
Rules of
Department of Transportation
Division 10—Missouri Highways and Transportation
Commission
Chapter 15—Contractor Prequalification

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Title 7—DEPARTMENT OF TRANSPORTATION

Division 10—Missouri Highways and Transportation Commission

Chapter 15—Contractor Prequalification

7 CSR 10-15.010 Prequalification to Bid of Certain Contractors

PURPOSE: This rule implements the requirements set forth in section 227.105, RSMo (Cum. Supp. 1996), concerning the prequalification of certain contractors to bid for highway projects with an estimated cost in excess of two million dollars.

(1) Definitions.

(A) The following definitions apply to this rule:

1. "Commission" means the Missouri Highways and Transportation Commission and all its members, jointly and severally;

2. "Department" means the Missouri Highways and Transportation Department, which may also be commonly referred to as the Missouri Department of Transportation. "Department" includes the chief engineer and all other officers and employees of the department, unless the text of this rule clearly indicates a contrary construction is intended;

3. "Chief engineer" means the chief engineer of the department; or if that position is vacant, then it means the deputy chief engineer;

4. "Highway project" means any type or combination of excavation, construction, demolition, maintenance, fabrication, paving, dredging, repair, erection, electrical, landscaping, seeding and mulching, erosion control, installation, manufacturing, transportation or other work, done under a contract with the commission or department on or for any existing or proposed road, highway or bridge in the Missouri state highway system;

5. "Contract" means a written agreement between a contractor and the commission or department, including but not limited to a purchase order or similar writing. A contract may include two (2) or more different highway projects as part of a required or permissive combination; and

6. "Cost estimate" means the contractor's own estimate, in the form of a complete and responsive bid, submitted by a contractor for a highway project. The contractor's cost estimate may be adjusted for mathematical and clerical accuracy by the department. This adjustment by the department will be considered to be part of the contractor's cost estimate. A contractor's bid (as adjusted) on a highway project is equivalent to that contractor's cost estimate.

(B) For purposes of this rule, work performed for or under contract with the commission is also performed for the department, and work performed for or under contract with the department is also performed for the commission. The term "work" shall be construed liberally in determining whether work has been performed for the department or commission. Work performed as a subcontractor on a project for the department or commission shall be deemed work performed for the department.

(C) For purposes of this rule, bids opened by the department are deemed to be opened by or for the commission as well, unless the circumstances clearly require a contrary conclusion.

(2) Application of this Rule.

(A) This rule does not apply to—

1. Any contractor which has a valid contractor questionnaire on file with the department, and which contractor (including, in the case of a partnership or joint venture, any component contractor) has performed any work for the department within the five (5) years preceding the date that contractor's bid for any highway project, or combination of projects, shall be opened by the department;

2. Any contractor which has a valid contractor questionnaire on file with the department, which has performed no work for the department within the five (5) years preceding the date that contractor's bid for any highway project or combination of projects shall be opened by the department, and which submits a bid (or cost estimate) on each individual highway project at or below two (2) million dollars; and

3. A contractor which meets the requirements of either paragraph (2)(A)1. or 2. of this rule is exempt from having to be prequalified to bid under section 227.105, RSMo (Cum. Supp. 1996), effective August 28, 1996.

(B) This rule applies only to a contractor which intends to or does submit a bid (or cost estimate) in excess of two (2) million dollars for any one (1) highway project, whether that highway project is bid separately or in combination with any other highway project(s); and further, that contractor must have performed no highway project work for the department in the five (5) years preceding the date the department shall or does open that contractor's bid on that highway project.

(3) Contractor Prequalification Required to Bid, When.

(A) The department shall not accept any bid (or cost estimate) in excess of two (2) million dollars for a single highway project

(whether it is bid individually or in combination with others), which bid is submitted by a contractor which has performed no highway project work for the department during the preceding five (5) years, unless the department has determined that the contractor is prequalified to bid.

