Finance Department
100 N. Main, Suite 11
Lovington, NM 88260

Phone: (575) 396-8521
Fax: (575) 396-5684
Email:kferguson@leacounty.net

LEGAL NOTICE OF INVITATION TO BID
LEA COUNTY, NEW MEXICO

HIGH PERFORMANCE ASPHALT PATCH MATERIAL
LEA COUNTY ROAD DEPARTMENT
NIGP Codes: 745-65, 745-67
BID #02 - (21-22)

DUE DATE: August 10, 2021 – 2:00 P.M. (LOCAL TIME)

The Lea County Board of County Commissioners will receive sealed bids for the above in the Finance Department, Fourth Floor, Courthouse, Lovington, New Mexico, at the address below.

BIDS WILL BE OPENED immediately after 2:00 P.M. in the Courthouse 1st Floor Commission Chambers.

For a copy of the "Invitation to Bid" and access to possible future addenda, please visit Lea County's web site at www.leacounty.net or contact the Finance Department, Courthouse, 100 N. Main, Suite 11, Lovington, NM 88260, (575) 396-8521, ext. 8610; kferguson@leacounty.net
QUESTIONS must be submitted in writing to the same contact info.

Rebecca Long, Chairperson
July 30, 2021

Hobbs Daily News-Sun

Albuquerque Journal

Terms and Conditions
(Unless otherwise specified)

1.General: When the Lea County Purchasing Officer or his/her designee issues a purchase order (P.O.) in response to the Vendor's bid, a binding contract is created.

2.Variation in Quantity: No variation in the quantity of any item called for by this order will be accepted unless such variation has been caused by conditions of loading, shipping, packing or allowances in manufacturing process and then only to the extent, if any, specified in this order.

3.Assignment:

a. Neither the order, nor any interest therein, nor any claim thereunder, shall be assigned or transferred by the Vendor, except as set forth in Subparagraph 3b or as expressly authorized in writing by the Lea County Purchasing Officer or his/her designee. No such assignment or transfer shall relieve the Vendor from the obligations and liabilities under this order.

b. Vendor agrees that any and all claims for overcharge resulting from antitrust violations which are borne by the County as to goods, services, and materials purchased in connection with this bid are hereby assigned to the County.

4. County Furnished Property: County furnished property shall be returned to the County upon request in the same condition as received except for ordinary wear, tear and modifications ordered hereunder.

5. Inspection: Final inspection and acceptance will be made at the destination. Supplies rejected at the destination for nonconformance with specifications shall be removed at the Vendor's risk and expense, promptly after notice of rejection.

6. Inspection of Plant: Lea County Purchasing Officer or his/her designee may inspect, at any reasonable time, the part of the Contractor's, or any subcontractor's plant or place of business, which is related to the performance of this contract.

7. Commercial Warranty: The Vendor agrees that the supplies or services furnished under this order shall be covered by the most favorable commercial warranties the Vendor gives for such to any customer for such supplies or services. The rights and remedies provided herein shall extend to the County and are in addition to and do not limit any rights afforded to the County by any other clause of this order. Vendor agrees not to disclaim warranties of fitness for a particular purpose of merchantability.

8. Taxes: The unit price shall exclude all state taxes.

9. Packing, Shipping and Invoicing:

a. The County's purchasing document number and the Vendor's name, user's name and location shall be shown on each packing and delivery ticket, package, bill of lading and other correspondence in connection with the shipments. The user's count will be accepted by the Vendor as final and conclusive on all shipments not accompanied by a packing ticket.

b. The Vendor's invoice shall be submitted duly certified and shall contain the following information: order number, description of supplies or services, quantities, unit price and extended totals. Separate invoices shall be rendered for each and every complete shipment.

c. Invoices must be submitted to the Lea County Road Department.

10. Default: The County reserves the right to cancel all or any part of this order without cost to the County, if the Vendor fails to meet the provisions of this order and, except as otherwise provided herein, to hold the Vendor liable for any excess cost occasioned by the County due to the Vendor's default. The Vendor shall not be liable for any excess costs if failure to perform the order arises out of causes beyond their control and without the fault or negligence of the Vendor, such causes include but are not restricted to, acts of God or the public enemy, acts of the State or Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of subcontractors due to any of the above, unless the County shall determine that the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Vendor to meet the required delivery scheduled. The rights of the County provided in this paragraph shall not be exclusive and are in addition to any other rights now being provided by law or under this order.

11. Non-Collusion: In signing this bid the Vendor certifies he/she has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with this offer submitted to the County Purchasing Officer or his/her designee.

12. Nondiscrimination: Vendor doing business with the Lea County Road Department must be in compliance with the Federal Civil Rights Act of 1964 and Title VII of the Act (Rev. 1979) and the Americans with Disabilities Act of 1990 (Public Law 101-336).

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

14. Item: All bid items are to be NEW and of most current production, unless otherwise specified.

15. Payment for Purchases: Except as otherwise agreed to: late payment charges may be assessed against the County in the amount and under the conditions set forth in Section 13-1-158 NMSA 1978.

16. Workers Compensation: The Contractor agrees to comply with state laws and rules pertaining to Workers Compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the contracting agency.

17. Submission of Bids: Bids must be submitted in a sealed envelope with the bid number and opening date clearly indicated on the bottom left hand side of the front of the envelope. Failure to label bid envelope will necessitate the premature opening of the bid in order to identify the bid number.

18. Contractor Personnel: Personnel proposed in the Contractor's written bid to the Procuring Agency (Lea County) are considered material to any work performed under this Price Agreement. Once a Purchase Order or contract has been executed, no changes of personnel will be made by the Contractor without prior written consent of the Procuring Agency. Replacement of any Contractor personnel, if approved, shall be with personnel of equal ability, experience, and qualifications. The Contractor will be responsible for any expenses incurred in familiarizing the replacement personnel to insure their being productive to the project immediately upon receiving assignments. Approval of replacement personnel shall not be unreasonably withheld. The Procuring Agency shall retain the right to request the removal of any of the Contractor's personnel at any time.

19. Subcontracting: The Contractor shall not subcontract any portion of the Price Agreement/Contract without the prior written approval of the Procuring Agency. No such subcontracting shall relieve the Contractor from its

obligations and liabilities under this Price Agreement, nor shall any subcontracting obligate payment from the Agency.

20. Records and Audit: The Contractor shall maintain detailed time and expenditure records that indicate the date, time, nature, and cost of services rendered during this Price Agreement's term and effect, and retain them for a period of three (3) years from the date of final payment under this Price Agreement. The records shall be subject to inspection by the Agency. The Agency shall have the right to audit billings, both before and after payment. Payment for services under this Price Agreement shall not foreclose the right of the Agency to recover excessive or illegal payments.

21. Subcontracts: The foregoing requirements for Contractor Personnel, Subcontracting, and Audit shall be inserted into all subcontracts from the prime Contractor to the subcontractor.

Lea County Price Agreement

Article I – Statement of Work
Under the terms and conditions of this Price Agreement, the using agency may issue orders for items and/or services described herein.

The terms and conditions of the Price Agreement shall form a part of each order issued hereunder.

The items and/or services to be ordered shall be listed under Article IX – Price Schedule. All orders issued hereunder will bear both an order number and this Price Agreement/Contract Number. It is understood that no guarantee or warranty is made or implied by either the Lea County Purchasing Officer or the user department that any order for any definite quantity will be issued under this Price Agreement. The Contractor is required to accept the order and furnish the items and/or services in accordance with the articles contained hereunder for the quantity of each order issued.

