

**REQUEST FOR PROPOSALS
PROFESSIONAL SERVICES TO DEVELOP RULES FOR
NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION DIVISION**

I. PURPOSE OF THIS REQUEST FOR PROPOSALS

The New Mexico Energy, Minerals and Natural Resources Department (EMNRD), Oil Conservation Division (OCD) issues this Request for Proposals (RFP) to solicit professional services for qualified offerors (Offerors) to develop and support the adoption of rules to regulate the venting and flaring of methane at oil and gas facilities.

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. QUALIFIED OFFERORS

Offerors must have at least 10 years of experience in the analysis of waste of resources, particularly natural gas, in the oil and gas industry; the development of administrative rules for governmental agencies; and the presentation of expert testimony in administrative or judicial proceedings. Additionally, qualified Offerors must not work currently, have worked previously, or anticipate work in the oil and gas industry.

III. SCOPE OF WORK

A. BACKGROUND

New Mexico, under the leadership of Governor Michele Lujan Grisham, established a greenhouse gas emission reduction goal of at least 45% below 2005 levels by 2030. To achieve this goal, the state must reduce the emission of methane, a potent greenhouse gas. Methane comprises about one-third of the state's greenhouse gas emissions, of which more than 60% percent is emitted by the oil and gas industry.

EMNRD, in conjunction with the New Mexico Environment Department, established the Methane Advisory Panel to identify the sources of methane emissions in the oil and gas industry, and the methods and technologies available to reduce those emissions. The successful Offeror shall provide assistance to OCD by reviewing the information compiled by the technical advisory panel, identifying additional relevant information, preparing draft rules to reduce the incidence and magnitude of waste of resources, particularly natural gas, from oil and gas facilities, and providing expert testimony in support of those rules in a hearing before the New Mexico Oil Conservation Commission.

B. TASK ORDERS

1. Process

The successful Offeror will be assigned work on an “as-needed” basis under Task Orders issued by OCD. Although OCD expects to assign multiple task orders, it cannot predict or guarantee their number or frequency.

Task Orders define a specific aspect of the project and request the successful Offeror to provide a timetable, budget, and other information. OCD will review the successful Offeror’s response and, after consultation with the successful Offeror if necessary, issue the Task Order.

2. Scope

Typical tasks that the successful Offeror will be asked to perform are listed below. Project-specific activities shall be detailed in individually approved Task Orders:

- consult in person or telephonically with OCD;
- review OCD's existing statutes, rules, policies, and practices regarding venting and flaring of natural gas by the oil and gas industry (Existing Rules);
- review the available information, including the reports and documents of the Methane Advisory Panel, regarding sources of waste in the oil and gas industry and the methods and technologies available to reduce that waste;
- advise OCD regarding the options to amend OCD’s Existing Rules;
- prepare draft amendments to OCD’s Existing Rules;
- evaluate the technical, economic, and regulatory impact of the draft amendments to the Existing Rules;
- prepare testimony and exhibits to support OCD’s application to amend the Existing Rules;
- present testimony at the hearing(s) on OCD’s application to amend the Existing Rules; and
- advise OCD, prepare supporting documentation, and participate in meetings with stakeholders regarding policies and procedures to implement the amendments to the Existing Rules.

IV. PROPOSAL FORMAT AND CONTENTS

- A. The proposal must provide a thorough description of the Offeror's qualifications to accomplish the activities in the Scope of Work.
- B. The proposal shall be submitted on white 8.5 x 11" paper, single-spaced, 12-point font type, numbered pages, and not to exceed 50 pages.
- C. The proposal must contain, at a minimum, the listed items in the specified sequence and must be organized in the following format:
 1. Letter of transmittal that:
 - identifies the proposal as a response to this RFP;
 - expressly accepts the terms and conditions of this RFP and the evaluation criteria;
 - expressly acknowledges receipt of this RFP and all amendments;
 - identifies the name, title, telephone number, fax number, and e-mail address of each person authorized to respond to requests for clarification;
 - identifies the name, title, telephone number, fax number, and e-mail address of each person authorized to negotiate the contract on behalf of the Offeror; and
 - a signature by the person authorized to contractually obligate the Offeror.
 2. Description of activities similar to the Scope of Work that the Offeror has performed;
 3. Description of the Offeror's capabilities, services and other resources to accomplish the activities in the Scope of Work.
 4. Description of the Offeror's systems and procedures to plan and implement the activities in the Scope of Work, including administration and cost control.
 5. Name and qualifications, including a brief biography and resume identifying education and work experience, of each person that will manage the activities in the Scope of Work or be assigned to the Task Orders.

