

**REQUEST FOR PROPOSALS  
ISSUED BY  
THE STATE OF NEW MEXICO,  
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT  
FOR A RIO GRANDE TRAIL MASTER PLAN  
AND ALIGNMENT STUDY**

**SECTION I. INTRODUCTION**

The New Mexico Energy, Minerals and Natural Resources Department (EMNRD) seeks the services of a non-federal governmental agency or another public or private entity with a minimum of five years of experience with outdoor recreation trail planning and design to complete a Master Plan and Alignment Study for the Rio Grande Trail in New Mexico (Master Plan), pursuant to NMSA 1978, Section 9-5C-1.G. EMNRD has approximately \$500,000 available for the work of this Request for Proposals (RFP). Any procurement that may result from this RFP is valid for one year from date of issue as indicated in Section IX, Contact Person and Proposal Due Date, below.

EMNRD will hold a mandatory pre-proposal meeting at 2 p.m. MST, on January 19, 2017, in the EMNRD, State Parks Division Second Floor Conference Room, 1220 S. St. Francis Dr., Santa Fe, NM 87505. Offerors must either attend the meeting in person, or participate in the meeting by calling 1-866-244-8528, passcode 401291.

**SECTION II. BACKGROUND**

Pursuant to NMSA 1978, Section 9-5C-1, the Rio Grande Trail Commission (RGTC) was created to establish the Rio Grande Trail (RTC) to run the length of the state from Colorado to Texas. The RGT shall be a recreation trail for New Mexico residents and visitors to enjoy the natural beauty of New Mexico and the Rio Grande and learn about the culture and history of New Mexico. The statute requires that the RGT shall be established to minimize environmental impacts and preserve sensitive habitat. The RGTC is responsible for defining and recommending viable RGT path routes, mitigating challenges related to its establishment, and defining and recommending other RGT features, facilities and enhancements. The RGTC also makes recommendations to the Legislature as needed and reports annually to the Governor and the appropriate interim committees that deal with water and natural resources and rural and economic development.

NMSA 1978, Section 9-5C-1.D specifies that the RGTC be administratively attached to and staffed by EMNRD. The RGTC has directed EMNRD to undertake a planning study for the RGT with U.S. Federal Highway Administration Recreational Trails Program funds obtained through a Grant Agreement with the New Mexico Department of Transportation (NMDOT) for that purpose.

### **SECTION III. QUALIFICATIONS**

EMNRD seeks an Offeror possessing all of the following qualifications:

- at least five years' experience with outdoor recreation trail master planning and design, preferably with regional or long distance trails, including identification of existing conditions, opportunities, and constraints and dealing with multiple landowners of various types;
- knowledge of land use evaluation, including assessment of environmental and cultural conditions, understanding of land use zoning and ownership issues, and environmental, historic, and cultural resources protection;
- knowledge of land use policies and regulations, in particular regarding the complex land use issues specific to New Mexico;
- ability to assess economic impacts of outdoor recreation and trails;
- GIS capabilities, including collection of land use and character data in ESRI Arc-GIS format and mapping of those data, as well as socioeconomic and other demographic data;
- experience with setting up and conducting public stakeholder and work group meetings, including setting up or conducting consultations with Native American tribal governments, identifying appropriate stakeholders and organizing stakeholder input;
- experience developing outreach strategies for master plan development and information dissemination;
- knowledge of design standards for trails and amenities and ability to estimate costs of trail construction and maintenance, including trailheads, multi-user trails, trail connections/intersections at highways, roads, and rail lines, and appropriate protection of natural and cultural resources;
- capabilities in marketing, branding, and development of other public relations/outreach tools; and
- capabilities in the development of website and power point graphic presentations for the purposes of clearly and concisely communicating information obtained throughout the master planning process.

Documents supporting the above qualifications must be submitted with proposal for consideration.

### **SECTION IV. SCOPE OF WORK**

The successful Offeror shall perform the following work:

#### **PROJECT MANAGEMENT**

The project management component includes public involvement, coordination with EMNRD and the RGTC, participation at RGTC meetings, and coordination with the five RGTC working groups – alignment, user groups, education and outreach, resources, and partnership.

Refine the list of key stakeholders and integrate public/stakeholder involvement so that for each group the planning process takes into account:

- structure and organization of potential working groups;
- type of public involvement and the format/structure of meetings;
- detailed timeline from initial kick-off to final public review;
- outreach strategy and plan to engage various public stakeholders (demographic groups, citizen/advocacy organizations, etc.);
- outreach strategy and plan to engage tribal leadership and planners; and
- outreach strategy and plan to engage local, state, and federal agency stakeholders.

**Deliverables:** Written project management plan that details public involvement, stakeholder outreach, and timeline and critical milestones. Attendance at and participation in RGTC meetings and work group activities.