Article II – Term
The term of this Price Agreement for issuance of orders shall be as indicated in specifications.

Article III – Specifications
Items and/or services furnished hereunder shall conform to the requirements of specifications and/or drawings applicable to items listed under Article IX – Price Schedule. Orders issued against this schedule will show the applicable price agreement item(s), number(s), and price(s);however they may not describe the item(s) fully.

Article IV – Shipping and Billing Instructions
Contractor shall ship in accordance with the instructions of this form. Shipment shall be made only against specific orders which the user may place with the Contractor during the term indicated in Article II – Term. The Contractor shall enclose a packing list with each shipment listing the order number, price agreement number and the commercial parts number (if any) for each item. Delivery shall be made as indicated on page 1. If vendor is unable to meet stated delivery, the Lea County Road Department must be notified.

Article V – Termination
This Price Agreement may be terminated by either signing party upon written notice to the other at least thirty (30) days in advance of the date of termination. Notice of termination of the Price Agreement shall not affect any outstanding orders.

Article VI – Amendment
This Price Agreement may be amended by mutual agreement of the Lea County Purchasing Officer or his/her designee and the Contractor upon written notice by either party to the other. An amendment to this Price Agreement shall not affect any outstanding orders issued prior to the effective date of the amendment as mutually agreed upon, and as published by the Lea County Purchasing Officer or his/her designee. Amendments affecting price adjustments and/or the extension of a price agreement expiration date are not allowed unless specifically provided for in the bid and price agreement specifications.

Article VII – Issuance or Orders
Only written signed orders are valid under this Price Agreement.

Article VIII – Packing (if applicable)

Packing shall be in conformance with standard commercial practices.

Article IX – Price Schedule
Prices as listed in the price schedule hereto attached are firm.

Establish a Price Agreement for High Performance Asphalt Concrete Patch Material for the Lea County Road Department.

Term of Price Agreement:
The term of this agreement shall be for one (1) year from date of award and with Lea County's option to extend for a period of one (1) year, by mutual price agreement of both parties and the approval of the Lea County Purchasing Officer at the same prices, terms and conditions. The price agreement shall not exceed four (4) years.

Bidding Information:
The conditions and specifications set out in the invitation to bid are inseparable and indivisible. Any vendor, by submitting a bid, agrees to be bound by all such conditions and/or specifications. All conditions and specifications in the Invitation to Bid, and all other documents required to be submitted, shall be returned by the vendor in their bid package. Failure to do so or any attempt to vary or change the conditions or specifications of the invitation to bid shall, at the discretion of the County constitute grounds for rejection of the entire bid.

The prices quoted herein represent the total compensation to be paid by the County for goods and/or services provided, including any and all labor, equipment, tools, materials, taxes, permits, licenses or other costs necessary to complete the services or goods provided. The prices quoted in this price agreement include an amount sufficient to cover such costs.

The vendor is to indicate their Federal Tax ID Number, New Mexico Gross Receipts Number or Social Security Number.

Contractors who are bidding shall promptly notify the County of any ambiguity, inconsistency or error which they may discover upon the examination of the bidding documents, or the site and location conditions. The County shall have the right to reject any or all bids, and in particular a bid not accompanied by the data required by this bidding document, or a bid which is in any way incomplete or irregular.

The Contractor shall be considered an independent Contractor and not an employee of the Lea County Road Department. However, directions as to time and place of performance and compliance with rules and regulations may be required by the using agency.

Questions concerning this Price Agreement shall be submitted IN WRITING to: Kelli Ferguson, Procurement Officer, kferguson@leacounty.net

Method of Award:
Low bid per item. Multiple awards may be issued in the best interest of the County.

Lea County General

Vendor is requested to indicate their federal tax id number, New Mexico gross receipts or social security number on the Bid Form.

Bid Review:
The County shall perform a bid analysis of the bids received to include a determination of qualification in accordance with the standards and requirements of the Price Agreement. The analysis and recommendation for award will be sent to Lea County Purchasing Officer for a determination.

Method of Award:
This Price Agreement may be awarded to vendor per item.

The Contractor Agrees To:

A. Provide competent supervision and skilled personnel to perform all work covered by this price agreement.

B. Comply with all local, state, and federal laws governing safety, health and sanitation. The Contractor shall provide all safeguards, safety devices and protective equipment, and take any other needed actions necessary to protect the safety and health of employees on-the-job, the safety of the public, and to protect property in connection with the performance of the work covered by the price agreement.

C. Indemnify and hold harmless the Lea County Road Department, its officers and employees, against liability, claims, damages, losses and/or expenses arising out of bodily injury to persons or damage to property caused by, or resulting from, Contractor's and/or its employees, own negligent act(s) or omissions(s) while Contractor, and/or its employees perform(s) or fails to perform its obligations and duties under the terms and conditions of this price agreement. This hold harmless and indemnification clause is subject to the immunities, provisions and limitations of the tort claims act (41-4-1, et seq., N.M.S.A. 1978 comp.) and section 56-7-1 N.M.S.A. 1978 comp. and any amendments thereto.

It is specifically agreed between the parties executing this price agreement that it is not intended by any of the provisions of any part of the Price Agreement to create the public or any member thereof a third party beneficiary or to authorize anyone not a party to the price 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 Price Agreement.

D. Comply with state laws and rules pertaining to workers' compensation insurance coverage for its employees. If the Contractor fails to comply with the Workers' Compensation Act and applicable rules when required to do so, the purchase order may be cancelled effective immediately.

E. Be responsible for all cleanup work on the project site and at the equipment storage areas prior to the final inspection and acceptance.

Insurance Requirements:
The Contractor shall procure and maintain at the Contractors expense insurance of the kinds and in amounts herein provided. This insurance shall be provided by insurance companies authorized to do business in the State of New Mexico and shall cover all operations under the price agreement, whether performed by the Contractor, the Contractor's agents or employees or by Sub-Contractors. All insurance provided shall remain in full force and

effect for the entire period of work, up to and including final acceptance, and the removal of all equipment, employees, agents and Sub-Contractors therefrom.

(A) Public Liability and Automobile Liability Insurance

1. General Liability: bodily injury liability and property damage liability insurance applicable in full to the subject project shall be provided in the following minimum amounts:

   Bodily Injury Liability: $1,000,000 each person;
   $2,000,000 each occurrence (annual aggregate)

   Property Damage Liability:
   $2,000,000 each occurrence (annual aggregate)

   a. The policy to provide this insurance is to be written on a Comprehensive General Liability Form or Commercial General Liability form which must include the following:

      1. Coverage for liability arising out of the operation of independent Contractors
      2. Completed operation coverage
      3. Attachment of the Broad Form Comprehensive General Liability Endorsement

   b. In the event that the use of explosives is a required part of the price agreement, the Contractor's insurance must include coverage for injury to or destruction of property arising out of blasting or explosion.

   c. In the event that a form of work next to an existing building or structure is a required part of price agreement, the Contractor's insurance must include coverage for injury to or destruction of property arising out of:

      1. The collapse of or structural injury to building or structures due to excavation, including burrowing, filling or backfilling in connection therewith, or to tunneling, cofferdam work or caisson work or to moving, shoring, underpinning, razing or demolition of building or structures or removal or rebuilding of structural supports thereof.

   d. Coverage must be included for injury to or destruction of property arising out of injury to or destruction of wires, conduits, pipes, mains, sewers or other similar property or any apparatus in connection therewith below the surface of the ground. If such injury or destruction is caused by or occurs during the use of mechanical equipment for the purpose of excavating, digging, or drilling, or to injury to or destruction of property at any time resulting therefrom.

