

REQUEST FOR PROPOSALS

ISSUED BY THE STATE OF NEW MEXICO, ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT, FORESTRY DIVISION FOR LAND TRUSTS AND LAND CONSERVATION ORGANIZATIONS TO CONDUCT DUE DILIGENCE TASKS FOR THE FOREST LEGACY AND/OR THE NATURAL HERITAGE CONSERVATION ACT PROGRAMS

I. PURPOSE

The State of New Mexico, Energy, Minerals and Natural Resources Department (EMNRD), Forestry Division (Forestry Division) is seeking proposals from land trust entities or other land conservation organizations that operate in New Mexico who meet the required qualifications as specified below and will be dedicated to submitting project proposals to the federally funded Forest Legacy Program (FLP) or state-funded Natural Heritage Conservation Act (NHCA) Program. The successful Offeror(s) shall be able to identify potential projects in New Mexico for securing conservation and/or agricultural easements or fee simple FLP purchases that meet the requirements of the FLP, or meet the requirements of the NHCA Program, and work with the landowner of such properties to complete the program application forms required to submit proposed projects.

EMNRD may award multiple contracts as a result of this Request for Proposals (RFP). Any proposal that may result 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

This RFP is directed at entities that meet the criteria below. An eligible Offeror:

- is a non-profit organization as described in 501(c) of the Internal Revenue Code of 1986 that operates in New Mexico and that has the power to acquire, hold or maintain land or interest in land;
- has necessary experience and knowledge, including previous experience working with landowners on other land conservation easement projects in New Mexico to identify and submit potential projects for either fee simple purchase or conservation easements that:
 - meet the requirements of the Forest Legacy Program guidelines (available at https://www.fs.usda.gov/sites/default/files/fs_media/fs_document/15541-forest-service-legacy-program-508.pdf)
 - And/or meet the requirements of the Natural Heritage Conservation Act Program (See Attachment 1).

<https://www.emnrd.nm.gov/sfd/carbon-sequestration-through-land-conservation/natural-heritage-conservation-act-and-natural-lands-protection-act/>);

- has knowledge of conducting or procuring due diligence services such as market valuations, mineral title opinions or mineral remoteness determinations, title commitment work; environmental assessments, baseline documentation reports, stewardship plans, and appraisals; and
- has experience working with landowners in New Mexico including but not limited to individuals, corporations, state agencies, political subdivisions of the state and tribal governments.

III. SCOPE OF WORK

The successful Offeror(s) shall assist the Forestry Division in identifying potential land conservation projects in New Mexico that meet the requirements of the Forest Legacy Program or meet the requirements of the Natural Heritage Conservation Act Program and work with the landowner of such properties to complete application forms, required to submit proposed projects.

The Forestry Division will assign work on an “as-needed” basis. The selected Contractors shall receive requested tasks from designated Division staff and shall develop and submit, for the Forestry Division’s approval, a timetable and budget to perform the work as requested by Division staff.

The successful Offeror(s) shall:

- identify and submit project proposals for the Forestry Division’s Forest Legacy Program;
- and/or identify and submit project proposals for the state-funded Natural Heritage Conservation Act Program;
- upon the Forestry Division’s request, complete by in-house staff, or procure via sub-contractor, due diligence activities for the submitted project proposals. For detailed requirements of each activity for FLP projects please refer to Part V., Land Acquisition Process and Requirements of the FLP Implementation Guidelines (linked above) and/or the Land Trust Alliance Standards and Guidelines (<https://a.storyblok.com/f/120093/x/6d634cb9ce/landtruststandardsandpractices-revised.pdf>). For detailed requirements for NHCA projects refer to NHCA statute and rule (Attachment 1) and/or the Land Trust Alliance Standards and Guidelines (<https://a.storyblok.com/f/120093/x/6d634cb9ce/landtruststandardsandpractices-revised.pdf>). Due diligence activities include:

1. mineral title opinions or mineral remoteness determinations, certifying that the landowner owns mineral rights or a report from a professional geologist that the probability of surface mining occurring on such property is so remote as to be negligible;
2. market evaluation report of the property determining what the current value of the property is for fee title acquisition or current value of a conservation easement for the property and detailing how that determination was made and what resources were used;
3. conducting title searches and providing title commitments; with the title commitments in the name of EMNRD-Forestry Division for FLP and/or EMNRD for NHCA;
4. environmental assessments (phase I, and phase II, if required);
5. baseline documentation report of property; establishing the initial conditions of the property necessary to monitor and enforce the conservation easement or deed.
6. develop stewardship plans; the plan is a site-specific plan that must be approved by the State forester or designee that meets or exceeds the Forest Service Forest Stewardship Program Standards and Guidelines. The plan documents and addresses the multiple natural resources present on a tract of FLP land, highlights the landowner's objectives, and describes actions to protect and manage soil, water, range, aesthetic quality, recreation, timber, fish and wildlife resources, and other conservation values identified on the tract.
7. land surveys which meet the standards and requirements of the American Land Title Association® and/or the National Society of Professional Surveyors
(https://cdn.ymaws.com/nsps.us.com/resource/resmgr/alta_standards/2021_Standards_20201030_grk.pdf);
8. facilitation of stakeholder meetings to develop co-management plans;
9. development of co-management plan(s) in conjunction with the Forestry Division that state the responsibilities of EMNRD-Forestry Division and the partner that will be co-managing the property to be held in fee title by the Forestry Division;

10. develop conservation easements or fee simple deed language in conjunction with the Forestry Division; and
11. Acquiring an appraisal specifying the users of the appraisal report (EMNRD-Forestry Division, landowner, and/or United States Department of Agriculture-Forest Service) that establishes fair market value of the conservation or agricultural easement and meets United States treasury regulations and the uniform standards of professional appraisal practice. In addition, for FLP the appraisal report must meet Federal appraisal standards known as the Uniform Appraisal Standards for Federal Land Acquisitions.

