

**REQUEST FOR PROPOSALS
FOR CONDUCTING A COMPREHENSIVE STUDY AND DEVELOPING A
RESTORATION AND REMEDIATION PLAN FOR THE SAN JUAN MINE**

**ISSUED BY THE STATE OF NEW MEXICO,
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT,
MINING AND MINERALS DIVISION**

I. PURPOSE OF THIS REQUEST FOR PROPOSALS

The State of New Mexico, Energy, Minerals, and Natural Resources Department (EMNRD), Mining and Minerals Division (MMD) seeks an individual or firm (Offeror), to investigate and determine the extent of any environmental contamination of the lands and waters on the San Juan Mine in Farmington, New Mexico (Mine) and prepare a comprehensive study (Study) applying the jurisdictional basis of the New Mexico Surface Mining Act (Act), NMSA 1978, Section 69-25A-1, and other applicable laws. All work must be completed in a timely manner to allow MMD to meet legislative deadlines.

Based on the results of the study, the firm shall develop a comprehensive restoration, reclamation, and remediation plan (Plan) based on MMD's jurisdiction under the Act for use as a planning document.

MMD has scheduled a non-mandatory pre-proposal conference, as well as a non-mandatory site visit, at the dates and times specified in Section IX, Schedule of Events.

Any proposal which results from this RFP is valid for one year from proposal due date as indicated in Section VIII, Contact Person and Due Dates, below.

II. ELIGIBLE OFFERORS

Offerors must provide services of qualified, properly licensed consultants with expertise in all phases listed in the scope of work and have at least 10 years of experience working in environmental impact assessments, environmental risk assessments and at least five years of experience working in environmental remediation. Offeror must demonstrate competency in understanding and applying the Act and all other applicable laws.

III. SCOPE OF WORK

The successful Offeror shall coordinate efforts with environmental engineers, hydrologists, geochemists and other professionals or consultants needed to perform a rigorous Study of the Mine to develop the Plan:

Task 1. Provide a Quality Assurance Quality Control document that details what data will be used in the Study and the Soundness, Applicability and Utility, Clarity and Completeness, Uncertainty and Variability, and Evaluation and Review of that data

(EPA/240/R-02/009, EPA 100/B-03/001 June 2003). Using data quality objectives (DQO's) provide a written summary identifying the levels of data quality being used and identify the potential of those data to impact the conclusions drawn from the Study;

Task 2. Investigate and determine the extent of any environmental contamination of the lands and waters on the Mine, including the presence of toxic metal contaminants. Including but not limited to:

- a. Conduct visual inspection of the facilities and adjoining properties and provide written summary of the inspection with photographs;
- b. Interview current and past owners, operators, occupants and, if needed, neighboring property owners and provide a written summary of those interviews;
- c. Review and provide MMD with a written summary of commonly known or reasonably ascertainable information about the property;
- d. Assess the degree of obviousness of the presence or likely presence of contamination at the property and the ability to detect the contamination and provide a written summary;

Task 3. Address the probability of adverse effects to human health and community resilience, and ecosystem health, particularly resulting from ground water contamination due to the migration of toxic metal contaminants. Including but not limited to: reviewing historical use and regulatory records and sources of information to develop a written summary of the potential threats to human or environmental health and provide the written summary to MMD;

Task 4. Create a comprehensive restoration, reclamation, and remediation Plan and provide a copy of the plan to MMD in a Word or Word compatible version. The Plan shall summarize the results of any inspections and data analysis in an executive summary, including but not limited to how to:

- a. remediate and prevent environmental contamination and impacts to ground water with long-term, measurable cleanup and performance standards;
- b. and prevent the migration of toxic metal contaminants.
- c. Provide various scenarios regarding remediation including a no action, intermediate and extensive if so warranted.

Task 5. Conduct outreach within impacted communities to inform the Study.

Task 6. Make recommendations for any further technical study and review.

Task 7. In a timely manner, provide MMD with a copy of the draft Study and potential

Plan in Word or Word compatible version and present specific measurable steps, informed by input from impacted communities, to oversee and enforce full remediation and restoration plans, including, to the extent possible, the cleanup of the mine and prioritizing for employment workers who were previously employed at the generating facility and mine and workers residing in New Mexico.

Task 8. In a timely manner, incorporate and address written comments from MMD on the draft Study and potential Plan and provide final plan to MMD in Word or Word compatible version.

Task 9. Prepare a presentation in coordination with MMD and co-present the presentation with MMD to the legislative interim committee dealing with water and natural resources to detail the findings of the Study.

PROPOSAL FORMAT AND CONTENTS

Proposals must contain sufficient information to provide MMD with a thorough description of Offeror's qualifications to accomplish the activities described in the Scope of Work. All proposals shall be on white 8.5 x 11" paper, in single-spaced, 12-point type, with a page limit of 30 pages.

The proposal **MUST** contain, at a minimum, all listed items in the sequence indicated and be organized in the following format.

