

112
City of Las Cruces[®]
 PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 9 Ordinance/Resolution# 09-10-456 Council District: 4

For Meeting of March 1, 2010

(Adoption Date)

TITLE:

A RESOLUTION AUTHORIZING THE USE OF AN EXISTING PRICING AGREEMENT THAT COOPERATIVE EDUCATIONAL SERVICES (CES) HAS WITH G. SANDOVAL CONSTRUCTION, INC., OF LAS CRUCES, NEW MEXICO, FOR THE REPAVING OF THE MUNSON SENIOR CENTER PARKING LOTS IN THE AMOUNT OF \$104,075.56; PLUS \$7,740.62 FOR NEW MEXICO GROSS RECEIPTS TAX (NMGRT); AND A CONTINGENCY OF \$25,000.00; FOR A TOTAL AUTHORIZATION OF \$136,816.18.

PURPOSE(S) OF ACTION:

Procure parking lot repaving and maintenance services.

Name of Drafter: Miguel Samaniego		Department: Project Management		Phone: 541-2538	
Department	Signature	Phone	Department	Signature	Phone
Facilities Department		541-2651	Budget		2300
			Assistant City Manager		2271
Legal		541-2128	City Manager		2076

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The parking lots at the Munson Senior Center have deteriorated over the past several years, and now present a tripping hazard to users of the facility. Project Management has consulted with Public Works staff, who have determined that the parking lots are either nearing the end of their serviceable life (requiring repaving); or can have their existence extended through a surfacing procedure.

Staff has reviewed various remodel and expansion plans for the facility, and has determined the best solution is to repave areas that are not in the way of future expansion, and perform light maintenance on those areas that will be disturbed in the future. Public Works has reviewed the project and determined, based on work load and resource availability, that this is a job best contracted out.

Project Management has recently been notified that the State General Obligation Bonds issued for this project are still in place and that funding is available for expenditure. However, the funds are set to revert on June 30, 2010. Staff is requesting authorization

(Continue on additional sheets as required)

to utilize an existing pricing agreement that Cooperative Educational Services (CES) has with G. Sandoval Construction, Inc., a local firm. In addition, the City is a member of and participates in the CES Program. Staff believes this to be the most efficient and economical approach to completing the project in a timely manner, avoiding potential loss of funds.

SUPPORT INFORMATION:

1. Resolution
2. Purchasing Manager's Request to Contract, attached as Exhibit "A"
3. Acceptance Memo
4. Agreement between CES and G. Sandoval Construction, Inc.

Fund Name / Account Number	Amount of Expenditure	Budget Amount
State Grant/Munson Senior Cntr 40800030-852100-60U05	\$136,816.18 ✓	\$198,000.00 ✓

Reg. 10102877 ok prep 8/20/10

OPTIONS / ALTERNATIVES:

1. Vote "Yes" and approve the Resolution, authorizing City staff to utilize the pricing agreement that CES has with G. Sandoval Construction, Inc., for the repaving and/or maintenance of the parking lots at the Munson Senior Center.
2. Vote "No" and not approve the Resolution, thereby not authorizing City staff to utilize the pricing agreement that CES has with G. Sandoval Construction, Inc., for the repaving and/or maintenance of the parking lots at the Munson Senior Center.
3. Vote to "Postpone" the Resolution and direct staff to review other options.

(Continue on additional sheets as required)

RESOLUTION NO. 09-10- 456

A RESOLUTION AUTHORIZING THE USE OF AN EXISTING PRICING AGREEMENT THAT COOPERATIVE EDUCATIONAL SERVICES (CES) HAS WITH G. SANDOVAL CONSTRUCTION, INC., OF LAS CRUCES, NEW MEXICO, FOR THE REPAVING OF THE MUNSON SENIOR CENTER PARKING LOTS IN THE AMOUNT OF \$104,075.56; PLUS \$7,740.62 FOR NEW MEXICO GROSS RECEIPTS TAX (NMGRT); AND A CONTINGENCY OF \$25,000.00; FOR A TOTAL AUTHORIZATION OF \$136,816.18.

