



State of New Mexico
General Services Department
Purchasing Division

Price Agreement Amendment

Awarded Vendor:
0000090285
GM Emulsion, LLC
5935 Agua Fria Street
Santa Fe, NM 87507
Email: gabriel@gmemulsion.com
Telephone No.: (505) 471-9981

Number: 00-80500-20-16843

Amendment No.: One

Term: September 22, 2020 – September 21, 2022

Ship To:
New Mexico Department of Transportation
Various Locations

Procurement Specialist: Karen Acosta-Gonzalez

Telephone No.: 505-372-9264

Invoice:
New Mexico Department of Transportation
Various Locations

Email: Karen.Acosta-Gonzal@state.nm.us

For questions regarding this contract please contact:
Angela Martinez 505-570-7940

Title: US 550 Warranty Work – Pavement Fog Sealing

This amendment is to be attached to the respective Price Agreement and become a part thereof.

In accordance with Price Agreement provisions, and by mutual agreement of all parties, this Price Agreement is extended from September 22, 2021 to September 21, 2022 at the same price, terms and conditions.

Except as modified by this amendment, the provisions of the Price Agreement shall remain in full force and effect.

Accepted for the State of New Mexico

Valerie Paulk

Date: 8/24/2021

MARK HAYDEN, New Mexico State Purchasing Agent

x **This Agreement was signed on behalf of the State Purchasing Agent**

Purchasing Division: 1100 St. Francis Drive, Room 2016, Santa Fe, 87505; PO Box 6850, Santa Fe, NM 87502 (505) 827-0472

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State of New Mexico General Services Department

Price Agreement

Awarded Vendor:
0000090285
GM Emulsion, LLC
5935 Agua Fria Street
Santa Fe, NM 87507

Email: gabriel@gmemulsion.com
Telephone No.: (505) 471-9981

Price Agreement Number: 00-80500-20-16843

Payment Terms: Net 30

F.O.B.: As Requested

Delivery: 5935 Agua Fria Street, Santa Fe, NM 87507

Ship To:
New Mexico Department of Transportation
Various Locations

Procurement Specialist: Raelynn Lujan *RL*

Telephone No.: 505-827-0484

Email: raelynn.lujan@state.nm.us

Invoice:
New Mexico Department of Transportation
As Requested at Time of Order.

For questions regarding this agreement please contact:
Angela Martinez- (505) 570-7940

Title: **US 550 Warranty Work- Pavement Fog Sealing**

Term: **September 22, 2020 thru September 21, 2021**

This Price Agreement is made subject to the “terms and conditions” as indicated on subsequent pages.

Accepted for the State of New Mexico

Valerie Paulk

Date: 9/23/2020

Mark Hayden, New Mexico State Purchasing Agent

X This Agreement was signed on behalf of
the State Purchasing Agent

MM

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Terms and Conditions
(Unless otherwise specified)

1. **General:** When the State Purchasing Agent or his/her designee issues a purchase document 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 State Purchasing Agent 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 State as to goods, services, and materials purchased in connection with this bid are hereby assigned to the State.
4. **State Furnished Property:** State furnished property shall be returned to the State upon request in the same condition as received except for ordinary wear, tear and modifications ordered hereunder.
5. **Discounts:** Prompt payment discounts will not be considered in computing the low bid.
6. **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.
7. **Inspection of Plant:** The State Purchasing Agent 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.
8. **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 State and are in addition to and do not limit any rights afforded to the State by any other clause of this order. **Vendor agrees not to disclaim warranties of fitness for a particular purpose of merchantability.**
9. **Taxes:** The unit price shall exclude all state taxes.
10. **Packing, Shipping and Invoicing:**
 - a. The State'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 using agency and NOT the State Purchasing Agent.
11. **Default:** The State reserves the right to cancel all or any part of this order without cost to the State, 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 State 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 the 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 State shall determine that the supplies or services to be furnished by

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the subcontractor were obtainable from other sources in sufficient time to permit the Vendor to meet the required delivery scheduled. The rights of the State 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.

12. **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 State Purchasing Agent or his/her designee.

13. **Nondiscrimination:** Vendor doing business with the State of New Mexico 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).

14. **The Procurement Code:** Sections 13-1-28 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.

15. **Items:** All bid items are to be NEW and of most current production, unless otherwise specified.

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

17. **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 Workers' Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the contracting agency.

18. **Submission of Bid:** 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.

19. **Contractor Personnel:** Personnel proposed in the Contractor's written bid to the Procuring Agency 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.

20. **Subcontracting:** The Contractor shall not subcontract any portion of the Price Agreement 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.

21. **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, State Purchasing Division, Department of Finance and Administration, and for Information Technology contracts, State Chief Information Officer. 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.

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

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New Mexico Employees Health Coverage

A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Contractor certifies, by signing this agreement, to have in place, and agrees to maintain for the term of the contract, health insurance for its New Mexico Employees and offer that health insurance to its New Mexico Employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceeds \$250,000 dollars.

B. Contractor agrees to maintain a record of the number of its New Mexico Employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.

C. Contractor agrees to advise all of its New Mexico Employees of the availability of State publicly financed health care coverage programs by providing each of its New Mexico Employees with, as a minimum, the following web site link to additional information: <https://bewellnm.com>.

D. For purposes of this Paragraph, the following terms have the following meanings:

- (1) "New Mexico Employee" means any resident of the State of New Mexico employed by Contractor who performs the majority of the employee's work for Contractor within the State of New Mexico, regardless of the location of Contractor's office or offices; and
- (2) "offer" means to make available, without unreasonable restriction, enrollment in one or more health coverage plans and to actively seek and encourage participation in order to achieve the goals of Executive Order 2007-049. This could include State publicly financed public health coverage programs such as *Insure New Mexico!*

Department 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 this 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 number. It is understood that no guarantee or warranty is made or implied by either the New Mexico State Purchasing Agent or the user 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 State Purchasing Agent must be notified.

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Article V - Termination

The Agency may terminate this Agreement for convenience or cause. The Contractor may only terminate this Agreement based upon the Agency's uncured, material breach of this Agreement. Contractor shall give Agency written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the Agency's material breaches of this Agreement upon which the termination is based and (ii) state what the Agency must do to cure such material breaches. Contractor's notice of termination shall only be effective (i) if the Agency does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the Agency does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach. Termination of this Contract, however, shall not affect any outstanding orders. This provision is not exclusive and shall not waive other rights and remedies afforded either party in the event of breach of contract or default. In such instances the contract may be cancelled effective immediately.

Article VI – Amendment

This Price Agreement may be amended by mutual agreement of the New Mexico State Purchasing Agent 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 New Mexico State Purchasing Agent 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.

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Specifications:

US 550 Warranty: Pavement Fog Sealing:

Establish a Price Agreement for Warranty Work Pavement Fog Sealing Maintenance along US 550 in Northwestern New Mexico as per specifications contained herein. Project limits are Milepost 23.7 to Milepost 143.0. This work shall consist of providing fog sealing and rejuvenating fog seal on the roadway as necessary in accordance with specifications contained within this Price Agreement and to the dimensions designated by the Engineer. For purposes of this agreement, "Engineer" is understood to be the New Mexico Department of Transportation (NMDOT) US 550 Warranty Engineer or the Project Manager as applicable.

All work performed under this Price Agreement shall meet the specifications as set forth in this Invitation to Bid, and all applicable New Mexico State Department of Transportation Standard Specifications for Highway and Bridge Construction, special provisions, standard drawings and supplemental specifications(current edition). They are available on the NMDOT website, at the following link: <http://dot.state.nm.us/content/nmdot/en/Standards.html> and they are available for purchase at the General Office Financial Control Section (505) 827-5159.