(B) A bid (or cost estimate) on any highway project submitted by a contractor which is not prequalified or exempt from prequalification under subsection (2)(A) of this rule shall not be accepted by the department or commission, but shall be returned to the contractor. Acceptance by the department only occurs if the highway project bid of the contractor is received, opened and the total bid publicly read by the department. The fact that agents of the department and/or commission may have received a sealed bid envelope for a highway project(s), or may have opened that sealed bid envelope, does not constitute acceptance by the department or commission of that bid, unless and until the total bid is publicly read or published by the department. If part of a combination bid is legally acceptable and another portion is not (such as in permissive combinations which are not qualified "All or none"), the department shall accept that portion which was legally bid and shall not accept the rest. If the department inadvertently errs in accepting a bid on a highway project which it should not have accepted under this rule and section 227.105, RSMo (Cum. Supp. 1996), the department, prior to any contract award, shall notify all contractors which bid on that highway project and the commission of the erroneous acceptance of the bid from a contractor which was not properly prequalified under this rule, showing that the matter has been corrected, and that action shall render null and void the prior erroneous bid acceptance.

(C) A contractor which is neither qualified nor exempt from qualification under this rule may be prequalified by satisfying the specific criteria set forth below in section (4) of this rule.

(D) Effective on or after August 28, 1996, the fact that a contractor has a standard contractor questionnaire on file with the department by the appropriate date does not allow that contractor to bid on all highway projects. It only permits that contractor to bid on those highway projects which have a cost estimated by the contractor at two (2) million dollars or less, if that contractor has done no work in the preceding five (5) years.

(4) Contractor Prequalification Responsibility.



(A) contractor (which, with reference to a partnership or joint venture, includes all component contractors jointly and severally) which has performed no work for the department during the preceding five (5) years must supply the following information to the satisfaction of the department, on a prequalification contractor questionnaire form obtained from the department, in order to become prequalified to bid on any highway project with a completion cost estimated by the contractor through its bid to be in excess of two (2) million dollars:

1. The same information required of any other contractor on a standard contractor questionnaire form. The prequalification contractor questionnaire form requests this information also. It is not necessary for a contractor to complete both forms to be prequalified;

2. The type(s) of highway projects in which the contractor desires to be prequalified. A contractor may apply to be prequalified in any one (1), more than one (1), or all types of highway project work. For the purposes of this rule, the various general highway project work types are—

A. Earthwork, including excavation, fill, grading, hauling, wasting, compaction and/or landscaping, including signing and signaling and other related work;

B. Bituminous pavement, including signing and signaling, guardrails, shoulders, and other related structures;

C. Portland cement concrete pavement, including signing and signaling, guardrails, shoulders, and other related structures;

D. Bridges, culverts and other similar structures, including signing and signaling, guardrails, shoulders, and other related structures; and

E. Other miscellaneous highway project types of work (which the contractor must describe specifically);

3. The contractor's experience in performing the type(s) of highway project for which prequalification is requested. The contractor must include the construction experience of the contractor's key personnel necessary to complete the type(s) of highway project designated;

4. The contractor's ability to complete the type(s) of highway project that the contractor has requested to be prequalified in. At a minimum, this shall include a showing of the contractor's ability to complete highway projects in a timely manner, by furnishing to the department a listing of all projects completed within the last five (5) years similar to the type(s) of highway project that the contractor requests prequalification on;

5. The type(s) of highway projects the contractor is qualified to perform. This showing can be made by a signed and notarized writing from the contractor's surety bonding company or broker, stating the type(s) of highway projects (as designated above) for which that company or broker will issue a performance and payment bond in an amount in excess of two (2) million dollars, to cover the highway project work and debts of that contractor;

6. Satisfactory evidence of the contractor's current insurance coverage, including comprehensive general liability, worker's compensation, and automobile/vehicular coverage. The evidence of insurance shall, at a minimum, demonstrate that the contractor has the same insurance required by the commission of other contractors to perform construction work on a state highway project. Or, the contractor and its insurance company or broker shall submit notarized statements that the contractor is able to and shall obtain the required types and amounts of insurance, with the required endorsements, prior to commencing work if the contractor is awarded a Missouri state highway project contract;

7. The contractor's designation of a Missouri resident individual or firm as its agent for the receipt of legal process. This designation must include the complete name, street and mailing address and phone number of that designated agent;

8. The contractor's listing of all current work in progress, whether or not the work is a highway project. This listing shall include the total value of all such work not yet completed, and the contract and estimated actual completion dates of these projects;