## **PHASE ONE: DEVELOPMENT OF THE RGT MASTER PLAN**

### **Task 1. Existing Conditions, Opportunities, and Constraints Analysis**

Develop the Master Plan beginning with a detailed and highly-researched analysis and report on existing conditions, opportunities and constraints, to include:

#### **Mapped Data (GIS)**

- Jurisdictional boundaries and publicly-owned and tribally-owned lands (tribal entities, United States Department of Agriculture, Forest Service; United States Department of the Interior (DOI), Fish and Wildlife Service; United States Army, Corps of Engineers; DOI, National Park Service; DOI, Bureau of Reclamation; DOI, Bureau of Land Management; DOI Bureau of Indian Affairs; EMNRD – State Parks Division; New Mexico Department of Game and Fish; State Land Office; and other publicly-owned land)
- Privately owned parcels – parcel level detail is not likely to be displayed at the statewide level, but must be compiled; depending on the results, large-scale private ownership could be suitable for display at the statewide level.
- Existing trails and related facilities (trail heads, parking areas, interpretive exhibits/facilities, campgrounds); construct database and map symbols to distinguish between trails of national, state, and local significance (e.g. National Historic/Recreational Trails, state trails, locally owned and maintained trails, other publicly accessible trails) and trails with different allowed uses (e.g. pedestrian, bicycle, equestrian, or motorized).
- Planned trails and related facilities (documented in existing master plans adopted by various stakeholders or jurisdictions).
- Culturally and environmentally sensitive areas – use/access limited or restricted by policy or owner, such as critical habitat, Wild and Scenic

- River designation.
- Nearby towns and commercial services available – specify if active Main Street or Frontier Community, State-Authorized Arts and Cultural District, or National Trail Gateway Community.

## **Narrative/Analysis**

- Introduction/overview - Provide an introduction/overview of the RGT corridor that summarizes the legislative context; history of trail development; existing plans and policies; cultural resources and contemporary cultural sensitivities; environmental setting and sensitivities, jurisdictional context, and contemporary cultural settings. The narrative may be broken down by regions. The regions, as identified by the RGTC, may be redefined or adjusted through the planning process:
  - I. Southern Rio Grande - includes Texas/Mexico border area, extends north to Belen (previous alignment study has been completed for Belen to Texas border section and will be available for update and inclusion in plan);
  - II. Central Rio Grande – extends from Belen to Pilar, includes extensive master planning in the Belen to Bernalillo section; and
  - III. Northern Rio Grande – from Pilar to Colorado border, encompasses the Rio Grande del Norte National Monument, which has been extensively master planned.
- Socio-economics – report on socio-economic data and trends, including data gleaned from existing studies such as the New Mexico Statewide Comprehensive Outdoor Recreation Plan. Develop recreational needs analysis and projections (existing and future demand by user group). Research and identify annual events that are currently using sections of the trail. Analyze existing economic benefits and project potential future benefits related to trail construction.
- Trail and facilities inventory – report on extent of existing trails by surface type and allowed uses, extent of planned trails including timeframe for construction. Identify and quantify gaps in connectivity of a primary, north/south contiguous trail.
- Policy and governance - summarize key policy components of existing master plans or plans in process - design standards, access policies, joint management/administrative agreements, construction phasing; management and operations (including coordinating volunteers, working with nonprofits, marketing and branding).
- Best practices – survey and report on best practices learned from other regional or long distance trail plans, including the planning process from start-up to completion, design, construction, policy and governance (including how liability issues are addressed), management and operations, public involvement, marketing and branding, working with

- nonprofits, fundraising.
- Funding – summarize, include eligibility requirements, maximum award amounts (if relevant), timing – include contact information (in an appendix).

**Deliverables:**

1. Existing conditions report in map and narrative formats supplemented by spreadsheets, charts, and graphics as needed.
2. Opportunities and constraints analysis in map and narrative formats supplemented by spreadsheets, charts, and graphics as needed.

**Task 2. Develop Overarching Vision and Goals**

Build upon the direction provided by NMSA 1978, Section 9-5C-1, the foregoing analysis, stakeholder involvement and input from the RGTC and its working groups to create a concise expression of the overarching vision and goals for the RGT that will guide development of the Master Plan and serve as a communication and fundraising tool.

**Deliverables:**

1. Wall-exhibit size map of RGT corridor with vision and goals and information on how to become involved in the planning and contact information for contributing funds or signing up to volunteer for trail construction and maintenance.
2. Single-page brochure with vision and goals and information on how to become involved in the planning and contact information for contributing funds or signing up to volunteer for trail construction and maintenance.
3. Social media plan to provide additional public exposure for the vision and goals and information on how to become involved in the planning and contact information for contributing funds or signing up to volunteer for trail construction and maintenance.

