

**REQUEST FOR PROPOSALS  
ISSUED BY THE  
STATE OF NEW MEXICO, ENERGY, MINERALS AND NATURAL RESOURCES  
DEPARTMENT, FORESTRY DIVISION  
FOR WILDLAND FIRE TRAINING INSTRUCTOR SERVICES**

**ARTICLE I. STATEMENT OF WORK**

The State of New Mexico, Energy, Minerals and Natural Resources Department (EMNRD), Forestry Division (Forestry Division) is seeking proposals from individuals, firms, entities, and colleges or universities who are qualified under the National Wildland Fire Coordinating Group (NWCG) publication PMS 310-1 to instruct the wildland fire training courses listed below, using the NWCG course specifications, primarily for volunteer fire departments.

This Request for Proposals (RFP) is directed to individuals, organizations, and entities who must provide their own instructor material such as instructor guides and videos (this reference material shall not be disseminated to students and is for instructor use only) and that can:

- instruct various wildland fire training courses as directed by the Forestry Division using the NWCG course specifications. For the Basic Wildland Firefighter Suppression Course: S130/190, I-100, L-180, successful Offeror(s) shall use NWCG instruction books and training materials and Forestry Division-approved workbooks and slides. For intermediate course instruction, successful Offeror(s) shall use the NWCG instructions books and training materials. Successful Offeror(s) instructor qualifications must meet NWCG's requirements listed in the PMS 901-1 (Field Manager's Course Guide) (see <https://www.nwcg.gov/publications/pms901-1>) as lead instructor for the level of the course they intend to instruct and the **currency requirements as indicated in the PMS 310-1** (Qualifications and Certifications Guide) (see <https://www.nwcg.gov/publications/pms310-1>);
- maintain these qualifications for the contract's duration;
- provide their own instructor material such as instructor guides and videos;
- provide the training either virtually or in person, to be determined in conjunction with the Forestry Division Program Manager;
- accommodate volunteer fire department trainee schedules (the Forestry Division may modify some NWCG basic and intermediate courses by compressing schedules); and
- meet Forestry Division geographic location and availability needs for wildland fire training.

The Forestry Division may enter into multiple agreements as a result of this RFP. Any proposal that may result from this RFP is valid for one year from date of proposal due date as indicated in Article VI, Contact Person and Due Dates, below.

The Forestry Division shall coordinate wildland fire training courses through Forestry Division District Fire Management Officers (FMO) and the Resource Protection Bureau. The Forestry Division District FMOs shall be responsible for initial contact with the contract instructors to verify availability; course promotion and scheduling; registration; providing training facilities; and providing exclusive NWCG workbooks, pre-work booklets, and training materials. Successful Offeror(s) shall be responsible for notifying students of course results and course certificate distribution upon successful completion of the course. Successful Offerors shall submit all course documentation to the District FMO. District FMOs shall oversee the coordination of the trainings ensuring NWCG and Forestry Division standards are upheld. For each course, the Forestry Division may survey students to evaluate successful Offeror(s) performance.

#### Course Number and Title

The Forestry Division may offer all NWCG Catalog courses at the 100 (Basic) and 200 (Intermediate) level on an as-needed basis. Course length is specified in NWCG publication PMS 901-1, as it may be updated from time to time.

In addition to the NWCG Basic and Intermediate courses, the Forestry Division may also offer:

#### Comm 1 and 2

Comm 1 - Beginning Programable Radio Communications Training  
Comm 2 - Advanced Programable Radio Communications Training

#### Advanced Wildland Courses

I-300: Intermediate ICS  
I-400: Advanced ICS  
L-380: Fireline Leadership  
S-330: Task Force/Strike Team Leader  
S-339: Division Supervisor  
S-336: Fire Suppression Tactics  
S-390: Intro to Wildland Fire Behavior Calculations  
D-310: Expanded Dispatch Support Dispatcher

Successful Offeror(s) shall be responsible for teaching the selected courses and for providing their own audio-visual equipment necessary for the display of classroom materials, including laptop computers and projectors. In the event the successful Offeror is delivering the course virtually, the successful Offeror shall provide available meeting platforms such as Teams, Zoom, or other virtual platform links to all students, and shall maintain and provide student course roster, virtual course curriculums, and

associated course training materials to students.

For each course, successful Offerors must be able to:

- ✓ provide course instruction;
- ✓ conduct a course review and course test and grade tests;
- ✓ provide written recommendations for certification for each student;
- ✓ document student daily attendance;
- ✓ record total volunteer student “seat hours”; and
- ✓ submit results and documentation, along with invoice for services to the Forestry Division.

Successful Offerors must attend in person or virtual training covering required documentation as determined by the Forestry Division.

Successful Offeror(s) may use volunteer or subcontractor instructors to assist in the conduct of the course, provided they are pre-approved in writing by the Forestry Division. Successful Offeror(s) shall be required to maintain insurance providing workers compensation protection, if applicable, and public liability insurance.