V. PROPOSAL FORMAT AND CONTENTS

Proposals must contain sufficient information to provide the Division with a thorough description of Offeror's qualifications to accomplish the activities described in the Scope of Work.

The proposal **MUST** contain, at a minimum, all listed items.

1. Certification in your Submittable proposal that:

- identifies the name, title, telephone number, and e-mail address of the person authorized to negotiate the contract on behalf of the Offeror;
- identifies the names, titles, telephone numbers, and e-mail addresses of person(s) to be contacted for clarification;
- expressly indicates acceptance of the terms and conditions of this RFP and its evaluation factors;
- certifies all entities or individuals responsible for authorizing Offeror's activities have agreed the proposal should be submitted;
- if applicable, acknowledges receipt of any and all amendments to this RFP; and
- is signed by the person authorized to contractually obligate the Offeror.

2. Documentation of experience, education, knowledge, and capability (refer to Proposal Evaluation Criteria). Including:

- Contact information for references who can attest to experience and quality of deliverables; and

3. Federal Compliance – If applying to FLP projects, Offeror(s) must provide their Unique Entity Identifier (UEI) and have an active registration on SAM.GOV (Appendix A to Part 25, Title 2) and state whether they meet C.F.R. requirements for an audit (2

C.F.R. 200.501(a) Audit Requirements). If Offeror does meet the requirements for an audit, Offeror must provide proof the audit has been submitted to the Federal Audit Clearinghouse (FAC) (2 C.F.R. 200.512 (b) Report Submission), and provide their federal Employer Identification Number, which will allow the Forestry Division access to the relevant audit(s) prior to any award subject to this RFP.

4. Budget Narrative- Offerors must provide a brief written narrative describing anticipated due diligence needs over the next four years and how an award to the Offeror and the ability to request reimbursement for due diligence expenses through Task Orders will result in increased conservation activity in New Mexico. In addition, please include the following:

- Hourly Rates per Position: Clearly specify the hourly rates for each in-house staff position anticipated to work on the project and the due diligence activities they are qualified to complete;

5. Campaign Contribution Form (Attachment 2) -- Offeror shall complete, sign, and submit with Offeror's proposal response the Campaign Contribution Disclosure Form 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.

6. Completed, signed Statement of Assurances Form (Attachment 3).

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

VI. CRITERIA AND EVALUATION POINT SUMMARY

Offeror(s) shall submit information sufficient to allow the Forestry Division to evaluate the proposal based upon criteria listed below:

Evaluation Criteria	Points
Relevant experience: Points will be awarded based on documented relevant experience, resources, education, knowledge, and capability of the organization and its employees.	50
Staffing: Points will be awarded based on number of staff and their qualifications.	50

Maximum possible points	100
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* Preference laws do not apply to the work of this RFP, as it may be funded with federal dollars.

VII. EVALUATION PROCESS

The evaluation process will follow the steps listed below:

1. Three Evaluation Team members will document contents of competitive sealed proposals after the submittal deadline.
2. 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.
3. The Forestry Division Contact Person may contact Offerors for clarification of the proposal.
4. 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 select the finalist Offeror(s) whose proposal and references is/are most advantageous to the Forestry Division, for award.

VIII. CONTRACT AWARD AND DURATION

The Forestry Division may award multiple contracts under the terms of the attached draft Professional Services Agreement (PSA) (Attachment 4) and in accordance with this RFP. Any PSA awarded as a result of this RFP 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 any amendments and renewals.

IX. CONTACT PERSON AND DUE DATES

The EMNRD Contact Person for this procurement is:

Carol Bada, Forest Legacy Program State Coordinator
 EMNRD, Forestry Division
 Wendell Chino Building
 1220 South Saint Francis Drive
 Santa Fe, NM 87505
 Telephone: (505) 660-0412
carol.bada@emnrd.nm.gov

Offerors shall direct any questions regarding this RFP to Carol Bada at the email or

physical address indicated. The Forestry Division will only respond to written questions regarding this RFP. Written answers to those questions will be sent to all who request copies of this RFP and will also be posted on the Forestry Division website as specified below.

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

Deadlines for Written Questions

Potential Offerors may submit written questions to the Contact Person as to the intent or clarity of this RFP until 5 p.m. MDT, July 31, 2025. All written questions must be addressed to the Contact Person as indicated above. In the event questions are mailed via United States Postal Service, they must be physically received at the above location by the stated date and time to be considered. 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 Forestry Division will post written responses to such questions on the Forestry Division website by August 11, 2025.

<https://www.emnrd.nm.gov/sfd/requests-for-proposals-and-grants/>.

Proposal Submittal and Due Date

Offerors shall submit their proposal using the Forestry Division's Submittable webpage using this address: <https://emnrd-sfd.submittable.com/submit> no later than 5 p.m. MDT, August 22, 2025. The Forestry Division will deem such proposals sealed in accordance with state statute. The Forestry Division 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: Miguel Gallegos, Chief Procurement Officer, EMNRD, 1220 S. St. Francis Drive, Santa Fe, NM, 87505.

IX. NOTICES

Award of agreements is contingent upon sufficient appropriations and authorization being made by the State of New Mexico and the U.S Department of Agriculture, Forest Service.

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

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 New Mexico 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 NHCA Statute and Rule

New Mexico PACE Enabling Laws

N.M. Stat. Ann. §§ 75-10-1 to 75-10-9
Current through the 2019 First Regular Session

Article 10 Natural Heritage Conservation (§§ 75-10-1 — 75-10-9)

75-10-1. Short title.

This act [75-10-1 to 75-10-9 NMSA 1978] may be cited as the “**Natural Heritage Conservation Act**”.

History: Laws 2010, ch. 83, § 1.

75-10-2. Purpose.

The purpose of the Natural Heritage Conservation Act [75-10-1 NMSA 1978] is to protect the state’s natural heritage, customs and culture by funding conservation and agricultural easements and by funding land restoration to protect the land and water available for forests and watersheds, natural areas, wildlife and wildlife habitat, agricultural production on working farms and ranches, outdoor recreation and trails and land and habitat restoration and management.