- a. Letter of transmittal that:
 1. identifies the name, title, telephone and fax numbers, and e-mail address of the person authorized to negotiate the contract on behalf of the Offeror;
 2. identifies the names, titles, telephone and fax numbers, and e-mail addresses of persons to be contacted for clarification;
 3. explicitly indicates acceptance of the terms and conditions of this RFP and its evaluation factors;
 4. acknowledges receipt of any and all amendments to this RFP; and
 5. is signed by the person authorized to contractually obligate the Offeror.
- b. Descriptions of similar projects Offeror(s) has performed, including experience and expertise in project development, initiation, management, and completion of work.
- c. Description of capabilities, services, hiring, training, and any other resources useful in accomplishing the required work.
- d. Description of systems and procedures for project planning and

administration, cost control, and marking milestones.

- e. Names and qualifications of key personnel to be assigned to the work, including a brief bio, resumes, permits, licenses, and certificates that qualify Offeror for this work, as well as any subcontractor or firm the Offeror may use to complete assigned tasks.
- f. References - Offerors must provide a minimum of two business references from similar contract services performed for private, state, or large local government clients within the last three years. Offerors are required to submit the Reference Questionnaire (Attachment 1) to the business references they list. The business references must submit the Reference Questionnaire directly to the EMNRD Contact Person listed in Section VIII below. Offerors are responsible for ensuring that the completed forms are received by or before the proposal submission deadline for inclusion in the evaluation process. Business references that are not received, or are not complete, may adversely affect the Offeror's score in the evaluation process. The Evaluation Team may contact any or all business references for validation of information submitted.
- g. Campaign Contribution Form - Offeror shall complete, sign, and submit with Offeror's proposal response the Campaign Contribution Disclosure Form (Attachment 2) and disclose whether Offeror, a family member, or a representative of the Offeror has made a campaign contribution to an applicable public official during the two years prior to the RFP. Offeror shall complete the non-disclosure statement or make separate disclosures for all campaign contributions given by (a) the Offeror, (b) a family member, or (c) a representative of the Offeror.
- h. Completed, signed Statement of Assurances Form (Attachment 3).
- i. New Mexico/Native American Resident Preferences – To ensure adequate consideration and application of NMSA 1978, Section 13-1-21, Offerors must submit a copy of their valid New Mexico/Native American Resident Preference Certificate or its valid New Mexico/Native American Resident Veteran Preference with their proposals. Certificates for preferences must be obtained through the New Mexico Department of Taxation and Revenue <http://www.tax.newmexico.gov/Businesses/in-state-veteran-preference-certification.aspx>.

In accordance with NMSA 1978, Section 13-1-21(H), EMNRD shall not award any combination of New Mexico/Native American Resident Preferences.

Any proposal that does not adhere to these requirements may be deemed non-responsive and rejected on that basis.

V. CRITERIA AND EVALUATION POINT SUMMARY

The Evaluation Team shall use the following criteria in the evaluation of proposals and in the selection of the successful Offeror.

Criteria	Points Available
<p>Statement of Experience:</p> <ul style="list-style-type: none"> • at least 10 years' experience working in environmental remediation; and • at least five years' experience working in environmental remediation. 	20
<p>Work Samples:</p> <ul style="list-style-type: none"> • Three examples of previous work of a similar nature. 	30
<p>Organizational Capacity and Qualified Support:</p> <ul style="list-style-type: none"> • ability of Offeror to devote necessary resources to accomplish the scope of work within the contract period; and • description of project management framework to be used in accomplishing the scope of work. 	15
<p>Past record of performance on contracts with government agencies or private industry with respect to:</p> <ul style="list-style-type: none"> • control of costs; • quality of work; and • ability to meet schedules. 	10
<p>Statement of Qualifications:</p> <ul style="list-style-type: none"> • list of all team members and their roles in the project, along with education, professions affiliations, certifications, and professional organization memberships. 	10
<p>References:</p> <p>Points will be awarded based upon an evaluation of the responses to a series of questions that will be asked of the references concerning the quality of the Offeror's services, the timeliness of services, responsiveness to problems and complaints, and the level of satisfaction with the Offeror's overall performance (See Attachment 1, Reference Questionnaire).</p>	10

Criteria	Points Available
<p>Organization and Quality of RFP Response</p> <p>This criterion considers the quality of the Offeror's response to this RFP. Evaluation criteria includes:</p> <ul style="list-style-type: none"> • proposal organization and ease of understanding; • spelling; • completeness; and • adherence to page limit. 	50
New Mexico/Native American Resident	5*
New Mexico/Native American Resident Veteran Preference	5*
Maximum possible points	150*
*Eligible vendors may receive points for being a Resident Vendor or a Resident Veteran, but not both.	

VI. EVALUATION PROCESS

The evaluation process will follow the steps listed below:

- a. Evaluation Team members will document contents of competitive sealed proposals after the submittal deadline.
- b. The Evaluation Team will review proposals for compliance with the mandatory requirements stated within this RFP. Proposals deemed non-responsive will be eliminated from further consideration.
- c. The Contact Person may contact Offerors for clarification of the proposal.
- d. The Evaluation Team will evaluate responsive proposals based on the criteria in Section V and will select responsive Offeror(s) with the highest total scores as finalist Offeror(s). The Evaluation Team will consult with listed references and select the finalist Offeror(s) whose proposal and references is/are most advantageous to EMNRD, for award. Please note, however, that a deficiency in any one factor may be grounds for rejection regardless of overall score.