Successful Offeror(s) who are retired from a Public Employee Retirement Association (PERA) government retirement system must provide the Forestry Division with a letter from PERA indicating they are independent contractors by the time the contract is signed.

## **ARTICLE II. PROPOSAL FORMAT AND CONTENTS**

Proposals must contain sufficient information to provide the Forestry Division with a thorough description of Offeror’s qualifications to accomplish the activities described in the Statement of Work. The proposal **MUST** be on 8.5 x 11 inch paper and contain, at a minimum, all listed items in the sequence indicated and be organized in the following format.

1. Letter of transmittal that:
  - identifies the name, title, telephone and fax numbers, and e-mail address of the person authorized to negotiate the contract on behalf of the Offeror;
  - identifies the names, titles, telephone and fax numbers, and e-mail addresses of persons to be contacted for clarification;
  - contains federal and state tax identification numbers;
  - explicitly indicates acceptance of the terms and conditions of this RFP and its evaluation factors;
  - acknowledges receipt of any and all amendments to this RFP; and
  - is signed by the person authorized to contractually obligate the Offeror.

2. Listing of qualifications, experience, education, and knowledge (refer to Proposal Evaluation Criteria).
3. Listing of each course Offeror is NWCG-qualified for and willing to instruct.
4. A copy of Offeror's Incident Qualification Card or National Wildland Coordinating Group (NWCG) "Red Card", and a copy of the offers incident qualification master record from the Incident Qualification System (IQS) or Incident Qualification and Certification System (IQCS).
5. Offerors must provide a minimum of two business references from similar contract services performed for private, state, or local government clients within the last three years. Offerors are required to submit the Reference Questionnaire (Attachment 1) to the business references they list. The business references must submit the Reference Questionnaire directly to the Forestry Division Contact Person listed in Section VIII below. Offerors are responsible for ensuring that the completed forms are received by or before the proposal submission deadline for inclusion in the evaluation process. Business references that are not received, or are not complete, may adversely affect the Offeror's score in the evaluation process. The Evaluation Team may contact any or all business references for validation of information submitted.
6. Signed Statement of Assurances (Attachment 2).
7. Completed, signed Campaign Contribution Disclosure Form (Attachment 3). Only non-governmental Offerors are required to complete and submit this form with their proposal.

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.

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

### ARTICLE III. CRITERIA AND EVALUATION POINT SUMMARY

The Forestry Division shall evaluate proposals based on how the project categories correlate with program objectives, given 120 possible points as specified below:

<b>Evaluation Criteria</b>	<b>Points</b>
Offeror meets the NWCG instructor qualifications and currency requirements (40 points)  Points will be awarded based on proof of NWCG PMS310-1 current qualifications. Higher qualifications and an Offeror's ability to teach more courses shall be scored higher.	40
Offeror's experience conducting fire training courses  Points will be awarded based current experience teaching NWCG curriculum. Offerors must document this experience the proposal.	20
Offeror's experience in wildland fire management  Points will be awarded based on the Offeror's incident qualification master record (IQS or IQCS) and other documented responses to wildland fire management incidents.	15
Offeror's daily rate per training day (training day equals six to 10 hours of instruction. The Forestry Division will not be reimbursing successful Offeror(s) for travel and therefore, such costs need to be reflected in the daily rate.  Points will be awarded for total cost of providing training daily.  The evaluation will be based on the following formula: $\text{Lowest Responsive Offer Amount} \div \text{This Offeror's Proposed Amount} \times \text{Award Points}$ .	25
References  Points will be awarded based upon an evaluation of the responses to a series of questions that will be asked of the references concerning the quality of the Offeror's services, the timeliness of services, responsiveness to problems and complaints, and the level of satisfaction with the Offerors overall performance (see Attachment 1, Reference Questionnaire).	20
<b>Maximum possible points</b>	<b>120*</b>

\* This procurement is excluded from state preference laws because it is funded with federal dollars.

## **ARTICLE IV. 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 Contact Person may contact Offerors for clarification of the proposals.
4. The Evaluation Team will evaluate responsive proposals based on the criteria in Article III and will select responsive Offeror(s) with the highest total scores as finalist Offeror(s).
5. Offerors shall review the federal compliance documents found in Attachment 4. These federal compliance documents can also be found at: <https://www.emnrd.nm.gov/sfd/requests-for-proposals-and-grants/>. Successful Offerors will be required to comply with Attachment 4.
6. The Evaluation Team will consult with listed references and select the finalist Offerors whose proposal and references is/are most advantageous to the Forestry Division, for award. Please note, however, that a deficiency in any one factor may be grounds for rejection regardless of overall score.