History: Laws 2010, ch. 83, § 2.

75-10-3. Definitions.

As used in the Natural Heritage Conservation Act [75-10-1 NMSA 1978]:

- A. “committee” means the natural lands protection committee;
- B. “conservation entity” means a private nonprofit charitable corporation or trust authorized to do business in New Mexico that has tax-exempt status as a public charity pursuant to the federal Internal Revenue Code of 1986 [26 USCS § 1 et seq.] and that has the power to acquire, hold or maintain land or interests in land;
- C. “conservation project” means the acquisition of conservation or agricultural easements from a willing seller or a land restoration project;
- D. “department” means the energy, minerals and natural resources department;
- E. “fund” means the natural heritage conservation fund; and
- F. “qualified entity” means a state agency, a state educational institution named in Article 12, Section 11 of the constitution of New Mexico, a political subdivision of the state or, for conservation projects wholly within New Mexico, an Indian tribe or pueblo.

History: Laws 2010, ch. 83, § 3.

75-10-4. Department; powers and duties.

A. The department may:

- (1) after consultation with landowners, conservationists and other interested persons, adopt and promulgate rules to carry out the provisions of the Natural Heritage Conservation Act [75-10-1 NMSA 1978];
- (2) enter into contracts;
- (3) enter into joint powers agreements pursuant to the Joint Powers Agreements Act [11-1-1 NMSA 1978] to carry out the provisions of the Natural Heritage Conservation Act [75-10-1 NMSA 1978];
- (4) make grants to qualified entities for conservation projects;
- (5) apply for and receive in the name of the department, any public or private funds available to the department to carry out the purposes of the Natural Heritage Conservation Act [75-10-1 NMSA 1978];
- (6) acquire conservation or agricultural easements by itself or with a conservation entity or qualified entity; and
- (7) do all other things necessary or appropriate to carry out the provisions of the Natural Heritage Conservation Act [75-10-1 NMSA 1978].

B. The department shall:

- (1) establish a competitive application process for grants from the fund; and
- (2) establish criteria and priorities for funding conservation projects.

History: Laws 2010, ch. 83, § 4.

75-10-5. Fund created; purpose; expenditures.

The “natural heritage conservation fund” is created as a nonreverting fund in the state treasury. The fund consists of appropriations, gifts, grants, donations, bequests, income from investment of the fund and any other money credited to the fund. The fund shall be administered by the department, and money in the fund is appropriated to the department to fund conservation projects. Expenditures from the fund shall be by warrants of the secretary of finance and administration upon vouchers signed by the secretary or the secretary’s authorized representative.

History: Laws 2010, ch. 83, § 5.

75-10-6. Conservation projects; procedures.

A. All conservation projects shall be maintained to protect the public health and welfare and shall be for:

- (1) preserving and conserving water quality and quantity;
- (2) protecting agricultural production on working farms, ranches and other agricultural lands;
- (3) protecting and restoring New Mexico’s forests and watersheds;
- (4) conserving wildlife habitat;
- (5) maintaining natural areas;
- (6) providing outdoor recreation opportunities, including hunting and fishing; or

(7) preserving cultural and historic sites with natural resource heritage value.

B. The department, working with the committee, landowners, conservationists and other interested persons, shall establish criteria for evaluating possible conservation projects. Criteria shall include:

- (1) the degree to which the conservation project serves the purposes of the Natural Heritage Conservation Act [75-10-1 NMSA 1978];
- (2) the amount of matching financial support for the conservation project from sources other than the state;
- (3) the technical qualifications of the applicant and its ability to complete and maintain the proposed conservation project;
- (4) the degree to which the conservation project fosters and integrates with existing conservation plans, strategies and initiatives;
- (5) the potential for benefits at landscape and ecosystem scale;
- (6) the potential for improved public access for outdoor recreation opportunities, including hunting and fishing;
- (7) the potential for economic benefits of the completed conservation project; and
- (8) other measurements and requirements required by the department and the committee.

C. The committee shall receive applications for conservation projects and shall evaluate them against the department's criteria. The committee may reject any incomplete applications or applications that do not meet the established criteria. After review, the committee shall make its recommendations on all evaluated conservation projects to the department.

History: Laws 2010, ch. 83, § 6.

75-10-7. Conservation projects; public-private projects.

A. The department may acquire conservation or agricultural easements and hold them in the name of the state.

B. When approving a conservation project that is the acquisition of a conservation or agricultural easement by a conservation entity, the department shall require the conservation entity to:

- (1) acquire no less than ten percent of the easement, and title to the easement shall be held by the conservation entity and a qualified entity as cotenants having undivided interests in proportion to each one's share of the acquisition; and
- (2) submit a plan for the management of lands for which the conservation entity and the qualified entity are responsible. The department, in consultation with the committee, shall review the plan to ensure compliance with the purposes of the Natural Heritage Conservation Act [75-10-1 NMSA 1978].

C. When approving a conservation project that is for land restoration by a conservation entity, the department shall require that the conservation entity provide at least ten percent of the cost of the conservation project.

History: Laws 2010, ch. 83, § 7.

75-10-8. Conservation projects; limitations.

The department may acquire or receive by gift or bequest conservation or agricultural easement interests in real property to advance the purposes of the Natural Heritage Conservation Act [75-10-1 NMSA 1978]. No easement interests, water rights or other rights of access shall be acquired pursuant to the Natural Heritage Conservation Act through exercise of the state's power of eminent domain or any other condemnation process. Land adjacent to any land subject to a conservation or agricultural easement that was acquired pursuant to the Natural Heritage Conservation Act shall not be subjected to any rules or restrictions as a result of such easement acquisition.

History: Laws 2010, ch. 83, § 8.

75-10-9. Annual report to the governor and the legislature.

The department and the committee shall report annually to the governor and the legislature on the status of applications and funded conservation projects.

History: Laws 2010, ch. 83, § 9.

