



# State of New Mexico General Services Department

## Price Agreement

**Awarded Vendor:**  
**3 Vendors Awarded- Please refer to page 6 for details**

**Email:**  
**Telephone No.:**

Price Agreement Number: 10-80500-21-16877

Payment Terms: Net 30

F.O.B.: As Requested

Delivery: See page 6

**Ship To:**  
**NMDOT- District 6**  
**1919 Pinon Dr.**  
**Milan, NM 87021-2160**

Procurement Specialist: Raelynn Lujan *RL*

Telephone No.: (505) 670-1561

Email: raelynn.lujan@state.nm.us

**Invoice:**  
**NMDOT- District 6**  
**1919 Pinon Drive**  
**PO Box 21 60**  
**Milan, NM 87021-2160**

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

**Title: Asphalt Concrete Patch Material**

**Term: April 29, 2021 thru April 28, 2022**

**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: 4/29/2021

Mark Hayden, New Mexico State Purchasing Agent

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

State of New Mexico  
General Services Department  
Purchasing Division  
Price Agreement #: 10-80500-21-16877

Page-2

**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

State of New Mexico  
General Services Department  
Purchasing Division  
Price Agreement #: 10-80500-21-16877

Page-3

subcontractors due to any of the above, unless the State 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 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.

State of New Mexico  
General Services Department  
Purchasing Division  
Price Agreement #: 10-80500-21-16877

Page-4

**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.

State of New Mexico  
General Services Department  
Purchasing Division  
Price Agreement #: 10-80500-21-16877

**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.

State of New Mexico  
General Services Department  
Purchasing Division  
Price Agreement #: 10-80500-21-16877

**Awarded Vendors:**

(AA) 0000046809  
C&E Concrete, Inc  
PO Box 2547  
Milan , NM 87021  
(505) 287-2944  
gdivine@ceconrete.net

Delivery: As required  
Preference: Resident

(AB) 0000045155  
Desert Mountain Corp  
PO Box 1633  
Kirkland, NM 87417  
(505) 860-9948  
pamela@desertmtncorp.com

Delivery: FOB: 4381 Hwy 64, Kirtland, NM 87417, As Requested  
Preference: Resident

(AC) 0000050893  
Pavement Sealants & Supply, Inc.  
PO Box 9703  
Albuquerque, NM 87119  
(505) 873-0818  
steve@pavementsealants.net  
renee@pavementsealants.net  
kristal@pavementsealants.net

Delivery: As Requested

State of New Mexico  
General Services Department  
Purchasing Division  
Price Agreement #: 10-80500-21-16877

Page-7

**Specifications:**

The purpose of this Invitation to Bid (ITB) is to establish a Price Agreement for Asphalt Concrete Patch Material for the New Mexico Department of Transportation (NMDOT) District Six. This Price Agreement includes materials, labor and equipment as per the specifications contained herein.

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:**

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.

State of New Mexico  
General Services Department  
Purchasing Division  
Price Agreement #: 10-80500-21-16877

Page-8

**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, at the discretion of the State of New Mexico, constitute grounds for rejection of the entire bid.

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 vendor 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. When bidding, enter the amounts for the respective bid item unit prices to a maximum of three (3) decimal places.

The Vendor shall be considered an independent Contractor and not an employee of the State of New Mexico. The NMDOT shall provide direction regarding the time and place of performance and compliance with rules and regulations required by this price agreement.

**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 statewide on an item by item basis. For a bid to be considered for award,

**Utilization of Vendors:**

The following procedure for the utilization of Vendors shall be used on multiple award price agreements.

1. The selection of a Vendor from a multiple award price agreement to complete a project shall be based on the purchase order utilizing pricing contained within this price agreement.
2. The District 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 NMDOT and able to meet all project delivery requirements including project schedule. A Vendor **not** offering the lowest cost to the NMDOT 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 District Engineer or their designee. Any changes to the original purchase order will require a modification form signed by the District Engineer or their designee. All supporting documentation shall be maintained in the project file.



State of New Mexico  
General Services Department  
Purchasing Division  
Price Agreement #: 10-80500-21-16877

Page-9

**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.

**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.

State of New Mexico  
General Services Department  
Purchasing Division  
Price Agreement #: 10-80500-21-16877

**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  
(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

State of New Mexico  
General Services Department  
Purchasing Division  
Price Agreement #: 10-80500-21-16877

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.

- (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.

State of New Mexico  
General Services Department  
Purchasing Division  
Price Agreement #: 10-80500-21-16877

(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).