**Task 3. Develop Preliminary Master Plan and Final Master Plan**

Prepare a preliminary Master Plan and Final Master Plan for review and approval by the RGTC and its working groups. The Master Plan shall, at a minimum, address the following content areas:

- a. Overarching vision and goals
- b. Summary of existing conditions, opportunities and constraints
- c. Identification and description of regions for detailed planning and design
- d. Overarching policy and governance – note regional variances as applicable:
  - i. Design standards for trails and amenities.

- ii. Access policies.
- iii. Safety and security – users and adjoining property owners.
- iv. Managing liability and right-of-way issues.
- v. Marketing, branding, and public relations/outreach – logos, signs, website, and publicity.
- vi. Maintenance and operations
- vii. Phasing and funding – identify short, mid- and long-term construction phasing related to anticipated funding source(s) for each region.
- viii. Monitoring, updating, and revising the Master Plan – annual reporting by RGTC to Governor’s Office and Legislature.

**Deliverables:**

1. Preliminary Master Plan - draft preliminary Master Plan with input from, and review by, RGTC working groups for each content area; followed by review by the RGTC.
2. Final Master Plan - Revise preliminary Master Plan as needed to prepare the final Master Plan for review by the RGTC working groups and final approval and adoption by the RGTC.
3. Master Plan summary map – create a version of the wall-size exhibit map (Task 2) that contains key provisions of the Master Plan. Format for two-sided printing if needed, and for folding.
4. Presentation materials – Develop website content and PowerPoint presentation materials for use by the RGTC to communicate the key provisions of the Master Plan to the public, to stakeholders and to the Legislature.

**PHASE TWO: DETAILED ALIGNMENT IDENTIFICATION AND IMPLEMENTATION PLAN**

Conduct this phase by region. The Alignment Working Group of the RGTC will identify lead agencies to guide the discussion in each region. Primary components include:

- Identify and analyze alternative alignments.
- Gather, incorporate or otherwise address stakeholder and public input.
- Develop preferred alignment and related facilities (trail heads, parking areas, campgrounds, etc.); projected costs, recommended schedule and funding sources.
- Refine (confirm or adjust) Master Plan governance, management, and operations for each region.

## **Task 1. Alternative Alignments Analysis**

Include the analysis of alternatives, based upon articulated goals, stakeholder involvement and existing conditions. The final document shall include a summary of the alternatives analysis process, details of the preferred alternative and summary of following:

- GIS maps and descriptions of all identified alternatives;
- preferred alternative with detailed narrative;
- detailed alignment maps of preferred alternative by segment, based on GIS analysis and field reconnaissance (GPS), showing property/jurisdictional boundaries, areas where additional right-of-way/easements will be required, existing and proposed trailheads and public access, connecting/intersecting trails, and public roads in the vicinity;
- specific design recommendations for trail crossings at highways, roads, and rail lines, and natural features and barriers; and
- limits/termini of various alternatives.

### **Deliverables:**

For each region, prepare the following:

Segmented alternative alignment analysis and identification of preferred alignment, estimated costs, proposed funding sources, timeframe for construction, plan for management and operations

## **Task 2. Identify Preferred Alignment and Implementation Plan**

Based on RGTC review of alternative alignments, refine foregoing analysis and prepare final report on preferred alignment and plan for implementation including:

- GIS maps and descriptions of all preferred alternatives;
- supporting narrative;
- implementation plan addressing resolution of jurisdictional or ownership issues, acquisition of ROW or public access easements by the appropriate land management agency, level of environmental review required prior to initiating construction, costs to construct trail and associated facilities, funding sources and timeframe; ongoing management and operations; and
- specific design guidelines (if regional variation on Master Plan guidelines is called for).

**Deliverables:**

Preferred Alignment and Implementation Plan – maps in PDF and GIS shapefiles, and narrative description of construction costs, funding sources and phasing, implementation steps to be followed.

**SECTION V. PROPOSAL FORMAT AND CONTENTS**

Proposals must contain sufficient information to provide EMNRD with a thorough description of Offeror’s qualifications to accomplish the activities described in the Scope of Work. All proposals shall be on white 8.5 x 11” paper, in single-spaced, 12-point type, 50-page maximum. The proposal MUST contain, at a minimum, all listed items in the sequence indicated and be organized in the following format.

A. A cover letter 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;
- explicitly indicate acceptance of the terms and conditions of this RFP and its evaluation factors;
- certifies all entities responsible for authorizing Offeror’s activities have agreed that their proposal should be submitted;
- if applicable, acknowledges receipt of any and all amendments to this RFP; and
- is signed by the person authorized to contractually obligate the Offeror.

B. Documentation of experience, education, knowledge, and capability (Refer to Proposal Evaluation Criteria);

C. Organizational References - Offerors must also provide two business references from similar projects performed for private, state, or large local government clients within the last three years. Offerors are required to submit Attachment 1 to the business references they list. The business references must submit the Reference Questionnaire directly to the EMNRD Contact Person listed in Section X 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.



