

**VILLAGE OF RUIDOSO
NOTICE OF SPECIAL MEETING**

Notice is hereby given that Lynn D. Crawford, Mayor of the Village of Ruidoso, has called a Special Meeting of the Governing Body of the Village of Ruidoso for Wednesday, September 18, 2024 at 8:00 AM. The Special Meeting will be held at 313 Cree Meadows Rd., Ruidoso, NM 88345. The purpose of the Special Meeting is as follows:

CALL TO ORDER.

MOMENT OF SILENCE AND PLEDGE OF ALLEGIANCE/SALUTE TO THE STATE FLAG.

Salute to the State Flag: "I Salute the Flag of the State of New Mexico, the Zia Symbol of Perfect Friendship Among United Cultures."

ROLL CALL.

AGENDA ITEMS.

1. Discussion and Possible Action on Notice of Intent to Commit Funding of \$72,615.87 to Zia Therapy Center for Public Transportation for Fiscal Year 2025-2026.
2. Discussion and Possible Action on Award of ITB#2024-011B, Sierra Blanca Regional Airport Pavement Maintenance of Parallel Taxiway A, Connector Taxiway A1 and Apron, to American Road Maintenance, Inc. in the Amount of \$404,676.70 Including NMGRT.
3. Discussion and Possible Action on Contract to American Road Maintenance, Inc. for Sierra Blanca Regional Airport Pavement Maintenance of Parallel Taxiway A, Connector Taxiway A1 and Apron, Awarded via ITB #2024-011B in the Amount of \$404,676.70 Including NMGRT.
4. Discussion and Possible Action on Task Order RFP #2024-004P-01-Amendment 1 with Cobb, Fendley & Associates, Inc. to Include Three Additional Watersheds to be Modeled within the Watershed Based Plan for an Increased Cost of \$39,435.97 including NMGRT and a Total Project Cost of \$236,874.91 including NMGRT.
5. Discussion and Possible Action on Adoption of Resolution 2024-41, a Resolution Authorizing the Participation in the Transportation Project Fund Program Administered by the New Mexico Department of Transportation for Fiscal Year 2025, in the Amount of \$2,000,000.00.
6. Discussion and Possible Action on Village of Ruidoso Code of Ordinances Chapter 86, Section 31-K, Adjustments to Water Charges.

I certify that notice has been given in compliance with Sections 10-15-1 through 10-15-4 NMSA 1978 and 2024-01. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the Village Clerk at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the Village Clerk if a summary or other type of accessible format is

needed.

Jini S. Turri, MMC, Village Clerk

ADJOURN.

AGENDA MEMORANDUM

Village of Ruidoso

Agenda Item - 1.

To: Mayor Crawford and Councilors

Presenter(s): Anthony Montes, Community Center Manager

Meeting Date: September 18, 2024

Re: Discussion and Possible Action on Notice of Intent to Commit Funding of \$72,615.87 to Zia Therapy Center for Public Transportation for Fiscal Year 2025-2026.

Item Summary:

Discussion and Possible Action on Notice of Intent to Commit Funding of \$72,615.87 to Zia Therapy Center for Public Transportation for Fiscal Year 2025-2026.

Financial Impact:

Upon approval, the amount will be earmarked in the FY 2026 budget of Lodger's Tax in the contract line item 214-166-52000 in the amount of \$72,615.87

Item Discussion:

Notice of Intent to Commit Funding of \$72,615.87 to Zia Therapy Center for Public Transportation for Fiscal Year 2025-2026.

Recommendations:

To Approve Notice of Intent to Commit Funding of \$72,615.87 to Zia Therapy Center for Public Transportation for Fiscal Year 2025-2026.

ATTACHMENTS:

Description

Funding Commitment Request



DATE: September 4, 2024

TO: Village of Ruidoso

FROM: Margaret S (Peggy) O'Neill MD
Zia Therapy Center, Inc. (Ztrans)

RE: Village of Ruidoso Letter of Financial Commitment for FY 25-26

Zia Therapy Center is requesting a letter of financial commitment from the Village of Ruidoso for the year beginning October 1, 2025 – September 30, 2026 in the amount of \$72,615.87. We ask that this letter be submitted to us on the Village's letterhead as has been in the previous years.

This request is required from NMDOT. This is not an obligation on behalf of the Village of Ruidoso, but your intent to provide funding for transportation services.

In addition to this request, we are sending information on New Mexico match grant funding. This aids municipalities with local match funding specifically for transportation services.

AGENDA MEMORANDUM

Village of Ruidoso

Agenda Item - 2.

To: Mayor Crawford and Councilors

Presenter(s): Lee Baker, Sierra Blanca Regional Airport Manager

Meeting Date: September 18, 2024

Re: Discussion and Possible Action on Award of ITB#2024-011B, Sierra Blanca Regional Airport Pavement Maintenance of Parallel Taxiway A, Connector Taxiway A1 and Apron, to American Road Maintenance, Inc. in the Amount of \$404,676.70 Including NMGRT.

Item Summary:

Discussion and Possible Action on Award of ITB#2024-011B, Sierra Blanca Regional Airport Pavement Maintenance of Parallel Taxiway A, Connector Taxiway A1 and Apron, to American Road Maintenance, Inc. in the Amount of \$404,676.70 Including NMGRT.

Financial Impact:

The award will be paid of grant funds received for the project. The grant and corresponding matches will be budgeted in the Airport Enterprise Fund's Capital Outlay - Projects line item (503-170-53006).

Item Discussion:

Armstrong Consultants were hired to develop the bid specifications and plans for this procurement

Legal Ads were placed in two (2) newspapers. Ruidoso News on 4/5/24 and 4/12/24 and the Albuquerque Journal on 4/7/24.

Four (4) contractors drew down on the ITB from Armstrong Consultants Inc., a Lochner Company website.

Re-Bid Conference and site visit was held on 4/16/24 at 1:00 p.m. No contractors attended.

One (1) addendum was issued for clarifications.

Bid submission deadline was 4/24/24 at 3:00 p.m.

Two (2) potential bidders submitted the Acknowledgement of Receipt forms, indicating their intent to submit a bid, they were American Road Maintenance, Inc., and Maxwell Asphalt.

American Road Maintenance Inc., bid submittal was responsive and was the lowest bidder.

Recommendations:

To Approve Award of ITB#2024-011B, Sierra Blanca Regional Airport Pavement Maintenance of Parallel Taxiway A, Connector Taxiway A1 and Apron, to American Road Maintenance, Inc. in the Amount of \$404,676.70 Including NMGRT.

ATTACHMENTS:

Description

Bid Report

Bid Summary

Award Recommendation

BID REPORT	
Invitation To Bid Title	SBRA Pavement Maintenance, Parallel Taxiway A, Connector Taxiway A1, Apron (Crack Seal and Seal Coat)
ITB Number	2024-011B
Date of Report	05/14/2024
Budgeted Line Item	
Budgeted Amount	
Author	Christy Coker, Purchasing Agent
Phone – Email	575-258-4343 Ext. 1081 purchasing@ruidoso-nm.gov

The purpose of this report is to concisely summarize the activity and recommendations of the BID process. The Bid Report will be:

- written by the purchasing lead or designee,
- approved by the requesting department,
- signed by the requesting department,
- And become part of the procurement file.

Section 1. ITB SCOPE OF SERVICES

The purpose of the Invitation to Bid (ITB) is to solicit competitive sealed bids for the procurement of SBRA Pavement Maintenance Parallel Taxiway A, Connector Taxiway A1, Apron (Crack seal and seal coat) for the Village of Ruidoso.

The Village is conducting a single-award ITB. It is anticipated that the award under this ITB will result in a contract that will be for the term of the project.

A full description of the scope of work is located in Technical Specifications of the ITB.

Section 2. SUMMARY OF BID DEVELOPMENT PROCESS

Armstrong Consultants were hired to develop the bid specifications and plans for this procurement.

Legal Ads were placed in two (2) newspapers: Ruidoso News on 4/5/24 and 4/12/24, and the Albuquerque Journal on 4/7/24.

Four (4) contractors drew down on the ITB from Armstrong Consultants, Inc A Lochner Company website.

Pre-Bid conference and site visit was held on 04/16/24 at 1:00 pm. No contractors attended.

One (1) addendum was issued for Clarifications.

Bid Submission Deadline was 4/24/24 at 3:00 pm.

Section 3. SUMMARY OF BID OPENING:

Two (2) potential bidders submitted the Acknowledgement of Receipt forms indicating their intent to submit a bid: American Road Maintenance, Inc and Maxwell Asphalt

American Road Maintenance, Inc bid submittal was responsive and was the lowest bidder for SBRA Pavement Maintenance, Parallel Taxiway A, Connector Taxiway A1, Apron (Crack Seal and Seal Coat).

Section 6. SUMMARY OF AWARD RECOMMENDATION

American Road Maintenance, Inc submittal was very well prepared and met all requirements of this procurement. Recommend the award of ITB 2024-011B for SBRA Pavement Maintenance, Parallel Taxiway A, Connector Taxiway A1, Apron (Crack Seal and Seal Coat) to American Road Maintenance, LLC.



BID TABULATION

Sierra Blanca Regional Airport
 Ruidoso, NM
 Pavement Maintenance
 AIP No. 3-35-0052-032-2024
 ACI No. 22748
 Bid Opening: April 24, 2024 at 3:00 p.m.

Item No.	Spec No.	Description	Qty	Unit	Engineer's Estimate		American Road Maintenance		Maxwell Asphalt	
					Unit Price	Amount	Unit Price	Amount	Unit Price	Amount
Schedule I - Parallel Taxiway A, Connector Taxiway A1 (Crack Seal and Seal Coat)										
1	C-105	Mobilization	1	LS	\$ 40,000.00	\$ 40,000.00	\$ 25,000.00	\$ 25,000.00	\$ 40,000.00	\$ 40,000.00
2	S-6	Watering	Incidental	Incidental	Incidental	Incidental	Incidental	Incidental	Incidental	Incidental
3	S-601	Crack Sealing	15,000	LBS	2.50	\$ 37,500.00	1.50	\$ 22,500.00	3.40	\$ 51,000.00
4	P-608	Emulsified Asphalt Seal Coat	84,600	SY	1.75	\$ 148,050.00	1.75	\$ 148,050.00	1.78	\$ 150,588.00
5	P-620a	Pavement Markings (Yellow, White, Black, Red)	32106	SF	1.50	\$ 48,159.00	1.00	\$ 32,106.00	2.25	\$ 72,238.50
6	P-620b	Temporary Markings (White Only)	491	SF	1.50	\$ 736.50	1.00	\$ 491.00	1.65	\$ 810.15
7	P-620c	Reflective Media - Type III, Gradation A (Yellow, White)	1,162	LB	5.00	\$ 5,810.00	7.00	\$ 8,134.00	5.00	\$ 5,810.00
8	P-620d	Reflective Media - Type I, Gradation A	87	LB	1.50	\$ 130.50	1.00	\$ 87.00	2.50	\$ 217.50
9	P-620e	Surface Preparation	Incidental	Incidental	Incidental	Incidental	Incidental	Incidental	Incidental	Incidental
10	P-620f	Marking Removals	86,408	SF	1.50	\$ 129,612.00	0.75	\$ 64,806.00	1.15	\$ 99,369.20
TOTAL SCHEDULE I						\$ 409,998.00		\$ 301,174.00		\$ 420,033.35

Item No.	Spec No.	Description	Qty	Unit	Engineer's Estimate		American Road Maintenance		Maxwell Asphalt	
					Unit Price	Amount	Unit Price	Amount	Unit Price	Amount
Schedule II - Apron (Crack Seal and Seal Coat)										
1	C-105	Mobilization	1	LS	\$ 10,000.00	\$ 10,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00
2	S-6	Watering	Incidental	Incidental	Incidental	Incidental	Incidental	Incidental	Incidental	Incidental
3	S-601	Crack Sealing	5,000	LBS	2.50	\$ 12,500.00	1.50	\$ 7,500.00	3.40	\$ 17,000.00
4	P-608	Emulsified Asphalt Seal Coat	30,455	SY	1.75	\$ 53,296.25	1.75	\$ 53,296.25	1.78	\$ 54,209.90
5	P-620e	Surface Preparation	Incidental	Incidental	Incidental	Incidental	Incidental	Incidental	Incidental	Incidental
6	P-620f	Marking Removals	3,293	SF	1.50	\$ 4,939.50	1.00	\$ 3,293.00	1.15	\$ 3,786.95
7	P-620g	Apron Pavement Markings (Yellow, Black)	3,151	SF	1.50	\$ 4,726.50	1.00	\$ 3,151.00	2.25	\$ 7,089.75
8	P-620h	Reflective Media - Type III, Gradation A	91	LB	5.00	\$ 455.00	7.00	\$ 637.00	2.50	\$ 227.50
TOTAL SCHEDULE II						\$ 85,917.25		\$ 72,877.25		\$ 87,314.10
BID TOTAL - SCHEDULES I - II						\$ 495,915.25		\$ 374,051.25		\$ 507,347.45



ARMSTRONG

A LOCHNER COMPANY

BID EVALUATION SUMMARY
 Sierra Blanca Regional Airport
 Ruidoso, NM
 Pavement Maintenance
 AIP No. 3-35-0052-032-2024
 ACI No. 22748

Bid Opening: April 24, 2024 at 3:00 p.m.

