

**REQUEST FOR PROPOSALS  
ISSUED BY THE STATE OF NEW MEXICO,  
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT,  
FORESTRY DIVISION  
FOR PROFESSIONAL HORTICULTURIST  
TO GROW TREE AND SHRUB SEEDLINGS FOR NEW MEXICO FORESTRY  
DIVISION**

**I. PURPOSE**

The New Mexico Energy, Minerals and Natural Resources Department (EMNRD), Forestry Division (Forestry Division) is seeking proposals for a professional horticulturist or an entity who has as a principal person who meets the required qualifications and will be dedicated to this project, with: a master's or doctorate degree in plant and environmental science (including horticulture, tree physiology, or related areas); a bachelor's degree in horticulture; or at least 10 years of direct experience in operating a nursery growing native trees and shrubs, to research and develop propagation methods for native tree and shrub species, to collect or obtain native plant seed from New Mexico whenever possible, and to grow native and non-native tree and shrub seedlings for the Conservation Seedling Distribution Program, Urban Forestry Program, and/or for Forestry Division Reforestation Projects.

Federal and state funding may be used for Urban Forestry Program and Reforestation Projects. The Conservation Seedling Program only uses state funding. Please indicate in your proposal which programs/projects you are willing to provide seedlings for. You must be registered and in good standing with the System for Award Management (SAM.gov) for programs utilizing federal funding.

Forestry Division may award more than one Professional Services Agreement (PSA) as a result of this Request for Proposals (RFP). Any procurement which may result from this RFP is valid for one year from date of issue as indicated in Section VIII, Contact Person and Due Dates, below.

**II. ELIGIBLE OFFERORS**

The successful Offeror(s) shall be able to plan and manage nursery operations and use independent decision-making to have species available and of appropriate size for the distribution periods Forestry Division specifies.

The successful Offeror(s) shall also conduct research and development of native tree and shrub species to determine germination and propagation needs and provide Forestry Division with advice and guidance on additional species Forestry Division may make available to the public.

This RFP is directed to individuals and entities that meet the criteria below.

- a master's or doctorate degree in plant and environmental science (including horticulture, tree physiology, or related areas); a bachelor's degree in horticulture; or at least 10 years of direct experience in operating a nursery growing native and non-native trees and shrubs;
- ability to conduct research and development of tree and shrub species and provide Forestry Division with advice and guidance on additional species Forestry Division could offer for sale;
- ability to recognize and treat insect and disease problems that may occur in the greenhouse;
- knowledge of germination and growing requirements for all the species requested;
- knowledge of types of soil medium needed to grow seedlings;
- ability to grow tree and shrub species, including seed harvesting, stratification, germination, propagation, and hardening off of seedlings;
- ability to acquire seed for the species. Seed should be from New Mexico when available, and if not, then seed should be acquired from the closest regional source. Forestry Division may provide seed to grower if the Forestry Division has a certain seed requirement;
- ability to provide soil medium and containers for seedlings;
- ability to germinate and grow seedling to Forestry Division specifications;
- ability to grow and maintain species that require a two-year growth cycle;
- ability to provide the species the Forestry Division requests; and
- have operational nursery facilities already in place which are adequate to meet the requirements contained within this RFP.

### **III. SCOPE OF WORK**

The successful Offeror(s) shall:

- Plan and manage nursery operations and use independent decision-making to have species available and of appropriate size for the distribution periods Forestry Division specifies.
- Upon the Forestry Division's request, conduct research and development of tree and shrub species to determine germination and propagation needs and provide the Forestry Division with advice and guidance on additional species the Forestry Division may make available to the public.
- Acquire seed for native and non-native tree and shrub species, soil medium, and containers, and germinate and grow seedlings to the following the Forestry Division's specifications:
  1. seedlings shall have a minimum caliper width of three millimeter at the root collar;

2. seedlings must be grown in a 10-inch cubic container and the shoot must be at least five inches in height; and
3. seedlings must be free of insects and disease upon inspection by the Forestry Division and prior to removal of seedlings from Offeror's facilities.

The Forestry Division has the right to inspect the seedlings at any point in the growing season and may reject any and all plants grown by the successful Offeror(s) that do not meet the above specifications, or which it determines not to be quality plants conducive for out-planting (planting the greenhouse-grown seedlings in the field). Such rejection shall not relieve the Offeror(s) of any other contractual obligation.