<https://laws.nmonesource.com/w/nmos/Chapter-75-NMSA-1978#!b/a10>

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 1 NATURAL RESOURCES GENERAL PROVISIONS
PART 3 ADMINISTRATION OF THE NATURAL HERITAGE CONSERVATION ACT

19.1.3.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department.
[19.1.3.1 NMAC - N, 7/30/2010]

19.1.3.2 SCOPE: 19.1.3 NMAC applies to application and selection procedures for conservation projects that may receive grants from the natural heritage conservation fund.
[19.1.3.2 NMAC - N, 7/30/2010]

19.1.3.3 STATUTORY AUTHORITY: 19.1.3 NMAC is adopted pursuant to the Laws of 2010, Chapter 83.
[19.1.3.3 NMAC - N, 7/30/2010]

19.1.3.4 DURATION: Permanent.
[19.1.3.4 NMAC - N, 7/30/2010]

19.1.3.5 EFFECTIVE DATE: July 30, 2010, unless a later date is cited at the end of a section.
[19.1.3.5 NMAC - N, 7/30/2010]

19.1.3.6 OBJECTIVE: 19.1.3 NMAC's objective is to establish procedures for carrying out the provisions of the Natural Heritage Conservation Act to protect New Mexico's natural heritage, customs and culture including establishing criteria for evaluating possible conservation projects to receive grants from the natural heritage conservation fund.
[19.1.3.6 NMAC - N, 7/30/2010]

19.1.3.7 DEFINITIONS:

A. "Agricultural easement" means a less than fee simple interest in land that is granted in perpetuity, which creates a legally enforceable land protection or preservation agreement and restricts or prohibits the future development, including subdivision, or alteration of the land or the permanent severance of any appurtenant water rights for a purpose other than agricultural production or the natural values of the land. The fee simple ownership remains with the landowner and the landowner continues uses of the land that are consistent with the provisions of the easement with no requirement for public access although the landowner may allow such access.

B. "Agricultural production" means the production for commercial purposes of crops, livestock or livestock products, including the processing or retail marketing of crops, livestock or livestock products that are primarily produced on site by an operator of a working farm, ranch or other agricultural land. The term includes use of land that is devoted to and meets requirements and qualifications for soil conservation programs under an agreement with an agency of the federal government and may include periodic fallowing and practices that promote conservation of land and water on and near the property.

C. "Applicant" means a qualified entity.

D. "Committee" means the natural lands protection committee established pursuant to NMSA 1978, Section 75-5-4(A).

E. "Conservation easement" means a less than fee simple interest in land granted in perpetuity, which creates a legally enforceable land protection or preservation agreement that restricts or prohibits further subdivision and may restrict or prohibit development, commercial and industrial uses or other activities, or alteration of the land or any appurtenant water rights necessary to maintain or preserve certain conservation values (*e.g.*, natural resource, wildlife habitat, scenic, open space, cultural, historic or recreational and educational) on the subject property. The fee simple ownership remains with the landowner and the landowner continues uses of the land that are consistent with the provisions of the easement with no requirement for public access although the landowner may allow such access.

F. "Conservation entity" means a private nonprofit charitable corporation or trust authorized to do business in New Mexico that has tax-exempt status as a public charity pursuant to the internal revenue code of 1986 and that has the power to acquire, hold or maintain land or interests in land.

G. "Conservation project" means the acquisition of conservation or agricultural easements from a willing seller or a land restoration project that protects the state's natural heritage, customs and culture through

action that preserves and conserves water quality and quantity to conserve and restore natural ecosystem function and processes; protects agricultural production on working farms, ranches and other agricultural lands; protects and restores New Mexico's forests and watersheds; conserves and restores wildlife habitat; maintains natural areas; provides outdoor recreation opportunities, including hunting and fishing and trails; or preserves cultural and historic sites with natural resources heritage value.

H. "Department" means the energy, minerals and natural resources department.

I. "Fund" means the natural heritage conservation fund.

J. "In-kind" means property or services that benefit a grant-supported conservation project that are contributed without charge or at less than fair market value. In-kind contributions for purposes of land restoration projects may consist of the cost of operating equipment or equipment rental, goods or services, including labor, directly benefitting the land restoration project and specifically identifiable to the land restoration project. Labor costs included as in-kind shall be documented as reasonable and reference rates applicable to the local area and type of service. In-kind contributions for purposes of agricultural or conservation easements means the donation of interests in real property or the payment of transactional costs such as appraisals, environmental assessments, title insurance or surveys.

K. "Land restoration project" means actions intended to renew a degraded, damaged or destroyed natural land area and associated vegetation or water features through active intervention, where the action is founded upon science-based technical information and prediction of the intervention's outcome such that it stimulates or accelerates natural system health, integrity and sustainability toward a specified outcome. Restoration includes an array of actions including erosion control, reforestation, forest thinning, re-vegetation of disturbed sites, repair of aquatic systems, removal of non-native species of animals and plants and the related sustainable re-establishment of native species, re-establishment of extirpated native species, measures taken to restrict disturbance to areas of crucial habitat or to develop and restore more suitable habitat and improved outdoor recreation opportunities and overall habitat and range improvements for native species benefit. A project includes related assessment and monitoring to judge long-term effectiveness and determine and implement periodic corrective or additional actions needed to achieve objectives.

L. "Natural resource heritage value" means a vegetation community component, animal species assemblage or combination thereof; other naturally occurring representation of biological diversity; or esthetically appealing vistas of natural landscape that are significant or important.

M. "Partner" means a conservation entity or other individual or entity cooperating or assisting a qualified entity with planning, applying for and executing a conservation project, which is specifically identified in an application, and will be a participant in a public-private conservation project.

N. "Qualified entity" means a state agency, a state educational institution named in Article 12, Section 11 of the constitution of New Mexico, a political subdivision of the state; or, for conservation projects wholly within New Mexico, an Indian tribe or pueblo.