	American Road Maintenance	Maxwell Asphalt	
Bid Signed?	Yes	Yes	
Bid bond provided?	Yes	Yes	
Addenda No. 1, 2, and 3 acknowledged?	Yes	Yes	
Contractor's License No.	384453 - Active	375180	
NM Dept of Workforce Solutions Registration No. https://www.dws.state.nm.us/pwaa/LRDEmployer/Corp/Lorin.ASPX			
FEIN#			
Verification of Contractor's License and Classifications per NM Construction Industries http://public.psexams.com	GF01	GF-1	
Subcontractor listed in Bid - Verification of Contractor's License (Bold names are registered through NM Regulation and Licensing Department)	J.R. Striping, Inc.	Surface Prep	
Are subcontractors registered with the NM Dept of Workforce Solutions?	J.R. Striping, Inc.	Surface Prep	
Verification of Bid Bond https://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/c570_a-2.htm	Travelers Casualty and Surety Company of America	United State Fire Insurance Company	
Campaign Contribution Disclosure Form	Yes	Yes	
Base Bid Amount excluding NMGRIT	\$ 374,051.25	\$ 507,347.45	
Bid Amount Correct?	Yes	Yes	
DBE Goal Obtained? If not, Good Faith Effort Provided?	Yes	Yes	



September 11, 2024

Mayor Lynn Crawford
 Village of Ruidoso
 313 Cree Meadows Drive
 Ruidoso, NM 88345

RE: Award Recommendation Letter ACI No. 22748
Schedule I – Parallel Taxiway A, Connector Taxiway A1 (Crack Seal and Seal Coat)
Schedule II – Apron (Crack Seal and Seal Coat)
Sierra Blanca Regional Airport – Ruidoso, NM
AIP No. 3-35-0052-032-2024

Dear Mayor:

Bids were received for the above referenced project on April 24, 2024. Two (2) bids were received and are shown in the attached bid tabulation.

The bids were reviewed for math errors, bid bonds, and other items of responsiveness. All two (2) bid(s) appear to be responsive. A general review of each bid is summarized below:

CONTRACTOR	5% Bid Bond Included	Req'd Proposal Sheets Included	Addenda Ack'd	Listed on Federal Disbarred Contractors List ¹	Proper Contractor Licensing ²
American Road Maintenance	Yes	Yes	Yes	No	Yes
Maxwell Asphalt	Yes	Yes	Yes	No	Yes

¹ Based on information from the Federal System for Award Management website, accessed on September 11, 2024.
² Based on information from the New Mexico Regulation and Licensing Department website, accessed on September 11, 2024.

A DBE goal of 7.22% was established for this project. American Road Maintenance has committed to a DBE utilization of 7.22% through subcontracting with J.R. Striping for crack sealing.

A great deal of effort was put forth to attract bidders to this project. A total of four (4) potential bidders were sent the Invitation for Bids, and a total of six (6) sets of plans and specifications were purchased by potential bidders, plan rooms, and suppliers. The advertisement for bids for the project was published for three (3) consecutive weeks prior to the bid opening. A pre-bid conference was held onsite to answer questions and show the project to potential bidders.

Based on conversations with FAA ADO staff, it is believed that sufficient funds are available for the budget listed below. A grant application is enclosed with this letter and should be signed and forwarded to the FAA as soon as possible.

Our recommendation is to award Schedule I and Schedule II to American Road Maintenance for a total contract amount of \$404,676.70 (Incl. NMGRT) upon receiving concurrence from the FAA Program Manager.

The following budget needs to be developed for AIP No. 3-35-0052-032-2024 consisting of:

Schedule I: Parallel Taxiway A, Connector Taxiway A1 (Crack Seal and Seal Coat)
 Schedule II: Apron (Crack Seal and Seal Coat)

DESCRIPTION	AMOUNT
Construction	
Schedule I (including NMGRT)	\$325,832.62
Schedule II (including NMGRT)	\$78,844.08
Construction Total	\$404,676.70
Engineering	
Design Engineering (including NMGRT)	\$30,833.44
Construction Engineering (including NMGRT)	\$50,739.94
Engineering Total	\$81,573.38
Administration	
Admin Expenses	\$5,000.00
Administration Total	\$5,000.00
Total Project Cost	\$491,250.08
Budget Summary	
FAA Share 90.00%	\$442,125.00
State Share 9.00%	\$44,212.51
Local Share 1.00%	\$4,912.57

We will send the Notice of Award for signature once approval is received from the FAA Program Manager and a FAA Grant Agreement is executed.

If you have any questions regarding this matter, please contact our office. We look forward to getting this project completed.

Sincerely,

ARMSTRONG CONSULTANTS, INC.



Amy Martinez
 Airport Design Engineer

Enclosures: Bid Tabulation

NOTICE OF AWARD

**FOR IMPROVEMENTS TO
SIERRA BLANCA REGIONAL AIRPORT
PARALLEL TAXIWAY A, CONNECTOR TAXIWAY A1, AND APRON (CRACK SEAL AND SEAL COAT)
RUIDOSO, NEW MEXICO**

**AIP NO. 3-35-0052-032-2024
NMDOT NO. SRR-24-02
ITB NO. 2024-011B**

TO: American Road Maintenance, Inc.
4554 E Eco Industrial Place
Tucson, AZ 85756

The OWNER has considered the Bid submitted by you for the above-described Work in response to its Invitation for Bids and Instructions to Bidders.

You are hereby notified that your Bid for Schedule I and Schedule II has been accepted in the amount of Four Hundred Four Thousand, Six Hundred Seventy-Six and 70/100 Dollars (\$404,676.70). The Bid amount includes NMGR.

You are required by the Instructions to Bidders to execute the Agreement and furnish the required Contractor's Performance and Payment Bonds and Proofs of Insurance within fifteen (15) calendar days from the date of this Notice to you.

If you fail to execute said Agreement and to furnish said Bonds and Proofs of Insurance within fifteen (15) days from the date of this Notice, said Owner will be entitled to consider your Bid abandoned, to annul this Notice of Award and to declare your Bid Security forfeited.

You are required to return an acknowledged copy of this NOTICE OF AWARD to the Owner.

Dated this _____ day of _____, 2024.

VILLAGE OF RUIDOSO
(OWNER)

By _____, Mayor
313 Cree Meadows Drive
Ruidoso, New Mexico 88345
(575) 258-4343

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE OF AWARD is hereby acknowledged by:

American Road Maintenance, Inc., Contractor

By: _____ Date: _____

Title: _____ Telephone: _____

AGENDA MEMORANDUM

Village of Ruidoso

Agenda Item - 3.

To: Mayor Crawford and Councilors

Presenter(s): Lee Baker, Sierra Blanca Regional Airport Manager

Meeting Date: September 18, 2024

Re: Discussion and Possible Action on Contract to American Road Maintenance, Inc. for Sierra Blanca Regional Airport Pavement Maintenance of Parallel Taxiway A, Connector Taxiway A1 and Apron, Awarded via ITB #2024-011B in the Amount of \$404,676.70 Including NMGRT.

Item Summary:

Discussion and Possible Action on Contract to American Road Maintenance, Inc. for Sierra Blanca Regional Airport Pavement Maintenance of Parallel Taxiway A, Connector Taxiway A1 and Apron, Awarded via ITB #2024-011B in the Amount of \$404,676.70 Including NMGRT.

Financial Impact:

The award will be paid of grant funds received for the project. The grant and corresponding matches will be budgeted in the Airport Enterprise Fund's Capital Outlay - Projects line item (503-170-53006).

Item Discussion:

Contract to American Road Maintenance, Inc. for Sierra Blanca Regional Airport Pavement Maintenance of Parallel Taxiway A, Connector Taxiway A1 and Apron, Awarded via ITB #2024-011B in the Amount of \$404,676.70 Including NMGRT.

Recommendations:

To Approve Contract to American Road Maintenance, Inc. for Sierra Blanca Regional Airport Pavement Maintenance of Parallel Taxiway A, Connector Taxiway A1 and Apron, Awarded via ITB #2024-011B in the Amount of \$404,676.70 Including NMGRT.

ATTACHMENTS:

Description
Contract

AGREEMENT

This Agreement is made and entered into this ____ day of _____, 2024 by and between the Village of Ruidoso, (hereinafter "Sponsor"), a body corporate and politic and constituting a political subdivision of the State of New Mexico, and American Road Maintenance (hereinafter "Contractor").

WITNESSETH

WHEREAS, Sponsor received sealed proposals for the provision and furnishing of any and all labor, tools, supplies, equipment, and/or materials necessary and required for the Rehabilitation of Parallel Taxiway A, Connector Taxiway A1, and Apron (Crack Seal and Seal Coat), and which more fully defined and identified in AIP No. 3-35-0052-032-2024, or ACI No. 22748 (hereinafter "Project"); and

WHEREAS, Contractor submitted a sealed proposal to Sponsor for the Project; and

WHEREAS, the Project has been awarded to Contractor; and

WHEREAS, Contractor is willing and able to perform all of the work that is necessary and required to complete the Project; and

THEREFORE, for and in consideration of the fees, covenants, and agreements contained herein, and for other good and valuable consideration, it is agreed and understood between Sponsor and Contractor:

ARTICLE 1

ACCESS TO RECORDS AND REPORTS

(2 CFR § 200.334, 2 CFR § 200.337, and FAA Order 5100.38)

The Contractor must maintain an acceptable cost accounting system. The Contractor agrees to provide the Sponsor, the Federal Aviation Administration, and the Comptroller General of the United States or any of their duly authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpt and transcriptions. The Contractor agrees to maintain all books, records, and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.

ARTICLE 2

AFFIRMATIVE ACTION REQUIREMENT

(41 CFR Part 60-4 and Executive Order 11246)

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

Timetables:

Goals for Minority participation for each trade 45.9%.

Goals for Female participation for each trade 6.9%

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

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

- C. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs (OFCCP) within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.
- D. As used in this notice and in the Contract resulting from this solicitation, the "covered area" is in Ruidoso, Lincoln County, New Mexico.

**ARTICLE 3
BREACH OF CONTRACT TERMS
(2 CFR § 200 Appendix II(A))**

Any violation or breach of terms of this contract on the part of the Contractor or its subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement.

Sponsor will provide Contractor written notice that describes the nature of the breach and corrective actions the Contractor must undertake in order to avoid termination of the contract. Sponsor reserves the right to withhold payments to Contractor until such time the Contractor corrects the breach or the Sponsor elects to terminate the contract. The Sponsor's notice will identify a specific date by which the Contractor must correct the breach. Sponsor may proceed with termination of the contract if the Contractor fails to correct the breach by the deadline indicated in the Sponsor's notice.

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder are in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

ARTICLE 4
BUY AMERICAN PREFERENCE
(Title 49 USC § 50101, Executive Order 14005, Ensuring the Future is Made in All
of America by All of America's Workers, Bipartisan Infrastructure Law
(Pub. L. No. 117-58), Build America, Buy America (BABA))

SEE INSTRUCTIONS TO BIDDERS - SECTION 22 AND PROPOSAL FOR SOLICITATION COMPLIANCE.

Certification of Compliance with Buy American Preference Statement

FAA BUY AMERICAN PREFERENCE

The Contractor certifies that its bid/offer is in compliance with 49 USC § 50101, BABA and other related Made in America Laws,¹ U.S. statutes, guidance, and FAA policies, which provide that Federal funds may not be obligated unless all iron, steel and manufactured goods used in AIP funded projects are produced in the United States, unless the Federal Aviation Administration has issued a waiver for the product; the product is listed as an Excepted Article, Material Or Supply in Federal Acquisition Regulation subpart 25.108; or is included in the FAA Nationwide Buy American Waivers Issued list.

The bidder or offeror must complete and submit the certification of compliance with FAA's Buy American Preference, BABA and Made in America laws included herein with their bid or offer. The Airport Sponsor/Owner will reject as nonresponsive any bid or offer that does not include a completed certification of compliance with FAA's Buy American Preference and BABA.

The bidder or offeror certifies that all constructions materials, defined to mean an article, material, or supply other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives that are or consist primarily of: non-ferrous metals; plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables); glass (including optic glass); lumber; or drywall used in the project are manufactured in the U.S.