## **ARTICLE V. CONTRACT AWARD AND DURATION**

The Forestry Division may award multiple contracts under the terms of the attached draft Professional Services Agreement (PSA) (Attachment 5) or Governmental Services Agreement (Attachment 6) 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, Contracts Review Bureau (CRB). The contract period for PSAs shall extend from the date of approval by CRB, and shall last no longer than four years, including amendments. Any GSA awarded as a result of this RFP shall not be binding until approved by EMNRD. The contract period for GSAs shall extend from the date of EMNRD approval and shall last no longer than four years.

## **ARTICLE VI. CONTACT PERSON AND DUE DATES**

Questions regarding this RFP shall be addressed to Gabriel Cordova, Program Manager, EMNRD, Forestry Division, Wendell Chino Building, 1220 South. St. Francis Drive, Santa Fe, NM 87505, telephone (505) 629-2041; email: [Gabrielf.cordova@emnrd.nm.gov](mailto:Gabrielf.cordova@emnrd.nm.gov).

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 via email to the Contact Person as to the intent or clarity of this RFP until 5 p.m. MDT, August 9, 2023. All written questions must be addressed to the Contact Person as indicated above. Questions shall be clearly labeled and shall cite the Section(s) in the RFP or other document which form the basis of the question.

The Forestry Division will post written responses to such questions as they are received on the Forestry Division website: <https://www.emnrd.nm.gov/sfd/requests-for-proposals-and-grants/>

### **Proposal Due Date**

Offerors shall submit via email one proposal, no later than 5 p.m. MDT, August 18, 2023, to the Contact Person above at the email address above. 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. **RFP responses MAY NOT be sent by facsimile.**

### **Protest Period**

Pursuant to NMSA 1978, § 13-1-172 and applicable procurement rules, Offerors who are not selected for funding 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 the Forestry Division. 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: Brian Holton, Bureau Chief for Administration, EMNRD Forestry Division, 1220 S. St. Francis Drive, Santa Fe, NM 87505.

## **ARTICLE VII. NOTICES**

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

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

The Forestry Division may cancel this RFP and reject any and all proposals when it is in the State of New Mexico's best interest.

The Forestry Division may conduct discussions with Offerors who submit proposals but may also accept proposals without such discussions.

The Procurement Code, NMSA 1978, Sections 13-1-28 through 13-1-199, imposes civil and misdemeanor criminal penalties for its violation. In addition, New Mexico criminal statutes impose felony penalties for bribes, gratuities, and kickbacks.



## Attachment 1

<b>REQUEST FOR PROPOSALS</b> <b>ISSUED BY THE STATE OF NEW MEXICO, ENERGY, MINERALS AND NATURAL RESOURCES</b> <b>DEPARTMENT, FORESTRY DIVISION</b> <b>FOR WILDLAND FIRE TRAINING INSTRUCTOR SERVICES</b>			
<b>REFERENCE QUESTIONNAIRE</b>			
<b>Name of Individual/Entity Requesting Reference:</b>			
<p>EMNRD, as a part of the RFP process, requires Offerors to submit a minimum of two business references as required within this document. The purpose of these references is to document the experience relevant to the scope of work and assist in the evaluation process.</p> <p>The Offeror is required to send this reference form to each business reference listed. The business reference, in turn, is requested to submit the Reference Form directly to the Contact Person listed below by the RFP submission deadline for inclusion in the evaluation process. The form and information provided will become a part of the submitted proposal.</p> <p>This form is being submitted to you for completion as a business reference for the individual or entity above. Please email this completed form directly to the Contact Person: Gabriel Cordova, Program Manager, EMNRD, Forestry Division email <a href="mailto:gabrielf.cordova@emnrd.nm.gov">gabrielf.cordova@emnrd.nm.gov</a>; cell phone (505) 629-2041 no later than 5 p.m., August 18 2023. Do not return this form to the individual or entity requesting the reference.</p> <p>For questions or concerns regarding this form, please contact the Contact Person listed above.</p>			
<b>Name of Individual/Entity Providing Reference:</b>			
<b>Contact Name and Title/Position:</b>			
<b>Contact Telephone Number:</b>			
<b>Contact E-Mail Address:</b>			
<b>QUESTIONS</b>			
1. In what capacity have you worked with this Offeror in the past? (Please explain)			
2. How would you rate this Offeror's knowledge and expertise? (Check one)			
3-Excellent _____	2-Satisfactory _____	1-Unsatisfactory _____	0-Unacceptable _____
Comments:			

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**REFERENCE QUESTIONNAIRE**

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

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

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

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

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

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

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

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

Comments:

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

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

<p style="text-align: center;"><b>REQUEST FOR PROPOSALS</b> <b>ISSUED BY THE STATE OF NEW MEXICO, ENERGY, MINERALS AND NATURAL RESOURCES</b> <b>DEPARTMENT, FORESTRY DIVISION</b> <b>FOR WILDLAND FIRE TRAINING INSTRUCTOR SERVICES</b> <b>REFERENCE QUESTIONNAIRE</b></p>
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8. With which aspect(s) of the Offeror's services are you most satisfied? (Please explain)
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9. With which aspect(s) of the Offeror's services are you least satisfied? (Please explain)
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10. Would you recommend this Offeror's services to your organization again? (Please explain)
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## Attachment 2

### Statement of Assurances Form

Each Offeror MUST complete this form and return it with Offeror's proposal or THE FORESTRY DIVISION will deem the proposal as non-responsive. By signing this form below, Offeror certifies 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.