The Vendor shall perform with its own organization at least 40% of the work based on the total purchase order amount and comply with section 108.1 of the New Mexico State Department of Transportation Standard Specifications for Highway and Bridge Construction, current edition.

Pursuant to the Contractor Prequalification Rule 18.27.5 NMAC, Vendors shall obtain prequalified status with the NMDOT as a condition to submitting a bid.

Vendors are required to ensure that the products used in conjunction with this Price Agreement have been submitted and approved through the NMDOT Product Evaluation Program prior to placement on a project. Any Questions regarding the NMDOT Product Evaluation Program shall be directed to Product Evaluation Coordinator at (505) 216-8777.

Term of Agreement:

The term of this price agreement shall be for one (1) year from date of award with the option to extend for a period (s) of three (3) additional years, on a year-by-year basis, by mutual agreement of all parties and approval of the New Mexico State Purchasing Agent at the same price, terms and conditions. This price agreement shall not exceed four (4) years

Performance, Payment and Material Bonds:

Upon the issuance of a purchase order, the awarded Vendor(s) must provide a performance bond, payment and materials bond equal to 100% of the total purchase order. Said bonds must be provided to the requesting District Engineer or their designee prior to the commencement of work. Failure to comply shall result in the purchase order being issued to another awarded vendor and difference being charged back to the originally awarded Vendor(s).

The performance bond is to secure the NMDOT for losses and damages sustained by reason of default by Vendor. A payment bond is to guarantee that subcontractors and material suppliers on the project will be paid. The materials bond is to guarantee availability of equipment and acceptance of product.

Tax Note:

Price shall not include State Gross Receipts or Local Option Tax. Taxes shall be added to the purchase order and invoice at current rates as a separate item to be paid by NMDOT.

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 submitted 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, in the discretion of the State of New Mexico, constitute grounds for rejection of the entire bid.

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The prices quoted herein represent the total compensation to be paid by the State of New Mexico for goods and/or services provided. It is understood that the party providing said goods and/or services to the State of New Mexico is responsible for payment of all costs of labor, equipment, tools, materials, federal taxes, permits, licenses, fees, and any other items necessary to complete the work provided. The prices quoted in this price agreement include an amount sufficient to cover such costs.

The Contractor shall be considered an independent Contractor and not an employee of the State of New Mexico. The New Mexico Department of Transportation shall provide direction regarding the performance required by this price agreement.

Vendor is requested to indicate their federal tax id number, New Mexico gross receipts or social security number

Bid Review:

NMDOT shall perform a bid analysis of all bids received for this Invitation to Bid, that require the technical expertise of an engineer. This includes a determination of qualification in accordance with the technical standards and requirements of the specifications. The analysis and recommendation for award will be sent to the State Purchasing Division (SPD) for final determination and awarding.

Method of Award:

Method of award shall be to multiple vendors.

For a bid to be considered for award, prices must be submitted for all items. Failure to do so will result in the bid being deemed irregular and rejected from consideration for award.

This price agreement may be awarded to one (1) or more vendors, but not to exceed three (3) vendors.

Utilization of Vendors:

The following procedure for the utilization of vendors shall be used on multiple source price agreements.

1. The selection of a vendor from a multiple source price agreement to complete a project shall be based on the purchase order.
2. The Warranty Engineer or their designee shall evaluate the estimated quantities, unit costs, total costs per item, and total project costs for each awarded vendor.
3. The vendor selected to perform the work on the project shall be the vendor providing services for the specific project estimate at the lowest overall cost to the New Mexico Department of Transportation and able to meet all project delivery requirements including project schedule. A vendor **not** offering the lowest cost to the New Mexico Department of Transportation can be used for the specific project if the vendor providing the lowest overall cost is unable to meet all project requirements as determined and documented by the Warranty Engineer or their designee. Any changes to the original purchase order will require a modification form signed by the Warranty Engineer or their designee. All supporting documentation shall be maintained in the project file.

Public Works Minimum Wage Act:

This is a Public Works Price Agreement subject to the provisions of the Public Works Minimum Wage Act, Section 13-4-11 through 13-4-17, et. Seq. NMSA 1978 as amended. Minimum Wage Rates as determined and published by the New Mexico Department of Workforce Solutions (NMDWS), Santa Fe, New Mexico shall be in effect and utilized by the Vendor during the life of this Price Agreement.

If a Vendor or Subcontractor is willfully paying employees covered by the Public Works Minimum Wage Act, lower rates than required, the Vendor or subcontractor may lose their right to proceed with the work.

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Price Agreement Order:

For projects over \$60,000.00 where a purchase order has been issued, a Wage Rate Decision number must be requested by the NMDOT. The Wage Rate Decision number can be obtained through the New Mexico Department of Work Force Solutions, Public Works Section. NMDOT must be registered through the Public Works website that can be accessed at: <http://www.dws.state.nm.us/pwaa/LRDEmployer/Core/Login.ASPX>

The Vendor 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 Vendor 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 State of New Mexico, 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, Vendor's and/or its employees, own negligent act(s) or omission(s) while Vendor, 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 worker's compensation insurance coverage for its employees. If the Vendor fails to comply with the Worker's 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 Vendor shall procure and maintain at the Vendor's 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 Vendor, the Vendor's agents or employees or by Sub-Contractors. All insurance provided shall remain in full force and effect for the entire period of the 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

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(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 Vendor'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 Vendor'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 there from.
2. Automobile liability insurance coverage for the Vendor (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 Vendor 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 Vendor is an "owner-operator" of such equipment, it is agreed that the State of New Mexico assumes no responsibility, financial or otherwise, for any injuries sustained by the "owner-operator" during the performance of said price agreement.

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(C) **Certificate of Insurance/Department as Additional Insured:** The Vendor being awarded this Price Agreement shall furnish evidence of Vendor's insurance coverage by a Certificate of Insurance. The Certificate of Insurance shall be required prior to the "Notice to Proceed" is issued.

The Vendor shall have the New Mexico Department of Transportation named as an additional insured on the Comprehensive General Liability Form or Commercial General Liability Form furnished by the Vendor, 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 the NMDOT 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.

The NMDOT 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 no way intended to define what constitutes adequate insurance coverage for individual Vendor. The NMDOT will recognize following form excess coverage (Umbrella) as meeting the requirements of Subsection (A) 1.a of this price agreement, should such insurance otherwise meet all requirements of such subsections.

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

(F) **Railroad Insurance:** In the event that railroad property is affected by the subject price agreement, the Vendor, in addition to the above requirements, shall be required to furnish a Railroad Protective Liability policy in the name of the railroad company involved. In addition, on those rails that are used by the National Railroad Passenger Corporation (NRPC), the Vendor will also obtain a Railroad Protective Liability Policy in the name of NRPC.

The limits of liability for the Railroad Protective Liability Policy (or policies) must be negotiated with the railroad company on a hazard and risk basis. In no event will the limits exceed the following:

Bodily Injury Liability, Property Damage Liability:

\$2,000,000 each occurrence

Liability and Physical Damage to Property:

\$6,000,000 aggregate

The limits of liability stated above apply to the coverage's as set forth in the Railroad Protective Liability Endorsement Form, subject to the terms, conditions, and exclusions found in the form.

The policy must afford coverage as provided in the Standard Railroad Protective Liability Endorsement (AASHTO Form).

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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 and the State of New Mexico and any Commission, Divisions, or Department thereof.