6. Two or more business references for governmental agencies for which the Offeror has performed activities similar to the Scope of Work during the preceding three years.

Each business reference must submit the Reference Questionnaire (Attachment 1) to the EMNRD Contact Person listed below. The Offeror is responsible to ensure that the EMNRD receives the questionnaires no later than the proposal submission deadline. A questionnaire that is not complete or not received by the proposal submission deadline will not be considered during the evaluation process. EMNRD may contact a business reference regarding the information provided in the questionnaire.

7. Campaign Contribution Disclosure Form (Attachment 2) for each campaign contribution given by the Offeror or its family member or representative.
8. Statement of Assurances Form (Attachment 3).
9. New Mexico Resident Vendor or Resident Veteran Business Preference Certificate issued pursuant to NMSA 1978, § 13-1-21. Certificates may be obtained from the New Mexico Department of Taxation and Revenue (<http://www.tax.newmexico.gov/Businesses/in-state-veteran-preference-certification.aspx>).

- D. A proposal that does not comply with these requirements may be deemed nonresponsive and rejected on that basis.

V. EVALUATION CRITERIA

OCD shall use the following criteria to evaluate proposals and select the successful Offeror. An Offeror's deficiency in one criterion may be a sufficient basis to select the proposal of another Offeror regardless of the total score.

Criteria	Possible Points
Experience: (1) Analysis of waste of resources in the oil and gas industry (2) Development of administrative rules for governmental agencies	30

Criteria	Possible Points
(3) Presentation of expert testimony in administrative or judicial proceedings, and particularly, in support of administrative rules for governmental agencies	
Staff Qualifications	20
Record of Performance for Governmental Agencies: (1) Quality of work (2) Working relationship (3) Compliance with schedules (4) Cost control	20
References	15
Compliance with RFP Requirements	15
New Mexico Preference – Resident Vendor or New Mexico Preference – Resident Veteran Business The Offeror may receive points for either preference, not both.	5 (maximum)
Maximum Possible Points	105

VI. EVALUATION PROCESS

OCD will evaluate the proposals by the following process:

1. Record the contents of each proposal.
2. Review each proposal for compliance with the RFP requirements and determine whether to reject or evaluate the proposal.
3. Contact the Offeror to clarify the proposal, if necessary.

4. Evaluate the proposals based on the specified criteria.
5. Identify the Offeror with the highest total score.
6. Contact the references of the identified Offeror.
7. Select the Offeror whose proposal is most advantageous to EMNRD.

VII. CONTACT PERSON

Questions regarding this RFP must be submitted in writing to the EMNRD Contact Person listed below. Offerors may contact the Contact Person only regarding this RFP:

Gabriel Wade
Deputy Director
Oil Conservation Division
Energy, Minerals and Natural Resources Department
1220 South St. Francis Drive
Santa Fe, New Mexico 87505
Tel. (505) 476-3381
gabriel.wade@state.nm.us

Other state employees or Evaluation Committee members are not authorized to discuss this RFP.

VIII. DUE DATES

A. WRITTEN QUESTIONS

Written questions regarding this RFP must be submitted to the EMNRD Contact Person no later than 5 p.m. MST on February 28, 2020. Questions shall cite the section of this RFP which forms the basis for the question. EMNRD will post a response to written questions at the following web address:

<http://www.emnrd.state.nm.us/OCD/announcements.html>.

