

**REQUEST FOR APPLICATIONS FOR  
GRID MODERNIZATION PROJECTS  
ISSUED BY THE  
STATE OF NEW MEXICO,  
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT,  
ENERGY CONSERVATION AND MANGEMENT DIVISION**

**I. PURPOSE OF THIS REQUEST FOR APPLICATIONS**

The State of New Mexico, Energy, Minerals and Natural Resources Department (EMNRD) Energy Conservation and Management Division (ECMD) is requesting applications from government entities for “grid modernization” technical assessments, demonstration projects, and monitoring evaluations to assist New Mexico in developing a modern electric grid that transitions the state to 100-percent zero-carbon electricity resources.

Grid modernization projects are those that make improvements to electric distribution or transmission infrastructure to accommodate or facilitate the integration of renewable electric generation resources with the electric distribution grid or otherwise enhance electric distribution or transmission grid reliability, grid security, demand response capability, customer service or energy efficiency or conservation.

Projects will serve one or more operational or functional goals of a modern grid, including: facilitating the adoption of clean energy generation resources; accommodating the integration of distributed energy resources (DERs); enabling customers with data and real-time usage information; maintaining or enhancing electric distribution or transmission grid reliability, resiliency and grid security; improving system efficiency; helping to optimize existing assets; allowing for adaption to changing load, including changes to peak load and demand due to the electrification of buildings and transportation.

Typical projects will fit within one of two Types. Type 1 projects can fall under one of two possible tracks. Track 1 projects are engineering or design studies that are expected to lead to the construction or installation of grid modernization technologies. Track 2 projects are research projects or monitoring and evaluation studies intended to provide valuable information about the functioning of the grid; the capabilities, risks, and benefits of an existing technology; customer demand response behavior; or the economic or societal value of distributed energy resources. Type 2 projects are those involving the construction or installation and verification of a grid technology.

ECMD may fund proposed projects on a first-come, first-served basis. Applications must be complete and must demonstrate that the project will meet all of the criteria listed in Section VIII below to be funded.

EMCD will conduct a non-mandatory pre-proposal conference for potential applicants at 12:00 PM Mountain Standard Time on June 9, 2021 via WebEx. Staff will describe the scope of work and application requirements and answer questions.

## II. ELIGIBILITY

Eligible Applicants include municipalities and county governments; state agencies; state universities; public schools; post-secondary education institutions; and Indian nations, tribes and pueblos. All projects must take place within the State of New Mexico.

Project costs eligible for reimbursement may include costs of project development, engineering design, environmental and regulatory assessments, equipment, supplies, construction, inspection and initial monitoring of the clean 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

A modern electric grid is required for New Mexico to achieve decarbonization, for utilities, households and businesses to take advantage of New Mexico's abundant renewable resources, to spur economic growth, and to improve the lives of New Mexicans.

NSMA 1978, Section 71-11-2 established the Grid Modernization Grant Program and Fund to support pilot projects that advance research and understanding of distribution grid technologies and other modern grid upgrades.

## IV. TYPE 1 PROJECTS SCOPE OF WORK

Type 1 projects will fall into one of two tracks. Track 1 projects will result in formal professional engineering or design studies that anticipate the construction or installation of a modern grid technology. Track 2 projects are other research projects and/or monitoring and evaluation studies that seek to provide the state with valuable information leading to a greater understanding of a grid modernization or renewable resource technology, grid function, or electricity customer behavior.

### A. Track 1

#### 1. Track 1 Project Elements Summary

- a. **Technology** – Proposed projects must focus on engineering and design related to the construction or installation of specific grid technologies, clean energy technologies, or other energy efficiency or energy conservation technologies, that have a direct bearing on grid function or operation.
- b. **Benefit to Utility Partner** – Per NSMA 1978, Section 71-11-2, projects receiving a grant from the grid modernization grant program shall be required to be coordinated with the electric service provider that serves the entity to ensure that the program

does not adversely impact electrical system efficiency, reliability, resilience, and security.