Authorization to Perform Work:

The purchase order issued by the New Mexico Department of Transportation is the official document that authorizes the Contractor to perform work. No work shall be performed on a project until a purchase order has been issued to the contractor.

Task orders submitted by the Project Manager to the Contractor describing the type and limits of the work are only estimates and do not authorize the Contractor to perform any work.

Prior to commencement of any work the Contractor shall have been issued a task order describing the work and a purchase order issued by the New Mexico Department of Transportation.

Function of the Project Manager:

The Project Manager will advise the Contractor, in writing of the locations, type and estimated quantities of work to be performed per task order and the time specified to complete the task order. The specified time to complete a task will be determined using reasonable estimates consistent with the type and quantity of work involved with the task. The Project Manager will provide drawings, details and/or any other information necessary to adequately describe the work to be performed. The Project Manager will inspect the work being performed to assure the workmanship and materials meet specified requirements.

US 550 WARRANTY WORK PAVEMENT FOG SEALING SPECIFICATIONS:

All work performed under this contract shall meet the specifications as set forth in this Price Agreement, and all applicable New Mexico State Department of Transportation Standard Specifications for Highway and Bridge Construction, current edition, current special provisions and supplemental specifications.

General Conditions:

The Contractor shall not park equipment during non-working hours inside the highway right of way unless it is determined by the Engineer or their designee that a safe recovery area thirty (30) feet as measured from the edge of the roadway is assured. If the right of way does not allow for an adequate recovery area, the Contractor shall be responsible for locating an equipment storage area, suitable to the Engineer or their designee

All equipment proposed to be used to accomplish the work described herein shall be of sufficient size and in such mechanical condition to meet requirements of work and to produce a satisfactory quality of work. Equipment used on any portion of the project shall be such that no damage to the roadway, adjacent property or other highways will result from its use.

The Contractor must be capable of performing work specified at locations as requested by the user within a minimum of thirty (30) calendar days after notification. Failure to perform the work described will result in the State Purchasing Director's office being notified for the appropriate action to be taken.

The Engineer will provide a Project Inspector to inspect operations to ensure that the work meets the performance criteria set forth in the specifications herein. The Engineer's decision will be considered final.

The Contractor shall be considered an independent Contractor and not an employee of the State of New Mexico. However, directions as to the time and place of performance and compliance with the agreement conditions and specifications may be required by the Engineer or their designee.

The awarded Contractor warrants and represents that it has taken into consideration and is familiar with the project site conditions, the nature and location of the work, conformation of the ground and roadway, character of soils, materials and surface conditions to be encountered, availability and cost for labor, materials and equipment necessary to perform the

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work herein, scheduling requirements and impacts, applicable safety and security rules, regulations and any matter which may affect the project.

All material used shall be specified by the Engineer or their designee. All work shall be in substantial compliance with manufacturer's recommendation and the pertinent Sections of the Department's Standard Specifications for Highway and Bridge Construction most current edition. Where conflicts exist between the terms of this agreement and the provisions of the standard specifications, the terms of this agreement will prevail. Only materials incorporated into the pavement at any given location will be paid for. Unauthorized excess materials ordered, wasted materials or materials ordered by the Contractor under written authorization but not incorporated into the work shall be paid for at invoice cost upon termination of the contract, and said materials shall become the property of the Department.

The Departments drop-off policy shall be adhered to for all applicable operations and will be considered incidental to the work and no separate measurement or payment will be made therefore. All materials and equipment storage shall adhere to the appropriate "Clear Zone" requirements for posted speeds and geometric conditions.

Traffic Control:

The Contractor shall abide with the New Mexico Department of Transportation Standard Specifications for Highway and Bridge Construction, most current edition, special provisions and supplemental specifications, Section 700 on Traffic Control Devices and with the Manual of Uniform Traffic Control Devices current edition, Part 6 – Temporary Traffic Control. Contractor shall submit a traffic control plan to the District Traffic Engineer three (3) weeks prior to actual construction. The District Traffic Engineer shall review and approve the proposed signage, location of signs and location and type of all traffic channelization devices to be utilized prior to the beginning of operations. All lane closures and detours must also be approved by the District Traffic Engineer or their designee.

The Contractor shall furnish directly (or provide through an approved Subcontractor) all traffic control for the work task orders including traffic control devices, planning and management. This shall include the preparing and implementing of traffic control plan in conformance with the Manual of Uniform Traffic Control Devices (MUTCD) and in conformance with the NMDOT Section 702, an approved traffic control plan and the standard specifications. Traffic control plan, shall be in accordance with and materials conform to the applicable requirements of Section 701 – Traffic Signs and Sign Structures; Section 702 – Traffic Control Devices for Construction; Section 704 – Pavement Markings and Section 720 – Vehicle Impact Attenuator units. These items shall include the provision by the Contractor of traffic control management and shall comply with Section 618 – Traffic Control Management of the Standard Specification and any revisions thereof. It is the responsibility of Contractor to have traffic control plan approved by the District Traffic Engineer prior to starting the work. No work shall be performed without a NMDOT approved Traffic Control Plan.

The Contractor shall also provide sufficient flagmen, when deemed necessary by the Project Manager or their designee, to assist with the traffic control during operations. The Contractor shall also remove or cover temporary signage that is required during nonworking hours and night-time hours. At least one lane shall remain open to traffic with adequate flagging and treated roadways shall be reopened to traffic during night-time or nonworking hours.

All traffic control planning, management, devices and activities necessary to conform to an approved traffic control plan will be considered incidental to other bid items; no measurement or separate payment will be made thereof; except temporary and permanent pavement markers

Temporary Pavement Markings:

The Contractor shall furnish and install removable temporary reflectorized tabs or reflectorized temporary paint. The Contractor shall properly maintain all reflectorized pavement markings until permanent markings are installed. The Engineer or their designee will have the option to decide which type of markings the Contractor is to provide. Pavement markings shall be installed at the end of each day's operations. The Contractor shall remove temporary striping within two (2) weeks of re-establishment of permanent striping or as indicated by the Engineer or their designee. Removal of temporary pavement markings will be considered incidental to the permanent pavement markings and no separate payment will be made thereof.

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Fog Seal: Pay Items (001-003) Fog Seal, CSS-1P or CQS-1F dilute 1:1 shall consist of providing asphalt emulsion and applying it to an existing surface. Asphalt Emulsion for fog seal shall be CSS-1P or CQS-1F diluted at a ratio of 1:1, or CQS-1P diluted at a ratio of 60:40 and all work will conform to Section 402 – Asphalt Materials, Hydrated Lime, and Anti-stripping Agent of the Standard Specifications. The asphalt emulsion designated as CSS-1P shall be cationic slow setting emulsion modified with polymer. Blending with approved base asphalt prior to emulsification shall incorporate the polymer or it shall be milled with the asphalt to produce the finished emulsion. The distillation residue of the modified emulsion shall contain a minimum of 3.0 percent polymer by weight, as determined by an analytical method approved by the Engineer or their designee. The emulsion supplier shall furnish the engineer samples of the base asphalt and polymer used in the finished emulsion.