¹ Per Executive Order 14005 "Made in America Laws" means all statutes, regulations, rules, and Executive Orders relating to federal financial assistance awards or federal procurement, including those that refer to "Buy America" or "Buy American," that require, or provide a preference for, the purchase or acquisition of goods, products, or materials produced in the United States, including iron, steel, and manufactured products offered in the United States.

ARTICLE 5
CIVIL RIGHTS-GENERAL
(49 USC § 47123)

5.1 General Clause that is used for Contracts, Lease Agreements, and Transfer Agreements. In all its activities within the scope of its airport program, the Contractor agrees to comply with pertinent statutes, Executive Orders, and such rules as identified in Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall, on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

5.2 Specific Clause that is used for General Contract Agreements. The above provision binds the Contractor and subcontractors from the bid solicitation period through the completion of the contract.

5.3 Specific Clause that is used for Lease Agreements or Transfer Agreements. If the Contractor transfers its obligation to another, the transferee is obligated in the same manner as the Contractor.

The above provision obligates the Contractor for the period during which the property is owned, used or possessed by the Contractor and the airport remains obligated to the Federal Aviation Administration.

**ARTICLE 6
CIVIL RIGHTS - TITLE VI ASSURANCES
(49 USC § 47123 and FAA Order 1400.11)**

*****NOTE: SEE INSTRUCTIONS TO BIDDERS - SECTION 23 FOR SOLICITATION COMPLIANCE.*****

6.1 Title VI List of Pertinent Nondiscrimination Acts and Authorities. During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-Assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 et seq.), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance);
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 et seq.) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-259) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990 (42 USC § 12101, et seq) (prohibit discrimination on the basis of disability in the operation of public entities, public and private

transportation systems, places of public accommodation, and certain testing entities) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;

- The Federal Aviation Administration's Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations);
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs [70 Fed. Reg. 74087 (2005)];
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC § 1681, et seq).

6.2 Compliance with Nondiscrimination Requirements: During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor"), agrees as follows:

- 1) Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
- 2) Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
- 3) Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
- 4) Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information,

the Contractor will so certify to the Sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

- 5) **Sanctions for Noncompliance:** In the event of a Contractor's noncompliance with the non-discrimination provisions of this contract, the Sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
- a. Withholding payments to the Contractor under the contract until the Contractor complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.
- 6) **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Sponsor to enter into any litigation to protect the interests of the Sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

ARTICLE 7

CLEAN AIR AND WATER POLLUTION CONTROL

(2 CFR Part 200, Appendix II(G), 42 USC § 7401, et seq, 33 USC § 1251, et seq)

CLEAN AIR AND WATER POLLUTION CONTROL

Contractor agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 USC §§ 7401-7671q) and the Federal Water Pollution Control Act as amended (33 USC §§ 1251-1387). The Contractor agrees to report any violation to the Owner immediately upon discovery. The Owner assumes responsibility for notifying the Environmental Protection Agency (EPA) and the Federal Aviation Administration.

Contractor must include this requirement in all subcontracts that exceed \$150,000.

ARTICLE 8

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT REQUIREMENTS

(2 CFR Part 200, Appendix II(E), 2 CFR § 5.5(b), 40 USC § 3702, 40 USC § 3704)

CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS

8.1 Overtime Requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic, including watchmen and guards, 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.

8.2 Violation; Liability for Unpaid Wages; Liquidated Damages. In the event of any violation of the clause set forth in paragraph (1) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this clause, in the sum of \$29 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this clause.

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

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

ARTICLE 9
COPELAND "ANTI-KICKBACK" ACT
(2 CFR § 200, Appendix II (D) and 29 CFR parts 3 and 5)

Contractor must comply with the requirements of the Copeland "Anti-Kickback" Act (18 USC 874 and 40 USC 3145), as supplemented by Department of Labor regulation 29 CFR part 3. Contractor and subcontractors are prohibited from inducing, by any means, any person employed on the project to give up any part of the compensation to which the employee is entitled. The Contractor and each Subcontractor must submit to the Sponsor, a weekly statement on the wages paid to each employee performing on covered work during the prior week. Sponsor must report any violations of the Act to the Federal Aviation Administration.

ARTICLE 10
DAVIS BACON REQUIREMENTS
(2 CFR Part 200, Appendix II(D), 29 CFR Part 5, 49 USC § 47112(b),
40 USC §§ 3141-3144, 3146, and 3147)

10.1 MINIMUM WAGES.

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

hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can easily be seen by the workers.

b.

- i.** The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
 - (a)** The work to be performed by the classification requested is not performed by a classification in the wage determination;
 - (b)** The classification is utilized in the area by the construction industry; and
 - (c)** The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- ii.** If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- iii.** In the event the Contractor, the laborers, or mechanics to be employed in the classification, or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a

determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

- iv. The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii) (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.
- v. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- iv. If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

10.2 Withholding. The Federal Aviation Administration or the Sponsor shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the Federal Aviation Administration 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.

10.3 Payrolls and Basic Records.

- a. Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 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 that 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 costs incurred in providing such benefits. Contractors employing apprentices or trainees under

approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b.

- i.** The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Federal Aviation Administration 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 the Federal Aviation Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR § 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <https://www.dol.gov/agencies/whd/government-contracts/construction/payroll-certification> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker and shall provide them upon request to the Federal Aviation Administration if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit them to the applicant, Sponsor, or Owner, as the case may be, for transmission to the Federal Aviation Administration, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, Sponsor, or Owner).
- ii.** Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

 - (a)** That the payroll for the payroll period contains the information required to be provided under 29 CFR § 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR § 5.5 (a)(3)(i), and that such information is correct and complete;
 - (b)** That each laborer and mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3;
 - (c)** 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.

- (d) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (3)(ii)(B) of this section.
 - (e) 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 (3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Sponsor, the Federal Aviation Administration, or the Department of Labor and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, Sponsor, applicant, or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR § 5.12.

10.4 Apprentices and Trainees.

- a. Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will

no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- b. **Trainees.** Except as provided in 29 CFR § 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination that provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- c. **Equal Employment Opportunity.** The utilization of apprentices, trainees, and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

10.5 Compliance with Copeland Act Requirements. The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

10.6 Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR §§ 5.5(a)(1) through (10) and such other clauses as the Federal Aviation Administration 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 § 5.5.

10.7 Contract Termination: Debarment. A breach of the contract clauses in paragraph 1 through 10 of this section may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR § 5.12.

10.8 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.

10.9 Disputes Concerning Labor Standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be

resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10.10 Certification of Eligibility.

- a. By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR § 5.12(a)(1).
- b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR § 5.12(a)(1).
- c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 USC § 1001.

**ARTICLE 11
DEBARMENT AND SUSPENSION
(2 CFR Part 180 (Subpart B), 2 CFR Part 200, Appendix II(H), 2 CFR Part 1200,
DOT Order 4200.5, Executive Orders 12549 and 12689)**

*****NOTE: SEE PROPOSAL FOR SOLICITATION COMPLIANCE. *****

CERTIFICATION OF OFFEROR/BIDDER REGARDING DEBARMENT

By submitting a bid/proposal under this solicitation, the bidder or offeror certifies that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.

CERTIFICATION OF LOWER TIER CONTRACTORS REGARDING DEBARMENT

The successful bidder, by administering each lower tier subcontract that exceeds \$25,000 as a "covered transaction", must confirm each lower tier participant of a "covered transaction" under the project is not presently debarred or otherwise disqualified from participation in this federally-assisted project. The successful bidder will accomplish this by:

1. Checking the System for Award Management at website: <http://www.sam.gov>.
2. Collecting a certification statement similar to the Certification of Offeror /Bidder Regarding Debarment, above.
3. Inserting a clause or condition in the covered transaction with the lower tier contract.

If the Federal Aviation Administration later determines that a lower tier participant failed to disclose to a higher tier participant that it was excluded or disqualified at the time it entered the covered transaction, the FAA may pursue any available remedies, including suspension and debarment of the non-compliant participant.

ARTICLE 12
DISADVANTAGED BUSINESS ENTERPRISE
(49 CFR part 26)

Contract Assurance (49 CFR § 26.13) - The Contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (a) Withholding monthly progress payments;
- (b) Assessing sanctions;
- (c) Liquidated damages; and/or
- (d) Disqualifying the Contractor from future bidding as non-responsible.

Prompt Payment (49 CFR § 26.29) – The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than thirty (30) days from the receipt of each payment the prime contractor receives from the Sponsor. The prime contractor agrees further to return retainage payments to each subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Sponsor. This clause applies to both DBE and non-DBE subcontractors.

Termination of DBE Subcontracts (49 CFR § 26.53(f)) – The prime contractor must not terminate a DBE subcontractor listed in response to the Instructions for Bidders, Section 20 (or an approved substitute DBE firm) without prior written consent of Sponsor. This includes, but is not limited to, instances in which the prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

The prime contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains written consent Sponsor. Unless Sponsor consent is provided, the prime contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

Sponsor may provide such written consent only if Sponsor agrees, for reasons stated in the concurrence document, that the prime contractor has good cause to terminate the DBE firm. For purposes of this paragraph, good cause includes the circumstances listed in 49 CFR §26.53.

Before transmitting to Sponsor its request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to Sponsor, of its intent to request to terminate and/or substitute, and the reason for the request.

The prime contractor must give the DBE five days to respond to the prime contractor's notice and advise Sponsor and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why the Sponsor should not approve the prime contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), Sponsor may provide a response period shorter than five days.

In addition to post-award terminations, the provisions of this section apply to preaward deletions of or substitutions for DBE firms put forward by offerors in negotiated procurements.

**ARTICLE 13
DISTRACTED DRIVING
(Executive Order 13513 and DOT Order 3902.10)**

TEXTING WHEN DRIVING

In accordance with Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving", (10/1/2009) and DOT Order 3902.10, "Text Messaging While Driving", (12/30/2009), the Federal Aviation Administration encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or subgrant.

In support of this initiative, the Owner encourages the Contractor to promote policies and initiatives for its employees and other work personnel that decrease crashes by distracted drivers, including policies that ban text messaging while driving motor vehicles while performing work activities associated with the project. The Contractor must include the substance of this clause in all sub-tier contracts exceeding \$10,000 that involve driving a motor vehicle in performance of work activities associated with the project.

**ARTICLE 14
PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND
VIDEO SURVEILLANCE SERVICES OR EQUIPMENT
(2 CFR § 200, Appendix II(K), 2 CFR § 200.216)**

Contractor and Subcontractor agree to comply with mandatory standards and policies relating to use and procurement of certain telecommunications and video surveillance services or equipment in compliance with the National Defense Authorization Act (Public Law 115-232 § 889(f)(1)).

**ARTICLE 15
EQUAL EMPLOYMENT OPPORTUNITY (EEO)
(2 CFR 200, Appendix II(C), 41 CFR § 60-1.4, 41 CFR § 60-4.3, Executive Order 11246)**

15.1 EQUAL OPPORTUNITY CLAUSE

15.1.1 During the performance of this contract, the Contractor agrees as follows:

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identify, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff, or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- b. 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 for employment

without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

- c. The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- d. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the Contractor's commitments under this section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- e. The Contractor 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.
- f. The Contractor 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 contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- g. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any such 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, 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.
- h. The Contractor will include the provisions of paragraphs (1) through (8) 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 may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance: *Provided*, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

15.2 STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS

15.2.1 As used in these specifications:

- a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;**
- b. "Director" means Director, Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, or any person to whom the Director delegates authority;**
- c. "Employer identification number" means the Federal social security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941;**
- d. "Minority" includes:**
 - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);**
 - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race);**
 - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and**
 - (iv) American Indian or Alaskan native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).**

15.2.2 Whenever the Contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

15.2.3 If the Contractor is participating (pursuant to 41 CFR part 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.

15.2.4 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 construction work in a geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

15.2.5 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.

15.2.6 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.

15.2.7 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 onsite supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
- b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the 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 of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.
- d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other

information that the union referral process has impeded the Contractor's efforts to meet its obligations.

- e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 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 onsite supervisory personnel such as superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other contractors and subcontractors with whom the Contractor does or anticipates doing business.
- i. Direct its recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, 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 nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
- o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
- p. Conduct a review, at least annually, of all supervisor's adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

15.2.8 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 women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

15.2.9 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).

15.2.10 The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, sexual orientation, gender identity, or national origin.

15.2.11 The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

15.2.12 The Contractor shall 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, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

15.2.13 The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of

these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR part 60-4.8.

15.2.14 The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government, and to keep records. Records shall at least include for each employee, the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15.2.15 Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g. those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

**ARTICLE 16
FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)
(29 USC § 201, et seq, 2 CFR § 200.430)**

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part-time workers.

