13-4-37 NMSA 1978.

4.5.6 Failure to Specify Subcontractor. If a contractor fails to specify a subcontractor in excess of the listing threshold, he represents that he is fully qualified to perform that portion himself and that he shall perform that portion himself. If after the award of the contract the contractor subcontracts any portion of the work, except as provided in the Subcontractors Fair Practices Act, the contractor shall be guilty of violation of the Subcontractors Fair Practices Act and subject to the penalties provided in subpart 4.5.9 of this section.

4.5.7 Inadvertent Clerical Error.

A. The contractor, as a condition to assert a claim of inadvertent clerical error in the listing of a subcontractor, shall within 2 working days after the time of the prime bid opening by the Owner give written notice to the Owner and to both the

subcontractor he claims to have listed in error and the subcontractor who had bid to the contractor prior to bid opening.

B. Any listed subcontractor who has been notified by the contractor in accordance with the provisions of this section as to an inadvertent clerical error shall be allowed 6 working days from the time of the prime bid opening within which to submit to the Owner and to the contractor written objection to the contractor's claim of inadvertent clerical error. Failure of such listed subcontractor to file such written notice within 6 working days shall be primary evidence of his agreement that an inadvertent clerical error was made.

C. The Owner shall, after a public hearing and in the absence of compelling reasons to the contrary, consent to the substitution of the intended contractor: 1) If the contractor, the subcontractor listed in error, and the intended subcontractor each submit an affidavit to the Owner, along with such additional evidence as the parties may wish to submit, that an inadvertent clerical error was in fact made, provided that the affidavits from each of the three parties are filed within eight working days from the time of the prime bid opening; or 2) If such affidavits are filed by both the contractor and the intended subcontractor within such specified time but the subcontractor whom the contractor claims to have listed in error does not submit within six working days to the Owner and to the contractor written objection to the contractor's claim of inadvertent clerical error as provided in this section.

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

4.5.8 Emergency Subcontracting. Subcontracting any portion of the work in excess of the listing threshold as to which no subcontractor was designated in the original bid shall be permitted only in the case

of public emergency or necessity and then only upon a written finding by the Owner setting forth the facts constituting the emergency or necessity.

4.5.9 Penalties.

A. A contractor who violates the provisions of the Subcontractors Fair Practices Act violates his own contract, and the Owner may exercise the option of: 1) canceling the contract; or 2) assessing the contractor a penalty in an amount of not more than ten percent of the amount of the subcontract involved but in no case less than the difference of the amount between the listed subcontractor and the subcontractor used, which penalty shall be deposited into the fund out of which the contract is awarded. In any proceeding under this subpart, the contractor shall be entitled to a hearing after notice.

B. A violation of the provisions of the Subcontractors Fair Practices Act constitutes grounds for disciplinary action against a contractor pursuant to regulations of the Construction Industries Division of the Regulation and Licensing Department.

C. A contractor who attempts to circumvent the provisions of the Subcontractors Fair Practices Act shall be subject to the penalties established pursuant to this subpart.

4.5.10 Dispute Resolution. Once the Owner has determined the existence of a valid claim under the provisions of the Subcontractors Fair Practices Act, the Owner or agent of the Owner may:

A. Hold a public hearing for the purpose of providing an informal resolution of the dispute by preparing a "front of dispute" which shall be available to all parties. The form shall state concisely, in numbered paragraphs, the matter at issue or dispute that the complainant expects to be determined. The agent or the Owner shall evaluate the issues presented by both sides of the dispute and render a decision within 10 days after the hearing, and provide the parties with a written copy of the decision by certified mail, return receipt requested; or

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

4.5.11 The Bidder shall not list himself as the supplier or as the Subcontractor for any trade unless he has previously performed work of this type or can prove to the Architect's/Engineer's and the Owner's satisfaction that he actually has, or will obtain, fully

adequate facilities and plans to perform the work with his own forces.

4.5.12 Failure to comply with subcontractor listing requirements or provisions of the Subcontractors Fair Practices Act shall be grounds for considering a Bid as nonresponsive.

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

A. Withdraw his Bid, or

B. Submit an acceptable substitute Subcontractor with no increase in his bid price.

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

4.5.14 The Successful Bidder shall, within 7 calendar days of notice of the award of a contract for the Work, submit the following information to the Architect/Engineer:

A. A signed list of the proprietary names and the suppliers of principal items or systems of material and equipment proposed for the Work; and

B. A list signed by all Subcontractors proposed for the principal portions of the Work in accordance with the Subcontractors Listing Form submitted with the Bid. Refer to Section 00430 for form of Subcontractors Listing.

4.5.15 The Successful Bidder will be required to establish to the satisfaction of the Architect/Engineer and the Owner the reliability and responsibility of the persons or entities proposed to furnish and perform the Work described in the Bidding Documents.

4.5.16 Persons and organizations proposed by the Bidder and to whom the Owner and the Architect/Engineer have made no reasonable objection under the provisions of subpart 4.5.15 above must be used on the Work for which they were proposed and shall not be changed except with the written consent of the Owner and the Architect/Engineer.

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

4.6 Submission of Bids

4.6.1 Bids shall be submitted at the time and place indicated in the Invitation for Bid and shall be included in an opaque sealed envelope marked with the Project title and name and address of the Bidder and accompanied by the bid security, subcontractors listing, and other required documents listed in the Bidding Requirements.

4.6.2 The envelope shall be addressed to the Owner at the address shown on the cover page. The following information shall be provided on the front lower left corner of the bid envelope: invitation for bid number, date of opening, and time of opening. If the bid is sent by mail, the sealed envelope shall have the notation **"SEALED BID ENCLOSED"** on the face thereof.

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

4.6.4 The Bidder shall assume full responsibility for timely delivery of Bids at the office noted on the Invitation for Bid, including those Bids submitted by mail. Hand-delivered bids shall be submitted at the location stated in the Invitation for Bid, Section 00022, and will be clocked in at the time received, which must be prior to the time specified. Bids will then be held for public opening.

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

4.7 Correction or Withdrawal of Bids

4.7.1 A Bid containing a mistake discovered before bid opening may be modified or withdrawn by a Bidder prior to the time set for bid opening by delivering written or telegraphic notice to the location designated in the invitation for bid as the place where bids are to be received.

4.7.2 Bid security, if required, shall be in an amount sufficient for the Bid as modified or resubmitted in conformance with subpart 4.2 of this section.

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

Bidding Documents.

4.7.4 After bid opening, no modifications in Bid Prices or other provisions of Bids shall be permitted. A low Bidder alleging a material mistake of fact that makes his Bid nonresponsive may be permitted to withdraw his Bid if:

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

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

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

4.8 Notice of Contract Requirements Binding on Bidder

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

A. Definitions - Sections 00700, Part 1.0 and 00810, §1.0;

B. Bribes, Gratuities, and Kickbacks - Section 00820;

C. Nonresident Contractor Requirements Regarding Gross Receipts Tax Surety Bond - Section 00820;

D. Contractor's Gross Receipts Tax Registration - Section 00820;

E. Contracts with Nonresident Persons or Partnerships or Unadmitted Foreign Corporations, Agent for Service of Process- Section 00820;

F. Assignment of Antitrust Claims - Section 00820;

G. Equal Employment Opportunity - Section 00820; and

H. Others listed within the Contract Documents.

4.9 Rejection or Cancellation of Bids

An invitation for bid may be canceled, or any or all Bids may be rejected in whole or in part, when it is in the best interest of the Owner. A determination containing the reasons therefor shall be made part of the project file (§13-1-131 NMSA 1978). Bid security for rejected Bids shall be returned to the Bidder.

4.10 Protests

4.10.1 Any Bidder, Offerer, or Contractor who is aggrieved in connection with this Bid may protest to the Owner. The protest should be made in writing 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 (§13-1-172, NMSA 1978).

4.10.2 In the event of a timely protest under subsection 4.10.1 above (§13-1-172 NMSA 1978), the procurement officer and the Owner shall not proceed further with the procurement unless the procurement officer or the Owner makes a determination that the award of contract is necessary to protect substantial interests of the Owner (§13-1-173 NMSA 1978).

4.10.3 The procurement officer or his designee shall have the authority to take any action reasonably necessary to resolve a protest of an aggrieved Bidder, Offerer, or contractor concerning procurement.

4.10.4 The procurement officer or his designee shall promptly issue a determination relating to the protest. The determination shall:

A. State the reasons for the action taken; and

B. Inform the protestant of the right to judicial review of the determination pursuant to §13-1-183 NMSA 1978 (§13-1-175 NMSA 1978).

C. A copy of the determination issued under §13-1-175 NMSA 1978 shall immediately be mailed to the protestant and other bidders or offerors involved in the procurement (§13-1-176 NMSA 1978).

5.0 CONSIDERATION OF BIDS

5.1 Receipt, Opening, and Recording

Bids received on time will be opened publicly and will be read aloud, and an abstract of the amounts of the Base Bids and alternates or Bid items, if any, will be

made available to the Bidders. Each Bid shall be open to public inspection (§13-1-107 NMSA 1978).

5.2 Bid Evaluation and Award. If the lowest bid, including alternates, exceeds the amount budgeted for construction, the Grantee may negotiate with the low bidder to bring the contract within the available funds, if the bid amount does not exceed 10% of available funds. Owner may reject all bids and may start the process over if necessary.

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

5.2.2 It is the intent of the Owner to award a contract to the lowest responsible Bidder, provided the Bid has been submitted in accordance with the requirements of the Bidding Documents. The unreasonable failure of a Bidder to promptly supply information in connection with an inquiry with respect to responsibility is grounds for a determination that the Bidder is not a responsible Bidder (§13-1-133 NMSA 1978). See subpart 6.6 of this section as to Post-Bid Information that may be required of a contractor as to qualifications.

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

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

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

5.3 Notice of Award

The Owner shall issue a written Notice of Award after review and approval of the bid and related documents by the Owner with reasonable promptness §§13-1-100

and 13-1-108 NMSA 1978).

5.4 Identical Bids

When two or more of the bids submitted are identical in price and are the low Bid, the Owner may:

A. Award pursuant to the multiple source award provisions of §§13-1-153 and 13-1-154 NMSA 1978 of the procurement code;

B. Award to a resident business if the identical low Bids are submitted by a resident business and a nonresident business;

C. Award to a resident manufacturer if the identical low Bids is submitted by a resident manufacturer and a resident business;

D. Award by lottery to one of the identical low Bidders; or

E. Reject all Bids and resolicit Bids or proposals for the required services, construction, or items of tangible personal property (§13-1-110 NMSA 1978).

F. Subsections B and C are not applicable to federally funded projects.

5.5 Cancellation of Award

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

6.0 POST-BID INFORMATION

6.1 Submittals to Architect/ Engineer

Within 7 days after Notice of Award, the following shall be submitted to the Architect/Engineer:

A. The required bonds and certificate of insurance,

B. The requirements under subpart 4.5.5 of this section, and

C. A brief resume of the Successful Bidder's superintendent.

6.2 Return of Bid Security

6.2.1 All bid security in the form of checks, except

those of the two lowest Bidders, will be returned immediately following the opening and checking of the Bids. The retained bid security of the unsuccessful of the two lowest Bidders, if in the form of a check, will be returned within 15 days following the award of contract.

6.2.2 The retained bid security of the Successful Bidder, if in the form of a check, will be returned after a satisfactory contract bond has been furnished and the Agreement has been executed. Bid securities in the form of bid bonds will be returned only upon the request of the unsuccessful Bidder, but will be released by the procurement officer after the Owner sends the Notice of Award.

6.3 Execution and Approval of Agreement

6.3.1 The agreement shall be prepared and sent to the Successful Bidder by the Owner and shall be signed by the Successful Bidder and returned, together with both the contract bonds and certificate of insurance, within 15 calendar days after the date of the Notice of Award.

6.3.2 If the Owner does not execute the agreement within 30 days following receipt from the Bidder of the signed Agreement with bonds and certificate, the Bidder shall have the right to withdraw his proposal without penalty. No contract shall be effective until it has been fully executed by all of the parties thereto.

6.4 Notice to Proceed

The Owner will issue a written Notice to Proceed to the contractor stipulating the date from which contract time will be charged and the date contract time is to expire, subject to valid modifications of the contract authorized by change order.

6.5 Failure to Execute Contract

Failure to return the signed Agreement with acceptable contract bonds and certificate of insurance within 15 calendar days after the date of the Notice of Award shall be just cause for the cancellation of the award and the forfeiture of the bid security, which shall become the property of the Owner, not as a penalty, but in liquidation of damages sustained. Award may then be made to the next lowest responsible Bidder, or the Work may be re-advertised and constructed under contract or otherwise, as the Owner may decide.

6.6 Contractor's Qualifications Statement

Bidders to whom award of a contract is under consideration shall submit, upon request, information and data to prove that their financial resources, production or service facilities, personnel, and service reputation and experience are adequate to make satisfactory delivery of the services, construction, or items of personal property described in the Bidding Documents (§13-1-82 NMSA 1978).

7.0 OTHER INSTRUCTIONS TO BIDDERS

The bid will be awarded on the lowest responsible base bid and the accepted alternates.

{This space is intentional left Blank}

GEOTECHNICAL INVESTIGATION REPORT

INFORMATION AVAILABLE TO BIDDERS
Section 00220

1.0 INVESTIGATION

(list any special conditions bidders need to be aware of at job site)

2.0 INTERPRETATION

These data are for information only and not intended as representations or warranties of continuity of conditions between borings.

The Owner and the Architect/Engineer disclaim any responsibility for accuracy, true location and extent of soils investigation that had been prepared by others. They further disclaim responsibility for interpretation of these data by bidders; as in projecting soil bearing values, soil profiles and soil stability.

[This Page Left Blank]

BID FORM
Lump Sum or Unit Price

BID FORMS
Section 00310

Project: _____ IFB No. _____

Bidder: _____

This Bid is submitted to:
[insert Owner's name and address]

Attn: Purchasing Agent

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

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

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

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

No. _____ Dated _____

No. _____ Dated _____

No. _____ Dated _____

No. _____ Dated _____

No. _____ Dated _____

No. _____ Dated _____

B. The Bidder has familiarized himself with the nature and extent of the Bidding Documents, Work,

site, locality, and all local conditions, laws, and regulations that in any manner may affect cost, progress, performance, or furnishing of the Work.

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

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

E. The Bidder has given the Architect/Engineer written notice of all conflicts, errors, and discrepancies that he has discovered in the Bidding Documents, and the written resolution thereof by the Architect/Engineer is acceptable to the Bidder.

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

G. The Bidder acknowledges that he has attended any mandatory pre-bid conference scheduled by the Owner and/or the Architect/Engineer pertaining to this project.

H. The Bidder agrees to show clearly on the envelope in which the Bid is submitted the Project

Name and Number, as well as Invitation for Bid Number.

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

4.0 Bids shall be presented in the form of a total Base Bid proposal under a lump sum contract plus any additive or deductive alternates that are selected by the Owner. A bid must be submitted on all bid items and alternatives. The Owner will not select segregated bids.

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

_____ (\$ _____)

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

B. **ADDITIVE/DEDUCTIVE ALTERNATE 1**

Item _____

_____ (\$ _____)

ADDITIVE/DEDUCTIVE ALTERNATE 2

Item _____

_____ (\$ _____)

ADDITIVE/DEDUCTIVE ALTERNATE 3

Item _____

_____ (\$ _____)

C. **UNIT PRICE**

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

Item _____

Unit Price (in words)

_____ (\$ _____)

Item _____

Unit Price (in words)

_____ (\$ _____)

Item _____

Unit Price (in words)

_____ (\$ _____)

5.0 The Bidder agrees that:

A. The Work to be performed under this Contract shall be commenced not later than 10 consecutive calendar days after the date of written Notice to Proceed, and that 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.

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

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

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

6.0 The following documents are attached to and

8.0 If the Bidder is

A. An **INDIVIDUAL**:

By _____
(Individual's Signature)

doing business as _____

Business address: _____

Telephone: (____) _____ Fax: (____) _____

[Seal]

B. A **PARTNERSHIP**:

By _____
(Firm Name)

made a condition of this Bid:

- A. Bid Bond
- B. Bid Security with Agent's Affidavit
- C. Subcontractors Listing & NMDWS Registration form.
- D. Certification of Bidder Regarding Equal Employment Opportunity, Form 950.1
- E. Certification of Bidder Regarding Section 3 and Segregated Facilities
- F. Section 3 Plan
- G. Table A Proposed Subcontracts Breakdown
- H. Table B Estimated Project Workforce Breakdown
- I. Active or "in progress" status in the System of Award Management (sam.gov) for contractor and subcontractor(s)
- J. Other (list):

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

(General Partner's Signature)

Business address: _____

Telephone: (____) _____ Fax: (____) _____ [Seal]

C. A CORPORATION:

Corporation Name: _____

State of Incorporation: _____

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

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

If a Foreign Corporation: _____
NM Certificate of Authority Number

Attest (Secretary): _____

Business address: _____

Telephone: (____) _____ Fax: (____) _____

D. A JOINT VENTURE:

By _____
(Name)

Address: _____

Telephone: (____) _____ Fax: (____) _____

By _____
(Name)

Address: _____

Telephone: (____) _____ Fax: (____) _____

[Each Joint Venturer must sign. The manner of signing for each individual, partnership, and corporation that is a party to the joint venture should be in the manner indicated in the appropriate category]

BIDDER MUST FILL IN THE FOLLOWING (If none, write none)
--

NM License N°.	_____	Classification(s)	_____
Resident Contractor's Preference N°.	Not Applicable for this Project	Workforce Solutions Dept. Registration N°.	_____

System of Award Management Registration No.
(CAGE Number or DUNS Number) _____

Federal Employer Tax ID No. _____

State of New Mexico Tax ID No. _____

BID BOND

SUPPLEMENTS TO BID FORMS
Section 00420

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned, _____
as Principal, and _____ as Surety, are hereby held and firmly bound unto
_____ as Owner in the penal sum of
_____ for which, well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executives,
administrators, successors and assigns.

SIGNED, this _____ day of _____, 20____.

The condition of the above obligation is such that whereas the Principal has submitted to the Owner a certain Bid,
attached hereto and hereby made a part hereof to enter into a contract in writing,
for (Project) _____

NOW, THEREFORE,

- A. If said Bid shall be rejected, or in the alternate,
- B. If said Bid shall be accepted and the Principal shall execute and deliver a contract in the Form of Contract, attached hereto (properly completed in accordance with said Bid) and shall furnish a Bond (Bid Security) for the faithful performance of said Contract, and for the payment of all persons performing labor or furnishing materials in connection therewith, and shall in all other respects perform the agreement created by the acceptance of said Bid.

Then this obligation shall be void, otherwise the same shall remain in force and effect; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event, exceed the penal amount of this obligation as herein stated.

The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and its bond shall be in no way impaired or affected by any extension of the time within which the Owner may accept such Bid; and said Surety does hereby waive notice of any such extension.

IN WITNESS WHEREOF, the Principal and the Surety have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to signed by their proper officers, the day and year first set forth above.

Principal: _____ (L.S.)

Surety: _____

[Seal]

By: _____

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____, certify that I am the _____
, Secretary of the Corporation named as Principal in this bond, that _____ who
signed the bond on behalf of the Principal was then _____ of said
corporation; that I know his/her signature, and his/her signature thereto is genuine; and that said bond was duly
signed, sealed, and attested to for and on behalf of said corporation by authority of this governing body.

[Corporate Seal]

Title: _____

BID SECURITY REVIEW FORM

SUPPLEMENTS TO BID FORMS
Section 00421

1. **Review and Approval:** This Bond has been executed by a Surety named in the current list of
"Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as
Acceptable Reinsuring Companies," as published in Circular 570 (July 1st edition) by the Audit Staff
Bureau of Accounts, United States Treasury Department.

☐ Yes ☐ No (If **No**, report to Funding Agency immediately)

2. I, as Owner's Representative, have verified with (Name of Contact) _____ of the
Office of the Superintendent of Insurance, 1-855-427-5674 that the Surety Company listed on the Bid
Bond is licensed/authorized to do business in the state of New Mexico in accordance with ☐ 13-1-46 and
☐ 13-4-18 NMSA 1978. If source of verification is other than the State Corporation Commission,
Insurance Division, identify the source document below and publication date.

_____ Dated: _____
(Name of Source Document)

_____ Date _____
(Signature of Owner's Representative)

AGENT'S AFFIDAVIT

SUPPLEMENTS TO BID FORMS
Section 00422

[To be filled in by Agent]

This Form Must Be
Used By Surety

STATE OF _____)
) ss.
COUNTY OF _____)

_____, being first duly sworn, deposes and says that he/she is the duly appointed agent for _____ and is licensed in the State of New Mexico.

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

SUBSCRIBED AND SWORN TO BEFORE ME THIS _____ DAY OF _____, 20_____.

NOTARY PUBLIC _____

MY COMMISSION EXPIRES: _____ [Seal]

Agent's Address:

Telephone (____) _____ Fax (____) _____

[This form must be used for all bonds required in the Bidding Documents. Power of Attorney for person signing for Surety Company must be attached to bond]

[This Page Left Blank]

SUBCONTRACTORS LISTING, NMDWS REGISTRATION, & ASSIGNMENT OF ANTITRUST CLAIMS

Project: _____ Project No. _____

1.0 SUBCONTRACTORS LISTING, NMDWS REGISTRATION, & ASSIGNMENT OF ANTITRUST CLAIMS [by Contractor, Subcontractors, Sub-Subcontractors, and Suppliers]

1.1 To be fully executed and included with Bid as a condition of the Bid, including all Subcontractors providing services valued at \$5,000 or more, pursuant to §13-4-34 NMSA 1978.

1.2 To be signed after award of Contract by individual empowered to obligate Supplier, Subcontractor, or Sub-subcontractor.

1.3 See Instructions to Bidders, subsection 4.5 of section 00100, Subcontractors, for rules regarding changes in this list after bidding.

1.4 The undersigned agrees that any and all claims which the firm may have or may inure to it for overcharges resulting from antitrust violations as to goods, services, and materials purchased in connection with the above-referenced project are hereby assigned to the Owner, but only to the extent

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

1.5 A contractor or subcontractor that submits a bid valued at more than \$60,000 for a public works project subject to the Public Works Minimum Wage Act shall be registered with the Labor and Industrial Division of the Workforce Solutions Department (NMDWS) (formerly the Department of Labor (DOL)). The Owner shall not accept a bid on a public works project from a Contractor that does not provide proof of required registration for itself. Contractors, prime contractors and subcontractors must be registered with the NMDWS (§13-4-13.1 NMSA 1978

Company Name of Contractor/Subcontractor	Email and phone number	NMDWS Registration No	DUNS number	SAMs registration number

U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
**CERTIFICATION OF BIDDER REGARDING
EQUAL EMPLOYMENT OPPORTUNITY**

INSTRUCTIONS

This certification is required pursuant to Executive Order 11246 (30 F. R. 12319-25). The implementing rules and regulations provide that any bidder or prospective contractor, or any of their proposed subcontractors, shall state as an initial part of the bid or negotiations of the contract whether it has participated in any previous contract or subcontract subject to the equal opportunity clause; and, if so, whether it has filed all compliance reports due under applicable instructions.

Where the certification indicates that the bidder has not filed a compliance report due under applicable instructions, such bidder shall be required to submit a compliance report within seven calendar days after bid opening. No contract shall be awarded unless such report is submitted.

CERTIFICATION BY BIDDER

NAME AND ADDRESS OF BIDDER *(Include ZIP Code)*

1. Bidder has participated in a previous contract or subcontract subject to the Equal Opportunity Clause. ☐ Yes ☐ No

2. Compliance reports were required to be filed in connection with such contract or subcontract ☐ Yes ☐ No

3. Bidder has filed all compliance reports due under applicable instructions, including SF-100. ☐ Yes ☐ No

4. Have you ever been or are you being considered for sanction due to violation of Executive Order 11246, as amended? ☐ Yes ☐ No

(Name And Title Of Signer Please type)

Signature

Date

**CERTIFICATION OF BIDDER REGARDING SECTION 3
AND SEGREGATED FACILITIES**

SUPPLEMENTS TO BID FORMS
Section 00441

[SAMPLE]

Name of Prime Contractor

Project Name

Project Number

The undersigned hereby certifies that:

(a) Section 3 provisions are included in the Contract.

(b) A written Section 3 plan was prepared and submitted as part of the bid proceedings (if bid equals or exceeds \$10,000).

(c) No segregated facilities will be maintained.

Name and Title of Signer (Print or Type)

Signature

Date

CONTRACTOR - SECTION 3 PLAN FORMAT

_____ (Name of contractor) agrees to implement the following specific affirmative action steps directed at increasing the utilization of lower income residents and businesses with the Municipality/County of _____, New Mexico.

A. To ascertain from the locality's CDBG program official the exact boundaries of the Section 3 covered project area and where advantageous, seek the assistance of local officials in preparing and implementing the affirmative action plan.