The City Council is informed that:

WHEREAS, the parking lots at Munson Senior Center have deteriorated to the point of becoming a safety hazard, and

WHEREAS, in order to remedy the safety hazard in a timely manner, staff intends to utilize the pricing agreement that Cooperative Educational Services (CES) has with G. Sandoval Construction, Inc., (a local firm), and

WHEREAS, CES is a member-owned agency that operates under a Joint Powers Agreement authorized by the New Mexico Department of Finance and Administration, whose members include two-year colleges, universities, charter schools, state schools, BIA institutions, and all of New Mexico's Public Schools, and whose services and contracts are available for use by local government agencies, and

WHEREAS, CES has obtained through a competitive bidding process, a pricing agreement with G. Sandoval Construction, Inc., for Job Order Contracting for indefinite quantity procurement for small to medium sized construction projects, and

WHEREAS, State funds were accepted by City Council through Resolution No. 07-329 in the amount of \$298,000.00.

NOW, THEREFORE, Be it resolved by the governing body of the City of Las Cruces:

Resolution No. 09-10-456, cont'd.
Page 2

(I)

THAT, City staff is authorized to utilize the existing pricing agreement that CES has with G. Sandoval Construction, Inc., to repave and perform maintenance on the parking lots at Munson Senior Center, for a total authorization of \$136,816.18, including NMGR.

(II)

THAT, City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED this ____ day of _____, 2010.

APPROVED:

Mayor

ATTEST:

City Clerk
(SEAL)

VOTE:

Mayor Miyagishima: _____
Councillor Silva: _____
Councillor Connor: _____
Councillor Pedroza: _____
Councillor Small: _____
Councillor Sorg: _____
Councillor Thomas: _____

Moved by: _____

Seconded by: _____

APPROVED AS TO FORM:

City Attorney

**City of Las Cruces**[®]

TO: Martha Montoya, ^{*M*}Contract Analyst

FROM: Miguel Samaniego, Project Manager ^{*[Signature]*}

DATE: December 15, 2009

SUBJECT: Acceptance Memo to Utilize Cooperative Educational Services (CES) pricing agreement with G. Sandoval Construction Inc., RFP 2009-021

FILE NO.: PM-09-242

Project Management wishes to utilize the Cooperative Educational Services (CES) Pricing Agreement with G. Sandoval Construction Inc., RFP 2009-021, to repave the parking lot at Munson Senior Center.

Utilizing an existing pricing agreement will expedite procuring construction services needed to rid the parking lot of tripping hazards.

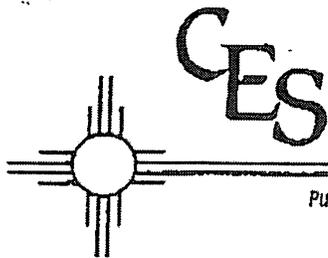
The purchase will be done in Fiscal Year 09/10. The project will be funded through various accounts.

Thank you.

Attachments

cc: Eric Martin, Project Management Administrator

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**COOPERATIVE EDUCATIONAL SERVICES**

Public Educational Institutions in New Mexico United by a Joint Powers Agreement to Establish an Educational Cooperative

November 5, 2009

Gabriel Sandoval
SANDOVAL CONSTRUCTION, INC.
2000 E Lohman Ave, Ste B
Las Cruces, NM 88001

Re: **ACCEPTANCE OF OFFER and CONTRACT AWARD For Contract #:**
2009-021 912-208 GSC RFP C: Gordian JOC Region 8
2009-021 912-308 GSC RFP C: RSMcans JOC Region 8

Dear Gabriel Sandoval:

On behalf of Cooperative Educational Services (CES), I thank you for responding to our RFP 2009-021. The solicitations have been reviewed and it is my pleasure to inform you that you have been selected to provide the materials and services indicated in your response.

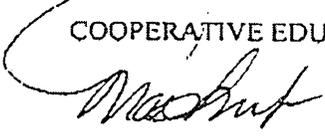
Enclosed are two items. First is the Acceptance of Offer and Contract Award. This award is from the cover sheet that you submitted in your bid. I suggest that you take this award and place it with your copy of the bid that you submitted. Please read carefully the paragraph above the authorized signature. It outlines the agreement and specifies the term of the award.

The second form relates to marketing. It provides an opportunity for you to receive either an electronic or computer disk copy of the CES members with their address and phone number. The form also indicates how we propose to list your company in our directory and on our website.