The Contractor has full responsibility to monitor compliance to the referenced statute or regulation. The Contractor must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

**ARTICLE 17
LOBBYING AND INFLUENCING FEDERAL EMPLOYEES
(31 USC § 1352 – Byrd Anti-Lobbying Amendment, 2 CFR part 200, Appendix II(I),
and 49 CFR part 20, Appendix A)**

CERTIFICATION REGARDING LOBBYING

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

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

- 18.1.2** If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- 18.1.3** The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

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

ARTICLE 18
PROHIBITION OF SEGREGATED FACILITIES
(2 CFR Part 200, Appendix II(C), 41 CFR Part 60-1)

- 19.1** The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Employment Opportunity clause in this contract.
- 19.2** "Segregated facilities," as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.
- 19.3** The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Employment Opportunity clause of this contract.

ARTICLE 19
OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970
(29 CFR part 1910)

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. The employer must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The employer retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR

Part 1910). The employer must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

ARTICLE 20
PROCUREMENT OF RECOVERED MATERIALS
(2 CFR § 200.323, 2 CFR Part 200, Appendix II(J), 40 CFR Part 247,
42 USC § 6901, et seq (Resource Conservation and Recovery Act (RCRA)))

Contractor and subcontractor agree to comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and the regulatory provisions of 40 CFR Part 247. In the performance of this contract and to the extent practicable, the Contractor and subcontractors are to use of products containing the highest percentage of recovered materials for items designated by the Environmental Protection Agency (EPA) under 40 CFR Part 247 whenever:

- (a) The contract requires procurement of \$10,000 or more of a designated item during the fiscal year; or,
- (b) The contractor has procured \$10,000 or more of a designated item using Federal funding during the previous fiscal year.

The list of EPA-designated items is available at www.epa.gov/smm/comprehensive-procurement-guidelines-construction-products.

Section 6002(c) establishes exceptions to the preference for recovery of EPA-designated products if the contractor can demonstrate the item is:

- (a) Not reasonably available within a timeframe providing for compliance with the contract performance schedule;
- (b) Fails to meet reasonable contract performance requirements; or
- (c) Is only available at an unreasonable price.

ARTICLE 21
SEISMIC SAFETY
(49 CFR Part 41)

NOT APPLICABLE

ARTICLE 22
TAX DELINQUENCY AND FELONY CONVICTIONS
(Section 8113 of the Consolidated Appropriations Act, 2022 (Public Law 117-103) and similar provisions
in subsequent appropriations acts. DOT Order 4200.6 – Appropriations Act Requirements for
Procurement and Non-Procurement Regarding Tax Delinquency and Felony Convictions)

CERTIFICATION OF OFFEROR/BIDDER REGARDING TAX DELINQUENCY AND FELONY CONVICTIONS

The applicant must complete the following two certification statements. The applicant must indicate its current status as it relates to tax delinquency and felony conviction by inserting a checkmark (✓) in the space following the applicable response. The applicant agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification in all lower tier subcontracts.

Certifications

- (a) The applicant represents that it is () is not (✓) a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.
- (b) The applicant represents that it is () is not (✓) a corporation that was convicted of a criminal violation under any Federal law within the preceding 24 months.

Note: If an applicant responds in the affirmative to either of the above representations, the applicant is ineligible to receive an award unless the sponsor has received notification from the agency suspension and debarment official (SDO) that the SDO has considered suspension or debarment and determined that further action is not required to protect the Government's interests. The applicant therefore must provide information to the Sponsor about its tax liability or conviction to the Sponsor, who will then notify the FAA Airports District Office, which will then notify the agency's SDO to facilitate completion of the required considerations before award decisions are made.

Term Definitions

Felony conviction: Felony conviction means a conviction within the preceding twenty-four (24) months of a felony criminal violation under any Federal law and includes conviction of an offense defined in a section of the U.S. code that specifically classifies the offense as a felony and conviction of an offense that is classified as a felony under 18 U.S.C. § 3559.

Tax Delinquency: A tax delinquency is any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

ARTICLE 23 TERMINATION OF CONTRACT

(2 CFR Part 200, Appendix II(B), FAA Advisory Circular 150/5370-10, Section 80-09)

TERMINATION FOR CONVENIENCE (CONSTRUCTION & EQUIPMENT CONTRACTS)

The Sponsor may terminate this contract in whole or in part at any time by providing written notice to the Contractor. Such action may be without cause and without prejudice to any other right or remedy of Sponsor. Upon receipt of a written notice of termination, except as explicitly directed by the Sponsor, the Contractor shall immediately proceed with the following obligations regardless of any delay in determining or adjusting amounts due under this clause:

- (a) Contractor must immediately discontinue work as specified in the written notice.
- (b) Terminate all subcontracts to the extent they relate to the work terminated under the notice.
- (c) Discontinue orders for materials and services except as directed by the written notice.
- (d) Deliver to the Sponsor all fabricated and partially fabricated parts, completed and partially completed work, supplies, equipment and materials acquired prior to termination of the work, and as directed in the written notice.

- (e) Complete performance of the work not terminated by the notice.
- (f) Take action as directed by the Sponsor to protect and preserve property and work related to this contract that Sponsor will take possession.

Sponsor agrees to pay Contractor for:

- (a) completed and acceptable work executed in accordance with the contract documents prior to the effective date of termination;
- (b) documented expenses sustained prior to the effective date of termination in performing work and furnishing labor, materials, or equipment as required by the contract documents in connection with uncompleted work;
- (c) reasonable and substantiated claims, costs, and damages incurred in settlement of terminated contracts with Subcontractors and Suppliers; and
- (d) reasonable and substantiated expenses to the Contractor directly attributable to Sponsor's termination action.

Sponsor will not pay Contractor for loss of anticipated profits or revenue or other economic loss arising out of or resulting from the Sponsor's termination action.

The rights and remedies this clause provides are in addition to any other rights and remedies provided by law or under this contract.

TERMINATION FOR DEFAULT (CONSTRUCTION)

Section 80-09 of FAA Advisory Circular 150/5370-10 establishes conditions, rights, and remedies associated with Sponsor termination of this contract due to default of the Contractor.

TERMINATION FOR DEFAULT (EQUIPMENT)

The Sponsor may, by written notice of default to the Contractor, terminate all or part of this Contract if the Contractor:

- (a) Fails to commence the Work under the Contract within the time specified in the Notice-to-Proceed;
- (b) Fails to make adequate progress as to endanger performance of this Contract in accordance with its terms;
- (c) Fails to make delivery of the equipment within the time specified in the Contract, including any Sponsor approved extensions;
- (d) Fails to comply with material provisions of the Contract;
- (e) Submits certifications made under the Contract and as part of their proposal that include false or fraudulent statements; or
- (f) Becomes insolvent or declares bankruptcy.

If one or more of the stated events occur, the Sponsor will give notice in writing to the Contractor and Surety of its intent to terminate the contract for cause. At the Sponsor's discretion, the notice may allow the Contractor and Surety an opportunity to cure the breach or default.

If within 10 days of the receipt of notice, the Contractor or Surety fails to remedy the breach or default to the satisfaction of the Sponsor, the Sponsor has authority to acquire equipment by other procurement action. The Contractor will be liable to the Sponsor for any excess costs the Sponsor incurs for acquiring such similar equipment.

Payment for completed equipment delivered to and accepted by the Sponsor shall be at the Contract price. The Sponsor may withhold from amounts otherwise due the Contractor for such completed equipment, such sum as the Sponsor determines to be necessary to protect the Sponsor against loss because of Contractor default.

Sponsor will not terminate the Contractor's right to proceed with the Work under this clause if the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such acceptable causes include: acts of God, acts of the Sponsor, acts of another Contractor in the performance of a contract with the Sponsor, and severe weather events that substantially exceed normal conditions for the location.

If, after termination of the Contractor's right to proceed, the Sponsor determines that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the Sponsor issued the termination for the convenience the Sponsor.

The rights and remedies of the Sponsor in this clause are in addition to any other rights and remedies provided by law or under this contract.

ARTICLE 24
TRADE RESTRICTION CLAUSE
(49 USC § 50104, 49 CFR part 30)

*****NOTE: SEE PROPOSAL FOR SOLICITATION COMPLIANCE. *****

TRADE RESTRICTION CERTIFICATION

By submission of an offer, the Offeror certifies that with respect to this solicitation and any resultant contract, the Offeror –

- (a)** is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms as published by the Office of the United States Trade Representative (USTR);
- (b)** has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country included on the list of countries that discriminate against U.S. firms as published by the USTR; and
- (c)** has not entered into any subcontract for any product to be used on the Federal project that is produced in a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18 USC § 1001.

The Offeror/Contractor must provide immediate written notice to the Owner if the Offeror/Contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The Contractor must require subcontractors provide immediate written notice to the Contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR § 30.17, no contract shall be awarded to an Offeror or subcontractor:

- (a) who is owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR; or
- (b) whose subcontractors are owned or controlled by one or more citizens or nationals of a foreign country on such USTR list; or
- (c) who incorporates in the public works project any product of a foreign country on such USTR list.

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

The Offeror agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in all lower tier subcontracts. The Contractor may rely on the certification of a prospective subcontractor that it is not a firm from a foreign country included on the list of countries that discriminate against U.S. firms as published by USTR, unless the Offeror has knowledge that the certification is erroneous.

This certification is a material representation of fact upon which reliance was placed when making an award. If it is later determined that the Contractor or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration (FAA) may direct through the Owner cancellation of the contract or subcontract for default at no cost to the Owner or the FAA.

**ARTICLE 25
VETERAN'S PREFERENCE
(49 USC § 47112(c))**

In the employment of labor (excluding executive, administrative, and supervisory positions), the Contractor and all sub-tier contractors must give preference to covered veterans as defined within Title 49 United States Code Section 47112. Covered veterans include Vietnam-era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns (as defined by 15 USC 632) owned and controlled by disabled veterans. This preference only applies when there are covered veterans readily available and qualified to perform the work to which the employment relates.

**ARTICLE 26
DOMESTIC PREFERENCES FOR PROCUREMENTS
(2 CFR § 200.322, 2 CFR Part 200, Appendix II(L))**

CERTIFICATION REGARDING DOMESTIC PREFERENCES FOR PROCUREMENTS

The Bidder or Offeror certifies by signing and submitting this bid or proposal that, to the greatest extent practicable, the Bidder or Offeror has provided a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including, but not limited to, iron, aluminum, steel, cement, and other manufactured products) in compliance with 2 CFR § 200.322.

**ARTICLE 27
CONTRACT DOCUMENTS**

The Contract Documents consist of the following:

Invitation for Bids	Instructions to Bidders	Change Orders
Notice of Award	Agreement	Applications for Payment
Performance Bond	EEO Requirements in Subcontracts	Addenda
Proposal	Payment Bond	Wage Rates
Notice to Proceed	Certification of Inclusion of Labor	General Provisions
Technical Specifications	Special Provisions	Construction Safety and Phasing Plan
Plans and Drawings		

These Contract Documents are incorporated herein and are a part of this Agreement.

**ARTICLE 28
SCOPE OF WORK**

Contractor is to complete the Project in accordance with the Contract Documents and in accordance with all codes and regulations governing the construction of the Project. Any work, materials, or equipment that may be reasonably inferred from the Contract Documents as being required to produce the intended result shall be supplied by Contractor whether or not specifically called for. Reference to standard specifications, manuals, or codes of any technical society, organization or association, or to the laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard, specification, manual, code, or laws or regulations in effect at the time of opening of bids and Contractor shall comply therewith. Sponsor shall have no duties other than those duties and obligations expressly set forth within the Contract Documents.

**ARTICLE 29
CONTRACT TIME**

Contractor agrees to undertake the performance of the Project on the date stated in the Notice to Proceed as issued by the Sponsor and agrees to fully complete the Project within twenty-one (21) calendar days for Schedule I and Schedule II unless an extension of time is granted by Sponsor in accordance with the provisions of Section 80, Paragraph 7, of the General Provisions.