B. To attempt to recruit from within the municipality or county (as applicable), the necessary number of lower income residents through: local advertising media, signs placed at the proposed site for the project, and community organizations and public or private institutions operating within or serving the project area such as Service Employment and Redevelopment (SER), Opportunities Industrialization Center (OIC), Urban League, Concentrated Employment Program, Hometown Plan, or the U. S. Employment Service.

C. To maintain a list of all lower income residents who have applied either on their own or on referral from any source, and to employ such persons, if otherwise eligible and if a vacancy exists.

D.* To insert this Section 3 Plan in all bid documents, and to require all bidders on subcontracts to submit a Section 3 affirmative action plan including utilization goals and the specific steps planned to accomplish these goals.

E.* To ensure that subcontracts which are

typically let on a negotiated rather than a bid basis in areas other than Section 3 covered project areas are also let on a negotiated basis, however, feasible, when let in a Section 3 covered project area.

F. To formally contact unions, subcontractors, and trade associations to secure their cooperation for this program.

G. To ensure that all appropriate project area business concerns are notified of pending sub-contractual opportunities.

H. To maintain records, including copies of correspondence, memoranda, etc., which document that all of the above affirmative action steps have been taken.

I. To appoint or recruit an executive official of the company or agency as Equal Opportunity Officer to coordinate the implementation of this Section 3 plan.

J. To list on Table A, information related to subcontracts to be awarded.

K. To list on Table B, all projected workforce needs for all phases of this project by occupation, trade, skill level, and number of positions.

* Loans, grants, contracts, and subsidies for less than \$10,000 will be exempt.

As officers and representatives of (name of contractor) _____, we the undersigned have read and fully agree to this Affirmative Action Plan, and become party to the full implementation of this program.

Signature

Title

Date

Signature

Title

Date

TABLE A
PROPOSED SUBCONTRACTS BREAKDOWN

For the Period Covering _____, 20__ through _____, 20__
[Duration of the CDBG-Assisted Project]

[illegible]

* The Project Area is coextensive with the Municipality/County of _____'s boundaries.

Company

Project Name

Project Number

EEO Officer (Signature)

Date _____

TABLE B
ESTIMATED PROJECT WORKFORCE BREAKDOWN

Column 1	Column 2	Column 3	Column 4	Column 5
Job Category	Total Estimated Positions	Number Positions Currently Occupied by Permanent Employees	Number Positions Not Currently Occupied	Number Positions to be filled with LIPAR*
Officers/Supervisors				
Professionals				
Technicians				
Housing Sales/Rental Management				
Office Clerical				
Service Workers				
Others				
TRADE:				
Journeyman				
Helpers				
Apprentices				
Maximum Number of Trainees				
Others				
TRADE:				
Journeyman				
Helpers				
Apprentices				
Maximum Number of Trainees				
Others				

*Lower Income Project Area Residents. Individuals residing within the Municipality/County of _____ whose family income does not exceed 80% of the median income of the State.

Company

[This Page Left Blank]

OTHER SUPPLEMENTS TO BID FORMS

SUPPLEMENTS TO BID FORMS
Section 00400

SUBSTITUTION LISTING

Section 00440

EQUIPMENT SUPPLIERS LISTING

Section 00450

NON-COLLUSION AFFIDAVIT

Section 00480

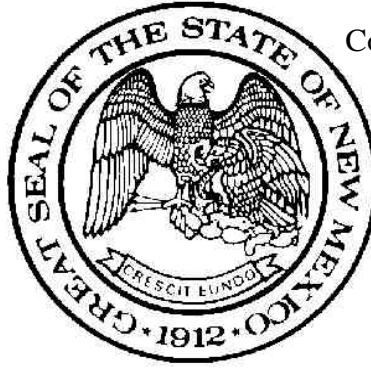
STATEMENT OF BIDDER'S QUALIFICATIONS

Section 00470

[If the above forms are required by the Owner or the Architect/Engineer to be inserted into the Bidding Documents, this page should be replaced by the appropriate forms – special mention under Section 7, Instructions to Bidders, and on the Bid Form, if applicable, should be made by the Architect/Engineer]

AGREEMENT BETWEEN OWNER AND CONTRACTOR

AGREEMENT FORMS - LUMP SUM PRICE OR UNIT PRICE
Section 00510



Contract No. _____

[Disclaimer: Changes and/or modifications made to this document, other than the typical construction items for which the contractor is bidding and/or will contract for, without the written consent of the Local Government Division, DFA shall render this document null and void]

This Agreement entered into this _____ day of _____, 20____, by and between the parties as follows:

THE OWNER:

THE CONTRACTOR:

Telephone: ____-____-_____

Telephone: ____-____-_____

E-mail address: _____

E-mail address: _____

For the following Project: _____

Project Number: _____

ARCHITECT/ENGINEER OF RECORD:

Telephone: ____-____-_____

E-mail address: _____

WHEREAS, _____

WHEREAS, the Owner, through its Mayor/Chairman, is authorized to enter into a construction contract for the Project pursuant to Sections 13-1-100 NMSA 1978; and

WHEREAS, award of the construction contract on this Project was approved by the Governing Body at its meeting of _____, 20__;

ARTICLE 1

THE CONTRACT DOCUMENTS

- Bid Form
- This Agreement
- Performance Bond
- Labor and Material Payment Bonds
- Agent's Affidavit
- Certificate of Insurance
- Assignment of Antitrust Claims
- Table A Subcontracts Breakdown
- Table B Estimated Project Workforce Breakdown
- Notice of Award
- Notice to Proceed
- Conditions of the Contract (General, Supplementary and Other Conditions)
- Drawings
- Specifications
- All Addenda Issued Prior to and
- All Modifications Issued after Execution of this Agreement
- Federal requirements, certifications and forms required by the CDBG program

ARTICLE 2

THE WORK

This image shows a single sheet of white paper with horizontal blue ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

**ARTICLE 3
TIME OF COMMENCEMENT
AND SUBSTANTIAL COMPLETION**

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

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

**ARTICLE 4
CONTRACT SUM**

4.1 The Owner shall pay the Contractor in current funds for the performance of the Work, subject to additions and deductions by Change Order as provided in the Contract, the Contract Sum of _____

Dollars (\$ _____).

4.2 The Contract sum is determined as follows:

Base Bid	\$	_____
Alternatives (if any)	\$	_____
NM GRT @ _____ %	\$	_____
Contract Sum	\$	_____

**ARTICLE 5
PROGRESS PAYMENTS**

5.1 Based upon Applications for Payment submitted to the Architect/Engineer by the Contractor and Certificates for Payment issued by the Architect/ Engineer, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided in the Contract for the period ending the 5th day of the month as follows:

5.2 Not later than thirty (30) working days following receipt by the Owner of an undisputed Application for Payment or as stated in Paragraph

25 of the Supplemental General Conditions, 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; less such amounts as the Architect/ Engineer shall determine for all incomplete Work and unsettled claims as provided in the Contract Documents ([Section 57-28-5 NMSA 1978](#)). (48 CFR 52.232-27) (Title 5 Part 1315.14).

5.2.1 When making payments, an owner, contractor or subcontractor shall not retain, withhold, hold back or in any other manner not pay amounts owed for work performed. For additional information regarding retainage and the Prompt Payment Act refer to Section 57-28-5 NMSA 1978.

**ARTICLE 6
FINAL PAYMENT**

6.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be paid by the Owner to the Contractor within thirty (30) calendar days after notification of the Owner by the Architect/Engineer that all incomplete and unacceptable work that was noted during the Substantial Completion Inspection and listed on the attachment to the Certificate of Substantial Completion has been corrected, and provided the Contract has been fully performed and a final Certificate for Payment has been issued by the Architect/Engineer and final monitoring and close-out by the Funding Agency. In addition, the Contractor shall provide to the Owner a certified statement of Release of Liens (*AIA Document G706A or approved form*) and Consent of Surety.

**ARTICLE 7
GENERAL AND SPECIAL PROVISIONS**

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

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

7.5 This Agreement shall not become effective until approved by the governing body; and signed by all parties required to sign this Agreement and reviewed by the Funding Agency.

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

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

7.8 The Contractor agrees not to purport to bind Owner to any obligation not assumed herein by Owner unless the Contractor 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 shown on the title page of this Agreement.

7.10 Nothing herein contained shall preclude the giving of any such written notice by personal service. The address to which notices shall be mailed to either party may be changed by written notice given by such party to the other as hereinabove provided.

7.11 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.

7.12 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.

7.13 This document shall be executed in no less than three (3) counterparts, each of which shall be deemed an original.

7.14 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.

7.15 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.

7.16 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.

7.17 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.

7.18 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.

7.19 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.

7.20 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.

7.21 Pursuant to §13-1-191 NMSA 1978, reference is hereby made to the criminal laws of

New Mexico, including §§30-14-1, 30-24-2, and 30-41-1 through 3 NMSA 1978, which prohibit bribes, kickbacks, and gratuities, violation of which constitutes a felony. Further, the Procurement Code, §§13-1-28 through 13-1-199 NMSA 1978, imposes civil and criminal penalties for its violation.

7.22 The Contract Documents, which constitute the entire Contract between the Owner and the Contractor, are listed in Article 1 and, except for Modifications issued after execution of this Agreement, are enumerated as follows:

7.23 The following documents bound in the Project Manual:

<u>Documents</u>	<u>Pages</u>
Bid Form	4A-21
Agreement between Owner and Contractor	4A-39
Performance Bond	4A-45
Labor and Material Payment Bond	4A-47
Agent's Affidavit	4A-29/51
Certificate of Insurance	4A-53
Assignment of Antitrust Claims	4A-55
Table A Subcontracts Breakdown	4A-58
Table B Estimated Project Workforce Breakdown	4A-59
General Conditions	4A-61
Supplementary Conditions	4A-75
Technical Specifications -	

AGREEMENT FORMS DIVISION 0 - SECTION 00500

Approved by the Governing Body at its meeting _____, 20____
of _____

OWNER:

Date: _____

Mayor/Chairperson

Reviewed:

As to Legal Form and Sufficiency

By: _____

Title: _____

Date: _____

As to Budget Sufficiency

By: _____

Title: _____

Date: _____

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

CONTRACTOR:

By: _____

Title: _____

Date: _____

Federal Tax ID N°:

State Tax ID N°:

AGENCY CONCURRENCE:

By: _____

Title: _____

Date: _____

[Instructions: This page to be replaced by Architect/Engineer with *AIA Document A311*, form of **Performance Bond** or similar documents and labeled as pages 4A-45]

[Instructions: This page to be replaced by Architect/Engineer with *AIA Document A311*, form of **Labor and Material Payment Bond** or similar documents and labeled as page 4A-47]

RIDER TO BONDS

BONDS, CERTIFICATES AND NOTICES
Section 00621

This Form Must Be
Used By Surety

Performance Bond N°. _____ Labor & Material Payment Bond N°. _____

Obligee (Owner): _____

Surety _____

Surety's New Mexico Agent:

Name: _____

Address: _____

Telephone N°. (____) _____

The Surety and Principal stipulate as follows:

Whenever, in the judgment of the Owner, the Surety on this bond shall be insolvent, or for any cause is not a proper or sufficient Surety, the Owner may require the Contractor to furnish a new or additional bond or security within ten (10) days; and thereupon, if the Owner shall so order, security shall be furnished. If such new or additional bond or security is not furnished within said time, the Owner may, at its option, take over and Surety, either doing the Work on force account, or letting the same by contract, and shall be entitled to use any equipment, materials and supplies of the delinquent Contractor in completing said Work.

The Surety hereby stipulates and agrees that no properly authorized Change Order altering Contract Time, Contract Sum, Conditions of the Contract, or the scope of nature of the Work to be performed thereunder shall in any way affect its obligation on this bond, and it does hereby waive any notice of such change.

Signed and sealed this _____ day of _____, 20____.

(Principal) (Seal)

(Witness)

(Title)

(Witness)

(Surety) (Seal)

(Title)

AGENT'S AFFIDAVIT

SUPPLEMENTS TO BID FORMS
Section 00422

[To be filled in by Agent]

This Form Must Be
Used By Surety

STATE OF _____)
) ss.
COUNTY OF _____)

_____, being first duly sworn, deposes and says that he/she is the duly appointed agent for _____ and is licensed in the State of New Mexico.

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

SUBSCRIBED AND SWORN TO BEFORE ME THIS _____ DAY OF _____, 20_____.

NOTARY PUBLIC

MY COMMISSION EXPIRES: _____

[SEAL]

Agent's Address:

Telephone (____) _____ Fax (____) _____

[This form must be used for all bonds required in the Bidding Documents. ☐ Power of Attorney for person signing for Surety Company must be attached to bond. Power of Attorney for person signing for Surety Company must be attached to bond]

GUARANTY BOND/MAINTENANCE BOND

BONDS, CERTIFICATES, AND NOTICES
Section 00600

GUARANTY BOND

Section 00630

MAINTENANCE BOND

Section 00640

(Instructions: This is a listing of forms that are not supplied. If required by the Owner or the Architect/Engineer as part of the Bidding Documents, this page should be replaced by the appropriate forms - special mention under Section 7, Instructions to Bidders, and on the Bid Form, if applicable, should be made by the Architect/Engineer.)

[Instructions: this page to be replaced by Architect/Engineer with AIA Document G705, form of Certificate of Insurance or similar form and labeled as page 53. A/E to fill in minimum amounts of insurance required in the Supplemental General Conditions]

ASSIGNMENT OF ANTITRUST CLAIMS

(To be executed by Suppliers, Subcontractors, and Sub-Subcontractors of Contractors)

BONDS, CERTIFICATES, AND NOTICES
Section 00661

This Form Must Be Submitted
Within 10 Days of Bid Award

Project: _____ Project Number: _____

_____ agrees that any and all claims which it may have or may have endured for overcharges resulting from antitrust violations as to goods, services, and materials purchased in connection with the above-referenced project are hereby assigned to the Owner, but only to the extent that such overcharges are passed on to the Owner.

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

Firm: _____

By: _____

Signed by Individual Empowered to Obligate Supplier,
Subcontractor, or Sub-Subcontractor

Title: _____

Date: _____

CERTIFICATE OF OWNER'S ATTORNEY

BONDS, CERTIFICATES, AND NOTICES
Section 00670

I, the undersigned, _____, the duly authorized and acting
legal representative of the (municipality/county) of _____
do hereby certify as follows:

I have examined the attached contract(s) and surety bonds and the manner of execution thereof, and I am of the opinion that each of the aforesaid agreements has been duly executed by the proper parties thereto acting through their duly authorized representatives; that said representatives have full power and authority to execute said agreements on behalf of the respective parties named thereon; and that the foregoing agreements constitute valid and legally binding obligation upon the parties executing the same in accordance with terms, conditions and provisions thereof.

Name: _____

Address: _____

Date: _____ Telephone N°. ____-____-____

TABLE A

SUBCONTRACTS BREAKDOWN

For the Period Covering _____, 20____ through _____, 20____
[Duration of the CDBG-Assisted Project]

[illegible]

* The Project Area is coextensive with the Municipality/County of _____'s boundaries.

Company

Project Name

Project Number

EEO Officer (Signature)

Date _____

TABLE B
ESTIMATED PROJECT WORKFORCE BREAKDOWN

Column 1	Column 2	Column 3	Column 4	Column 5
Job Category	Total Estimated Positions	Number Positions Currently Occupied by Permanent Employees	Number Positions Not Currently Occupied	Number Positions to be filled with LIPAR*
Officers/Supervisors				
Professionals				
Technicians				
Housing Sales/Rental Management				
Office Clerical				
Service Workers				
Others				
TRADE:				
Journeyman				
Helpers				
Apprentices				
Maximum Number of Trainees				
Others				
TRADE:				
Journeyman				
Helpers				
Apprentices				
Maximum Number of Trainees				
Others				

*Lower Income Project Area Residents. Individuals residing within the Municipality/County of _____ whose family income does not exceed 80% of the median income of the State.

Company

[This Page Left Blank]

GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

GENERAL CONDITIONS OF THE CONTRACT
Section 00700

TABLE OF CONTENTS

1. Contract and Related Contract Documents	26. Acceptance of Final Payment as Release
2. Definitions	27. Payments by Contractor
3. Additional Instructions and Detail Drawings	28. Insurance
4. Shop/Setting Drawings	29. Contract Security
5. Materials/Services/Facilities	30. Additional/Substitute Bond
6. Contractor's Title to Materials	31. Assignments
7. Inspection/Testing of Materials	32. Mutual Responsibility of Contractors
8. "Or Equal" Clause	33. Separate Contracts
9. Patents	34. Subcontracting
10. Survey/Permits/Regulations	35. Architect/Engineer Authority
11. Contractor's Obligations	36. Stated Allowances
12. Weather Conditions	37. Use of Premises/Removal of Debris
13. Protection of Work and Property, Emergency	38. Quantities of Estimate
14. Inspection	39. Lands and Rights of Way
15. Reports/Records/Data	40. General Guaranty
16. Superintendence by Contractor	41. Conflicting Conditions
17. Changes in Work	42. Notice of Service Thereof
18. Extras	43. Required Provisions
19. Time for Completion and Liquidated Damages	44. Protection of Lives/Health
20. Correction of Work	45. Subcontracts
21. Subsurface Conditions Found Different	46. Interest of Member of or Delegate to Congress
22. Claims for Extra Cost	47. Other Prohibited Interests
23. Right of Owner to Terminate	48. Use and Occupancy Prior to Acceptance
24. Construction Schedule/Periodic Estimate	
25. Payments to Contractor	

1. Contract and Contract Documents

1.1 The project to be constructed pursuant to this contract will be financed with the assistance of the New Mexico Small Cities Community Development Block Grant Program and is subject to all applicable federal and state laws and regulations. State administered Community Development Block Grant monies are federal funds. Section § 13-1-30B NMSA 1978 of the Procurement Code stipulates: "When a procurement involves the expenditure of federal funds, the procurement shall be conducted in accordance with mandatory applicable federal law and regulations. When mandatory applicable federal law or regulations are inconsistent with the provisions of the Procurement Code, compliance with federal law or regulations shall be compliance with the Procurement Code."

1.2 The applicable governing federal procurement standards are defined in OMB Circular A-102, Attachment O. When federal and state procurement policies are different, the more restrictive policies

apply so long as they are consistent with Circular A-102 standards.

1.3 The plans, specifications and addenda, hereinafter enumerated in Paragraph 1 of the Supplemental General Conditions shall form part of this Contract and the provisions thereof shall be as binding upon the parties hereto as if they were herein fully set forth. The table of contents, titles, headings, running headlines and marginal notes contained herein and in said documents are solely to facilitate reference to various provisions of the Contract Documents and in no way affect, limit or cast light on the interpretation of the provisions to which they refer.

2. Definitions

The following terms as used in this contract are respectively defined as follows:

2.1 *Contractor* is a person, firm or corporation with whom the contract is made by the Owner.

2.2 *Subcontractor* is a person, firm or corporation supplying labor and materials or only labor for work at the site of the project for, and under separate contract or agreement with, the Contractor.

2.3 *Work on (at) the project* is work to be performed at the location of the project, including the transportation of materials and supplies to or from the location of the project by employees of the Contractor and any Subcontractor.

3. Additional Instructions and Detail Drawings

3.1 The Contractor will be furnished additional instructions and detail drawings as necessary to carry out the work included in the contract. The additional drawings and instructions thus supplied to the Contractor will coordinate with the Contract Documents and will be so prepared that they can be reasonably interpreted as part thereof. The Contractor shall carry out the work in accordance with the additional detail drawings and instructions. The Contractor and the Architect/Engineer will prepare jointly (a) a schedule, fixing the dates at which special detail drawings will be required, such drawings, if any, to be furnished by the Architect/ Engineer in accordance with said schedule, and (b) a schedule fixing the respective dates for the submission of shop drawings, the beginning of manufacture, testing and installation of materials, supplies and equipment, and the completion of the various parts of the work; each such schedule to be subject to change from time to time in accordance with progress of the work.

4. Shop or Setting Drawings

4.1 The Contractor shall submit promptly to the Architect/Engineer two copies of each shop or setting drawing prepared in accordance with the schedule predetermined as aforesaid. After examination of such drawings by the Architect/Engineer and the return thereof, the Contractor shall make such corrections to the drawings as have been indicated and shall furnish the Architect/ Engineer with two corrected copies. If requested by the Architect/Engineer the Contractor must furnish additional copies. Regardless of corrections made in or approval given to such drawings by the Architect/Engineer, the Contractor will never the less be responsible for the accuracy of such drawings and for their conformity to the Plans and Specifications, unless he notifies the Architect/Engineer in writing of any deviations at the time he furnishes such drawings.

5. Materials, Services, and Facilities

5.1 It is understood that except as otherwise specifically stated in the Contract Documents, the Contractor shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, superintendence, temporary construction of every nature, and all other services and facilities of every nature whatsoever necessary to execute, complete, and deliver the work within the specified time.

5.2 Any work necessary to be performed after regular working hours, on Sundays or legal holidays, shall be performed without additional expense to the Owner.

6. Contractor's Title to Materials

6.1 No materials or supplies for the work shall be purchased by the Contractor or by any Subcontractor subject to any chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller. The Contractor warrants that he has good title to all materials and supplies used by him in the work, free from all liens, claims or encumbrances.

7. Inspection and Testing of Materials

7.1 All materials and equipment used in the construction of the project shall be subject to adequate inspection and testing in accordance with accepted standards. The laboratory or inspection agency shall be selected by the Owner. The Owner will pay for all laboratory inspection service direct, and not as a part of the contract.

7.2 Materials of construction, particularly those upon which the strength and durability of the structure may depend, shall be subject to inspection and testing to establish conformance with specifications and suitability for uses intended.

8. "Or Equal" Clause

8.1 Whenever a material, article or piece of equipment is identified on the plans or in the specifications by reference to manufacturers' or vendors' names, trade names, catalogue numbers, etc., it is intended merely to establish a standard; and, any material, article, or equipment or other manufacturers and vendors which will perform adequately the duties imposed by the general design will be considered equally acceptable provided the material, article, or

equipment so proposed, is, in the opinion of the Architect/Engineer, of equal substance and function. It shall not be purchased or installed by the Contractor without the Architect/Engineer's written approval.

9. Patents

9.1 The Contractor shall hold and save the Owner and its officers, agents, servants, and employees harmless from liability of any nature or kind, including cost and expenses for, or on account of, any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the contract, including its use by the Owner, unless otherwise specifically stipulated in the Contract Documents.

9.2 License or Royalty Fees. License and/or Royalty Fees for the use of a process which is authorized by the Owner of the project must be reasonable, and paid to the holder of the patent, or his authorized licensee, direct by the Owner and not be or through the Contractor.

9.3 If the Contractor uses any design, device or materials covered by letters, patent or copyright, he shall provide for such use by suitable agreement with the Owner of such patented or copyrighted design, device or material. It is mutually agreed and understood, that, without exception, the contract prices shall include all royalties or costs arising from the use of such design, device or materials, in any way involved in the work. The Contractor and/or his Sureties shall indemnify and save harmless the Owner of the project from any and all claims for infringement by reason of the use of such patented or copyrighted design, device or materials, or any trademark or copyright in connection with work agreed to be performed under this contract, and shall indemnify the Owner for any cost, expense or damage which it may be obliged to pay by reason of such infringement at any time during the prosecution of the work or after, completion of the work.

10. Surveys, Permits, and Regulations

10.1 Unless otherwise expressly provided for in the Specifications, the Owner will furnish to the Contractor all surveys necessary for the execution of the work.

10.2 The Contractor shall procure and pay all permits, licenses and approvals necessary for the execution of his contract.

10.3 The Contractor shall comply with all laws, ordinances, rules, orders, and regulations relating to performance of the work, the protection of adjacent property, and the maintenance of passageways, guard fences or other protective facilities.

11. Contractor's Obligations

11.1 The Contractor shall and will, in good workmanlike manner, do and perform all work and furnish all supplies and materials, machinery, equipment, facilities and means, except as herein otherwise expressly specified, necessary or proper to perform and complete all the work required by this contract, within the time herein specified. The Contractor will perform the Work in accordance with the provisions of this contract and said specifications and in accordance with the plans and drawings covered by this contract any and all supplemental plans and drawings, and in accordance with the directions of the Architect/Engineer as given from time to time during the progress of the work. He shall furnish, erect, maintain, and remove such construction plant and such temporary works as may be required.

11.2 The Contractor shall observe, comply with, and be subject to all terms, conditions, requirements, and limitations of the contract and specifications, and shall do, carry on, and complete the entire work to the satisfaction of the Architect/Engineer and the Owner.

12. Weather Conditions

12.1 In the event of temporary suspension of work, or during inclement weather, or whenever the Architect/Engineer shall direct, the Contractor will, and will cause his subcontractors to protect carefully his and their work and materials against damage or injury from the weather. If, in the opinion of the Architect/Engineer, any work or materials shall have been damaged or injured by reason of failure on the part of the Contractor or any of his Subcontractors so to protect his work, such materials shall be removed and replaced at the expense of the Contractor.

13. Protection of Work and Property-Emergency

13.1 The Contractor shall at all times safely guard the Owner's property from injury or loss in connection with this contract. He shall at all times safely guard and protect his own work, and that of adjacent property from damage. The Contractor shall replace or make good any such damage, loss or injury unless such is caused directly by errors contained in the contract or by the Owner, or his duly authorized

representatives.