If an Offeror finds discrepancies, omissions, or ambiguities in the contract documents, it will at once notify THE FORESTRY DIVISION, which will send written corrections or explanations to all Offerors. The Forestry Division will not be responsible for any oral instructions.

If an Offeror's proposal substantially adds to, subtracts from, or otherwise changes the provisions of this RFP, the proposal shall be void.

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.

Offeror certifies that funds awarded to the Offeror by the Forestry Division through any contract issued pursuant to this RFP will not be used to supplant funds that the Offeror may have at its disposal from other sources.

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 which may result from this RFP, Offeror agrees, by submitting a proposal, to have in place, and agrees to maintain for the Agreement's term, health insurance for those employees and offer that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Offeror and the state exceed \$250,000.

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.

<b>Statement of Assurances Form</b>	
Application of Veterans and Residence Preference:	
This procurement is excluded from state preference laws because it is funded with federal dollars.	
_____ Offeror Signature	_____ Date:
Offeror's Printed Name and Title: _____	

### Attachment 3

This attachment only applies to non-governmental Offerors.

## 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 into a contract with any state agency or local public body **for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources** 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 of 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:**

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

(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 4**  
**Federal Compliance**

**FINANCIAL CAPABILITY QUESTIONNAIRE**

FISCAL YEAR:

Adequate accounting systems should meet the following criteria as outlined in the Office of Management and Budget's (OMB) Circular of Uniform Administrative Requirements, Cost Principles, and Audit Requirements found in 2 CFR Part 200, as implemented by USDA regulations 2 CFR Part 400.

- (1) Accounting records should provide information needed to adequately identify the receipt of funds under each grant awarded and the expenditure of funds for each grant.
- (2) Entries in accounting records should refer to subsidiary records and/or documentation which support the entry and which can be readily located.
- (3) The accounting system should provide accurate and current financial reporting information.
- (4) The accounting system should be integrated with an adequate system of internal controls to safeguard the funds and assets covered, check the accuracy and reliability of accounting data, promote operational efficiency, and encourage adherence to prescribed management policies.

**APPLICANT ORGANIZATIONAL INFORMATION**

1. Name of Organization and Address:

2. Authorized Representative's Name and Title:

3. Phone: - - ext.

4. Fax: - -

5. Email:

6. Year Established:

7. Employer Identification Number (EIN):

8. DUNS Number:

9. Type of Organization:

10. Approximate Number of Employees:

Full Time (Paid):

Full Time (Volunteer):

Part Time (Paid):

Part Time (Volunteer):

**FEDERAL AUDIT DATA**11. Have you been audited by a Federal agency?: ☐ Yes ☐ No

If yes, please indicate the type:

☐ OMB A-133 Single Audit (required of institutions that annually expend over \$750,000 in federal funds)☐ Incurred Cost ☐ Accounting System ☐ Timekeeping

12. Date of Last Federal Audit/Review (m/d/yyyy):

Audit Agency/Firm:

If findings are reported, explain:

**FINANCIAL STATEMENT AUDIT DATA**

13. Date of Last Financial Statement Audit:

Fiscal Period Audited:

Audit Firm:

Auditor's Opinion on Financial Statement:

☐ Unqualified Opinion☐ Qualified, Disclaimer  
or Adverse Opinions

If other than unqualified, state reason:



If you have not had an audit completed in the last two years, please submit a copy of your most recent tax forms (990 for non-profits). If you do not have a current tax form, please explain:

#### ACCOUNTING SYSTEM

14. Has any Government Agency rendered an official written opinion concerning the adequacy of the accounting system for the collection, identification and allocation of costs under Federal contracts/grants?

☐ Yes ☐ No

15. If yes, provide name and address of Agency performing review:

Attach a copy of the latest review and any subsequent correspondence, clearance documents, etc.

16. Which of the following best describes your accounting system:

☐ Manual ☐ Automated ☐ Combination

17. Does the accounting system identify the receipt and expenditure of program funds separately for each grant?

☐ Yes ☐ No ☐ Not Sure

18. Does the accounting system provide for the recording of expenditures for each grant/contract by budget cost categories shown in the approved budget?

☐ Yes ☐ No ☐ Not Sure

19. Does the accounting system provide for the recording of cost sharing or match for each grant? Can you ensure that documentation is available to support recorded match or cost share?