We are looking forward to working with you. Please let us know how we can be of assistance to you in presenting you as a vendor to CES member institutions.

Sincerely yours,

COOPERATIVE EDUCATIONAL SERVICES


Max Luft
Executive Director

Enclosures

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DEC.02.2009 16:41

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#4289-002

Form B

OFFER AND ACCEPTANCE OF OFFER AND CONTRACT AWARD

PROJECT: RFP 2009-021

OFFER
ACCEPTANCE OF OFFER
and
CONTRACT AWARD

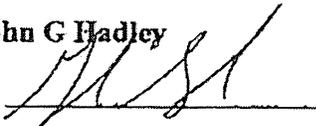
OFFER TO BE COMPLETED BY VENDOR

In compliance with the Request for Proposal, the undersigned warrants that I/we have examined the Instruction to Offerors, and, being familiar with all of the conditions surrounding the proposed projects, hereby offer and agree to furnish all labor, materials, and supplies incurred in compliance with all terms, conditions, specifications and amendments in this Request for Proposal and any written exceptions in the offer. Signature also certifies understanding and compliance with the certification requirements of the Categorical Terms and Conditions. The under-signed understands that his/her competence and responsibility and that of his/her proposed subcontractors, time of completion, as well as other factors of interest to CES as stated in the evaluation section, will be a consideration in making the award.

Company Name **G. Sandoval Construction**

Contact Person **John G Hadley**

Address **2000 E. Lohman Ave Suite B**

Authorized Signature 

City **Las Cruces** State **NM** Zip **88001** Printed Name **Gabriel Sandoval**

ACCEPTANCE OF OFFER AND CONTRACT AWARD TO BE COMPLETED ONLY BY AGENCY

Your offer for services and materials is hereby accepted. As vendor, you are now bound to sell the materials and services listed by the attached offer based upon the solicitation, including all terms, conditions, specifications, amendments as set forth in the Request for Proposal. As vendor, you are hereby cautioned not to commence any billable work or provide any material or service under this contract until vendor receives an executed purchase order from Agency.

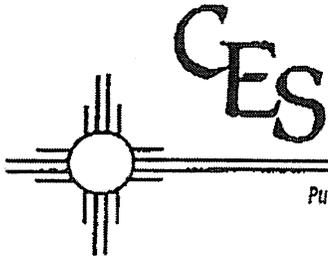
The parties intend this contract to constitute the final and complete agreement between agency and contractor, and no other agreements, oral or otherwise, regarding the subject matter of this contract, will bind any of the parties hereto. No change or modification of this contract will be valid unless it is in writing and signed by both parties to this contract. If any provision of this contract is deemed invalid or illegal by any appropriate court of law, the remainder of this contract will not be affected thereby. The term of the agreement will commence on award and continue until September 1, 2010, unless terminated, canceled or extended. By mutual written agreement, the contract may be extended for three (3) additional 12-month periods, ending September 1, 2011, September 1, 2012 and September 1, 2013.


Authorized Signature

2009-021-GSC
Contract Number

Awarded this 20th day of October, 2009.





COOPERATIVE EDUCATIONAL SERVICES

Public Educational Institutions in New Mexico United by a Joint Powers Agreement to Establish an Educational Cooperative

November 5, 2009

Gabriel Sandoval
SANDOVAL CONSTRUCTION, INC.
2000 E Lohman Ave, Ste B
Las Cruces, NM 88001

Re: CES Contract No. 2009-021-GSC

Dear Gabriel Sandoval:

Thank you for responding to 2009-021.

We have made available on our website, prepared and disseminated a procurement product services Blue Book containing a vendor directory to all of our members. This will efficiently enable the school staff to look up important information about each vendor before placing an order. The following is the information we have listed for your company. Please review and submit corrections to us as soon as possible.

Sandoval Construction is a Las Cruces-based general contractor providing a full range of construction, remodeling and renovation services to Region 8 CES members. Their experienced staff can assist CES members in obtaining and completing JOC projects in a timely and cost-effective manner.

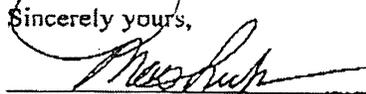
Although space is limited, the description is intended as a quick reference of your products. If you would like to revise the above noted vendor description, please provide any revisions in writing to CES procurement office. The directory is the main advertising tool that we will place in the member office. You are invited to send product literature directly to the member institutions.