VII. CONTRACT AWARD AND DURATION

EMNRD may award (contract) under the terms of the attached draft Professional Services Agreement (PSA) (Attachment 4) and in accordance with this RFP. Any PSA awarded because of this RFP and selected proposal shall not be binding until approved by the General Services Department, State Purchasing Division, Contracts Review Bureau. The contract period shall extend from the date of contract approval by the Contracts Review Bureau, and shall last no longer than four years, including amendments.

VIII. CONTACT PERSON AND DUE DATES

Any inquiries or requests regarding this procurement must be submitted in writing to the EMNRD Contact Person listed below. Offerors may contact ONLY the Contact Person regarding this RFP. Other state employees or Evaluation Committee members do not have authority to respond on EMNRD's behalf.

The EMNRD Contact Person for this procurement is:

Erik Munroe
Coal Mine Reclamation Program
Mining and Minerals Division
Energy, Minerals and Natural Resources Department
1220 South St. Francis Drive
Santa Fe, New Mexico 87505
Email: erik.munroe@emnrd.nm.gov
Telephone: (505) 670-9997

IX. SEQUENCE OF EVENTS

The Contact Person will make every effort to adhere to the following schedule. The tentative schedule for the procurement is as follows:

Action	Responsible Party	Tentative Due Dates
Issue RFP	MMD	October 10, 2023
Non-Mandatory Pre-Proposal Conference	MMD	November 1, 2023 at 9:30 a.m. MDT Teams meeting: Click here to join the meeting
Non-Mandatory Site Visit	EMNRD	Tour San Juan Mine: November 16, 2023 at 9 a.m. MST
Deadline to submit Written Questions	Potential Offerors	December 1, 2023 at 5 p.m. MST

Action	Responsible Party	Tentative Due Dates
Last Response to Written Questions/Amendments	Contact Person	December 14, 2023 at 5 p.m. MST https://www.emnrd.nm.gov/mmd/public-notices
<i>Submission of Proposal</i>	<i>Potential Offerors</i>	January 12, 2024 by 3 p.m. MST, to Contact Person
Proposal Evaluation	Evaluation Committee	January 25, 2024
Selection of Finalists	Evaluation Committee	January 26, 2024
Finalize Contractual Agreements	Agency/Finalist Offeror	February 16, 2024
Contract Award	Agency/Finalist Offeror	February 23, 2024
Protest Deadline		15 days from the date of notice of selection/non-selection as specified above.

Table 1: Tentative Schedule of Events

Deadlines for Written Questions

Potential Offerors may submit written questions to the Contact Person as to the intent or clarity of this RFP until the date and time specified above in the Schedule of Events. All written questions must be addressed to the Contact Person as indicated above. Questions shall be clearly labeled and shall cite the Section(s) in the RFP or other document which form the basis of the question.

The Division will post written responses to such questions on the Division website: <https://www.emnrd.nm.gov/mmd/public-notices/>, at the date and time scheduled above in the Schedule of Events.

Proposal Due Date

Potential Offerors shall submit their proposals electronically in PDF format to Erik Munroe at the above email address no later than the date specified above in the Schedule of Events. Proposals must be submitted in the format specified above in Section IV, Proposal Contents and Format. Proposals must be received by the stated date and time to be considered. EMNRD shall not accept proposals received after this date and shall make absolutely no exceptions for proposals not received by the appointed time.

Protest Period

Pursuant to NMSA 1978, Section 13-1-172 and applicable procurement rules, Offerors who are not selected have the right to timely protest the procurement. Protests must be written and must include: the name and address of the protestor and the name of the procurement being protested; a statement of the grounds for protest including

appropriate supporting exhibits; and the ruling requested from EMNRD. The protest period begins on the day after notice of selection/non-selection and ends at 5 p.m. 15 days later. Protests must be delivered to: Albert Chang, Director, EMNRD, Mining and Minerals Division, 1220 S. St. Francis Drive, Santa Fe, NM 87505.

X. NOTICES

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

Offerors must factor in Gross Receipts Tax (GRT) costs as part of their responses. Any response that does not clearly indicate GRT is included in the budget may be deemed non-responsive and rejected.

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

EMNRD may conduct discussions with Offerors who submit proposals but may also accept proposals without such discussions.

The Procurement Code, NMSA 1978, Sections 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.

Attachment 1

REQUEST FOR PROPOSALS FOR CONDUCTING A COMPREHENSIVE STUDY AND DEVELOPING A RESTORATION AND REMEDATION PLAN FOR THE SAN JUAN GENERATING FACILITY MINE REFERENCE QUESTIONNAIRE			
Name of Individual/Entity Requesting Reference:			
<p>EMNRD, as a part of the RFP process, requires Offerors to submit a minimum of two business references as required within this document. The purpose of these references is to document the experience relevant to the scope of work and provide assistance in the evaluation process.</p> <p>The Offeror is required to send this reference form to each business reference listed. The business reference, in turn, is requested to submit the Reference Form directly to the Contact Person listed below by the RFP submission deadline for inclusion in the evaluation process. The form and information provided will become a part of the submitted proposal.</p> <p>This form is being submitted to you for completion as a business reference for the individual or entity above. Please return this completed form directly to the Contact Person: Erik Munroe Coal Mine Reclamation Program, Mining and Minerals Division, Energy, Minerals and Natural Resources Department, 1220 South St. Francis Drive, Santa Fe, New Mexico 87505; telephone: (505) 670-9997; e-mail: erik.munroe@emnrd.nm.gov; no later than 5 p.m. MST, January 12, 2024. Do not return this form to the individual or entity requesting the reference.</p> <p>For questions or concerns regarding this form, please contact the Contact Person listed above.</p>			
Name of Individual/Entity Providing Reference:			
Contact Name and Title/Position:			
Contact Telephone Number:			
Contact E-Mail Address:			
QUESTIONS			
1. In what capacity have you worked with this Offeror in the past? (Please explain)			
2. How would you rate this Offeror's knowledge and expertise? (Check one)			
3-Excellent _____	2-Satisfactory _____	1-Unsatisfactory _____	0-Unacceptable _____
Comments:			