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.

**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 written certification of acceptance is issued, late payment charges shall be paid on the unpaid

State of New Mexico  
General Services Department  
Purchasing Division  
Price Agreement #: 10-80500-21-16877

Page-13

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.

**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.

The NMDOT upon review of an escalation request may require additional supporting documentation prior to providing a written recommendation to the SPD. Final determination on the approval or disapproval of the escalation request will be made by SPD.

All quantities are to be measured by the District Engineer or their designee and shall be considered to be final and all payments for the same will be made on this basis.

**Quantities:**

The approximate quantities for each item are estimated and are for bidding purposes only. Actual requirements will be as determined by the District Engineer or their designee and quantities may be increased or decreased as necessary to meet actual field requirements. The State of New Mexico does not guarantee any amount of work.

**Minimum Requirements:**

**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 4% moisture) without stripping and have stripping resistance of retained coating of not less than 95%. The permanent asphalt repair shall be

State of New Mexico  
General Services Department  
Purchasing Division  
Price Agreement #: 10-80500-21-16877

Page-14

uniform, remain flexible and cohesive to -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 seasons. Material has a winter mix (450 viscosity), spring/fall mix (700 viscosity) and a summer mix (850 viscosity) for all climates and temperatures throughout the year. Material can be produced at any viscosity. NMDOT shall recommend what viscosity they desire in their particular location.

**Material:****A) Aggregate**

The aggregate shall consist of 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 Angles Abrasion: Max40%  
 ASTM C-117 -200 Sieve (by wash): Max2%  
 ASTM C-127, 128 Specific Gravity: Max 2.55-2.75%  
 ASTM C-123 Soft Aggregates Max3%

**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

State of New Mexico  
General Services Department  
Purchasing Division  
Price Agreement #: 10-80500-21-16877

Page-15

ASTM D-113 Ductility at 39° F (4° C)      0.4 fu/Min 100 min  
ASTM D-2042 Solubility in Tricloroethylene:      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 95% bituminous material.

Boiling test- 50 grams in put into 400 ml. of distilled water in a beaker and boiled for 3 minutes and stirred at one revolution per second. Material must retain coating in excess of 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 5.5% liquid blend or 110 lbs. per finished ton (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 aggregate. The bituminous liquid blend content is 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 5 mils and capable of holding 50 pounds 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

State of New Mexico  
General Services Department  
Purchasing Division  
Price Agreement #: 10-80500-21-16877

**Pallets:**

The pallets must be 48 inches in length by 40 inches width and have four way entries to field side unloading. The pallet must be capable of containing a minimum of 56 bags or 2800 pounds.

**Palletizing:**

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

The palletized packaging must have a 48 inch by 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 180° F. The bituminous liquid blend shall not be heated above 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 by the NMDOT 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 bio assay procedure for hazardous materials, which determines effect of runoff in waterways, lakes, ponds and groundwater.

**Specification Sampling**

A one-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-quart sample will be taken by the representative and is to be retained by the customer/producer for a period of one 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 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.



State of New Mexico  
General Services Department  
Purchasing Division  
Price Agreement #: 10-80500-21-16877

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.

All materials furnished under this price agreement must appear on the current NMDOT revised approved materials list on file at the NMDOT General Office and shall have been approved by the NMDOT Materials Lab and NMDOT Product Evaluation Committee. A copy of the letter or Certification of Approval from the NMDOT shall accompany all bids.

**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 additional charge for any material that should ever ravel or release from repaired area.

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 correct type, size and design are being used. All workmanship shall be made upon the basis of this statement.

**Purchase and Delivery:**

The NMDOT District Six reserves the right to purchase goods and/or services from any of the awarded contractors based on the needs of the Department. The Department will determine and use the Price Agreement item which best serves the Department's needs, based on cost, delivery time, schedule of work and quality of materials. All decisions by the Department will be final. The NMDOT 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 NMDOT, and the quantities may be increased or decreased as necessary to meet actual requirements or needs. NMDOT does not guarantee any amount of work.

The vendor is to indicate their Federal Tax ID number, New Mexico gross receipts number or social security number \_\_\_\_\_.