In addition, the emulsion shall be homogenous, shall show no separation of polymer, and shall comply with the following requirements:

Material Specification for CSS-1P:

Table 1: CSS-1P

<u>Test on Emulsion</u>	<u>Method</u>	<u>Min</u>	<u>Max</u>
Viscosity, Saybult Furol @ 122 F, sec.	AASHTO T 72	20	100
Sieve Test, %	AASHTO T 59		0.1
24-Hour Storage Stability, %	AASHTO T 59		1
Emulsion particle charge		positive	
Cement mixing test, percent			2
Residue, percent	*	62	
Distillation, oil distillation, by volume emulsion, percent	AASHTO T 59		0.5
<u>Test on residue from distillation test penetration:</u>			
Penetration @ 77°F, 100 g, 5 sec dmm	**	40	90
Ductility, 77 degrees F., 5 cm/min	AASHTO 51	40	
Kinematic viscosity @ 275 degrees F., cst/sec	***	650	
Softening point, degrees F.		135	

Footnotes:

* The temperature for this test should be held below 280 degrees f., higher temperatures may cause the polymers to break down.

** Climate conditions should be considered when establishing this band.

*** Use ASTM 2170 test method.

Material Specification for CQS-1F:

CQS-1F is a cationic emulsified asphalt product for use as a fast breaking, fast curing emulsion for use in fog seal applications. It shall be capable of allowing return to traffic in less than 1 hour at temperatures above 25 C and less than 50% humidity. It shall be delivered to the jobsite in a ready-to-apply diluted form meeting the requirements below. Payment will be made for the undiluted material tonnage.

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Table 2: CQS-1F

<u>Test on Emulsion</u>	<i>Method</i>	<i>Min</i>	<i>Max</i>
Viscosity @ 25°C, SSF	ASTM D88	20	500
Sieve Test, %	ASTM D244		0.1
24-Hour Storage Stability, %	ASTM D244		1
Residue from Distillation @ 260°C, %	ASTM D244	60	
Oil portion from distillation ml of oil per 100 g emulsion	ASTM D244		1
Emulsion Particle Charge	ASTM D244	positive	
<u>Test on Diluted Emulsion</u>			
Viscosity @ 25°C, SSF	ASTM D88		50
Sieve Test, %	ASTM D244		0.1
Residue from Distillation @ 260°C, %	ASTM D244	30	
<u>Test on residue from distillation:</u>			
Penetration @ 25°C, 100 g, 5 sec, dmm	ASTM D5	60	150

Material Specification for CQS-1P:

CQS-1P is a cationic emulsified asphalt product for use as a fast breaking, fast curing emulsion for use in fog seal applications. It shall be capable of allowing return to traffic in less than 1 hour at temperatures above 25 C and less than 50% humidity. It shall be delivered to the jobsite in a ready-to-apply diluted form meeting the requirements below. Payment will be made for the undiluted material tonnage.

Table 3: CQS-1P

<u>Test on Emulsion</u>	<i>Method</i>	<i>Min</i>	<i>Max</i>
Viscosity, Saybult Furol @ 122 F, sec.	ASTM D-244	20	100
Sieve Test, %	ASTM D-244		0.1
Particle charge	ASTM D-244	positive	
Residue, percent		64	
Solubility in TCE% (min)	ASTM D2042	97.5	
Ductility @ 25C	AASHTO T 51	100+	
Elastic Recovery @ 25C	AASHTO T 301	60	

Construction Requirements for Fog Seal:

Fog seal shall not be applied on a wet surface, or when the atmospheric temperature is below 50 degrees F, or when weather conditions prevent the proper placement of the fog seal. The fog seal shall be applied using a distributor which shall be capable of maintaining the fog seal material at an even temperature, distributing the material uniformly on variable widths with uniform pressure, and at readily determined controlled rates ranging from 0.05 to 0.50 gal/sy with a residual rate specified in the work order ranging from 0.025 to 0.25 gal/sy. The distributor shall circulate the fog seal

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material within the tank, the spray bar and all other accessories used therewith, when spraying is not being performed. The distributor shall be equipped with a hand wand having a means for precise control with single or double nozzle and a positive shut-off valve. Distributor equipment shall include a tachometer, pressure gauges, accurate volume measuring devices or a calibrated tank, and, when required, a thermometer for measuring temperatures of tank contents. Distributors shall be equipped with a power unit for the pump and full-circulation spray bars, which can be adjusted laterally and vertically.

The surfaces to receive the fog seal shall be clean and free of dirt, surface moisture, vegetation and any other deleterious materials. Contractor shall sweep, broom and/or clean pavement surface prior to application of fog seal, to the satisfaction of the Engineer or their designee. Sweeping, broom, and cleaning shall be considered incident and no pay shall be received for this work. Fog seal shall be handled and applied in accordance with the manufacturers' recommendations. Fog seal shall not be applied until the quantities, application rates, material temperature, and areas to be treated have been approved by the Engineer or their designee. Fog seal shall be applied to a width of the section to be sealed by means of a pressure distributor, in a uniform and continuous spread. During application, should clogging, skipping, streaking or other irregularities in distribution occur, operations shall cease until corrective action is taken. Upon completion of application, the fog seal surface shall be allowed to cure for a minimum of 6 hours prior to releasing traffic onto surface. Temporary striping shall be provided prior to opening to traffic. Permanent striping shall be applied no less than 7 days nor longer than 20 days following application of fog seal.

Acceptance:**Certification of Fog Seal Materials:**

1. The contractor shall provide to the Engineer or their designee a written certification that the fog seal materials meet the requirements for CSS-1P, CQS-1F, and CQS-1P and the product has been diluted at a ratio in accordance with the manufacturer's recommendations. The written certification shall provide the undiluted CSS-1P, CQS-1F, and CQS-1P weight separately.
2. CSS-1P – Emulsion transports delivered to the project shall provide a load ticket displaying tons of asphalt fog seal (undiluted) and total tons fog seal. Test reports from producer shall contain results confirming material meets specification requirements shown in Table 1, test weekly. Except: Ductility and Kinematic Viscosity – test monthly; and 24-Hr Storage Stability, Emulsion Particle Charge, and Cement mixing test – test annually. Copies of all material load tickets and applicable tests, representing delivered material shall be given to the Project Manager.
3. CQS-1F – Emulsion transports delivered to the project shall provide a load ticket displaying tons of asphalt fog seal (undiluted) and total tons fog seal. Test reports from producer shall contain results confirming material meets specification requirements shown in Table 2, test weekly. Except: 24-Hour Storage Stability and Emulsion Particle charge – test annually. Copies of all material load tickets and applicable tests, representing delivered material shall be given to the Project Manager.
4. CQS-1P – Emulsion transports delivered to the project shall provide a load ticket displaying tons of asphalt fog seal (undiluted) and total tons fog seal. Test reports from producer shall contain results confirming material meets specification requirements shown in Table 3, test weekly. Except: Particle Charge – test annually; Ductility – monthly.

Pay item (004) Rejuvenating Fog Seal (CMS-1P): The asphalt emulsion shall be a polymer modified rejuvenating emulsion with a latex polymer rejuvenating agent and asphalt and shall meet the following specifications.

RFS Section I - Product Specification

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Table 4: CMS-1P (Undiluted/Concentrate)

(1) <u>Test on Emulsion</u>	<u>Method</u>	<u>Specification</u>
Viscosity @77 (SFS)	ASTM D244	20 - 100
Residue, w%, minimum.	ASTM D244	65
pH	ASTM E70	2.0-5.0
Sieve, w%, max.	ASTM D244	0.1
Oil distillate, w%, max.	ASTM D244	0.5
Specific Gravity of residue of recovered latex min.	WE-EM – 100-2 ⁽⁵⁾	1.15
 <u>Test on Residue</u> ⁽¹⁾		
Viscosity @ 140°F, (P), maximum.	ASTM D2171	5000
Penetration @ 39.2°F, minimum.	ASTM D5	40
Elastic Recovery on residue by distillation, %, minimum.	AASHTO T59, T301 ^(1,2)	45
 <u>Test on Latex:</u>		
Specific Gravity (minimum)	ASTM 1475	1.08
Tensile strength, die C dumbbell, psi, minimum	ASTM D412 ⁽³⁾	500
Swelling in rejuvenating agent, % maximum; 48 hours exposure @ 104°F	ASTM D471 ⁽⁴⁾ Modified	40% intact film
 <u>Test on rejuvenating agent:</u>		
Flash point, COC , °F	ASTM D92	> 380

⁽¹⁾Exception to AASHTO T59: Bring the temperature on the lower thermometer slowly to 350° F plus or minus 10° F. Maintain at this temperature for 20 minutes. Complete total distillation in 60 plus or minus 5 minutes from first application of heat.