13.2 In case of an emergency which threatens loss or injury of property, and/or safety of life, the Contractor will be allowed to act, without previous instructions from the Architect/Engineer, in a diligent manner. He shall notify the Architect/Engineer immediately thereafter. Any claim for compensation by the Contractor due to such extra work shall be promptly submitted to the Architect/Engineer for approval.

13.3 Where the Contractor has not taken action but has notified the Architect/Engineer of an emergency threatening injury to persons to damage to the work or any adjoining property, he shall act as instructed or authorized by the Architect/Engineer.

13.4 The amount of reimbursement claimed by the Contractor on account of any emergency action shall be determined in the manner provided in Paragraph 17 of the General Conditions.

14. Inspection

14.1 The authorized representatives and agents of the Department of Housing and Urban Development shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials, and other relevant data and records.

15. Reports, Records, and Data

15.1 The Contractor shall submit to the Owner such schedule of quantities and costs, progress schedules, payrolls, reports, estimates, records and other data as the Owner may request concerning work performed or to be performed under this contract.

16. Superintendence by Contractor

16.1 At the site of the work the Contractor shall employ a construction superintendent or foreman who shall have full authority to act for the Contractor. It is understood that such representative shall be acceptable to the Architect/Engineer and shall be one who can be continued in that capacity for the particular job involved unless he ceases to be on the Contractor's payroll.

17. Changes in Work

17.1 No changes in the work covered by the approved Contract Documents shall be made without having prior written approval of the Owner and funding agency. Charges or credits for the work covered by the approved change shall be determined by one or more,

or a combination of the following methods:

- A. Unit bid prices previously approved.
- B. An agreed lump sum.
- C. The actual cost of:
 - 1. Labor, including foremen;
 - 2. Materials entering permanently into the work;
 - 3. The ownership or rental cost of construction plant and equipment during the time of use on the extra work;
 - 4. Power and consumable supplies for the operation of power equipment;
 - 5. Insurance;
 - 6. Social Security and old age and unemployment contributions.

17.2 To the costs under 17.1 there shall be added a fixed fee to be agreed upon but not to exceed fifteen percent (15%) of the actual cost of the work. The fee shall be compensation to cover the cost of supervision, overhead, bond, profit and any other general expenses.

17.3 The Contractor must submit in writing any request for any modifications to the plans and specifications. Shop drawings that are submitted to the Architect/Engineer for review do not constitute "in writing" unless it is brought to the attention of the Architect/Engineer that specific changes are being proposed. In any event, the responsibility for proposing changes to the plans and specifications by means of shop drawings resides with the Contractor and no additional costs resulting from such changes will be paid to the Contractor.

17.4 All change orders will include the total added (or deducted) cost to the Owner, including gross receipts tax. The Owner must approve any increase or decrease to the Construction Cost.

17.5 All change orders will be approved by the funding agency (Local Government Division, DFA) before taking effect. Any additional project costs (including GRT) approved by the Owner without LGD approval, shall become the sole responsibility of the Owner.

17.6 Any party that becomes aware of an expected project cost over-run, will notify the Owner immediately. The Owner will notify the Funding Agency. If funding is not already in place to cover the entire over-run, the owner and Architect/Engineer will: 1) amend the scope of work to bring the project back within budget, 2) secure additional and timely funding to cover the entire over-run or 3) deny

approval of the change order.

18. Extras

18.1 Without invalidating the contract, the Owner may order extra work or make changes by altering, adding to or deducting from the work, the contract sum being adjusted accordingly, and the consent of the Surety being first obtained where necessary or desirable. All the work of the kind bid upon shall be paid for at the price stipulated in the proposal, and no claims for any extra work or materials shall be allowed unless the work is ordered in writing by the Owner or its Architect/Engineer, acting officially for the Owner, and the price is stated in such order.

19. Time for Completion and Liquidated Damages

19.1 It is hereby understood and mutually agreed, by and between the Contractor and the Owner, that the date of beginning and the time for completion as specified in the contract of the work to be done hereunder are *essential conditions* of this contract: and it is further mutually understood and agreed that the work embraced in this contract shall be commenced on a date to be specified in the "Notice to Proceed."

19.2 The Contractor agrees that said work shall be prosecuted regularly, diligently, and uninterruptedly at such rate of progress as will insure full completion thereof within the time specified. It is expressly understood and agreed, by and between the Contractor and the Owner, that the time for the completion of the work described herein is a reasonable time for the completion of the same, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality.

19.3 If the said Contract shall neglect, fail or refuse to complete the work within the time herein specified, or any proper extension thereof granted by the Owner, then the Contractor does hereby agree, as a part consideration for the awarding of this contract, to pay to the Owner the amount specified in the contract, not as a penalty but as liquidated damages for such breach of contract as hereinafter set forth, for each and every calendar day that the contract shall be in default after the time stipulated in the contract for completing the work.

19.4 The said amount is fixed and agreed upon by and between the Contractor and the Owner because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Owner would in such event sustain, and said amount is agreed to be

the amount of damages which the Owner would sustain and said amount shall be retained from time to time by the Owner from current periodical estimates.

19.5 It is further agreed that time is of the essence of each and every portion of this contract and of the specifications wherein a definite and certain length of time is fixed for the performance of any act whatsoever; and where under the contract an additional time is allowed for the completion of any work, the new time limit fixed by such extension shall be of the essence of this contract. Provided, that the Contractor shall not be charged with liquidated damages or any excess cost when the Owner determines that the Contractor is without fault and the Contractor's reasons for the time extension are acceptable to the Owner; Provided, further, that the Contractor shall not be charged with liquidated damages or any excess cost when the delay in completion of the work is due:

A. To any preference, priority or allocation order duly issued by the Government;

B. To unforeseeable cause beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God, or of the public enemy, acts of the Owner, acts of another Contractor in the performance of a contract with the Owner, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and severe weather; and

C. To any delays of Subcontractors or suppliers occasioned by any of the causes specified in subsections a) and b) of this article:

19.6 Provided further, that the Contractor shall, within ten (10) days from the beginning of such delay, unless the Owner shall grant a further period of time prior to the date of final settlement of the contract, notify the Owner, in writing, of the causes of the delay, who shall ascertain the facts and extent of the delay and notify the Contractor within a reasonable time of its decision in the matter.

20. Correction of Work

20.1 All work, all materials, whether incorporated in the work or not, all processes of manufacture, and all methods of construction shall be at all times and places subject to the inspection of the Architect/ Engineer who shall be the final judge of the quality and suitability of the work, materials, processes of manufacture, and methods of construction for the purposes for which they are used. Should they fail to meet his approval they shall be forthwith

reconstructed, made good, replaced and/or corrected, as the case may be, by the Contractor at his own expense. Rejected material shall immediately be removed from the site. If, in the opinion of the Architect/Engineer, it is undesirable to replace any defective or damaged materials or to reconstruct or correct any portion of the work injured or not performed in accordance with the Contract Documents, the compensation to be paid to the Contractor hereunder shall be reduced by such amount as in the judgment of the Architect/Engineer shall be equitable.

21. Subsurface Conditions Found Different

21.1 Should the Contractor encounter sub-surface and/or latent conditions at the site materially differing from those shown on the Plans or indicated in the Specifications, he shall immediately give notice to the Architect/Engineer of such conditions before they are disturbed. The Architect/Engineer will thereupon promptly investigate the conditions, and if he finds that they materially differ from those shown on the Plans or indicated in the Specifications, he will at once make such changes in the Plans and/or Specifications as he may find necessary, any increase or decrease of cost resulting from such changes to be adjusted in the manner provided in Paragraph 17 of the General Conditions.

22. Claims for Extra Cost

22.1 No claim for extra work or cost shall be allowed unless the same was done in pursuance of a written order of the Architect/Engineer approved by the Owner, as aforesaid, and the claim presented with the first estimate after the changed or extra work is done. When work is performed under the terms of subparagraph 17.3 of the General Conditions, the Contractor shall furnish satisfactory bills, payrolls and vouchers covering all items of cost and when requested by the Owner, give the Owner access to accounts relating thereto.

23. Right of the Owner to Terminate Contract

23.1 In the event that any of the provisions of this contract are violated by the Contractor, or by any of his subcontractors, the Owner may serve written notice upon the Contractor and the Surety of its intention to terminate the contract, such notices to contain the reasons for such intention to terminate the contract, and unless within ten (10) days after the serving of such notice upon the Contractor, such violation or delay shall cease and satisfactory arrangement of correction be made, the contract shall, upon the

expiration of said ten (10) days, cease and terminate. In the event of any such termination, the Owner shall immediately serve notice thereof upon the Surety and the Contractor and the Surety shall have the right to take over and perform the contract; Provided, however, that if the Surety does not commence performance thereof within ten (10) days from the date of the mailing to such Surety of notice of termination, the Owner may take over the work and prosecute the same to completion by contract or by force account for the account and at the expense of the Contractor and the Contractor and his Surety shall be liable to the Owner for any excess cost occasioned the Owner thereby, and in such event the Owner may take possession of and utilize in completing the work, such materials, appliances, and plant as may be on the site of the work and necessary therefor.

24. Construction Schedule and Periodic Estimates

24.1 Immediately after execution and delivery of the contract, and before the first partial payment is made, the Contractor shall deliver to the Owner an estimated construction progress schedule in form satisfactory to the Owner, showing the proposed dates of commencement and completion of each of the various subdivisions of work required under the Contract Documents and the anticipated amount of each monthly payment that will become due the Contractor in accordance with the progress schedule. The Contractor shall also furnish on forms to be supplied by the Owner (a) a detailed estimate giving a complete breakdown of the contract price and (b) periodic itemized estimates of work done for the purpose of making partial payments thereof. The costs employed in making up any of these schedules will be used only for determining the basis of partial payments and will not be considered as fixing a basis for additions to or deductions from the contract price.

25. Payments to Contractor

25.1 Based upon Applications for Payment submitted to the Architect/Engineer by the Contractor and Certificates for Payment issued by the Architect/Engineer, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided in the Contract for the period ending the ____ day of the month as follows:

A. Not later than thirty (30) working days following receipt by the Owner of an undisputed Application for Payment or as stated in Paragraph 3 of the Supplemental General Conditions, 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 less such amounts as the Architect/Engineer shall determine for all incomplete Work and unsettled claims as provided in the Contract Documents.

B. When making payments, an owner, contractor or subcontractor shall not retain, withhold, hold back or in any other manner not pay amounts owed for work performed. For additional information regarding retainage and the Prompt Payment Act refer to Section 57-28-5 NMSA 1978.

25.2 In preparing estimates the material delivered on the site and preparatory work done may be taken into consideration.

25.3 All material and work covered by partial payments made shall thereupon become the sole property of the Owner, but this provision shall not be construed as relieving the Contractor from the sole responsibility for the care and protection of materials and work upon which payments have been made or the restoration of any damaged work, or as a waiver of the right of the Owner to require the fulfillment of all of the terms of the contract.

25.4 Owner's Right to Withhold Certain Amounts and Make Application Thereof: The Contractor agrees that he will indemnify and save the Owner harmless from all claims growing out of the lawful demands of subcontractors, laborers, workmen, mechanics, material men, and furnisher of machinery and parts thereof, equipment, power tools, and all supplies, including commissary, incurred in the furtherance of the performance of this contract. The Contractor shall, at the Owner's request, furnish satisfactory evidence that all obligations of the nature hereinabove designated have been paid, discharged, or waived. If the Contractor fails so to do, then the Owner may, after having served written notice on the said Contractor, either pay unpaid bills, of which the Owner has written notice, direct, or withhold from the Contractor's unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged

whereupon payment to the Contractor shall be resumed, in accordance with the terms of this contract, but in no event shall the provisions of this sentence be construed to impose any obligations upon the Owner to either the Contractor or his Surety. In paying any unpaid bills of the Contractor, the Owner shall be deemed the agent of the Contractor, and any payment so made by the Owner shall be considered as a payment made under the contract by the Owner to the Contractor and the Owner shall not be liable to the Contractor for any such payments made in good faith.

26. Acceptance of Final Payment Constitutes Release

26.1 The acceptance by the Contractor of final payment shall be and shall operate as a release to the Owner of all claims and all liability to the Contractor for all things done or furnished in connection with this work and for every act and neglect of the Owner and others relating to or arising out of this work. No payment, however, final or otherwise, shall operate to release the Contractor or his sureties from any obligations under this contract or the Performance and Payment Bond.

27. Payments by Contractor

27.1 Contractors and subcontractors shall make prompt payment to their subcontractors and suppliers for amounts owed for work performed on the construction project within seven days after receipt of payment from the owner, contractor or subcontractor. If the contractor or subcontractor fails to pay his subcontractor and suppliers by first-class mail or hand delivery within seven days of receipt of payment, the contractor or subcontractor shall pay interest to his subcontractors and suppliers beginning on the eighth day after payment was due, computed at one and one-half percent of the undisputed amount per month or fraction of a month until payment is issued. These payment provisions apply to all tiers of contractors, subcontractors and suppliers (Section 57-28-1 et. seq. NMSA 1978).

28. Insurance

28.1 The Contractor shall not commence work under this contract until he has obtained all the insurance required under this paragraph and such insurance has been approved by the Owner, nor shall the Contractor allow any subcontractor to commence work on his subcontract until the insurance required of the subcontractor has been so obtained and approved.

28.2 Compensation Insurance. The Contractor shall procure and shall maintain during the life of this contract Workmen's Compensation Insurance as required by applicable State or territorial law for all of this employees to be engaged in work at the site of the project under this contract and, in case of any such work sublet, the Contractor shall require the subcontractor similarly to provide Workmen's Compensation Insurance for all of the latter's employees to be engaged in such work unless such employees are covered by the protection afforded by the Contractor's Workmen's Compensation Insurance. In case any class of employees engaged in hazardous work on the project under this contract is not protected under the Workmen's Compensation statute, the Contractor shall provide and shall cause each subcontractor to provide adequate employer's liability insurance for the protection of such of his employees as are not otherwise protected.

28.3 Contractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance. The Contractor shall procure and shall maintain during the life of this contract Contractor's Public Liability Insurance, Contractor's Property Damage Insurance and Vehicle Liability Insurance in the amounts specified in the Supplemental General Conditions.

28.4 Subcontractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance. The Contractor shall either 1) require each of his subcontractors to procure and to maintain during the life of his subcontract, Subcontractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance of the type and in the amounts specified in the Supplemental General Conditions specified in subparagraph 28.3 hereof or, 2) insure the activities of his policy, specified in subparagraph 28.3 hereof.

28.5 Scope of Insurance and Special Hazards. The insurance require under subparagraphs 28.3 and 28.4 hereof shall provide adequate protection for the Contractor and his subcontractors, respectively, against damage claims which may arise from operations under this contract, whether such operations be by the insured or by anyone directly or indirectly employed by him and, also against any of the special hazards which may be encountered in the performance of this contract as enumerated in the Supplemental General Conditions.

28.6 Builder's Risk Insurance (Fire and Extended Coverage). Until the project is completed and accepted by the Owner, the Owner, or Contractor [at the

Owner's option as indicated in the Supplemental General Conditions, Form HUD-4238-N] is required to maintain Builder's Risk Insurance (fire and extended coverage) on a 100 percent completed value basis on the insurable portion of the project for the benefit of the Owner, the Contractor, subcontractors as their interests may appear. The Contractor shall not include any costs for Builder's Risk Insurance (fire and extended coverage) premiums during construction unless the Contractor is required to provide such insurance; however, this provision shall not release the Contractor from his obligation to complete, according to plans and specifications, the project covered by the contract, and the Contractor and his Surety shall be obligated to full performance of the Contractor's undertaking. Certificates of insurance acceptable to the Owner shall be filed with the Owner within ten (10) days after receipt of the Notice of Award. These certificates shall contain a provision that coverage's afforded under the policies will not be cancelled unless a least thirty (30) days prior written notice has been given to the Owner. A copy of the Builder's All-Risk Policy, if required, shall be provided to the Owner before any portion of Work is commenced by the Contractor. The original Owner's Protective Liability Insurance Policy shall be provided to the Owner before any portion of the work is commenced by the Contractor.

28.7 Payment of Damages. Nothing contained in these insurance requirements is to be construed as limiting the extent of the Contractor's responsibility for payment of damages resulting from his operation under this contract.

28.8 Proof of Carriage of Insurance. The Contractor shall furnish the Owner with certificates showing the type, amount, class of operations covered, effective dates and date of expiration of policies. Such certificates shall also contain substantially the following statement: "The insurance covered by this certificate will not be canceled or materially altered, except after ten (10) days written notice has been received by the Owner."

29. Contract Security

29.1 The Contractor shall furnish a performance bond in an amount at least equal to one hundred percent (100%) of the contract prices as security for the faithful performance of this contract and also a payment bond in an amount not less than one hundred percent (100%) of the contract price or in a penal sum not less than that prescribed by state, territorial or local law, as security for the payment of all persons

performing labor on the project under this contract and furnishing materials in connection with this contract. The performance bond and the payment bond may be in one or in separate instruments in accordance with local law.

29.2 A claimant is further defined as set forth in ☐ Sections 13-4-18 through ☐ 13-4-20 NMSA 1978. The security is bound by the provisions of ☐ Sections 13-4-18 through ☐ 13-4-20 NMSA 1978.

30. Additional or Substitute Bond

30.1 If at any time the Owner for justifiable cause shall be or become dissatisfied with any surety or sureties, then upon the Performance or Payment Bonds, the Contractor shall within five (5) days after notice from the Owner so to do, substitute an acceptable bond (or bonds) in such form and sum and signed by such other surety or sureties as may be satisfactory to the Owner. The premiums on such bond shall be paid by the Contractor. No further payments shall be deemed due nor shall be made until the new surety or sureties shall have furnished such an acceptable bond to the Owner.

31. Assignments

31.1 The Contractor shall not assign the whole or any part of this contract or any moneys due or to become due hereunder without written consent of the Owner. In case the Contractor assigns all or any part of any moneys due or to become due under this contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any moneys due or to become due to the Contractor shall be subject to prior claims of all persons, firms and corporations of services rendered or materials supplied for the performance of the work called for in this contract.

32. Mutual Responsibility of Contractors

32.1 If, through acts of neglect on the part of the Contractor, any other Contractor or any subcontractor shall suffer loss or damage on the work, the Contractor agrees to settle with such other Contractor or subcontractor by agreement or arbitration if such other Contractor or subcontractors will so settle. If such other Contractor or subcontractor shall assert any claim against the Owner on account of any damage alleged to have been sustained, the Owner shall notify the Contractor, who shall indemnify and save harmless the Owner against any such claim.

33. Separate Contract

33.1 The Contractor shall coordinate his operations with those of other Contractors. Cooperation will be required in the arrangement for the storage of materials and in the detailed execution of the work. The Contractor, including his subcontractors, shall keep informed of the progress and the detail work of other Contractors and shall notify the Architect/Engineer immediately of lack of progress or defective workmanship on the part of other Contractors. Failure of a contractor to keep informed of the work progressing on the site and failure to give notice of lack of progress or defective workmanship by others shall be construed as acceptance by him of the status of the work as being satisfactory for proper coordination with his own work.

34. Subcontracting

34.1 The Contractor may utilize the services of specialty subcontractors on those parts of the work which, under normal contracting practices, are performed by specialty subcontractors.

34.2 The Contractor shall not award any work to any subcontractor without prior written approval of the Owner, which approval will not be given until the Contractor submits to the Owner a written statement concerning the proposed award to the subcontractor, which statement shall contain such information as the Owner may require.

34.3 The Contractor shall be as fully responsible to the Owner for the acts and omissions of his subcontractors, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.

34.4 The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind subcontractors to the Contractor by the terms of the General Conditions and other contract documents insofar as applicable to the work of subcontractors and to give the Contractor the same power as regards terminating any subcontract that the Owner may exercise over the Contractor under any provision of the contract documents.

34.5 Nothing contained in this contract shall create any contractual relation between any subcontractor and the Owner.

35. Architect/Engineer's Authority

35.1 The Architect/Engineer shall give all orders and directions contemplated under this contract and specifications, relative to the execution of the work. The Architect/Engineer shall determine the amount, quality, acceptability, and fitness of the several kinds of work and materials which are to be paid for under this contract and shall decide all questions which may arise in relation to said work and the construction thereof. The Architect/Engineer's estimates and decisions shall be final and conclusive, except as herein otherwise expressly provided. In case any question shall arise between the parties hereto relative to said contract or specifications, the determination or decision of the Architect/Engineer shall be a condition precedent to the right of the Contractor to receive any money or payment for work under this contract affected in any manner or to any extent by such question.

35.2 The Architect/Engineer shall decide the meaning and intent of any portion of the specifications and of any plans or drawings where the same may be found obscure or be in dispute. any differences or conflicts in regard to their work which may arise between the Contractor under this contract and other Contractors performing work for the Owner shall be adjusted and determined by the Architect/Engineer.

36. Stated Allowances

36.1 The Contractor shall include in his proposal the cash allowances stated in the Supplemental General Conditions. The Contractor shall purchase the "Allowed Materials" as directed by the Owner on the basis of the lowest and best bid of at least three competitive bids. If the actual price for purchasing the "Allowed Materials" is more or less than the "Cash Allowance," the contract price shall be adjusted accordingly. The adjustment in contract price shall be made on the basis of the purchase price without additional charges for overhead, profit, insurance or any other incidental expenses. The cost of installation of the "Allowed Materials" shall be included in the applicable sections of the Contract Specifications covering this work.

37. Use of Premises and Removal of Debris

37.1 The Contractor expressly undertakes at his own expense:

- A. to take every precaution against injuries to persons or damage to property;
- B. to store his apparatus, materials, supplies and equipment in such orderly fashion at the site of the

work as will not unduly interfere with the progress of his work or the work of any other contractors;

C. to place upon the work or any part thereof only such loads as are consistent with the safety of the portion of the work;

D. to clean up frequently all refuse, rubbish, scrap materials, and debris caused by his operations, to the end that at all times the site of the work shall present a neat, orderly and workmanlike appearance;

E. before final payment to remove all surplus material, false-work, temporary structures, including foundations thereof, plant of any description and debris of every nature resulting from his operations, and to put the site in a neat, orderly condition.

F. to effect all cutting, fitting or patching of his work required to make the same to conform to the plans and specifications and, except with the consent of the Architect/Engineer, not to cut or otherwise alter the work of any other Contractor.

38. Quantities of Estimate

38.1 Wherever the estimated quantities of work to be done and materials to be furnished under this contract are shown in any of the documents including the proposal, they are given for use in comparing bids and the right is especially reserved except as herein otherwise specifically limited, to increase or diminish them as may be deemed reasonably necessary or desirable by the Owner to complete the work contemplated by this contract, and such increase or diminution shall in no way vitiate this contract, nor shall any such increase or diminution give cause for claims or liability for damages.

39. Lands and Rights-of-Way

39.1 Prior to the start of construction, the Owner shall obtain all lands and rights-of-way necessary for the carrying out and completions of work to be performed under this contract.

40. General Guaranty

40.1 Neither the final certificate of payment nor any provision in the Contract Documents, nor partial or entire occupancy of the premises by the Owner, shall constitute an acceptance of work not done in accordance with the Contract Documents or relieve the Contractor of liability in respect to any express warranties or responsibility for faulty materials or workmanship. The Contractor shall remedy any defects in the work and pay for any damage to other work resulting therefrom, which shall appear within a period of one year from the date of final acceptance of

the work unless a longer period is specified. The Owner will give notice of observed defects with reasonable promptness.

41. Conflicting Conditions

41.1 Any provisions in any of the Contract Documents which may be in conflict or inconsistent with any of the paragraphs in these General Conditions shall be void to the extent of such conflict or inconsistency.

42. Notice and Service Thereof

42.1 Any notice to any Contractor from the Owner relative to any part of this contract shall be in writing and considered delivered and the service thereof completed, when said notice is posted, by certified or registered mail, to the said Contractor at his last given address, or delivered in person to the said Contractor or his authorized representative on the work.

43. Provision Required by Law Deemed Inserted

43.1 Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the contract shall forthwith be physically amended to make such insertion or correction.

44. Protection of Lives and Health

44.1 "The Contractor shall exercise proper precaution at all times for the protection of persons and property and shall be responsible for all damages to persons or property, either on or off the site, which occur as a result of his prosecution of the work. The safety provisions of applicable laws and building and construction codes, in addition to specific safety and health regulations described by Chapter XIII, Bureau of Labor Standards, Department of Labor, Part 1518, Safety and Health Regulations for Construction; as outlined in the Federal Register, Volume 36, No. 75, Saturday, April 17, 1971. Title 29 - LABOR, shall be observed and the Contractor shall take or cause to be taken, such additional safety and health measures as the Contracting Authority may determine to be reasonably necessary."

45. Subcontracts

45.1 It is the contractor's responsibility to provide the owner an updated listing of subcontractors or any further subcontracts (Table A) within 10 days of the award.