For a current listing (at no charge) of all our member institutions with their address, telephone number and superintendent, please provide an e-mail address below and fax or mail it to CES.

E-mail member list to: _____

If you have any questions about the contract, please call us. We look forward to working with you and together successfully meeting the schools' needs.

Sincerely yours,



Max Luft, Executive Director

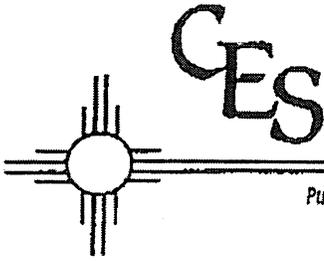
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November 5, 2009

Gabriel Sandoval
SANDOVAL CONSTRUCTION, INC.
2000 E Lohman Ave, Ste B
Las Cruces, NM 88001

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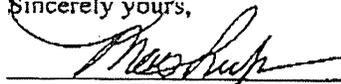
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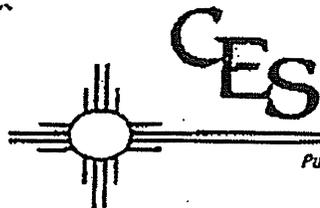
Max Luft, Executive Director

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SANDOVAL CONSTRUCTION, INC.
2000 E Lohman Ave, Ste B
Las Cruces, NM 88001

RE: CES Contract # 2009-024 GSC Amendment to Accommodate American Recovery and Reinvestment Act (ARRA) Funded Projects

Greetings:

CES has been contacted by some of its members and participating entities regarding purchasing products and services through CES contracts using ARRA funds and inquiring if CES' existing contracts include and/or contain the necessary language to comply with the terms, conditions and requirements of ARRA awarded grants. In order for state and local public bodies to use their ARRA funds to make purchases from your firm using your CES contract, you must acknowledge that you will comply with all disclosure and reporting requirements, without an increase in compensation.

If you agree to comply with the disclosure and reporting requirements specified by the federal government in connection with ARRA funded projects, please sign the attached form and return it to CES procurement office on or before Friday, November 13, 2009. A list of CES vendors who have agreed to comply with the ARRA reporting and disclosure requirements will be made available to CES members and participating entities. Please note that the federal reporting and disclosure requirements only apply to purchases made using ARRA funds. If you believe that your firm's products and services offered through CES will not be funded by ARRA funds, you will not need to execute the attached form.

If you have any questions regarding this matter, please do not hesitate to contact myself or John Tortelli at (505) 344-5470.

Respectfully,

Llew Perry
Procurement Officer
Cooperative Educational Services

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**Cooperative Educational Services Contract Amendment
To Comply With
American Recovery and Reinvestment Act's (ARRA's)
Disclosure and Reporting Requirements**

On this 20th Day of October, Two Thousand and Nine Cooperative Educational Services and SANDOVAL CONSTRUCTION, INC., acknowledge the following as an amendment to the following contract(s):

Contract #	Category Description
2009-021 912-208 GSC	RFP C: Gordian JOC Region 8
2009-021 912-308 GSC	RFP C: RSMcans JOC Region 8

Purpose of Amendment

Through the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5 ("ARRA"), the United States Government has made available federal funds for state and local public bodies to acquire various goods and services as stipulated and provided for in the grant award documents. In order for CES' Members and Participating Entities to acquire these goods and services utilizing CES cooperative purchasing contracts, CES and its vendors must agree and adhere to the following disclosure, reporting requirements and other federal requirements that may apply.

Therefore, the following are additional terms, conditions, guidelines, definitions, procedures and requirements that may apply to and govern the utilization of the above noted contracts by CES members and participating entities when ARRA or Federal funds are a funding source.

The CES vendor specifically agrees to comply with each of the terms and conditions contained herein, which are hereby incorporated by reference into all applicable contract documents. The CES vendor understands and acknowledges that the federal stimulus process is still evolving and that new requirements for ARRA compliance may still be forthcoming from federal government and the State of New Mexico. Accordingly, the CES vendor specifically agrees that both it and all subcontractors will comply with all such requirements during the contract period. The CES vendor understands that the reporting and disclosure requirements specified by the federal government and the State of New Mexico and such information will be provided, without increased compensation, whenever a CES member or participating entity utilizes it CES contract(s) listed above.