- Provide the Forestry Division with species from the Forestry Division's Climate Ready Trees List (<https://www.emnrd.nm.gov/sfd/urban-and-community-forestry/climate-ready-trees/>), the following species of seedlings or others as requested by the Forestry Division and agreed upon by the Offeror(s):  
 Apache Plume - ***Fallugia paradoxa***, Arizona Ash – ***Fraxinus velutina***, Arizona Cypress - ***Cupressus arizonica***, Arizona Sycamore – ***Platanus wrightii***, Arizona walnut – ***Juglans major***, Aspen - ***Populus tremuloides***, Bigtooth Maple – ***Acer grandidentatum***, Black Willow - ***Salix gooddingii***, Blue Spruce - ***Picea pungens***, Bristlecone Pine – ***Pinus aristata***, Buffaloberry - ***Shepherdia argentea***, Chokecherry - ***Prunus virginiana***, Desert Willow - ***Chilopsis linearis***, Douglas Fir - ***Pseudotsuga menziesii***, Engelmann Spruce – ***Picea engelmannii***, False Indigo – ***Amorpha fruticosa***, Fernbush – ***Chamaebatiaria millefolium***, Four-Wing Saltbush - ***Atriplex canescens***, Gambel oak – ***Quercus gambelli***, Golden Current - ***Ribes aureum***, Lacebark Elm - ***Ulmus parifolia***, Hop Tree – ***Ptelea trifoliata***, Limber Pine – ***Pinus flexilis***, Little Leaf Sumac - ***Rhus microphyllum***, Mountain Mahogany - ***Cercocarpus montanus***, Mountain Snowberry – ***Symphoricarpos oreophilus***, Narrowleaf Cottonwood – ***Populus angustifolia***, Native Plum - ***Prunus americana***, Nettleleaf Hackberry – ***Celtis reticulata***, New Mexico Forestiera - ***Forestiera neomexicana***, New Mexico Locust - ***Robinia neomexicana***, Peachleaf Willow - ***Salix amygdaloides***, Penstemon species – ***Penstemon spp.***, Piñon Pine – ***Pinus edulis***, Plains Cottonwood – ***Populus deltoids ssp. monilifera***, Ponderosa Pine - ***Pinus ponderosa***, Red-osier Dogwood – ***Cornus stolonifera***, Rio Grande Cottonwood - ***Populus deltoids ssp. Wislizeni***, Rocky Mountain Juniper - ***Juniperus scopulorum***, Rubber Rabbitbrush (Chamisa) - ***Chrysothamnus nauseosus***, Serviceberry - ***Amelanchier Spp.***, Shrubby cinquefoil – ***Potentilla fruticosa*** L., Skunkbush Sumac - ***Rhus trilobata***, Southwestern White Pine - ***Pinus strobiformis***, Texas red oak – ***Quercus buckleyi***, Thinleaf Alder – ***Alnus incana ssp. tenuifolia***, Wax

Currant – ***Ribes cereum***, White Fir - ***Abies concolor***, Woods Rose - ***Rosa woodsii***, and Winterfat - ***Ceratoides lanata***.

- Produce a minimum of 10,000 seedlings that meet the Forestry Division's specifications for distribution for each of the calendar years 2026-2029.

#### IV. 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 Scope of Work. Offerors may submit proposals by hard copy (address listed below under Contact Person), or through the Forestry Division's Submittable webpage using this address: <https://emnrd-sfd.submittable.com/submit>.

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

- A) Letter of transmittal that:
  - identifies the name, title, telephone, and e-mail address of the person authorized to negotiate the contract on behalf of the Offeror;
  - identifies the names, titles, telephone, and e-mail addresses of persons to be contacted for clarification;
  - explicitly indicate acceptance of the terms and conditions of this RFP and its evaluation factors;
  - indicates for which programs/projects you are willing to provide seedlings;
  - acknowledges receipt of any and all amendments to this RFP; and
  - is signed by the person authorized to contractually obligate the Offeror.
- B) Organizational experience – Detail Offeror's relevant experience, resources, education, knowledge, documentation and capability, and if Offeror is not an individual, the relevant experience, resources, education, knowledge, documentation and capability of the employee who meets the horticulturist requirement. Provide proof of degree (in the form of a transcript or diploma copy), or document nursery experience in a written synopsis, no more than four pages in length, detailing successful experience in seed stratification, germination, and growing requirements including temperature and soil media) for any four of the species listed above in the Scope of Work; training relevant to nursery operations including knowledge and ability to recognize and treat insect and disease problems that may occur in the greenhouse; and numbers

of previous contracts for growing seedlings successfully completed (include contact information for those contracts).