☐ Yes ☐ No ☐ Not Sure

20. Are time distribution records maintained for each employee that specifically identify effort charged to a particular grant or cost objective?

☐ Yes ☐ No ☐ Not Sure

21. Does the accounting/financial system include budgetary controls to preclude incurring obligations or costs in excess of total funds available for a grant?

☐ Yes ☐ No ☐ Not Sure

22. Does the accounting/financial system include budgetary controls to preclude incurring obligations or costs in excess of total funds available for a budget cost category (e.g. Personnel, Travel, etc.)?

☐ Yes ☐ No ☐ Not Sure

23. Is your organization generally familiar with the existing regulation and guidelines containing the Cost Principles and procedures for the determination and allowance of costs in connection with Federal grants?

☐ Yes ☐ No ☐ Not Sure

#### FUNDS MANAGEMENT

24. Is a separate bank account maintained for Federal grant funds?

☐ Yes ☐ No

25. If a separate bank account is not maintained, can the Federal grant funds and related expenses be readily identified?

☐ Yes ☐ No

#### PROPERTY STANDARDS, PROCUREMENT STANDARDS, AND TRAVEL POLICIES

##### PROPERTY STANDARDS

26. Does your property management system(s) provide for maintaining: (1) a description of the equipment; (2) an identification number; (3) source of the property, including the award number; (4) where title vests; (5) acquisition date; (6) federal share of property cost; (7) location and condition of the property; (8) acquisition cost; & (9) ultimate disposition information?

☐ Yes ☐ No ☐ Not Sure



27. Does your property management system(s) provide for a physical inventory and reconciliation of property at least every two years?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Sure
28. Does your property management system(s) provide controls to insure safeguards against loss, damage or theft of the property?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Sure
<b>PROCUREMENT STANDARDS</b>	
29. Does your organization maintain written procurement procedures which (1) avoid unnecessary purchases; (2) provide an analysis of lease and purchase alternatives; and (3) provide a process for soliciting goods and services?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Sure
30. Does your procurement system provide for the conduct to ensure selection on a competitive basis and documentation of cost or price analysis for each procurement action?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Sure
31. Does your procurement system include provisions for checking the "Excluded Parties List" system for suspended or debarred sub-grantees and contractors, prior to award? <a href="http://www.sam.gov">www.sam.gov</a>	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Sure
<b>TRAVEL POLICY</b>	
32. Does your organization maintain a standard travel policy or, if no policy exists, does your organization adhere to rates and amounts established under 5 U.S.C. 5701-11, ("Travel and Subsistence Expenses; Mileage Allowances"), and policies under the Federal Acquisition Regulations at 48 CFR 31.205-46(a)?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Sure
<b>SUBRECIPIENT MANAGEMENT</b>	
33. (For Pass-through entities only). Does your organization have controls in place to monitor activities of subrecipients, as necessary, to ensure that Federal awards are used for authorized purposes in compliance with laws, regulations, and the provisions of the award and that performance goals are achieved.	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Sure
<b>INDIRECT COSTS</b>	
34. My organization has an established indirect cost rate	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Sure
35. If my organization chooses to charge indirect costs to the Federal award or use indirect costs as a match, you understand that you must prepare an indirect cost rate proposal and submit it to your cognizant Federal agency for approval. Alternatively, you may use a de minimus rate of 10% of modified total direct costs (MTDC).	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Sure
<b>STANDARDS FOR FINANCIAL MANAGEMENT SYSTEMS AND APPLICANT CERTIFICATION</b>	
I certify that the above information is complete and correct to the best of my knowledge.	
Signature:	
Name:	
Title:	

**Burden Statement**

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0217. The time required to complete this information collection is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at 202-720-2600 (voice and TDD).

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call toll free (866) 632-9992 (voice). TDD users can contact USDA through local relay or the Federal relay at (800) 877-8339 (TDD) or (866) 377-8542 (relay voice). USDA is an equal opportunity provider and employer.