9. The equipment that the contractor has available for the type(s) of highway project for which prequalification is requested. For the purposes of this rule, equipment is available if the contractor currently owns, rents or leases that equipment, or if the contractor has the present ability to rent, lease or purchase such equipment so that it is available for use on such designated type(s) of highway project. The designation of available equipment shall include a specific list of all classes of equipment available to perform the type(s) of highway project work designated for prequalification, and whether they are currently owned, leased, or available for rent, lease or purchase; and

10. Where practical, the contractor shall provide from its highway project surety bonding company, copies of records from the most recent audit issued of that company (and not the brokerage company which merely sells the surety bonds issued by another company). Audit report documents and records from

independent public accounting or certified public accountant (C.P.A.) firms are preferred, rather than internal bonding company audits. This information should indicate the general financial stability of the surety bonding company the contractor anticipates using to bond its highway projects in Missouri. If the bonding company is listed in the "United States Department of the Treasury, Fiscal Service, Department Circular 570, Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" and is authorized to issue surety bonding instruments in Missouri, only a photocopy of the bonding company's audit assets and liabilities balance sheet is necessary. The department prefers that the bonding company submit these audit record copies directly to the department. If it is not practical to obtain or submit these documents from the surety bonding company's most recent audit, a complete and detailed explanation of why it is not practical to provide that information at present, when that information will be provided to the department, or why that information is not necessary to be provided, must be submitted in lieu thereof, with supporting documentation. The department will determine if the justification for why it is not practical to obtain or submit the bonding company audit information is satisfactory.

(B) Submitting the Prequalification Contractor Questionnaire to the Department.

1. The prequalification contractor questionnaire must be completed fully and accurately, personally signed and notarized, and mailed or delivered to the department so that it is received by the appropriate departmental staff no less than seven (7) calendar days prior to the date and hour the contractor anticipates bidding on any Missouri highway project. However, if the contractor already has a standard contractor questionnaire on file with the department, it may bid on any Missouri highway project which the contractor's bid estimates will cost two (2) million dollars or below.

2. The prequalification contractor questionnaire must be mailed or delivered to:

Division Engineer, Design
Missouri Department of Transportation
105 West Capitol Avenue
P.O. Box 270
Jefferson City, MO 65102-0270

(C) Delivery may be in person, by a representative or agent, or by any United States Postal Service or express delivery company, without restriction, as long as it is complete and received in the appropriate office of the department no later than seven (7) calendar

days prior to the date and hour the contractor's bid will be opened by the department.

(D) If the contractor fails to supply the form to the department within this specified time frame, submits an incomplete form which lacks any necessary information requested, or does not submit any form at all, the contractor shall not be allowed to bid on any highway project (if no valid standard contractor questionnaire is on file with the department). Additionally, the contractor shall not be allowed to bid on any highway project which that contractor estimates to cost in excess of two (2) million dollars.

(E) The contractor will be notified in writing if the prequalification contractor questionnaire is incomplete or insufficient in any respect. If practicable, notification will be made by facsimile transmission as well as by first class United States mail, so that the contractor is aware of the problem prior to submitting any highway project bid to the department.

(5) Departmental Review and Contractor Prequalification.

(A) Once the department receives the form from the contractor within the specified seven (7)-day time period prior to the date and hour of the bid opening of the highway project, the department will review the prequalification contractor questionnaire form for accuracy and completeness, and will verify such information contained or attached to the form as the department deems appropriate. The department's review of the contractor's form will be conducted by the unit or staff designated by the chief engineer in writing for that purpose.

(B) If, in the discretion of the designated staff of the department, the contractor's prequalification contractor questionnaire and attachments show that the contractor should be qualified to bid on highway projects of the type(s) the contractor has requested prequalification for, the department will notify the contractor in writing by first class United States mail. The department may also notify the contractor by phone or facsimile transmission if a highway project bid opening date is approaching, but there is no obligation upon the department to do so. The contractor may also contact the department by phone, facsimile transmission or in writing, to confirm that its prequalification contractor questionnaire has been approved.