D. Federal funds are being used for this projects, and therefore New Mexico preference laws to not apply to this solicitation.

E. Campaign Contribution Form (Attachment 2) -- Offeror shall complete, sign, and submit with Offeror's proposal response the Campaign Contribution Disclosure Form and disclose whether Offeror, a family member, or a representative of the Offeror has made a campaign contribution to an applicable public official during the two years prior to the RFP. Offeror shall complete the non-disclosure statement or make separate disclosures for all campaign contributions given by (1) the Offeror, (2) a family member, or (3) a representative of the Offeror; and

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

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

## **SECTION VI. CONTRACT AWARD AND DURATION**

The contract period may extend from the date of contract approval by the Department of Finance and Administration (DFA) for a period not to exceed 48 months, including amendments.

EMNRD may award a contract or contracts under the terms of the attached draft Professional Services Agreement (PSA) (Attachment 4) and in accordance with this RFP. Any PSA awarded as a result of this RFP shall not be binding until approved by the Department of Finance (DFA) and Administration.

### **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 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: Stephanie Martinez, Chief Procurement Officer, EMNRD, 1220 S. St. Francis Drive, Santa Fe, N.M., 87505.

## **SECTION VII. PROPOSAL EVALUATION CRITERIA**

EMNRD shall use the following criteria in the evaluation of proposals and in the selection of the successful Offeror.

<b>Factor/Criteria</b>	<b>Points Available</b>
<p>Statement of Qualifications:</p> <ul style="list-style-type: none"> <li>• list of all team members and their roles in the project, along with education, professions affiliations, certification, and professional organization memberships.</li> <li>• List of qualified tribal liaison team members</li> </ul>	17
<p>Statement of Experience evidencing the following:</p> <ul style="list-style-type: none"> <li>• at least five years' experience with outdoor recreation trail planning and design, preferably with regional or long distance trails, including identification of existing conditions, opportunities, and constraints and dealing multiple landowners of various types;</li> <li>• knowledge of land use evaluation, including assessment of environmental and cultural conditions, understanding of land use zoning and ownership issues, and environmental, historic, and cultural resources protection;</li> <li>• knowledge of land use policies and regulations, in particular regarding the complex land use issues specific to New Mexico;</li> <li>• experience facilitating consultation with tribes;</li> <li>• ability to assess economic impacts of outdoor recreation and trails;</li> <li>• GIS capabilities, including collection of land use and character data in ESRI Arc-GIS format and mapping of those data, as well as socioeconomic and other demographic data;</li> <li>• experience with setting up and conducting public stakeholder and work group meetings, identifying appropriate stakeholders and organizing stakeholder input;</li> <li>• experience developing outreach strategies for master plan development and information dissemination;</li> <li>• knowledge of design standards for trails and amenities and ability to estimate costs of trail construction and maintenance, including trailheads, multi-user trails, trail connections/intersections at highways, roads, and rail lines, and appropriate protection of natural and cultural resources;</li> <li>• capabilities in marketing, branding, and development of other public relations/outreach tools; and</li> <li>• capabilities in the development of website content and PowerPoint graphic presentations for the purposes of clearly and concisely communicating information obtained throughout</li> </ul>	45

the master planning process.	
Organizational Capacity and Qualified Support: <ul style="list-style-type: none"> <li>• ability of entity to devote necessary resources to accomplish the scope of work within the contract period; and</li> <li>• description of project management framework to be used in accomplishing the scope of work.</li> </ul>	20
References: <p>Points will be awarded based upon an evaluation of the responses to a series of questions that will be asked of the references concerning the quality of the Offeror's services, the timeliness of services, responsiveness to problems and complaints, and the level of satisfaction with the Offeror's overall performance (See Attachment 1, Reference Questionnaire).</p>	18 maximum
<b>TOTAL</b>	<b>100 maximum</b>

**SECTION VIII. EVALUATION PROCESS**

The evaluation process will follow the steps listed below:

- A. The Evaluation Team members will document contents of competitive sealed proposals after the submittal deadline.
- B. The Evaluation Team will review proposals for compliance with the mandatory requirements stated within this RFP.
- C. The Contact Person may contact Offerors for clarification of the proposal.
- D. The Evaluation Team shall evaluate responsive proposals based on the criteria in Section VII, Proposal Evaluation Criteria, and select responsive Offeror(s) with the highest total weighted scores as finalist Offeror(s). The Evaluation Team will consult with listed references and select the finalist Offeror(s) whose proposal and references is/are most advantageous to EMNRD, for award.