ARTICLE 30 DAMAGES

- 30.1** It is acknowledged that Contractor's failure to complete the Project within the Contract Time will cause Sponsor to incur substantial economic damages and losses of the types and in the amounts which are significantly difficult to compute and ascertain with any certainty as a basis for the recovery by Sponsor of actual damages, and that liquidated damages represent a fair, reasonable, and appropriate estimate thereof. Accordingly, in lieu of actual damages for such delay, Contractor agrees that liquidated damages may be assessed and recovered by Sponsor as against Contractor and its Surety in the event of delayed completion and without Sponsor being required to present any evidence of the amount or character of actual damages sustained by reason thereof. Contractor shall be liable to Sponsor for payment of liquidated damages in the amount of One Thousand Nine Hundred and No/100ths Dollars (\$1,900) for each day that the Project is delayed beyond the Contract Time as adjusted for any time extension that may be provided for by the Contract Documents. Such liquidated damages are intended to represent estimated actual damages and are not intended as a penalty, and Contractor shall pay them to Sponsor without limiting Sponsor's right to terminate this Agreement for default as provided elsewhere herein. Additionally, Sponsor may hold all or part of any liquidated damages from payments that may be due to Contractor for the Project. The acceptance by Sponsor of such liquidated damages does not constitute a waiver by Sponsor of any other remedy available at law or in equity, and Sponsor expressly reserves its right to pursue any available remedy.
- 30.2** If Contractor fails to comply with any covenants or conditions of this Agreement, Sponsor may take such actions as Sponsor deems necessary to complete the Project using persons and entities selected by Sponsor. If Sponsor's costs of completing the Project exceed any unpaid amounts to Contractor for the Project, upon demand, Contractor shall reimburse Sponsor the difference between the actual cost of completion and the unpaid balance of any amounts that remain to be paid for the Project. Sponsor's rights and remedies under this section are not exclusive and are cumulative with any other rights and remedies Sponsor may have under this Agreement or applicable law. Notwithstanding the foregoing, Sponsor shall have all available rights and remedies pursuant to New Mexico's statutes related to the Construction Defect Action Reform Act as well as any and all other applicable federal, state, or local statutes, laws, rules, and/or regulations.

ARTICLE 31 TERMS OF PAYMENT

- 31.1** Sponsor agrees to pay Contractor in accordance with the price or prices set forth in Contractor's Proposal, for the total cost of the Project, or the "Contract Price," will be Four Hundred Four Thousand, Six Hundred Seventy-Six and 70/100 Dollars (\$404,676.70) (Including NMGRT). Partial payments will be made for work completed on the Project during the previous month, as well as for materials (invoice cost only) delivered to the site of the Project and which are properly and suitably stored.
- 31.2** Application for partial payments for stored materials must be accompanied by certified invoices showing all pertinent data that may be required by Armstrong Consultants, Inc. ("Engineer"), to verify the accuracy of the invoices and their relation to the stored materials. Failure to provide certified invoices will disqualify the materials in question from consideration for partial payment. Partial payments for work completed on the Project during the previous month will be made based on the Contractor's Application for Payment and any Recommendation of Payment made

due to Contractor based on the Contractor's Application for Payment and any Recommendation of Payment made by Engineer. However, nothing herein shall be construed as relieving Contractor and his, her, or its Sureties on the Contractor's Bond from any claim or claims for work or labor done, or materials or supplies furnished, as part of this Agreement and the completion of the Project.

31.3 It is the intent of Sponsor to make any partial payments in the following manner:

31.3.1 The Contractor shall submit to Engineer his Application for Payment no later than the next to last Friday of the month.

31.3.2 Engineer will, within 7 days after receipt, submit the Application for Payment to Sponsor for payment along with its Recommendation of Payment, noting any changes. The Sponsor will then make payment to Contractor when funds are received from the FAA and/or State and are available to Sponsor for payment to Contractor.

ARTICLE 32 BONDS & INSURANCE

32.1 At the time of the execution of this Agreement, Contractor shall provide the bonds that are required by the Contract Documents. The Performance Bond will be in an amount not less than one hundred percent (100%) of the Contract Price and shall provide for the completion of the Project in accordance with the Contract Documents, without additional cost to Sponsor. The obligation period of the Performance Bond will provide for the correction or replacement of any portion of the Project that is considered by Sponsor and/or Engineer to be defective in materials and workmanship for a period of one year following final acceptance of the Project, and it shall fully cover any and all of the costs of removal, correction, reconstruction, and any and all other related expenses in repairing or correcting the defective portions of the Project, without additional cost to Sponsor. The Payment Bond will be in an amount not less than one hundred percent (100%) of the Contract Price and it shall provide for the payment of all Project costs in accordance with the Contract Documents, without additional cost to Sponsor.

32.2 Contractor shall obtain, before beginning the Project, and maintain in full force at all times relevant to this Agreement, as well as assure that all persons or entities working on the Project obtain and maintain in full force at all times, insurance for the protection of claims under workers' compensation laws. Prior to commencing work on the Project, Contractor, at Sponsor's request, shall provide Sponsor with a certification of the maintenance of workers' compensation as required by this section. Contractor shall also maintain, in full force at all times relevant to this Agreement, public liability/commercial general liability insurance and property damage insurance for the Contractor and for his Subcontract operations with a limit of at least \$2,000,000. This insurance shall also include coverage for completed operations, contractual liability, and automotive liability and shall afford coverage for all claims for bodily injury, including death, and all claims for the destruction of, or damage to, property arising out of or in connection with any work completed on the Project in regard to this Agreement, whether such work was done by Contractor or anyone directly or indirectly employed by Contractor or by a subcontractor. At a minimum, Public Liability Insurance shall be in the amount of not less than \$2,000,000.00 for injuries, including accidental death, to any one person, nor less than \$2,000,000.00 on account of any one accident. Property Damage Insurance shall be carried in an amount not less than \$2,000,000.00. Additionally, Contractor shall name Sponsor and Engineer as additional named insureds on these insurance policies, with the exception of the Workers' Compensation Insurance. Contractor, at

Sponsor's request, shall provide Sponsor with certificates of these insurance policies. Prior to the completion of the Project, the insurance required under this Agreement cannot be cancelled by Contractor. See Special Provisions for additional insurance information.

ARTICLE 33 BONDING CLAUSES

- 33.1** Contractor agrees to furnish a performance bond for 100 percent of the Contract Price. This bond is to be executed in connection with this Agreement in order to secure fulfillment of all of Contractor's obligations under this Agreement.
- 33.2** Contractor agrees to furnish a payment bond for 100 percent of the Contract Price. This bond is to be executed in connection with this Agreement to ensure payment of all monies owed by Contractor under this Agreement and other Contract Documents.

ARTICLE 34 CHANGE ORDERS

Changes in the scope of work for the Project or the performance of the work under this Agreement and any materials used may be accomplished after execution of the Agreement and without invalidating the Agreement. However, a change order shall be in writing and signed by Sponsor, Contractor, Engineer, and other Funding Agencies as required. Change orders shall include notice to the Sponsor of the increase or decrease in cost as a result thereof. Any revision to the Plans and Specifications that are approved by Sponsor, if any, shall be considered to be a change order that has been approved by Sponsor when delivered to Contractor, requiring no further approval by Sponsor.

ARTICLE 35 DEBRIS REMOVAL

Contractor shall, at all times, keep the work site reasonably free from the accumulation of waste materials or rubbish caused by its operations during its work on the Project. All waste and debris, tools or equipment, and surplus materials or machinery shall be removed as a condition of the substantial completion of the Project.

ARTICLE 36 ATTORNEY'S FEES & PUNITIVE DAMAGES

In the event of litigation or arbitration to resolve any claim made by either party to this Agreement, the prevailing party shall be entitled to its costs and attorney fees incurred as a result of such litigation or arbitration. Each party hereto also intentionally waives all rights to recover punitive or exemplary damages from the other.

ARTICLE 37 GOVERNING LAW

This Agreement shall be interpreted and governed in accordance with the laws of the State of New Mexico.

**ARTICLE 38
MODIFICATION OF AGREEMENT**

No subsequent modification of the terms of this Agreement shall be valid, binding on the parties, or enforceable unless made in writing and signed by the parties.

**ARTICLE 39
SEVERABILITY**

In the event any part of this Agreement is found to be void, illegal, invalid, or unenforceable under any present or future law, then the remaining provisions of this Agreement shall nevertheless be binding with the same effect as though such part was deleted.

**ARTICLE 40
BINDING EFFECT**

This Agreement shall be binding upon and insure to the benefit of the parties hereto and their respective heirs, successors, and assigns.

**ARTICLE 41
HOLD HARMLESS**

Contractor shall release Sponsor and Engineer, and all of their agents, representatives, officers, employees, boards, directors, committees, and commissions, of any liability for, and shall protect, defend, indemnify, and hold Sponsor and Engineer harmless from and against all claims, demands, and causes of action of every kind and character that are asserted or brought on account of bodily injury, death, or damage to property as a result of the actions, omissions, negligence, gross negligence, and/or recklessness of Contractor or Contractor's agents, employees, representatives, invitees, licensees, subcontractors, or subcontractor's subcontractors. Contractor's indemnification obligations under this section shall be without regard to, and without any right to contribution from, any insurance maintained by Contractor. Additionally, Contractor's indemnity obligations under this section shall be supported by insurance, but this insurance requirement shall be a separate and distinct obligation from Contractor's indemnity obligations, and the insurance and indemnity obligations shall be separately and independently enforceable. Further, Contractor's indemnity obligations hereunder are not limited by any insurance coverage Contractor may have.

CAUTION: READ BEFORE SIGNING.

IN WITNESS THEREOF, the parties have executed this Agreement on the date set forth next to their signatures.

American Road Maintenance, Inc.
CONTRACTOR

By:  _____
Authorized Representative

Date: 8/7/24 _____

Village of Ruidoso
SPONSOR

By: _____
Lynn Crawford
Mayor

Date: _____

CONSTRUCTION PERFORMANCE BOND

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):
American Road Maintenance, Inc.
4554 E Eco Industrial Place
Tucson, AZ 85756

SURETY (Name and Principal Place of Business)
Travelers Casualty and Surety Company of America
One Tower Square,
Hartford, CT 06183

OWNER (Name and Address):
Village of Ruidoso
313 Cree Meadows Drive
Ruidoso, New Mexico 88345

CONSTRUCTION CONTRACT

Date: _____
Amount: \$374,051.25 Three Hundred Seventy-four Thousand Fifty-one & 25/100
Description (Name and Location):
Sierra Blanca Regional Airport
Ruidoso, New Mexico
AIP No. 3-35-0052-032-2024


BOND

Date (Not earlier than Construction Contract Date): _____
Amount: \$374,051.25 Three Hundred Seventy-four Thousand Fifty-one & 25/100
Modifications to this Bond Form: None

CONTRACTOR AS PRINCIPAL
Company: American Road Maintenance, Inc.
(Corp. Seal)

SURETY
Company: Travelers Casualty and Surety Company of America
(Corp. Seal)

Signature:  _____
Name and Title: Kyle Paulson / Officer

Signature:  _____
Name and Title: Sean J. McCauley, Jr., Attorney-in-Fact



1. The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, including all related Construction Documents and modifications thereto, which is incorporated herein by reference.
2. If the Contractor completes the Contract and corrects all defects that appear within one year after final acceptance of all the work required under the Contract Documents, the Surety and the Contractor shall have no obligation under this bond, except to participate in conferences as provided in Subparagraph 3.1.
3. The Surety's obligations under this Bond shall arise after:
 - 3.1 The Owner has notified the Contractor and the Surety at its address described in Paragraph 10 below, that the Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Contract, or for correcting defects in workmanship or material that have appeared within one year after final acceptance of the work. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Contract, or to correct said defects in workmanship or material, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default; and
 - 3.2 The Owner has declared a Contractor Default and formally terminated the Contractor's right to complete the Contract or to correct said defects. Such Contractor Default shall not be declared earlier than twenty days after the Contractor and the Surety have received notice as provided in Subparagraph 3.1; and
 - 3.3 The Owner has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Contract or to a contractor selected to perform the Contract, or to correct said defects in accordance with the terms of the Contract with the Owner.
4. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:
 - 4.1 Arrange for the Contractor, with consent of the Owner to perform and complete the Contract, or to correct said defects in workmanship or material; or
 - 4.2 Undertake to perform and complete the Contract, or to correct said defects in workmanship or material itself, through its agents or through independent contractors; or
 - 4.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract to (a) perform and complete the Contract or correct said defects in workmanship or materials; (b) arrange for a Contract to be prepared for execution by the Owner and the Contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Contract and (c) pay to the Owner the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by the Owner resulting from the Contractor's default; or
 - 4.4 Waive its right to perform and complete, arrange for completion or obtain a new contractor and with reasonable promptness under the circumstances:
 1. After investigation, determine the amount for which it may be liable to the Owner and as soon as practicable after the amount is determined, tender payment therefore to the Owner; or
 2. Deny liability in whole or in part and notify the Owner citing reasons therefore.
5. If the Surety does not proceed as provided in Paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond and the Owner shall be entitled to enforce any remedy available to the Owner if the Surety proceeds as provided in Subparagraph 4.4 and the Owner refuses the payment tendered or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.
6. After the Owner has terminated the Contractor's right to complete the Contract, or to correct said defects in workmanship or materials and if the Surety elects to act under Subparagraphs 4.1, 4.2 or 4.3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Contract and related Construction Documents and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Contract and Construction Documents. To the limit of the amount of this Bond, but subject to commitment by the Owner to pay the Balance of the Contract Price to mitigation of costs and damages of the Contract, the Surety is obligated without duplication for:
 - 6.1 The responsibilities of the Contractor for completion of the Contract and correction of any defects that appear within one year following final acceptance of all the work required under the Construction Contract and related Documents;
 - 6.2 Additional legal, design professional and delay costs resulting from the Contractor's Default, or resulting from the actions or failure to act of the Surety under Paragraph 4; and
 - 6.3 Liquidated damages, or if no liquidated damages are specified in the Contract, actual damages caused by delayed performance or nonperformance of the Contractor.
7. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Contract and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this bond to any person or entity other than the Owner or its heirs, executors, administrators, or successors.
8. The Surety hereby waives notice of any change, including changes of time and changes in the work required under the Contract or related subcontracts, purchase orders and other obligations.
9. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after Owner became aware, or reasonably should have become aware of Contractor Default or within two years after the Surety refuses or fails to perform its obligations under this Bond; whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period for limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
10. Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page.
11. When this bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted hereon and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common-law bond.
12. Definitions:
 - 12.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Contract after all proper adjustments have been made, including allowance to the Contractor of any amount received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Contract.
 - 12.2 Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.
 - 12.3 Contractor Default: Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Contract.
 - 12.4 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