⁽²⁾ Elastic Recovery @ 10° C (50° F): Hour glass sides, pull 20 cm, hold 5 minutes then cut, let sit 1 hour.

⁽³⁾ Tensile Strength Determination: Samples for testing for tensile strength in accordance with ASTM D412 shall be cut using a die dumbbell at a crosshead speed of 20 in/min.

⁽⁴⁾ Latex Testing: Suitable substrate for film formation shall be polyethylene boards, silicone rubber sheeting, glass, or any substrate which produces a cured film of uniform cross-section. Polymer film shall be prepared from latex as follows:

Resistance to Swelling: Polymer films shall be formed by using a 50 mil drawdown bar and drawing down 50 mils of the latex on polyethylene boards. Films shall be cured for 14 days at 75°F and 50% humidity. Samples for resistance to swelling in rejuvenating agent shall be 1" by 2" rectangles cut from the cured film. Cut at least 3 specimens for each sample to be tested for swelling. Fill 3- 8 oz ointment tins with at least a ½" deep of rejuvenating agent. Swelling samples shall be weighed and then placed in the ointment tins on top of the rejuvenating agent. Then, add at least another ½" deep of rejuvenating agent over each of the latex samples. The ointment tins shall be covered and placed in an oven at 104°F for the specified 48 hours +/- 15 minutes. The ointment tins are allowed to cool to 75°F and then the latex films are removed from the tins. Unabsorbed rejuvenating agent is removed from the intact latex film by scraping with a rubber policeman and blotting with paper towels. If the latex film does not remain intact during removal from the tins or while removing the unabsorbed rejuvenating agent the sample shall be rejected. After the rejuvenating agent is removed from the samples they are then weighed. Percent swelling is reported as weight increase of the polymer film; report mass increase as a percent by weight of the original latex film mass upon exposure of films to the rejuvenating agent.

⁽⁵⁾ See Appendix A WE-EM-100-2

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The emulsion manufacturer shall submit to the agency certification that the emulsion meets the specification. The latex manufacturer through the emulsion supplier shall submit to the agency test results from an accredited laboratory certification that the latex is compatible in a cationic solution and meets the required specifications and that it is supplying the latex specified for this contract. Test results dated more than 90 days from task order issue date will not be accepted.

The refinery refining the rejuvenating agent, through emulsion supplier shall submit to the agency test results on the rejuvenating agent and certification that the material meets the required specifications.

Polymer film's required for testing must be prepared in accordance with this specification by a laboratory with an IAS ISO 17025 accreditation. The polymer films used for testing shall be derived from the same 1 quart sample received from the manufacture of the latex. The swell test, tensile test and specific gravity test shall be certified and performed by the same laboratory. The refinery manufacturing the rejuvenating agent shall submit to the laboratory testing the latex a one quart sample of the rejuvenating agent for use in the swell test.

Certifications and test results on the latex shall be submitted thirty (30) days, excluding shipping time, prior to beginning work.

Certifications and test results on the emulsion must be submitted to the agency and approved by the agency ten (10) days prior to supplying material.

Prior to and during the project the agency may require one quart samples of both the finished emulsion and the latex used in the emulsion. The agency will be allowed to withdraw samples from the supplier's storage tanks and submit to the agency designated laboratory for testing. All testing shall be at the Agency's expense.

Construction Requirement for Rejuvenating Fog Seal Materials

Shall conform to "Construction Requirements for Fog Seal Materials" as described in the Supplemental Specifications above.

Acceptance:

Certification of Rejuvenating Fog Seal Materials:

1. The contractor shall provide to the Engineer or their designee a written certification that the rejuvenating fog seal materials meet the requirements defined within, and the product has been diluted at a ratio of 1:1 in accordance with the manufacturer's recommendations. The written certification shall provide the undiluted rejuvenating weight separately and the diluted weight.
2. Rejuvenating Fog Seal – Emulsion transports delivered to the project shall provide a load ticket displaying tons of asphalt rejuvenating agent (undiluted) and total tons asphalt rejuvenating agent. Test reports from producer shall contain results confirming material meets specification requirements shown in Table 4, test weekly. Except: Elastic Recovery – test monthly. Copies of all material load tickets and applicable tests, representing delivered material shall be given to the Project Manager.

Fog Seal or Rejuvenating Fog Seal – Spills: Material spilled on the pavement surface (e.g. result of: equipment failure, vehicle accident, high application rate, broken nozzles, etc.) shall be contained quickly, operations shall stop and equipment shall be moved immediately from roadway. Spilled material shall be removed from pavement and traffic controls adjusted as necessary. Pavement areas impacted shall be repaired by Contractor at their expense with no separate payment made therefore and shall be approved by the Project Manager.

Pay Items (013): Blotter sand, to be applied as directed by the Engineer or their designee or as defined in the Work Order. Blotter sand shall be applied at a rate of 1-2 pounds of sand per square yard after fog seal or rejuvenating seal breaks entirely. The blotter sand shall be removed by rotary broom and vacuum truck or may be swept to the shoulder

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edge using a road broom. The blotter sand shall be removed from roadway after the seal has cured completely prior to reopening to traffic.

Pay Items (005-011): Retro-reflectorized Painted Markings and Temporary Markings follow the New Mexico State Department of Transportation Standard Specifications for Highway and Bridge Construction most recent edition.

Pay Item (014): Mobilization, Contractor shall furnish the Engineer or their designee, of the NMDOT with mileage for every move over thirty (30) miles. In cases where Contractor moves for their own convenience, he will not be paid for the mileage upon returning to their previous worksite or to a location within the thirty (30) miles of their last worksite. No payment will be made for moves of less than thirty (30) miles. No payment will be made for the Contractors return to his designated base station. The Project Manager or designee will verify the distance used for payment and their decision shall be final. For the purpose of this item, the Contractor shall designate a New Mexico base station at Albuquerque, NM.

Method of Measurement and Basis of Payment:

All quantities are to be measured by the Engineer their designee and shall be considered to be final and all payments for same will be made on this basis. The accepted quantities, measured as provided above, shall be paid for at the contract unit price as follows:

- 1. Fog Seal..... TON (**Undiluted**)
- 2. Rejuvenating Fog Seal.....TON (**Undiluted**)
- 3. Blotter Sand..... TON
- 4. Temporary Retro-reflectorized Paint..... LINEAL FOOT
- 5. Temporary Retro-reflectorized Tabs..... EACH
- 6. Retro-reflectorized Painted Markings.....LINEAL FOOT
- 7. Mobilization..... MILE

Fog seal and rejuvenating fog seals shall be delivered to the project diluted. Payment, however, will be made for **undiluted** material tonnage at the unit price per ton established herein.

These unit prices bid shall be considered full compensation for emulsified asphalt, material, labor, tools, equipment, cleaning existing pavement, maintenance of traffic, temporary lane markers and all other incidentals necessary to complete the work in accordance with these specifications and the bid documents.