B. PROPOSALS

Offerors must submit one original and three identical copies of the proposal, sealed and delivered by certified mail-return receipt requested or similar service to the EMNRD Contact Person no later than 5 p.m. MST on March 20, 2020. Proposals received after this date and time shall not be accepted.

C. PROTESTS

An Offeror who is not selected has the right to timely protest the procurement. NMSA

1978, § 13-1-172. A protest must be in writing and identify the name and address of the protestor, the name of the procurement being protested, the grounds for the protest, and the requested relief, and attach any supporting documents. The protest period commences on the day after the Offeror receives actual or constructive notice of the selection decision, and concludes at 5:00 p.m. MST on the 15th day after the day of commencement.

Protests must be delivered to:

Eric Ames
Office of General Counsel
Energy, Minerals and Natural Resources Department
1220 South St. Francis Drive
Santa Fe, New Mexico 87505
Tel. (505) 476-3463
eric.ames@state.nm.us

IX. CONTRACT AWARD AND DURATION

EMNRD may award a contract in accordance with this RFP under the terms of the draft Professional Services Agreement (PSA) (Attachment 4). The 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.

X. NOTICES

The award of a contract is contingent upon sufficient appropriation and authorization by the State of New Mexico.

The money made available to support a PSA awarded 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 all proposals if it is in the best interest of the State of New Mexico.

EMNRD may contact an Offeror to discuss a proposal, but may accept or reject a proposal without making such contact.

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

Attachment 1

REQUEST FOR PROPOSALS	
REFERENCE QUESTIONNAIRE	
Name of Requester	
<p>The Offeror must provide business references in support of its proposal. Please return this questionnaire no later than 5 p.m. MST on _____, 2020, to:</p> <p>Gabriel Wade Deputy Director Oil Conservation Division Energy, Minerals and Natural Resources Department 1220 South St. Francis Drive Santa Fe, New Mexico 87505 Tel. (505) 476-3381 gabriel.wade@state.nm.us</p>	
Name of Reference	
Contact Name Position Telephone Number Mailing Address Email Address	
QUESTIONS	
1. In what capacity have you worked with the Offeror?	
Comment:	

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2. How would you rate the Offeror's knowledge and expertise?

3-Excellent

2-Satisfactory

1-Unsatisfactory

0-Unacceptable

Comment:

3. How would you rate the Offeror's response to changes in the project's scope and timeline?

3-Excellent

2-Satisfactory

1-Unsatisfactory

0-Unacceptable

Comment:

4. What is your level of satisfaction with the Offeror's deliverables?

3-Excellent

2-Satisfactory

1-Unsatisfactory

0-Unacceptable

Comment:

5. How would you rate the relationship between the Offeror and your staff?

3-Excellent

2-Satisfactory

1-Unsatisfactory

0-Unacceptable

Comment:

6. Who were the Offeror's employees who worked on your project, and how would you rate them individually? Please identify the factors for your rating, such as skills, knowledge, and conduct.

Name	Factor	Rating 3-Excellent 2-Satisfactory 1-Unsatisfactory 0-Unacceptable

Comment:

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

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

9. Would you recommend retaining this Offeror 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

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

(Attach extra pages if necessary)

Signature: _____ Date: _____

_____ Title/Position: _____

--OR--

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

Signature: _____ Date: _____

_____ Title/Position: _____

Attachment 3

STATEMENT OF ASSURANCES FORM

The Offeror shall complete this form and return it with the proposal. By signing this form, the Offeror acknowledges and agrees to the following:

1. The Offeror solely bears the cost of preparing a response to this RFP. The State of New Mexico (State) expressly declares that it shall not be responsible to pay any cost incurred by the Offeror to prepare or submit the proposal.
2. The proposal shall become part of the State's official file.
3. The issuance of this RFP or the Offeror's submittal of a response does not obligate the State to award a contract or constitute a commitment to award a contract.
4. The Offeror has examined all contract documents, including all stipulations that may affect its obligation to perform under the contract.
5. The Offeror's failure to acquaint itself with the amount and nature of the work required to the contract shall not be considered a basis for additional compensation after the contract has been awarded.
6. The Offeror has the staff, facilities, and competence to perform under the contract.
7. The State may investigate the Offeror's staff, facilities, and competence at any time, and for this purpose, the State's representatives may inspect the Offeror's facilities and interview its staff at a reasonable time.
8. The Offeror's proposal must be signed by an officer having the authority to bind the Offeror.
9. The Offeror shall comply with all relevant federal and state laws and regulations or rules.
10. 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.