(C) If, in the discretion of the designated staff of the department, the contractor's prequalification contractor questionnaire and attachments do not show that the contractor is qualified to bid on any one (1) or more of the type(s) of highway project for which the con-

tractor has requested prequalification, that departmental staff shall notify the contractor applicant in writing that the application is still undergoing review, and shall refer the matter to the chief engineer; or if the chief engineer is unavailable, the deputy chief engineer; or if they are unavailable, to the assistant chief engineer, design. That individual shall make the final administrative decision on behalf of the department, as to whether the contractor is or is not prequalified to bid on any or all types of highway projects for which prequalification is requested. That individual shall act no later than twenty-one (21) calendar days after the date the completed prequalification contractor questionnaire with all attachments was received. No further appeal or review within the department is available.

(D) If a contractor is dissatisfied with the final administrative decision made by the department on its prequalification contractor questionnaire, the contractor may request in writing within twenty-one (21) calendar days of the date of mailing by the department of the administrative review that the commission review the final administrative decision made by the department. A contractor is not obligated to seek commission review in order to preserve its rights. Any request for commission review shall be made in triplicate writing to:

Commission Secretary
Missouri Highways and
Transportation Commission
105 West Capitol Avenue
P.O. Box 270
Jefferson City, MO 65102-0270

The request for review shall state specifically and completely the legal and factual basis upon which the contractor believes its prequalification application was denied in error. No new documentation or information may be submitted at this time which was not made a part of the originally-filed prequalification contractor questionnaire. At the commission's sole discretion, the commission shall decide if it wishes to review the final departmental decision. If the commission elects to itself review that decision, it shall make its review when it deems best, upon the records and documents in the possession of the department. There will be no further briefing, personal appearance, argument or presentation to the commission by the contractor or its representative, agent or attorney. The commission's decision on that record shall supersede the prior decision of the department, and shall then constitute the final administrative decision. If the commission elects in its sole discretion to not review the department's decision, then that departmental

decision shall stand as the final administrative decision.

(E) A contractor which was denied prequalification to perform any type of highway project may reapply for prequalification for that or other types of highway projects in sixty (60) days or more from the date of the final administrative decision by the department (or commission), or when the circumstances which caused the denial have changed significantly, whichever is less. If the contractor reapplies on the basis of a significant change of circumstances, a complete explanation and supporting documentation showing the significant change of circumstances must be attached, in addition to all other information and documentation required by this rule.

(F) The department and commission will not entertain appeals, requests for reconsideration, or other objections from any third parties that a contractor was prequalified wrongfully or improperly.

(6) Effect of Contractor Prequalification.

(A) The contractor shall be entitled to bid on all highway projects having a cost estimated by the contractor below two (2) million dollars; and on those highway projects having a cost estimated by the contractor in excess of two (2) million dollars for which it is prequalified to bid by the final administrative decision of the department (or where applicable, the commission). If the contractor bids on any highway project having a cost estimate by that contractor in excess of two (2) million dollars for which it has not been prequalified, its bid may be rejected, subject to subsection (6)(B) of this rule.

(B) If a contractor has a valid standard contractor questionnaire or prequalification contractor questionnaire on file with the department, and then does any highway project work for the department or commission, the contractor is entitled to bid on any highway project work without limitation or restriction. Any limitations on the type or estimated cost of highway project work which previously applied to a contractor which has any valid contractor questionnaire on file with the department no longer apply when that contractor has completed any highway project work for the department or commission within the five (5)-year period prior to having its bid on a highway project opened. Further, a contractor who has submitted a valid prequalification contractor questionnaire may bid on any type of highway project, including those highway project types which the department (or commission) did not prequalify that firm for, if the contractor's bid or cost estimate of that highway project is not in excess of two (2) million dollars.



(C) A contractor remains prequalified, based upon its prequalification contractor questionnaire, for a period of one (1) year. At that time, the contractor will have up to three (3) months to refile another prequalification contractor questionnaire (if it has not done any highway project work for the department or commission in the last five (5) years before the contractor's bid will be opened) if the contractor desires to bid on highway projects having a cost estimate in excess of two (2) million dollars. However, the contractor may file a standard contractor questionnaire if the contractor has done any work for the department or commission within the five (5)-year period preceding the date of bid opening of a highway project with a cost estimated by that contractor in excess of two (2) million dollars which the contractor will bid on; or if the contractor will not bid during the next year on a highway project having a cost estimated by that contractor in excess of two (2) million dollars.