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REFERENCE QUESTIONNAIRE

3. How would you rate the Offeror's flexibility relative to changes in the project scope and timelines? (Check one)

3-Excellent _____	2-Satisfactory _____	1-Unsatisfactory _____	0-Unacceptable _____
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Comments:

4. What is your level of satisfaction with hard-copy materials produced by the Offeror? (Check one)

3-Excellent _____	2-Satisfactory _____	1-Unsatisfactory _____	0-Unacceptable _____
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Comments:

5. How would you rate the dynamics/interaction between the Offeror and your staff and/or volunteers? (Check one)

3-Excellent _____	2-Satisfactory _____	1-Unsatisfactory _____	0-Unacceptable _____
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Comments:

6. Who were the Offeror's principal representatives involved in your project and how would you rate them individually? Would you comment on the skills, knowledge, behaviors or other factors on which you based the rating? (3 – Excellent; 2 – Satisfactory; 1 – Unsatisfactory; 0 – Unacceptable)

Principal Representative Name:		Rating: _____
Principal Representative Name:		Rating: _____
Principal Representative Name:		Rating: _____
Principal Representative Name:		Rating: _____

Comments:

7. How satisfied are you with the products developed by the Offeror? (Check one)

3-Excellent _____	2-Satisfactory _____	1-Unsatisfactory _____	0-Unacceptable _____
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Comments:

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REFERENCE QUESTIONNAIRE

8. With which aspect(s) of the Offeror's services are you most satisfied? (Please explain)

9. With which aspect(s) of the Offeror's services are you least satisfied? (Please explain)

10. Would you recommend this Offeror's services to your organization again? (Please explain)

Attachment 2
CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to the Procurement Code, NMSA 1978, Sections 13-1-28, *et seq.*, and NMSA 1978, Section 13-1-191.1 (2006), as amended by Laws of 2007, Chapter 234, any prospective contractor seeking to enter a contract with any state agency or local public body must file this form with that state agency or local public body.

This form must be filed even if the contract qualifies as a small purchase or a sole source contract.

The prospective contractor must disclose whether they, a family member, or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member, or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars (\$250) over the two year period.

Furthermore, the state agency or local public body may cancel a solicitation or proposed award for a proposed contract pursuant to NMSA 1978, Section 13-1-181 or a contract that is executed may be ratified or terminated pursuant to NMSA 1978, Section 13-1-182 of the Procurement Code if:

- 1) a prospective contractor, a family member of the prospective contractor, or a representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process; or,
- 2) a prospective contractor fails to submit a fully completed disclosure statement pursuant to the law.

The state agency or local public body that procures the services or items of tangible personal property shall indicate on the form the name or names of every applicable public official, if any, for which disclosure is required by a prospective contractor.

THIS FORM MUST BE INCLUDED IN THE REQUEST FOR PROPOSALS AND MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

The following definitions apply:

“Applicable public official” means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

“Campaign Contribution” means a gift, subscription, loan, advance, or deposit of money or

other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect, or expend contributions on that official's behalf for the purpose of electing the official to statewide or local office. "Campaign Contribution" includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

"Family member" means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law, or son-in-law of (a) a prospective contractor, if the prospective contractor is a natural person; or (b) an owner of a prospective contractor.

"Pendency of the procurement process" means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals.

"Prospective contractor" means a person or business that is subject to the competitive sealed proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person or business qualifies for a sole source or a small purchase contract.

"Representative of a prospective contractor" means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership, or a trustee of a trust of the prospective contractor.

Note: A prospective contractor shall make **separate** disclosures of all campaign contributions given by (1) the prospective contractor, or (2) a family member, or (3) representative of the prospective contractor, or shall complete the non-disclosure statement, as applicable.

DISCLOSURE OF CONTRIBUTIONS:

Contribution Made By:			
Relation to Prospective Contractor:			
Name of Applicable Public Official:		Governor Michelle Lujan Grisham	
Contribution(s) Date(s)	Contribution Amount(s):	Nature of Contribution(s):	Purpose of Contribution(s):
	\$		
	\$		
	\$		
	\$		
	\$		

(Attach extra pages if necessary)

Signature: _____

Date: _____

Title/Position: _____

--OR--

NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS (\$250) WERE MADE to an applicable public official by me, a family member or representative.