I. Definition of Additional Terms

Audit Rights: In accordance with applicable State of New Mexico and Federal law, the contractor's books, records and documentation related to the CES vendor's contract(s) thereof may be audited at a reasonable time and place. The contractor agrees to provide CES, within a reasonable time frame, copies of requested audit information.

Construction: As defined in the New Mexico Procurement Code Regulations under NMSA 1978, 13-1-40 "construction" means building, altering, repairing, installing or demolishing in the ordinary course of business any road, highway, bridge, parking area or related project;

building, stadium or other structure; airport, subway or similar facility; park, trail, athletic field, golf course or similar facility; dam, reservoir, canal, ditch or similar facility; sewage or water treatment facility, power generating plant, pump station, natural gas compressing station or similar facility; sewage, water, gas or other pipeline; transmission line; radio, television or other tower; water, oil or other storage tank; shaft, tunnel or other mining appurtenance; electrical wiring, plumbing or plumbing fixture, gas piping, gas appliances or water conditioners; air conditioning conduit, heating or other similar mechanical work; or similar work, structures or installations. Construction shall also include: leveling or clearing land; excavating earth; drilling wells of any type, including seismographic shot holes or core drilling; and similar work, structures or installations.

Contract Changes: CES can make changes in the general scope of this contract by giving notice to the contractor and subsequently confirming such changes in writing. If such changes affect the cost and/or the time required for performance of this service, an equitable adjustment in the price or delivery or both will be made. No change by the contractor will be recognized without written approval of CES. Any claim of contractor for any adjustment must be made in writing within thirty (30) days from the date of receipt by the contractor of notification of such change, unless CES waives this condition. Nothing in this section will excuse contractor from proceeding with performance of the service as changed hereunder.

Contractor/CES Vendor: A firm who has responded to a CES solicitation and who has been awarded a contract based on its response for providing, delivering and/or installing products and services, and who is receiving ARRA or Federal funds from a CES, CES Members or CES Participating Entities.

Federal Requirements: Contractor, when working on any federally assisted projects with more than Two Thousand Five Hundred Dollars (\$2,500) in labor costs, will comply with the Contract Work Hours and Safety Standards Act, the Davis-Bacon Act (Section 29, CFR Part 5), the Copeland "Anti-Kickback" Act, and the Equal Opportunity Employment requirements of Executive Order 11375. In such projects, the contractor agrees to post wage rates at the work site, and comply with all reporting requirements. The contractor will provide CES with a copy of any required report filed. In addition, to comply with the Copeland Act, the contractor must keep records for three (3) years, and allow the federal grantor agency access to these records, upon demand. All federally assisted contracts to Members/Participating Entity that exceed Ten Thousand Dollars (\$10,000) may be terminated by the federal grantee for noncompliance by the contractor. In addition, compliance with the federal regulations no increases in the contract costs beyond the cost stipulated by the Contractor's CES contract will be allowed.

Member of CES: Any public educational institution in the State of New Mexico that has by their board resolution resolved to become a party of the Joint Powers Agreement to Establish an Educational Cooperative and has been approved for Membership by CES' Board of Directors and the New Mexico Department of Finance and Administration.

CES Participating Entity: Any local public body, political subdivision of the state of New Mexico or State Agency who made application to and was approved by CES to become a participating entity and enter into a cooperative purchasing agreement with CES to utilize CES

public solicited and awarded contracts.

Provisions Required by Federal Law and/or Grants Awarded for Projects Covered By a CES Contract: Each and every provision of federal law and any clause required by law to be in the contract will be read and enforced as though it were included therein, and if through mistake or otherwise, any such provision is not inserted, or is not correctly inserted, then upon application of either party, the contract will forthwith be physically amended to make such insertion or correction.