CONSTRUCTION PAYMENT BOND

Bond No. 108079685

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):
American Road Maintenance
4554 E Eco Industrial Place
Tucson, AZ 85756

SURETY (Name and Principal Place of Business)
Travelers Casualty and Surety Company of America
One Tower Square,
Hartford, CT 06183

OWNER (Name and Address):
Village of Ruidoso
313 Cree Meadows Drive
Ruidoso, New Mexico 88345

CONSTRUCTION CONTRACT

Date: _____
Amount: \$374,051.25 Three Hundred Seventy-four Thousand Fifty-one & 25/100
Description (Name and Location):
Sierra Blanca Regional Airport
Ruidoso, New Mexico
AIP No. 3-35-0052-032-2024

BOND

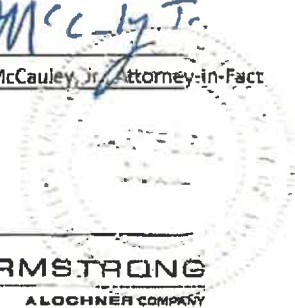
Date (Not earlier than Construction Contract Date): _____
Amount: \$374,051.25 Three Hundred Seventy-four Thousand Fifty-one & 25/100
Modifications to this Bond Form:

CONTRACTOR AS PRINCIPAL
Company: American Road Maintenance
(Corp. Seal)

SURETY
Company: Travelers Casualty and Surety Company of America
(Corp. Seal)

Signature: 
Name and Title: Kyle Paulson / Officer

Signature: 
Name and Title: Sean J McCauley, Jr. Attorney-in-Fact



1. The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference.
2. With respect to the Owner, this obligation shall be null and void if the Contractor:
 - 2.1. Promptly makes payment, directly or indirectly, for all sums due Claimants and
 - 2.2. Defends, indemnifies and holds harmless the Owner from all claims, demands, liens or suits by any person or entity who furnished labor, materials or equipment for use in the performance of the Construction Contract, provided the Owner has promptly notified the Contractor and the Surety (at the address as described in Paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety and provided there is no Owner Default.
3. With respect to Claimant's this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.
4. The Surety shall have no obligation to Claimants under this Bond until:
 - 4.1. Claimants who are employed by or have a direct contract with the Contractor have given notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.
 - 4.2. Claimants who do not have a direct contract with the Contractor:
 1. Have furnished written notice to the Contractor and sent a copy, or notice thereof, to the Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed; and
 2. Have either received a rejection in whole or in part from the Contractor, or not received within 30 days of furnishing the above notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly; and
 3. Not having been paid within the above 30 days, have sent a written notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.
5. If a notice required by Paragraph 4 is given by the Owner to the Contractor or to the Surety, that is sufficient compliance.
6. When the Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:
 - 6.1. Send an answer to the Claimant, with a copy to the Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.
 - 6.2. Pay or arrange for payment any undisputed amounts.
7. The Surety's total obligation shall not exceed the amount of this Bond and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
8. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any Construction Performance Bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and the Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.
9. The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.
10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.
11. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the work or part of the work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Subparagraph 4.1 or Clause 4.2 (3), or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
12. Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, the Owner or the Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.
13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or legal requirement shall be deemed incorporated herein. The intent is, that this Bond shall be construed as a statutory bond and not as a common law bond.
14. Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.
15. DEFINITIONS
 - 15.1. Claimant: An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.
 - 15.2. Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes hereto.
 - 15.3. Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.



Travelers Casualty and Surety Company of America
Travelers Casualty and Surety Company
St. Paul Fire and Marine Insurance Company

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company are corporations duly organized under the laws of the State of Connecticut (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint **SEAN J MCCAULEY JR** of **DALLAS**, Texas, their true and lawful Attorney(s)-in-Fact to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed, and their corporate seals to be hereto affixed, this 21st day of April, 2021.



State of Connecticut

City of Hartford ss.

By: 
 Robert L. Raney, Senior Vice President

On this the 21st day of April, 2021, before me personally appeared Robert L. Raney, who acknowledged himself to be the Senior Vice President of each of the Companies, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of said Companies by himself as a duly authorized officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission expires the 30th day of June, 2026




 Anna P. Nowik, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of each of the Companies, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is


FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, **Kevin E. Hughes**, the undersigned, Assistant Secretary of each of the Companies, do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which remains in full force and effect.

Dated this _____ day of _____




 Kevin E. Hughes, Assistant Secretary

To verify the authenticity of this Power of Attorney, please call us at 1-800-421-3880.
Please refer to the above-named Attorney(s)-in-Fact and the details of the bond to which this Power of Attorney is attached.

State Corporation Commission
of New Mexico

Department of Insurance

No. 002084



1997

AMENDED
CERTIFICATE OF AUTHORITY

It Is Hereby Certified, That the _____

TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA

ONE TOWER SQUARE

HARTFORD, CONNECTICUT 06185

has complied with the requirements of the laws of this State applicable to
said Company and is hereby authorized to transact the business of
CASUALTY AND/OR SURETY

PROPERTY AND/OR MARINE & TRANSPORTATION AND VEHICLE
KINDS OF INSURANCE

Insurance in accordance with its Charter or Certificate of Incorporation
within the State of New Mexico, subject to the provisions and requirements
of law.

In Witness Whereof, The Superintendent of
Insurance of the State of New Mexico has caused
this license to be signed and the seal of said Super-
intendent to be affixed hereto at the city of Santa

Fe, this 8TH day of JULY

A. D. 19 97




SUPERINTENDENT OF INSURANCE
NUNC PRO TUNC JULY 1, 1997

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
08/06/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Scott & McCauley Insurance Agency 2 Ritz Carlton Drive Suite 204 Dana Point CA 92629		CONTACT NAME: Dylan Scott		
		PHONE (A/C, No, Ext): (949) 503-1953	FAX (A/C, No):	
		E-MAIL ADDRESS: dylan@sminsuranceagency.com		
INSURED American Road Maintenance, Inc 4554 E Eco Industrial Pl Tucson AZ 85756		INSURER(S) AFFORDING COVERAGE		NAIC #
		INSURER A: Landmark American Insurance Company		33138
		INSURER B: United States Fire Insurance Company		21113
		INSURER C: AXIS Surplus Insurance Company		26620
		INSURER D:		
		INSURER E:		
INSURER F:				

COVERAGES CERTIFICATE NUMBER: ARM - COI - 2024-25 REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY			LHA114538	03/31/2024	03/31/2025	EACH OCCURRENCE \$ 1,000,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000
							MED EXP (Any one person) \$ 5,000
							PERSONAL & ADV INJURY \$ 1,000,000
GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:							GENERAL AGGREGATE \$ 2,000,000
							PRODUCTS - COMP/OP AGG \$ 2,000,000
							\$
B	AUTOMOBILE LIABILITY			506-909057-4	03/31/2024	03/31/2025	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	<input checked="" type="checkbox"/> ANY AUTO						BODILY INJURY (Per person) \$
	<input type="checkbox"/> OWNED AUTOS ONLY	<input type="checkbox"/> SCHEDULED AUTOS					BODILY INJURY (Per accident) \$
	<input type="checkbox"/> HIRED AUTOS ONLY	<input type="checkbox"/> NON-OWNED AUTOS ONLY					PROPERTY DAMAGE (Per accident) \$
							Comp/Coil Deductible \$ 5,000
C	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR			P-001-003628506-01	03/31/2024	03/31/2025	EACH OCCURRENCE \$ 2,000,000
	<input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE						AGGREGATE \$ 2,000,000
							\$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			408-746711-7	03/31/2024	03/31/2025	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	<input type="checkbox"/> Y <input type="checkbox"/> N	N/A				E.L. EACH ACCIDENT \$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE \$ 1,000,000
							E.L. DISEASE - POLICY LIMIT \$ 1,000,000
B	INLAND MARINE			506-909057-4	03/31/2024	03/31/2025	Leased or Rented \$75,000
							Deductible \$1,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

RE:
AIP NO. 3-35-0052-032-2024
NMDOT NO. SRR-24-02

Blanket Additional Insured as required by an executed written contract or agreement on the General Liability, Auto Liability and Umbrella policies. Coverage is Primary & Non-Contributory where required by written contract or agreement with the named insured. Blanket Waiver-of-Subrogation is granted in favor of the Additional Insureds with respects to the General Liability, Auto Liability, and Workers Compensation policies. Thirty (30) days' notice of cancellation with

CERTIFICATE HOLDER

CANCELLATION

Villag of Ruidoso 313 Cree Meadows Dr Ruidoso NM 88345	<p style="text-align: center;">SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.</p> <p style="text-align: center;">AUTHORIZED REPRESENTATIVE</p>
--	---

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AGENCY CUSTOMER ID: 00000003

LOC #: _____

ADDITIONAL REMARKS SCHEDULE

Page _____ of _____

AGENCY Scott & McCauley Insurance Agency		NAMED INSURED American Road Maintenance, Inc	
POLICY NUMBER			
CARRIER	NAIC CODE	EFFECTIVE DATE:	

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: 25 **FORM TITLE:** Certificate of Liability Insurance

ten (10) days' notice for nonpayment of premium is provided. Excess coverage is Follow Form. The certificate holder is considered a Loss Payee per written contract or agreement on the Contractors Equipment Policy (Scheduled & Leased and Rented).

Type Of Insurance: Excess Liability
Insurer Affording Coverage: A
Policy Number: LHA600057
Policy Eff - Exp Dates: 3/31/2024 - 3/31/2025
Limits: \$3,000,000
In Excess Of: \$2,000,000

AGENCY CUSTOMER ID: _____

LOC #: _____

ADDITIONAL REMARKS SCHEDULE

Page ____ of ____

AGENCY Scott & McCauley Insurance Agency		NAMED INSURED American Road Maintenance, Inc	
POLICY NUMBER			
CARRIER	NAIC CODE	EFFECTIVE DATE:	

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: 25 **FORM TITLE:** Certificate of Liability Insurance: Remarks

Type Of Insurance: Excess Liability
Insurer Affording Coverage: A
Policy Number: LHA600057
Policy Eff - Exp Dates: 3/31/2024 - 3/31/2025
Limits: \$3,000,000
In Excess Of: \$2,000,000

AGENDA MEMORANDUM

Village of Ruidoso

Agenda Item - 4.

To: Mayor Crawford and Councilors

Presenter(s): Christella Armijo, Water Resource Director
Ashlie Carabajal, Water Resource Manager

Meeting Date: September 18, 2024

Re: Discussion and Possible Action on Task Order RFP #2024-004P-01-Amendment 1 with Cobb, Fendley & Associates, Inc. to Include Three Additional Watersheds to be Modeled within the Watershed Based Plan for an Increased Cost of \$39,435.97 including NMGRT and a Total Project Cost of \$236,874.91 including NMGRT.

Item Summary:

Discussion and Possible Action on Task Order RFP #2024-004P-01-Amendment 1 with Cobb, Fendley & Associates, Inc. to Include Three Additional Watersheds to be Modeled within the Watershed Based Plan for an Increased Cost of \$39,435.97 including NMGRT and a Total Project Cost of \$236,874.91 including NMGRT.

Financial Impact:

The amendment has been budgeted for the SGRT Special Revenue Fund's Professional Services line item (202-205-52006).

Item Discussion:

The Village of Ruidoso has received grant funds from the NMED Surface Water Quality Bureau to create a watershed-based plan. This plan will be written by Cobb, Fendley & Associates, Inc. that will meet the criteria that will be acceptable to the EPA and NMED Surface Water Quality Bureau. The task order amendment will include modeling for three additional watersheds that were impacted by the South Fork and Salt Incident.