**SECTION IX. CONTACT PERSON AND PROPOSAL DUE DATE**

Questions regarding this RFP shall be addressed to:

Judy Kowalski  
Bureau Chief, Design and Development Bureau  
EMNRD, State Parks Division  
1220 S. St. Francis Dr.  
Santa Fe, New Mexico 87505  
Phone: (505) 476-3387

Offerors shall submit one original and 10 identical hard copies of the proposal at the address above, no later than 4:30 p.m. MST, February 16, 2017. 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. RFP responses MAY NOT be sent by facsimile or e-mail.

## **SECTION X. 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

**REQUEST FOR PROPOSALS  
ISSUED BY  
THE STATE OF NEW MEXICO,  
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT FOR  
PROFESSIONAL SERVICES TO COMPLETE A RIO GRANDE TRAIL MASTER PLAN AND ALIGNMENT  
STUDY**

**REFERENCE QUESTIONNAIRE**

**Name of Individual/Entity  
Requesting Reference:**

EMNRD, as a part of the RFP process, requires Offerors to submit a minimum of two business references as required within this document. The purpose of these references is to document the experience relevant to the scope of work and provide assistance in the evaluation process.

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 by the RFP submission deadline for inclusion in the evaluation process. The form and information provided will become a part of the submitted proposal.

This form is being submitted to you for completion as a business reference for the individual or entity above. Please return this completed form directly to the Contact Person (Judy Kowalski, State Parks Division, EMNRD, 1220 S. St. Francis Drive, Santa Fe, NM 87505) by February 16, 2017. Do not return this form to the individual or entity requesting the reference.

For questions or concerns regarding this form, please contact the Contact Person listed above.

**Name of Individual/Entity  
Providing Reference:**

**Contact Name and  
Title/Position:**

**Contact Telephone  
Number:**

**Contact E-Mail Address:**

**QUESTIONS**

1. In what capacity have you worked with this Offeror in the past? (Please explain)

2. How would you rate this Offeror's knowledge and expertise? (Check one)

3 – Excellent \_\_\_      2 – Satisfactory \_\_\_      1 – Unsatisfactory \_\_\_      0 – Unacceptable \_\_\_

Comments:

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 \_\_\_

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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**REFERENCE QUESTIONNAIRE**

Comments:	
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5. How would you rate the dynamics/interaction between the Offeror and your staff? (Check one)			
3 – Excellent ____	2 – Satisfactory ____	1 – Unsatisfactory ____	0 – Unacceptable ____

Comments:	
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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:	
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7. How satisfied are you with the products developed by the Offeror? (Check one)			
3 – Excellent ____	2 – Satisfactory ____	1 – Unsatisfactory ____	0 – Unacceptable ____

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

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

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

Attachment 2

**CAMPAIGN CONTRIBUTION DISCLOSURE FORM**

Pursuant to the Procurement Code, Sections 13-1-28, *et seq.*, 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 3

**Statement of Assurances Form**

Each Offeror MUST complete this form and return it with Offeror's proposal or EMNRD will deem the proposal as non-responsive. By signing this form below, Offeror acknowledges and agrees to the following:
This RFP does not commit the State of New Mexico (State) to pay any costs incurred in the in the preparation or submission of this proposal. Any cost incurred by the Offeror in developing a proposal response shall be borne solely by the Offeror. Offeror understands that that Offeror's proposal shall become part of the official file on this matter without obligation to the State. Issuance of this RFP does not constitute an award commitment on the part of the State.
Offeror shall examine all contract documents, noting particularly all stipulations that in any way affect contract work. Failure of an Offeror to acquaint itself fully with the amount and nature of the work required to fulfill all terms of the contract documents shall not be considered a basis for extra compensation after a contract has been awarded.
Offeror represents and warrants to the State that Offeror has the staff, facilities, and competence to furnish the required services. The State may investigate Offeror's adequacy of the staff, facilities, and competence. For this purpose, representatives of the State may 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.
Employee Pay Equity Reporting –  A. Offeror agrees if it has 10 or more New Mexico employees OR eight or more employees in the same job classification, at any time during the term of any Agreement which may result from this RFP, to complete and submit the PE10-249 form on the annual anniversary of the initial report submittal for contracts up to one year in duration.  B. If Offeror has 250 or more employees, Offeror must complete and submit the PE250 form on

the annual anniversary of the initial report submittal for contracts up to one year in duration.

C. For contracts that extend beyond one calendar year, or are extended beyond one calendar year, Offeror also agrees to complete and submit the PE10-249 or PE250 form, whichever is applicable, within 30 days of the annual contract anniversary date of the initial submittal date or, if more than 180 days has elapsed since submittal of the last report, at the completion of the contract, whichever comes first.

D. Should Offeror not meet the size requirement for reporting at contract award but subsequently grows such that Contractor meets or exceeds the size requirement for reporting, Offeror agrees to provide the required report within 90 days of meeting or exceeding the size requirement. That submittal date shall serve as the basis for submittals required thereafter.