- C) Knowledge of species propagation and disease treatment – Describe Offeror's recent and current experience in obtaining seed source, germination techniques, growing and ability to recognize and treat insect and disease problems that may occur in the greenhouse. Provide documentation successfully propagated in the past, successful treatment of insect and disease problems, and entities Offeror grew the seedlings for (include contact information), highlight experience with native species, if applicable.
- D) Staffing and facilities – Provide names and qualifications of key personnel who will perform work under the contract, including location and description of facilities and resources to perform services. Provide photos of nursery facilities and details on nursery facilities, and number of staff. The Forestry Division may make on-site visits to verify facility capabilities if it deems such visits necessary.
- E) Budget - Provide a written budget for services to be provided under any agreement which may result from this RFP. Provide this budget for each year of a possible four-year contract. If the Offeror is submitting a proposal in hard format, the budget must be placed in a separate sealed envelope with the Offeror's name on the envelope and included in the proposal response. If the Offeror is submitting a proposal in electronic format, the budget must be placed in a separate PDF document.
- F) Campaign Contribution Form - Offeror shall complete, sign, and submit with Offeror's proposal the Campaign Contribution Disclosure Form (Attachment 1) 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 (1) the Offeror, (2) a family member, or (3) a representative of the Offeror.
- G) Completed, signed Statement of Assurances Form (Attachment 2).

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

## V. CRITERIA AND EVALUATION POINT SUMMARY

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

<b>Evaluation Criteria</b>	<b>Points</b>
Relevant experience  Points will be awarded based on proof of degree or documented nursery experience; training relevant to nursery operations, including knowledge and ability to recognize and treat insect and disease problems that may occur in the greenhouse; and number of previous contracts for successfully growing seedlings.	30
Species propagation and disease treatment  Points will be awarded based current experience in obtaining seed source, germination techniques, growing native species and ability to recognize and treat insect and disease problems that may occur in the greenhouse.	30
Staffing  Points will be awarded based on adequacy of staff, facilities, and resources to perform services.	25
Budget  Points will be awarded for total cost of providing seedlings (including seed acquisition, propagation, germination, treatment of disease, and research and development of additional species), for each year of a possible four-year contract.  The evaluation will be based on the following formula: Lowest Responsive Offer Amount divided by This Offeror's Proposed Amount x Award Points.	15
<b>Maximum possible points</b>	<b>100</b>

## VI. 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 EMNRD Contact Person may contact Offerors for clarification of the proposal.

4. The Evaluation Team will evaluate responsive proposals based on the criteria in Section V and will select responsive Offeror(s) with the highest total scores as finalist Offeror(s). The Evaluation Team will select the finalist Offeror(s) whose proposal and references is/are most advantageous to EMNRD, for award.

## **VII. CONTRACT AWARD AND DURATION**

EMNRD may award multiple contracts under the terms of the attached draft PSA (Attachment 3) and in accordance with this RFP. Any PSA awarded as a result of this RFP shall not be binding until approved by the General Services Department, State Purchasing Division, Contracts Review Bureau. The contract period shall extend from the date of contract approval by the Contracts Review Bureau, and shall last no longer than four years, including amendments.

## **VIII. CONTACT PERSON AND DUE DATES**

The EMNRD Contact Person for this procurement is:

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

Offerors shall direct any questions regarding this RFP to Carol Bada at the address indicated. EMNRD will only respond to written questions regarding this RFP. Written answers to those questions will be sent to all who request copies of this RFP and will also be posted on the EMNRD Forestry Division website.

Any inquiries or requests regarding this procurement must be submitted in writing to the EMNRD 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 EMNRD's behalf.

### **Deadlines for Written Questions**

Potential Offerors may submit written questions to the Contact Person as to the intent or clarity of this RFP until 5 p.m. MDT, July 17, 2025. All written questions must be addressed to the Contact Person as indicated above. In the event questions are mailed, they must be physically received at the above location by the stated date and

time to be considered. Questions shall be clearly labeled and shall cite the Section(s) in the RFP or other document which form the basis of the question.