Escalation Clause:

In the event of a product cost increase, an escalation request will be submitted for review to the NMDOT on an individual basis. This measure is not intended to allow any increase in profit margin, but is solely intended to allow compensation for actual cost increases directly related to bid items.

To facilitate prompt consideration, all requests for price increase must include all information listed below:

- 1. Price Agreement Item Number
- 2. Current Item Price
- 3. Proposed New Price
- 4. Percentage of Increase
- 5. Mill/Supplier Notification of price increase indicating percentage of increase including justification for increase.

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The NMDOT upon review of an escalation request may require additional supporting documentation prior to providing a written recommendation to the General Services Department's (GSD), State Purchasing Division. Final determination on the approval or disapproval of the escalation request will be made by GSD's, State Purchasing Division.

Monthly Fog Seal (undiluted) & Rejuvenating Fog Seal (undiluted) Price Adjustment Procedures:

An adjustment will be made to the original Price Agreement for fog seal (undiluted) and rejuvenating fog seal (undiluted) if the New Mexico Asphalt Rack-Price Index monthly price index of asphalt binder fluctuates in excess of 5% from price published in the month of Price Agreement award. Adjustment is not optional. Items subject to adjustment include: fog seal (undiluted) and rejuvenating fog seal (undiluted). Submit applicable mix designs, including percentage of fog seal (undiluted), for inclusion in the price adjustment for the pay item listed below in the Price Agreement.

For **increasing prices** (The monthly adjustment shall apply on those contracts whose monthly fluctuations have a (B / C) ratio greater than 1.05). Use Equation (1).

Equation (1):
$$A = 1.2 \times (B - (1.05 \times C)) \times D$$

For **decreasing prices** (The monthly adjustment shall apply on those contracts whose monthly fluctuations have a (B / C) ratio less than 0.95). Use Equation (2).

Equation (2):
$$A = 1.2 \times (B - (0.95 \times C)) \times D$$

Where:

- A – Monthly adjustment to the Price Agreement for fog seal or rejuvenating fog seal (undiluted)
- 1.2 – Factor applied to relate the price of standard grade asphalt used in NM asphalt rack-price index and the price of fog seal (undiluted) and rejuvenating fog seal (undiluted) materials.
- B – Average monthly price index per ton of asphalt binder (based on the published NM index price corresponding to the month the fog seal or rejuvenating fog seal (undiluted) was actually placed on a project).
- C – Base Price Index (average selling price per ton of asphalt binder at time of bid opening based on the published NM index price).
- D – Tons of fog seal or rejuvenating fog seal (undiluted) placed for the subject month.

Monthly Adjustment: The fog seal or rejuvenating fog seal (undiluted) tonnage shall have an adjustment determined above by either Equations (1) or (2), as appropriate. All adjustments shall be based on the average monthly price index per ton of asphalt binder corresponding to the date (month) the fog seal or rejuvenating fog seal (undiluted) was actually placed on a project.

For the purposes of making these calculations, the Department's State Materials Bureau will maintain a database of monthly price indexes. This index is based on the average of the major suppliers in New Mexico. This index is maintained by the NMDOT and published on the NMDOT Plan, Specifications & Estimates (PS&E) Bureau website.

Payments and Invoicing:

Within fifteen (15) days after the date the NMDOT receives written notice from the Vendor that payment is requested for services, construction or items of tangible personal property delivered on site and received, the NMDOT shall issue a written certification of complete or partial acceptance or rejection of the services, construction or items of tangible personal property. If the NMDOT finds that the services, construction or items of tangible personal property are not acceptable, it shall, within thirty (30) days after the date of receipt of written notice from the Vendor that payment is requested, provide to the Vendor a letter of exception explaining the defect or objection to the services, construction or delivered tangible personal property along with details of how the Vendor may proceed to provide remedial action. Upon certification by the NMDOT that the services, construction or items of tangible personal property have been received and accepted, payment shall be tendered to the Vendor within thirty (30) days after the date of certification. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. After the thirtieth day from the date that

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written certification of acceptance is issued, late payment charges shall be paid on the unpaid balance due on the purchase order to the Vendor at the rate of one and a half (1½) percent per month. 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 Vendor within five (5) working days of receipt of funds from that funding agency.

Final payment shall be made within thirty (30) days after the work has been approved and accepted by the New Mexico Department of Transportation's Secretary of his/her duly authorized representative. The Vendor agrees to comply with state laws and rules pertaining to worker's compensation insurance coverage for its employees. If Vendor 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:

NM Department of Transportation
 US 550 Warranty Engineer
 1120 Cerrillos Road – P.O. Box 1149
 Santa Fe, NM 87504-1149

With Copy to:

Mesa PDC, LLC
 US 550 Warranty Project Manager
 13775 Clark Road
 Rosemount, MN 55068

Appendix A**WE-EM – 100-2****Procedure for the Qualitative Determination of Polymer in Polymer Modified Rejuvenating Asphalt Emulsions****1. Scope**

1.1 This test method is designed to determine the specific gravity the latex present in polymer modified asphalt emulsions. The specific gravity of polymers can be used for quality control purposes without the necessity of determining the actual composition. The specific gravity of the asphalt blend in a polymer modified rejuvenating emulsion should be between 1.00 and 1.04 depending on the crude sources of the blended petroleum products. It is therefore possible to take advantage of differences in specific gravities to qualitatively determine for quality control purposes if the latex residue is above about 1.055 or below 1.00. The procedure determines the density or specific gravity at 25° C of the residue in the recovered latex; which will also include any residual emulsifier thus the density or specific gravity could be higher or lower than the theoretical value.

1.2. While this method is general in that it can separate latex from any polymer modified asphalt emulsions, it is especially of value in determining the specific gravity of the residue from the latex in a polymer modified rejuvenating asphalt emulsion or any other similar product that reportedly meets its specification for quality control purposes.

2.0 Reference Documents**2.1 Documents**

ASTM D-70. Density of Semi-Solid Bituminous Materials (Pycnometer Method)
 ASTM D-1475. Density of Liquid Coatings, Inks and Related Products
 ASTM D-1856

3.0 Summary of Method.

3.1 The method consists of procedures to separate the latex from the asphalt emulsion. It consists of centrifuging diluted emulsions to obtain a sample of the aqueous phase for determining the specific gravity of a mainly asphalt free residue.

3.2 Separation of Polymers.

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A 75:25 mixture of the emulsions and either water or a 14% salt brine is prepared and split into duplicate 150 ml centrifuge tubes. The balanced samples are centrifuged for 1 hour at 4500 RPM after which the supernatant on the top if water was the dilutant or the emulsion free liquid at the bottom if brine was the dilutant is carefully separated and placed into duplicate bottles. The specific gravities of the recovered latex samples are determined, and the % solids are obtained on the latex for which the specific gravity was run. The specific gravity of the latex residue is then calculated from the specific gravity of the dilute latex and the % solids.

4.0 Apparatus

- 4.1. 180 ml conic centrifuge tubes
- 4.2. Centrifuge capable of 4500 RPM.
- 4.3. Specific gravity bottles
- 4.4. Balance capable of precision to 0.01 grams
- 4.5. Analytical balance capable of weighing up to 160 grams
- 4.7. Oven at about 230 F
- 4.8. Apparatus of Optional Form to Siphon Top of Graduate Cylinder or centrifuge tubes.
- 4.9. 250 ml Wide Mouth Distillation Flasks
- 4.10. Electric heating mantle with variable transformer
- 4.11. 125 ml Bottles
- 4.12 6 oz ointment cans.