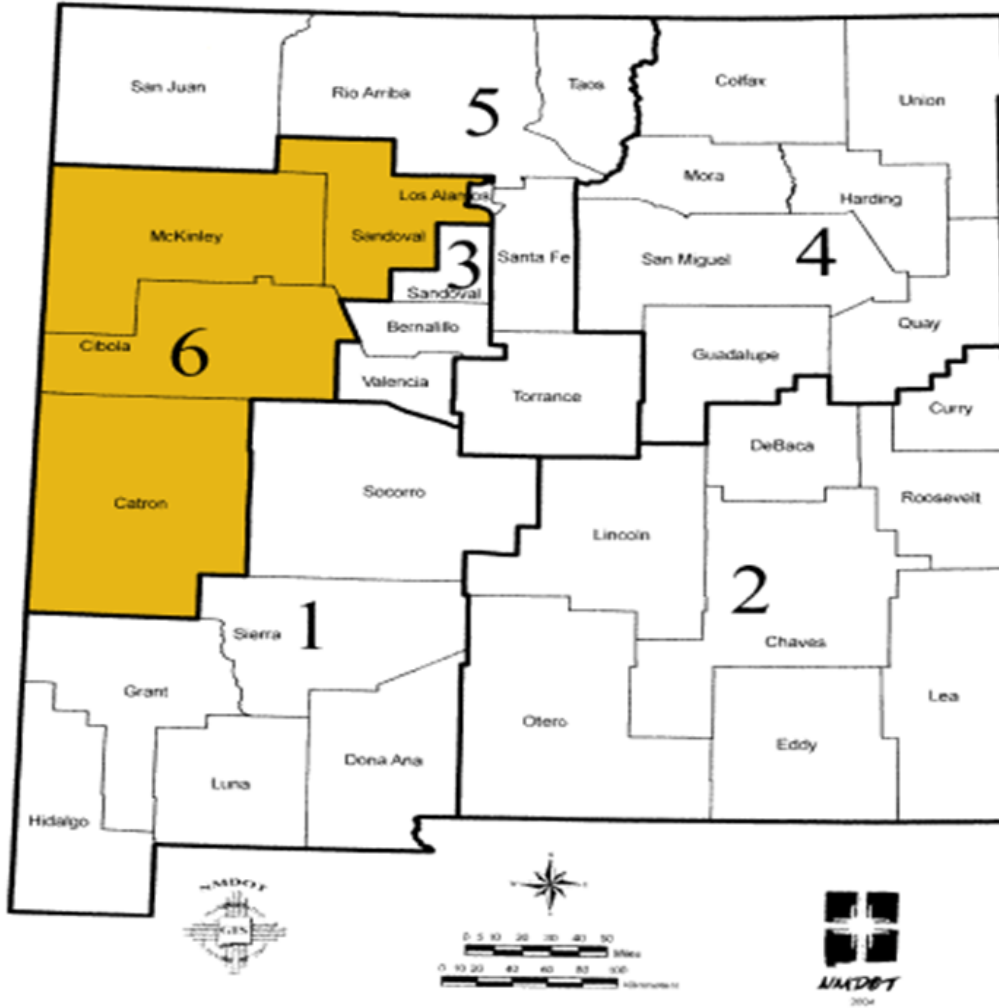
Contractors who are bidding: shall promptly notify the Department of any ambiguity, inconsistency or error which they may discover upon the examination of the bidding documents, or the site and location conditions. The Department shall have the right to reject any or all bids, and in particular a bid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

Orders will be filled at the price in effect on the date of receipt of the order by the vendor. Any Questions concerning this Price Agreement or request for escalation shall be submitted in writing to Michael Neely, Procurement Supervisor by e-mail at: michael.neely@state.mn.us.

**\*\*\* End of Specifications \*\*\***

State of New Mexico  
General Services Department  
Purchasing Division  
Price Agreement #: 10-80500-21-16877

NEW MEXICO DEPARTMENT OF TRANSPORTATION DISTRICTS



State of New Mexico  
 General Services Department  
 Purchasing Division  
 Price Agreement #: 10-80500-21-16877

Page-19

**Awarded Items:**

Item	Approx. Qty.	Unit	Article and Description	Unit Price (AA)	Unit Price (AB)	Unit Price (AC)
1	1,000	BAG	Asphalt High Performance Cold Patch Material In Fifty (50) Pound Bags	\$16.50	\$12.96	\$10.97
2	1,000	TONS	Asphalt, High Performance Cold Patch Material	\$185.00	\$226.28	\$187.77

Item	Vendor	Comments
1	(AB)	Per bag, 63 bags per pallet. FOB Kirtland/Delivery as requested
2	(AB)	FOB Kirtland/Delivery as requested
1	(AC)	Delivery "AS REQUESTED" , MATERIAL AVAILABLE
2	(AC)	Delivery "AS REQUESTED" , MATERIAL AVAILABLE