Recommendations:

To Approve Task Order RFP #2024-004P-01-Amendment 1 with Cobb, Fendley & Associates, Inc. to Include Three Additional Watersheds to be Modeled within the Watershed Based Plan for an Increased Cost of \$39,435.97 including NMGRT and a Total Project Cost of \$236,874.91 including NMGRT.

ATTACHMENTS:

Description

Task Order Amendment

Change Order Request

**TASK ORDER
FROM
VILLAGE OF RUIDOSO
TO
Cobb, Fendley & Associates, Inc.
FY 2024**

1. **Task Order Number:** RFP#2024-004P-01-Amendment 1
2. **Title:** Rio Ruidoso Watershed Based Plan
3. **Location:** Village of Ruidoso
4. **Scope of Services Required:** Provide engineering services for the creation of the Watershed Based Plan as described in the attached proposal.
5. **Project Number:** _____
6. **Village Contact:** Christella Armijo or Ashlie Carabajal
Cobb Fendley Contact: Sean Wolfe
7. **Performance Time:** June 2024 – June 2025
8. **Estimated Cost:** \$197,438.94 including NM gross-receipts tax
9. **Amendment 1 Total Cost:** \$236,874.91 including NM gross-receipts tax
10. **Attachments:** May 28, 2024 “Village of Ruidoso Watershed Based Plan”
11. **Amendment 1 Attachment:** September 12, 2024 “Revised Amendment #1 to Task Order RFP#2024-004P-01, Additional Watershed Modeling”
12. **The parties hereto executed the original Task Order on: (date)** _____

Village of Ruidoso

Cobb, Fendley & Associates, Inc.

Lynn D. Crawford, Mayor

Sean Wolfe, PG, Region Manager

Date: _____

Date: _____

(SEAL)

ATTEST:

Jini S. Turri, Village Clerk

September 12, 2024

Ashlie Carabajal
Water Resources Manager
Village of Ruidoso
313 Cree Meadows Drive
Ruidoso, NM 88345
Email: ashliecarabajal@ruidoso-nm.gov

VIA EMAIL

RE: **REVISED** Amendment #1 to Task Order RFP#2024-004P-01, Additional Watershed Modeling

Dear Ashlie,

CobbFendley, under contract RFP#2024-004P, has been issued task order #1 to complete a Watershed Based Water Quality Improvement Plan. The first task within the scope of this project is to perform watershed modeling including hydrologic and hydraulic analysis of watershed function. Our original scope of work included analysis and modeling of two watersheds, the Upper Rio Ruidoso and the Carrizo Creek watersheds. These occupy approximately 73 square miles of forested watershed, some located on the Mescalero Apache Reservation.

Due to the impacts of the South Fork and the Salt wildfires that burned over 25,500 acres both north and south of Ruidoso, NM, hydrologic conditions have changed. These fires destroyed the forest canopy and denuded ground cover leaving the soil exposed to rainfall impacts and erosive forces. Since late June of 2024, numerous intense storms have and continue to occur creating flash flooding, debris flows, and substantial sediment transport. These floods have created localized flooding, damaged home and property, and required numerous road closures in the area.

After meeting with you on July 30, 2024, it was determined that expanding the watershed modeling analysis was necessary. Three new watersheds; Middle Rio Ruidoso, Cherokee Bill, and Devils Canyon will be included. This expands the study area by 163.75 square miles to a total of 237 square miles. The Village also requested that we overlay the extents of recent and prior fire burn scars over these areas to better ascertain watershed conditions affecting runoff and flooding. The fires include the Blue 2, White, Little Bear, and McBride along with the recent South Fork and Salt fire events. The USGS Hydrologic Unit Codes from the national map viewer for the watersheds of interest have been reviewed and serve as the basis of watershed extents. Fire burn scar limits will be provided by the Village as ESRI shape files. A combined ESRI map will be created to illustrate these layers and boundaries included with a formal drainage report. The report will describe the working assumptions, data sources, methodology, and results of both hydrologic and hydraulic modeling. All HEC-HMS and HEC-RAS hydrologic and hydraulic modeling files will also be provided.

To support this expanded modeling effort, CobbFendley respectfully requests additional fee to support these efforts. Our original labor fee for task 1 – Watershed Modeling totaled \$43,982 exclusive of NMGRT and related expenses. The increase in size of the modeled area incorporating fire extents requires an additional \$39,435.97 including the additional labor, expenses for site visits, and NMGRT for a total of \$83,417.97 for task 1 within our executed task order dated July 18, 2024.

We appreciate the opportunity to support the Village now and into the future as we work together toward recovery from this devastating event. Please feel free to contact me with any questions or additional information needs. Thank you very much.

Sincerely,



L. Brad Sumrall, PE
Principal
Senior Project Manager
Mountain Municipal Program

AGENDA MEMORANDUM

Village of Ruidoso

Agenda Item - 5.

To: Mayor Crawford and Councilors

Presenter(s): Ronald L. Sena, Village Manager

Meeting Date: September 18, 2024

Re: Discussion and Possible Action on Adoption of Resolution 2024-41, a Resolution Authorizing the Participation in the Transportation Project Fund Program Administered by the New Mexico Department of Transportation for Fiscal Year 2025, in the Amount of \$2,000,000.00.

Item Summary:

Discussion and Possible Action on Adoption of Resolution 2024-41, a Resolution Authorizing the Participation in the Transportation Project Fund Program Administered by the New Mexico Department of Transportation for Fiscal Year 2025, in the Amount of \$2,000,000.00.

Financial Impact:

Upon approval, a budget adjustment will be completed to budget the Village's match. Funding of the project can be taken from the General Fund's Cash Balance or increase GRT tax revenue in the General Fund.

NMDOT Share- 95% or \$1,900,000
VOR Share - 5% - \$100,000
Total Project cost - \$2,000,000

Item Discussion:

The Village of Ruidoso (VOR) is applying for \$2 million from the NMDOT Transportation Project Fund. The funding requested is enough to fully complete our project. We are requesting funding to repair six roads:

NMDOT Share- 95% or \$2,000,000
VOR Share - 5% - \$100,000
Total Project cost - \$2,000,000

1. White Mountain Dr. (1.3 miles)
2. Porr Dr. (1.0 mile)
3. Jack Little Dr. (0.7 mile)
4. II Davis Dr. (0.65 mile)

- 5. Leon Farrar Dr. (0.5 mile)
- 6. Wingfield Dr. (0.9 mile)

All four roads are school bus routes for the Ruidoso Municipal Schools and critical access routes for emergency services. The total length of the proposed project is 4.1 miles. The project falls within the NMDOT owned right-of-way and we will be asking for support from NMDOT District II Engineer. Our quote is based on Cutler Repaving, Inc. state-wide pricing agreement. This will be a turn-key project to include pavement. rehabilitation, roadway striping, traffic control, construction, construction observation and testing.

Recommendations:

To Approve Adoption of Resolution 2024-41, a Resolution Authorizing the Participation in the Transportation Project Fund Program Administered by the New Mexico Department of Transportation for Fiscal Year 2025, in the Amount of \$2,000,000.00.

ATTACHMENTS:

Description

Resolution 2024-41

Agreement

VILLAGE OF RUIDOSO

RESOLUTION 2024-41

**PARTICIPATION IN TRANSPORTATION PROJECT FUND PROGRAM ADMINISTERED
BY NEW MEXICO DEPARTMENT OF TRANSPORTATION**

WHEREAS, the **Village of Ruidoso** and the New Mexico Department of Transportation have entered into a grant agreement under the Transportation Fund Program for a local road project.

WHEREAS, the total cost of the project will be \$2,000,000 to be funded in proportional share by the parties hereto as follows:

- a. New Mexico Department of Transportation’s share shall be 95% or \$1,900,000.00

and

- b. **Village of Ruidoso**’s proportional matching share shall be 5% or \$100,000.00

TOTAL PROJECT COST IS \$2,000,000.00

The **Village of Ruidoso** shall pay all costs, which exceed the total amount of \$2,000,000.00

Now therefore, be it resolved in official session that **Village of Ruidoso** determines, resolves, and orders as follows:

That the project for this Cooperative agreement is adopted and has a priority standing.

The agreement terminates on June 30, 2027, and the **Village of Ruidoso** incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into the written agreement.

Now therefore, be it resolved by the **Village of Ruidoso** to enter into Cooperative Agreement for Project Control Number **LP20060** with the New Mexico Department of Transportation for the TPF Program for year 2024 on Village of Ruidoso Project 2, roadway maintenance improvements; to include 4.9 miles of roadway maintenance to include pavement rehabilitation, roadway striping, utility cover adjustments, traffic control, construction observation & testing on White Mountain Dr., Porr Dr., Jack Little Dr., LL Davis Dr., Leon Farrar Dr. & Wingfield Dr., with a 1.5" mill, 1-1.5" remix of existing road, and with a 2" overlay though the use of a heater scarify process.

Passed, Adopted and Approved this 18th Day of September 2024

VILLAGE OF RUIDOSO, NEW MEXICO

Lynn D. Crawford, Mayor

(SEAL)

ATTEST:

Jini Turri, Village Clerk

Contract No. _____
 Vendor No. 0000054454
 Control No. HW2LP20060

**TRANSPORTATION PROJECT FUND
 GRANT AGREEMENT**

This Agreement is between the **New Mexico Department of Transportation** (Department) and **Village of Ruidoso** (Public Entity). This Agreement is effective as of the date of the last party to sign it on the signature page below.

Pursuant to NMSA 1978, Sections 67-3-28 and 67-3-78 and 18.27.6 NMAC, the parties agree as follows:

1. Purpose.

The purpose of this Agreement is to provide Transportation Project Funds (TPF) to the Public Entity for the following project scope **Village of Ruidoso Roadway Maintenance Project 2-4.9 miles of roadway maintenance Improvements to include pavement rehabilitation, roadway striping, utility cover adjustments, traffic control, construction observation & testing on White Mountain Dr., Porr Dr., Jack Little Dr., LL Davis Dr., Leon Farrar Dr. & Wingfield Dr., with a 1.5" mill, 1-1.5" remix of existing road, and with a 2" overlay though the use of a heater scarify process** (Project or CN LP20060). This Agreement specifies and delineates the rights and duties of the parties.

2. Project Funding.

- a. The estimated total cost for the Project is Two Million Dollars and No Cents (**\$2,000,000.00**) to be funded in proportional share by the parties as follows:

Project Funding	Department Share	Public Entity Share	Total Cost
Funding Source 1	95%	5%	
<u>FY 2025 Transportation Project Fund</u> For the purpose stated above in Section 1.	\$1,900,000.00	\$100,000.00	\$2,000,000.00
Total Transportation Project Funds			\$2,000,000.00

- b. The Public Entity is responsible for all costs that exceed Project funding.
- c. All allocated funds must be spent by **June 30, 2027**.
- d. The Public Entity represents that no federal funds will be used to finance the Project.
- e. The Public Entity must repay Project funding to the Department if:
 - 1. The Project is cancelled or partially performed.

2. A final audit conducted by the Department at Project completion determines the following: an overpayment, unexpended monies or ineligible expenses.

3. The Department:

- a. Shall distribute the funds, identified in Section 2a1, in a lump sum to the Public Entity after:
 1. The Department has received this Agreement fully executed with a Resolution of Sponsorship attached as Exhibit B.
 2. Receipt of a letter requesting funds, which includes the following Project documents: Notice of Award/Work Order and Notice to Proceed for the Project.
 3. If a Department's or another entity's right-of-way is involved, a permit or letter of approval/authorization, from the entity with jurisdiction over the Project right-of-way.
- b. Will not:
 1. Perform any detailed technical reviews of Project scope, cost, budget, schedule, design or other related documents;
 2. Have any involvement in the construction phase;
 3. Be involved in permit preparation or the review or coordination with regulatory agencies.
 4. Conduct periodic assurance inspections or comparison material testing.
 5. Participate in resolving bidding and contract disputes between the Public Entity and contractors.
- c. May perform Project monitoring that might consist of the following:
 1. Review of Project status to ensure that project goals, objectives, performance requirements, timelines, milestone completion budgets and other guidelines are being met.
 2. Request written Project status reports.
 3. Conduct a review of the Local Entity's performance and administration of the Project funds identified in Section 2a.
- d. Reserves the right, upon receipt of the Public Entity's Certification of Completion, Exhibit A, to request additional documents that demonstrate Project completion.
- e. If required, the District Engineer or designee, will conduct a Project review to determine if permit is required from the Department. If there is a determination that a permit is not required, a letter of approval and authorization will be forwarded to the Public Entity.