II: Requirements

1. **DUNS NUMBER:** All Contractors are required to provide to CES, its members and participating entities with their unique Dun and Bradstreet "data universal numbering system" DUNS number prior to start of any project that is funded wholly or in part with ARRA funds. Registration is free and be accessed at <http://fedgov.dnb.com/webform>.
2. **AVAILABILITY OF FUNDING:** Contractor agrees that programs supported with temporary federal funds made available by the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, will not be continued with state financed or CES member or participating entity appropriations once the temporary federal funds are expended.
3. **BUY AMERICAN REQUIREMENT:** Contractor agrees that in accordance with ARRA, Section 1605, neither Contractor or its subcontractors will use ARRA funds for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel and manufactured goods used in the project are produced in the United States in a manner consistent with United States obligations under international agreements. The Contractor understands that this requirement may only be waived by the applicable federal agency in limited situations as set out in ARRA, Section 1605.
4. **CONFLICTING REQUIREMENTS:** Contractor agrees that, to the extent ARRA requirements conflict with CES requirements, the ARRA requirements shall control.
5. **FALSE CLAIMS ACT:** Contractor agrees that it shall promptly refer to an appropriate federal inspector general any credible evidence that a principal, employec, agent, subcontractor or other person has committed a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving those funds.
6. **ENFORCEABILITY:** Contractor agrees that if Contractor or one of its subcontractors fails to comply with all applicable federal and state requirements governing the use of ARRA funds, CES or its members and participating entities may withhold or suspend, in whole or in part, funds awarded under the program, or recover misspent funds following an audit. This provision is in addition to all other remedies available to CES or its members and participating entities under all applicable state and federal laws.

7. **INSPECTION OF RECORDS:** Contractor agrees that it shall permit the CES, its members or participating entities, State of New Mexico, the United States Comptroller General or his representative or the appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1978 or his representative to: (1) examine any records that directly pertain to, and involve transactions relating to, this contract; and (2) interview any officer or employee of Contractor or any of its subcontractors regarding the activities funded with funds appropriated or otherwise made available by the ARRA.
8. **PROHIBITION ON USE OF ARRA FUNDS:** Contractor agrees that none of the funds made available under this contract may be used for any casino or other gambling establishment, aquarium, zoo, golf course, swimming pools, or similar projects.
9. **REPORTING REQUIREMENTS:**
Pursuant to Section 1512 of the ARRA, state agencies receiving ARRA funds must submit a report to the federal government no later than ten (10) calendar days after the end of each calendar quarter. This report must contain the information outlined below.

Accordingly, Contractor agrees to provide CES or its members and participating entities with the following information in a timely manner as provided in this contract addendum:

- a. The total amount of ARRA funds received by Contractor during the Reporting Period;
- b. The amount of ARRA funds that were expended or obligated during the Reporting Period;
- c. A detailed list of all projects or activities for which ARRA funds were expending or obligated, including:
 - i. the name of the project or activity;
 - ii. a description of the project or activity;
 - iii. an evaluation of the completion status of the project or activity; and
 - iv. an estimate of the number of jobs created and the number of jobs retained by the project or activity;
- d. For any subcontracts equal to or greater than \$25,000:
 - i. The name of the entity receiving the subcontract;
 - ii. The amount of the subcontract;
 - iii. The transaction type;
 - iv. The North American Industry Classification System (NAICS) code or
 - v. Catalog of Federal Domestic Assistance (CFDA) number;
 - vi. Program source;
 - vii. An award title descriptive of the purpose of each funding action;
 - viii. The location of the entity receiving the subcontract;
 - ix. The primary location of the subcontract, including the city, state, congressional district and country; and
 - x. A unique identifier of the entity receiving the sub-contract and the parent entity of Contractor, should the entity be owned by another.
 - xi. The names and total compensation of the five most highly compensated officers of the company if it received: 1) 80% or more of its annual gross

- revenues in Federal awards; and 2) \$25M or more in annual gross revenue from Federal awards.
- e. For any subcontracts of less than \$25,000 or to individuals, the information required above may be reported in the aggregate and requires the certification of an authorized officer of Contractor that the information contained in the report is accurate.
 - f. Any other information reasonably requested by the State of Alaska or required by state or federal law or regulation.

Standard data elements and federal instructions for use in complying with reporting requirements under Section 1512 of the ARRA, are pending review by the federal government, and were published in the Federal Register on April 1, 2009 [74 FR 14824], and are to be provided online at www.FederalReporting.gov. The additional requirements will be added to the contract(s).