E. Offeror also agrees to levy this requirement on any subcontractor(s) performing more than 10% of the dollar value of this Agreement if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of the contract. Offeror further agrees that, should one or more subcontractor not meet the size requirement for reporting at contract award but subsequently grows such that the subcontractor meets or exceeds the size requirement for reporting, Offeror shall submit the required report, for each such subcontractor, within 90 days of that subcontractor meeting or exceeding the size requirement. Subsequent report submittals, on behalf of each such subcontractor, shall be due on the annual anniversary of the initial report submittal.

F. Offeror shall submit the required form(s) to the State Purchasing Division of the General Services Department, and other departments as may be determined, on behalf of the applicable subcontractor(s) in accordance with the schedule contained in this paragraph. Offeror acknowledges that this subcontractor requirement applies even though Offeror itself may not meet the size requirement for reporting and be required to report itself.

#### Additional Pay Equity Reporting Information

For the purposes of complying with the Pay Equity Reporting Information section above:

1. "Job Classification" means an arrangement of tasks in an establishment or industry into a limited series of jobs or occupations, rated in terms of skill, responsibility, experience, training, and similar considerations, usually for wage setting purposes. This term, or job class, refers to a single cluster of jobs of approximately equal "worth."

2. "New Mexico Employee" (also "Employee") means a person working within the State of New Mexico at a New Mexico facility, regardless where the employee legally resides, and regardless of the origin of compensation checks.

3. "PE10-249 form" means the reporting form to be used by contractors that meet or exceed the minimum size thresholds for reporting but have less than 250 New Mexico employees.

4. "PE250 form" means the reporting form to be used by contractors that have 250 or more New Mexico employees.

5. "Solicitation" means an Invitation to Bid or a Request for Proposals.

B. Report Submittal: Until further notice, successful Offeror shall submit the required form(s) to the State Purchasing Division of the General Services Department, and other departments as may be determined. The mailing address is: PO Box 6850, Santa Fe, NM, 87502-6850.

C. The successful Offeror shall not be required to report more frequently than annually unless more than 180 calendar days has elapsed since submittal of the last report and the contract has reached completion. The requirement for reporting at contract completion shall not apply in the case of a one-time fulfillment of a purchase order.

D. Exceptions to the Pay Equity Reporting Requirement:

1. Offerors with fewer than 10 employees are exempt, unless they have at least eight employees in the same job classification.

2. Offerors receiving a contract resulting from an emergency procurement are exempt, unless they hold other contracts that would already subject them to the requirement.

E. Offerors who are subject to the Pay Equity Reporting Requirement shall complete and sign the applicable pay equity form (PE 10-249 or PE250) and submit the form with their proposal. Offerors who fall within an exception to the Pay Equity Reporting Requirement shall include a statement in their transmittal letter that indicates they are exempt and cites the specific exception they fall under.

Application of New Mexico Preference Laws:

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 4  
**STATE OF NEW MEXICO**  
**ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT**  
**PROFESSIONAL SERVICES 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 Department of Finance and Administration (DFA).

IT IS AGREED BETWEEN THE PARTIES:

**1. Scope of Work.**

Contractor shall perform the following work:

(Insert Scope of Work here.)

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

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).

Contractor shall not award subcontracts to parties listed on the governmentwide 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 contains 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.

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.

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.

**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 New Mexico gross receipts taxes, if any, and travel, pursuant to Paragraph 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. Delete this instruction.)*

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 shall Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided.

B. *(For single-year contract, may need to revise the FY references)*  
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 DFA. 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.

**(—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, if any, and any travel, if necessary.

B. Payment 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 DFA. In no event shall Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of 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 WILL NOT BE PAID.

**Option 3: Time and Materials.**

A. EMNRD shall pay to Contractor in full payment for services satisfactorily performed pursuant to the Scope of Work rendered at the rate of **\$00.00** per hour, such compensation not to exceed **\$00**, which amount includes New Mexico gross receipts taxes, if any,

and travel pursuant to Paragraph C 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.

B. Payment 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 DFA. In no event shall Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of 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 WILL NOT BE PAID.

C. (For multiple year *(To be negotiated at EMNRD's discretion.)*) EMNRD shall pay such travel expenses as may be incurred in, 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, §§ 10-8-1 *et seq.*, as implemented by the current Department of Finance and Administration (DFA) rule and the current EMNRD Travel Policy.

D. Contractor shall be responsible for paying New Mexico Gross Receipts taxes, if any, levied on amounts payable under this Agreement.

E. Contractor must submit detailed statements accounting for all services performed, and expenses incurred. *(Invoices Vouchers must be supported by approved purchase order or equivalent document and invoice by the supplier, evidencing the propriety of each claim for payment. Wage amounts charged shall be based upon payrolls maintained by Contractor and must be supported by time and attendance sheets.)* If EMNRD finds that the statement, services, or expenses are not acceptable, within 30 days after the date of receipt of (i) written notice from Contractor that payment is requested, and (ii) all supporting documentation, EMNRD shall provide Contractor a letter of exception explaining the defect or objection to the statement, services, or expenses, and outlining steps Contractor may take to provide remedial action. Upon certification by EMNRD that the statement, supporting documentation, 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 DFA. This Agreement shall terminate on **(DATE)** unless terminated pursuant to Section 4, Termination, or Section 5, Appropriations. In accordance with NMSA 1978, § 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, § 13-1-150.