4. The Public Entity Shall:

- a. Act in the capacity of lead agency for the purpose as described in Section 1.
- b. Procure and award any contract in accordance with applicable procurement law, rules, regulations and ordinances.
- c. Be responsible for all design activities necessary to advance the Project to construction and coordinate construction.
- d. Unless otherwise specified in a letter of authorization or permit, design and construct the Project in accordance with the Public Entity's established design standards.
- e. Have sole responsibility and control of all project phases and resulting quality of the completed work.
- f. If the Project is in full or on a portion of a state highway, on a Department right of way or a National Highway System route:

1. Obtain from the Department a permit in accordance with 18.31.6.14 NMAC, State Highway Access Management Requirements or a letter of authorization; and
 2. Design and construct the Project in accordance with standards established by the Department.
- g. Adopt a written resolution of Project support that includes a commitment to funding, ownership, liability and maintenance. The resolution is attached to this Agreement as Exhibit B.
 - h. Consider placing pedestrian, bicycle and equestrian facilities in the Project design in accordance with NMSA 1978, Section 67-3-62.
 - i. Comply with any and all state, local and federal regulations including the Americans with Disabilities Act (ADA) and laws regarding noise ordinances, air quality, surface water quality, ground water quality, threatened and endangered species, hazardous materials, historic and cultural properties, and cultural resources.
 - j. Be responsible for all permit preparation, review and coordination with regulatory agencies.
 - k. Cause all designs, plans, specifications and estimates to be performed under the direct supervision of a Registered New Mexico Professional Engineer, in accordance with NMSA 1978 Section 61-23-26.
 - l. Allow the Department to perform a final inspection of the Project and all related documentation to determine if the Project was constructed in accordance with the provisions of this Agreement. At the Department's request, provide additional documentation to demonstrate completion of the required terms and conditions.
 - m. Meet with the Department, as needed, or provide Project status reports within thirty (30) days of request.
 - n. Within 60 days after Project completion, provide the Certification of Completion, which is attached as Exhibit A, that it has complied with the requirements of 18.27.6 NMAC and this Agreement.
 - o. Upon completion, maintain all the Public Entity's facilities constructed or reconstructed under this Agreement.

5. Both Parties Agree:

- a. Upon termination of this Agreement any remaining property, materials, or equipment belonging to the Department will be accounted for and disposed of by the Public Entity as directed by the Department.
- b. Unless otherwise indicated in a letter of authorization, the Project will not be incorporated into the State Highway System and the Department is not assuming maintenance responsibility or liability.
- c. Pursuant to NMSA 1978, Section 67-3-78, Transportation Project Funds granted under this provision cannot be used by the Public Entity to meet a required match under any other program.
- d. The requirements of 18.27.6 NMAC are incorporated by reference.
- e. The inability to properly complete and administer the Project may result in the Public Entity being denied future grant funding.

6. Term.

This Agreement becomes effective upon signature of all parties. The effective date is the date when the last party signed the Agreement on the signature page below. This Agreement terminates on the earliest of the following dates: (a) Department receipt of the Certification of Completion or (b) **June 30, 2027**. In the event an extension to the term is needed, the Public Entity shall provide written notice along with detailed justification to the Department sixty (60) days prior to the expiration date to ensure timely processing of an Amendment. Neither party shall have any obligation after said date except as stated in Sections 2e, 4l, 4n and 7.

7. Termination.

If the Public Entity fails to comply with any provision of this Agreement, the Department may terminate this Agreement by providing thirty (30) days written notice. This Agreement may also be terminated pursuant to Section 15. Neither party has any obligation after termination, except as stated in Sections 2e, 4l, 4n and 7.

8. Third Party Beneficiary.

It is not intended by any of the provisions of any part of this Agreement to create in the public or any member of the public a third party beneficiary or to authorize anyone not a party to the Agreement to maintain a suit(s) for wrongful death(s), bodily and/or personal injury(ies) to person(s), damage(s) to property(ies), and/or any other claim(s) whatsoever pursuant to the provisions of this Agreement.

9. New Mexico Tort Claims Act.

As between the Department and Public Entity, neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, *et seq.*

10. Contractors Insurance Requirements.

The Public Entity shall require contractors and subcontractors hired for the Project to have a general liability insurance policy, with limits of liability of at least \$1,000,000 per occurrence. The Department is to be named as an additional insured on the contractors and subcontractor's policy and a certificate of insurance must be provided to the Department and it must state that coverage provided under the policy is primary over any other valid insurance.

To the fullest extent permitted by law, the Public Entity shall require the contractor and subcontractors to defend, indemnify and hold harmless the Department from and against any liability, claims, damages, losses or expenses (including but not limited to attorney's fees, court costs, and the cost of appellate proceedings) arising out of or resulting from the negligence, act, error, or omission of the contractor and subcontractor in the performance of the Project, or anyone directly or indirectly employed by the contractor or anyone for whose acts they are liable in the performance of the Project.

11. Scope of Agreement.

This Agreement incorporates all the agreements, covenants, and understandings between the parties concerning the subject matter. All such covenants, agreements, and understandings have been merged into this written Agreement. No prior Agreement or understandings, verbal or

otherwise, of the parties or their agents will be valid or enforceable unless embodied in this Agreement.

12. Terms of this Agreement.

The terms of this Agreement are lawful; performance of all duties and obligations must conform with and not contravene any state, local, or federal statutes, regulations, rules, or ordinances.

13. Legal Compliance.

The Public Entity shall comply with all applicable federal, state, local, and Department laws, regulations and policies in the performance of this Agreement, including, but not limited to laws governing civil right, equal opportunity compliance, environmental issue, workplace safety, employer-employee relations and all other laws governing operations of the workplace. The Public Entity shall include the requirements of this Section 13 in each contract and subcontract at all tiers.

14. Equal Opportunity Compliance.

The parties agree to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, the parties agree to assure that no person in the United States will, on the grounds of race, color, national origin, ancestry, sex, sexual preference, age or handicap, be excluded from employment with, or participation in, any program or activity performed under this Agreement. If the parties are found to not be in compliance with these requirements during the term of this Agreement, the parties agree to take appropriate steps to correct these deficiencies.

15. Appropriations and Authorizations.

The terms of this Agreement are contingent upon sufficient appropriations and authorizations being made by the governing board of the Public Entity, the Legislature of New Mexico for performance of the Agreement. If sufficient appropriations and authorizations are not made by the Public Entity and the Legislature this Agreement will terminate upon written notice being given by one party to the other. The Department and Public Entity are expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered, and approved for expenditure.

16. Accountability of Receipts and Disbursements.

There shall be strict accountability for all receipts and disbursements relating to this Agreement. The Public Entity shall maintain all records and documents relative to the Project for a minimum of five (5) years after completion of the Project. The Public Entity shall furnish the Department and State Auditor, upon demand, any and all such records relevant to this Agreement. If an audit finding determines that specific funding was inappropriate or not related to the Project, the Public Entity shall reimburse that portion to the Department within thirty (30) days of written notification. If documentation is insufficient to support an audit by customarily accepted accounting practices, the expense supported by such insufficient documentation must be reimbursed to the Department within thirty (30) days.

17. Severability.

In the event that any portion of this Agreement is determined to be void, unconstitutional or otherwise unenforceable, the remainder of this Agreement will remain in full force and effect.

18. Applicable Law.

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue is proper in a New Mexico Court of competent jurisdiction in accordance with NMSA 1978, Section 38-3-1(G).

19. Amendment.

This Agreement may be amended by an instrument in writing executed by the parties.

The remainder of this page is intentionally left blank.

In witness whereof, each party is signing this Agreement on the date stated opposite that party's signature.

NEW MEXICO DEPARTMENT OF TRANSPORTATION

By: _____
Cabinet Secretary or Designee

Date: _____

Approved as to form and legal sufficiency by the New Mexico Department of Transportation's Office of General Counsel

By: _____
Assistant General Counsel

Date: _____

Village of Ruidoso

By: _____

Date: _____

Title: _____

Attest: _____

Title: _____

EXHIBIT A

CERTIFICATION OF PROJECT COMPLETION

Public Entity:

Control No. LP20060

I, _____, in my capacity as _____ of _____ certify in regard to Control No. **LP20060**:

1. That the Public Entity has complied with the terms and conditions of the requirements under this Agreement and 18.27.6 NMAC.
2. That all work in was performed in accordance with the Agreement.
3. That the total Project cost of _____, with New Mexico Department of Transportation 95% share of _____ and the Public Entity share of _____ is accurate, legitimate, and appropriate for the Project.
4. That the Project was completed on _____ of _____, 20_____

In Witness Whereof, _____ in his/her capacity as _____ of _____ certify that the matters stated above are true to his/her knowledge and belief.

Village of Ruidoso

By: _____ Date: _____

Title: _____ Date: _____

ATTEST:

By: _____ Date: _____

Public Entity Clerk

When completed, send Certification of Project Completion to the District Coordinator, New Mexico Department of Transportation.

EXHIBIT B
RESOLUTION
Village of Ruidoso

PARTICIPATION IN TRANSPORTATION PROJECT FUND PROGRAM ADMINISTERED BY
NEW MEXICO DEPARTMENT OF TRANSPORTATION

WHEREAS, the **Village of Ruidoso** and the New Mexico Department of Transportation have entered into a grant agreement under the Transportation Fund Program for a local road project.

WHEREAS, the total cost of the project will be \$2,000,000 to be funded in proportional share by the parties hereto as follows:

- a. New Mexico Department of Transportation's share shall be 95% or \$1,900,000.00

and

- b. **Village of Ruidoso**'s proportional matching share shall be 5% or \$100,000.00

TOTAL PROJECT COST IS \$2,000,000.00

The **Village of Ruidoso** shall pay all costs, which exceed the total amount of \$2,000,000.00.

Now therefore, be it resolved in official session that **Village of Ruidoso** determines, resolves, and orders as follows:

That the project for this Cooperative agreement is adopted and has a priority standing.

The agreement terminates on June 30, 2027 and the **Village of Ruidoso** incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into the written agreement.

Now therefore, be it resolved by the **Village of Ruidoso** to enter into Cooperative Agreement for Project Control Number **LP20060** with the New Mexico Department of Transportation for the TPF Program for year 2025 for Village of Ruidoso Roadway Maintenance Project 2-4.9 miles of roadway maintenance Improvements to include pavement rehabilitation, roadway striping, utility cover adjustments, traffic control, construction observation & testing on White Mountain Dr., Porr Dr., Jack Little Dr., LL Davis Dr., Leon Farrar-Dr. & Wingfield Dr., with a 1.5" mill, 1-1.5" remix of existing road, and with a 2" overlay though the use of a heater scarify process within the control of the **Village of Ruidoso** in New Mexico.

(Appropriate Signatures below (Council, Commission, School Board, Tribe, Pueblo, Nation, etc.)

(PRINTED NAME, POSITION)

DATE

(PRINTED NAME, POSITION)

DATE

AGENDA MEMORANDUM

Village of Ruidoso

Agenda Item - 6.

To: Mayor Crawford and Councilors

Presenter(s): Judi Starkovich, Finance Director
Christella Armijo, Water Resource Director
Adam Sanchez, Public Works Director

Meeting Date: September 18, 2024

Re: Discussion and Possible Action on Village of Ruidoso Code of Ordinances Chapter 86, Section 31-K, Adjustments to Water Charges.

Item Summary:

Discussion and Possible Action on Village of Ruidoso Code of Ordinances Chapter 86, Section 31-K, Adjustments to Water Charges.

Financial Impact:

To be determined by Finance

Item Discussion:

Village of Ruidoso Code of Ordinances Chapter 86, Section 31-K, Adjustments to Water Charges.

Recommendations:

To Take Action on Village of Ruidoso Code of Ordinances Chapter 86, Section 31-K, Adjustments to Water Charges.

ATTACHMENTS:

Description
Chapter 86, Section 31-K

(k) *Adjustments to water charges.*

- (1) The village may adjust the water service charges as billed where all the following conditions are met:
 - a. The amount billed is much higher than the customer is normally billed in a comparable month;
 - b. The customer proves to the satisfaction of the village manager that the reason for the high usage is an extraordinary condition relating to the water pipes on the customer's side of the meter, such as a broken pipe, but not including leaking faucet washers; and
 - c. The customer must repair water leak within 15 days of initial notification by the village or the customer's request for an adjustment to water charges and must provide proof that the condition has been repaired.
- (2) If the customer proves the requirements were met in subsection (k)(1) of this section, the village may provide a discount after documentation that the leak has been fixed (i.e. a paid plumbers bill, etc.). Said discounts would be calculated on the quantity of water used, billed at the lowest commodity charge rate for an average comparable month. For the purposes of this provision, the term "average comparable month" shall mean the same month of the year in the previous three years, or if these months are not comparable by reason of changes in occupancy or other reasons, any other month determined to be comparable by the village manager.
- (3) Adjustments under subsections (k)(1) and (2) of this section shall not be made for consecutive months, nor shall they be made for more than two months in any 12-month period.
- (4) If the customer and the village manager are unable to agree on an adjustment under this subsection, the matter may be appealed to the village council.