## **2. Track 1 Project Deliverables**

Projects will consist of the following deliverables:

- a. an initial written report summarizing the project that includes:
  - i. how the technology serves a functional or operational goal of grid modernization;
  - ii. background information on the technology that is the subject of the engineering study, and how the technology will be used in the project service area;
  - iii. the geographic limits of the project;
  - iv. the nature of the partnership with the utility that services this area;
  - v. the proposed economic impacts of the project; and
  - vi. the expected educational value of the project.
- b. a quarterly written report to include a financial summary and review/evaluation of performance goals; and
- c. a final professional engineering/design study, that can be used to inform a grid infrastructure and/or technology installation project.

## **B. Track 2**

### **1. Track 2 Project Elements Summary**

- a. **Benefit to Utility Partner** – Per NSMA 1978, Section 71-11-2, projects receiving a grant from the grid modernization grant program shall be required to be coordinated with the electric service provider that serves the entity in order to ensure that the program does not adversely impact electrical system efficiency, reliability, resilience, and security.
- b. **Research Question and Methodology** – Proposed projects under this track must consist of a relevant research question and appropriate methodology for answering this research question. Proposed projects under this track may come in a variety of forms such as feasibility studies of an existing technology; monitoring, evaluation and verification of an existing technology, or other original research projects that fit within the description of grid modernization projects listed in Section I above.

## 2. Track 2 Project Deliverables

Projects will consist of the following deliverables:

- a. an initial written report summarizing the project that includes:
  - i. background and summary of existing research;
  - ii. any refinements to the proposed research question and proposed methodology;
  - iii. (optional) preliminary or expected results;
  - iv. timeline for completing the project;
  - v. nature of the relationship with the utility partner;
  - vi. the proposed economic impacts of the project; and
  - vii. the expected educational value of the project
- b. quarterly written report to include a financial summary and review/evaluation of performance goals.
- b. a final written report summarizing the results of the research; and
- c. a presentation to EMNRD staff or the Grid Modernization Implementation Working Group.

## V. TYPE 2 PROJECTS SCOPE OF WORK

Infrastructure or technology installation projects resulting from this RFA must serve one or more operational or functional goals of a modern grid, including: facilitating the adoption of clean energy generation resources; accommodating the full integration of DERs; enabling customers with data and real-time usage information; maintaining or enhancing electric distribution or transmission grid reliability, resiliency and grid security; improving system efficiency; helping to optimize existing assets; allowing for adaption to changing load, including changes to peak load and demand due to the electrification of buildings and transportation.

### A. Type 2 Project Elements Summary

1. **Technology** – Proposed projects must consist of the application of one or more grid technologies, clean energy technologies, or other energy efficiency or energy conservation technologies, that have a direct bearing on grid function and/or operation.
2. **Benefit to Utility Partner** – Per NSMA 1978, Section 71-11-2, projects receiving a grant from the grid modernization grant program shall be required to be coordinated with the electric service provider that serves the entity in order to ensure that the program does not adversely impact

electrical system efficiency, reliability, resilience and security.

3. **Technology Monitoring and Verification Component** – Applicants will be required to submit a final written report after one year following construction. This report shall describe monitoring activities and verify the effectiveness and impact of the technology on the grid, market potential and scalability, and any questions for future research.

#### **B. Type 2 Project Deliverables**

Projects will consist of the following deliverables:

1. an initial written report summarizing the project and how it serves a functional or operational goal of grid modernization; background information on the technology being deployed and how it will be used in the project service area, including any safety concerns and how those will be mitigated; the geographic limits of the project; and how the project shall be evaluated;
2. quarterly reports including a financial summary (e.g., construction work activities completed and purchase and installation of a project technology, labor costs, or other expenses) and review/evaluation of performance goals;
3. interim reports summarizing the functionality of the technology on an appropriate frequency; and
4. a final report verifying the technology's functionality and summarizing the impact on the grid, market potential and scalability, and any questions for future research.