O. "Working farm, ranch or other agricultural land" means land that has been primarily devoted to active agricultural production for at least two of the five years immediately prior to consideration for an agricultural easement or other conservation project.

[19.1.3.7 NMAC - N, 7/30/2010]

19.1.3.8 GENERAL PROVISIONS: The department administers the Natural Heritage Conservation Act, which establishes a fund and a competitive grant program to select and fund conservation projects. The committee evaluates proposed conservation projects and recommends to the department which proposed conservation projects should receive funding.

[19.1.3.8 NMAC - N, 7/30/2010]

19.1.3.9 ELIGIBLE APPLICANTS: Only qualified entities may apply for grants from the fund.

Conservation entities may not individually apply for or receive grants directly from the fund, but they may partner with qualified entities on conservation projects. If a conservation entity will jointly acquire a conservation or agricultural easement or is a partner on a land restoration project, the conservation entity shall be identified in the application.

[19.1.3.9 NMAC - N, 7/30/2010]

19.1.3.10 CONSERVATION PROJECTS: Conservation projects that may receive grants from the fund include the following:

- A. acquisition of conservation easements from willing sellers by qualified entities, including the department, which may or may not be in partnership with conservation entities;
 - B. acquisition of agricultural easements from willing sellers by qualified entities, including the department, which may or may not be in partnership with conservation entities; or
 - C. land restoration projects by qualified entities, including the department, which may or may not be in partnership with conservation entities.
- [19.1.3.10 NMAC - N, 7/30/2010]

19.1.3.11 GRANT APPLICATION PROCESS:

A. If funding is available, the department may establish one or more competitive grant application cycles each calendar year and specify the required format, forms and deadline for application submittal. Each application cycle announcement shall specify any priority area, ecological, geographic, funding, type of project or other limitations applicable to that cycle, as related to funds available, accomplishments to date and criteria specified in Subsection C of 19.1.3.12 NMAC.

B. The applicant shall submit an application in a format specified by the department that includes at a minimum the following information:

- (1) the type of conservation project (*e.g.*, conservation easement, agricultural easement or land restoration);
- (2) the applicant's address, contact information and contact person;
- (3) the landowner's address and contact information;
- (4) general information about the property including a legal description of the property;
- (5) information demonstrating how the proposed conservation project meets the requirements of the Natural Heritage Conservation Act, 19.1.3.12 NMAC and the criteria in Subsection B of 19.1.3.12 NMAC;
- (6) for grant applications seeking funding to acquire a conservation easement or agricultural easement:
 - (a) property details supplied by the landowner to the qualified entity, including ownership interests, liens, mortgages and encumbrances;
 - (b) a draft deed of conservation easement or deed of agricultural easement or a descriptive list of intended easement provisions including acreage, building envelopes, conservation provisions and reserved uses;
 - (c) a written statement from the landowner that the landowner wishes to sell a conservation easement or agricultural easement to the applicant;
 - (d) a written description of the applicant's authority to acquire and hold land or interests in land, including conservation easements or agricultural easements; and
 - (e) a written statement or other proof that the applicant has the experience and the ability to manage lands for conservation, natural resource heritage value or agricultural value;
- (7) for land restoration projects, a statement describing the intended land restoration activities with specific objectives and a designated project manager identified to be responsible for implementation of the approved project including overseeing contractor or subcontractor administration, providing liaison with affected landowners, ensuring technical viability of the project, ensuring funds expended are within budget and obtaining any necessary permits;
- (8) the name of any qualified entities or conservation entities that are partnering with the qualified entity on the conservation project, a description of each entity's role and contribution and a written commitment from each conservation entity identifying that entity's proposed responsibilities and contributions;
- (9) how the conservation project relates to applicable state, tribal, county or local plans;
- (10) projected beginning and completion dates for the conservation project and a schedule of activities required to complete the conservation project with projected beginning and completion dates for those activities;
- (11) a full budget for the project detailing the costs and in-kind contributions, if any; and
- (12) a list of any permits, certifications and clearances needed to implement the project.

C. The department shall review applications for timeliness and completeness before providing the grant applications it has received to the committee. The committee may consider the grant applications at a regularly scheduled meeting or at a special meeting scheduled for the purpose of considering grant applications.

[19.1.3.11 NMAC - N, 7/30/2010]

19.1.3.12 APPLICATION REVIEW:

A. The committee shall review applications that are timely, that are complete and that comply with the Natural Heritage Conservation Act and 19.1.3 NMAC and evaluate them against the criteria in Subsection B of 19.1.3.12 NMAC. The committee may reject untimely applications, incomplete applications or applications that do not comply with the Natural Heritage Conservation Act or 19.1.3 NMAC. The department secretary, upon request by the committee, may provide technical assistance through staff assignment or a group of public agency and private individuals selected to assist during a specified review cycle. After review, the committee shall make its recommendations on all evaluated conservation projects to the department.

B. The committee shall evaluate applications for conservation projects based upon the following criteria:

- (1) the degree to which the conservation project serves the purposes of the Natural Heritage Conservation Act;
- (2) the extent of cash and in-kind matching financial support for the conservation project from sources other than the state, in context with the amount of funding requested and available overall;
- (3) the applicant's and partner's technical qualifications and its ability to complete and maintain the proposed conservation project;
- (4) the degree to which the conservation project fosters and integrates with existing conservation plans, strategies and initiatives;
- (5) the potential for benefits at the landscape and ecosystem scale;
- (6) the potential for improved public access for outdoor recreation opportunities, including hunting and fishing;
- (7) the potential for economic benefits, including direct commerce and ecosystem services, of the completed conservation project;
- (8) complementary or strategic values through proximity to other conservation actions, priorities or projects;
- (9) conservation project readiness for completion on a timely schedule;
- (10) degree and extent of partner involvement;
- (11) the likelihood that the conservation project as proposed will have long-term success in achieving its purposes and will have long-term sustainability, including involvement of land dedicated to conservation purposes and an explicit monitoring plan.