2. Automobile liability insurance coverage for the Contractor (whether included in the policy providing general liability insurance or in a separate policy) must provide liability for the ownership, operation and maintenance of owned, non-owned, and hired cars. The limits of liability for automobile liability insurance shall be provided in the following amounts:

Bodily Injury Liability:
$1,000,000 each person; $2,000,000 each occurrence (annual aggregate)

Property Damage Liability:

$2,000,000 each occurrence (annual aggregate)

(B) Worker's Compensation Insurance: The Contractor shall also carry Worker's Compensation insurance or otherwise fully comply with provisions of the New Mexico Workman's Compensation Act and Occupational Disease Disablement Law.

If the Contractor is an "owner-operator" of such equipment, it is agreed that the COUNTY assumes no responsibility, financial or otherwise, for any injuries sustained by the "owner-operator" during the performance of said price agreement.

(C) Certificate of Insurance/Department as Additional Insured: The Contractor being awarded Price Agreement shall furnish evidence of Contractor's insurance coverage by a Certificate of Insurance. The Certificate of Insurance shall be submitted prior to award of the Price Agreement.

The Contractor shall have LEA COUNTY named as an additional insured on the Comprehensive General Liability Form or Commercial General Liability Form furnished by the Contractor pursuant to Paragraph (A) 1 and (A) 2, of this subsection. The Certificate of Insurance shall state that the coverage provided under the policy is primary over any other valid and collectible insurance.

The Certificate of Insurance shall also indicate compliance with these specifications and shall certify that the coverage shall not be changed, cancelled or allowed to lapse without giving LEA COUNTY thirty (30) days written notice. Also, a Certificate of Insurance shall be furnished to the New Mexico Department of Transportation on renewal of a policy or policies as necessary during the terms of this Price Agreement.

LEA COUNTY ROAD DEPARTMENT shall not issue a notice to proceed until such time as the above requirements have been met.

(D) Umbrella Coverage: The insurance limits cited in the above paragraphs are minimum limits. This specification is in no way intended to define what constitutes adequate insurance coverage for individual Contractor. LEA COUNTY will recognize following form excess coverage (Umbrella) as meeting the requirements of this price agreement, should such insurance otherwise meet all requirements of these subsections.

(E) Other Required Insurance: The Contractor shall procure and maintain, when required by LEA COUNTY, form and types of bailee insurance such as, but not limited to, builder's risk insurance, Contractor's equipment insurance, rigger's liability property insurance, etc. In an amount necessary to protect LEA COUNTY against claims, losses, and expenses arising from the damage, disappearance or destruction of property of others in the care, custody or control of the Contractor, including property of others being installed, erected or worked upon by the Contractor, his agents or Sub-Contractors.

The Contractor shall be considered an independent Contractor and not an employee of the County. However, directions as to the time and place of performance and compliance with rules and regulations may be required.

The conditions listed in the above paragraphs are an integral part of this bid and shall be the conditions regulating the performance of any price agreement between the Bidder/Contractor and Lea County/ the Lea County Road Department and any Commission, Divisions, or Department thereof.

SPECIFICATIONS FOR HIGH PERFORMANCE ASPHALT PATCH:

High Performance Permanent Cold Patch Material Description:
This material shall be a high performance permanent cold mix patching material for the use in asphalt and concrete. Material shall remain pliable in the bag and bulk and workable for a minimum of one (1) year even if stored outside at ambient temperatures. It shall be composed of laboratory approved mineral aggregates and modified bituminous liquid blend capable of coating wet aggregates (up to four percent (4%) moisture) without stripping and have stripping resistance of retained coating of not less than ninety-five percent (95%). The permanent asphalt repair shall be uniform, remain flexible and cohesive to negative fifteen degrees Fahrenheit (-15° F) and be capable of retaining adhesive qualities in wet applications. The patching materials shall be able to repair asphalt, concrete, surface treated roads and shall not require removal and replacement if ever the pavement is overlaid. This material shall be mixed in a hot mix plant; no mixing in a pugmill is permitted. The high performance pavement patching material will be capable of storage in an uncovered outdoor stockpile for a minimum of twelve (12) months.

All Season Mix:
Material is made for all four (4) seasons. Material has a winter mix four hundred fifty (450) viscosity, spring/fall mix seven hundred (700) viscosity and a summer mix eight hundred fifty (850) viscosity for all climates and temperatures throughout the year. Material can be produced at any viscosity. The County shall recommend what viscosity they desire in their particular location.

Material:
A) - Aggregate
The aggregate shall consist of one hundred percent (100%) crushed stone or a laboratory approved equivalent under ASTM C-136. Aggregate must have a minimum of two (2) fractured faces. All aggregate is to be from approved sources, and representative samples of required aggregate shall be from the plant site and laboratory tested. Sampling and testing methods shall be in accordance with accepted local practice.

Gradation analysis is to comply with all local requirements. Recommended gradation analysis is as follows:

Screen Size	Percentage Passing (%)
3/8	100
No. 4	20-85
No. 8	2-30
No. 16	0-10
No. 50	0-6
No. 200	0-2

All aggregate percentages are based on the total weight of aggregate.

ASTM C-88 Soundness Loss	Max 12%
ASTM C-131 Los Angeles Abrasion	Max 40%
ASTM C-117-200 Sieve (by wash)	Max 2%

ASTM C-127 128 Specific Gravity	Max 2.55-2.75%
ASTM C-123 Soft Aggregates	Max 3%

Aggregate Acceptance:
Aggregate compatibility approved must be obtained from the quality control facility prior to material mixing at any hot mix plant.

B) - Bituminous Material

The modified bituminous liquid will meet the following requirements:

ASTM D-1310 Flashpoint (TOC)	200°F (94°C) Min.
ASTM D-5 Penetration	200°F Minimum
ASTM D113 Ductility at 39°F (4°C)	0.4 In/Min 100 min
ASTM D-2042 Solubility in Triclliloroethylene	99% Minimum

Testing Requirements: Note:
Three separate tests

ASTM D-2172 Extraction Max:	4.5-7%

ASTM D-1664 Coating and Stripping Test for both wet and dry.

Aggregate must retain coating greater than ninety-five percent (95%) bituminous material. Boiling test – 50 grams input into four hundred (400) mi. of distilled water in a breaker and boiled for three (3) minutes and stirred at one revolution per second. Material must retain coating in excess of ninety-five percent (95%).

Liquid blend shall be shipped from authorized blending terminal locations. Liquid shall be blended at terminal under supervision of authorized quality control personnel. No additives, modifiers, or extra ingredients are to be introduced into the liquid blend at any time after shipment from terminal. A copy of bill of lading and material certification shall accompany every shipment. Liquid blend shall be shipped in insulated tankers to maintain oil temperature during transportation.

Plant Mix:
The cold mix shall consist of aggregates meeting material as specified in section A) Aggregate, and the bituminous liquid blend meeting material specified in section B) Bituminous material as indicated in the proposed job mix formula. Bituminous material shall be accepted at the supplier's source and at the plant site on the basis of a supplier material certification.