#### **VI. Application Contents**

Applicants are solely responsible for providing all information requested and meeting all RFA requirements. If Applicants fail to provide any of the required information or meet the terms of this RFA, EMNRD may, at its sole discretion, declare the application to be non-responsive and give it no further consideration. All information must be clear, concise and complete.

The application package must include the following:

1. **Applicant Contact Information:** Identify the name, title, telephone number, and e-mail address of the person authorized to negotiate a contract on behalf of the Applicants. Identify the names, titles, telephone numbers, and e-mail addresses of persons to be contacted for clarification.

2. **Project Summary:** Provide a description of the project partners, project goals and benefits, addressing the first four evaluation criteria listed in Section VIII below.
3. **Project Deliverable Descriptions:** Describe in detail each deliverable (see pages 3-5 for deliverables that correspond to the type of project you are proposing), including a plan for execution, a project timetable that specifies completion of each deliverable, and a description of the process that will be used to document the project's progress and success. If a consulting firm, subcontractor or other agency will be conducting any portion of the work, that must be specified in the descriptions.
4. **Project Budget:** Provide a detailed budget narrative and allocation of costs by task. The budget detail must include a discussion of the total project cost and sources of funding (both cash and in-kind) including state, federal grants, partner contribution, etc.
5. **Personnel Qualifications:** Provide names and qualifications of key personnel to be assigned to the work, including a brief bio, resumes, permits, licenses, and certificates that qualify the Applicants for this work, as well as any subcontractor, or firm the Applicants may use to complete assigned tasks.
6. **Statement of Cooperation:** Provide a letter from the utility servicing the project area that demonstrates the utility is in full support of the project and will cooperate with the installation.
7. **Additional Documentation:** For Type 2 projects, include any engineering studies, technical diagrams and specifications, and/or maps of the project area.

## VII. ADDITIONAL REQUIREMENTS FOR TYPE 1 AND 2 PROJECTS

### A. Federal Funding Monitoring and Reporting Requirements (Type 1 only)

The funds available to support Type 1 projects are through the U.S. Department of Energy (DOE) State Energy Program (SEP), therefore, all undertakings are subject to provisions of Section 106 (36 C.F.R. Part 800) of the National Historic Preservation Act (NHPA) and related laws and regulations of the National Environmental Policy Act (NEPA).

Federal regulations require DOE to monitor each grant recipient and grantees to monitor each project, program, subrecipient, function, or activity supported by federal funds to ensure compliance with all federal regulations.

Prohibited uses of SEP funding include (10 C.F.R. 420.18):

- purchase of land, buildings, or structures, or any interest therein;
- subsidize utility rate demonstrations or state tax credits for energy conservation or renewable energy measures; and
- conduct research, development, or demonstration of energy efficiency or renewable energy techniques and technologies not commercially available, or purchase equipment for the conduction thereof. However, demonstrations of commercially available energy efficiency or renewable energy techniques and technologies are permitted.

**B. 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). EMNRD reserves the right to structure reporting requirements on a project-specific basis.

**C. Statement of Compliance (Type 2 Only)**

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.

**D. 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.

**VIII. FUNDING APPLICATION EVALUATION CRITERIA**

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

No.	Evaluation Factor
1	<p>Project Approach</p> <p>This criterion considers whether the project focuses on a new technology or a new or innovative application of an existing technology that will provide useful information to the state, utilities, electric cooperatives and the public related to</p>