C. The committee will evaluate and categorize applications according to the following matrix of factors and relative values and base its assessment and recommendations on the matrix. The committee has discretion to determine how to use the information from the matrix to determine value assignments among features of each application, in consideration of any limitations identified in the application cycle announcement as provided for in Subsection A of 19.1.3.11 NMAC.

Factor	Level 4	Level 3	Level 2	Level 1
Serves purposes of the Natural Heritage Conservation Act	Clearly serves all purposes	Clearly serves multiple purposes	Clearly serves one purpose and may serve others	Questionable if any purposes are adequately served
Extent of matching cash and in-kind financial support	Applicant/Partner provide more than 75% of project costs	Applicant/Partner provide 50 to 75% of project costs	Applicant/Partner provide 25 to 49% of project costs	Applicant/Partner provide less than 25% of project costs
Qualifications and ability of applicant and partners to complete and maintain proposed project	Substantial past experience and continuing capability to do proposed work and follow-up	Demonstrated completions of similar work and is fully structured to do similar work	Demonstrates some past ability and basic documented qualifications and infrastructure	Indicates uncertain capability or has no prior experience and necessary infrastructure
Degree of fostering existing conservation plans, strategies and initiatives (PSIs) specified in the cycle announcement	Project has substantial relation to most PSIs and directly fosters several	Project clearly fosters multiple PSIs and directly relates to several	Project has clear relation to one PSI and possible service to others	Project has uncertain relation to any PSIs or no clear degree of fostering

Factor	Level 4	Level 3	Level 2	Level 1
Potential for benefits at landscape or ecosystem scale	Substantial landscape and ecological scale benefits are evident in completed work	Substantial landscape or ecological scale benefits are evident in completed work	Desired scale benefits are evident, but are judged minimal	No clear benefits are evident at desired scale
Potential for improved public access to outdoor recreation opportunities on or off project site	Multiple enhanced recreation opportunities are evident, including hunting and fishing	Some enhanced outdoor recreation opportunities are evident and have prospect for growth	Some enhanced outdoor recreation opportunities are evident but are limited	Proposal has no discernible outdoor recreation elements
Potential economic benefits of completed project	Project has multiple economic benefits at multiple scales	Project has some economic benefits locally and broader	Project shows economic benefits, at least locally	Project has no discernible economic benefits
Complementary or strategic values through proximity to other ongoing or completed conservation actions, including any priority areas formally identified by the committee	Project is within a priority area or directly links to nearby completed or ongoing conservation actions and provides added heritage values	Project is within a priority area but has limited relationship to other conservation actions that will provide synergistic heritage values	Project is not within a priority area but has proximity to other actions that may provide synergy or economy of scale or cost effectiveness	Project has no proximity to other conservation endeavors and is not otherwise distinctive as a starting point
Degree of readiness to start and complete project on timely schedule	Readiness and time schedule are clear and background work is complete; timely execution is essentially assured	Readiness and time schedule are clear and reasonable to the project, but could experience some delay	Readiness and time schedule are clear, but have acknowledged or likely delays inconsistent with the nature of the project	Readiness and completion scheduling is unspecified, unclear or uncertain
Degree and extent of partner involvement	Multiple entity project where reasonable partnering is included with clear and substantive involvement and contribution	Multiple entity project where reasonable partnering is included beyond minimal but is not extensive	Single or multiple entity project where partnering is included, but is minimal	Single entity project with no partner involvement when such partnership is possible and advised
Likely long-term success and sustainability	Project is well-described and accomplishable with substantive provisions for sustained maintenance and routine outcome assurance	Project is well-described and accomplishable with basic provisions for sustained maintenance and periodic outcome assessment	Project is inherently achievable but contains limited provisions for maintenance over the long-term	Project appears basically achievable, but long-term outcome is questionable or uncertain

D. A summary of committee judgments, without attribution to individual committee members, among factors described in Subsection C of 19.1.3.12 NMAC will be made public regarding all applications that are recommended to the department for funding and those that are not recommended to be funded.
[19.1.3.12 NMAC - N, 7/30/2010]

19.1.3.13 GRANT AWARDS:

A. A conservation project involving acquisition of a conservation or agricultural easement requires an appraisal that establishes the fair market value of the conservation or agricultural easement and meets United States treasury regulations and the uniform standards of professional appraisal practice before the department will disburse the funds to the qualified entity.

B. In addition, for conservation projects involving acquisition of a conservation or agricultural easement, the qualified entity or partner conservation entity shall provide as specified by the department documents including a title commitment; phase I environmental site assessment and, if needed based on phase I environmental site assessment, a phase II environmental site assessment; a title opinion certifying that the landowner owns the minerals rights or a report, satisfactory to the department, from a professional geologist that the probability of surface mining occurring on such property is so remote as to be negligible; and if deemed necessary by the department, a property boundary survey. If the landowner owns the mineral rights, an easement shall prohibit subsequent sale or development of mineral rights by the landowner granting the conservation or agricultural easement. A baseline documentation report of the property shall be recorded with the deed of conservation easement or agricultural easement in the office of the applicable county clerk.

C. Agricultural and conservation easements shall contain a provision that if a qualified entity, other than the department, or a partner conservation entity fails to enforce the easement as determined by a court or if either the qualified entity or conservation entity cease to exist, that the easement will go to another qualified entity or partner conservation entity as specified in the easement and agreed to by that qualified entity, or otherwise the easement shall become vested in the department as recommended by the department and other extant easement right holders. Any qualified entity's interest in an easement shall only go to another governmental entity. The department shall have the option to provide similar rights of enforcement or possession to other governmental entities (*e.g.*, federal partners) where such partners have similar rules, regulations or requirements and demonstrated capacity to manage or enforce easements.

D. Grant awards may be approved for use to pay transactional costs for easement projects such as appraisals, title insurance, title opinions, surveys or environmental reviews up to three percent of the total value of the conservation project funded or 10 percent of the amount of the grant, whichever is less. The committee and the department may consider and approve grant requests for paying only transaction costs for easement projects, subject to the grant being for up to three percent of the total value of the conservation project or \$45,000, whichever is less.