**Federal Eligibility Checklist  
Pre-Award  
(EMNRD – Forestry Division Use Only)**

Applicant Name:		Reviewer Name:				
Project Name:		Date:				
Determination:		<input type="checkbox"/> <b>Subrecipient</b> <input type="checkbox"/> <b>Contractor</b>				
<p>Only Offerors who receive a “Yes” answer for each of the items listed below will be considered to receive federal funds in the form of a <b>subaward</b>. Only applicants who receive a “Yes” answer for each of the items listed below with an asterisk will be considered to receive federal funds in the form of a <b>contract</b>.</p>						
<input type="checkbox"/>	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	NA	*The Forestry Division has determined the Offeror qualifies as a subrecipient or contractor using the Subrecipient-Contractor Determination Checklist.
<input type="checkbox"/>	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	NA	The Forestry Division has confirmed the Offeror has an active registration in SAM. (Applicant must be registered in SAM using a valid DUNS number and must maintain an active SAM registration annually.)
<input type="checkbox"/>	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	NA	The Forestry Division has confirmed the Offeror has a unique entity identification number and has an active account in the System for Award Management (SAM)., and that the applicant name matches the SAM.gov account.
<input type="checkbox"/>	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	NA	*The Forestry Division has confirmed the Offeror is not suspended or debarred using SAM to determine exclusions. (Pursuant to 2 C.F.R. Part 180, provisions restrict federal awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal programs or activities. The Forestry Division reviewer must attach a hard copy of the record to this checklist to document eligibility.)
<input type="checkbox"/>	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	NA	The Forestry Division has confirmed the Offeror is in compliance with federal and state audit requirements. (Offeror must have a Certification, Agreed Upon Procedures, or Single Audit on file with OSA and must be in compliance for the past three fiscal years through the most current audit cycle.)
						<b>Offerors may be acting in both capacities. Use the checklist by determination, answering the questions as they pertain to the potential subaward or contract in question. An Offeror will receive an “NA” for checklist questions that do not have an asterisk.</b>

**Attachment 5**  
**STATE OF NEW MEXICO,**  
**ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT**  
**PROFESSIONAL SERVICES AGREEMENT (AGREEMENT)**

THIS AGREEMENT is made and entered into by and between the State of New Mexico, Energy, Minerals and Natural Resources Department (EMNRD) and (insert Contractor Name) (Contractor), and is effective as of the date set forth below upon which it is executed by the General Services Department, State Purchasing Division (GSD/SPD), Contracts Review Bureau.

IT IS AGREED BETWEEN THE PARTIES:

**1. Scope of Work.**

Contractor shall perform the following work:

(Insert Scope of Work here.)

**2. Compensation.**

Option 1: Work Product.

A. EMNRD shall pay Contractor for services satisfactorily performed pursuant to the Scope of Work and as specified below. This amount shall not exceed \_\_\_\_\_ (\$ \_\_\_\_\_), which amount includes travel and New Mexico gross receipts taxes pursuant to Paragraphs C and D of this Compensation Section (if travel is negotiated. Travel payment language also does not apply when paying on a deliverables basis unless the travel is set out as a separate item. If travel is not paid, remove reference to travel.). EMNRD shall make payment upon the satisfactory and timely completion of the work described in the Scope of Work and for no more than the maximum amount set forth below for each deliverable:

(Insert deliverables/payment schedule here. Delete this instruction.)

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

(—OR—)

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

A. Upon satisfactory completion of services, EMNRD shall pay Contractor for services satisfactorily performed pursuant to the Scope of Work in an amount not to exceed \_\_\_\_\_ (\$ \_\_\_\_\_), which amount includes New Mexico gross receipts taxes.

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



A. EMNRD shall pay to Contractor in full payment for services satisfactorily performed pursuant to the Scope of Work rendered at the rate of \$\_\_\_\_\_ per hour, such compensation not to exceed \$\_\_\_\_\_, which amount includes travel and New Mexico gross receipts taxes, pursuant to Paragraphs C and D of this Compensation Section. This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for Contractor to continue to provide services without compensation when the total compensation amount is reached. Contractor is responsible for notifying EMNRD when the services provided under this Agreement reach the total compensation amount. In no event will Contractor be paid for services provided or travel expenses exceeding the total compensation amount without this Agreement being amended in writing prior to those services exceeding the total compensation amount being provided.

B. (For single-year contract, may need to tweak the first sentence.) Payment in FYXX, FYXX, and FYXX is subject to availability of funds pursuant to Section 5, Appropriations, set forth below and to any negotiations between the parties from year to year pursuant to Section 1, Scope of Work, and to approval by GSD/SPD. EMNRD must receive all invoices no later than 15 days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date WILL NOT BE PAID.

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

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

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

### 3. Term.

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



extensions and renewals, shall exceed four years, except as set forth in NMSA 1978, Section 13-1-150.

#### 4. Termination.

##### A. EMNRD.

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

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

##### B. Contractor.

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

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

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

1) not incur any further obligations for salaries, services, or any other expenditure of funds under this Agreement without EMNRD's written approval;

2) comply with all directives EMNRD issues in the notice of termination as to the performance of work under this Agreement; and

3) take such action as EMNRD directs for the protection, preservation, retention, or transfer of all property titled to EMNRD and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by Contractor with contract funds shall become property of EMNRD upon termination and shall be submitted to

EMNRD as soon as practicable. (If federal funding is involved, include the following clause. If not, delete it.) Otherwise, all property procured under this Agreement shall be used and disposed of in accordance with (insert name of federal funding entity) regulations.

4) Contractor shall submit an invoice for work performed prior to Contractor's receipt or issuance of a notice of termination no later than 30 days after receiving or sending a notice of termination.