(D) A contractor which filed a valid and acceptable prequalification contractor questionnaire, and then did any highway project work for the department or commission, does not need to file another contractor questionnaire form during the balance of the period in which that prequalification contractor questionnaire remains valid. That contractor will be viewed in all legal respects as if it had a standard contractor questionnaire on file. Once a prequalification contractor questionnaire is filed validly, it serves the same functions as a standard contractor questionnaire for all purposes.

(E) Any contractor which files a prequalification contractor questionnaire unnecessarily, because it has done highway project work for the department or commission within at least the last four (4) years, will not have the questionnaire rejected for that reason. Instead, the contractor will be informed in writing that its contractor questionnaire has been accepted, and that the contractor could have filed a standard contractor questionnaire instead.

(7) Miscellaneous Provisions.

(A) All information submitted by a contractor, its bonding company or others to the department relevant to a determination of minimum qualifications to bid under section 227.105, RSMo (Cum. Supp. 1996), and all information used by the department to determine the contractor's prequalification to bid under that statute and this rule, is protected from disclosure pursuant to the provisions of that statute and section 610.021, RSMo (Supp. 1995), as it may be amended.

(B) The provisions of this rule are intended to be severable. If any provision is found by a court of competent jurisdiction to be invalid, unlawful or unconstitutional, the remaining provisions of the rule are intended to be valid unless the court finds the valid provisions of the rule are so essentially and inseparably connected with, and so dependent upon, the void provision that it cannot be presumed the commission would have promulgated the valid provisions without the void one; or unless the court finds that the valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the commission's intent or with section 227.105, RSMo (Cum. Supp. 1996).

*AUTHORITY: sections 227.105, RSMo Supp. 1996 and 226.130 Supp. 1995. * Emergency rule filed Aug. 15, 1996, effective Aug. 28, 1996, terminated Nov. 22, 1996. Emergency filed Nov. 12, 1996, effective Nov. 22, 1996, expired March 31, 1997. Original rule filed, Aug. 15, 1996 as 7 CSR 10.15.900 changed to 7 CSR 10-15.010, effective Feb. 28, 1997.*

**Original authority: 226.130, RSMo 1939, amended 1993, 1995; 227.105, RSMo 1996.*

CONTRACTOR NO.

To be Assigned by MoDOT

RETURN TO: Missouri Department of Transportation
Attn: Design Division
P. O. Box 270
Jefferson City, MO 65102

Revision Date: 10/28/96

**MISSOURI HIGHWAY AND TRANSPORTATION COMMISSION
PREQUALIFICATION CONTRACTOR QUESTIONNAIRE**

Legal Name of the Corporation, Firm or Individual Contractor

Fictitious Name under which you wish to bid (if registered with the Missouri Secretary of State)

An Individual
 A Partnership
 A Corporation
 A Joint Venture
 A Limited Liability Corp.
 A Limited Liability Partnership

P. O. Box _____ Street Address _____
City and State _____ Zip Code _____
Telephone No. () _____ Date Submitted _____
Fax No. () _____

Has this firm or organization (or in the case of a partnership or joint venture, has any contractor which is included within this firm or organization) performed any work as a contractor or subcontractor for the Missouri Highway and Transportation Commission, the Missouri Highway and Transportation Department, or the Missouri Department of Transportation, in the last five (5) years? Yes No

If yes, give complete details, descriptions and dates on additional sheets as needed.

This firm or organization has _____ years experience as a general contractor and/or _____ years as a subcontractor in the heavy and highway construction field.

Has your firm or organization ever failed to complete any work awarded to you? _____
If so, where and why? (Attach additional sheets as needed.) _____

Has your firm or organization ever failed to complete any work in a timely manner? _____
If so, where and why? (Attach additional sheets as needed.) _____

Type(s) of work on which your firm or organization desires to be prequalified:

_____ Earthwork _____ Bituminous Pavement _____ Portland Cement Concrete Pavement
_____ Bridges, Culverts and other similar structures _____ All other (Explain): _____



PREQUALIFICATION CONTRACTOR QUESTIONNAIRE

This organization has completed the following similar projects for the type(s) of work designated within the last five years. (Attach additional sheets as needed.)

Contract Amount	Type of Work	When Completed	Location City and State	Project Owner's Name and Address

Listed below are the organization's current projects in progress, including the value of projects not yet completed and their completion dates. (Attach additional sheets as needed.)

Contract Amount	Type of Work	Estimated Completion Date	Percent Complete	Location City and State	Project Owner's Name / Address

Listed below is the organization's construction experience of personnel performing the type(s) of work designated. (Attach additional sheets as needed.)

Name	Present Position	Years of Construction Experience	Magnitude and Type of Work	In What Capacity

PREQUALIFICATION CONTRACTOR QUESTIONNAIRE

Listed below is the organization's equipment available for the type(s) of work designated. (Attach additional sheets as needed.)

Number of Units	Description	Specify: Leased, Owned or Available for Lease

Listed below are all the officers, owners and/or directors of this organization, their present position, and their construction experience. (Attach additional sheets as needed.)

Name	Present Position	Years of Construction Experience	Magnitude and Type of Work	In What Capacity

Do any of the people listed above,

- (a) Perform a management or supervisory function for any other business?
 Yes No (If yes, list below)

<u>Name</u>	<u>Title</u>	<u>Business & Function</u>
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- (b) Work for or other firms that have a business relationship with you firm?
 Yes No (If yes, list below)

<u>Name</u>	<u>Title</u>	<u>Business & Function</u>
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PREQUALIFICATION CONTRACTOR QUESTIONNAIRE

Listed below is a Missouri resident designated by this organization as its agent for the receipt of legal process.

Complete Name, Street and Mailing Address, and Phone Number

Please attach current certificate(s) of insurance coverage, including comprehensive general liability, worker's compensation and automobile/vehicular coverage. If this coverage does not meet all requirements of a contractor under Sec. 107 of the Missouri Standard Specifications for Highway Construction, then both the contractor organization and its insurance company or broker shall submit notarized statements that the contractor is able to and shall obtain the required types and amounts of insurance, with the required endorsements, prior to commencing work if the contractor is awarded a Missouri state highway project contract.

If the organization's Bonding Company is not listed in the current "United States Department of the Treasury, Fiscal Service, Department Circular 570, Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies", attach the most recent complete audit of that Bonding Company. If the Bonding Company is so listed, at a minimum attach the complete balance sheets from the last audit of that Bonding Company.

Attach a signed and notarized writing from the organization's surety bonding company or broker, stating the type(s) of highway projects for which that company or broker will issue a performance and payment bond in an amount in excess of two million dollars (\$2,000,000), to cover the highway project work and debts of the organization.

If a corporation, attach a copy of the organization's current annual report, or initial report if a new corporation, on file with the Corporation Division of the Missouri Secretary of State's Office. Each corporation which is a party to a joint venture shall submit the same required report with its joint venture contractor questionnaire. See Sec. 102 of the Missouri Standard Specifications for Highway Construction. If applicable, provide a certified copy of the fictitious name registration with the Missouri Secretary of State.

If this firm or any of the listed individuals is now or has been debarred, suspended or restricted from bidding by any state or federal agency or official, check here and attach details on additional sheets as needed.

This firm will comply with all written requests by the Missouri Department of Labor and Industrial Relations, Division of Labor Standards, to provide information for the purpose of establishing a prevailing wage.

Signature(s) _____
(If partnership - all partners must sign)



PREQUALIFICATION CONTRACTOR QUESTIONNAIRE

AFFIDAVIT

_____, being duly sworn stated that (s)he is _____
(Typed or printed Officer's name) (Title of Officer)

of _____, that (s)he has read and understands the requirements of Section 227.105, RSMo Supp.
(Name of Firm)

1996, and Rule 7 CSR 10-15.900, "Prequalification to Bid of Certain Contractors", that (s)he is authorized to execute this document on behalf of this firm, and that all statements on this form and attachments thereto are true, correct and complete.

Signature of the Officer

Subscribed and sworn to before me by _____,
who personally appeared before me and is known to me to be the person described in and who executed the foregoing affidavit,
and acknowledged that _____ (s)he executed the same as _____ free act and deed.

IN WITNESS WHEREOF I have hereto set my hand and affixed my official seal at my office in
_____, this _____ day of _____, 19 ____

Seal of
Notary Public

Notary Public Signature

Typed or Printed Name of Notary Public

My commission expires _____, 19 ____