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

11. The Offeror shall provide a copy of the New Mexico Resident Vendor or Resident Veteran Business Preference Certificate to be eligible for preference points.

Signature of Offeror's Authorized Representative

Date

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 [Contractor] (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:

[Scope of Work]

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 and travel pursuant to paragraphs C and D of this 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:

[Deliverables & Payment Schedule]

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.

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 and travel pursuant to paragraphs C and D of this section.

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 \$_____ per hour, such compensation not to exceed \$_____, which amount includes New Mexico gross receipts taxes and travel pursuant to paragraphs C and D of this 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 the 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. Payment in 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. 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 rule and the current EMNRD Travel Policy.

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

E. Contractor must submit detailed statements accounting for all services performed, and expenses incurred. 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 the GASD/SPD Contracts Review Bureau. This Agreement shall terminate on [DATE] unless terminated pursuant to Section 4, Termination, or Section 5, Appropriations. In accordance with NMSA 1978, § 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.

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.

5. Appropriations.

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, 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.

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(D) and § 10-16-13, 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.

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. 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, GSD/SPD's, or the State Auditor'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 shall continue until all potential litigation, appeals, claims, or exceptions have expired or been resolved.

19. Indemnification.

Contractor shall defend, indemnify, and hold harmless EMNRD, its officers, employees, agents, and representatives, and the State of New Mexico from all actions, proceedings, claims, demands, costs, damages, attorneys' fees, and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, 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.

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. 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.

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, without limitation, notice by facsimile) and shall be given to the relevant party at its e-mail address, mailing address, or facsimile number set forth below, or such other address or facsimile number as such party may hereafter specify by written notice to the other given by courier, by United States certified or registered mail, by facsimile, or by e-mail or by other telecommunication device capable of creating a written record of such notice and its receipt.

To EMNRD:

Gabriel Wade
Deputy Director
Oil Conservation Division
Energy, Minerals and Natural Resources Department
1220 South St. Francis Drive
Santa Fe, New Mexico 87505
Tel. (505) 476-3381
gabriel.wade@state.nm.us

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

To New Mexico Risk Management Division:

Risk Management Division
General Services Department

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

To Contractor:

[name, telephone number, and mailing and electronic addresses]

24. Authority.

If Contractor is other than a natural person, the individual(s) signing this Agreement on Contractor's behalf and Contractor represents and warrants 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.

25. Acknowledgement. Contractor acknowledges EMNRD 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 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.

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 statutes, rules and regulations imposed as a consequence of funding pursuant to this Agreement, including:

A. Contractor and Contractor's employees shall comply with NMSA 1978, § 66-7-374, Texting While Driving in connection with this Agreement. The statute prohibits reading or viewing a text message or manually typing on a handheld mobile communication device for any purpose while driving a motor vehicle, 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.

29. Insurance.

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. 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, § 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.

4) Professional liability insurance covering Contractor's negligent acts, errors, or omissions.

B. Contractor shall provide EMNRD with a copy of the insurance certificate within 10 days of Agreement 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 or other insurance required by this contract.

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

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

By: _____
Cabinet Secretary or Designee

Date: _____

By: _____
Legal Counsel - Certifying legal sufficiency

Date: _____

By: _____
Chief Financial Officer

Date: _____

CONTRACTOR

By: _____
Authorized Representative Signature

Date: _____

Printed Name and Title

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

By: _____
GSD/SPD Contracts Review Bureau

Date: _____

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.

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

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

By: _____

Date: _____