**\*\*\* 2 Items Awarded Total \*\*\***

## Certificate Of Completion

Envelope Id: 9C167B35BC3D421980DBE28A3F26ECDF	Status: Completed
Subject: GSD/SPD Procurement#: 10-80500-21-16877	
Source Envelope:	
Document Pages: 19	Signatures: 1
Certificate Pages: 5	Initials: 2
AutoNav: Enabled	Envelope Originator:
Envelopeld Stamping: Enabled	Raelynn Lujan
Time Zone: (UTC-07:00) Mountain Time (US & Canada)	13 Bataan Blvd
	Santa Fe, NM 87508
	Raelynn.Lujan@state.nm.us
	IP Address: 164.64.63.2

## Record Tracking


Status: Original 4/29/2021 8:59:11 AM	Holder: Raelynn Lujan Raelynn.Lujan@state.nm.us	Location: DocuSign
Security Appliance Status: Connected	Pool: StateLocal	
Storage Appliance Status: Connected	Pool: GSD	Location: DocuSign

## Signer Events

Signature	Timestamp
Raelynn Lujan raelynn.lujan@state.nm.us New Mexico General Services Security Level: Email, Account Authentication (None)	Sent: 4/29/2021 9:00:41 AM Viewed: 4/29/2021 9:00:50 AM Signed: 4/29/2021 9:00:54 AM
Signature Adoption: Pre-selected Style Using IP Address: 73.26.157.179	

### Electronic Record and Signature Disclosure:

Accepted: 6/26/2020 4:27:38 PM  
ID: 6aae9b5a-2aef-4297-a7b0-359c22309d31

Natalie Martinez Natalie.Martinez1@state.nm.us New Mexico General Services Security Level: Email, Account Authentication (None)		Sent: 4/29/2021 9:00:56 AM Viewed: 4/29/2021 9:55:17 AM Signed: 4/29/2021 9:55:23 AM
Signature Adoption: Pre-selected Style Using IP Address: 173.191.151.220		

### Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Valerie Paulk valerie.paulk@state.nm.us State Purchasing Agent New Mexico General Services Signing Group: 35000 - State Purchasing Agent Security Level: Email, Account Authentication (None)		Sent: 4/29/2021 9:55:25 AM Viewed: 4/29/2021 10:07:55 AM Signed: 4/29/2021 10:08:11 AM
Signature Adoption: Pre-selected Style Using IP Address: 174.237.138.128 Signed using mobile		

### Electronic Record and Signature Disclosure:

Accepted: 5/29/2020 9:40:59 AM  
ID: f12ca6d0-7cba-4de4-b58f-8180244887ff

## In Person Signer Events

Signature

Timestamp

## Editor Delivery Events

Status

Timestamp

## Agent Delivery Events

Status

Timestamp

## Intermediary Delivery Events

Status

Timestamp

<b>Certified Delivery Events</b>	<b>Status</b>	<b>Timestamp</b>
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<b>Carbon Copy Events</b>	<b>Status</b>	<b>Timestamp</b>
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<b>Witness Events</b>	<b>Signature</b>	<b>Timestamp</b>
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<b>Notary Events</b>	<b>Signature</b>	<b>Timestamp</b>
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<b>Envelope Summary Events</b>	<b>Status</b>	<b>Timestamps</b>
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Envelope Sent	Hashed/Encrypted	4/29/2021 9:00:41 AM
Certified Delivered	Security Checked	4/29/2021 10:07:55 AM
Signing Complete	Security Checked	4/29/2021 10:08:11 AM
Completed	Security Checked	4/29/2021 10:08:11 AM

<b>Payment Events</b>	<b>Status</b>	<b>Timestamps</b>
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<b>Electronic Record and Signature Disclosure</b>
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## **ELECTRONIC RECORD AND SIGNATURE DISCLOSURE**

### **A. ELECTRONIC RECORD AND SIGNATURE DISCLOSURE (ERSD)**

From time to time, New Mexico General Services Department (GSD), on behalf of the State of New Mexico (SONM), may be required by law to provide you with certain written notices or disclosures. Stated below are the terms and conditions for GSD's providing you such notices and disclosures electronically through the DocuSign system. Please read this information carefully. If you are able to access this information electronically and agree to **this Electronic Record and Signature Disclosure (ERSD)**, please confirm your agreement by selecting the check-box next to "I agree to use electronic records and signatures" before clicking "CONTINUE" within the DocuSign system.