Signature: _____

Date: _____

Title/Position: _____

**Attachment 3
STATEMENT OF ASSURANCES FORM**

<p>Each Offeror MUST complete this form and return it with Offeror's proposal or EMNRD will deem the proposal as non-responsive. By signing this form below, Offeror acknowledges and agrees to the following:</p>
<p>This RFP does not commit the State of New Mexico (State) to pay any costs incurred in the in the preparation or submission of this proposal. Any cost incurred by the Offeror in developing a proposal response shall be borne solely by the Offeror. Offeror understands that that Offeror's proposal shall become part of the official file on this matter without obligation to the State. Issuance of this RFP does not constitute an award commitment on the part of the State.</p>
<p>Offeror shall examine all contract documents, noting particularly all stipulations that in any way affect contract work. Failure of an Offeror to acquaint itself fully with the amount and nature of the work required to fulfill all terms of the contract documents shall not be considered a basis for extra compensation after a contract has been awarded.</p>
<p>Offeror represents and warrants to the State that Offeror has the staff, facilities, and competence to furnish the required services. The State may investigate Offeror's adequacy of the staff, facilities, and competence. For this purpose, representatives of the State may make an inspection of Offeror's facilities, equipment, etc., and interview staff.</p>
<p>To be considered, Offeror's proposal must be signed by an officer having the authority to bind Offeror.</p>
<p>Offeror agrees to comply with all relevant federal and state laws and regulations or rules.</p>
<p>New Mexico Employees Health Coverage:</p> <p>If Offeror has, or grows to, six or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six-month period during the term of any Agreement which may result from this RFP, Offeror agrees, by submitting a proposal, to have in place, and agrees to maintain for the Agreement's term, health insurance for those employees and offer that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Offeror and the state exceed \$250,000.</p> <p>Offeror agrees to maintain a record of the number of employees who have:</p> <ol style="list-style-type: none"> 1) accepted health insurance; 2) declined health insurance due to other health insurance coverage already in place; or 3) declined health insurance for other reasons. <p style="text-align: center;">These records are subject to review and audit by a representative of the State.</p> <p>Offeror agrees to advise all employees of the availability of state publicly-financed health care coverage programs.</p>
<p>Application of Veterans and Residence Preference:</p> <p>Offeror acknowledges Offeror must provide a copy of either the New Mexico/Native American Resident Preference Certificate or valid New Mexico/Native American Resident Veteran Preference with the proposal to be eligible for preference points.</p>
<p>_____</p> <p>Offeror Signature Date: _____</p> <p>Offeror's Printed Name and Title: _____</p>

Attachment 4
STATE OF NEW MEXICO,
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
PROFESSIONAL SERVICES AGREEMENT (AGREEMENT)

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) (Contractor), and is effective as of the date set forth below upon which it is executed by the General Services Department, State Purchasing Division (GSD/SPD), Contracts Review Bureau.

IT IS AGREED BETWEEN THE PARTIES:

1. Scope of Work.

Contractor shall perform the following work:

(Insert Scope of Work here.)

2. Compensation.

Option 1: Work Product.

A. EMNRD shall pay Contractor for services satisfactorily performed pursuant to the Scope of Work and as specified below. This amount shall not exceed _____ (\$ _____), which amount includes travel and New Mexico gross receipts taxes pursuant to Paragraphs C and D of this Compensation Section (if travel is negotiated. Travel payment language also does not apply when paying on a deliverables basis unless the travel is set out as a separate item. If travel is not paid, remove reference to travel.). 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. Delete this instruction.)

In no event shall Contractor be paid for services provided or travel expenses exceeding the total compensation amount without this Agreement being amended in writing prior to those services or expenses exceeding the total compensation amount being provided.

(—OR—)

Option 2: Lump Sum Amount Upon Completion of All Work.

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.

Option 3: Time and Materials. Travel may or may not be paid, depending on negotiation between EMNRD and Contractor.

A. EMNRD shall pay to Contractor in full payment for services satisfactorily performed pursuant to the Scope of Work rendered at the rate of \$_____ per hour, such compensation not to exceed \$_____, which amount includes travel and New Mexico gross receipts taxes, pursuant to Paragraphs C and D of this Compensation Section. 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. The parties do not intend for 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 will Contractor be paid for services provided or travel expenses exceeding the total compensation amount without this Agreement being amended in writing prior to those services exceeding the total compensation amount being provided.

B. **(For single-year contract, may need to tweak the first sentence.)** Payment in FYXX, FYXX, and FYXX is subject to availability of funds pursuant to Section 5, Appropriations, set forth below and to any negotiations between the parties from year to year pursuant to Section 1, Scope of Work, and to approval by GSD/SPD. 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 WILL NOT BE PAID.

C. **(To be negotiated at EMNRD's discretion. Travel payment language does not apply when choosing to pay Contractor on a lump sum basis. Travel payment language also does not apply when paying on a deliverables basis unless the travel is set out as a separate item.)** EMNRD shall pay such travel expenses as may be incurred, and that are necessary for, the performance of this Agreement at the rates established in the New Mexico Per Diem and Mileage Act, NMSA 1978, Sections 10-8-1 *et seq.*, as implemented by the current Department of Finance and Administration rule and the current EMNRD travel policy.

D. Contractor is responsible for paying New Mexico Gross Receipts taxes levied on amounts payable under this Agreement.

E. 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.

3. Term.

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE GSD/SPD Contracts Review Bureau. This Agreement shall terminate on **(DATE)** unless terminated pursuant to Section 4, Termination, or Section 5, Appropriations. In accordance with NMSA 1978, Section 13-1-150, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in NMSA 1978, Section 13-1-150.