The preferred mixing ration shall be five and one half percent (5.5%) liquid blend or one hundred ten pounds (110 lbs.) per finished ton –two thousand pounds (2000 lbs.) of mixed material. Continuous on-site testing will determine exact final mixing ration which will be identified in the final job mix formula. All aggregate percentages are based on the total weight of the mix. The job mix information shall provide:

- Aggregate gradation band and aggregate type
- Bituminous material-amount and type including any additives used

- Temperature ranges for material preparation

Packaging Empty Bags:
The bags must be plastic or poly type with minimum thickness of five (5) millimeters and capable of holding fifty pounds (50 lbs.) of finished high performance cold mix. The bag must be sealed on each side and bottom with top or fill side open and capable of being heat sealed to complete the packaging.

The empty bag must have clearly identifying markings and labeling in English and Spanish.
1. Product name
2. Company name
3. Weight/per bag
4. Installation
5. Instructions or pictorial on back of bag
6. Visual label-mix

Pallets:
The pallets must be forty-eight (48) inches in length by forty (40) inches width and have four (4) way entries to field side unloading. The pallet must be capable of containing a minimum of fifty-six (56) bags or two thousand eight hundred (2800) pounds.

Palletizing:
The palletizing must meet the following requirements to meet shipping, handling and storage of product.

The palletized packaging must have a forty-eight (48) inch by forty (40) inch cardboard pallet liner that is placed on the bottom of the pallet to prevent the bags from being damaged when unloading occurs.

The palletized packaging must be completely wrapped on the outside with a poly type stretch or shrink wrap material. The palletized packaging must have an ultraviolet cover to protect the packaging from product bleed through and bag deterioration.

Manufactured Preparation and Operation:

Hot Mix Production
The mixture is to be produced through a conventional hot asphalt plant only under the direct supervision of a qualified representative and furnished product will not exceed one hundred eight degrees Fahrenheit (180°F). The bituminous liquid blend shall not be heated above two hundred degrees Fahrenheit (200°F). The final mixture must be tested in accordance with on-site quality control requirements.

Pugmill Production
Mixture through a cold manufacturing process (Pugmill) will not be accepted.

Stockpile Inspection

Prior to production, the stockpile site is to be inspected for any contaminant such as dirt, sand or debris that may affect the quality of the high performance cold patch. The stockpile area should be a hard surface, preferably paved with concrete, or a bituminous surface.

Environmental Toxicity Testing

The modified bituminous cold patch must have an independent test conducted by a certified laboratory as to toxicology results in a static acute bioassay procedure for hazardous materials, which determines effect of runoff in waterways, lakes, ponds and groundwater.

Specification Sampling

A one (1) quart sample of the liquid blend will be retained at the asphalt depot prior to shipping. On delivery of the tank truck, an additional one (1) quart sample will be taken by the representative and is to be retained by the customer/producer for a period of one (1) year, or until the stockpile is depleted.

Quality Control

On each load, the quality control technician will prepare a quality control report. All phases of production of the plant operation and material testing on each on hundred fifty (150) tons of production will be prepared and entered accordingly in each category. Site tests will be completed which include spot test, strip resistance, coating, observation and roll test.

A copy of bill of lading and material certification shall accompany every shipment marked with the purchase order number on any and all paperwork pertaining to each shipment.

Performance Guarantee

The high performance cold mix material, when applied according to the proper directions to deteriorated concrete or bituminous pavement surfaces, must be guaranteed by the producer to permanently adhere to the repaired area for the life of the repair or until surrounding pavement area fails. Producer must replace actual volumes at no charge for any material that should ever ravel or release from repaired area.

The vendor must submit the name of their product to be included in the bid package and shall provide the Lea County Purchasing Department with product literature to include, but not be limited to product specifications, composition and manufacturers recommendations.

Quantities are estimates only. Exact quantities shall be determined by the County Engineer or designee.

All specifications are a minimum. Any reference herein to a particular make or model is not intended to be restrictive, but to set forth an acceptable level of quality and design.
The apparent silence of any specification as to any details or the omission from it, of a detailed description concerning any point shall be regarded as meaning that only the best commercial practices are to prevail and that only material of first quality and connect type, size and design are being used. All workmanship shall be made upon the basis of this statement.

Payments and Invoicing:

Within fifteen days after the date LEA COUNTY receives written notice from the Contractor that payment is requested for services, construction or items of tangible personal property delivered on site and received, LEA COUNTY shall issue a written certification of complete or partial acceptance or rejection of the services, construction or items of tangible personal property. If the County finds that the services, construction or items of tangible personal property are not acceptable, it shall, within thirty days after the date of receipt of written notice from the Contractor that payment is requested, provide to the Contractor a letter of exception explaining the defect or objection to the services, construction or delivered tangible personal property along with details of how the Contractor may proceed to provide remedial action. Upon certification by the County that the services, construction or items of tangible personal property have been received and accepted, payment shall be tendered to the Contractor within thirty days after the date of certification. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. For purchases funded by state or federal grants to local public bodies, if the public body has not received the funds from the federal or state funding agency, but has already certified that the services or items of tangible personal property have been received and accepted, payments shall be tendered to the Contractor within five working days of receipt of funds from that funding agency.

Final payment shall be made within thirty days after the work has been approved and accepted by the Lea County Road Department or their authorized representative. The Contractor agrees to comply with state laws and rules pertaining to worker's compensation insurance coverage for its employees. If Contractor fails to comply with the workers' compensation act and applicable rules when required to do so the purchase order may be canceled effective immediately.

Invoice To:
Lea County Road Department
5915 N. Lovington Hwy
Hobbs, NM 88240

Quantities:
The approximate quantities for each item are estimated and are for bidding purposes only. Actual requirements will be as determined by the County Public Works Director or their designee and quantities may be increased or decreased as necessary to meet actual field requirements. The County does not guarantee any amount of work.

Purchase and Delivery:
The Lea County Road Department reserves the right to purchase goods and/or services from any of the awarded Contractors based on the needs of the County. The County will determine and use the Price Agreement item which best serves the County's needs, based on cost, delivery time, schedule of work and quality of materials. All decisions by the County will be final.

The County is under no obligation to purchase asphalt concrete patch material from the Contractor that is not required for the completion of the project. The quantities are estimates and are for bidding purposes only. The actual requirements will be determined by the County and the quantities may be increased or decreased as necessary to meet actual requirements or needs. The County does not guarantee any amount of work.

Escalation Clause:
In the event of a product cost increase, an escalation request will be reviewed by this office on an individual basis. Please be aware this measure is not intended to allow any increase in profit margin, only to compensate for an actual cost increase. Price decreases as well as increases shall apply. If vendor's prices are reduced for any reason, users shall receive the benefit of such reductions. Price increases will not be retroactive to orders already in house or backorders.