46. Interest of Member of or Delegate to Congress

46.1 No member of or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

47. Other Prohibited Interests

47.1 No official of the Owner who is authorized in such capacity and on behalf of the Owner to negotiate, make, accept or approve, or to take part in negotiating, making accepting or approving any architectural, engineering, inspection, construction or material supply contract or any subcontract in connection with the construction of the project, shall become directly or indirectly interested personally in this contract or in any part hereof. No officer, employee, architect, attorney, engineer or inspector of or for the Owner who is authorized in such capacity and on behalf of the Owner to exercise any legislative, executive, supervisory or other similar functions in connection with the construction of the project, shall become directly or indirectly interested personally in this contract or in any part thereof, any material supply contract, subcontract, insurance contract, or any other contract pertaining to the project.

48. Use and Occupancy Prior to Acceptance by Owner

48.1 The Contractor agrees to the use and occupancy of a portion or unit of the project before formal acceptance by the Owner, provided the Owner:

A. Secures written consent of the Contractor except in the event, in the opinion of the Architect/Engineer, the Contractor is chargeable with unwarranted delay in final cleanup of punch list items or other contract requirements.

B. Secures endorsement from the insurance carrier and consent of the surety permitting occupancy of the building or use of the project during the remaining period of construction, or,

C. When the project consists of more than one building, and one of the buildings is occupied, secures

permanent fire and extended coverage insurance,
including a permit to complete construction. Consent
of the surety must also be obtained.

MODIFICATIONS TO GENERAL CONDITIONS

SUPPLEMENTARY CONDITIONS
Section 00700

***If the Architect/Engineer must make changes to the General Conditions of this contract they must be included here.**

[This Page Left Blank]

SUPPLEMENTAL GENERAL CONDITIONS

SUPPLEMENTARY CONDITIONS
Section 00820

TABLE OF CONTENTS

- | | |
|--|---|
| 1. Enumeration of Plans, Specifications and Addenda | 10. Special Conditions Pertaining to Hazards, Safety Standards and Accident Prevention |
| 2. Stated Allowances | 11. Flood Disaster Protection |
| 3. Notice of Extended Payment Provision | 12. Access to Records and Maintenance of Records |
| 4. Public Liability and Property Damage Insurance | 13. Conflict of Interest of Officers or Employees of the Local Jurisdiction, members of the Local Governing Body, or other Public Officials |
| 5. Photographs of Project | 14. Minority and Female Contractor Association |
| 6. Schedule of Minimum Hourly Wage Rates | 15. Special Hazards |
| 7. Builder's Risk Insurance | |
| 8. Special Equal Opportunity Provisions | |
| 9. Certification of Compliance with Air and Water Acts | |

1. ENUMERATION OF PLANS, SPECIFICATIONS AND ADDENDA

Page ____ to ____, inclusive

Following are the Plans, Specifications and Addenda which form a part of this contract, as set forth in Paragraph 1 of the General Conditions, "Contract and Contract Documents":

Page ____ to ____, inclusive

DRAWINGS

General Construction: Nos. _____

Heating and Ventilating: Nos. _____

Plumbing: Nos. _____

Electrical: Nos. _____

_____ Nos. _____

_____ Nos. _____

SPECIFICATIONS

General Construction: Page ____ to ____, inclusive

Heating and Ventilating Page ____ to ____, inclusive

Plumbing: Page ____ to ____, inclusive

Electrical Page ____ to ____, inclusive

ADDENDA

No. _____ Date _____ No. _____ Date _____

No. _____ Date _____ No. _____ Date _____

No. _____ Date _____ No. _____ Date _____

2. STATED ALLOWANCES

A. Pursuant to paragraph 36 of the General Conditions, the Contractor shall include the following cash allowances in the Bid:

1. For (page ____ of Specifications) \$ _____

2. For (page ____ of Specifications) \$ _____

3. For (page ____ of Specifications) \$ _____

4. For (page ____ of Specifications) \$ _____

5. For (page ____ of Specifications) \$ _____

6. For (page ____ of Specifications) \$ _____

3. NOTICE OF EXTENDED PAYMENT PROVISION

This contract allows the Owner to make payment within ____ (not to exceed 45 days) days after submission of an undisputed request for payment ([Section 57-28-5 B \(2\) NMSA 1978](#)).

4. CONTRACTOR'S AND SUBCONTRACTOR'S PUBLIC LIABILITY, VEHICLE LIABILITY, AND PROPERTY DAMAGE INSURANCE

As required under paragraph 28 of the General Conditions, the policy shall be written for not less than the following or greater if required by law:

4.1 Worker's Compensation (including accident and occupational disease coverage):

- | | |
|-------------------------|---------------------------------|
| a. State | Statutory |
| b. Employer's Liability | \$ 100,000 each accident |
| | \$ 500,000 disease-policy limit |
| | \$ 100,000 disease-each |
- employee

4.2 Comprehensive General Liability (including Premises Operations; Independent Contractor's Protective; Products and Completed Operations; Broad Form Property Damage):

- | | |
|--------------------|-----------------------------|
| a. Bodily Injury | \$ 500,000 per person |
| | \$1,000,000 each occurrence |
| b. Property Damage | \$ 500,000 each occurrence |
| | \$ 500,000 annual aggregate |
- c. Property Damage Liability Insurance shall provide X, C or coverage as applicable.

4.3 Comprehensive Automobile Liability:

- | | |
|--------------------|-----------------------------|
| a. Bodily Injury | \$ 500,000 per person |
| | \$1,000,000 each occurrence |
| b. Property Damage | \$ 500,000 each occurrence |
| | \$ 500,000 annual aggregate |

4.4 Umbrella Excess Liability: \$1,000,000 over primary insurance

4.5 The Contractor shall either: (1) require each of his subcontractors to procure and to maintain during the life of his subcontract, Subcontractor's Public Liability and Property Damage of the type and in the same amounts as specified in the preceding paragraph, or (2) insure the activities of his subcontractors in his own policy.

5. PHOTOGRAPHS OF PROJECT

As required by the Funding Agency, the Contractor will furnish photographs before construction, during construction and upon completion of the project.

6. SCHEDULE OF OCCUPATIONAL

CLASSIFICATIONS AND MINIMUM HOURLY WAGE RATES.

Given on pages _____ through _____. Note: Applicable federal and state regulations require that the higher of the federal or the state wage rate for each classification must be paid. See Section 9 of the Additional Conditions.

7. BUILDER'S RISK INSURANCE

7.1 As provided in the General Conditions, Paragraph 28, the Contractor ☐ will ☐ will not* maintain Builder's Risk Insurance (fire and extended coverage) on a 100 percent completed value basis on the insurable portions of the project for the benefit of the Owner, the Contractor, and all subcontractors, as their interests may appear.

(* Check one - to be filled in by Architect/Engineer)

8. SPECIAL EQUAL OPPORTUNITY PROVISIONS - Executive Order 11246

A. Section 202 Equal Opportunity Clause

During the performance of this contract, the Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, 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, 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 agree to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

2. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration without regard to race, color, religion, sex, or national origin.

3. The Contractor will send to each labor union

or representative of workers with which he has a collective bargaining agreement or other contract or understanding a notice to be provided by the Contract Compliance Officer advising the said labor union or workers' representatives of the Contractor's commitment under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and the rules, regulations, and relevant orders of the Secretary of Labor.

5. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Department and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and others.

6. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

7. The Contractor will include the provisions of the sentence immediately preceding paragraph 1. and the provisions of paragraphs 1 through 7 in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the department may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Department, the Contractor may request the United States to enter into such litigation to protect the interest of the United States.

B. Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246).

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

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

Goals for Minority Female Participation: * % listed by County below		Goals for Participation:	
	6.9%		
Bernalillo	38.3%	Catron	46.9%
Sandoval	"	Colfax	"
De Baca	"		
Chaves	49.0%	Guadalupe	"
Dona Ana	"	Lincoln	"
Eddy	"	Los Alamos	"
Grant	"	McKinley	"
Hidalgo	"	Mora	"
Luna	"	Rio Arriba	"
Otero	"	San Juan	"
Sierra	"	San Miguel	"
Santa Fe	"		
Lea	31.0%	Socorro	"
Roosevelt	"	Taos	"
Torrance	"		
Curry	11.0%	Valencia	"
Harding	"		
Quay	"		
Union	"		

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

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action

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

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

4. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is (insert description of the geographical areas where the contract is to be performed, giving the State, County, and Municipality, if any).

C. Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)

1. As used in these specifications:

a. *covered area* means the geographic area described in the solicitation from which this contract resulted;

b. *Director* means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

c. *Employer identification number* means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S.

Treasury Department Form 941.

d. *Minority* includes:

(1) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

(2) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race);

(3) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands); and

(4) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. When the Contractor, or any Subcontractor at any tier, subcontracts a portion of the Work involving any construction trade, is shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific

affirmative action standards provided in paragraphs 7a through 7p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area.

Covered construction contractors performing contracts in geographical areas where they do not have a Federal or Federally-assisted construction contract shall apply the minority and female goals established for the geographic area where the contract is being performed. Goals are published periodically in the Federal Register in notice form and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more

women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provided written notification to minority and female recruitment sources and to community or its unions have employment opportunities available, and maintain a record of the organizations' responses.

c. Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source, or community organization and what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or female sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and female, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.

f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by

specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer, and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through 7p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through 7p of these specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and females in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female work force participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation shall not be a defense for the Contractor's non-compliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Contractor shall not carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended.

D. Civil Rights Act of 1964

Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

E. Section 109 of the Housing and Community Development Act of 1974

No person in the United States shall on the ground of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

F. "Section 3" Compliance in the Provision of Training, Employment and Business Opportunities

1. The work to be performed under this contract is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the project.

2. The parties to this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR 134, and all applicable rules and orders of the Department issued thereunder prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.

3. The Contractor will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising said labor organization or workers' representative of his commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

4. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued hereunder prior to the execution of the contract, shall be a condition of the Federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors or subcontractors, its successors and assigns to those sanctions specified by the grant or loan agreement or contract through which federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.

G. Section 504 Handicapped (if \$ 2,500 or over), Affirmative Action for Handicapped Workers

1. The Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant is qualified. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

2. The Contractor agrees to comply with the rules, regulations and relevant orders of the Secretary of Labor issued pursuant to this Act.

3. In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations and relevant orders of the Secretary of Labor issued pursuant to this Act.

4. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the Contracting Officer. Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.

5. The Contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contractual understanding, that the Contractor is bound by the terms of Section 503 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance physically and mentally handicapped individuals.

6. The Contractor will include the provisions of this part in every subcontract or purchase order of \$2,500 or more unless exempted by the rules, regulation, or orders of the Secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each subcontractor and vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract

Compliance Programs may direct to enforce such provisions, including action for noncompliance.

H. Age Discrimination Act of 1975

No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance.

9. CERTIFICATION OF COMPLIANCE WITH AIR AND WATER ACTS

(Applicable to Federal assisted construction contracts and related subcontracts exceeding \$100,000).

Compliance with Air and Water Acts

A. During the performance of this contract, the Contractor and all subcontractors shall comply with the requirements of the Clean Air Act, as amended, 42 USC 1857 et seq., the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq., and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR Part 15, as amended.

B. In addition to the foregoing requirements, all nonexempt Contractors and Subcontractors shall furnish to the Owner, the following:

1. A stipulation by the Contractor or subcontractors, that any facility to be utilized in the performance of any nonexempt contract or subcontract, is not listed on the "List of Violating Facilities" issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR 15.20.

2. Agreement by the Contractor to comply with all the requirements of Section 114 of the Clean Air Act, as amended, (42 USC 1857c-8) and Section 308 of the Federal Water Pollution Control Act, as amended, (33 USC 1318) relating to inspection, monitoring, entry, reports and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.

3. A stipulation that as a condition for the award of the contract, prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized, or to be utilized for the contract, is

under consideration to be listed on the EPA "List of Violating Facilities".

4. Agreement by the Contractor that he will include, or cause to be included, the criteria and requirements in paragraph a through d of this section in every nonexempt subcontract and requiring that the Contractor will take such action as the Government may direct as a means of enforcing such provisions.

10. SPECIAL CONDITIONS PERTAINING TO HAZARDS, SAFETY STANDARDS AND ACCIDENT PREVENTION

A. Lead-Based Paint Hazards

(Applicable to contracts for construction or rehabilitation of residential structures)

The construction or rehabilitation of residential structures is subject to the HUD Lead-Based Paint regulations, 24 CFR Part 35. The Contractor and Subcontractors shall comply with the provisions for the elimination of lead-based paint hazards under sub-part B of said regulations. The Owner will be responsible for the inspections and certifications required under Section 35.14(f) thereof.

B. Use of Explosives

When the use of explosives is necessary for the prosecution of the work, the Contractor shall observe all local, state and federal laws in purchasing and handling explosives. The Contractor shall take all necessary precautions to protect completed work, neighboring property, water lines, or other underground structures. Where there is danger to structures or property from blasting, the charges shall be reduced and the material shall be covered with suitable timber, steel or rope mats.

The Contractor shall notify all Owners of public utility property of intention to use explosives at least eight hours before blasting is done, close to such property. Any supervision or direction of use of explosives by the Architect/Engineer does not in any way reduce the responsibility of the Contractor or his Surety for damages that may be caused by such use.

C. Danger Signals and Safety Devices

The Contractor shall make all necessary precautions

to guard against damages to property and injury to persons. He shall put up and maintain in good condition, sufficient red or warning lights at night, suitable barricades and other devices necessary to protect the public. In case the Contractor fails or neglects to take such precautions, the Owner may have such lights and barricades installed and charge the cost of this work to the Contractor. Such action by the Owner does not relieve the Contractor of any liability incurred under these specifications or contract.

11. FLOOD DISASTER PROTECTION

This contract is subject to the requirements of the Flood Disaster Protection Act of 1973 (P.L. 93-234). Nothing included as a part of this contract is approved for acquisition or construction purposes as defined under Section 3(a) of said Act, for use in an area identified by the Secretary of HUD as having special flood hazards which is located in a community not then in compliance with the requirements for participation in the National Flood Insurance Program pursuant to Section 201(d) of said Act; and the use of any assistance provided under this contract for such acquisition or construction in such identified areas in communities then participating in the National Flood Insurance Program shall be subject to the mandatory purchase of flood insurance requirements of Section 102(a) of said Act.

Any contract or agreement for the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Contract shall contain, if such land is located in an area identified by the Secretary as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 et seq., provisions obligating the transferee and its successors or assigns to obtain and maintain, during the ownership of such land, such flood insurance as required with respect to financial assistance for acquisition or construction purposes under Section 102(a) of the Flood Disaster Protection Act of 1973.

12. ACCESS TO RECORDS AND MAINTENANCE OF RECORDS

The State grantor agency (funding agency), the Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and

records of the Contractor which are directly pertinent to this specific contract, for the purpose of audits, examinations, and making excerpts and transcriptions. All records connected with this contract will be maintained in a central location by the unit of local government and will be maintained for a period of six (6) years from the official date of close-out of the Grant.

13. CONFLICT OF INTEREST OF OFFICERS OR EMPLOYEES OF THE LOCAL JURISDICTION, MEMBERS OF THE LOCAL GOVERNING BODY, OR OTHER PUBLIC OFFICIALS

No officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this contract, during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed. Further, the Contractor shall cause to be incorporated in all subcontracts the language set forth in this paragraph prohibiting conflict of interest.

14. MINORITY AND FEMALE CONTRACTOR ASSOCIATIONS

Lists are available from various sources including the state Department of Transportation, the U.S. Department of Housing and Urban Development, Ft. Worth Area Office. These lists are provided solely for the benefit of the Contractor for the purpose of assisting him/her in meeting the Equal Opportunity Provisions contained in these Supplemental General Conditions. The lists do not contain a complete listing of minority and female businesses. The information may in some cases be out of date.

15. SPECIAL HAZARDS

The Contractor's and his Subcontractor's Public Liability and Property Damage Insurance shall provide adequate protection against the following special hazards:

[If none, insert "none"]

MODIFICATIONS TO SUPPLEMENTAL GENERAL CONDITIONS

SUPPLEMENTARY CONDITIONS
Section 00820

***If the Architect/Engineer must make any modifications to the Supplemental General Conditions of this contract they must be included here.**

ADDITIONAL CONDITIONS

SUPPLEMENTARY CONDITIONS
Section 00830

TABLE OF CONTENTS

1. Construction Industries Licensing Act
 2. Contract Audit
 3. Assignment of Antitrust Claims
 4. Bribes, Gratuities, and Kickbacks
 5. Non-Resident Contractor's Requirements Regarding Gross Receipts Tax Surety Bond
 6. Contractor's Gross Receipts Tax Registration
 7. Contracts with Nonresident Persons or Partnerships or Unadmitted Foreign Corporations, Agent for Service of Process
 8. Safety Standards and Accident Prevention
 9. Minimum Wage Rates
 10. Project Identification Sign
-

1. CONSTRUCTION INDUSTRIES LICENSING ACT

1.1 This Contract is subject to the provisions of the New Mexico Construction Industries Licensing Act (§§60-13-1 to 60-13-59 NMSA 1978), the rules and regulations of the New Mexico Construction Industries Commission and the rules, regulations and codes of the various trade boards adopted pursuant to the Construction Industries Licensing Act.

2. CONTRACT AUDIT

2.1 The Owner shall be entitled to audit the books and records of a Contractor 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 Contractor for a period of six years from the date of final payment under the prime Contract and by the Subcontractor for a period of six years from the date of final payment under the subcontract unless a shorter period is otherwise authorized by the Owner in writing (§13-1-161 NMSA 1978).

3. ASSIGNMENT OF ANTITRUST CLAIMS

3.1 All contractor, suppliers, subcontractors agree that any and all claims which it may have or may inure to it for overcharges resulting from antitrust violations as to goods, services and materials purchased in connection with this Project are hereby assigned to the Owner and the funding agency, but only to the extent that such

overcharges are passed on to the Owner. It is agreed that the contractor, supplier, subcontractor or sub-subcontractor retains all rights to any such antitrust claims to the extent of any overcharges not passed on to the Owner, including the right to any treble damages attributable thereto.

4. BRIBES, GRATUITIES, AND KICKBACKS

4.1 It is illegal in this state for any public employee to solicit or accept anything of value in connection with award of this Contract and for any person to offer or pay anything of value to any such public employee (§§30-24-1 through 2 NMSA 1978).

4.2 Pursuant to §13-1-191 NMSA 1978 reference is hereby made to the criminal laws of New Mexico, including §§30-24-1 through 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.

5. NON-RESIDENT CONTRACTOR'S REQUIREMENTS REGARDING GROSS RECEIPTS TAX SURETY BOND

5.1 Section 7-1-55A NMSA 1978 provides that any person (as defined in §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 §7-9-4 NMSA 1978 to secure payment of the tax imposed on the gross receipts from the contract, and 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.

5.2 If the total sum to be paid under the contract is changed by ten percent 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 days after the change (§7-1-55B NMSA 1978).

5.3 In addition to the above requirements, the Contractor will be subject to all the requirements of §7-1-55 NMSA 1978.

6. CONTRACTOR'S GROSS RECEIPTS TAX REGISTRATION

6.1 §7-10-4 NMSA 1978 provides that any person (as defined in §7-10-3 NMSA 1978) performing services for the state or its political subdivisions, as those terms are used in the Gross Receipts and Compensating Tax Act (§§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 of the state to pay the gross receipts tax.

6.2 For information in obtaining the identification number contact: Revenue Processing Division, Taxation and Revenue Department, Manuel Lujan Sr. Building, 1200 St. Francis Drive, Santa Fe, New Mexico 87505, or call (505) 827-0825.

6.3 If any person who performs services for the State or its political subdivisions is not registered to pay the gross receipts tax, the Owner 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.

7. CONTRACTS WITH NONRESIDENT PERSONS OR PARTNERSHIPS OR UNADMITTED FOREIGN CORPORATIONS, AGENT FOR SERVICE OF PROCESS

Special attention of contractors is called to the requirements of §§ 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.

7.1 The Contractor warrants and agrees that he, all subcontractors and any further subcontractors will comply with all applicable provisions of the New Mexico Public Works Minimum Wage Act, §13-4-11 NMSA 1978. The attached Minimum Wage Rate Determinations are declared to be prevailing and apply

to all construction. Note: Applicable federal and state regulations require that the higher of the federal or the state wage rate for each classification must be paid.

8. SAFETY STANDARDS AND ACCIDENT PREVENTION

With respect to all work performed under this contract, the Contractor shall:

A. Comply with the safety standards provisions of applicable laws, building and construction codes and the "Manual of Accident Prevention in Construction" published by the Associated General Contractors of America, the requirements of the Occupational Safety and Health Act of 1970 (P.L. 91-596), and the requirements of Title 29 of the Code of Federal Regulations, 1518 as published in the "Federal Register", Volume 36, No. 75, Saturday, April 17, 1971.

B. Exercise every precaution at all times for the prevention of accidents and the protection of persons (including employees) and property.

C. Maintain at his/her office or other well-known place at the job site, all articles necessary for giving first aid to the injured, and shall make standing arrangements for the immediate removal to a hospital or a doctor's care of persons (including employees), who may be injured on the job site. In no case shall employees be permitted to work at a job site before the employer has made a standing arrangement for removal of injured persons to a hospital or a doctor's care.

9. MINIMUM WAGE RATES

9.1 Submission of weekly payroll records to the Owner and Department of Workforce Solutions is mandatory. Include the decision number on Contractor's and subcontractor's payrolls. The scale of wages must also be posted in a prominent location at the site.

9.2 In the event it is found by the Labor Commission, that any laborer or mechanic employed by the Contractor, subcontractor or any further subcontractors on the site of the project covered by this Contract, has been or is being paid as a result of a willful violation, a rate of wages less than the rate of wages required by the Contract, the Owner may, by written notice to the Contractor, his subcontractor or any further subcontractors if the violation involves a Subcontractor, terminate their right to proceed with the

Work or such part of the Work as to which there has been a willful failure to pay the required wages and the Owner may prosecute the work to completion by contract or otherwise, and the Contractor, subcontractor or any further subcontractor shall be liable to the Owner and the State of New Mexico for any excess cost occasioned thereby. If the Owner or State of New Mexico is unable to collect from the Subcontractor or any further Subcontractors, the Contractor will be liable for all costs.


10. PROJECT IDENTIFICATION SIGN

10.1 The Contractor as an incidental cost shall

provide, erect, and maintain for the duration of the construction project one identification sign at each construction site. The sign shall be painted on one side with a background color of yellow with red lettering of 3/4" thick, not smaller than 4' x 6' nor larger than 4' x 8', marine grade plywood. Each sign shall be mounted on two 4" x 4" posts, with the bottom of the sign at least four feet above grade. The sign shall be mounted level and at the location designated by the Architect/Engineer or the Owner's Project Manager. The sign shall be salvaged to the Owner at the end of the construction project.