4. Termination.

A. EMNRD.

1) EMNRD may terminate this Agreement for convenience or cause by giving written notice to Contractor at least 30 days prior to the intended date of termination, except that EMNRD may terminate this Agreement immediately by giving written notice to Contractor if (i) Contractor becomes unable to perform the services contracted for as determined in the sole discretion of EMNRD; (ii) during the term of this Agreement, Contractor is suspended or debarred by the State Purchasing Agent; (iii) this Agreement is terminated pursuant to Section 5, Appropriation, of this Agreement; or (iv) this Agreement is terminated pursuant to Section 12, Conflict of Interest; Governmental Conduct Act. **(May need to revise Section number to track actual contract contents.)**

2) Except as otherwise expressly allowed or provided by this Agreement, EMNRD's sole liability upon termination shall be to pay for acceptable work performed prior to Contractor's receipt or issuance of a notice of termination; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. This provision is not exclusive and does not waive EMNRD's other legal rights and remedies caused by Contractor's default/breach of this Agreement.

B. Contractor.

1) Contractor may terminate this Agreement only based upon EMNRD's uncured, material breach of this Agreement.

2) Contractor shall give EMNRD written notice of termination at least 30 days

prior to the intended date of termination, which notice shall (i) identify EMNRD's alleged material breaches of this Agreement upon which the termination is based and (ii) state what EMNRD must do to cure such material breaches. Contractor's notice of termination shall only be effective if (i) EMNRD does not cure all material breaches within the 30 day notice period or (ii) in the case of material breaches that cannot be cured within 30 days, EMNRD does not, within the 30 day notice period, notify Contractor of EMNRD's intent to cure and begin with due diligence to cure the material breach.

C. Termination Management. Immediately upon receipt by either EMNRD or Contractor of notice of termination of this Agreement, Contractor shall:

- 1) not incur any further obligations for salaries, services, or any other expenditure of funds under this Agreement without EMNRD's written approval;
- 2) comply with all directives EMNRD issues in the notice of termination as to the performance of work under this Agreement; and
- 3) take such action as EMNRD directs for the protection, preservation, retention, or transfer of all property titled to EMNRD and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by Contractor with contract funds shall become property of EMNRD upon termination and shall be submitted to EMNRD as soon as practicable. **(If federal funding is involved, include the following clause. If not, delete it.)** Otherwise, all property procured under this Agreement shall be used and disposed of in accordance with (insert name of federal funding entity) regulations.
- 4) Contractor shall submit an invoice for work performed prior to Contractor's receipt or issuance of a notice of termination no later than 30 days after receiving or sending a notice of termination.

5. Appropriations.

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico and (insert name of federal funding entity) for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature and (insert name of federal funding entity), this Agreement shall terminate immediately upon written notice being given by EMNRD to Contractor. EMNRD's decision as to whether sufficient appropriations are available shall be accepted by Contractor and shall be final. If EMNRD proposes an amendment to the Agreement to unilaterally reduce funding, Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within 30 days of receipt of the proposed amendment.

6. Status of Contractor.

Contractor and its subcontractors, 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 Contractor for tax purposes, including without limitation, self-employment and business income tax. Contractor has no authority to bind and shall not bind the State of New Mexico unless expressly authorized in writing by the State of New Mexico, and then only within the strict limits of that 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 without the prior written approval of EMNRD. No such subcontract shall relieve Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment by EMNRD.

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. 200.318 through 200.326 for procurement of services or property 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 Per Diem and Mileage Act,

NMSA 1978, Section 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 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 by Contractor and shall not be made available to any individual or organization by Contractor without EMNRD's prior written approval.

11. Product of Service -- Copyright.

All materials developed or acquired by Contractor under this Agreement shall become the property of the State of New Mexico and shall be delivered to EMNRD no later than the termination date of this Agreement. Nothing developed or produced, in whole or in part, by Contractor under this Agreement shall be the subject of an application for copyright or other claim of ownership by or on behalf of Contractor.

12. Conflict of Interest; Governmental Conduct Act.

A. Contractor represents and warrants that Contractor presently has no interest and, during this Agreement's term, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.

B. Contractor further represents and warrants that Contractor has complied with, and, during this Agreement's term, shall continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, NMSA 1978, Sections 10-16-1 through 10-16-18. Without in anyway limiting the generality of the foregoing, Contractor specifically represents and warrants that:

1) in accordance with NMSA 1978, Section 10-16-4.3, Contractor does not employ, has not employed, and will not employ during the term of this Agreement any EMNRD employee while such employee was or is employed by EMNRD and participating directly or indirectly in EMNRD's contracting process;

2) this Agreement complies with NMSA 1978, Section 10-16-9(A) because (i) Contractor is not a public officer or employee of the State of New Mexico (State); (ii) Contractor is not a member of the family of a public officer or employee of the State; (iii) Contractor is not a business in which a public officer or employee or the family of a

public officer or employee has a substantial interest; or (iv) if Contractor is a public officer or employee of the State, a member of the family of a public officer or employee of the State, or a business in which a public officer or employee of the State or the family of a public officer or employee of the State has a substantial interest, public notice was given as required by NMSA 1978, Section 10-16-9(A) and this Agreement was awarded pursuant to a competitive process;