Orders will be filled at the price in effect on the date of receipt of the order by the vendor. Any request for escalation shall be submitted in writing to Kelli Ferguson, Procurement Officer by email at kferguson@leacounty.net

Effective dates for an increase will not be any sooner than fifteen (15) days from the date the written request is received by the Lea County Purchasing Department. To facilitate prompt consideration, all requests for price increase must include all information listed below:

1. Current item price
2. Proposed new price
3. Percentage of increase
4. Mill/supplier notification of price increase indicating percentage of increase
5. Vendor is requested to indicate Federal Tax ID number, NM Gross Receipts number, or Social Security number
6. Price Agreement Number
7. Business/Contractor contact person and contact information

Item	Approx. Qty.	Unit	Article and Description	Unit Price
001	1,000	Bag	Asphalt High Performance Cold Patch Material in fifty (50) pound	$
002	1,200	Ton	Asphalt High Performance Cold Patch Material Bulk	$

** 2 Items Total**

BID FORM

HIGH PERFORMANCE ASPHALT PATCH MATERIAL

LEA COUNTY ROAD DEPARTMENT

BID #02 – (21-22)

Item	Approx. Qty.	Unit	Article and Description	Unit Price	Extended Price
001	1,000	Bag	Asphalt High Performance Cold Patch Material in fifty (50) pound bags	$_____	$_____
002	1,200	Ton	Asphalt High Performance Cold Patch Material Bulk	$_____	$_____
				TOTAL	$_____

PRICE PROPOSAL
BID FOR LUMP SUM CONTRACT

Date of Bid: _____

New Mexico State Contractor's License No. _____ATTACH A COPY

Resident Contractor's Preference Certificate No. _____ ATTACH A COPY

Public Works Registration No. _____ ATTACH A COPY

Contractor's New Mexico Gross Receipts Tax No. _____

Contractor's Federal Employee Identification No. _____

State of New Mexico, County of Lea
BID #02 – (21-22)

Project Name: HIGH PERFORMANCE ASPHALT PATCH MATERIAL
LEA COUNTY ROAD DEPARTMENT

Bid of (company name):_____
(Hereinafter called the "Contractor") organized and existing under the laws of the State of New Mexico, doing business as a Corporation, Partnership or Individual **(Circle correct one)**

To: County of Lea, Lovington, New Mexico (hereinafter called the "Owner")

The undersigned, as an authorized representative for the Contractor named above, in compliance with the Invitation to Bid #02 – (21-22) – HIGH PERFORMANCE ASPHALT PATCH MATERIAL

The undersigned Contractor's representative also acknowledges receipt of the following Addenda:

Addendum No: ____, dated _____
Addendum No: ____, dated _____
Addendum No: ____, dated _____
Addendum No: ____, dated _____

Base Price (excluding NM GRT): The Contractor agrees to perform/provide all estimated services/work & materials as requested and described in this Bid for a total amount determined as follows:

Total Base Price Lump Sum Without Tax $ _____

_____Dollars
(Total Base Price written in words)

(Total amounts shall be shown in both words and figures. In case of a discrepancy, the amount shown in words will govern – **please print). All sums shall exclude NM Gross Receipts Tax.**

The Contractor understands that the contract will be awarded in accordance with the provisions of the Bid and that the Owner reserves the right to reject any or all bids and to waive any formalities in the bidding.

The Contractor agrees that these prices will be good and may not be withdrawn for a period of sixty (60) calendar days after the scheduled closing time for receiving bids.

Upon receipt of written notice of acceptance of this Price, Contractor will execute the final contract and deliver surety bonds as required by the instructions to Bidders within seven calendar days.

The Bid Security attached in the sum of 5% of the amount proposed is: _____ _____Dollars, ($ _____) and shall become the property of the Owner in the event the contract and bonds are not executed within the time set forth herin, as liquidated damages for the delay and additional expenses to the Owner caused therby.

Respectfully Submitted,

By: (Authorized Signature) _____ Date: _____

By: (Same name, printed or typed) _____

Title: _____

Company: _____

Address: _____ Phone: _____

_____ Zip: _____

Fax: _____ Email: _____

(Affix Corporate Seal if bid by Corporation):

HIGH PERFORMANCE ASPHALT PATCH MATERIAL
OPTIONS, EXCEPTIONS OR VARIATIONS

LEA COUNTY ROAD DEPARTMENT
NIGP Codes: 745-65, 745-67
BID #02 – (21-22)

DUE DATE: August 10, 2021 – 2:00 P.M. (LOCAL TIME)

Please state each and every option, exception, or variation to the specifications (if any) for the products or services offered (use additional pages if necessary). *If bid deviates significantly from the specifications, please provide further documentation showing that bid is capable of meeting the performance requirements shown in the specifications.*

Please sign below and return with your offer.

1) THERE **ARE** OPTIONS, EXCEPTIONS OR VARIATIONS. _____
Signature

2) THERE **ARE NO** OPTIONS, ETC. LISTED. This Invitation to Bid, meets or exceeds all Specifications, Terms and Conditions as described in said Invitation to Bid without exceptions. All bids not meeting all Specifications, Terms and Conditions will be rejected and all costs will be borne by the seller.

_____
Signature

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

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

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

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

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

The following definitions apply:

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

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

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

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

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

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

Name(s) of Applicable Public Official(s) :

Board Of County Commissioners: Rebecca Long, Dean Jackson, Jonathan Sena, Pat Sims, Gary Eidson; Assessor Sharla Kennedy; Clerk Keith Manes; Probate Judge Sandra Goad; Treasurer Susan Marinovich; Sheriff Corey Helton.

DISCLOSURE OF CONTRIBUTIONS BY PROSPECTIVE CONTRACTOR:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Date Contribution(s) Made: _____

_____

Amount(s) of Contribution(s) _____

_____

Nature of Contribution(s) _____

_____

Purpose of Contribution(s) _____

_____

(Attach extra pages if necessary)

_____ _____

Signature Date

_____

Title (position)

-- OR —

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

_____ _____

Signature Date

_____

Title (Position)

LEA COUNTY RESIDENT/VETERANS PREFERENCE CERTIFICATION FORM

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

Please check one box only:

Resident Veteran Business:

☐ I declare under penalty of perjury that my business annual gross revenues did not exceed three million dollars ($3,000,000) in the preceding tax year. I also declare that my business or myself has not benefited from this preference for more than ten consecutive years.

Resident Business:

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

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

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

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

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

Resident Business/Veteran Business Certificate Number:_____

_____ _____

(Signature of Business Representative)* (Date)

*Must be an authorized signatory for the Business.

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

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

Related Party Disclosure Form

1. Are you indebted to or have a receivable from any member of the Board of County Commissioners; elected county officials, administration officials, department heads, and key management supervisors with the County of Lea?

Yes_____ No _____

_____

_____

2. Are you , or any officer of your company related to any member of the Board of County Commissioners; elected county officials, administration officials, department heads, key management supervisors of the County of Lea and have you had any of the following transactions since January 1, 2008, to which Lea County was, is to be, a party?

	Yes	No
Sales, Purchase or leasing of property ?	___	___
Receiving, furnishing of goods, services or facilities?	___	___
Commissions or royalty payments	___	___

_____

_____

3. Does any member of the Board of County Commissioners; elected county officials, administration officials, department heads, key management supervisors with the County of Lea, have any financial interest in your company whether a sole proprietorship, partnership, or corporation of any kind that currently conducts business with the County of Lea?

Yes_____ No _____

_____

4. At any time from January 2008 through the present, did you, your company, or any officer of your company have an interest in or signature authority over a bank account for the benefit of a member of the Board of County Commissioners; elected county officials, administration officials, department heads, key management supervisors with the County of Lea?

Yes_____ No _____

_____

_____

5. Are you negotiating to employ or do you currently employ any employee, officer or family member of an employee or officer of County of Lea?