Sample Sign

Sign shall be yellow background with red letters

<p>[21/2"]</p> <p>(ENTITY)</p>  <p>[Logo - 1'-6" Dia./Sq.]</p> <p>COUNCIL/COMMISSION</p> <p>VACANT, DISTRICT 1</p> <p>WAYNE SONCHAR, DISTRICT 2</p> <p>BRUCE JOEL PERLMAN, DISTRICT 3</p> <p>CONSTANCE WILLIAMS, DISTRICT 4</p> <p>VACANT, DISTRICT 5</p> <p>EVELYN CABALLERO HOLGUIN, DISTRICT 6</p> <p>GARY WHITEHEAD, DISTRICT 7</p>	<p>[2"]</p> <p>NEW MEXICO COMMUNITY DEVELOPMENT COUNCIL PROJECT</p> <p>MICHELLE LUJAN GRISHAM, GOVERNOR</p> <p>[3"] (PROJECT NAME)</p> <table border="0"> <tr> <td data-bbox="568 966 1023 1155"> <p>ARCHITECT</p> <p>(NAME)</p> <p>(ADDRESS)</p> <p>(CITY, STATE, ZIP CODE)</p> <p>(TELEPHONE Nº. 505-000-0000)</p> </td> <td data-bbox="1023 966 1521 1155"> <p>[1-1/2"]</p> <p>CONTRACTOR</p> <p>(NAME)</p> <p>(ADDRESS)</p> <p>(CITY, STATE, ZIP CODE)</p> <p>(TELEPHONE Nº. 505-000-0000)</p> </td> </tr> <tr> <td data-bbox="568 1176 1023 1386"> <p>OWNER</p> <p>[ENTITY]</p> <p>(ADDRESS)</p> <p>(CITY, STATE, ZIP CODE)</p> <p>(TELEPHONE Nº. 505-000-0000)</p> <p>(NAME), MANAGER</p> </td> <td data-bbox="1023 1176 1521 1386"> <p>[1-1/2"]</p> <p>FUNDING</p> <p>CDBG GRANT - \$</p> <p>(DOT COOP GRANT - \$)</p> <p>(CITY/COUNTY FUNDS - \$)</p> <p>(TOTAL PROJECT COST - \$)</p> </td> </tr> </table> <p>[1-1/2" wide red outline, with rounded corners @ interior box]</p>	<p>ARCHITECT</p> <p>(NAME)</p> <p>(ADDRESS)</p> <p>(CITY, STATE, ZIP CODE)</p> <p>(TELEPHONE Nº. 505-000-0000)</p>	<p>[1-1/2"]</p> <p>CONTRACTOR</p> <p>(NAME)</p> <p>(ADDRESS)</p> <p>(CITY, STATE, ZIP CODE)</p> <p>(TELEPHONE Nº. 505-000-0000)</p>	<p>OWNER</p> <p>[ENTITY]</p> <p>(ADDRESS)</p> <p>(CITY, STATE, ZIP CODE)</p> <p>(TELEPHONE Nº. 505-000-0000)</p> <p>(NAME), MANAGER</p>	<p>[1-1/2"]</p> <p>FUNDING</p> <p>CDBG GRANT - \$</p> <p>(DOT COOP GRANT - \$)</p> <p>(CITY/COUNTY FUNDS - \$)</p> <p>(TOTAL PROJECT COST - \$)</p>
<p>ARCHITECT</p> <p>(NAME)</p> <p>(ADDRESS)</p> <p>(CITY, STATE, ZIP CODE)</p> <p>(TELEPHONE Nº. 505-000-0000)</p>	<p>[1-1/2"]</p> <p>CONTRACTOR</p> <p>(NAME)</p> <p>(ADDRESS)</p> <p>(CITY, STATE, ZIP CODE)</p> <p>(TELEPHONE Nº. 505-000-0000)</p>				
<p>OWNER</p> <p>[ENTITY]</p> <p>(ADDRESS)</p> <p>(CITY, STATE, ZIP CODE)</p> <p>(TELEPHONE Nº. 505-000-0000)</p> <p>(NAME), MANAGER</p>	<p>[1-1/2"]</p> <p>FUNDING</p> <p>CDBG GRANT - \$</p> <p>(DOT COOP GRANT - \$)</p> <p>(CITY/COUNTY FUNDS - \$)</p> <p>(TOTAL PROJECT COST - \$)</p>				

11. OTHER ADDITIONAL CONDITIONS (list):

- 11.1 Federal Labor Standards Provisions
- 11.2 Attachments to Federal Labor Standards Provisions

MODIFICATIONS TO ADDITIONAL CONDITIONS

SUPPLEMENTARY CONDITIONS
Section 00830

*If the Architect/Engineer must make any modifications to the Additional Conditions of this contract they must be included here.

FEDERAL LABOR STANDARDS PROVISIONS
U.S. Department of Housing and Urban Development

HUD4010 (2-84) (HB 1344.1)

Applicability

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the Provisions applicable to such Federal assistance.

A. 1.(i) Minimum Wages. All laborers and mechanics employed or working upon the site of the work (or under the United State Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), 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 29 CFR 5.5(a)(1)iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 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 29 CFR Part 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all time 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.

(ii)(a) Any class of laborers or mechanics 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. HUD shall approve 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 HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits were appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30 day period that additional time is necessary. [\(Approved by the Office of Management and Budget under OMB control number 1215-0140.\)](#)

- (c) In the event the contractor, the laborers or mechanics to be employed in the classification or their

representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30 day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(b) or (c) of this paragraph, 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 or 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. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

2. Withholding. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers 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 (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, HUD or its designee 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. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

3. (i) Payrolls and Basic Records. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). 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. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140 and 1215-0017).

(ii)(a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR Part 5.5(a)(3)(i). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1). U.S. Government Printing Office, Washington, DC 20402. For all CDBG projects, the mandatory form WH-347 (Exhibit 4-P Certified Payroll) located on the website link http://nmdfa.state.nm.us/CDBG_Implementation_Manual.aspx. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149).

(b) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agency 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 maintained under 29 CFR Part 5.5(a)(3)(i) 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 in 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 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 (for all CDBG projects use the mandatory Exhibit 4-P Certified Payroll located on the website link http://nmdfa.state.nm.us/CDBG_Implementation_Manual.aspx) 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 HUD or its designee 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, HUD or its designee 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 Part 5.12.

4. (i) Apprentices and Trainees. 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, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, 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 Bureau of Apprenticeship and Training 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 any 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 or 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 Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, 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 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 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 predetermine 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 requirement of Executive Order 11246, as amended and 29 CFR Part 30.

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

6. Subcontracts. The contractor or subcontractor will insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as HUD of its designee may by appropriate instructions require, 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 Part 5.5.

7. Contract Termination; Debarment. A breach of the contract clauses in 9 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 HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

10. (i) Certification of Eligibility. 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) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(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 of 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1010, Title 18, U.S.C., "Federal Housing Administration transaction", provides in part "Whoever, for the purpose of...influencing in any way the action of such Administration...makes, utters or publishes any statement, knowing the same to be false...shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

11. A. Complaints, Proceedings, or Testimony by Employees. No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this contract are applicable shall be discharged or in any other manner discriminated against by the contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this contract to his employer.

B. Contract Work Hours and Safety Standards Act. 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 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 subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards employed in violation of the clause set forth in subparagraph (1) of the paragraph, in the sum of \$27 (or as otherwise specified by the Contract Work Hours and Safety Standards Act (CWHSSA) for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of four hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.

(3) Withholding for Unpaid Wages and Liquidated Damages. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contract, 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 subparagraph (2) of this paragraph.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in

subparagraph (1) through (4) of this paragraph 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 subparagraphs (1) through (4) of this paragraph.

C. Health and Safety

(1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

(2) The contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 (formerly part 1518) and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act (Public Law 91-54, 83 Stat. 96).

(3) The Contractor shall include the provisions of this Article in every subcontract so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontract as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

HUD-1010.1 (2-76)

ATTACHMENT TO FEDERAL LABOR STANDARDS PROVISIONS

SO-CALLED "ANTI-KICKBACK ACT" AND REGULATIONS PROMULGATED PURSUANT THERETO BY THE SECRETARY OF LABOR UNITED STATES DEPARTMENT OF LABOR

TITLE 18, U.S.C., section 874

(Replaces section 1 of the Act of June 13, 1934 (48 Stat. 948, 40 U.S.C.,
sec. 276b) pursuant to the Act of June 25, 1948, 62 Stat. 862)

KICKBACKS FROM PUBLIC WORKS EMPLOYEES

Whoever, by force, intimidation, or threat of procuring dismissal from employment, or by any other manner whatsoever induces any person employed in the construction, prosecution, completion or repair of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States, to give up any part of the compensation to which he is entitled under his contract of employment, shall be fined not more than \$5,000 or imprisoned not more than five years, or both.

SECTION 2 OF THE ACT OF JUNE 13, 1934, AS AMENDED (48 Stat. 948, 62 Stat. 862, 63 Stat. 108, 72 Stat. 967, 40 U.S.C., sec 276c)

The Secretary of Labor shall make reasonable regulations for contractors and subcontractors engaged in the construction, prosecution, completion or repair of public buildings, public works or buildings or works financed in whole or in part by loans or grants from the United States, including a provision that each contractor and subcontractor shall furnish weekly a statement with respect to the wages paid each employee during the preceding week. Section 1001 of Title 18 (United State Code) shall apply to such statements.

---X X X---

Pursuant to the aforesaid Anti-Kickback Act, the Secretary of Labor, United States Department of Labor, has promulgated the regulations hereinafter set forth, which regulations are found in Title 29, Subtitle A, Code of Federal Regulations, Part 3. The term "this part," as used in the regulations hereinafter set forth, refers to Part 3 last above mentioned. Said regulations are as follows:

TITLE 29 - LABOR

Subtitle A - Office of the Secretary of Labor

PART 3- CONTRACTORS AND SUBCONTRACTORS ON PUBLIC BUILDING OR PUBLIC WORK FINANCED IN WHOLE OR IN PART BY LOANS OR GRANTS FROM THE UNITED STATES.

Section 3.1 Purpose and Scope.

This part prescribes "anti-kickback" regulations under section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c), popularly known as the Copeland Act. This part applies to any contract which is subject to Federal wage standards and which is for the construction, prosecution, completion, or repair of public buildings, public works or buildings or works financed in whole or in part by loans or grants from the United States. The part is intended to aid in the enforcement of the minimum wage provisions of the Davis-Bacon Act and the various statutes dealing with Federally assisted constructions that contain similar minimum wage provisions, including those provisions which are not subject to Reorganization Plan No. 14 (e.g., the College Housing Act of 1950, the Federal Water Pollution Control Act, and the Housing Act of 1959), and in the enforcement of the overtime provisions of the Contract Work Hours Standards Act whenever they are applicable to construction work. The part details the obligation of contractors and subcontractors relative to the weekly submission of statements regarding the wages paid on work covered thereby; sets forth the circumstances and procedures governing the making of payroll deductions from the wages of those employed on such work; and delineates the methods of payment permissible on such work.

Section 3.2 Definitions.

As used in the regulations in this part:

(a) The terms "building" or "work" generally include construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The terms include, without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levers, and canals; dredging, shoring, scaffolding, drilling, blasting, excavating, clearing, and landscaping. Unless conducted in connection with and at the site of such building or work as is described in the foregoing sentence, the manufacture or furnishing of materials, articles, supplies, or equipment (whether or not a Federal or State agency acquires title to such materials, articles, supplies, or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) is not a "building" or "work" within the meaning of the regulations in this part.

(b) The terms "construction," "prosecution," "completion," or "repair" means all types of work done on a particular building or work at the site thereof, including, without limitation, altering, remodeling, painting and decorating, the transporting of materials and supplies to or from the building or work by the employees of the construction contractor or construction subcontractor, and the manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work, by persons employed at the site by the contractor or subcontractor.

(c) The terms "public building" or "public work" include building or work for whose construction, prosecution, completion, or repair, as defined above, a Federal agency is a contracting party, regardless of whether title thereof is in a Federal agency.

(d) The term "building or work financed in whole or in part by loans or grants from the United States" includes building or work for whose construction, prosecution, completion, or repair, as defined above, payment or part payment is made directly or indirectly from funds provided by loans or grants by a Federal agency. The term does not include building or work for which Federal assistance is limited solely to loan guarantees or insurance.

(e) Every person paid by a contractor or subcontractor in any manner for his labor in the construction, prosecution, completion, or repair of a public building or public work or building or work financed in whole or in part by loans or grants from the United States is "employed" and receiving "wages," regardless of any contracted relationship alleged to exist between him and the real employer.

(f) The term "any affiliated person" includes a spouse, child, parent, or other close relative of the contractor or subcontractor; a partner or officer of the contractor or subcontractor; a corporation closely connected with the

contractor or subcontractor as parent, subsidiary or otherwise, and an officer or agent of such corporation.

(g) The term "Federal agency" means the United States, the District of Columbia, and all executive departments, independent establishments, administrative agencies, and instrumentalities of the United States and of the District of Columbia, including corporations, all or substantially all of the stock of which is beneficially owned by the United States, by the District of Columbia, or any of the foregoing departments, establishments, agencies and instrumentalities.

Section 3.3 Weekly Statement with Respect to Payment of Wages

(a) As used in this section, the term "employees" shall not apply to persons in classifications higher than that of laborer or mechanic and those who are the immediate supervision of such employees.

(b) Each contractor or subcontractor engaged in the construction, prosecution, completion, or repair of any public building or public work, or building or work financed in whole or in part by loans or grants from the United States shall furnish each week a statement with respect to the wages paid each of its employees engaged on work covered by 29 CFR Parts 3 and 5 during the preceding weekly payroll period. This statement shall be executed by the contractor or subcontractor or by an authorized officer or employee of the contractor or subcontractor who supervises the payment of wages and shall be on form WH 348, "Statement of Compliance", or on an identical form on the back of WH 317, "Payroll (For Contractors Optional Use)" or on any form with identical wording. Sample copies of WH 347 and WH 348 may be obtained from the Government contracting or sponsoring agency, and copies of these forms may be purchased at the Government Printing Office.

(c) The requirements of this section shall not apply to any contract of \$2,000 or less.

(d) Upon a written finding by the head of a Federal agency, the Secretary of Labor may provide reasonable limitations, variations, tolerances, and exemptions from the requirements of this section subject to such conditions as the Secretary of Labor may specify.

[20 F.R. 93, Jan. 4, 1964, as amended at 33 F.R. 10186, July 17, 1968]

Section 3.4 Submission of Weekly Statements and the Preservation and Inspection of Weekly Payroll Records.

(a) Each weekly statement required under section 3.3 shall be delivered by the contractor or subcontractor, within seven days after the regular payment date of the payroll period, to a representative of a Federal or State agency in charge at the site of the building or work, or, if there is no representative of a Federal or State agency at the site of the building or work, the statement shall be mailed by the contractor or subcontractor, within such time, to a Federal or State agency contracting for or financing the building or work. After such examination and check as may be made, such statement, or a copy thereof, shall be kept available, or shall be transmitted together with a report of any violation, in accordance with applicable procedures prescribed by the United States Department of Labor.

(b) Each contractor or subcontractor shall preserve his weekly payroll records for a period of three years from date of completion of the contract. The payroll records shall set out accurately and completely the name and address of each laborer and mechanic, his correct classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid. Such payroll records shall be made available at all times for inspection by the contracting officer or his authorized representative, and by authorized representatives of the Department of Labor.

Section 3.5 Payroll Deductions Permissible Without Application to or Approval of the Secretary of Labor.

Deductions made under the circumstances or in the situations described in the paragraphs of this section may be made without application and approval of the Secretary of Labor:

(a) Any deduction made in compliance with the requirements of Federal, State, or local law, such as Federal or State withholding income taxes and Federal social security taxes.

(b) Any deductions of sums previously paid to the employee as a bona fide prepayment of wages when such prepayment is made without discount or interest. A "bona fide prepayment of wages" is considered to have been made only when cash or its equivalent has been advanced to the person employed in such manner as to give him complete freedom of disposition of the advanced funds.

(c) Any deduction of amounts required by court process to be paid to another, unless the deduction is in favor of the contractor, subcontractor or any affiliated person, or when collusion or collaboration exists.

(d) Any deduction constituting a contribution on behalf of the person employed to funds established by the employer or representatives of employees, or both, for the purpose of providing either from principal or income, or both, medical or hospital care, pensions or annuities on retirement, death benefits, compensation for injuries, illness, accidents, sickness, or disability, or for insurance to provide any of the foregoing, or unemployment benefits, vacation pay, savings accounts, or similar payments for the benefit of employee, their families and dependents; Provided, however, that the following standards are met: (1) The deduction is not otherwise prohibited by law; (2) it is either (i) voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of or for the continuation of employment, or (ii) provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees; (3) no profit or other benefit is otherwise obtained, directly or indirectly, by the contractor or subcontractor or any affiliated person in the form of commissions, dividend, or otherwise; and (4) the deductions shall serve the convenience and interest of the employee.

(e) Any deduction contributing toward the purchase of United States Defense Stamps and Bonds when voluntarily authorized by the employee.

(f) Any deduction requested by the employee to enable him to repay loans to or to purchase shares in credit unions organized and operated in accordance with Federal and State credit union statutes.

(g) Any deduction voluntarily authorized by the employee for the making of contributions to governmental or quasi-governmental agencies, such as the American Red Cross.

(h) Any deductions voluntarily authorized by the employee for the making of contributions to Community Chests, United Givers Funds, and similar charitable organizations.

(i) Any deductions to pay regular union initiation fees and membership dues, not including fines or special assessments; Provided however, that a collective bargaining agreement between the contractor or subcontractor and representatives of its employees provides for such deductions and the deductions are not otherwise prohibited by law.

(j) Any deduction not more than for the "reasonable cost" of board, lodging, or other facilities meeting the requirements of section 3(m) of the Fair Labor Standards Act of 1938, as amended, and Part 531 of this title. When such a deduction is made the additional records required under section 516.27(a) of this title shall be kept.

Section 3.6 Payroll Deductions Permissible with the Approval of the Secretary of Labor

Any contractor or subcontractor may apply to the Secretary of Labor for permission to make any deduction not permitted under Section 3.5. The Secretary may grant permission whenever he finds that:

(a) The contractor, subcontractor, or any affiliated person does not make a profit or benefit directly or indirectly the deduction either in the form of a commission, dividend, or otherwise;

(b) The deduction is not otherwise prohibited by law;

(c) The deduction is either (1) voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of employment or its continuance, or (2) provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representative of its employees; and

(d) The deduction serves the convenience and interest of the employee.

Section 3.7 Applications for the Approval of the Secretary of Labor

Any application for the making of payroll deductions under section 3.6 shall comply with the requirements prescribed in the following paragraphs of this section:

(a) The application shall be in writing and shall be addressed to the Secretary of Labor.

(b) The application shall identify the contract or contracts under which the work in question is to be performed. Permission will be given for deductions only on specific, identified contracts, except upon a showing of exceptional circumstances.

(c) The application shall state affirmatively that there is compliance with the standards set forth in the provisions of section 3.6. The affirmation shall be accompanied by a full statement of the facts indicating such compliance.

(d) The application shall include a description of the proposed deduction, the purpose to be served thereby, and the classes of laborers or mechanics from whose wages the proposed deduction would be made.

(e) The application shall state the name and business of any third person to whom any funds obtained from the proposed deductions are to be transmitted and the affiliation of such person, if any, with the applicant.

Section 3.8 Action by the Secretary of Labor Upon Applications.

The Secretary of Labor shall decide whether or not the requested deduction is permissible under provisions of section 3.6; and shall notify the applicant in writing of his decision.

Section 3.9 Prohibited Payroll Deductions.

Deductions not elsewhere provided for by this part and which are not found to be permissible under Section 3.6 are prohibited.

Section 3.10 Methods of Payment of Wages.

The payment of wages shall be by cash, negotiable instruments payable on demand, or the additional forms of compensation for which deductions are permissible under this part. No other methods of payment shall be recognized on work subject to the Copeland Act.

Section 3.11 Regulations Part of Contract.

All contracts made with respect to the construction, prosecution, completion, or repair of any public building or public work or building or work financed in whole or in part by loans or grants from the United States covered by the regulations in this part shall expressly bind the contractor or subcontractor to comply with such of the regulations in this part as may be applicable. In this regard, see section 5.5(a) of the subtitle.

[Instructions: This page to be replaced by Architect/Engineer with the state Minimum Wage Rate Determination and federal Minimum Wage Rate Determination and related documents issued for this specific project.
Technical Specifications to follow wage rates]

Exhibit 4-B Request for State Wage Determination



Please visit: www.dws.state.nm.us/PWAA to request NM Wage Determinations:

The screenshot shows the login page for the New Mexico Department of Workforce Solutions' Public Works and Apprenticeship (PWAA) system. At the top, there's a header with the department's logo and the title "PUBLIC WORKS AND APPRENTICESHIP". Below this is a navigation bar with links for "Home", "About Us", "Information", and "Tuesday January 30, 2018". The main content area is titled "LOGIN". A yellow banner at the top of the login section states: "PLEASE NOTE: Tuesday, January 30, 2018, the Public Works and Apprenticeship Application will be undergoing maintenance and will be unavailable from 7:00 p.m. to 8:00 p.m." Below this, a section titled "Login or create an account to access additional features" contains a form for entering a "User ID" and "Password", a "Login" button, and links for "Forgot Password" and "Create an Account". A "Warning" message box on the right states: "This system may contain U.S. Government information, which is controlled by authorized party ONLY. Unauthorized access, use, misuse, or modification of this computer system or of the data contained herein or in media within the system constitutes a violation of Title 15, United States Code, Section 1855, and may subject the individual to Criminal and Civil penalties pursuant to Title 26, United States Code, Sections 7512, 7513 (the Computer Fraud and Abuse Act, and FARA). This system and equipment are subject to monitoring to ensure proper performance of applicable security features or procedures. Such monitoring may result in the acquisition, recording, and analysis of all data being communicated, transmitted, processed or stored in this system by a user. If monitoring reveals possible evidence of criminal activity, such evidence may be provided to Law Enforcement Personnel. BY USING THIS SYSTEM, YOU ARE EXPRESSLY CONSENTING TO SUCH MONITORING." Below the login section, a section titled "Links that can be used without creating an account" lists: "Want to learn more about Apprenticeship? Learn more about Apprenticeship", "Registered Contractors Search and view registered contractors", and "Wage Decisions Search and view Public Works projects". At the bottom right, a footer indicates "Last updated: 1/31/2018 9:16:13 PM | Accessibility | Privacy Statement | Viewing Tips".

EXHIBIT 4-C
REQUEST FOR FEDERAL WAGE RATE DETERMINATION/10 DAY CALL

Federal Wage Rates MUST be obtained from LGD office. Wages cannot be pulled from DOL website.

Check the appropriate box: ☐ Initial Request for Federal Wages, or ☐ 10 Day Call

To receive decision fill out this form and mail to:

Local Government Division, DFA; Suite 202, Bataan Memorial Building; Santa Fe, New Mexico 87501

or email to: Administrative Assistant, Camille Baca at Camille.Baca@state.nm.us, 505-827-8051 and CDB Project Manager

CDBG Project #: _____ **Grantee:** _____ **Phone #:** _____

Location of work to be performed: _____ **County:** _____

Date of Request: _____ **Est. Advertising Date:** _____ **Est. Bid Opening:** _____

Description of Work (Exhibit "A" of Grant Agreement):

Select type of construction:

☐ **Building:** Generally includes construction of sheltered enclosures with walk-in access for housing persons, machinery, equipment or supplies. This includes all construction within and including the exterior walls, both above and below grade.

☐ **Highway:** Includes construction, alteration or repair of roads, streets, highways, parking areas and other projects not incidental to building or heavy construction.

☐ **Residential:** Involves the construction, alteration or repair of single-family houses or apartment buildings no more than four stories tall.

☐ **Heavy:** Is generally considered for all construction not properly classified as highway, residential, or building. Water and sewer line construction will typically be categorized as heavy construction.

***Federal definitions above are not identical to those issued by the New Mexico Department of Workforce Solutions. It is possible to have two different types of wage decisions.**

Send information to:

Name: _____ **Phone #:** _____ **Email:** _____

Address: _____

To be completed by DFA/Local Government Division:

Decision Number: _____ **Date of Decision:** _____

Expires: _____ **Supersedes Decision:** _____

Approved: _____ **Date:** _____
DFA/Local Government Division

EXHIBIT 4-D
ARCHITECT'S & ENGINEERS CERTIFICATION COMPLIANCE WITH
MINIMUM
STANDARDS FOR
ACCESSIBILITY BY THE PHYSICALLY HANDICAPPED

Contract No: _____

Project Name: _____

Pursuant to the requirements of the Americans with Disabilities Act (ADA) of 1990, and the regulations issued subsequent thereto, the undersigned certifies that the design of the above-mentioned project is in conformance with the minimum standards contained in the American Standard Specifications for Making Buildings and Facilities Accessible To and Usable By the Physically Handicapped, Number a-1117.1R-1971 (as modified by 41 CFR 101-19.603)

Architect for the Project: _____
(Legal Name and Address)

Registration Number: _____

Architect Signature: _____

PRINT NAME: _____

Grantee Official Signature: _____

PRINT NAME: _____

Date: _____

**EXHIBIT 4-E
MINUTES OF BID OPENING**

Project Name: _____

Project No.: _____

Bids were opened following the published bid opening date and time of
_____.

Bidders and bid amounts in the order of opening were:

Contractor name	\$ price	confirm attachments
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Bid recommendation to the governing body is scheduled for (date) _____

Name, Purchasing Agent or Clerk

**EXHIBIT 4-G
NOTICE OF CONTRACT AWARD**

TO: Project Manager, Local Government Division/DFA
Bataan Memorial Building Suite 202
Santa Fe, New Mexico 87501

CC: New Mexico Department of Workforce Solutions
301 West DeVargas
Santa Fe, New Mexico 87501

FROM: Name of Grantee _____
CDBG Grant No. _____

This is to inform you that a contract has been awarded:

Project Name: _____

Federal Wage Decision _____ State Wage Decision _____

Date of Award _____ Amount of Award _____

The Contractor is:

Firm Name: _____ FEI# _____

Address: _____ Phone # _____

A Preconstruction conference will be held at the below date, time and place:

Date: _____ Time: _____ Where: _____

It is anticipated that construction will take place:

Approximate Starting Date: _____ Approximate Completion Date: _____

The person responsible for compliance with Labor Standards and Equal Opportunity:

Name: _____ Phone: _____

Signature: _____ Date: _____

**EXHIBIT 4-H
NOTICE TO ALL EMPLOYEES**

**NOTICE
TO ALL
EMPLOYEES**

**Working on federal or federally
Financed Construction Projects**

**MINIMUM
WAGES**

You must be paid not less than the wage rate in the schedule posted with this Notice for the kind of work you perform.

OVERTIME

You must be paid not less than one and one-half times your basic rate of pay for all hours worked over 40 a week. There are some exceptions.

APPRENTICES

Apprentice rates apply only to apprentices properly registered under approved federal or State apprenticeship programs.