The Division will post written responses to such questions on the Division website by August 4, 2025:

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

### **Proposal Submittal and Due Date**

All proposals must be received by the Contact Person or designee no later than 5 p.m. MDT, August 15, 2025. Proposals must be submitted in the format specified above in Section IV, Proposal Contents and Format. In the event proposals are mailed, they must be physically received at the above location by the stated date and time in order to be considered. EMNRD shall not accept proposals received after this date and shall make absolutely no exceptions for proposals not received at the above location by the appointed time.

If submitting hard documents, Offerors shall submit one original hard proposal and three identical hard copies to Carol Bada at the above address by the date and time specified above. In the event proposals are mailed, they must be physically received at the above location by the stated date and time in order to be considered

If submitting electronically, offerors shall submit their proposal using the Division's Submittable webpage using the address: <https://emnrd-sfd.submittable.com/submit>. EMNRD will deem such proposals sealed in accordance with state statute. EMNRD 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 regulations, Offerors who are not selected have the right to timely protest the procurement. Protests must be written and must include: the name and address of the protestor and the name of the procurement being protested; a statement of the grounds for protest including appropriate supporting exhibits; and the ruling requested from EMNRD. The protest period begins on the day after notice of selection/non-selection and ends at 5 p.m. 15 days later. Protests must be delivered to: Miguel Gallegos, Chief Procurement Officer , EMNRD, 1220 S. St. Francis Drive, Santa Fe, NM, 87505.

## **IX. NOTICES**

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



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

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

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

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

**Attachment 1**  
**CAMPAIGN CONTRIBUTION DISCLOSURE FORM**

Pursuant to the Procurement Code, Sections 13-1-28 through 13-1-199, NMSA 1978 and NMSA 1978, § 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 Section 13-1-181 NMSA 1978 or a contract that is executed may be ratified or terminated pursuant to Section 13-1-182 NMSA 1978 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 _____	
<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 2**  
**STATEMENT OF ASSURANCES FORM**

Each Offeror MUST complete this form and return it with Offeror's proposal or EMNRD will deem the proposal as non-responsive. By signing this form below, Offeror acknowledges and agrees to the following:

This RFP does not commit the State of New Mexico (State) to pay any costs incurred in the in the preparation or submission of this proposal. Any cost incurred by the Offeror in developing a proposal response shall be borne solely by the Offeror. Offeror understands that that Offeror's proposal shall become part of the official file on this matter without obligation to the State. Issuance of this RFP does not constitute an award commitment on the part of the State.

Offeror shall examine all contract documents, noting particularly all stipulations that in any way affect contract work. Failure of an Offeror to acquaint itself fully with the amount and nature of the work required to fulfill all terms of the contract documents shall not be considered a basis for extra compensation after a contract has been awarded.

Offeror represents and warrants to the State that Offeror has the staff, facilities, and competence to furnish the required services. The State may investigate Offeror's adequacy of the staff, facilities, and competence. For this purpose, representatives of the State may make an inspection of Offeror's facilities, equipment, etc., and interview staff.

In order 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.

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

Offeror acknowledges Offeror must provide a copy of either the Resident Preference or Veterans Preference Certificate to be eligible for preference points.

\_\_\_\_\_  
Offeror Signature

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

Offeror's Printed Name and Title: \_\_\_\_\_

### Attachment 3

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

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

IT IS AGREED BETWEEN THE PARTIES:

**1. Scope of Work.**

Contractor shall perform the following work:

(Insert Scope of Work here.)

**2. Compensation.**

**Option 1: Work Product.**

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

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

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

(—OR—)

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

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

(—OR—)

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

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

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

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

8-8 NMSA 1978, as implemented by the current Department of Finance and Administration rule and the current EMNRD travel policy.

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

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

### **3. Effective Date and Term.**

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

### **4. Termination.**

#### **A. EMNRD.**

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



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

B. Contractor.

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

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

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

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

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

3) take such action as EMNRD directs for the protection, preservation, retention, or transfer of all property titled to EMNRD and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by Contractor with contract funds shall become property of EMNRD upon termination and shall be submitted to EMNRD as soon as practicable. **(If federal funding is involved, include the following clause. If not, delete it.)** Otherwise, all property procured under this Agreement shall be used and disposed of in accordance with (insert name of federal funding entity) regulations.