5.0 Reagents and Materials

- 5.1 Distilled water
- 5.2 14% Saline Solution

6.0 Procedure

The densities or specific gravities for the residues of latices with different compositions will differ. It is possible to recover the latex from a latex modified asphalt emulsion by adjusting the specific gravity of the aqueous phase such that one phase would float and the other one sink. This method is not recommended for latices for which the specific gravity of the latex residue is between 1.00 and 1.04. The procedure consists of adjusting the specific gravity of the aqueous phase so that the specific gravity of that phase is between those of the asphalt and polymer. In this manner, gravity pulls down the heavier particles, and buoyancy lifts up the lighter particles if they are large enough so that Brownian movement does not interfere. If the latex has a residual specific gravity below that of water, the emulsion is diluted with distilled water. In the case of latices with specific gravities above about 1.055 a 14% salt brine is used to dilute the emulsion.

6.1 Qualitative Identification of Latex Type.

If the emulsion sample has set for a day or so, inspect the undisturbed top. If there is latex floating on the top go directly to Paragraph 6.3: "Latices Which Are Lighter than Water". If there is no latex floating on the top, and one is confident that the latex is heavier than water, go to paragraph 6.2 "Latices Which Are Heavier than Water". If in doubt, follow the following procedure

- 6.1.1 Select two 180 ml conical centrifuge tubes
- 6.1.2 Mix 120 gm of the sample with 40 gm of distilled water and place in a centrifuge tube. Pour 150 ml of that mixture in one tube, discard the remainder.
- 6.1.3 Mix 120 gm of the sample with 44 gm of a 14% solution of sodium chloride (saline) and place in the other centrifuge tube so that the weight of the combined tube and bucket are the same. Discard the remainder.
- 6.1.4 Allow samples to set over night or centrifuge and observe the result.
 - 6.1.4.1. If there is no latex floating on the top, and there is a definite white layer forming on the bottom, the latex is heavier than water. Go to 6.2 for recovering the latex.

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6.1.4.2 If there is latex floating on the top of the tube diluted with water, and just some cloudiness in the bottom of the tube with the saline, the sample is lighter than water. Go to 6.3 for recovering the latex.

6.2 Latices Which Are Heavier Than Water.

6.2.1 Recovering the Latex

6.2.1.1 **Using Gravity.** A 14 % (w/w) sodium chloride solution is prepared and added to the emulsion at a ratio by weight of 300:100: emulsion: salt brine. The aqueous phase will have a higher density than the emulsion particles but lower than the latex particles. In **Table A1** is shown a table of the specific gravities of brine solutions at 15°C.

Place about 400 ml of the blend in a separatory funnel. Allow the mixture to set for at least one week for the latex has settled to the bottom.

After the latex has settled, drain it into a 125 ml Erlenmeyer flask. Mix well by swirling the flask and pour into a 125 ml bottle.

6.2.1.2. **Using the Centrifuge.** A 14 % (w/w) sodium chloride solution is prepared and added to the emulsion at a ratio by weight of 300:100: emulsion salt brine. The aqueous phase will have a higher density than the emulsion particles but lower than the latex particles. In **Table A1**, below, is shown a table of the specific gravities of brine solutions at 15° C.

Place approximately 150 ml of the mixture in each of 2 centrifuge tubes, making sure that each opposing pair is equal in weight.

Centrifuge for 1 hour at 4500 RPM.

After the sample has been centrifuged, remove the latex from the bottom of each tube in a manner that provides the least contamination with the asphalt emulsion and place in a new centrifuge tubes. (The asphalt emulsion may have inverted from the effect of the salt in which case the latex may be easily poured out once a hole is made in the inverted latex.) Balance each of the new tubes with each other then re-centrifuge for 15 minutes at 4500 RPM. Push a pipette through any asphalt film on top and remove the latex with the pipette and place in a labeled 125 ml bottle.

6.2.2 Determination of Density of recovered Latex

Place duplicate pre-weighed and pre-calibrated pycnometers into a plastic bag and then place them and the duplicate bottles containing the sample into a 25° C water bath to equilibrate. Once the pycnometers and samples are equilibrated, remove first one of the duplicate pycnometer, weigh immediately then fill with the first of the duplicates as quickly as possible. Place the top on it, press down firmly and dab off any material that comes through the hole on the top. Weigh pycnometer and determine weight of sample of latex (W_L) and the density (D_T) of the latex removed (W_L) using the volume of the pycnometer (V_P): (If specific gravity is desired, use the weight of water contained in the pycnometer at calibration. $V_P = (\text{Weight of Water}) / 0.99754$)

$$D_T = (W_L) / (V_P) \quad (1)$$

6.2.3. Determination of % Solids and Ash of Latex

6.2.3.1 Transfer aliquots of approximately 5 ml each of the recovered latex into duplicate pre-fired and pre-weighed crucibles and immediately weigh. Record the weight of the sample in the crucible (W_T).

6.2.3.2 Place the crucible into an oven at 80-90° C until they appear dry. Weigh samples.

6.2.3.3. Place the crucibles in a vacuum desiccator under about 25 mm of Hg pressure for 15 minutes. Weigh. Repeat until a constant weight is reached.

6.2.3.4 Calculate the weight of water lost (W_W) by subtracting the dry weight (W_D) from the total weight (W_T):

$$W_W = W_T - W_D \quad (2)$$

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6.2.3.5 Place the crucible on a triangle over a Bunsen burner and fire it until the fire in the crucible goes out, then place the crucible into a furnace until all evidence of organic material is gone (it may look gray). Place the fired crucible in a desiccator to cool.

6.2.3.6 Weigh the crucible and determine the amount of salt present. (W_S)

6.2.3.7 Subtract the weight determined in 6.2.3.5(W_S) from the dry weight to determine the weight of the rubber (W_R):

$$W_R = W_D - W_S \quad (3)$$

6.2.3.8 Divide the weight of the salt (W_S) by the combined weight of the salt (W_S) and water (W_W) to obtain the % salt in the aqueous brine (P_B):

$$P_B = (W_S / (W_S + W_W)) * 100 \quad (4)$$

6.2.3.9 From Table A1 determine the specific gravity of the aqueous phase (brine) (G_{B15}) at 15° C. Interpolate as necessary. Subtract 0.002 from that number to obtain the specific gravity at 25°C (G_{B25}) and then multiply by 0.99754 g/ml to get the density at 25° C (D_B) in g/ml:

$$D_B = (G_{B15} - 0.002) * 0.99754 \quad (5)$$

6.2.3.10 Based upon the data, calculate the combined density of the polymer and residual emulsifier present from the following formula:

$$D_R = P_R / (100/D_T - (100 - P_R)/D_B) \quad (6)$$

Where D_R is residue density

P_R is percent residue in recovered latex sample

D_T is measured density of total sample

P_B is percent brine in sample, = 100 - P_R

D_B is brine density

6.2.4. Recovery of Residue

The purpose of this phase of the test is to obtain a film for further evaluation. It is not for the purpose of determining % solids. That should be done in section 6.2.3.

6. 2.4.1. Pour remains of the contents of the pycnometer into a pre-weighed 250 ml wide mouth flask.

Note: 250 ml wide mouthed flasks that are not made with a standard tapered mouth are hard to find. If a 24/40 standard taper 250 ml flask is used, there can be some trouble with foam. If that is the case, watch the distillation carefully and cool the top of the flask if the foam rises. If a wide-mouthed flask is used such as that described in ASTM D 1856, foam is not a problem.