Yes_____ No _____

_____

The answers to the foregoing questions are correctly stated to the best of my knowledge and belief.

Signature of Owner or Company President:_____**Date**_____

(Print Name and Title): _____

Certification Regarding
Debarment, Suspension, and Other Responsibility Matters

Offeror certifies to the best of its knowledge and belief that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

2. Have not within a three year period preceding this proposal been convicted of, had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State Antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

3. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any offenses; and

4. Have not within a three-year period preceding this application/proposal had one or more public transaction (Federal, State, or local) terminated for cause or default.

I understand that a false statement on this certification may be ground for rejection of this proposal or termination of the award. Under 18USC Sec. 1001, a false statement may result in a fine of up to $10,000 or imprisonment for up to 5 years, or both.

Signature of Authorized Representative Date

Typed Name & Title of Authorized Representative

NON-COLLUSION AFFIDAVIT

STATE OF_____)

County OF_____)

_____(name) being first duly sworn, deposes and says

that he/she is (title) _____

of (organization)_____

who submits herewith to the County of Lea, a proposal:

That all statements of fact in such proposal are true:

That said proposal was not made in the interest of or on behalf of any undisclosed person, partnership, company, association, organization or corporation;

That said bidder has not, directly or indirectly by agreement, communication or conference with anyone attempted to induce action prejudicial to the interest of the County of Lea, or of any bidder of anyone else interested in the proposed contract; and further,

That prior to the public opening and reading of proposal, said bidder:

1. Did not directly or indirectly, induce or solicit anyone else to submit a false or sham proposal
2. Did not directly or indirectly collude, conspire, connive or agree with anyone else that said bidder or anyone else would submit a false or sham proposal, or that anyone should refrain from bidding or withdraw his proposals;
3. Did not in any manner, directly or indirectly, seek by agreement, communication or conference with anyone to raise or fix the proposal price of said bidder or of anyone else, or to raise or fix any overhead, profit or cost element of their proposal price, or of that of anyone else;
4. Did not directly or indirectly, submit his proposed price or any breakdown thereof, or the contest thereof, or divulge information or data relative thereto, to any corporation, partnership, company, association organization, bid depository or to any member or agent thereof, or to any individual of group of individuals, except that County of Lea, or to any person or persons who have a partnership or other financial interests with said bidder in his business.

By:_____

Title_____

SUBSCRIBED and sworn to before me this_____day of_____, 20_____.

Notary Public:_____
My Commission Expires:

CONTRACT # _____
Effective Date: _____

LEA COUNTY CONTRACT FOR GOODS AND SERVICES

This Contract is entered into between Lea County, hereinafter referred to as the "County," and "Contractor" described below, collectively the "Parties", to provide services on behalf of Lea County.

Contractor Legal Name: _____

Services Summary Description: _____

Initial Period of Performance shall be through: _____

Pre-GRT, Total Annual Charges to this contract may not exceed: _____

This Contract complies with New Mexico and County procurement requirements as follows:

☐ RFP # _____, ☐ BOCC approval date _____

☐ Bid # _____, ☐ BOCC approval date _____

☐ "Qualified" Professional Service, $60,000 or less annually. Qualifications attached.

☐ Three Written Quotes $60,000 or less annually ☐ $20,000 or less annually.

☐ Sole – Source ☐ Emergency Procurement

☐ Other: Revenue; non-financial MOA; or _____

SAMPLE

No services shall be rendered nor shall any goods be provided until this contract has been executed by all parties, regardless of the indicated effective date.

NOTICES: All correspondence regarding this contract shall be sent to:

Lea County Government	Contractor:
Department:	ATTN:
ATTN:	Title:
Street: 100 N. Main, Ste 11	Street:
City, State, Zip: Lovington, NM 88260	City, State, Zip:
Phone:	Phone:
Fax:	Fax:
Cell:	Cell:
Email:	Email:

ARTICLE 1 - SERVICES AND/OR GOODS TO BE PROVIDED: For RFP or Professional Services contracts, the Contractor shall provide services to the County on matters relating to the contractor's specialized areas of expertise as defined in this Contract and its referenced or incorporated Attachments. Negotiated fees are fixed for the first year. Price adjustments thereafter are subject to review and written determination on an individual contract basis.

For Sealed Bid / Indefinite Quantity contracts, the Contractor shall have the item(s) or service(s) available, as defined in this contract, on an "as ordered" basis. No funds are obligated under

© *Form Revision Date Jan-2015*

Sealed Bid / Indefinite Quantity contracts. Funds for Sealed Bid / Indefinite Quantity contracts are obligated by purchase orders on an "as needed" basis. Prices are fixed for the first year of a Sealed Bid / Indefinite Quantity contract. Thereafter, in the event of a product cost increase an escalation request will be reviewed by the County on an individual basis. Escalation requests are only to compensate for an actual cost increase and will not be considered for an increase in profit margin.

All Contractors shall secure and remain current on all insurances, licenses, permits, certificates, fees, etc., required for the performance of this contract.

ARTICLE 2 - CONTRACT DOCUMENTS: The Contract shall be comprised of this contract document, its Attachments and all documents referenced herein. As applicable, the Contract shall also include all Proposal or Bid documents, including the Contractor's responses, Reference Specifications, Special Conditions, Technical Specifications, Standard Details, any addenda thereto, and all negotiation records, all of which are incorporated herein and made a part of the Contract.

In instances where there exists a conflict between any of the Contract documents described above, this Contract plus attachments hereto, negotiation records, the County's solicitation documents, and the Contractor's response to the solicitation, in that order, shall control the interpretation of the parties' respective rights and obligations.

ARTICLE 3 - PERIOD OF PERFORMANCE: The period of performance of this Contract shall commence _____ **or date of last signature**, whichever is later, and continue through the Initial Period of Performance date detailed above. If stipulated in a formal Proposal or Bid solicitation by the County, this Contract may be renewed for up to _____ additional years, not to exceed a total of _____ years.

SAMPLE

ARTICLE 4 - PLACE OF PERFORMANCE: The Contractor shall provide the required services or goods for Lea County when and where appropriate or as required by the County.

ARTICLE 5 - COST AND PAYMENT: The Contractor shall be paid for services rendered satisfactorily per the negotiated fee(s) and payment schedules incorporated hereto in applicable attachments, including Attachments A and B. All payments will be in arrears. Payment shall be made per request upon receipt of a detailed invoice that shall include description of work completed or goods delivered pursuant to the deliverable(s) agreements and measures of attainment of this contract for the period covered by the invoice. The invoice submitted shall note the purchase order number and this Contract number and may be delivered to the Department contact specified in "Notices" above. The County shall pay to the Contractor the New Mexico Gross Receipts Tax on labor and services only as levied on the amounts invoiced and payable under this contract. The Contractor will pay the New Mexico Gross Receipts Tax levied on the amounts payable under this contract and remitted to them by Lea County to the appropriate state agency.

ARTICLE 6 - AMENDMENTS: This Contract shall not be altered, changed, or amended except by written instrument signed by both parties.

ARTICLE 7 - ASSIGNMENT: The Contractor shall not assign nor delegate specific duties as part of this Contract nor transfer any interest nor assign any claims for money due or to become due under this Contract without the written consent of the County.