## **5. Appropriations.**

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

## **6. Status of Contractor.**

Contractor and its subcontractors, agents, and employees are independent contractors performing professional services for EMNRD and are not employees of the State of New Mexico. Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. Contractor acknowledges that all sums received hereunder are reportable by Contractor for tax purposes, including without limitation, self-employment and business income tax. Contractor has no authority to bind and shall not bind the State of New Mexico unless expressly authorized in writing by the State of New Mexico, and then only within the strict limits of that authority.

## **7. Assignment.**

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

## **8. Subcontracting.**

Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of EMNRD. No such subcontract shall relieve Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment by EMNRD.

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

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

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

C. Any subcontract agreement shall include all provisions necessary to allow Contractor to meet its obligations and requirements under this Agreement and all provisions required by law.

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

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

**9. Release.**

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

**10. Confidentiality.**

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

**11. Product of Service -- Copyright.**

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

**12. Conflict of Interest; Governmental Conduct Act.**

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

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

1) in accordance with NMSA 1978, Section 10-16-4.3, Contractor does not employ, has not employed, and will not employ during the term of this Agreement any EMNRD employee

while such employee was or is employed by EMNRD and participating directly or indirectly in EMNRD's contracting process;

2) this Agreement complies with NMSA 1978, Section 10-16-9(A) because (i) Contractor is not a public officer or employee of the State of New Mexico (State); (ii) Contractor is not a member of the family of a public officer or employee of the State; (iii) Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if Contractor is a public officer or employee of the State, a member of the family of a public officer or employee of the State, or a business in which a public officer or employee of the State or the family of a public officer or employee of the State has a substantial interest, public notice was given as required by NMSA 1978, Section 10-16-9(A) and this Agreement was awarded pursuant to a competitive process;

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

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

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

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

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

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

**13. Amendment.**

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

**14. Merger.**

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

**15. Penalties for Violation of Law.**

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

**16. Equal Opportunity Compliance.**

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

**17. Applicable Law.**

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

**18. Records and Financial Audit.**

Contractor shall maintain time and expenditure records that indicate the date, time, nature, and cost of services rendered during the Agreement's term and effect and retain them for a period of six years from the date of final payment under this Agreement. EMNRD shall have the right to audit time and expenditure records both before and after payment, and Contractor agrees to include in all subcontracts hereunder the same right of inspection and audit against all subcontractors. Payment under this Agreement shall not foreclose EMNRD's right to recover excessive or illegal payments. In EMNRD's, GSD/SPD's, or the State Auditor's, (or insert name of federal funding entity)'s sole discretion, the periods of inspection and audit may be extended for records which relate to litigation or settlement of claims arising out of performance of this Agreement (and costs and expenses of this Agreement for which exception is under consideration by the federal funding agency or any authorized representative) and shall continue until all potential litigation, appeals, claims, or exceptions have expired or been resolved.

**19. Indemnification.**

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

**20. New Mexico Employees Health Coverage.**

A. If Contractor has, or grows to, six or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six-month period during the term of the contract, Contractor certifies, by signing this Agreement, to have in place, and agree to maintain for this Agreement's term, health insurance for those employees and offer that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.

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

1) accepted health insurance;

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

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

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

**21. Invalid Term or Condition.**

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

**22. Enforcement of Agreement.**

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

**23. Notices.**

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

To EMNRD:

[insert position title and address of project manager]

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

To Contractor:

[insert contact information]

To Risk Management Division:

Risk Management Division  
General Services Department

P.O. Drawer 26100  
Santa Fe, NM 87502-0110

**24. Authority.**

If Contractor is other than a natural person, the individual(s) signing this Agreement on Contractor's behalf and Contractor represent and warrant that such individual has the power and authority to bind Contractor, and that no further action, resolution, or approval from Contractor is necessary to enter into a binding agreement.

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

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

**26. Attorneys' Fees and Costs.**

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

**27. Minimum Wage Rate.**

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

**28. Compliance with Funding Source Conditions.**

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

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

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

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



- 1) including qualified MBEs/WBEs on solicitation lists;
- 2) assuring that MBEs/WBEs are solicited once they are identified;
- 3) when economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum MBE/WBE participation;
- 4) where feasible, establishing delivery schedules which will encourage MBE/WBE participation;
- 5) encouraging use of the services of the U.S. Department of Commerce's Minority Business Development Agency and the U.S. Small Business Administration to identify MBEs/WBEs, as required; and
- 6) if any subcontracts are to be let, requiring the subcontractor to take the affirmative steps listed above.

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

- 1) engage in severe forms of trafficking in persons during this Agreement's term;
- 2) procure a commercial sex act during this Agreement's term; or
- 3) use forced labor in the performance of this Agreement.