#### 4. Termination.

A. Grounds. EMNRD may terminate this Agreement for convenience or cause. Contractor may only terminate this Agreement based upon EMNRD's uncured, material breach of this Agreement.

B. Notice; EMNRD Opportunity to Cure.

1) Except as otherwise provided in Section 4(B)(3), EMNRD shall give Contractor written notice of termination at least 30 days prior to the intended date of termination.

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 all EMNRD's 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 (i) if 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.

3) Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to Contractor (i) if Contractor becomes unable to perform the services contracted for, as determined by EMNRD; (ii) if, during the term of this Agreement, Contractor is suspended or debarred by the State Purchasing Agent; or (iii) the 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, Paragraph C, of this Agreement. *(May need to revise Section number to track actual contract contents. Either way, delete this instruction.)*

C. Liability. Except as otherwise expressly allowed or provided under 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. Contractor shall submit an invoice for such work within 30 days of receiving or sending the notice of termination. *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.*

D. 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 shall direct 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.

**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 may not, does not have the authority to, and agrees not to purport to bind the State of New Mexico unless Contractor has express written authority to do so, 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 from EMNRD.

*(Option: Depending on your underlying federal funding source, you may need to include subparagraphs A and B if you are using federal funds to pay for this Agreement.)*

A. 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.

B. 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.)

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

**9. Release.**

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

**10. Confidentiality.**

Any confidential information provided to or developed by Contractor in the performance of this Agreement shall be kept confidential 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, §§ 10-16-1 through 10-16-18. Without in anyway limiting the generality of the foregoing, the Contractor specifically represents and warrants that:

1) in accordance with NMSA 1978, § 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, § 10-16-7(A) because (i) Contractor is not a public officer or employee of the 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, § 10-16-7(A) and this Agreement was awarded pursuant to a competitive process;

3) in accordance with NMSA 1978, § 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, § 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, § 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, § 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, § 10-16-3 and § 10-16-13.3, 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 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. 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, 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 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, §§ 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, § 38-3-1 (G). By execution of this Agreement, Contractor acknowledges and agrees to the exclusive jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of this Agreement's terms.

**18. Records and Financial Audit.**

A. Contractor shall maintain detailed time and expenditure records that indicate the date; time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of six years from the date of final payment under this Agreement. *(Option: If you are using federal funding, Contractor must retain the records for three years after the funding expires, even if the contract ends prior to the funding expiring. Revise this paragraph to indicate a date certain by which Contractor must retain the records. Delete this instruction.)* Contractor further agrees to include in all subcontracts hereunder the same right of inspection and audit against all subcontractors. EMNRD shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose EMNRD's right to recover excessive or illegal payments. In EMNRD's, DFA'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.*

*(Option: Are you using federal funds to pay for this contract? If yes, you need to include the following paragraph in your contract because the requirements are cumulative. If no, delete this paragraph. Delete this instruction.)*

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

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

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, caused by the negligent act or failure to act of Contractor, Contractor's officers, employees, servants, subcontractors, consultants, or agents, or if 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 subcontractors thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by Contractor or any officer, agent, employee, servant, or subcontractor under this Agreement is brought against the Contractor, Contractor's officers, employees, servants, subcontractors, consultants, or agents, shall, as soon as practicable but no later than four 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, §§ 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.

- have:
- 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 programs.

**21. Employee Pay Equity Reporting.**

A. Contractor agrees if it has 10 or more New Mexico employees OR eight or more employees in the same job classification, at any time during the term of this contract, to complete and submit the PE10-249 form on the annual anniversary of the initial report submittal for contracts up to one year in duration.

B. If Contractor has 250 or more employees, Contractor must complete and submit the PE250 form on the annual anniversary of the initial report submittal for contracts up to one year in duration.

C. For agreements that extend beyond one calendar year, or are extended beyond one calendar year, Contractor also agrees to complete and submit the PE10-249 or PE250 form, whichever is applicable, within 30 days of the annual agreement anniversary date of the initial submittal date or, if more than 180 days has elapsed since submittal of the last report, at the completion of the agreement, whichever comes first.

D. Should Contractor not meet the size requirement for reporting at contract award but subsequently grows such that Contractor meets or exceeds the size requirement for reporting, Contractor agrees to provide the required report within 90 days of meeting or exceeding the size requirement. That submittal date shall serve as the basis for submittals required thereafter.