	grid modernization. This includes the ability to secure a statement of cooperation with the utility managing the service area in which the project will take place.
2	<p>Alignment with Grid Modernization and Energy Goals</p> <p>This criterion considers whether the project has the potential to improve electrical system efficiency, reliability, resilience and security; lowers operations and maintenance costs; and meets energy demands through a flexible, diversified and distributed energy portfolio consistent with New Mexico's energy goals (<i>i.e.</i>, including the project's potential success, lessons to be learned, scalability, or broader applicability.)</p>
3	<p>Education and Public Awareness</p> <p>This criterion considers whether the project has the potential to foster the public's, students' or a specific government or industry sector's overall understanding and appreciation of the benefits of modernizing the electric grid.</p>
4	<p>Economic Development</p> <p>This criterion considers whether the project is likely to stimulate in-state economic development, including the creation of jobs and apprenticeships. This criterion will also consider the potential for further development of a commercial market for grid modernization technology services.</p>
5	<p>Capabilities</p> <p>This criterion considers several elements, all of which must be meet:</p> <ul style="list-style-type: none"> <li>• experience completing projects of similar size and scope, including staff, contractor or partner expertise to perform the proposed work;</li> <li>• level of understanding and experience with the specific technology or research in question;</li> <li>• alignment of work outlined with proposed budget (<i>i.e.</i> the ability to complete the project financially);</li> <li>• alignment of proposed deliverables with the proposed project schedule;</li> <li>• the proposed methods for evaluating project progress and success; and</li> <li>• for Type 2 projects, this criterion also considers preparedness and readiness for construction projects as demonstrated by engineering studies and other relevant documentation.</li> </ul>

**IX. EVALUATION PROCESS**

The evaluation process will follow the steps listed below:

- A. Two Evaluation Team members will document contents of competitive sealed applications after the submittal deadline.
- B. The Evaluation Team will review applications for compliance with the mandatory requirements stated within this RFA. Applications deemed non-responsive will be eliminated from further consideration.
- C. The Contact Person may contact the Applicants(s) for clarification of the



proposal.

- D. The Evaluation Team will evaluate responsive applications based on completeness and the criteria in Section VIII, Funding Application Evaluation Criteria.

**X. AWARD**

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

**XI. CONTACT PERSON**

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

Jacqueline Waite  
EMNRD  
1220 South St. Francis Drive  
Santa Fe, New Mexico 87505  
Jacqueline.Waite@state.nm.us

Applicants shall submit one application to the contact email listed above.

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

<http://www.emnrd.state.nm.us/ecmd/>

**XII. NOTICES**

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

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

EMNRD may cancel this RFA 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.

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

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

**THE PARTIES MUTUALLY AGREE:**

1. Scope of Work: Contractor shall:

**(Insert description of work. Remove this instruction.)**

Contractor 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, remove this Option 1 heading and remove the optional Paragraph As below.**

A. EMNRD shall pay Contractor for services satisfactorily performed pursuant to the Scope of Work and as specified below. This amount shall not exceed \_\_\_\_\_ (\$ \_\_\_\_\_), including New Mexico 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)**

This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein or the amounts state per task. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. Contractor is responsible for notifying EMNRD when the services provided under this Agreement reach the total compensation amount. In no event shall the Contractor 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, remove Paragraph B of this Compensation Section as well and re-letter successive paragraphs**

accordingly. Remove the paragraph above it. Remove this Option 2 heading.

A. Upon satisfactory completion of services, EMNRD shall pay Contractor for services satisfactorily performed pursuant to the Scope of Work in an amount not to exceed \_\_\_\_\_ (\$ \_\_\_\_\_), which amount includes New Mexico gross receipts taxes, and any travel, if necessary, pursuant to Paragraphs B and C of this Compensation Section. In no event shall the Contractor 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, remove this Option 3 heading and the paragraphs above it.

A. EMNRD shall pay Contractor 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 Contractor 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 Contractor 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 Contractor of any unperformed obligations under the Scope of Work.

B. EMNRD shall pay such travel expenses as may be incurred in, and that are necessary for, this Agreement's performance at the rates established in the New Mexico Per Diem and Mileage Act, NMSA 1978, §§ 10-8-1, *et seq.* as implemented by the current Department of Finance and Administration (DFA) rule and the current EMNRD travel policy.