**PROPER
PAY**

If you do not receive proper pay, contact the Contracting Officer listed below:

or you may contact the nearest office of the Wage and Hour Division, U.S. Department of Labor. The Wage and Hour Division has offices in several hundred communities throughout the country. They are listed in the U.S. Government section of most telephone directories under: U.S. Department of Labor Employment Standards Administration

EXHIBIT 4-H-1

EMPLOYEE RIGHTS UNDER THE DAVIS-BACON ACT

FOR LABORERS AND MECHANICS EMPLOYED ON FEDERAL OR FEDERALLY ASSISTED CONSTRUCTION PROJECTS

THE UNITED STATES DEPARTMENT OF LABOR WAGE AND HOUR DIVISION

PREVAILING WAGES

You must be paid not less than the wage rate listed in the Davis-Bacon Wage Decision posted with this Notice for the work you perform.

OVERTIME

You must be paid not less than one and one-half times your basic rate of pay for all hours worked over 40 in a work week. There are few exceptions.

ENFORCEMENT

Contract payments can be withheld to ensure workers receive wages and overtime pay due, and liquidated damages may apply if overtime pay requirements are not met. Davis-Bacon contract clauses allow contract termination and debarment of contractors from future federal contracts for up to three years. A contractor who falsifies certified payroll records or induces wage kickbacks may be subject to civil or criminal prosecution, fines and/or imprisonment.

APPRENTICES

Apprentice rates apply only to apprentices properly registered under approved Federal or State apprenticeship programs.

PROPER PAY

If you do not receive proper pay, or require further information on the applicable wages, contact the Contracting Officer listed below:

or contact the U.S. Department of Labor's Wage and Hour Division.



For additional information:

1-866-4-USWAGE
(1-866-487-9243) TTY: 1-877-889-5627



WWW.WAGEHOUR.DOL.GOV

U.S. Department of Labor | Employment Standards Administration | Wage and Hour Division

WH 1321 (Revised April 2009)

EXHIBIT 4-I

You Have a Right to a Safe and Healthful Workplace. **IT'S THE LAW!**

- ☐ You have the right to notify your employer or OSHA about workplace hazards. You may ask OSHA to keep your name confidential.
- ☐ You have the right to request an OSHA inspection if you believe that there are unsafe and unhealthful conditions in your workplace. You or your representative may participate in the inspection.
- ☐ You can file a complaint with OSHA within 30 days of discrimination by your employer for making safety and health complaints or for exercising your rights under the *OSH Act*.
- ☐ You have a right to see OSHA citations issued to your employer. Your employer must post the citations at or near the place of the alleged violation.
- ☐ Your employer must correct workplace hazards by the date indicated on the citation and must certify that these hazards have been reduced or eliminated.
- ☐ You have the right to copies of your medical records or records of your exposure to toxic and harmful substances or conditions.
- ☐ Your employer must post this notice in your workplace.



The *Occupational Safety and Health Act of 1970 (OSH Act)*, P.L. 91-596, assures safe and healthful working conditions for working men and women throughout the Nation. The Occupational Safety and Health Administration, in the U.S. Department of Labor, has the primary responsibility for administering the *OSH Act*. The rights listed here may vary depending on the particular circumstances. To file a complaint, report an emergency, or seek OSHA advice, assistance, or products, visit our website at www.osha.gov or call 1-800-321-OSHA or your nearest OSHA office:

Atlanta (404) 562-2300
Denver (303) 844-1600
San Francisco (415) 975-4310

Boston (617) 565-9880
Kansas City (816) 426-5861
Seattle (206) 553-5930

Chicago (312) 353-2220
New York (212) 337-2378
Teletypewriter (TTY) 1-877-889-5627

Dallas (214) 767-4731
Philadelphia (215) 861-4900

If you work in a state operating under an OSHA-approved plan, your employer must post the required state equivalent of this poster.

1-800-321-OSHA



Occupational Safety
and Health Administration

www.osha.gov

U.S. Department of Labor

OSHA 3165-09R

EXHIBIT 4-I-1 (SPANISH)

Seguridad y Salud en el Trabajo ¡Es la Ley!



Administración de Seguridad
y Salud Ocupacional

Departamento del Trabajo
de los Estados Unidos

EMPLEADOS:

- Usted tiene el derecho de notificar a su empleador o a la OSHA sobre peligros en el lugar de trabajo. Usted también puede pedir que la OSHA no revele su nombre.
- Usted tiene el derecho de pedir a la OSHA que realice una inspección si usted piensa que en su trabajo existen condiciones peligrosas o poco saludables. Usted o su representante pueden participar en esa inspección.
- Usted tiene 30 días para presentar una queja ante la OSHA si su empleador llega a tomar represalias o discriminar en su contra por haber denunciado la condición de seguridad o salud o por ejercer los derechos consagrados bajo la Ley OSH.
- Usted tiene el derecho de ver las citaciones enviadas por la OSHA a su empleador. Su empleador debe colocar las citaciones en el lugar donde se encontraron las supuestas infracciones o cerca del mismo.
- Su empleador debe corregir los peligros en el lugar de trabajo para la fecha indicada en la citación y debe certificar que dichos peligros se hayan reducido o desaparecido.
- Usted tiene derecho de recibir copias de su historial o registro médico y el registro de su exposición a sustancias o condiciones tóxicas o dañinas.
- Su empleador debe colocar este aviso en su lugar de trabajo.
- Usted debe cumplir con todas las normas de seguridad y salud ocupacionales expedidas conforme a la Ley OSH que sean aplicables a sus propias acciones y conducta en el trabajo.

EMPLEADORES:

- Usted debe proporcionar a sus empleados un lugar de empleo libre de peligros conocidos.
- Usted debe cumplir con las normas de seguridad y salud ocupacionales expedidas conforme a la Ley OSH.



Los empleadores pueden obtener ayuda gratis para identificar y corregir las fuentes de peligro y para cumplir con las normas, sin citación ni multa, por medio de programas de consulta respaldados por la OSHA en cada estado del país.

1-800-321-OSHA (6742)

www.osha.gov

OSHA 3167-01-07R



Equal Employment Opportunity is THE LAW

Private Employers, State and Local Governments, Educational Institutions, Employment Agencies and Labor Organizations

Applicants to and employees of most private employers, state and local governments, educational institutions, employment agencies and labor organizations are protected under Federal law from discrimination on the following bases:

RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN

Title VII of the Civil Rights Act of 1964, as amended, protects applicants and employees from discrimination in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment, on the basis of race, color, religion, sex (including pregnancy), or national origin. Religious discrimination includes failing to reasonably accommodate an employee's religious practices where the accommodation does not impose undue hardship.

DISABILITY

Title I and Title V of the Americans with Disabilities Act of 1990, as amended, protect qualified individuals from discrimination on the basis of disability in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment. Disability discrimination includes not making reasonable accommodation to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, barring undue hardship.

AGE

The Age Discrimination in Employment Act of 1967, as amended, protects applicants and employees 40 years of age or older from discrimination based on age in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment.

SEX (WAGES)

In addition to sex discrimination prohibited by Title VII of the Civil Rights Act, as amended, the Equal Pay Act of 1963, as amended, prohibits sex discrimination in the payment of wages to women and men performing substantially equal work, in jobs that require equal skill, effort, and responsibility, under similar working conditions, in the same establishment.

GENETICS

Title II of the Genetic Information Nondiscrimination Act of 2008 protects applicants and employees from discrimination based on genetic information in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment. GINA also restricts employers' acquisition of genetic information and strictly limits disclosure of genetic information. Genetic information includes information about genetic tests of applicants, employees, or their family members; the manifestation of diseases or disorders in family members (family medical history); and requests for or receipt of genetic services by applicants, employees, or their family members.

RETALIATION

All of these Federal laws prohibit covered entities from retaliating against a person who files a charge of discrimination, participates in a discrimination proceeding, or otherwise opposes an unlawful employment practice.

WHAT TO DO IF YOU BELIEVE DISCRIMINATION HAS OCCURRED

There are strict time limits for filing charges of employment discrimination. To preserve the ability of EEOC to act on your behalf and to protect your right to file a private lawsuit, should you ultimately need to, you should contact EEOC promptly when discrimination is suspected.

The U.S. Equal Employment Opportunity Commission (EEOC), 1-800-669-4000 (toll-free) or 1-800-669-6820 (toll-free TTY number for individuals with hearing impairments). EEOC field office information is available at www.eeoc.gov or in most telephone directories in the U.S. Government or Federal Government section. Additional information about EEOC, including information about charge filing, is available at www.eeoc.gov.

EXHIBIT 4-J EQUAL OPPORTUNITY IS THE LAW POSTER

Employers Holding Federal Contracts or Subcontracts

Applicants to and employees of companies with a Federal government contract or subcontract are protected under Federal law from discrimination on the following bases:

RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN

Executive Order 11246, as amended, prohibits job discrimination on the basis of race, color, religion, sex or national origin, and requires affirmative action to ensure equality of opportunity in all aspects of employment.

INDIVIDUALS WITH DISABILITIES

Section 503 of the Rehabilitation Act of 1973, as amended, protects qualified individuals from discrimination on the basis of disability in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment. Disability discrimination includes not making reasonable accommodation to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, barring undue hardship. Section 503 also requires that Federal contractors take affirmative action to employ and advance in employment qualified individuals with disabilities at all levels of employment, including the executive level.

DISABLED, RECENTLY SEPARATED, OTHER PROTECTED, AND ARMED FORCES SERVICE MEDAL VETERANS

The Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212, prohibits job discrimination and requires affirmative action to employ and advance in employment disabled veterans, recently separated veterans (within

three years of discharge or release from active duty), other protected veterans (veterans who served during a war or in a campaign or expedition for which a campaign badge has been authorized), and Armed Forces service medal veterans (veterans who, while on active duty, participated in a U.S. military operation for which an Armed Forces service medal was awarded).

RETALIATION

Retaliation is prohibited against a person who files a complaint of discrimination, participates in an OFCCP proceeding, or otherwise opposes discrimination under these Federal laws.

Any person who believes a contractor has violated its nondiscrimination or affirmative action obligations under the authorities above should contact immediately:

The Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, 1-800-397-6251 (toll-free) or (202) 693-1337 (TTY). OFCCP may also be contacted by e-mail at OFCCP-Public@dol.gov, or by calling an OFCCP regional or district office, listed in most telephone directories under U.S. Government, Department of Labor.

Programs or Activities Receiving Federal Financial Assistance

RACE, COLOR, NATIONAL ORIGIN, SEX

In addition to the protections of Title VII of the Civil Rights Act of 1964, as amended, Title VI of the Civil Rights Act of 1964, as amended, prohibits discrimination on the basis of race, color or national origin in programs or activities receiving Federal financial assistance. Employment discrimination is covered by Title VI if the primary objective of the financial assistance is provision of employment, or where employment discrimination causes or may cause discrimination in providing services under such programs. Title IX of the Education Amendments of 1972 prohibits employment discrimination on the basis of sex in educational programs or activities which receive Federal financial assistance.

INDIVIDUALS WITH DISABILITIES

Section 504 of the Rehabilitation Act of 1973, as amended, prohibits employment discrimination on the basis of disability in any program or activity which receives Federal financial assistance. Discrimination is prohibited in all aspects of employment against persons with disabilities who, with or without reasonable accommodation, can perform the essential functions of the job.

If you believe you have been discriminated against in a program of any institution which receives Federal financial assistance, you should immediately contact the Federal agency providing such assistance.

IMPORTANT: HOW TO POST NOTICES IN A FORMAT ACCESSIBLE TO INDIVIDUALS WITH DISABILITIES

The law requires an employer to post notices describing the Federal laws prohibiting job discrimination based on race, color, sex, national origin, religion, age, equal pay and disability.

The enclosed poster, prepared by the Equal Employment Opportunity Commission (EEOC), summarizes these laws and explains how an employee or applicant can file a complaint if s/he believes that s/he has been the victim of discrimination.

These posters should be placed in a conspicuous location in the workplace where notices to applicants and employees are customarily posted.

The Americans with Disabilities Act (ADA) requires that notices of Federal laws prohibiting job discrimination be available in a location that is accessible to applicants and employees with disabilities that limit mobility.

Printed notices should be made available in an accessible format, as needed, to persons with disabilities that limit the ability to see or read. Notices can be recorded on an audio cassette or read to applicants or employees with disabilities that limit seeing or reading ability.

The EEOC has audio cassette recordings of the "Equal Employment Opportunity is the Law" poster. Employers may order a limited number for free by contacting the EEOC at:

Equal Employment Opportunity Commission
Office of Communications and Legislative Affairs
1801 L. Street, NW
Washington, DC 20507
1-800-669-4000 or 1-800-669-6820 (TTY)
Or (202) 663-4900

e-mail: info@ask.eeoc.gov

(Please include your zip code and/or city and state so that your e-mail will be sent to the appropriate office.)

Exhibit 4-J-1

La Igualdad De Oportunidades De Empleo Es

LA LEY

Empleadores con Contratos o Subcontratos Federales

Solicitantes de empleo y empleados de compañías privadas que tienen un contrato o subcontrato federal son protegidos por las siguientes autoridades federales:

RAZA, COLOR, RELIGION, SEXO, ORIGEN NACIONAL

La Orden del Poder Ejecutivo 11246, según enmendada, prohíbe la discriminación en el empleo por razón de raza, color, religión, sexo u origen nacional, y requiere programas de acción afirmativa para asegurar la igualdad de oportunidades en todos los aspectos de empleo.

INDIVIDUOS CON IMPEDIMENTOS

La Sección 503 de la Ley de Rehabilitación de 1973, según enmendada, prohíbe la discriminación en el empleo por razón de impedimento y requiere programas de acción afirmativa en la contratación y ascenso de personas calificadas con impedimentos que, con comodidad razonable, pueden desempeñar las funciones esenciales del empleo.

VETERANOS DE LA ERA DE VIETNAM, VETERANOS CON IMPEDIMENTOS ESPECIALES, Y OTROS VETERANOS PROTEGIDOS

38 U.S.C. 4212 de la Ley de Asistencia para la Readaptación de los Veteranos de Vietnam prohíbe la discriminación en el empleo y exige programas de acción afirmativa en la contratación y ascenso de veteranos calificados de Vietnam y de veteranos calificados con impedimentos especiales.

Cualquier persona que crea que un contratista no ha cumplido con sus obligaciones referentes a la no discriminación o los programas de acción afirmativa bajo las leyes anteriormente mencionadas debe comunicarse de inmediato con:

The Office of Federal Contract Compliance Programs (OFCCP), Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 o llamar al (202) 693-0101, o una oficina regional o de distrito del OFCCP listado bajo el título U.S. Government, Department of Labor.

Empleadores Privados, Gobiernos Estatales y Locales, Instituciones de Enseñanza

Las siguientes leyes federales protegen solicitantes de empleo y empleados de la mayoría de los empleadores privados, gobiernos estatales y locales, instituciones de enseñanza, agencias de empleo y organizaciones laborales:

RAZA, COLOR, RELIGION, SEXO, ORIGEN NACIONAL

El Título VII de la Ley de Derechos Civiles de 1964, según enmendada, prohíbe la discriminación en el empleo por razón de raza, color, religión, sexo u origen nacional en la contratación, promoción, despido, pago, beneficios suplementarios, programas de adiestramiento, clasificación de empleo, reclutamiento y bajo cualquier otro término y condición de empleo.

IMPEDIMENTO

La Ley para Personas con Impedimentos de 1990, según enmendada, protege solicitantes de empleados y empleados contra la discriminación en la contratación, promoción, despido, pago, programas de adiestramiento, beneficios suplementarios, clasificación, asignación, y otros aspectos de empleo por razón de impedimento. La ley también exige que toda entidad comprendida proporcione a solicitantes de empleo y empleados calificados con impedimentos comodidad razonable al menos que esto cause dificultad excesiva.

EDAD

La Ley Contra la Discriminación en el Empleo por Razón de Edad de 1967, según enmendada, protege solicitantes de empleo y empleados de 40 años de edad o más de la discriminación en el empleo por razón de edad en la contratación, promoción, despido, pago, y bajo cualquier otro término, condición o privilegio de empleo.

SEXO (PAGO)

Además del Título VII de la Ley de Derechos Civiles de 1964 (anteriormente descrita), la Ley de Igualdad en el Pago de 1963, según enmendada, prohíbe la discriminación por razón de sexo en el pago de salario a mujeres y hombres que realizan trabajos sustancialmente iguales en el mismo lugar de trabajo.

Tomar represalia contra una persona que haya presentado una denuncia de discriminación, participe en una investigación, o se oponga a una práctica ilegal de empleo es prohibido por todas estas leyes federales.

Si usted cree que ha sido discriminado bajo cualquiera de las leyes descritas, debe comunicarse de inmediato con:

La Comisión de Igualdad de Oportunidades de Empleo (EEOC), 1801 L Street, N.W., Washington, D.C. 20507 o con una oficina local de la Comisión llamando gratuitamente al (800) 669-4000. Para personas con impedimentos auditivos, el número sin cargo de la Comisión por el sistema TDD es (800) 669-6820.

Programas o Actividades que Reciben Subsidios Federales

RAZA, COLOR, ORIGEN NACIONAL, SEXO

Además del amparo que brinda el Título VII de la Ley de Derechos Civiles de 1964, el Título VI de la ley prohíbe la discriminación por razón de raza, color, u origen nacional en programas o actividades que reciben subsidios federales. Discriminación en el empleo está comprendida bajo el Título VI si el objetivo primordial del subsidio es proporcionar empleos y en los casos en que la discriminación en el empleo causa o podría causar discriminación en la prestación de servicios de esos programas. El Título IX de las Enmiendas de Educación de 1972 prohíbe la discriminación en el empleo por razón de sexo en programas o actividades educacionales que reciben subsidios federales.

INDIVIDUOS CON IMPEDIMENTOS

La Sección 504 de la Ley de Rehabilitación de 1973, según enmendada, prohíbe la discriminación en el empleo por razón de impedimentos en cualquier programa o actividad que recibe subsidios del gobierno federal. Se prohíbe la discriminación en todas las modalidades de empleo contra personas con impedimentos físicos y mentales que, con comodidad razonable, pueden desempeñar las funciones esenciales del empleo.

Si usted cree que ha sido discriminado en el empleo en un programa de cualquier institución que recibe subsidios federales, debe comunicarse de inmediato con la agencia federal que otorga el subsidio.

EXHIBIT 4-K

COMMONLY ASKED QUESTIONS CONCERNING EQUAL EMPLOYMENT OPPORTUNITY

1. What are the responsibilities of the Offeror or Bidder to insure equal employment opportunity?

The Offeror or Bidder must comply with the "Equal Opportunity Clause" and the "Standard Federal Equal Opportunity Construction Contract Specifications."

2. Are Contractors required to insure a comfortable working environment for all employees?

Yes, it is the Contractor's responsibility to provide an environment free of harassment, intimidation, and coercion to all employees and to notify all foremen and supervisors to carry out this obligation, with specific attention to minority or female individuals.

3. To alleviate developing separate facilities for men and women on all sites, can a Contractor put all women employees on one site?

No, the Contractor must assign two or more women to each site when possible.

4. Are Contractors required to make special outreach efforts to minority and female recruitment sources?

Yes. Contractors must establish a current list of minority and female recruitment sources, notify them when employment opportunities are available, including on-the-job training and apprenticeship programs, and record responses.

5. Are any efforts made to record the number of minority and females applying for positions with Contractors?

Yes. All Contractors must maintain a current file of the names, addresses and telephone numbers of all minority and female applicants and document whatever action was taken.

6. What happens if a woman or minority is sent to the union by the Contractor and is not referred back to the Contractor for employment?

If the unions impede the Contractor's responsibility to provide equal employment opportunity, a written notification is sent to the Director.

7. What efforts are made by Contractors to create entry level positions for women and minorities?

Contractors are required to develop on-the-job training programs or participate in training programs, especially those funded by the Department of Labor, to create positions for women and minorities relevant to the Contractor's employment needs.

8. Are any efforts made by the Contractor to publicize their Equal Employment Opportunity (EEO) policy?

Yes. The Contractor is responsible to notify unions and training programs and request their cooperation as well as to include it in any policy manual or collective bargaining agreement, and to publicize it in the company newspaper and annual report. Externally, the Contractor is responsible to include the EEO policy in all media advertisement.

9. Are any in-service training programs provided for staff to update the EEO Policy?

At least annually a review of the EEO policy and the affirmative action obligations is required of all employees in a decision-making position. A record of the meeting, including date, time, location, persons present, subject matter discussed and disposition of the subject matter must be maintained.

10. What recruitment efforts are made for minorities and women?

The Contractor must notify minority and female recruitment sources one month prior to the date of acceptance for apprenticeship or other training programs. Notification must be orally and in writing. The Contractor must also encourage present minority and female employees to recruit members of their own group.

11. Are any measures taken to encourage promotions for minorities and women?

Yes. An annual evaluation is conducted for all minority and female personnel to encourage these employees to seek higher positions.

12. What efforts are taken to ensure that personnel policies are in accordance with the EEO policy?

Personnel policies regarding job practices, work assignments, etc. are continually monitored to ensure that the EEO policy is carried out.

13. Can women be excluded from utilizing any facilities available to men?

No. All facilities and company activities are non-segregated except for bathrooms or changing facilities to insure privacy.

14. What efforts are made to utilize minority and female contractors and suppliers?

None. However, records are kept of all offers to minority and female construction contractors.

15. If a Contractor participates in a business related association which does not comply with affirmative action standards, does that show a failure to comply?

No. The Contractor's obligation to comply is his own. If he makes every effort to assure that this group has a positive impact on EEO policy and they fail to accept this attitude, it shall not be deemed to be noncompliance on the part of the Contractor.

16. Would a Contractor be in violation of EEO policy and affirmative action if he set up one set of goals to include minorities and women?

Yes. There is a single goal for minorities and a separate single goal for women. The Contractor is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority.

17. Can a Contractor hire a subcontractor who has been debarred from government contracts pursuant to EEO?

No. The Contractor must suspend, terminate or cancel any subcontractor who is in violation of the EEO policy.

18. What effort has been taken by the Contractor to monitor all employment to insure the company EEO Policy is begin carried out?

The Contractor must designate a responsible individual to keep accurate records of all employees, which includes specific information required by the government.

EXHIBIT 4-L
CDBG Preconstruction Conference Minutes with Required Elements

Available on DFA/LGD Website

**EXHIBIT 4-M
NOTICE TO PROCEED
(MUST USE GRANTEE LETTERHEAD)**

TO: Contractor_____

FROM: CDBG Grantee_____

CDBG Contract No._____

State Wage Determination No._____

Federal Wage Determination No._____

In accordance with the contract dated _____ you are hereby notified
to commence work on _____

Project Name_____

Starting Date (on or before)_____

You are to complete the work within _____ consecutive calendar days.

Completion Date (on or before) _____

Name _____

Title _____

Signature _____

Date _____

cc: Local Government Division, DFA

EXHIBIT 4-N APPOINTMENT OF LABOR STANDARDS OFFICER

CDBG Contract No: _____ Grantee: _____

I, _____ hereby appoint _____
(Print Mayor/County Chairman) (Print Name)

as the Labor Standards Officer for the aforementioned contract. The appointed Labor Standards Officer is assigned to oversee the labor portion of the contract and will be responsible for assuring compliance with all requirements under **CHAPTER 4 of the New Mexico Community Development Block Grant Implementation Manual**.

Appointed Labor Standards Officer: _____
(Print Name)

Address: _____

City: _____ State: _____ Zip: _____

Telephone Number: (____) - _____

I acknowledge the appointment and duties of Labor Standards Officer.