E. Contractor also agrees to levy this requirement on any subcontractor(s) performing more than 10% of the dollar value of this Agreement if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of the contract. Contractor further agrees that, should one or more subcontractor not meet the size requirement for reporting at contract award but subsequently grows such that the subcontractor meets or exceeds the size requirement for reporting, Contractor shall submit the required report, for each such subcontractor, within 90 days of that subcontractor meeting or exceeding the size requirement. Subsequent report submittals, on behalf of each such subcontractor, shall be due on the annual anniversary of the initial report submittal.

F. Contractor shall submit the required form(s) to the State Purchasing Division of the General Services Department, and other departments as may be determined, on

behalf of the applicable subcontractor(s) in accordance with the schedule contained in this section. Contractor acknowledges that this subcontractor requirement applies even though Contractor itself may not meet the size requirement for reporting and be required to report itself.

G. Notwithstanding the foregoing, if this Agreement was procured pursuant to a solicitation, and if Contractor has already submitted the required report accompanying Contractor's response to such solicitation, the report does not need to be re-submitted with this Agreement.

## **22. Additional Pay Equity Reporting Information.**

A. For the purposes of complying with Section 21, Employee Pay Equity Reporting:

1) "Job Classification" means an arrangement of tasks in an establishment or industry into a limited series of jobs or occupations, rated in terms of skill, responsibility, experience, training, and similar considerations, usually for wage setting purposes. This term, or job class, refers to a single cluster of jobs of approximately equal "worth."

2) "New Mexico Employee" (also Employee) means a person working within the State of New Mexico at a New Mexico facility, regardless where the employee legally resides, and regardless of the origin of compensation checks.

3) "PE10-249 form" means the reporting form to be used by Contractors that meet or exceed the minimum size thresholds for reporting but have less than 250 New Mexico employees.

4) "PE250 form" means the reporting form to be used by Contractors that have 250 or more New Mexico employees.

5) "Solicitation" means an Invitation to Bid or a Request for Proposals.

B. Exceptions to the Pay Equity Reporting Requirement:

1) Contractors with fewer than 10 employees are exempt, unless they have at least eight employees in the same job classification.

2) Contractors receiving a contract resulting from an emergency procurement are exempt, unless they hold other contracts that would already subject them to the requirement.

3) Out-of-state Contractors that have no facilities and no employees working in New Mexico are exempt if the agreement is directly with the out-of-state Contractor and fulfilled directly by the out-of-state Contractor, and not passed through a local vendor.

## **23. 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, unless failing to give effect to such term or condition defeats the purpose of this Agreement.

**24. 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.

**25. Notices.**

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To EMNRD:

*(insert position title and address of project manager)*

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

To the Contractor:

[insert name, address and email].

To Risk Management Division:

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

**26. 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 he or she 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.

**27. 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.



**28. Attorneys' Fees and Costs. (Negotiable clause.)**

Contractor agrees that if Contractor is found by a court of competent jurisdiction to have breached this Agreement, or any amendments hereto, or to have committed any tortious act relating to the scope of this Agreement, EMNRD may recover from Contractor reasonable attorneys' fees and costs in connection with pre-litigation enforcement efforts, litigation brought to obtain such judicial determination, or any appeal of such determination, and to collect any judgment.

**29. 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.

**30. 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.

**(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 inapplicable clauses.)**

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

1) 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:

- a) including qualified MBEs/WBEs on solicitation lists;
- b) assuring that MBEs/WBEs are solicited once they are identified;
- c) when economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum MBE/WBE participation;
- d) where feasible, establishing delivery schedules which will encourage MBE/WBE participation;
- e) 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
- f) if any subcontracts are to be let, requiring the subcontractor to take the affirmative steps listed above.

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

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

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

**31. 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, to have in place and agrees to maintain for this Agreement's term, the following policy or policies of insurance providing:

1) Workers' Compensation protection that complies with the requirements of the New Mexico Workers' Compensation Act, NMSA 1978, §§ 52-1-1 *et seq.*, if applicable. 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, in amounts equal to or greater than liability limits set forth in NMSA 1978, § 41-4-19, as may be amended from time to time. 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 provide under the policy is primary over any other valid and collectible insurance and provide a waiver of subrogation.

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, §§ 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. At EMNRD's request, Contractor shall provide EMNRD with a copy of the insurance policy. At EMNRD's request, Contractor shall provide EMNRD with a copy of the insurance policy. Contractor shall notify EMNRD 10 days before cancellation or expiration of any required Workers' Compensation or contractual or general liability insurance coverage. *(Only 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 DFA 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**

Federal ID No.: \_\_\_\_\_

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

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

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

This Agreement has been approved by the DFA Contracts Review Bureau

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

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

(Selection Option 1, or 2)

Option 1:

The records of the Taxation and Revenue Department reflect that 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: \_\_\_\_\_

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**

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

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

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