10. **SEGREGATION OF FUNDS:** Contractor agrees that it shall segregate obligations and expenditures of Recovery Act funds from other funding. No part of funds made available under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may be commingled with any other funds or used for a purpose other than that of making payments for costs allowable under the ARRA.
11. **SUBRECEIPIENT REQUIREMENTS:** Contractor agrees that it shall include these supplemental terms and conditions, including this requirement, in any of its subcontracts in connection with projects funded in whole or in part with funds available under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5.
12. **JOB POSTING REQUIREMENTS:** Section 1512 of the ARRA requires states receiving stimulus funds to report on jobs created and retained as a result of the stimulus funds. Contractors who receive ARRA funded contracts are required to post job opportunities created in connection with projects funded in whole or in part with ARRA funds on the State of New Mexico Department of Work Force Solutions www.dws.state.nm.us.
13. **WAGE REQUIREMENTS**
Contractor agrees that, in accordance with Section 1606 of the ARRA, both it and its subcontractors shall fully comply with this section in that, notwithstanding any other provision of law, and in a manner consistent with the other provisions of the ARRA, all laborers and mechanics employed by contractors and subcontractors on projects funded in whole or in part with funds available under the ARRA shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality, as determined by the United States Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40 of the United States Code. The Secretary of Labor's determinations regarding the prevailing wages applicable in the State of New Mexico are located at: www.gpo.gov/davisbacon/nm.html.
14. **WHISTLEBLOWER PROTECTION**

Contractor agrees that both it and its subcontractors shall comply with Section 1553 of the ARRA, which prohibits all non-federal Contractor of ARRA funds, including CES, its members and participating entities, and all contractors of CES, from discharging, demoting or otherwise discriminating against an employee for disclosures by the employee that the employee reasonably believes are evidence of (1) gross mismanagement of a contract relating to ARRA funds; (2) a gross waste of ARRA funds; (3) a substantial and specific danger to public health or safety related to the implementation or use of ARRA funds; (4) an abuse of authority related to implementation or use of ARRA funds; or (5) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) awarded or issued relating to ARRA funds. Contractor agrees that it and its subcontractors shall post notice of the rights and remedies available to employees under Section 1553 of Title XV of Division A of the ARRA.

15. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS, 31 U.S.C. 3801 et seq.

- (1). Program Fraud and False or Fraudulent Statements or Related Acts.
- (2). The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 et seq., apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the federal assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
- (3). The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 on the Contractor, to the extent the Federal Government deems appropriate.
- (4). The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

16. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

No Obligation by the Federal Government.

- (1). The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party

(whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

- (2). The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance funds. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

17. LOBBYING, 31 U.S.C. 1352

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

- (1). No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2). If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.)]
- (3). The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as

amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, SANDOVAL CONSTRUCTION, INC., certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

18. CIVIL RIGHTS REQUIREMENTS, 29 U.S.C. § 623, 42 U.S.C. § 2000, 42 U.S.C. § 6102, 42 U.S.C. § 12112, 42 U.S.C. § 12132, 29 CFR Part 1630, 41 CFR Parts 60 et seq.

The following requirements apply to the underlying contract:

- (1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements by federal agencies may issue.
- (2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:
 - (a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements a federal agency may issue.
 - (b) Age - In accordance with section 4 of the Age Discrimination in Employment Act

of 1967, as amended, 29 U.S.C. § § 623, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements federal agency may issue.

- (c). Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements federal agency may issue.
- (3). The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal funds, modified only if necessary to identify the affected parties.

19. DEBARMENT, SUSPENSION, INELIGIBILITY OR VOLUNTARY EXCLUSION CERTIFICATION

This clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

- (1). The prospective lower tier participant shall provide immediate written notice to the department, institution or office to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
- (2). The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
- (3). The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under the applicable CFR, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
- (4). The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- (5). A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment

- under applicable CFR, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.
- (6). Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business activity.
- (7). Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under applicable CFR, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- (8). **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions**
The prospective lower tier participant certifies, by submission of this proposal or contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

20. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

(1) Minimum wages - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers

or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
- (4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe

benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) Withholding - CES, its Members or Participating Entities shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, CES, its Members or Participating Entities may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of

apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the CES, its Members or Participating Entities for transmission to the appropriate federal agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Department of Labor and the granting federal agency, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor,

applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training

Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.

(5) Compliance with Copeland Act requirements - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their

representatives.