3) in accordance with NMSA 1978, Section 10-16-8(A), (i) Contractor is not, and has not been represented by, a person who has been a public officer or employee of the State within the preceding year and whose official act directly resulted in this Agreement and (ii) Contractor is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the State whose official act, while in State employment, directly resulted in EMNRD's making this Agreement;

4) this Agreement complies with NMSA 1978, Section 10-16-9(A) because (i) Contractor is not a legislator; (ii) Contractor is not a member of a legislator's family; (iii) Contractor is not a business in which a legislator or a legislator's family has a substantial interest; or (iv) if Contractor is a legislator, a member of a legislator's family, or a business in which a legislator or a legislator's family has a substantial interest, disclosure has been made as required by NMSA 1978, Section 10-16-9(A), this Agreement is not a sole source or small purchase contract, and this Agreement was awarded in accordance with the provisions of the Procurement Code;

5) in accordance with NMSA 1978, Section 10-16-13, Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and

6) in accordance with NMSA 1978, Section 10-16-3(D), Contractor has not contributed, and during this Agreement's term shall not contribute, anything of value to a public officer or employee of EMNRD.

C. Contractor's representations and warranties in Paragraphs A and B of this Section 12 are material representations of fact upon which EMNRD relied when EMNRD and Contractor entered this Agreement. Contractor shall provide immediate written notice to EMNRD if, at any time during this Agreement's term, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Section 12 were erroneous on this Agreement's effective date or have become erroneous by reason of new or changed circumstances occurring after this Agreement's effective date. If EMNRD later determines that Contractor's representations and warranties in Paragraphs A and B of this Section 12 were erroneous on this Agreement's effective date, or have become erroneous by reason of new or changed circumstances occurring after this Agreement's effective date, in addition to other remedies available to EMNRD and notwithstanding anything in this Agreement to the contrary, EMNRD may immediately terminate this Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this Section 12.

13. Amendment.

This Agreement shall not be altered, changed, or amended except by instrument in writing executed by the parties hereto and all other required signatories.

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, covenant, or understanding of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

15. Penalties for Violation of Law.

The Procurement Code, NMSA 1978, Sections 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, 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, Section 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 all lawsuits arising under or out of this Agreement's terms.

18. Records and Financial Audit.

Contractor shall maintain 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 for a period of six years from the date of final payment under this Agreement. EMNRD shall have the right to audit time and expenditure records both before and after payment, and Contractor agrees to include in all subcontracts hereunder the same right of inspection and audit against all subcontractors. Payment under this Agreement shall not foreclose EMNRD's right to recover excessive or illegal payments. In EMNRD's, GSD/SPD's, or the State Auditor's, (or insert name of federal funding entity)'s sole discretion, 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 of this Agreement for which exception is under consideration by the federal funding agency or any authorized representative) and shall continue until all potential litigation, appeals, claims, or exceptions have expired or been resolved.

19. Indemnification.

Contractor shall defend, indemnify, and hold harmless EMNRD, its officers, employees, agents, and representatives, and the State of New Mexico from all actions, proceedings, claims, demands, costs, damages, attorneys' fees, and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, including any action, proceeding, claim, demand, cost, damage, attorney's fee, or other liability or expense caused by the negligent act or failure to act of Contractor or its officers, employees, servants, subcontractors, consultants, or agents, or caused by the actions of any client of Contractor resulting in injury or damage to persons or property during the time when Contractor, Contractor's officers, agents, employees, servants, consultants, or subcontractors thereof has or is performing services pursuant to this Agreement. In the event that any action, proceeding, claim, demand, cost, damage, attorney's fee, or other liability or expense which may arise out of the performance of this Agreement is brought against Contractor or its officers, employees, servants, subcontractors, consultants, or agents, Contractor shall, as soon as practicable but no later than two days after it receives notice thereof, notify EMNRD's legal counsel, and the Risk Management Division of the New Mexico General Services Department by certified mail. Nothing in this Agreement shall be deemed to be a waiver by the State of New Mexico of the provisions of the Tort Claims Act, NMSA 1978, Sections 41-4-1 *et seq.*

20. New Mexico Employees Health Coverage.

A. If Contractor has, or grows to, six or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six-month period during the term of the contract, Contractor certifies, by signing this Agreement, to have in place, and agree to maintain for this Agreement's term, health insurance for those employees and offer that health insurance to those employees if the expected annual

value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.

B. Contractor agrees to maintain a record of the number of employees who have:

- 1) accepted health insurance;
- 2) declined health insurance due to other health insurance coverage already in place; or
- 3) declined health insurance for other reasons.

These records are subject to review and audit by a representative of the state.

C. Contractor agrees to advise all employees of the availability of state publicly financed health care coverage.

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 effective waiver by a party of any of its rights shall be effective to waive any other rights.

23. Notices.

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

To EMNRD:

[insert position title and address of project manager]

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

To 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 Contractor's behalf and Contractor represent and warrant that such individual has the power and authority to bind Contractor, and that no further action, resolution, or approval from Contractor is necessary to enter into a binding agreement.

25. Acknowledgement. (Option: Include in PSA if acknowledgement required. If not using this section, delete it and renumber successive sections accordingly. Delete this instruction.)