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

**5. Appropriations.**

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

**6. Status of Contractor.**

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

**7. Assignment.**

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

**8. Subcontracting.**

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

**9. Release.**

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

**10. Confidentiality.**

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

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

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

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

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

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

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

2) this Agreement complies with NMSA 1978, Section 10-16-7(A) because (i) the Contractor is not a public officer or employee of the State; (ii) the Contractor is not a member of the family of a public officer or employee of the State of New Mexico (State); (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee of the State, a member of the family of a public officer or employee of the State, or a business in which a public officer or employee of the State or the family of a public officer or employee of the State has a substantial interest, public notice was given as required by NMSA 1978, Section 10-16-7(A) and this Agreement was awarded pursuant to a competitive process;

3) in accordance with NMSA 1978, Section 10-16-8(A), (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the State within the preceding year and whose official act directly resulted

in this Agreement and (ii) the Contractor is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the State whose official act, while in State employment, directly resulted in EMNRD's making this Agreement;

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

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

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

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

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

### **13. Amendment.**

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

**14. Merger.**

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

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

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

**16. Equal Opportunity Compliance.**

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

**17. Applicable Law.**

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

**18. Records and Financial Audit.**

The Contractor shall maintain time and expenditure records that indicate the date, time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of six years from the date of final payment under this Agreement. The records shall be subject to inspection by the Agency, the General Services Department/State Purchasing Division and the State Auditor. EMNRD shall have the right to audit time and expenditure records both before and after payment, and Contractor agrees to include in all subcontracts hereunder the same right of inspection and audit against all subcontractors. Payment under this Agreement shall not

foreclose EMNRD's right to recover excessive or illegal payments. In EMNRD's, GSD/SPD's, or the State Auditor's, (or insert name of federal funding entity)'s sole discretion, the periods of inspection and audit may be extended for records which relate to litigation or settlement of claims arising out of performance of this Agreement (and costs and expenses of this Agreement for which exception is under consideration by the federal funding agency or any authorized representative) and shall continue until all potential litigation, appeals, claims, or exceptions have expired or been resolved.

#### **19. Indemnification.**

The Contractor shall defend, indemnify and hold harmless EMNRD, its officers, employees, agents, and representatives, and the State of New Mexico from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, including any action, proceeding, claim, demand, cost, damage, attorney's fee, or other liability or expense caused by the negligent act or failure to act of the Contractor or its officers, employees, servants, subcontractors, consultants, or agents, or caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor, Contractor's officers, agents, employees, servants, consultants, or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, , proceeding, claim, demand, cost, damage, attorney's fee or any other liability or expense which may arise out of the performance of this Agreement is brought against the Contractor or its officers, employees, servants, subcontractors, consultants, or agents, the Contractor shall, as soon as practicable but no later than two days after it receives notice thereof, notify EMNRD's legal counsel of and the Risk Management Division of the New Mexico General Services Department by certified mail. Nothing in this Agreement shall be deemed to be a waiver by the State of New Mexico of the provisions of the Tort Claims Act, NMSA 1978, Sections 41-4-1 through 41-4-27 and 41-4-30.

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

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

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

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

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

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

**21. Invalid Term or Condition.**

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

**22. Enforcement of Agreement.**

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

**23. Notices.**

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

To EMNRD:

[insert position title and address of project manager]

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

To Contractor:

[insert contact information]

To Risk Management Division:

Risk Management Division

General Services Department

P.O. Drawer 26100

Santa Fe, NM 87502-0110

**24. Authority.**

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

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

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

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

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

**27. Minimum Wage Rate.**

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

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

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



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

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

A. Compliance with use of Small Businesses (SBs), Minority Business Enterprises (MBEs) and Women's Business Enterprises (WBEs), Veteran-Owned Businesses (VBs), and Labor Surplus Area Firms (LSAFs) - Contractor shall take affirmative steps to assure that MBEs and WBEs are used when possible as sources of supplies and services. The affirmative steps shall include the following:

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

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

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

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

D. In the event this Agreement is funded with federal monies, Contractor shall comply with 2 C.F.R. 200.318 through 200.327 for procurement conducted pursuant to this Agreement.

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

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

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

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

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

- 1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- 2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum;

plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

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

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

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

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

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

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

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

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

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

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

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

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

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

5) Medical malpractice liability insurance that complies with the Medical Malpractice Act, NMSA 1978, Chapter 41, Article 5 (For agreements with medical providers who are required to have malpractice insurance.)

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

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

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

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

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

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

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

**CONTRACTOR NAME**

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

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

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

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

(Selection Option 1 or 2)

Option 1:

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

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

I.D. No.: \_\_\_\_\_

(must be 11 digits long)

By: \_\_\_\_\_

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

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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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**Option 2:**

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

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

By: \_\_\_\_\_

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

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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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