(10) Certification of eligibility - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

21. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The Contract Work Hours and Safety Standards Act is codified at 40 USC 3701, et seq. The Act applies to grantee contracts and subcontracts "financed at least in part by loans or grants from ... the [Federal] Government." 40 USC 3701(b)(1)(B)(iii) and (b)(2), 29 CFR 5.2(h). Applies to "contract in an amount that are greater than \$100,000." 40 USC 3701(b)(3)(A)(iii).

- (1). Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2). Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- (3). Withholding for unpaid wages and liquidated damages - The (write in the name of the grantee) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or

subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

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

22. PRIVACY ACT, 5 U.S.C. 552

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

- (1). The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.
- (2). The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance funds.

23. ENERGY CONSERVATION REQUIREMENTS, 42 U.S.C. 6321 et seq.

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the static energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

24. CLEAN WATER REQUIREMENTS, 33 U.S.C. 1251

- (1). The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to the appropriate EPA Regional Office.
- (2). The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance funds.

25. CLEAN AIR, 42 U.S.C. 7401 et seq., 40 CFR 15.61

- (1). The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. . The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to appropriate federal agency and the appropriate EPA Regional Office.
- (2). The Contractor also agrees to include these requirements in each subcontract financed

in whole or in part with Federal funds.

26. RECYCLED PRODUCTS, 42 U.S.C. 6962, 40 CFR Part 247, Executive Order 12873

Recovered Materials - The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

27. SEISMIC SAFETY REQUIREMENTS, 42 U.S.C. 7701

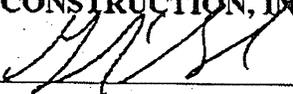
The contractor agrees to ensure that any new building or addition to an existing building leased or purchased with federal funds will be designed and constructed in accordance with the with appropriate seismic design standards. Those standards must be equivalent to or exceed the seismic safety levels in the National Earthquake Hazards Reduction Program (NEHRP) recommended provisions for the development of seismic regulations for new buildings and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by NEHRP and the certification of compliance issued on the project.

PLEASE NOTE THAT COMPLIANCE WITH APPLICABLE SECTIONS OF THE AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA) AND FEDERAL REQUIREMENTS WILL BE STRICTLY ENFORCED BY THE STATE AND FEDERAL GOVERNMENT. THEREFORE, ALL CONTRACTORS AND SUBCONTRACTORS SHOULD BECOME FAMILIAR WITH THE SPECIFIC TERMS AND REPORTING REQUIREMENTS OF ARRA AND FEDERAL GOVERNMENT AS MAY BE APPLICABLE TO FUNDS RELATED TO THIS CONTRACT.

Cooperative Educational Services

Contractor - SANDOVAL
CONSTRUCTION, INC.

Signed By: 

Signed By: 

Print Name: Max Luft

Print Name: Gabriel Sandoval

Title: Executive Director

Title: president

Date: 11/04/09

Date: 11/8/09

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CITY OF LAS CRUCES

PURCHASING MANAGER'S REQUEST TO CONTRACT

For Meeting of: March 1, 2010

Resolution No.: 09-10-456

**Existing Contract Purchase For
Repaving of the Munson Senior Center Parking Lots**

The Las Cruces City Council is provided the following information concerning this request:

RFP/BID SOLICITATION INFORMATION:

- | | | |
|----|--|--|
| 1. | Existing Contract Issuer | Cooperative Educational Services (CES) |
| 2. | Contract Number: | 2009-021-GSC |
| 3. | Contract Expiration Date: | September 1, 2010 |
| 4. | Description: | Repaving of the Munson Senior Center Parking Lots |
| 5. | Using Department: | Project Management |
| 6. | Current Award Recommendation To: | G. Sandoval Construction, Inc. |
| 7. | Award Amount (includes any tax and contingency): | \$136,816.18 |
| 8. | Contract Duration: | Until Complete |
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PROCUREMENT CODE COMPLIANCE:

The City of Las Cruces Procurement Code was administered in the conduct of this procurement and approval to purchase is hereby requested pursuant to **Section 24-316**.



Purchasing Manager

12/19/10
Date

CONFIRMATION OF FUND ENCUMBRANCE:

REQUISITION OR PURCHASE ORDER NUMBER:	10102877
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