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

D. Contractor must submit detailed invoices accounting for all services performed, and expenses incurred. Invoices evidencing the propriety of each claim for payment must be supported by approved purchase order. (When compensation is based on hourly rates, Contractor shall also provide documentation of hours expended on the services provided.) If EMNRD finds that the invoice services, or expenses are not acceptable, within 30 days of receipt of written notice from Contractor that payment is requested for services received, EMNRD shall provide Contractor a letter of exception explaining the defect or objection to the invoice, services, or expenses, and outlining steps Contractor may take to provide remedial action. Upon certification by EMNRD that the invoice, services, or expenses have been received and accepted, EMNRD shall tender payment to Contractor within 30 days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, EMNRD shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

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

A. Within XX days following this Agreement's effective date, EMNRD shall transfer to Contractor \_\_\_\_\_ (\$ \_\_\_\_\_), 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 Contractor 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. Contractor 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 Contractor and of EMNRD and when 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 (option - and insert name of federal funding agency) 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 Contractor. 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 Contractor.

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

6. Status of Contractor: Contractor and its agents and employees are independent contractors performing professional services for EMNRD and are not employees of the State of New Mexico. Contractor 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. Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that written authority.

7. Assignment: Contractor 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: Contractor 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 Contractor in relation to a subcontract if Contractor does not obtain prior written approval.

Option: Include A, B, and C if you are using federal funds for the work of this contract. Remove this instruction.

A. Contractor shall comply with 2 C.F.R. Sections 200.318 through 200.326 for procurement of subcontractors conducted pursuant to this Agreement.

B. Contractor is required to provide EMNRD with evidence of competitive procurement for any subcontract, including records of advertisement of bid, proposals received, and methods to select each subcontractor.

C. Any subcontract agreement shall include all provisions necessary to allow Contractor 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.

D. Travel expense reimbursement requested for subcontractors, if applicable, shall be reimbursed in accordance with rates established in the New Mexico 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 Contractor in the performance of this Agreement shall be kept confidential and shall not be made available by Contractor to any individual or organization without EMNRD's prior written approval.

11. Product of Services; Copyright: All materials developed or acquired by Contractor 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 Contractor 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 Contractor.

12. Conflict of Interest; Governmental Conduct Act: Contractor 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. Contractor 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: Contractor 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 Contractor 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 Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor 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, Contractor 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. Contractor 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 Contractor has an office within the state; otherwise, Contractor 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). Contractor 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 make a determination 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 Contractor receives \$750,000 or more in federal funding from all sources in the aggregate in a fiscal year, Contractor'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. Contractors 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, Contractors shall have one of the above-mentioned Forms or Agreed Upon Procedures on file with the Office of the State Auditor. Contractor 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 New Mexico Tort Claims Act, NMSA 1978, §§ 41-4-1, *et seq.*, as amended.

20. Procurement, Utilization, and Disposition of Property: Contractor 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 Contractor has any property in its possession belonging to EMNRD, Contractor 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 Contractor 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 Contractor:

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

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

25. Acknowledgment: Contractor 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: Contractor agrees that if a court of competent jurisdiction finds Contractor has breached this Agreement, or amendments hereto, or to have committed any tortious act relating to this Agreement's scope, EMNRD may recover from Contractor 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, Contractor 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. Contractor 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) - Contractor 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 - Contractor, Contractor'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 - Contractor and Contractor'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. In the event this Agreement is funded with federal monies, Contractor shall comply with 2 C.F.R. Sections 200.318 through 200.326 for procurement conducted pursuant to this Agreement.

F. In the event this Agreement is funded with federal monies and Contractor wishes to enter into an agreement with a small business firm or non-profit organization regarding the substitution of parties, assignment, or performance of experimental, developmental, or research work under this Agreement, Contractor shall comply with the requirements of 37 C.F.R. Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements" and any implementing regulations issued by the (insert name of federal funder).

G. Contractor 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, Contractor 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, Contractor 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: Contractor 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. Contractor 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. Contractor 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 New Mexico Worker's Compensation Act, NMSA 1978, §§ 52-1-1, *et seq.*, if applicable. If the Contractor 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: \_\_\_\_\_  
Cabinet Secretary or Designee

Date: \_\_\_\_\_

**CONTRACTOR NAME**

By: \_\_\_\_\_  
Authorized Representative Signature

Date: \_\_\_\_\_

\_\_\_\_\_  
Printed Name and Title