Contractor shall acknowledge EMNRD and (insert name of federal funding entity) as a co-sponsor and funding source in all news releases, programs, proceedings, and related publicity/publications for the Project.

26. Attorneys' Fees and Costs.

Contractor agrees that if Contractor is found by a court of competent jurisdiction to have breached this Agreement, or any amendment hereto, or to have committed any tortious act relating to this Agreement, EMNRD shall be entitled to recover from Contractor reasonable attorneys' fees and costs for pre-litigation research, investigation, and preparation, litigation brought to obtain such judicial determination, any appeal of such 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 of hiring for and performance of this Agreement.

28. Compliance with Funding Source Conditions.

Contractor shall comply with all applicable state and federal statutes and rules or regulations imposed as a consequence of funding pursuant to this Agreement. Contractor is responsible for obtaining a copy of any federal funding award that provides funding for this Agreement.

(Are you using federal funds for this Agreement? Depending on the funding source, you may be required to include the following. If not, delete this instruction and the following clauses.)

Contractor shall also comply with the following clauses in the performance of this Agreement:

A. 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.

B. 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.

C. Compliance with NMSA 1978, Section 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.

D. In the event this Agreement is funded with federal monies, Contractor shall comply with 2 C.F.R. 200.318 through 200.326 for procurement conducted pursuant to this Agreement.

E. 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).

F. 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.

G. 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.

H. 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.

29. Insurance. (Type of insurance required varies with nature of work performed. Will always require Workers' Compensation. Delete this instruction.)

A. Contractor certifies that, by signing this Agreement, it will establish and maintain during this Agreement's term, the following policy or policies of insurance providing:

1) Workers' Compensation protection that complies with the requirements of the Workers' Compensation Act, NMSA 1978, Sections 52-1-1 *et seq.*, if applicable. Employer's liability: \$100,000.00. If Contractor fails to comply with the Workers' Compensation Act and applicable rules when required to do so, EMNRD may terminate this Agreement.

2) Comprehensive general liability protection (including endorsements providing broad form property damage, personal injury coverage, and contractual assumption of liability for all liability Contractor has assumed under this Agreement or any amendment thereto), pursuant to NMSA 1978, Section 41-4-19, as may be amended from time to time. Limits shall not be less than the following:

- a. bodily injury: \$1,000,000.00 per person/\$1,000,000.00 per occurrence;
- b. property damage or combined single limit coverage: \$1,000,000.00;
- c. automobile liability (including non-owned automobile coverage): \$1,000,000.00; and
- d. umbrella: \$1,000,000.00.

Such policy or policies shall name the State of New Mexico and EMNRD as additional insured and shall specifically state the coverage provide under the policy is primary over any other valid and collectible insurance and provide a waiver of subrogation.

3) Comprehensive performance liability protection covering contractual liability that may arise under this Agreement and any amendment hereto. Such policy or policies shall name the State of New Mexico and EMNRD as additional insured and shall specifically state the coverage provided under the policy is primary over any other valid and collectible insurance and provide a waiver of subrogation. (Optional)

4) Professional liability insurance covering Contractor's negligent acts, errors, or omissions. (For agreements with architects, engineers, lawyers, etc.)

5) Medical malpractice liability insurance that complies with the Medical Malpractice Act, NMSA 1978, Sections 41-5-1 *et seq.* (For agreements with medical

providers who are required to have malpractice insurance.)

6) General liability insurance sufficient to cover the claims which may fall under the Indemnification Paragraph of this Agreement. (For agreements with medical providers who are not required to have malpractice insurance.)

B. Contractor shall provide EMNRD with a copy of the insurance certificate no later than 10 days after this Agreement's effective date. At EMNRD's request, Contractor shall also provide EMNRD with a copy of the insurance policy, or relevant portions thereof. Contractor shall notify EMNRD 30 days before cancellation or expiration of any required Workers' Compensation coverage or (include the references to the types of insurance you are asking for).

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of signature by the GSD/SPD Contracts Review Bureau below.

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

By: _____
Cabinet Secretary or Designee

Date: _____

By: _____
Legal Counsel - Certifying legal sufficiency

Date: _____

By: _____
Chief Financial Officer

Date: _____

CONTRACTOR NAME

By: _____
Authorized Representative Signature

Date: _____

Printed Name and Title

This Agreement has been approved by the GSD/SPD Contracts Review Bureau

By: _____ Date: _____
GSD/SPD Contracts Review Bureau

(Selection Option 1 or 2)

Option 1:

The records of the Taxation and Revenue Department reflect Contractor is registered with the Taxation and Revenue Department of the State of New Mexico to pay gross receipts and compensating taxes.

**STATE OF NEW MEXICO
TAXATION AND REVENUE
DEPARTMENT**

I.D. No.: _____
(must be 11 digits long)

By: _____

Date: _____

Taxation and Revenue is only verifying the registration and will not confirm or deny tax liability statements contained in this contract.

Option 2:

Services will be performed out-of-state, Contractor is exempt from paying gross receipts taxes.

**STATE OF NEW MEXICO
TAXATION AND REVENUE
DEPARTMENT**

By: _____

Date: _____

Taxation and Revenue is only verifying the registration and will not confirm or deny tax liability statements contained in this contract.