E. Overhead and administrative expenses used as in-kind contributions may be no more than 10 percent of the total cost of a project.

F. A qualified entity or conservation entity may use contractors or subcontractors so long as their use is explained in the application, all applicable procurement requirements are met and the contractors or subcontractors are identified by name in the application, to the extent known. If contractors or subcontractors are identified in the application, the qualified entity or entities shall include documentation in the application that demonstrates all applicable procurement requirements were met. The qualified entity or entities associated with an approved project shall be wholly responsible for the project execution and performance, whether or not contractors or subcontractors are used. Use of contractors or subcontractors not identified in an application shall require the department's prior written approval.

G. Prior to commencing any work, any contractors or subcontractors may be required to furnish state certification from insurers for coverage in the minimum amounts as designated by the state. Appropriate coverage shall be maintained in full force and effect during the term of the project and shall not serve to limit any liabilities or any other contractor obligations. The state and the department must be added as additional insured as required by statute, agreement or other obligation.

[19.1.3.13 NMAC - N, 7/30/2010]

19.1.3.14 PUBLIC-PRIVATE CONSERVATION PROJECTS:

A. Conservation or agricultural easements. Conservation projects that are the joint acquisition of a conservation easement or agricultural easement by a qualified entity and a conservation entity and are funded in part with a grant to a qualified entity shall meet the following requirements.

(1) The qualified entity and conservation entity shall hold title to the conservation easement or agricultural easement as cotenants having undivided interests in proportion to each entity's share of the acquisition.

(2) The conservation entity shall acquire no less than 10 percent of the easement as a percentage of the appraised easement value and may do so through cash or in-kind contributions to the total project value not paid by a qualified entity. If an in-kind contribution, no portion of that contribution shall be comprised of the portion of a donation by a landowner for which the landowner has been previously compensated through a state tax incentive or

credit, but nothing in this provision shall diminish the ability for any landowner to be eligible to apply for any state tax incentive or credit.

(3) The conservation entity, as part of the qualified entity's application, shall submit a plan for the conservation and stewardship of the lands for which the conservation entity and the qualified entity are responsible. The plan shall comply with the purposes of the Natural Heritage Conservation Act and shall specifically identify the entity responsible for ongoing monitoring and stewardship.

B. Land restoration. When a conservation entity has partnered with a qualified entity on a land restoration project that is funded in part with a grant to a qualified entity, the following requirements apply.

(1) The conservation entity shall provide at least 10 percent of the cost of the conservation project and may do so, all or in part, through cash or in-kind contributions to the total project cost not paid by a qualified entity.

(2) The qualified entity shall submit a plan for management of the lands for which the qualified entity and conservation entity are responsible. A conservation entity partner may prepare the management plan. The management plan shall comply with the purposes of the Natural Heritage Conservation Act and shall specifically identify the entity responsible for ongoing management, stewardship and monitoring.

[19.1.3.14 NMAC - N, 7/30/2010]

19.1.3.15 MONITORING REPORT REQUIREMENTS:

A. Qualified entities awarded grants from the fund shall submit annual reports, by December 1 each year, to the department for 10 years after the date of the acquisition of the conservation or agricultural easement or the date of a grant agreement for a land restoration project, unless a longer or shorter monitoring period is mutually agreed in writing among the department and the qualified entity. On joint public-private conservation projects, the qualified entity may delegate this requirement to a conservation entity. The designated responsible qualified entity or conservation entity shall document easement monitoring activities in perpetuity and keep all documentation available for review by the department at any time. Annual reporting and perpetual documentation shall describe the subject property's management by the landowner and include the details of the qualified entity's and any partner conservation entity's stewardship and monitoring activities. For land restoration projects, the report shall provide at least a qualitative assessment of the degree to which the project has accomplished or is accomplishing the objectives specified in the land restoration project application and grant agreements. Monitoring involves assessment of a conservation project for indications that the pre-specified objectives and intent are being met or that trends are in that direction; there is no requirement for scientific-based, cause-effect research and data collection unless such efforts are specifically made a part of the project agreement at the outset or in subsequent amendments of the agreement. The qualified entity or any designated partner entity shall collect sufficient baseline information during the first year of the project such that subsequent monitoring and description of change can be accomplished.

B. A qualified entity's failure to comply with the reporting or documentation requirements, including ensuring proper reporting or documentation by the conservation entity if this requirement is delegated, may disqualify the qualified entity from receiving future grant funding.

[19.1.3.15 NMAC - N, 7/30/2010]

19.1.3.16 COMPLIANCE: The department may audit a qualified entity's or conservation entity's records including stewardship records, financial statements and supporting records relating to the grant award. The qualified entity shall retain such documents pursuant to state and federal requirements, except for stewardship records, which the qualified or conservation entity shall maintain for 10 years, unless a longer or shorter period is mutually agreed in writing among the department and the qualified entity. If the qualified entity is partnering with a conservation entity, the qualified entity shall have a written agreement with the conservation entity that requires the conservation entity to maintain its records for the same time period and allow the department to audit those records. The department may terminate a grant agreement or disqualify a qualified entity from receiving future grants upon discovery of a violation of the terms of the grant agreement or 19.1.3 NMAC.

[19.1.3.16 NMAC - N, 7/30/2010]

19.1.3.17 STATUS REPORTING: The department shall report, including committee outcomes, annually by December 15 to the governor and legislature on status of applications and funded projects.

[19.1.3.17 NMAC - N, 7/30/2010]

HISTORY OF 19.1.3 NMAC: [RESERVED]

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):
	\$		
	\$		
	\$		
	\$		

	\$		
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(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

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:

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.

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.

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 inspect Offeror's facilities, equipment, etc., and interview staff.

To receive consideration, Offeror's proposal must be signed by an officer having the authority to bind Offeror.