6. 2.4.2 Weigh and record weight

6. 2.4.3. Distill off the water by placing the flask in the mantle.

6.2.4.4. After the distillation is completed, (no boiling in the flask) there may be moisture on the top of the flask. Place the flask for a short time in an oven above 110 ° C until the moisture has evaporated.

6.2.4.4. Determine the weight of the rubber film and salt in the flask and divide by the original weight, multiply by 100 and record as the % residue including salt.

6.2.4.5. Fill the flask half full with pre-boiled distilled water and then carefully remove the film from the glass surface with a spatula.

6.2.4.6. Wash film well with distilled water or extract the salt out with distilled water in a Soxhlet.

6.2.4.6. Dry the film and place film a pre-labeled 6 oz ointment tin. Put the duplicate films in the same tin.

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6.2.4 Sample Retain

Combine the remaining unused material into a labeled 125 ml bottle for retain.

6.3 Latices Which Are Lighter Than Water**6.3.1 Recovering the latex**

6.3.1.1 Using Gravity. Place 400 ml of a 100:300-distilled water:latex (W/W) blend into a 500 ml graduated cylinder. The aqueous phase will have a lower density than the emulsion particles but higher than the latex particles. Allow the mixture to set one week or more to allow the latex to cream to the top.

After the latex has risen to the top, remove it with a siphon as described in ASTM- D-6930 and place into a 125 ml Erlenmeyer Flask. Mix well then place into a 125 ml bottle.

6.3.1.2 Using the Centrifuge. Prepare a blend of 240 gm of emulsion and 80 gm of water. The aqueous phase will have a lower density than the emulsion particles but higher than the latex particles.

Place approximately 150 ml of the mixture in each of 2 centrifuge tubes, making sure that each opposing pair are equal in weight .Centrifuge at 4500 RPM for 1 hour.

After the sample has been centrifuged, remove the latex from the top in a manner that provides the least contamination with the asphalt emulsion and place in new centrifuge tubes. Balance each of the new tubes with each other then re-centrifuge for 15 minutes at 4500 RPM. Push a pipette through any asphalt film on top and remove the latex with the pipette and place in duplicate labeled 125 ml bottles. (At times there is a light asphalt film on top, probably from cutback residue in a truck carrying the emulsion.)

6.3.2 Determination of Density of Recovered Latex

Follow 6.2.2 as described above. Record the density D_R

6.3.3. Determination of % Solids of the Latex. By Crucibles

6.3.3.1 Follow 6.2.3.1 to 6.2.3.3.

6.3.3.2 Determine the weight percent of water and rubber in the sample:

$$\text{Percent water } (P_W) = (W_W / W_T) * 100 \quad (7)$$

$$\text{Percent rubber } (P_R) = 100 - P_W \quad (8)$$

Based upon the data, calculate the density of the rubber (as blended with residual emulsifiers) from the following formula:

$$D_R = P_R / (100/D_T - P_W/D_W) \quad (9)$$

Where D_R is light rubber residue density

P_R is percent light rubber in sample

D_T is measured density of total sample

P_W is percent water in sample

D_W is water density at 25° C (0.99754 g/ml) (If specific gravity is desired, set D_W to 1.0000.

6.3.4. Determination of % Solids of the Latex and Recovery of the Rubber Film by Distillation.

6.3.4.1. Pour contents of the pycnometer into a pre-weighed 250 ml round bottom wide mouth flask.

Note: 250 ml wide mouthed flasks that are not made with a standard tapered mouth are hard to find. If a 24/40 standard taper 250 ml flask is used, there can be some trouble with foam. If that is the case, watch the distillation carefully and cool

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the top of the flask if the foam rises. If a wide-mouthed flask is used such as that described in ASTM D 1856, foam is not a problem.

6.3.4.2 Weigh and record weight

6.3.4.3. Distill off the water by placing the flask in the mantle. A setting of 65 -70 % works well.

6.3.4.4. After the distillation is completed, (no boiling in the flask) there may be moisture on the top of the flask. Place the flask for a short time in an oven above 110°C until the moisture has evaporated.

6.3.4.4. Determine the weight of the rubber film in the flask and divide by the original weight, multiply by 100 and record as the % residue.

6.3.4.5. Fill the flask half full with pre-boiled distilled water and carefully remove the film from the glass surface with a spatula.

6.3.4.6. Place the flask into a vacuum desiccator and evacuate until the water starts to boil (About 25 mm Hg.) Record whether the film floats or sinks. This is a check on the above calculations because if it floats, the specific gravity must be below one.

6.3.4.7 Place film into a pre-labeled 6 oz ointment tin. Put the duplicate films in the same tin.

6.3.5 Sample Retain

Place the contents of the pycnometer and the remaining material in the flask into a labeled 125 ml bottle for retain.

7.0 Report

7.1 Report the presence of latex as identified as a white layer at the bottom of the centrifuge tube with the brine or as a whitish cream on the top with the sample blended with distilled water.

7.2 Report the density of the sample recovered.

Table A1- Specific Gravities of Brine Solutions

% NaCl by Weight	Specific Gravity, 15°C
0	1.000
1	1.007
2	1.014
3	1.021
4	1.028
5	1.036
6	1.043
7	1.051
8	1.059
9	1.067
10	1.074
11	1.082
12	1.089
13	1.097
14	1.104
15	1.112
16	1.119
17	1.127
18	1.135
19	1.143
20	1.152
21	1.159

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22	1.168
23	1.176

Temperature correction. Subtract 0.001 for each 5°C at which the temperature of the sample was above 15°C when volume and weight were measured. It would be well if the samples were taken at 25°C. In all calculations use the density of water at the temperature at which the original sample's weight and volume where measured.

**** End of Bid Specifications ****

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Awarded Items:

Item	Approx. Qty.	Unit	Article and Description	Unit Price
001	300	TONS	Fog Seal, CSS-1P (Undiluted)	\$975.00
002	300	TONS	Fog Seal, CQS-1F (Undiluted)	\$975.00
003	300	TONS	Fog Seal, CQS-1P (Undiluted)	\$975.00
004	300	TONS	Rejuvenating Fog Seal, CMS-1P (Undiluted)	\$1,100.00
005	120,000	LF	Temporary Striping Retroreflectorized Paint	\$0.35
006	30,000	EA	Temporary Striping Retroreflectorized Tabs	\$4.00
007	3,000,000	LF	Retroreflectorized Painted Markings (High Solids Waterbase Acrylic)	\$0.25
008	2,000,000	LF	Retroreflectorized Painted Markings (Hi-Build Acrylic paint OR Hi-Performance Water Borne paint) 333,000 to 667,000	\$0.25
009	30	EA	Retroreflective Painted Pavement Mark Arrow (RIGHT or LEFT)	\$250.00
010	30	EA	Retroreflective Painted Word (ONLY)	\$325.00
011	250	SF	Retroreflective Painted Marking Crosswalk	\$10.00
012	1	LS	Fog Seal (undiluted) & Rejuvenating Fog Seal (undiluted) Price Adjustment (JOC Special Provision)	\$0.00
013	2,000	TONS	Blotter Sand	\$400.00
014	500	MILE	Mobilization – One Way as Defined	\$25.00

*** 14 Awarded Items Total ***


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Agent Delivery Events

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Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	9/23/2020 10:47:09 AM
Certified Delivered	Security Checked	9/23/2020 11:10:52 AM
Signing Complete	Security Checked	9/23/2020 11:11:39 AM
Completed	Security Checked	9/23/2020 11:11:39 AM
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