ARTICLE 8 - BINDING EFFECT OF CONTRACT: Both Parties agree that the terms of this Contract and any extension or renewal thereof shall extend to and be binding upon the

administrators, assigns, successors, and transferees of the contracting parties.

ARTICLE 9 - COMPLIANCE WITH GOVERNING LAW: This Contract shall be construed in agreement with New Mexico law. The Contractor shall keep fully informed of and shall also comply with all applicable federal, state, and local laws, ordinances, and regulations and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any manner affect those engaged or employed, or the work, or which in any way affect the conduct of the work. By way of illustration, but not of limitation, the Contractor shall comply with laws relating to employment eligibility including: the Immigration Reform and Control Act of 1986 (Public Law 99-603) and the Immigration Act of 1990 (Public Law 101-649) regarding employment verification and retention of verification forms for any individual(s) hired on or after November 6, 1986, that will perform any labor or services under this Contract. The Contractor shall comply with all federal statutes relating to non-discrimination including, but not limited to: Title VII of the Civil Rights Act of 1964 (Public Law 88-352), which prohibits discrimination on the basis of race, color, or national origin; Title IX of the Education Amendments of 1972, as amended [20 U.S.C.A. Section 504 of the Rehabilitation Act of 1973 (Public Law 93-112)], which prohibits discrimination on the basis of handicap; the Age Discrimination in Employment Act of 1967 (Public Law 90-202), as amended; the Americans with Disabilities Act of 1990 (Public Law 101-336); and all amendments to each, and all requirements imposed by the regulations issued pursuant to these acts, especially 45 CFR Part 80 (relating to race, color, and national origin), 45 CFR Part 84 (relating to handicap), 45 CFR Part 86 (relating to sex), and 45 CFR Part 91 (relating to age).

ARTICLE 10 - CONFIDENTIAL INFORMATION: Any confidential information, not subject to disclosure under the Inspection of Public Records Act, given to or developed by the Contractor, its officers, directors, employees, agents, or sub-consultants in the performance of this Contract will be kept confidential and will not be made available to any individual, organization, or other entity by the Contractor without prior written approval of the County.

SAMPLE

ARTICLE 11 - CONFLICT OF INTEREST: The Contractor warrants that it presently has no interest and shall not acquire any interest during the term of this Contract which would have the potential to conflict with the performance of the services required under this Contract. In the event such a conflict arises, it shall immediately be brought to the attention of the County and appropriate action acceptable to the County shall be taken. The Contractor's failure to inform the County of the existence of a potential conflict of interest constitutes default and shall be grounds for immediate termination of Contract by the County.

ARTICLE 12 - CONFLICTS OF LAW: If any provision of this contract conflicts with governing federal or state law or County ordinances, then that law or ordinance shall supersede the conflicting provision of this contract.

ARTICLE 13 - HIPAA COMPLIANCE: As applicable, the parties agree to comply with the provision of the Health Insurance Portability and Accountability Act of 1996, and related regulations, as amended ("HIPAA") in the event the Contractor receives patient records or information (Protected Health Information as defined by HIPAA).

ARTICLE 14 - INDEMNIFICATION AND HOLD HARMLESS AGREEMENT:
Non-Governmental Entity The Contractor shall hold harmless, indemnify and defend the County and its "public employees" as defined in the New Mexico Tort Claims Act, Sections 41-4-1 to 41-4-29, NMSA 1978, as amended, against and from any and all claims, losses, demands, judgments, damages, liabilities, lawsuits, expenses, attorney's fees, costs or actions of any kind resulting from or related to the Contractor's intentional acts, errors or omissions in the

Contractor's performance under this contract. The Contractor's agreement to hold harmless,

indemnify and defend shall not be affected or terminated by the cancellation, expiration of the term or any renewal or any other modification of the Contract for any reason and shall survive the cancellation, expiration of the term or any renewal or any other modification of this contract, acts, errors or omissions to act occurring during the term of this contract.

Governmental Entity: Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Contract. Any liability incurred in connection with this Contract is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA, 1978 § 41-4-1 et. seq. and its amendments, where applicable.

ARTICLE 15 - INDEPENDENT CONTRACTOR: Nothing in this Contract is intended or should be construed in any way to create or establish a partnership relationship between the Parties or to establish the Contractor as an agent, representative, or employee of the County for any purpose or any manner whatsoever. Contractor and its employees shall not accrue leave, retirement, insurance, or any other benefits afforded to employees of the County. Contractor is an independent contractor of the County. The Contractor, its officers, directors, employees, servants, agents, or representatives are not and shall not be deemed employees of the County and shall not bind the County in any respect.

ARTICLE 16 - INSURANCE: For the duration of the contract and until all work specified in the contract is completed, the Contractor shall maintain in effect current Certificates of all insurance as required below and comply with all limits, terms and conditions stipulated therein. The County shall be named as an additional insured as stipulated. Contractors who are required to provide Certificate(s) of Insurance, must provide a new current Certificate(s) no less than annually. As applicable, work under this contract shall not commence until evidence of all required insurance is provided to the respective County Department for inclusion with this Contract. All insurance shall be written to conform to the requirements stipulated. Evidence of such insurance shall consist of a completed certificate of insurance, signed by the insurance agent for the Contractor and returned to the County attesting that all required insurance is in effect. If for any reason any material change occurs in the coverage during the course of the contract such change will not become effective until 30 days after the County has received written notice of such change.

SAMPLE

Required Insurance: As specified in the **RFP, BID documents or Attachment A.**

ARTICLE 17 - JURISDICTION AND VENUE: If any dispute arising under this contract cannot be resolved by negotiation or mediation, the proper jurisdiction and venue for any litigation, if permitted, is the Fifth Judicial District, Lea County Division, Lovington, New Mexico.

ARTICLE 18 - KEY PERSONNEL: The Contractor shall identify all key personnel assigned to the performance of this Contract in Section II, Attachment H of this Contract. Key personnel may not be changed without prior written approval of the County Manager and inclusion of that written approval in the official Contract File in the County Purchasing Department.

ARTICLE 19 - MEDIATION: In the event that a dispute arises with respect to any of the provisions contained in this Contract or any other matter affecting this contractual relationship between the County and the Contractor, the Parties agree that prior to filing any court action to enforce the Contract or rights under the Contract, they will use the services of a mediator. The mediator shall either be certified as a mediator or shall have experience as a mediator. The parties shall mutually agree upon the choice of mediator. In the event the Parties have not agreed to a mediator within three days of written notice to the other regarding the dispute, then a list of seven potential mediators will be obtained from the Court or other professional association, and the Parties shall use a striking process until a mediator is agreed upon.

Each party shall be responsible for their respective mediation costs.

ARTICLE 20 - MERGER OF PRIOR CONTRACTS: This Contract incorporates all the conditions, contracts, agreements, and understandings of the Parties concerning the subject matter of this Contract. All such conditions, understandings, and agreements have been merged otherwise, shall be valid or enforceable unless embodied in this Contract, either explicitly or by reference.

ARTICLE 21 - NON-APPROPRIATION: The County's obligation to make payment under the terms of this Contract is contingent upon its appropriation of sufficient funds to make those payments and the NM Department of Finance's (DFA) final approval of the County's budget. If the County does not appropriate sufficient funds or DFA does not approve the County's final budget, this Contract will terminate upon written notice of that effect to the Contractor. The County Board's determination that sufficient funds have not been appropriated, through Board of County Commissioners or DFA action, is firm, binding, and not subject to review.