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

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

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

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

as parties declared ineligible under statutory or regularity authority other than Executive Order 12549.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

By: \_\_\_\_\_  
Cabinet Secretary or Designee

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

By: \_\_\_\_\_  
Legal Counsel - Certifying legal sufficiency

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

By: \_\_\_\_\_  
Chief Financial Officer

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

**CONTRACTOR NAME**

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

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

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

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

By: \_\_\_\_\_ Date: \_\_\_\_\_  
GSD/SPD Contracts Review Bureau

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: \_\_\_\_\_

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

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**Attachment 6**  
**STATE OF NEW MEXICO,**  
**GOVERNMENTAL SERVICES AGREEMENT**  
**BETWEEN THE**  
**STATE OF NEW MEXICO,**  
**ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT**  
**AND**  
**ENTITY**

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

**THE PARTIES MUTUALLY AGREE:**

1. Scope of Work: Entity shall:

(Insert description of work. Remove this instruction.)

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

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

Option 1: Work Product. If you choose this option, remove this Option 1 heading and remove the optional Paragraph As below.

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

(Insert deliverables/payment schedule here. Remove this instruction)

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

Option 2: Lump Sum Amount Upon Completion of All Work. If you choose this option, remove Paragraph B of this Compensation Section as well and re-letter successive paragraphs accordingly. Remove the paragraph above it. Remove this Option 2 heading.

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

Option 3: Time and Materials. If you choose this option, remove this Option 3 heading and the paragraphs above it.

A. EMNRD shall pay Entity for services rendered and amount not to exceed \_\_\_\_\_ (\$ \_\_\_\_\_) per (hour, day, week, month), such compensation not to exceed \_\_\_\_\_ (\$ \_\_\_\_\_) in total, which amount includes gross receipts taxes and travel as shown in Paragraphs B and C of this Compensation Section. EMNRD shall reimburse Entity for the cost of materials necessary under this Agreement for an amount not to exceed \_\_\_\_\_ (\$ \_\_\_\_\_). This amount is a maximum and not a guarantee that the work assigned to Entity under this Agreement to be performed shall equal the amount stated herein. EMNRD MUST receive all invoices no later than 15 days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date SHALL NOT BE PAID. Payment shall not relieve the Entity of any unperformed obligations under the Scope of Work.

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

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

D. Entity 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, Entity shall also provide documentation of hours expended on the services provided.) If EMNRD finds that the invoice services, or expenses are not acceptable, within 30 days of receipt of written notice from Entity that payment is requested for services received, EMNRD shall provide Entity a letter of exception explaining the defect or objection to the invoice, services, or expenses, and outlining steps Entity 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 Entity within 30 days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, EMNRD shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11. Product of Services; Copyright: All materials developed or acquired by Entity under this Agreement shall become the State of New Mexico's property and be delivered to EMNRD no later than this Agreement's expiration date. Nothing Entity produces, in whole or in part, under this Agreement shall be the subject of a copyright application or other claim of ownership by or on behalf of Entity.

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

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

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



valid or enforceable unless as embodied in this Agreement.

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

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

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

18. Records and Audit:

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

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

B. If Entity receives \$750,000 or more in federal funding from all sources in the aggregate in a fiscal year, Entity's financial records involving services and procurement under this Agreement shall be audited annually pursuant to all federal, state, and local government

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

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

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

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

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

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

To EMNRD:

(insert position title and address of project manager)

General Counsel  
EMNRD – Office of the Secretary  
1220 S. St. Francis Drive

Santa Fe, NM 87505

To the Entity:

(insert contact information)

To Risk Management Division:

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

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

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

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

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

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

28. Compliance with Law and Funding Source Conditions:

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

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

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

- 1) including qualified MBEs/WBEs on solicitation lists;
- 2) assuring that MBEs/WBEs are solicited once they are identified;
- 3) when economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum MBE/WBE participation;
- 4) where feasible, establishing delivery schedules which will encourage MBE/WBE participation;
- 5) encouraging use of the services of the U.S. Department of Commerce's Minority Business Development Agency and the U.S. Small Business Administration to identify MBEs/WBEs, as required; and
- 6) if any subcontracts are to be let, requiring the subcontractor to take the affirmative steps listed above.

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

- 1) engage in severe forms of trafficking in persons during this Agreement's term;
- 2) procure a commercial sex act during this Agreement's term; or
- 3) use forced labor in the performance of this Agreement.

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

E. In the event this Agreement is funded with federal monies, Entity shall comply with 2 C.F.R. 200.318 through 200.326 for procurement of property or services conducted pursuant to this Agreement.

F. In the event this Agreement is funded with federal monies and Entity 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, Entity shall comply with the requirements of 37 C.F.R. Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements" and any implementing regulations issued by the (insert name of federal funder).

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

as parties declared ineligible under statutory or regularity authority other than Executive Order 12549.

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

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

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

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

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

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

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

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

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Cabinet Secretary or Designee

**ENTITY NAME**

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

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