Signature: _____ Date: _____
(Labor Standards Officer)

Appointed by: _____ Title: _____
(Print Mayor/County Chairman)

Signature: _____ Date: _____
(Mayor/County Chairman)

EXHIBIT 4-O

Record of Employee Interview

**U.S. Department of Housing
and Urban Development
Office of Labor Relations**

OMB Approval No. 2501-0009
(exp. 12/31/2013)

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number. The information is collected to ensure compliance with the Federal labor standards by recording interviews with construction workers. The information collected will assist HUD in the conduct of compliance monitoring; the information will be used to test the veracity of certified payroll reports submitted by the employer. **Sensitive Information.** The information collected on this form is considered sensitive and is protected by the Privacy Act. The Privacy Act requires that these records be maintained with appropriate administrative, technical, and physical safeguards to ensure their security and confidentiality. In addition, these records should be protected against any anticipated threats or hazards to their security or integrity that could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom the information is maintained. **The information collected herein is voluntary, and any information provided shall be kept confidential.**

1a. Project Name			2a. Employee Name			
1b. Project Number			2b. Employee Phone Number (including area code)			
1c. Contractor or Subcontractor (Employer)			2c. Employee Home Address & Zip Code			
			2d. Verification of identification? Yes <input type="checkbox"/> No <input type="checkbox"/>			
3a. How long on this job?	3b. Last date on this job before today?	3c. No. of hours last day on this job?	4a. Hourly rate of pay?	4b. Fringe Benefits? Vacat Yes No ion <input type="checkbox"/> <input type="checkbox"/> Medic Yes No al <input type="checkbox"/> <input type="checkbox"/> Pensi Yes No on <input type="checkbox"/> <input type="checkbox"/>	4c. Pay stub? Yes No <input type="checkbox"/> <input type="checkbox"/>	
5. Your job classification(s) (list all) --- continue on a separate sheet if necessary						
6. Your duties						
7. Tools or equipment used						
8. Are you an apprentice or trainee?		Y N	10. Are you paid at least time and ½ for all hours worked in excess of 40 in a week?		Y N	
9. Are you paid for all hours worked?		<input type="checkbox"/> <input type="checkbox"/>	11. Have you ever been threatened or coerced into giving up any part of your pay?		<input type="checkbox"/> <input type="checkbox"/>	
12a. Employee Signature			12b. Date			
13. Duties observed by the Interviewer (Please be specific.)						
14. Remarks						

15a. Interviewer name (please print)	15b. Signature of Interviewer	15c. Date of interview
--------------------------------------	-------------------------------	------------------------

Payroll Examination

16. Remarks

17a. Signature of Payroll Examiner	17b. Date
------------------------------------	-----------

Previous editions are obsolete

Form HUD-11 (08/2004)

EXHIBIT 4-P Certified Payroll

Available on DFA/LGD Website in PDF format

EXHIBIT 4-Q OVERTIME VIOLATIONS REPORT

TO: Local Government Division/Department of Finance & Administration

ATTENTION: Labor Standards Compliance Officer

FROM: _____
(Grantee)

CDBG GRANT No. _____

DATE: _____

SUBJECT: Report of Overtime Violation(s)

Project Name _____

Contractor or Subcontractor Name _____

Indicate overtime violations below:

Name(s) of Affected Employee(s)	Classification	Rates(s) of Pay (Basic + Fringe)	Violation(s) Date(s) #Hours

Signed _____ Title _____ Date _____
(Chief Elected Official)

Exhibit 4-R FINAL WAGE COMPLIANCE REPORT

Grantee:	CDBG Project #:
Federal Wage Decision #:	State Wage Decision #:
Construction Contract Amount:	Contract Award Date:
Construction Completion Date:	

Prime Contractor

(Name) (Address) (City) (State) (Zip Code)

Subcontractor(s):

(Name) (Address) (City) (State) (Zip Code)

(Name) (Address) (City) (State) (Zip Code)

I. Violations

A. Were any workers paid less than the specified **State** rates that applied to this project?

Yes ☐ / No ☐

B. Were any workers paid less than the specified **Federal** rates that applied to this project?

Yes ☐ / No ☐

If YES:

1. What was the total amount of restitution paid by or on behalf of the above listed contractors?

\$ _____ (*Complete Exhibit 4-R-2*)

2. What was the method of restitution?

☐

Paid by Contractor

☐

Paid by _____ with funds withheld from payment to the Contractor
(City/County)

C. Were any workers paid ***incorrect*** overtime payments? Yes ☐ / No ☐ (*Liquidated damages at the rate of \$10 for each calendar day that incorrect overtime payments were made for each worker must be calculated and the contractor notified of his liability.*) **If YES, attach a detailed report** that includes the nature of the overtime violations including the following:

1. Company's name, address and phone number;

2. Date Contractor was notified in writing of the amount of liquidated damages which could be assessed;

3. Date the Contractor responded to the written notice: (Must be within 30 days of the receipt); and

4. Did the Contractor seek a reduction of waiver of the liquidated damages? Yes ☐ / No ☐

If YES

- a. Was the request approved? Yes ☐ / No ☐ and for what? ☐ Reduction ☐ Waiver
- b. On what grounds was HUD or DOL's response based?
- c. Total amount of Liquidated Damages paid.
- d. What was the method of payment of the Liquidated Damages?
- ☐ Paid by Contractor
- ☐ Paid by _____ with funds withheld from payment to the Contractor
(City/County/CHDO name)
- e. Did the Contractor appeal the final decision to assess Liquidated Damages?
(*Attach copies of all correspondence.*)

D. Were any wage underpayments willful? YES ☐ / NO ☐ (*If yes, attach detailed report*)

E. Should sanctions against the Contractor/Subcontractor be considered? YES ☐ / NO ☐ (*If yes attach a justification for the sanctions*)

F. Wage underpayments were discovered through:

G. The types of violations were:

II. Disposition (*Narrative*):

Labor Compliance Officer:

Signature: _____

Printed Name: _____

Date: _____

Contact Information:

Phone:

E-mail:

Grantee Contact: (if different)

Printed Name: _____

Contact Information:

Phone:

E-mail:

NOTE: When underpayments by a construction contractor or subcontractor total \$1,000 or more to his/her entire workforce (not to individual employees), or when there is reason to believe that the violations are aggravated or willful (or, in the case of the Davis-Bacon Act, that the

construction contractor has disregarded its obligations to employees and subcontractors), the Grantee shall furnish within 30 days after completion of investigation, this enforcement report to the Department.

EXHIBIT 4-R-1

EMPLOYEE'S RESTITUTION RECEIPT

NAME AND ADDRESS OF PRIME CONTRACTOR				DATE				
				CONTRACT NO.				
NAME AND ADDRESS OF SUBCONTRACTOR				PROJECT NAME AND NO.				
EMPLOYEE'S NAME AND	PERIOD COVERED	CLASSIFICATION	HOURS WORKED		HOURLY RATE ACTUALLY PAID		HOURLY RATE IN CONTRACT	
			ST	OT	ST	OT	ST	OT
AMOUNT OF GROSS WAGES EARNED FROM HOURS INDICATED ABOVE IN ACCORDANCE WITH CONTRACT RATES:							\$	-
AMOUNT OF WAGES ACTUALLY RECEIVED FOR HOURS INDICATED							\$	-
ABOVE GROSS AMOUNT OF WAGE RESTITUTION DUE:							\$	-
I DO HEREBY CERTIFY THAT I HAVE RECEIVED WAGE RESTITUTION					DUE AS FOLLOWS			
LESS LEGAL					GROSS AMOUNT:\$ -			
					PAYROLL DEDUCTIONS:\$ -			
					NET PAY RECEIVED:\$ -			
THE ABOVE REPRESENTS FULL RESTITUTION FOR THE HOURS WORKED					AS INDICATED ABOVE.			
SIGNATURE OF EMPLOYEE								
AS REPRESENTATIVE OF THE ABOVE NAMED (CONTRACTOR OR SUBCONTRACTOR). CERTIFY THAT PAYMENT HAS BEEN MADE TO THE ABOVE EMPLOYEE FOR WAGES					ID DO HEREBY DUE AS INDICATED ABOVE.			
PRINT NAME & TITLE AND PROVIDE SIGNATURE								DATE
STATE OF: _____					COUNTY OF: _____			
SUBSCRIBED AND SWORN BEFORE ME _____					DAY OF _____, 20			
THIS NOTARY PUBLIC: _____								
MY COMMISSION EXPIRES: _____								

EXHIBIT 4-R-2 EMPLOYEE RESTITUTION SUMMARY

[illegible]

EXHIBIT 4-S

Presented below is language that may be useful in the preparation of:

A LISTING OF THE DUTIES, RESPONSIBILITIES AND LIMITATIONS OF AUTHORITY OF THE RESIDENT PROJECT REPRESENTATIVE.

Adaptation to the peculiarities and
requirements of each Project is essential.

ENGINEER shall furnish a Resident Project Representative (RPR), assistants and other field staff to assist ENGINEER in observing performance of the Work of the Contractor.

Through more extensive on-site observations of the Work in progress and field checks of materials and equipment by the RPR and assistants, ENGINEER shall endeavor to provide further protection for OWNER against defects and deficiencies in the Work; but, the furnishing of such services will not make ENGINEER responsible for or give ENGINEER control over construction means, methods, techniques, sequences or procedures or for safety precautions or programs, or responsibility for CONTRACTOR's failure to perform the Work in accordance with the Contract Documents.

The duties and responsibilities of the RPR are limited to those of ENGINEER in ENGINEER's agreement with the OWNER and in the construction Contract Documents, and are further limited and described as follows:

A. General

RPR is ENGINEER's agent at the site, will act as directed by and under the supervision of ENGINEER, and will confer with ENGINEER regarding RPR's actions. RPR's dealings in matters pertaining to the on-site work shall in general be with ENGINEER and CONTRACTOR keeping OWNER advised as necessary. RPR's dealings with subcontractors shall only be through or with the full knowledge and approval of CONTRACTOR. RPR shall generally communicate with OWNER with the knowledge of and under the direction of ENGINEER.

B. Duties and Responsibilities of RPR

1. *Schedules:* Review the progress schedule, schedule of Shop Drawing submittals and schedule of values prepared by CONTRACTOR and consult with ENGINEER concerning acceptability.
2. *Conferences and Meetings:* Attend meetings with CONTRACTOR, such as pre-construction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.
3. *Liaison:*
 - a. Serve as ENGINEER's liaison with CONTRACTOR, working principally through CONTRACTOR's superintendent and assist in understanding the intent of the Contract Documents; and assist ENGINEER in serving as OWNER's liaison with CONTRACTOR when CONTRACTOR's operations affect OWNER's on-site operations.
 - b. Assist in obtaining from OWNER additional details or information, when required for proper execution of the Work.
4. *Shop Drawings and Samples:*
 - a. Record date of receipt of Shop Drawings and samples.
 - b. Receive samples which are furnished at the site by CONTRACTOR, and notify ENGINEER of availability of samples for examination.

- c. Advise ENGINEER and CONTRACTOR of the commencement of any Work requiring a Shop Drawing or sample if the submittal has not been approved by ENGINEER.
- 5. *Review of Work, Rejection of Defective Work, Inspections and Tests:*
 - a. Conduct on-site observations of the Work in progress to assist ENGINEER in determining if the Work is in general proceeding in accordance with the Contract Documents.
 - b. Report to ENGINEER whenever RPR believes that any Work is unsatisfactory, faulty or defective or does not conform to the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise ENGINEER of Work that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
 - c. Verify that tests, equipment and systems startups and operating and maintenance training are conducted in the presence of appropriate personnel, and that CONTRACTOR maintains adequate records thereof; and observe, record and report to ENGINEER appropriate details relative to the test procedures and startups.
 - d. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections and report to ENGINEER.
- 6. *Interpretation of Contract Documents:* Report to ENGINEER when clarifications and interpretations of the Contract Documents are needed and transmit to CONTRACTOR clarifications and interpretations as issued by ENGINEER.
- 7. *Modifications:* Consider and evaluate CONTRACTOR's suggestions for modifications in Drawings or Specifications and report with RPR's recommendations to ENGINEER. Transmit to CONTRACTOR decisions as issued by ENGINEER.
- 8. *Records:*
 - a. Maintain at the job site orderly files for correspondence, reports of job conferences, Shop Drawings and samples, reproductions of original Contract Documents including all Work Directive Changes, Addenda, Change Orders, Field Orders, additional Drawings issued subsequent to the execution of the Contract, ENGINEER's clarifications and interpretations of the Contract Documents, progress reports, and other Project related documents.
 - b. Keep a diary or log book, recording CONTRACTOR hours on the job site, weather conditions, data relative to questions of Work Directive Changes, Change Orders or changed conditions, list of job site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to ENGINEER.
 - c. Record names, addresses and telephone numbers of all CONTRACTORS, subcontractors and major suppliers of materials and equipment.
- 9. *Reports:*
 - a. Furnish ENGINEER periodic reports as required of progress of the Work and of CONTRACTOR's compliance with the progress schedule and schedule of Shop Drawing and sample submittals.
 - b. Consult with ENGINEER in advance of scheduled major tests, inspections or start of important phases of the Work.

- c. Draft proposed Change Orders and Work Directive Changes, obtaining backup material from CONTRACTOR and recommend to ENGINEER Change Orders, Work Directive Changes, and Field Orders.
 - d. Report immediately to ENGINEER and OWNER upon the occurrence of any accident.
 - 10. *Payment Requests:* Review applications for payment with CONTRACTOR for compliance with the established procedure for their submission and forward with recommendations to ENGINEER, noting particularly the relationship of the payment requested to the schedule of values, Work completed and materials and equipment delivered at the site but not incorporated in the Work.
 - 11. *Certificates, Maintenance and Operation Manuals:* During the course of the Work, verify that certificates, maintenance and operation manuals and other data required to be assembled and furnished by CONTRACTOR are applicable to the items actually installed and in accordance with the Contract Documents, and have this material delivered to ENGINEER for review and forwarding to OWNER prior to final payment for the Work.
 - 12. *Completion:*
 - a. Before ENGINEER issues a Certificate of Substantial Completion, submit to CONTRACTOR a list of observed items requiring completion or correction.
 - b. Conduct final inspection in the company of ENGINEER, OWNER and CONTRACTOR and prepare a final list of items to be completed or corrected.
 - c. Observe that all items on final list have been completed or corrected and make recommendations to ENGINEER concerning acceptance.
- C. Limitations of Authority**
- Resident Project Representative:
- 1. Shall not authorize any deviation from the Contract Documents or substitution of materials or equipment, unless authorized by ENGINEER.
 - 2. Shall not exceed limitations of ENGINEER's authority as set forth in the Contract Documents.
 - 3. Shall not undertake any of the responsibilities of CONTRACTOR, subcontractors or CONTRACTOR's superintendent.
 - 4. Shall not advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction unless such advice or directions are specifically required by the Contract Documents.
 - 5. Shall not advise on, issue directions regarding or assume control over safety precautions and programs in connection with the Work.
 - 6. Shall not accept Shop Drawing or sample submittals from anyone other than Contractor.
 - 7. Shall not authorize OWNER to occupy the Project in whole or in part.
 - 8. Shall not participate in specialized field or laboratory tests or inspections conducted by others except as specifically authorized by ENGINEER.

EXHIBIT 4-T CONSTRUCTION CONTRACT CHECKLIST

Bid Package Review

- ✓ Advertisement and Invitation for Bids
- ✓ Instructions to Bidders includes Statement of Bidder's Qualifications
- ✓ Bid Format (*including all deductive or additive alternates as applicable*)
- ✓ Bid Bond
- ✓ Performance Bond
- ✓ Payment Bond
- ✓ Standard Form Contract
- ✓ General Contract Conditions
- ✓ Wage Rate Decision Date: _____ By: _____
 - Wage Rate determination requested: _____
 - Wage Rate determination acknowledged: _____
 - Changes in wage rate reviewed: _____
- ✓ Davis-Bacon provisions (\$2,000)
- ✓ Contract Work Hours and Safety Standards Clauses (CWHSSC)
- ✓ Copeland Anti-Kickback clause
- ✓ Employment of Apprentices/Trainees clause
- ✓ Civil Rights Act of 1964-Title VI clause
- ✓ Compliance with Title VIII Fair Housing
- ✓ EO 11246 standard clause
- ✓ Hsng. & Community Development Act of 1974 (Section 109)
- ✓ Section 3 Plan
- ✓ Age Discrimination Act of 1975
- ✓ Federal Labor Standards Provisions (HUD Form 4010)
- ✓ Drawings and Technical Specifications (*including location of all utility lines and similar services*)

Pre-Construction/Notice to Proceed

- ✓ Contractor Clearance Date: _____ By: _____
- ✓ Surety Verification
- ✓ Notice of Contract Award/Preconstruction conference
 - (*To be sent to LGD and NM Department of Workforce Solutions*)
- ✓ Pre-construction Conference Minutes
- ✓ Notice to proceed issued to Contractor
- ✓ Appoint Labor Standards Officer
- ✓ Contractor/Subcontractor Report

Inspection

- ✓ Project Inspection:
 - Month 1: _____
 - Month 2: _____
 - Month 3: _____
 - Month 4: _____
- ✓ Complaints, if any, and actions taken Date: _____ By: _____
- ✓ Correspondence concerning contract or EO Compliance
- ✓ Project Labor Standards Enforcement file established

- ✓ **Project Inspection Checklist**
 - **Project Site Posting**
 - **Wage Decision** _____
 - **Notice to Employees** _____
 - **Safety & Health Protection on Job** _____
 - **EEO Requirements** _____
 - **Employee Interviews**
 - **Attach Employee Interview form for each interview conducted.**
 - All classifications represented on the job must be included in interviews.**
- _____
- **Inspector's report written (*re: posting of site, contractor compliance with EO specification*)** _____
- _____

Project Completion

- ✓ **Files reviewed to determined completeness, establish that all required restitutions have been made and are adequately documented.**
- ✓ **Final Wage Compliance Report**
- ✓ **Copy of "As-Built" record drawings**
- ✓ **Contractor's Certification of Equal Employment Opportunity**
- ✓ **Subcontractor's Certification of Equal Employment Opportunity**
- ✓ **Contractor's Certification regarding Section 3**
- ✓ **Subcontractor's Certification regarding Section 3**
- ✓ **Contractor established own Equal Employment Opportunity file**
- ✓ **Requested and received wage decision for any classification not included on wage decision**
- ✓ **If apprentices are to be used on contract, received copy of Contractor's apprentice program from State Bureau of Apprenticeship and Training (SBAT)**
- ✓ **If trainees are to be used on contract, received copy of Contractor's trainee program certification from SBAT**
- ✓ **Bonding/Insurance on file with Grantee**

Construction/Enforcement

- ✓ **Payrolls and Statement of Compliance**

	Received	Reviewed	Discrepancies
Week 1:	_____	_____	_____
Week 2:	_____	_____	_____
Week 3:	_____	_____	_____
Week 4:	_____	_____	_____
Etc.	<i>(Document on attached sheet including resolutions and notice to State)</i>		

EXHIBIT 4-U

PAYROLL REVIEW WORKSHEET

Project Name and Number: LGD Project Manager

Federal Wage Decision Number: _____

State Wage Decision Number: _____

Contractor/Subcontractor: _____

Payroll End Date: _____

Trade	What was Actually Paid	State Rate	Fringe	Total State	Feder al	Fringe	Total Fed	Amt. of Restitution
				\$ -			\$ -	
				\$ -			\$ -	
				\$ -			\$ -	
				\$ -			\$ -	
				\$ -			\$ -	
				\$ -			\$ -	
				\$ -			\$ -	
				\$ -			\$ -	
				\$ -			\$ -	
				\$ -			\$ -	
				\$ -			\$ -	
				\$ -			\$ -	
				\$ -			\$ -	
				\$ -			\$ -	

NOTE: If the actual rate paid to any employees is lower than the prevailing rate, ie, the higher of the two, for any particular trade, the contractor or sub-contractor must make & document wage restitution immediately! If restitution is not made quickly, progressive contract payments may be withheld.

Name of Reviewer (Print)

Signature of Reviewer Date

CDBG INFRASTRUCTURE CHECKLISTS

Application	2
Grant Agreement	3
Monitoring	4
Progress Reports.....	5
Financial Management	6
Procurement.....	7
Professional Services	8
Environmental	9
Exempt	9
Categorically Excluded Subject to 24 CFR 58.5	10
Full Assessment	11
Federal Requirements	12
Construction	13
Labor Standards.....	14
Closeout Documents	15

INFRASTRUCTURE OVERVIEW

These checklists itemize the documentation that will substantiate compliance with applicable CDBG requirements. Grantees must maintain the applicable files for each CDBG project. You may, of course, include additional documentation in your files to show compliance with local requirements or to supplement the items below. This checklist should provide step by step guidance in chronological order of tasks necessary to complete the project.

APPLICATION

"CERTIFICATIONS AND ASSURANCES"

Yes ___ No ___ - HUD applicant disclosure report **(Exhibit 1-F)**

"PUBLIC PARTICIPATION"

Yes ___ No ___ - Public meeting notice **(Exhibit 1-Q)** English & Spanish

Indicate: ☐ Published, Date(s): _____

☐ Posted, Date(s): _____

Yes ___ No ___ - Public meeting

Number of Pre-Selection meetings: _____

Number of Post-Selection meetings: _____

Indicate: ☐ Notice published/posted at least 10 days prior to the date of the meeting

☐ Pre-Selection public meeting agenda with required elements **(Exhibit 1-Q-1)**

☐ Post-Selection public meeting agenda with required elements **(Exhibit 1-Q-2)**

☐ Sign-in sheet(s)

☐ Meeting minutes (if applicable)

"SURVEY/ACS"

Yes ___ No ___ - Copy of survey or census data used to meet low/moderate income requirements

Yes ___ No ___ NA ___ - Correspondence/back up data pertinent to the application (if applicable)

"SITE CONTROL"

Yes ___ No ___ - CDBG Site Certificate

Yes ___ No ___ NA ___ - Deed of trust or other legal document providing ownership, access and/or right of way

Yes ___ No ___ NA ___ - Map(s)

"CASH MATCH/LEVERAGING"

Yes ___ No ___ NA ___ - Supporting documentation for proof of cash match

Yes ___ No ___ NA ___ - Supporting documentation for proof of leveraging

Yes ___ No ___ NA ___ - Supporting documentation for proof of in-kind payment

Other documents, comments and/or concern(s)/recommendation(s), finding(s)/corrective action(s) cited:

GRANT AGREEMENT

"PRE-EXECUTION"

Yes ___ No ___ NA ___ - Grant award letter from LGD

Yes ☐ No ☐ NA ☐ - Grantee's registration in System for Award Management (**Exhibit 1-X**)

✓ Year #1 registration date _____; expiration date _____

"POST-EXECUTION"

Yes __ No __ NA __ - Grant Agreement

Yes ☐ No ☐ NA ☐ - Grantee's registration in System for Award Management (**Exhibit 1-X**)

[] Year #2 registration date _____; expiration date _____

[] Year #3 registration date _____; expiration date _____

"GRANT AMENDMENTS" (if applicable)

Yes ___ No ___ NA ___ - Letter(s) requesting amendments, with justification(s)

Yes ___ No ___ NA ___ - Grant Agreement amendments #_____ thru #_____

Yes ☐ No ☐ NA ☐ - Records or correspondence concerning other grant conditions

Yes ___ No ___ NA ___ - Supporting documentation for increase of leveraging / in-kind payment
(Budget Amendments if applicable)

Other documents, comments and/or concern(s)/recommendation(s), finding(s)/corrective action(s) cited:

MONITORING

[] Grant execution date: _____

Yes ___ No ___ - Project files (centrally located and properly maintained)

Yes ___ No ___ - EEO posters at grantee office (**Exhibits 4-J, 4-J-1**)

Yes ___ No ___ - Fair Housing posters at grantee's office.

"1ST ANNUAL MONITORING"

Yes ___ No ___ - Monitoring notification from DFA/LGD (letter or email)

- Monitoring completion date: _____

Yes ___ No ___ - Monitoring review letter and date sent: _____

Yes ___ No ___ NA ___ - Findings: # _____ (if applicable)

Yes ___ No ___ NA ___ - Concerns: # _____ (if applicable)

Yes ___ No ___ NA ___ - Corrective action deadline: _____ (if applicable)

Yes ___ No ___ NA ___ - Corrective action date: _____ (if applicable)

Yes ___ No ___ NA ___ - State's response to clearance of findings and/or concerns (if applicable)

"2ND ANNUAL MONITORING" (if grant expiration date amended)

Yes ___ No ___ NA ___ - Monitoring notification from DFA/LGD (letter or email)

- Monitoring completion date: _____

Yes ___ No ___ NA ___ - Monitoring review letter and date sent: _____

Yes ___ No ___ NA ___ - Findings: # _____ (if applicable)

Yes ___ No ___ NA ___ - Concerns: # _____ (if applicable)

Yes ___ No ___ NA ___ - Corrective action deadline: _____ (if applicable)

Yes ___ No ___ NA ___ - Corrective action date: _____ (if applicable)

Yes ___ No ___ NA ___ - State's response to clearance of findings and/or concerns (if applicable)

Documents, comments and/or concern(s)/recommendation(s), finding(s)/corrective action(s) cited:

PROGRESS REPORTS

Reporting Deadlines:

January – March	Due: April 20 th
April – June	Due: July 20 th
July – September	Due: October 20 th
October – December	Due: January 20 th

1st Report

Yes ___ No ___ NA ___ - Progress report **(Exhibit 1-D)**

Number of days submitted after deadline: _____

Quality of report: High Medium Low

2nd Report

Yes ___ No ___ NA ___ - Progress report **(Exhibit 1-D)**

Number of days submitted after deadline: _____

Quality of report: High Medium Low

3rd Report

Yes ___ No ___ NA ___ - Progress report **(Exhibit 1-D)**

Number of days submitted after deadline: _____

Quality of report: High Medium Low

4th Report

Yes ___ No ___ NA ___ - Progress report **(Exhibit 1-D)**

Number of days submitted after deadline: _____

Quality of report: High Medium Low

5th Report

Yes ___ No ___ NA ___ - Progress report **(Exhibit 1-D)**

Number of days submitted after deadline: _____

Quality of report: High Medium Low

6th Report

Yes ___ No ___ NA ___ - Progress report **(Exhibit 1-D)**

Number of days submitted after deadline: _____

Quality of report: High Medium Low

7th Report

Yes ___ No ___ NA ___ - Progress report **(Exhibit 1-D)**

Number of days submitted after deadline: _____

Quality of report: High Medium Low

8th Report

Yes ___ No ___ NA ___ - Progress report **(Exhibit 1-D)**

Number of days submitted after deadline: _____

Quality of report: High Medium Low

Other documents, comments and/or concern(s)/recommendation(s), finding(s)/corrective action(s) cited: _____

FINANCIAL MANAGEMENT

CDBG ACCOUNTING

- Yes ___ No ___ - Depository/authorized signatories designation form **(Exhibit 1-G)**
Yes ___ No ___ NA ___ - Witness certification, if applicable **(Exhibit 1-H)**
Yes ___ No ___ NA ___ - Substitute w-9 **(Exhibit 1-I)**
 [] CDBG-specific checking account
 [] Voided check or bank letter
Yes ___ No ___ - Insurance for Public Officials Liability (Fidelity Bond)
 - Counties: New Mexico County Insurance Authority (or equivalent)
 [] Year 1 coverage; expires _____
 [] Year 2 coverage; expires _____
 - Municipalities: New Mexico Self-Insurers Fund (NMSIF) or equivalent
 [] Year 1 coverage; expires _____
 [] Year 2 coverage; expires _____

PAY REQUESTS

- Yes ___ No ___ Requests for Payment **(Exhibit 1-M)** - # _____ thru # _____
 ✓ Invoices for professional services
 ✓ Payment applications (ex. AIA) for construction services
 ✓ Updated payrolls (for construction only)
 ✓ Proof of payment (cancelled checks)

3 DAY RULE (IF APPLICABLE)

- Yes ___ No ___ NA ___ - Grantee Received DFA/LGD Approval of 3 Day Rule
Yes ___ No ___ - Fiscal proof of receipts & disbursements
Yes ___ No ___ - Bank statements, deposit slips, cancelled checks, etc.