Offeror agrees to comply with all relevant federal and state laws and regulations or rules.

New Mexico Employees Health Coverage:

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 that 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.

Offeror 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.

Offeror agrees to advise all employees of the availability of state publicly-financed health care coverage programs.

Application of Resident Preference and Veterans Preference (NMSA 1978, Sections 13-1-21 and 22):

Offeror acknowledges that preference laws do not apply to the work of this RPF as it is funded with federal dollars.

Offeror Signature

Date:

Offeror's Printed Name and Title: _____

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

THIS AGREEMENT (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.

(—OR—)

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, Sections 10-8-1 through 10-8-8 NMSA 1978, 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 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. Effective Date and 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 paragraph 4 (Termination), or paragraph 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 the Contractor. EMNRD's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If EMNRD proposes an amendment to the Agreement to unilaterally reduce funding, the 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.

The Contractor and its subcontractors and employees are independent contractors performing professional services for EMNRD and are not employees of the State of New Mexico. The 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. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The 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.

The 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.

The 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 the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from EMNRD.

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 the Contractor in the performance of this Agreement shall be kept confidential by the Contractor and shall not be made available to any individual or organization by the Contractor without EMNRD's prior written approval.

11. Product of Service -- Copyright.

All materials developed or acquired by the 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 the Contractor under this Agreement shall be the subject of an application for copyright or other claim of ownership by or on behalf of the Contractor.

12. Conflict of Interest; Governmental Conduct Act.

A. The 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. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978C. Without in anyway limiting the generality of the foregoing, the Contractor specifically represents and warrants that:

1) in accordance with NMSA 1978, Section 10-16-4.3, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any Agency 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 10-16-7(A) because (i) the Contractor is not a public officer or employee of the State; (ii) the Contractor is not a member of the family of a public officer or employee of the State of New Mexico (State); (iii) the 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 the 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 10-16-7(A) and this Agreement was awarded pursuant to a competitive process;

3) in accordance with NMSA 1978, Section 10-16-8(A), (i) the 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) the 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, § 10-16-9(A) because (i) the Contractor is not a legislator; (ii) the Contractor is not a member of a legislator's family; (iii) the Contractor is not a business in which a legislator or a legislator's family has a substantial interest; or (iv) if the 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, the 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), the 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 entering into 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. In such an occurrence, and in addition to all remedies available to EMNRD and notwithstanding anything in this Agreement to the contrary, EMNRD may immediately terminate the 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, oral or otherwise, 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.

The 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, Section 38-3-1(G). By execution of this Agreement, Contractor acknowledges and agrees to the 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.

The 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. The records shall be subject to inspection by the Agency, the General Services Department/State Purchasing Division and the State Auditor. 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.

The Contractor shall defend, indemnify and hold harmless EMNRD, its officers, employees, agents, and representatives, and the State of New Mexico from all actions, proceeding, 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 the Contractor or its officers, employees, servants, subcontractors, consultants, or agents, or caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor, Contractor's officers, agents, employees, servants, consultants, or subcontractor 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 any other liability or expense which may arise out of the performance of this Agreement is brought against the Contractor or its officers, employees, servants, subcontractors, consultants, or agents, the Contractor shall, as soon as practicable but no later than two days after it receives notice thereof, notify EMNRD's legal counsel of 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 through 41-4-27 and 41-4-30.

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 the term of the contract, 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 such other address as such party may hereafter specify by written notice to the other given by courier, by United States certified or registered mail, 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]

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 represents and warrants 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 Small Businesses (SBs), Minority Business Enterprises (MBEs) and Women's Business Enterprises (WBEs), Veteran-Owned Businesses (VBs), and Labor Surplus Area Firms (LSAFs) - 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 SBs/MBEs/WBEs/VBs/LSAFs on solicitation lists;
- 2) assuring that SBs/MBEs/WBEs/VBs/LSAFs are solicited once they are identified;
- 3) when economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum SB/MBE/WBE/VB/LSAF participation;
- 4) where feasible, establishing delivery schedules which will encourage SB/MBE/WBE/VB/LSAF 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 SBs/MBEs/WBEs/VBs/LSAFs, 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 200.327 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.

I. Contractor should, to the greatest extent practicable and consistent with law, provide a preference for the purchase, acquisition, or use of goods, product or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).

- 1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- 2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pip; aggregates such as concrete; glass, including optical fiber; and lumber.

J. Compliance with the Davis-Bacon Act (40 U.S.C. § 3141-3144 and 3146-3147), as amended and as supplemented by the U.S. Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction") – Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of the U.S. Department of Labor. In addition, Contractor shall pay wages not less than once per week.

K. Compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by the U.S. Department of Labor regulations (29 CFR Part 3) – Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which they are entitled.

L. If this Agreement is valued at more than \$100,000 and involves the employment of mechanics or laborers, Contractor must comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. § 3702 and § 3704) as supplemented by the U.S. Department of Labor regulations (29 CFR Part 5).

M. If the Federal Award meets the definition of “funding agreement” under 37 CFR § 401.2(a), the Contract must comply with “Rights to Inventions Made by Nonprofit Organizations, Small Business Firms Under Government Grants, Contracts and Cooperative Agreements” (37 CFR Part 401).

N. Contract should, to the greatest extent practicable and consistent with law, purchase acquire, or use products and services that can be reused, refurbished, or recycled; contain recycled content, or biobased, or are energy and water efficient; and are sustainable. This may include purchasing compostable items and other products and services that reduce the use of single-use plastic products. Procurement of such items as prescribed in the guidelines of the U.S. Environmental Protection Agency (40 CFR Part 247).

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, Chapter 52, Article 1, 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, Chapter 41, Article 5 (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).

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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: _____ Date: _____
Cabinet Secretary or Designee

By: _____ Date: _____
Legal Counsel - Certifying legal sufficiency

By: _____ Date: _____
Chief Financial Officer

CONTRACTOR NAME

By: _____ Date: _____
Authorized Representative Signature

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.*