## **B. Obtaining paper copies**

At any time up to twenty (20) calendar days following your use of DocuSign to electronically sign a document, you may request a paper copy of any record provided or made available electronically to you by GSD. You will have the ability to download and print documents SONM sends you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a twenty (20) calendar day period after such documents are first sent to you. Following the twenty (20) day period, if you want GSD to send you paper copies of any such documents from GSD's office, you will be charged a \$1.00 per-page fee plus postage. You may request delivery of such paper copies from GSD by following the procedure stated in Section H, below.

## **C. Withdrawing your consent**

If you decide to receive notices and disclosures from GSD electronically, you may at any time change your mind and inform GSD you want to receive required notices and disclosures only in paper format. The procedure concerning how you may inform GSD of your decision to receive future notices and disclosures in paper format as well as withdraw your consent to receive notices and disclosures electronically is stated in Section D, immediately below.

## **D. Consequences of changing your mind**

If you elect to receive required notices and disclosures only in paper format, it will slow the speed with which GSD will be able to complete certain steps in specific transactions and deliver paper copies to you. GSD will need: (1) to send the required notices or disclosures to you in paper format; and (2) wait until GSD receives your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from SONM or to electronically sign documents generated and sent to you from SONM.

## **E. All notices and disclosures will be sent to you electronically**

Unless you inform GSD otherwise according to these procedures, GSD will electronically provide you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements and other documents that are required to be provided or made available to you during the course of your electronic signature relationship with SONM. To reduce the possibility of inadvertent non-receipt, GSD prefers to provide all required notices and disclosures by the same method and to the same email or physical address that you furnish to GSD. Thus, you may receive the disclosures and notices electronically or in paper form. If you do not agree with this procedure, please inform GSD according to the procedures stated in Section I, below. Please also refer to Section D, immediately above, which states the consequences resulting from your declination of electronic delivery of notices and disclosures.

## **F. How to contact GSD:**

You may inform General Services Department (GSD) of any changes you select regarding State Purchasing Division's (SPD) electronic communications with you, to request paper copies of certain information from SPD, and to withdraw your prior consent to receive notices and disclosures electronically by emailing your request(s) to SPD at: [GSD.SPInfo@state.nm.us](mailto:GSD.SPInfo@state.nm.us)

## **G. To advise SPD of your new email address**

To inform SPD of a change in the email address to which SPD sends you notices and disclosures electronically, you must send an email to SPD at [GSD.SPInfo@state.nm.us](mailto:GSD.SPInfo@state.nm.us) and in the body of such request you must include your previous and new email addresses.

## **H. To request paper copies from SPD**

To request delivery of paper copies of electronic notices and disclosures that DocuSign and/or SPD have previously provided to you, you must send an email to SPD at [GSD.SPInfo@state.nm.us](mailto:GSD.SPInfo@state.nm.us) and in the body of your email request state your email address, full name, mailing address, and telephone number. SPD will charge you a \$1.00 per page copy fee plus postage.

## **I. To withdraw your consent with SPD**

To inform SPD that you no longer wish to receive notices and disclosures in electronic format you may:

(1) Decline to sign a document from within a signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may:

(2) Send SPD an email to [GSD.SPInfo@state.nm.us](mailto:GSD.SPInfo@state.nm.us) and in the body of your request state your email address, full name, mailing address, and telephone number.

## **J. Required hardware and software**

The minimum system requirements for using the DocuSign system may change over time. The current DocuSign system requirements may be found at:

<https://support.docusign.com/guides/signer-guide-signing-system-requirements>

## **K. Acknowledging your access and consent to receive and sign documents electronically**

To confirm that you are able to electronically access the information contained in this Electronic Record and Signature Disclosure (ERSD), please confirm that you have: (1) read this ERSD, and either: (2) you are able to print on paper or electronically save this ERSD for your future reference and access; or (3) you are able to email this ERSD to an email address where you will be able to print this ERSD on paper and/or save this ERSD for your future reference and access. Further, if you consent to receiving notices and disclosures from DocuSign and/or SPD exclusively in electronic format, then select the check-box next to “I agree to use electronic records and signatures,” before you click “CONTINUE” within the DocuSign system.

By selecting the check-box next to “I agree to use electronic records and signatures,” you confirm that:

- You have read this Electronic Record and Signature Disclosure (ERSD); and
- You can print this ERSD on paper, or you can save and/ or send this ERSD to a location where you can print this ERSD, for your future reference and access; and
- Until or unless you notify SPD as stated in this ERSD, you consent to exclusively receive through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by SPD during the course of your electronic signature relationship with SPD.