CASH MATCH/LEVERAGING

- Yes ___ No ___ Cash Match/Leveraging **(Exhibit 1-J)**
 ✓ Invoices for professional services
 ✓ Invoices for grant administration
 ✓ Invoices for construction
 ✓ Invoices for other

Other documents, comments and/or concern(s)/recommendation(s), finding(s)/corrective action(s) cited: _____

PROCUREMENT

As a CDBG grant recipient, the Grantee must adopt by resolution a procurement code on annually to be compliant with the terms and conditions of the grant agreement. The Grantee can adopt the State of New Mexico's Procurement Code or may adopt the local Procurement Code, so long as it is equal to or more stringent than the State Procurement Code. It is the Grantee's responsibility to ensure the local Procurement Code meets this criteria. Non-compliance may result in a finding and/or reversion of funds.

Yes ___ No ___ Does Grantee utilize the State of New Mexico's procurement code regulations?

☐ Copy of State of New Mexico Procurement Code

☐ Meeting minutes and resolution to adopt Code

☐ Year 1 (**Exhibit 1-Y**) resolution date _____;
expiration date _____

☐ Meeting minutes and resolution to adopt Code

☐ Year 2 (**Exhibit 1-Y**) resolution date _____;
expiration date _____

OR

Yes ___ No ___ NA ___ Does Grantee utilize a local procurement code?

☐ Copy of local procurement code

☐ Meeting minutes and resolution to adopt Code

☐ Year 1 (**Exhibit 1-Y**) resolution date _____;
expiration date _____

☐ Meeting minutes and resolution to adopt Code

☐ Year 2 (**Exhibit 1-Y**) resolution date _____;
expiration date _____

Other documents, comments and/or concern(s)/recommendation(s), finding(s)/corrective actions(s) cited:

PROFESSIONAL SERVICES

PROCUREMENT PHASE

- Yes ___ No ___ NA ___ - DFA acceptance of RFP for administrative services
Yes ___ No ___ NA ___ - DFA acceptance of RFP for design services
Yes ___ No ___ NA ___ - Request for Proposal (RFP) for administrative services **(Exhibit 3-A)**
Yes ___ No ___ - Request for Proposal (RFP) for design professional services **(Exhibit 3-C)**
Yes ___ No ___ NA ___ - Affidavits of publication for RFP or tear sheet (minimum 14 days allowed for response)
Yes ___ No ___ NA ___ - Copy of minutes for the pre-proposal conference(s) (if applicable)
Yes ___ No ___ NA ___ - Copy of minutes for the opening of proposals
Yes ___ No ___ NA ___ - Certified copy of the RFP evaluation sheet(s)
Yes ___ No ___ NA ___ - Minutes of the Council or Commissioner meeting when the award is made

CONTRACT EXECUTION PHASE

- Yes ___ No ___ NA ___ - Contractor/subcontractor clearance form **(Exhibit 1-X)**
[] Contractor Name _____
[] Sub-Consultant Name _____ (if applicable)
[] Sub-Consultant Name _____ (if applicable)
Yes ___ No ___ NA ___ - Copy of the Notice of Award (Use Grantee Letterhead)
Yes ___ No ___ NA ___ - Executed Administrative Services contract **(Exhibit 3-B)** and any related addenda
Yes ___ No ___ - Executed Engineer/Architect contract **(Exhibit 3-D & 3-E)** and any related addenda
Yes ___ No ___ NA ___ - Campaign contribution form(s) (Chapter 3, page 3-C-14).
Yes ___ No ___ NA ___ - Contractor/subcontractor activity report **(Exhibit 1-E)**
Yes ___ No ___ NA ___ - Letter of Denial to unsuccessful proposers for Administrative services
Yes ___ No ___ NA ___ - Letter of Denial to unsuccessful proposers for Engineer & Architect services
Yes ___ No ___ - Grantee's Economic Opportunity for Low and Very Low Income Persons in connection with assisted projects HUD 60002 **(Exhibit 1-U)**

Other documents, comments and/or concern(s)/recommendation(s), finding(s)/corrective actions(s) cited:

ENVIRONMENTAL REVIEW

Only one Environmental Review checklist should be completed depending on the level of review required. In order for a determination to be made, the Grantee must submit Exhibit 2-A and Exhibit 2-A-1 to DFA/LGD. Once the Agency has made a determination, DFA/LGD will notify the Grantee.

EXEMPT:

Yes ___ No ___ NA ___ - Environmental assessment determination (**Exhibit 2-A**)
Yes ___ No ___ NA ___ - Certifying Official designation (**Exhibit 2-A-1**)
Yes ___ No ___ NA ___ - "Transmittal Letter for Finding of Exempt Projects" (**Exhibit 2-B**) mailed to LGD
Yes ___ No ___ NA ___ - Certification of exemption for CDBG funded projects (**Exhibit 2-B-1**)
Yes ___ No ___ NA ___ - Compliance document checklist (**Exhibit 2-B-2**)
Yes ___ No ___ NA ___ - SHPO Notice, if applicable- (**Exhibit 2-J**)
Yes ___ No ___ NA ___ - Request for release of funds - (**Exhibit 2-L**)
Yes ___ No ___ NA ___ - Authority to use grant funds- (**Exhibit 2-Q**), issued by LGD

Other documents, comments and/or concern(s)/recommendation(s), finding(s)/corrective action(s) cited (use additional pages if necessary):

ENVIRONMENTAL CATEGORICALLY EXCLUDED SUBJECT TO 24 CFR 58.35

- Yes ___ No ___ NA ___ - Environmental assessment determination (**Exhibit 2-A**)
- Yes ___ No ___ NA ___ - Certifying Official designation (**Exhibit 2-A-1**)
- Yes ___ No ___ NA ___ - Agency consultation notices (**Exhibit 2-I**) sent to Agency contact distribution list (**Exhibit 2-E**) and applicable Native American contact distribution (<https://egis.hud.gov/tdat/Query.aspx?state=New Mexico>). If the Agency/Native American entity was responsive, submit the response letter. If non-responsive, submit documented proof that at least 2 attempts were made to request consultation. ALL consultation notices **must be on Grantee letterhead**.
- Yes ___ No ___ NA ___ - State Historic Preservation Office (SHPO) Notice (**Exhibit 2-J**) requesting clearance re: 36 CFR Part 800 regulations; must include pictures and map (flood plain maps, if applicable) sent to SHPO
- Yes ___ No ___ NA ___ - Letter from SHPO granting clearance
- Yes ___ No ___ NA ___ - Cultural resource survey, if required by SHPO
- Yes ___ No ___ NA ___ - Letters from any other interested agencies, groups, etc. (not included in Exhibits 2-E and Native American Tribes) regarding environmental impact of the project, if applicable
- Yes ___ No ___ NA ___ - Agency response letter certification (**Exhibit 2-I-1**) for all non-responsive Agency/Native American contacts
- Yes ___ No ___ NA ___ - Letter for floodplain determination (**Exhibit 2-F**)

If determined to be in a floodplain:

- Yes ___ No ___ NA ___ - Floodplain and wetlands early public review notice (**Exhibit 2-G**) 15 day comment period required prior to publishing notice of explanation; must have copy of actual notice and affidavit of publication/tear sheet). Agency Consultation list (**Exhibit 2-E**) and applicable Native American Consultation (<https://egis.hud.gov/tdat/Query.aspx?state=New Mexico>) must be notified with proof of distribution.
- Yes ___ No ___ NA ___ - Floodplain and Wetlands Notice of Explanation (**Exhibit 2-H**); 7 day comment period required prior to proceeding with or publishing any other notice such as Notice of Intent to Request Release of Funds; must have copy of actual notice and affidavit of publication/tear sheet. Agency Consultation List (**Exhibit 2-E**) and applicable Native American Consultation (<https://egis.hud.gov/tdat/Query.aspx?state=New Mexico>) must be notified with proof of distribution.
- Yes ___ No ___ NA ___ - Insurance Coverage (**Exhibit 2-F-1**)

- Yes ___ No ___ NA ___ - Laws and Authorities Checklist for all Projects (**Exhibit 2-N**). Indicate each determination made and provide source notes based on the consultation received. See page 3 of Exhibit 2-N for additional guidance.
- Yes ___ No ___ NA ___ - Compliance Documentation Checklist (**Exhibit 2-B-2**)
- Yes ___ No ___ NA ___ - Finding of Categorical Exclusion (**Exhibit 2-C**)
- Yes ___ No ___ NA ___ - Certification of Categorical Exclusion Subject to 24 CFR Part 58.5 (**Exhibit 2-C-1**)
- Yes ___ No ___ NA ___ - Transmittal Letter for Categorical Exclusion (**Exhibit 2-D**)
- Yes ___ No ___ NA ___ - Notice of Intent to Request Release of Funds (**Exhibit 2-K**); 7 day comment period required; must have copy of actual notice and affidavit of publication/tear sheet
- Yes ___ No ___ NA ___ - Evidence of Posting Notices, if not published (**Exhibit 2-M**); 10 day comment period required.
- Yes ___ No ___ NA ___ - Request for Release of Funds - (**Exhibit 2-L**)
- Yes ___ No ___ NA ___ - Authority to Use Grant Funds- (**Exhibit 2-Q**), issued by LGD after State's public comment period (15 days)

FULL ENVIRONMENTAL ASSESSMENT (EA)

- Yes ___ No ___ NA ___ - Transmittal Letter for Environmental Assessment (**Exhibit 2-R**)
- Yes ___ No ___ NA ___ - Environmental Assessment Determination (**Exhibit 2-A**)
- Yes ___ No ___ NA ___ - Certifying Official Designation (**Exhibit 2-A-1**)
- Yes ___ No ___ NA ___ - Agency Consultation Notices (**Exhibit 2-I**) sent to Agency Contact Distribution List (**Exhibit 2-E**) and applicable Native American Contact Distribution List (<https://egis.hud.gov/tdat/Query.aspx?state=New Mexico>). If the Agency/Native American entity was responsive, submit the response letter. If non-responsive, submit documented proof that at least 2 attempts were made to request consultation. ALL consultation notices **must be on Grantee letterhead**.
- Yes ___ No ___ NA ___ - State Historic Preservation Office (SHPO) Notice (**Exhibit 2-J**) requesting clearance re: 36 CFR Part 800 regulations; must include pictures and map (flood plain maps, if applicable) sent to SHPO
- Yes ___ No ___ NA ___ - Letter from SHPO granting clearance
- Yes ___ No ___ NA ___ - Cultural resource survey, if required by SHPO
- Yes ___ No ___ NA ___ - Letters from any other interested agencies, groups, etc. (not included in Exhibits 2-E and applicable Native American Tribes) regarding environmental impact of the project, if applicable
- Yes ___ No ___ NA ___ - Agency Response Letter Certification (**Exhibit 2-I-1**) for all Non-Responsive Agency/Native American Contacts
- Yes ___ No ___ NA ___ - Letter for Floodplain Determination (**Exhibit 2-F**)

If determined to be in a Flood Plain:

- Yes ___ No ___ NA ___ - Floodplain and Wetlands Early Public Review Notice (**Exhibit 2-G**) 15 day comment period required prior to publishing notice of explanation; must have copy of actual notice and affidavit of publication/tear sheet). Agency Consultation List (**Exhibit 2-E**) and applicable Native American Consultation List (<https://egis.hud.gov/tdat/Query.aspx?state=New Mexico>) must be notified with proof of distribution.
- Yes ___ No ___ NA ___ - Floodplain and Wetlands Notice of Explanation (**Exhibit 2-H**); 7 day comment period required prior to proceeding with or publishing any other notice such as Notice of Intent to Request Release of Funds; must have copy of actual notice and affidavit of publication/tear sheet. Agency Consultation List (**Exhibit 2-E**) and applicable Native American Consultation List (<https://egis.hud.gov/tdat/Query.aspx?state=New Mexico>) must be notified with proof of distribution.
- Yes ___ No ___ NA ___ - Insurance Coverage (**Exhibit 2-F-1**)

- Yes ___ No ___ NA ___ - Laws and Authorities Checklist for all Projects (**Exhibit 2-N**). Indicate each determination made and provide source notes based on the consultation received. See page 3 of Exhibit 2-N for additional guidance.
- Yes ___ No ___ NA ___ - Environmental Assessment Impact Checklist (**Exhibit 2-O**). Indicate each determination made and provide source notes based on the consultation received. See page 5 of Exhibit 2-O for additional guidance.
- Yes ___ No ___ NA ___ - Compliance Documentation Checklist (**Exhibit 2-B-2**)
- Yes ___ No ___ NA ___ - Notice of Finding of No Significant Impact & Notice of Intent to Request Release of Funds (**Exhibit 2-P**)
- Yes ___ No ___ NA ___ - Evidence of Posting Notices, if not published (**Exhibit 2-M**)
- Yes ___ No ___ NA ___ - Request for Release of Funds - (**Exhibit 2-L**)
- Yes ___ No ___ NA ___ - Authority to Use Grant Funds- (**Exhibit 2-Q**), issued by LGD after State's public comment period (15 days)

FEDERAL REQUIREMENTS

Plan must be adopted by resolution throughout the life of the grant. The adopted resolution will expire after 1 year and need to be readopted (ex. if the plan was adopted by resolution on 7/1/2098, it needs to be readopted by 7/1/2099 to remain in compliance). The Federal Requirements Plan **(Exhibit 1-Z)** must be completed and adopted by resolution using the Annual CDBG Resolutions **(Exhibit 1-Y)**. At the anniversary, the Grantee may readopt the same Plan using **Exhibit 1-Y**.

ANNUAL REQUIREMENTS

Year 1

Yes ___ No ___ NA ___ - Federal Requirements Plan: **(Exhibit 1-Z)** Date: _____
✓ Citizen Participation, Fair Housing, Residential Anti-Displacement & Relocation and Section 3

Yes ___ No ___ NA ___ - Resolution to adopt federal requirements plan **(Exhibit 1-Y)**
- Year 1 resolution date _____; expiration date _____
Yes ___ No ___ NA ___ - Grantee Section 3 Plan Chart **(Exhibit 1-Y)**
Yes ___ No ___ NA ___ - Meeting minutes

Year 2

Yes ___ No ___ NA ___ - Resolution to adopt federal requirements plan **(Exhibit 1-Y)**
- Year 2 resolution date _____; expiration date _____
Yes ___ No ___ NA ___ - Updated Grantee Section 3 Plan Chart **(Exhibit 1-Y)**
Yes ___ No ___ NA ___ - Meeting minutes

ADDITIONAL REQUIREMENTS

Yes ___ No ___ NA ___ - Fair Housing Self-Assessment **(Exhibit 1-O-2)**
Yes ___ No ___ NA ___ - Evidence of activity to further fair housing, one per project.
Yes ___ No ___ NA ___ - Grantee Work Force Analysis or EEO-4 form **(Exhibit 1-S)**
[] Year 1 submission date _____; expiration date _____
[] Year 2 submission date _____; expiration date _____

Other documents, comments and/or concern(s)/recommendation(s), finding(s)/corrective action(s) cited:

CONSTRUCTION

PROCUREMENT PHASE

- Yes ___ No ___ - Approval of Plans/specs & Bid Documents by authoritative agencies
Yes ___ No ___ - Approval by DFA/LGD of Plans/specs & Bid Documents
Yes ___ No ___ - Affidavit of publication and/or tear sheet of the invitation/notice for bids
Yes ___ No ___ NA ___ - Solicitation list and copy of the transmittal letters of those contractors whom
may be solicited for bids
Yes ___ No ___ - NMDWS Wage Rate Decision # _____
Yes ___ No ___ - Initial Request Federal Wage Rates **(Exhibit 4-C)**; Decision # _____
Yes ___ No ___ - Minutes of pre-bid conference
Yes ___ No ___ - 10 (ten) day call Federal Wage Rates **(Exhibit 4-C)**; Decision # _____
Yes ___ No ___ - Copy of the bid opening minutes. **(Exhibit 4-E)**
Yes ___ No ___ - Certified copy of the bid tabulation sheet(s)
Yes ___ No ___ - Copy of the letter of recommendation from the engineer/architect of record
Yes ___ No ___ - Contractor/Subcontractor Clearance Form **(Exhibit 1-X)**

NOTE: Contractor/Subcontractor Clearance Form must be completed for each individual contractor working on the job

- [] Contractor Name _____
[] Sub-Contractor Name _____ (if applicable)
[] Sub-Contractor Name _____ (if applicable)
[] Sub-Contractor Name _____ (if applicable)
[] Sub-Contractor Name _____ (if applicable)

(MUST HAVE DFA/LGD APPROVAL OF PROCUREMENT PRIOR TO PRE-CON)

- Yes ___ No ___ - DFA/LGD verifies that bid amount consistent with construction budget line item
Yes ___ No ___ - DFA/LGD written approval of procurement procedure (email or letter)

PRE-CONSTRUCTION CONFERENCE

- Yes ___ No ___ - Copy of the minutes of the Council meeting when the award is made
Yes ___ No ___ - Copy of the notice of award/preconstruction conference. **(Exhibit 4-G)**
Yes ___ No ___ - Contract execution between **"Owner" and "Contractor"** to include: contract/bid documents with required bonds (Labor and Material Payment Bond with associated power of attorney and Performance Bond with associated power of attorney), certifications, any related addenda, change orders, etc. **(Exhibit 4-A)**
Yes ___ No ___ - Grantee's Economic Opportunity for Low and Very Low Income Persons in connection with assisted projects HUD 60002 **(Exhibit 1-U)**
Yes ___ No ___ NA ___ - Section 3 contractor certification form **(Exhibit 1-V)**, if applicable
Yes ___ No ___ - Contractor and Subcontractor Activity Report **(Exhibit 1-E)**
Yes ___ No ___ NA ___ - Copies of the written notification to all other unsuccessful bidders, if any

DFA/LGD CONCURRENCE

- Yes ___ No ___ - **Funding Agency (DFA/LGD)** concurrence of construction contract to include: contract/bid documents with required bonds (Labor and Material Payment Bond with associated power of attorney and Performance Bond with associated power of attorney), certifications, any related addenda, change orders, etc. **(Exhibit 4-A)**
Yes ___ No ___ NA ___ - Copy of the notice to proceed **(Exhibit 4-M)**
Yes ___ No ___ NA ___ - Minutes of the pre-construction conference **(Exhibit 4-L)**
Yes ___ No ___ NA ___ - Designation of a Labor Standards Compliance Officer **(Exhibit 4-N)**
Yes ___ No ___ NA ___ - Approval of Plans/specs & Bid Documents by CID (public facility projects only)

LABOR STANDARDS

DO NOT BREAK GROUND WITHOUT DFA/LGD CONCURRENCE OF CONSTRUCTION CONTRACT, FAILURE TO DO SO WILL RESULT IN A FINDING AND COULD RESULT IN A REVERSION OF FUNDS)

CONSTRUCTION-SITE SIGNAGE REQUIREMENTS

- Yes ___ No ___ NA ___ - New Mexico CDBG sign with Community Development Council Members
Yes ___ No ___ NA ___ - Copy of state wage decision(s)
Yes ___ No ___ NA ___ - Copy of federal wage decision(s)
Yes ___ No ___ NA ___ - Notice to all employees **(Exhibit 4-H)**
Yes ___ No ___ NA ___ - Employee Rights notice **(Exhibit 4-H-1)**
Yes ___ No ___ NA ___ - Right to a Healthful Workplace **(Exhibit 4-I)**
Yes ___ No ___ NA ___ - Right to a Healthful Workplace *Spanish* **(Exhibit 4-I-1)**
Yes ___ No ___ NA ___ - Equal Opportunity is the Law **(Exhibit 4-J)**
Yes ___ No ___ NA ___ - Equal Opportunity is the Law **(Exhibit 4-J)** *Spanish*
Yes ___ No ___ NA ___ - Questions concerning EEO **(Exhibit 4-K)**

PAYROLL

- Yes ___ No ___ NA ___ - Weekly payrolls and statement of compliance **(Exhibits 4-P)**
Yes ___ No ___ NA ___ - Weekly payroll review worksheet **(Exhibit 4-U)**
Federal Wage Decision # _____, which was in effect
State Wage Decision # _____ which was in effect
Total # of weekly payrolls # _____ thru # _____

INTERVIEWS

- Yes ___ No ___ - Monthly employee interviews **(Exhibit 4-O)**
Yes ___ No ___ - Employee interviews occurred each month during construction
Month construction started _____ thru completion _____
Yes ___ No ___ - Employee interviews were conducted for approximately 10% of each job classification on site
Yes ___ No ___ NA ___ - Evidence that contractor is complying with Apprenticeship & Training Act, if applicable
Yes ___ No ___ NA ___ - Section 3 new hire certification form **(Exhibit 1-W)**, if applicable

WAGE / OVERTIME VIOLOATIONS

- Yes ___ No ___ NA ___ - Overtime Violation Report **(Exhibit 4-Q)**
Yes ___ No ___ NA ___ - Final Wage Compliance Report **(Exhibit 4-R)**
Yes ___ No ___ NA ___ - Employee Restitution Receipt **(Exhibit 4-R-1)**
Yes ___ No ___ NA ___ - Federal and State Wage Violation Tracking Sheet **(Exhibit 4-R-2)**
Yes ___ No ___ NA ___ - Correspondence pertaining to any violations and wage restitutions

Other documents, comments and/or concern(s)/recommendation(s), finding(s)/corrective action(s) cited:

CLOSEOUT DOCUMENTS

CLOSEOUT PUBLIC MEETING

- Yes ___ No ___ NA ___ - Closeout Public meeting notice
Yes ___ No ___ NA ___ - Public meeting notice published/posted at least 10 days prior to the date of the meeting
Date(s) notice was published and/or posted: _____
Yes ___ No ___ NA ___ - Closeout Public meeting minutes
Date(s) public meeting was held: _____
Yes ___ No ___ NA ___ - Public meeting agenda with required elements **(Exhibit 1-Q-1)**
Yes ___ No ___ NA ___ - Sign-in sheet(s)

FINAL CLOSEOUT

- Yes ___ No ___ NA ___ - Architect or Engineer's letter of final acceptance or certificate of substantial completion
Yes ___ No ___ NA ___ - A copy of record (as-builts) drawings
Yes ___ No ___ NA ___ - Architect & Engineer Certification Compliance (ADA) **(Exhibit 4-D)**
Yes ___ No ___ NA ___ - Construction Contractor Checklist **(Exhibit 4-T)**
Yes ___ No ___ NA ___ - Final inspection report
Yes ___ No ___ NA ___ - Final HUD Recipient Disclosure Report **(Exhibit 1-F) must be updated**
Yes ___ No ___ NA ___ - Grantee's statement of acceptance (signed by Chief Elected Official)
Yes ___ No ___ NA ___ - Contractors affidavit of compliance and all lien releases
Yes ___ No ___ NA ___ - Contractor's letter stating no subcontractors were employed, if applicable
Yes ___ No ___ NA ___ - Written Consent of Surety, if any, to final payment
Yes ___ No ___ NA ___ - Permanent Certificate of Occupancy issued by Construction Industries Division, if applicable
Yes ___ No ___ NA ___ - Design Professional and Contractor final billings, final drawdown request to make final payment to design professional and contractor
Yes ___ No ___ NA ___ - Final change order with tabulation of over runs and under runs
Yes ___ No ___ NA ___ - Final Progress Report **(Exhibit 1-D-1)**
Yes ___ No ___ NA ___ - Final Request for Payment/Financial Status Report **(Exhibit 1-M)**

Other documents, comments and/or concern(s)/recommendation(s), finding(s)/corrective action(s) cited:
