

**NOTICE OF FUNDING OPPORTUNITY FOR
TRIBAL SOLAR PROJECTS
ISSUED BY THE
STATE OF NEW MEXICO,
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT,
ENERGY CONSERVATION AND MANGEMENT DIVISION**

I. PURPOSE OF THIS NOTICE OF FUNDING OPPORTUNITY

The State of New Mexico Energy, Minerals and Natural Resources Department (EMNRD), Energy Conservation and Management Division (ECAM), is requesting applications from Indian Nations, Pueblos, and Tribes, for the development of Solar for New Mexico projects to help ECAM increase solar power deployment in the state and advance the clean energy economy in New Mexico. These grid-tied solar energy production and associated energy storage projects entail the use of a large solar photovoltaic (PV) system that provides power as well as environmental and economic benefit(s) to multiple community members, especially low- and moderate-income (LMI) residents.

Projects will serve one or more goals of the state's shared solar program:

1. Lower electricity bills for LMI residents (less than 80% Area Median Income); as the energy transition increases utility costs;
2. Support resilience, clean energy development, and state-based solar industry; and
3. Reduce greenhouse gas emissions.

ECAM is looking to fund construction-ready or near construction-ready solar installation projects. Projects must be completed by June 30, 2028. Applicants must demonstrate that the project will meet all of the criteria listed in Section VII below to be funded.

Applications will be accepted until July 15, 2026. Any applications that may result from this Notice of Funding Opportunity (NOFO) are valid for one year from application due date as indicated in Section X, Contact Person, below. ECAM may make multiple awards as a result of this NOFO.

ECAM will conduct a non-mandatory pre-application webinar conference for potential Offerors at 11:00 a.m. MDT on May 20, 2026 via Teams to provide Offerors an opportunity to be briefed on and ask questions about this grant funding opportunity. To register please visit <https://events.gcc.teams.microsoft.com/event/e80f7bd7-8595-4c9c-b56b-59aeaba0343d@04aa6bf4-d436-426f-bfa4-04b7a70e60ff> Please contact the ECAM Contact Person listed below with any issues registering.

II. ELIGIBILITY

Eligible Applicants include Indian Nations, Pueblos, and Tribes seeking to develop solar projects that will directly benefit LMI households. All projects must take place within the State of New Mexico.

Allowable costs include environmental and regulatory assessments, equipment, supplies, construction, inspection and initial monitoring of the solar energy technology performance. Ineligible items include, but are not limited to, the costs of water rights, land easements, right-of-way acquisition and legal costs.

III. BACKGROUND INFORMATION

ECAM provides services to plan and implement statutorily required state and federal clean energy programs. ECAM's programs are aligned to promote a clean energy future. In 2025, the New Mexico Legislature created the Community Benefit Fund (CBF) in Section 6-4-37 NMSA 1978. ECAM was awarded CBF funds to develop or enhance energy efficiency technology, renewable energy technology, batteries and other systems capable of retaining, storing and delivering energy by chemical, thermal, mechanical or other means and any interconnection equipment required to safely interconnect these systems with the electric grid for expenditure in fiscal years 2026 through 2028. Aligned with those goals, ECAM is using \$4,900,000 to support projects through the Solar for New Mexico Grant Program (Program). ECAM developed a state solar program to expand the number of LMI and disadvantaged communities that have access to affordable solar energy. The Program also has the additional goals of expanding the clean energy economy in New Mexico and developing the workforce. The Program aims to provide LMI households with benefits commensurate to at least 20% of their historical energy expenditures.

The successful Applicants shall assist ECAM with expanding access to solar for LMI households in New Mexico by developing new solar energy generation projects within New Mexico.

IV. SCOPE OF WORK FOR SOLAR PROJECTS ON TRIBAL LANDS

Successful Applicants will apply Solar for New Mexico funding to the completion of a solar PV project that benefits LMI households, resulting in bill savings and other economic, social or environmental benefits.

Successful Applicants will describe a scope of work that shall encompass any aspect of procurement, installation, testing, and commissioning resulting in a **completed solar energy system, or solar plus storage system by June 30, 2028**. Successful Applicants will clearly articulate major milestones of the project and associated costs. Successful Applicants shall describe a scope of work that includes:

- a. A deliverables-based summary of the plan for the solar installation project;
- b. A completed engineering/design study; and

- c. Proof of compliance with applicable federal, state, and local construction requirements.

V. APPLICATION CONTENTS

Applicants are required to complete and submit the application using the supplied template that includes the following items:

1. Contact Information.

- a. Name, title, telephone number and e-mail address for the person or persons authorized to negotiate a contract on applicant's behalf in the application.
- b. Names, titles, telephone numbers and e-mail addresses of persons to be contacted for clarification related to the contents of an application.
- c. Name of Tribal Entity

2. Project Information. Applicants shall include a narrative and materials describing the scope of work, including:

- a. Total funding request
- b. Project Need: Explain the specific need for the project and how it will address barriers for the LMI community it will serve
- c. Scope of Work:
 - i. Describe the project size, location and stage of planning and/or barriers to completion;
 - ii. Describe the type of technologies to be installed (e.g. solar panels with tracking system, battery energy storage, etc.);
 - iii. Include design information (mounting, facilities, structures, etc.), including engineering technical specification sheets or site location maps; and
 - iv. Describe the ownership structure of the installed solar and/or storage system.
- d. Project Impacts
 - i. Estimate number of LMI households to be served by the project, and how the project will/has recruit(ed) eligible participating households according to the program eligibility income limit.
 - ii. Provide an explanation of how you will provide benefits through this program which are commensurate with 20% of households' historic energy expenditure. Applicants are responsible for documenting and reporting data utilized in calculating household savings, including for households which do not have individual electricity bills.
 - iii. The estimated total economic value from solar project over project lifetime (at least 25 years). This, at a minimum, should include value of renewable energy credits or revenue from power sold to a utility.

3. **Budget.** Applicants shall include the following:
 - a. a project budget detailing projects costs and total amount requested from the Solar for New Mexico Program, in alignment with milestones identified in the timeline;
 - b. a narrative on the project budget, explaining the project costs, details on project match and any stacking or braiding considered in the budget, as well as any administrative or overhead considerations;
 - c. information on additional funding this project will leverage, if applicable. This can be provided by applicants, partners, co-investment, tax credits or other programs that the project will benefit from.
4. **Timeline.** Applicants shall include a milestones-based timeline showing how the project will be completed by June 30, 2028. (Milestones: Outline the key activities and major milestones of the project.)
5. **Technical Capabilities.** Applications shall include documentation, including Resumes/Curriculum Vitae showing that the applicants and designated sub-contractors are qualified to complete the project.
 - a. **Organization Capability.** Provide evidence of your organization’s capability to execute this project, including examples of past successful projects that demonstrate your expertise, including whether you have experience with energy projects in the utility service area of your proposed project, or in New Mexico. If your organization does not have a proven track record in executing similar projects, please explain why you are still capable of leading this initiative (see question below to provide additional information on project partners and team that will provide necessary capabilities).
 - b. **Project Partners and Team Experience:** Describe your project partners and team, highlighting relevant experience, skills, and roles for this project. Include any partners involved in the project, including their roles (e.g., currently identified contractors, developers, community partners, etc.) and contributions (e.g., financial, in-kind contributions etc.).
 - c. If applicable, describe challenges (e.g., financing, permitting, construction, procurement, and workforce development) that have prevented the project’s implementation so far, and how this funding will help overcome them.
6. **Community Benefits Plan.** Applicants shall describe the process for engaging the impacted community (e.g., public meetings) and how community engagement led to the development of the project application using the template provided (see Attachment 1).

VI. ADDITIONAL REQUIREMENTS

A. General Reporting Requirements

All selected Applicants shall submit progress and expenditure reports, including a final report, in accordance with the requirements of their respective Governmental Services Agreement (Attachment 2). EMNRD reserves the right to structure reporting requirements on a project-specific basis.

B. Statement of Compliance

1. All selected Applicants shall provide a statement to demonstrate acknowledgement of compliance with all applicable federal, state and local environmental laws, including but not limited to the Cultural Properties Act, NMSA 1978 §§ 18-6-1 through 18-6-17, and the Endangered and Protected Species Act NMSA 1978 §§ 17-1-14 through 17-5-21.
2. Community Benefit Fund compliance: Pursuant to NMSA 1978, 6-4-37(B)(1), prior to any payment to Entity from EMNRD, Entity shall provide either (1) documentation that it held two meetings within the community affected by the proposed project that shows notice of the meetings was provided to overburdened communities that may be impacted by the project; or (2) a community benefits agreement negotiated with overburdened communities that may be impacted by the project.

C. Maintenance and Inspection of Public Records Act/Confidential Information

All information obtained regarding the project, including pre-applications, applications for funding and reports are subject to disclosure, in response to requests received under provisions of the New Mexico Inspection of Public Records Act, NMSA 1978, Sections 14-2-1 to 14-2-12. Information that could reasonably be considered to be proprietary, privileged or confidential commercial or financial information must be identified as such. EMNRD will maintain the confidentiality of that information only to the extent permitted by law.

VII. FUNDING APPLICATION EVALUATION CRITERIA

Project applications will be evaluated according to the criteria listed in the rubric below. Applications must be complete and meet all criteria to be funded.

Score	
-1	Non-responsive/Incomplete
1	Responsive/meets minimum threshold
2	Decent case/outcomes likely but not demonstrated
3	Good case/outcomes likely and somewhat demonstrated
4	Strong case/outcomes likely and mostly demonstrated
5	Exemplary proof of concepts and expected results

No.	Description of Evaluation Criterion	Points Available (50 total)
	Capability to meet the scope of work described in the following sections:	
1	Appropriateness of project timeline & milestones including demonstrated ability to complete the project in the required timeframe	20
2	Qualifications of project team members (including subcontractors)	5
3	Ability to complete the project financially if the total budget exceeds the amount requested	5
4	Ability to increase access to solar and storage for LI households	5
5	Ability to provide benefits which are commensurate with 20% of households' historic energy expenditures	5
6	The applicant demonstrates compliance with the CBF or if selected, will be in compliance with the CBF before going under contract with EMNRD based on the following:	10 (total from 6.1-6.5)
6.1	Identification of overburdened communities	2
6.2	Community Input and Negotiation	2
6.3	Social Benefits	2
6.4	Economic Benefits	2
6.5	Environmental Benefits	2

EMNRD will consider projects in light of available funding at the time of review and in consideration of other high-ranking applications.

VIII. EVALUATION PROCESS

The evaluation process will follow the steps listed below:

- A. Three Evaluation Team members will document contents of applications after the submittal deadline.
- B. The Evaluation Team will review applications for compliance with the mandatory requirements stated within this NOFO. Applications deemed non-responsive will be eliminated from further consideration.

- C. The Contact Person may contact the Applicants(s) for clarification of the contents of the application.
- D. The Evaluation Team will evaluate responsive applications based on completeness and the criteria in Section VII, Funding Application Evaluation Criteria.

IX. AWARD

EMNRD may award multiple contracts under the terms of the attached draft GSA (Attachment 2) and this NOFO. Any GSA awarded as a result of this NOFO shall not be binding until approved by EMNRD and the funds encumbered by Department of Finance and Administration.

X. CONTACT PERSON

Questions concerning this NOFO, as well as applications, are to be submitted to:

Trevor Leuzinger, Program Manager
Energy Conservation and Management Division
Energy, Minerals, and Natural Resources Department
1220 South St. Francis Drive
Santa Fe, New Mexico 87505
Trevor.Leuzinger@emnrd.nm.gov
(505)-460-7706

Applicants shall submit one application in PDF format to the contact email listed above by 5:00 PM MT on July 15, 2026.

EMNRD will only respond to written questions regarding this NOFO. Written answers to those questions will be posted on the EMNRD ECAM's website as the questions arrive:

<https://www.emnrd.nm.gov/ecmd/about-us/requests-for-proposals-applications/>

XI. NOTICES

Award of agreements is contingent upon sufficient appropriations and authorization being made by the State of New Mexico.

The money made available to support any GSA entered into as a result of this NOFO must cover Gross Receipts Taxes as a component of the total GSA amount.

EMNRD may cancel this NOFO and reject any and all applications when it is in the State of New Mexico's best interests.

EMNRD may conduct discussions with Applicants who submit applications but may also

accept applications without such discussions.

ATTACHMENT 1

Community Benefits Plan

This template was designed by the Energy Conservation and Management Division for applicants applying for Solar for New Mexico Program Funding, Grid Modernization Grant Program Funding, and Community Energy Efficiency Development Grant Program Funding pursuant to the requirements of the 2025 Community Benefit Fund Act and existing program requirements.

Applicants are required to use this template and complete all sections I-III. Responses to each section should be between 300 and 500 words.

1. Identification of overburdened communities¹

(Please provide the location of the community impacted by this project at the finest scale possible, e.g., county, city/town, neighborhood scale or latitude/longitude coordinates.)

2. Community input and negotiation

(Please describe the proposed project and how community input contributed to the development of both the project proposal and this community benefits plan.)

3. Community Benefits

(Please describe the negotiated community benefits plan.)

4. Social Benefits

(Please describe how the proposed community benefits plan aims to positively impact community health and safety, access to services, resilience or adaptation to climate change and/or education).

5. Economic Benefits

(Please describe how the proposed community benefits plan will improve the economic conditions of the community and/or positively impact workforce development.)

6. Environmental Benefits

(Please describe how the proposed community benefits plan aims to increase air or water quality in the community and/or help clean up legacy pollution.)

7. Additional Benefits

(Describe any additional benefits (e.g. reduce emissions of greenhouse gases and other harmful outdoor air co-pollutants, create jobs and economic opportunities for New Mexico workers/small businesses, etc.)

ATTACHMENT 2

**STATE OF NEW MEXICO,
GOVERNMENTAL SERVICES AGREEMENT
BETWEEN THE
STATE OF NEW MEXICO,
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
AND
ENTITY**

THIS GOVERNMENTAL SERVICES AGREEMENT (Agreement) is made and entered into by and between the State of New Mexico, Energy, Minerals, and Natural Resources Department (EMNRD) and (Insert Entity name. Remove this instruction.) (Entity).

THE PARTIES MUTUALLY AGREE:

1. Scope of Work: Entity shall:

(Insert description of work. Remove this instruction.)

Entity shall also provide brief written progress reports to EMNRD on a (*weekly, bi-weekly, monthly, quarterly, annual, with each request for payment/reimbursement or some other time frame*) basis. (All contracts must have reporting requirements, or the program manager must justify the lack of reports in a written memo to the file for auditing purposes.)

2. Compensation: (For paragraph A, select option 1, 2, 3, or 4)

Option 1: Work Product. If you choose this option, use Paragraph A below. If you do not intend to reimburse for travel, remove travel reference from paragraph and adjust Paragraph A accordingly. Remove this instruction and all other options not chosen in this Compensation Section.

- A. EMNRD shall pay Entity for services satisfactorily performed pursuant to the Scope of Work and as specified below. This amount shall not exceed _____ (\$ _____), including New Mexico governmental gross receipts taxes, and any travel, if necessary, pursuant to Paragraphs B and C of this Compensation Section. EMNRD shall make payment upon the satisfactory and timely completion of the work described in the Scope of Work and for no more than the maximum amount set forth below for each deliverable:

Insert deliverables/payment schedule here. Remove this instruction.

If you pay travel, the amount needs to be set out as a separate deliverable in the deliverables/payment schedule. Remove this instruction.

This amount is a maximum and not a guarantee that the work assigned to be performed by Entity under this Agreement shall equal the amount stated herein or the amounts state per task. The parties do not intend for the Entity to continue to provide services without compensation when the total compensation amount is reached. Entity is responsible for notifying EMNRD when the services provided under this Agreement reach the total compensation amount. In no event shall the Entity be paid for services provided exceeding the total compensation amount without this Agreement being amended in writing prior to those services exceeding the total compensation amount being provided. EMNRD MUST receive all invoices no later than 15 days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date SHALL NOT BE PAID.

Option 2: Lump Sum Amount Upon Completion of All Work. If you choose this option, use Paragraph A below. If you do not intend to reimburse for travel, remove travel reference from paragraph and adjust Paragraph A accordingly. Remove this instruction and all other options not chosen in this Compensation Section.

- A. Upon satisfactory completion of services, EMNRD shall pay Entity for services satisfactorily performed pursuant to the Scope of Work in an amount not to exceed _____ (\$ _____), which amount includes New Mexico governmental gross receipts taxes, and any travel, if necessary, pursuant to Paragraphs B and C of this Compensation Section. In no event shall the Entity be paid for services provided exceeding the total compensation amount without this Agreement being amended in writing prior to those services exceeding the total compensation amount being provided. EMNRD MUST receive all invoices no later than 15 days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date SHALL NOT BE PAID.

Option 3: Time and Materials. If you choose this option, use Paragraph A below. If you do not intend to reimburse for travel, remove travel reference from paragraph and adjust Paragraph A accordingly. Remove this instruction and all other options not chosen in this Compensation Section.

- A. EMNRD shall pay Entity for services rendered and amount not to exceed _____ (\$ _____) per (hour, day, week, month), such compensation not to exceed _____ (\$ _____) in total, which amount includes gross receipts taxes and travel as shown in Paragraphs B and C of this Compensation Section. EMNRD shall reimburse Entity for the cost of materials necessary under this Agreement for an amount not to exceed _____ (\$ _____). This amount is a maximum and not a guarantee that the work assigned to Entity under this Agreement to be performed shall equal the amount stated herein. EMNRD MUST receive all

invoices no later than 15 days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date SHALL NOT BE PAID. Payment shall not relieve the Entity of any unperformed obligations under the Scope of Work.

Option 4: Advance of Funds. If you choose this option, remove all the previous choices. Remove this Option 4 heading.

A. Within 30 days following this Agreement's effective date, EMNRD shall transfer to Entity _____ (\$ _____), which shall include New Mexico Governmental Gross Receipts Taxes, for completion of the Tasks described in the Scope of Work above. Payment shall not relieve Entity of any unperformed obligations under the Scope of Work.

B. Upon expiration or termination of this Agreement, if either party has property or funds in its possession belonging to the other, it shall return the property or funds in proportion to the parties' original contribution.

C. Entity shall be responsible for paying New Mexico Governmental Gross Receipts taxes levied on amounts payable under this Agreement, if applicable.

3. Term: This Agreement becomes effective when executed by an authorized representative of Entity and of EMNRD and when New Mexico Department of Finance and Administration (DFA) encumbers funds for this Agreement. It shall terminate on (Insert date) unless earlier terminated pursuant to Section 4, Termination, or Section 5, Appropriations, below.

4. Termination: Either party may terminate this Agreement upon written notice delivered to the other at least 10 days prior to the intended termination date. By such termination, neither party may nullify or avoid any obligation required to have been performed prior to termination.

5. Appropriations: This Agreement's terms are contingent upon the New Mexico State Legislature) granting sufficient appropriation and authorization. If sufficient appropriation or authorization is not granted, EMNRD may terminate this Agreement, or in the alternative suspend performance pending approval of sufficient appropriation or authorization, upon written notice from EMNRD to Entity. EMNRD's decision as to whether sufficient appropriations are available shall be at its sole and absolute discretion and shall be final, binding, and accepted by Entity.

Option: If Entity is another state agency, revise this section to reflect Entity is not an EMNRD employee. Remove this instruction.)

6. Status of Entity: Entity and its agents and employees are independent contractors performing professional services for EMNRD and are not employees of the State of New Mexico. Entity and its agents and employees shall not accrue leave,

retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. Entity acknowledges that all sums received hereunder are reportable by the Entity for tax purposes, including without limitation, self-employment and business income tax. Entity agrees not to purport to bind the State of New Mexico unless the Entity has express written authority to do so, and then only within the strict limits of that written authority.

7. Assignment: Entity shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without EMNRD's prior written approval.

8. Subcontracting: Entity shall not subcontract any portion of the services to be performed under this Agreement or obligate itself in any manner to any third party, with respect to any rights or responsibilities under this Agreement, without EMNRD's prior written approval. EMNRD may disallow costs incurred by the Entity in relation to a subcontract if Entity does not obtain prior written approval.

A. Entity shall comply with 2 C.F.R. 200.318 through 200.326 for procurement of property or services conducted pursuant to this Agreement.

B. Any contract shall include all provisions necessary to allow Entity to meet its obligations and requirements under this Agreement and all provisions required by law.

Option: Include subparagraph below if subcontractor will be reimbursed for travel expenses. Remove instruction.

C. Travel expense reimbursement requested for subcontractors, if applicable, shall be reimbursed in accordance with rates established in the Per Diem and Mileage Act, NMSA 1978, § 10-8-1 *et seq.*, as implemented by the current DFA Rule and EMNRD Travel Policy.

9. Release: Final payment of the amounts due under this Agreement shall operate as a release of EMNRD, its officers, and employees, and the State of New Mexico from all liabilities, claims, and obligations whatsoever arising from or under this Agreement.

10. Confidentiality: Any confidential information provided to or developed by Entity in the performance of this Agreement shall be kept confidential and shall not be made available by Entity to any individual or organization without EMNRD's prior written approval.

11. Product of Services; Copyright: All materials developed or acquired by Entity under this Agreement shall become the State of New Mexico's property and be delivered to EMNRD no later than this Agreement's expiration date. Nothing Entity

produces, in whole or in part, under this Agreement shall be the subject of a copyright application or other claim of ownership by or on behalf of Entity.

12. Conflict of Interest; Governmental Conduct Act: Entity warrants that it presently has no interest and that it shall not acquire any interest, direct or indirect, which would conflict in any manner with performance or other services required under this Agreement. Entity certifies that all applicable provisions of the requirements of the Governmental Conduct Act, NMSA 1978, §§ 10-16-1 through –18, including provisions related to contracting with, or employing, public officers, legislators, state employees, or former state employees, have been followed.

13. Amendment: This Agreement shall not be altered, changed, or amended except by written instrument executed and approved by the parties hereto.

14. Merger: This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements, and understandings have been merged into this written Agreement. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless as embodied in this Agreement.

15. Penalties for Violation of Law: The Procurement Code, NMSA 1978, §§ 13-1-28 through 13-1-199, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities, and kickbacks.

16. Equal Opportunity Compliance: Entity agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Entity assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation, or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Entity is found not to be in compliance with these requirements during the life of this Agreement, Entity agrees to take appropriate steps to correct these deficiencies.

17. Applicable Law: The laws of the State of New Mexico shall govern this Agreement, without giving effect to New Mexico's choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978, § 38-3-1(G). By execution of this Agreement, Entity acknowledges and agrees to the exclusive jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

18. Records and Audit:

A. Entity shall maintain detailed time and expenditure records that indicate the date, time, nature, and cost of services rendered during the Agreement's term and effect and retain them until six years after the termination date specified in Section 3, Term. These records shall be maintained and available within the State of New Mexico if the Entity has an office within the state; otherwise, Entity shall make such records available to EMNRD within 10 days upon EMNRD's request. During this time, such records shall be subject to inspection by EMNRD, DFA, and the State Auditor (and insert name of federal funding agency). Entity further agrees to include in all subcontracts hereunder the same right of inspection and audit against all subcontractors. EMNRD shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose EMNRD's right to recover excessive or illegal payments. The periods of inspection and audit may be extended for records, which relate to litigation or settlement of claims arising out of performance of this Agreement (and costs and expenses related to this Agreement for which exception is under consideration by insert name of federal funding agency or any authorized representative) and shall continue until all potential litigation, appeals, claims, or exceptions have expired or been resolved.

Option: Are you using federal funds to pay for this contract? If yes, you must determine whether your provider is a subrecipient or a contractor. If you determine your provider is a subrecipient, you need to include the following paragraph in your contract. If you determine your provider is a contractor, the requirements do not apply and you will remove this this paragraph. Delete this instruction.

B. If Entity receives \$750,000 or more in federal funding from all sources in the aggregate in a fiscal year, Entity's financial records involving services and procurement under this Agreement shall be audited annually pursuant to all federal, state, and local government audit requirements, and in accordance with the Single Audit Act Amendments of 1996, 2 C.F.R. 200, Subpart F – Audit Requirements, OMB Circular Compliance Supplement and Government Auditing Standards, as prescribed by the Single Audit Act of 1984, or any subsequent OMB Circular. Entities who do not meet the \$750,000 audit threshold (Tier 7), must complete the State of New Mexico – Office of the State Auditor Certification Form for Tier 1 and Tier 2, or the Office of the State Auditor Agreed Upon Procedures (Tiers 3-6) in accordance with the Audit Act, NMSA 1978, §§ 12-6-1 through 12-6-14, and 2.2.2.16 NMAC, Annual Financial Procedures Required for Local Public Bodies with Annual Revenues Less than Five Hundred Thousand Dollars. To comply with state audit requirements, Entities shall have one of the above-mentioned Forms or Agreed Upon Procedures on file with the Office of the State Auditor. Entity shall provide EMNRD with a copy of the independent financial audit, either in hard copy format or on disk, no more than 45 days after the audit's completion for each fiscal year this Agreement is in effect.

19. Liability: Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred with this Agreement is subject to the immunities and limitations of the Tort Claims Act, NMSA 1978, §§ 41-4-1 *et seq.*, as amended.

20. Procurement, Utilization, and Disposition of Property: Entity shall report acquisition of any capital property (property with an expected life of at least one year) to EMNRD within one month following the acquisition. If upon termination of this Agreement Entity has any property in its possession belonging to EMNRD, Entity shall account for the property and dispose of it as EMNRD directs. (Option: If federal funding is involved include the following statement. Otherwise remove it and this instruction) All property acquired by the Entity or procured under this Agreement shall be used and disposed of in accordance with [insert federal funding agency's name] regulations governing disposal of property.

21. Invalid Term or Condition: If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

22. Enforcement of Agreement: A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict performance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no waiver of a specified right by a party shall be effective to waive any other rights.

23. Notice: Except as otherwise specified herein, all notices hereunder shall be in writing) and shall be given to the relevant party at its address set forth below, or such other address as such party may hereafter specify by notice to the other given by courier, by United States certified or registered mail, or by telecommunication device capable of creating a written record of such notice and its receipt.

To EMNRD:

(insert position title and address of project manager)

General Counsel
EMNRD – Office of the Secretary
1220 S. St. Francis Drive
Santa Fe, NM 87505

To the Entity:

(insert contact information)

To Risk Management Division:

Risk Management Division
General Services Department
P.O. Drawer 26100
Santa Fe, NM 87502-0110

24. Authority: If Entity is other than a natural person, the individual(s) signing this Agreement on behalf of Entity represent and warrant that he or she has the power and authority to bind Entity, and that no further action, resolution, or approval from Entity or any other entity is necessary to enter a binding contract.

Option: Include the following if acknowledgment required. If not, remove this section and renumber successive accordingly. Remove this instruction.

25. Acknowledgment: Entity shall acknowledge EMNRD (option - and insert name of federal funding agency) as a co-sponsor and funding source in all news releases, programs, proceedings, and related publicity/publications for the project.

26. Attorney's Fees and Costs: Entity agrees that if a court of competent jurisdiction finds Entity has breached this Agreement, or amendments hereto, or to have committed any tortious act relating to this Agreement's scope, EMNRD may recover from Entity reasonable attorneys' fees and costs in connection with litigation brought to obtain the judicial determination and to collect any judgment.

27. Minimum Wage Rate: If applicable, Entity shall comply with minimum wage rates as established by the New Mexico Department of Workforce Solutions, Labor Relations Division, and with all other applicable requirements of that Department, including posting of the wage rates in a prominent location on the site for hiring and performing of this Agreement.

28. Compliance with Law and Funding Source Conditions:

A. Entity shall comply with all applicable state and federal statutes, regulations, or rules, including without limitation those imposed as a consequence of funding pursuant to this Agreement.

(If you are using federal funds to pay for the work of this agreement, the following clauses must be included. If you are using non-federal funding, delete the clauses and this instruction.)

B. Compliance with use of Minority Business Enterprises (MBEs) and Women's Business Enterprises (WBEs) - Entity shall take affirmative steps to assure that MBEs and WBEs are used when possible as sources of supplies and services. The affirmative steps shall include the following:

- 1) including qualified MBEs/WBEs on solicitation lists;
- 2) assuring that MBEs/WBEs are solicited once they are identified;
- 3) when economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum MBE/WBE participation;

4) where feasible, establishing delivery schedules which will encourage MBE/WBE participation;

5) encouraging use of the services of the U.S. Department of Commerce's Minority Business Development Agency and the U.S. Small Business Administration to identify MBEs/WBEs, as required; and

6) if any subcontracts are to be let, requiring the subcontractor to take the affirmative steps listed above.

C. Compliance with Trafficking Victims Protection Act of 2000 - Entity, Entity's employees, subcontractors, and subcontractors' employees shall not:

1) engage in severe forms of trafficking in persons during this Agreement's term;

2) procure a commercial sex act during this Agreement's term; or

3) use forced labor in the performance of this Agreement.

D. Compliance with NMSA 1978, § 66-7-374, Texting While Driving - Entity and Entity's employees shall not read or view a text message or manually type on a handheld mobile communication device for any purpose while driving a motor vehicle in connection with this Agreement, except to summon medical or other emergency help, or unless that device is an amateur radio and the driver holds a valid amateur radio operator license issued by the Federal Communications Commission.

E.

G. Entity shall not award subcontracts to parties listed on the government-wide exclusions in the federal System for Award Management (SAM), in accordance with OMB guidelines that implement federal Executive Orders 12549 (3 C.F.R. part 1986, Comp., p. 189) and 12689 (3 C.F.R. part 1989 Comp., p. 235), "Debarment and Suspension." SAM exclusions contain the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regularity authority other than Executive Order 12549.

H. If the value of this Agreement exceeds \$100,000, Entity shall comply with the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352) regarding the limitations of use of appropriated funds to influence certain federal contracting and financial transactions.

I. If this Agreement is valued at more than \$150,000, Entity shall comply with all applicable standards orders or requirements issued under the federal Clean Air Act (42 U.S.C. § 7401 *et seq.*); Clean Water Act (33 U.S.C. § 1251 *et seq.*); Executive Order 11738 (Providing for Administration of the Clean Air Act and the Federal Water Pollution Control Act With Respect to Federal Contracts, Grants, or Loans); and U.S. Environmental Protection Agency (EPA) regulations.

Option: If agreement is with a state agency do not include the following provision because all state agencies are covered by Risk Management Division. Remove this Section (and this instruction) and renumber successive sections accordingly. If agreement is with a county, municipality, state university, or public school, determine whether it has insurance coverage. If it does, keep the following. If the county, municipality, state university, or public school does not have coverage, discuss the situation with legal as to how it should be addressed. Remove these instructions.

29. Insurance Coverage: Entity shall provide EMNRD a statement indicating that the activities described in the Scope of Work are covered by insurance as set forth below, secured in accordance with any method allowed by applicable law, including self-insurance, pooling of self-insured reserves, or insurance provided by a third party, prior to commencing work under this Agreement. Entity shall maintain continuous coverage of the activities described in the Scope of Work, so long as this Agreement is in effect. Failure to maintain such coverage is reason for immediate termination of this Agreement. Entity shall notify EMNRD prior to cancellation or expiration of any insurance required under this Agreement.

A. Worker's Compensation protection that complies with the requirements of the Worker's Compensation Act, NMSA 1978, §§ 52-1-1 *et seq.*, if applicable. If the Entity fails to comply with the Workers Compensation Act and applicable rules when required to do so, EMNRD may terminate this Agreement.

B. Comprehensive public liability protection covering property damage and personal injury liability that may arise under this Agreement and any amendments hereto, in amounts equal or greater than liability limits set forth in NMSA 1978, § 41-4-19, as it may be amended from time to time.

IN WITNESS WHEREOF, the parties hereto have herein below executed this Agreement.

**STATE OF NEW MEXICO, ENERGY, MINERALS AND NATURAL RESOURCES
DEPARTMENT**

By: _____ Date: _____
Cabinet Secretary or Designee

ENTITY NAME

By: _____ Date: _____
Authorized Representative Signature

Printed Name and Title