ARTICLE 22 - NOTICE TO PROCEED OR COMMENCEMENT OF WORK: It is expressly understood that this Contract is not binding upon the County until approved and signed by the County and, further, that the Contractor shall not proceed with its obligations until the Contract has been signed by all Parties.

ARTICLE 23 - PARAGRAPH HEADINGS: Paragraph headings are for convenience and reference and are not intended to limit the scope of any provision of this Contract.

ARTICLE 24 - PERSONAL LIABILITY: No elected or appointed official, employee, servant, agent, or law enforcement officer of the County shall be held personally liable under this Contract or any extension or renewal thereof because of its enforcement or attempted enforcement, provided they are acting within the course and scope of their employment or governmental duty and responsibility.

SAMPLE

ARTICLE 25 - PROCUREMENT CODE: The Procurement Code, § 13-1-25 through § 13-1-199, NMSA 1978 as amended, imposes civil and criminal penalties for its violation. In addition, New Mexico Criminal Statutes impose felony penalties for illegal bribes, gratuities and kickbacks. Pursuant to the above, it is unlawful for any Contractor to engage in bribery, offering gratuities with the intent to solicit business, or offering or accepting kickbacks of any kind. All other similar act(s) of bribes, gratuities, and/or kickbacks are likewise prohibited.

ARTICLE 26 - PROPRIETARY INFORMATION: All documents, writings, electronic formats, drawings, designs, specifications, notes, project manuals, or related documents and other work developed in the performance of this Contract by the Contractor shall become the sole property of the County whether the activity for which they are developed is implemented or not. The Contractor shall provide the County with a complete set of all such proprietary information as requested by the County, but no later than the effective termination date of the contract. Contractor is strictly prohibited from reproducing, duplicating or printing any such proprietary information in any format for personal or monetary recognition, use or gain without the advance written permission of the County.

ARTICLE 27 - RECORD KEEPING AND AUDITS: The Contractor shall compile, maintain, and make available for inspection all records relating to the services to be provided under this Contract. These records shall be subject to inspection by the County or designated auditor. The County shall have the right to audit billings both before and after payment; payment under this Contract shall not foreclose the right of the County to be reimbursed any excessive or illegal payment amounts made to the Contractor during the term of this Contract. Pursuant to State of New Mexico General Records Retention requirements, Contractor will retain all original, source and supporting documents and records related to this contract for a minimum of six (6) years after the ending date of this contract.

ARTICLE 28 - RELEASE: The Contractor, upon final payment of amounts due under this Contract for work completed and accepted by the County, releases the County, its officers and employees from all liabilities, claims, and obligations whatsoever arising from or under this Contract. The Contractor agrees not to bind the County to any obligation not assumed in this Contract by the County, unless the Contractor has express written authority from the County Manager to do so, and then only within the limits of the expressed written authority.

ARTICLE 29 - SEVERABILITY: If any clause or provision of the Contract is held to be illegal, invalid, or unenforceable by a court of competent jurisdiction, then it is the intention of the parties hereto that the remainder of the Contract shall remain in full force and effect. However, in the event that either Party can no longer reasonably perform pursuant to the remaining Contract terms, or if the purpose of the Contract can no longer be carried out by either Party, the Contract may be voided and no damages shall accrue to either party.

ARTICLE 30 - SOVEREIGN IMMUNITY:
Non-Governmental Entity: By entering into this Contract, the County and its "public employees" as defined in the New Mexico Tort Claims Act, NMSA 1978, Sections 41-4-1 through 41-4-29, as amended, do not waive sovereign immunity, do not waive any defense, and do not waive any limitations of liability pursuant to law. No provision in this Contract modifies or waives any provision of the New Mexico Tort Claims Act, *supra.*
Governmental Entity: By entering into this Contract, the County and the Governmental Entity Contractor do not waive sovereign immunity, do not waive any defense and do not waive any limitations of liability pursuant to law. No provision in this Contract modifies or waives any provision of the New Mexico Tort Claims Act, supra.

SAMPLE

ARTICLE 31 - SUBCONTRACTING: This Contract is based on the personal skills and reliability of the Contractor as known by the County at the time of execution of this Contract. The Contractor shall not subcontract out any portion of the services to be performed under this Contract without the prior written approval of the County Manager and inclusion of that written approval in the official Contract File in the County Purchasing Department. The written approval shall minimally include disclosure of the name of the individual(s) to be contracted, a statement of the individual(s) qualifications and a justification of the request to subcontract.

ARTICLE 32 - TERMINATION: The County may terminate this contract for convenience, in whole or in part, by providing written notice to the Contractor thirty (30) days prior to termination. In the event of contract termination, the Contractor shall be paid for work completed to the date of termination. In no event shall the dollar amount to be paid upon termination exceed a total of the maximum contracted amount and any additional amount provided for by amendment(s).

a. Where a Party to this Contract has committed a major breach that is capable of remedy, the Party who is not in breach may serve a written notice, with a fixed period in which to remedy the breach. The period given shall be determined at the sole discretion of the Party serving the notice but subject to a minimum period of two weeks.

b. The County and Contractor shall have the right, such right being exercised at their absolute discretion, to terminate this Contract, in writing, if a major breach has been committed that cannot be remedied. Further, the Parties may terminate this contract, in writing, if a breach has not been remedied to the reasonable satisfaction of the Party serving the notice of breach within the period specified in any such notice.

ARTICLE 33 - THIRD PARTY BENEFICIARY: It is agreed between the Parties executing this Contract that it is not intended by any of the provisions of this Contract to create on behalf of the public or any member thereof the status of third party beneficiary nor to authorize anyone not a party to the agreement to maintain a suit based upon this Contract.

ARTICLE 34 - WAIVER: Any waiver by the County of any breach of any covenant, term, condition, or agreement in this Contract to be kept and performed by Contractor shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent County from declaring a default for any succeeding breach either of the same covenant, term, condition, or agreement or another. All remedies afforded in this Contract shall be taken and construed as cumulative, that is, in addition to every other remedy provided herein or by law.

ARTICLE 35 - DUPLICATE ORIGINALS: This document shall be executed in no less than two (2) counterparts, each of which shall be deemed an original.

SIGNATURES:

IN WITNESS WHEREOF, the parties have caused this instrument to be executed by their duly authorized representatives.

LEA COUNTY: _____

_____ _____

County Manager

_____

Print Name and Title

Date: _____ Date: _____

SAMPLE

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Contractor's NM Taxation and Revenue Department ID Number: _____

The following Attachments and Addenda have been reviewed and approved by the County Contract Officer or approved designee:

Document Name	Approved	Comments	Notes
Attachment A - Scope of Work			Required all Contracts
Attachment B – Cost per Unit Service			Required all Contracts
Attachment C – Contribution Disclosure			Required all Contracts
Attachment D – Related Party Disclosure			Required all Contracts
Attachment E – Debarment Certification			Required all Contracts
Attachment F - Non Collusion Affidavit			Required all Contracts
Attachment G – Insurance Certificates			By Attachment A Specifications
Attachment H – 1. Business License(s) 2. Professional Licenses 3. Staff Resumes			1. Required All Contracts 2. Required Licensed Professionals 3. Required all contracts
Attachment I – Procurement Method			Purchasing Dept. Determines
Attachment J - Other			Purchasing Dept. Determines

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