

**STATE OF NEW MEXICO
BEFORE THE SECRETARY OF THE ENVIRONMENT**

**IN THE MATTER OF:
THE APPLICATION OF YUCCA
GROWTH INFRASTRUCTURE,
LLC FOR AN AIR QUALITY PERMIT,
NO. NSR 10883**

No. AQB 26-57 (P)

**MAXWELL’S RESPONSE IN SUBSTANTIAL SUPPORT OF
JOINT EMERGENCY MOTION FOR DISQUALIFICATION AND STAY, AND
SUPPLEMENTAL MOTION FOR EXPEDITED DISCLOSURE CONCERNING THE
ERG CONTRACTUAL RELATIONSHIP**

Mr. Maxwell, your intervenor, submits this Response to the August 19, 2026 Emergency Motion for Hearing Consistent with Due Process Guarantees, Disqualification of Hearing Officer, and Stay filed by Jose Saldaña, Jr. and Vivian Fuller through the New Mexico Environmental Law Center (“NMELC”), together with the Center for Biological Diversity (“CBD”) (collectively, “Movants”), and concurrently submits this Supplemental Motion concerning the contractual relationship among the New Mexico Environment Department (“NMED” or “Department”), Eastern Research Group, LLC (“ERG”), and Hearing Officer Max Shepherd.

Maxwell substantially supports the Joint Motion’s central contention that the cumulative procedural history presents a serious impartiality concern requiring expedited review, while declining to adopt several factual characterizations or inferences that go beyond the present record. Maxwell does not contend that adverse rulings alone establish personal bias, nor does he ask the tribunal to infer subjective motive merely from disputed procedural decisions. He does agree that the relevant events should be considered cumulatively rather than as isolated disagreements over case management.

Maxwell combines his Response and Supplemental Motion in pursuit of administrative efficiency. Movants have placed the Hearing Officer’s qualification and impartiality directly at

issue under 20.1.4.100(E)(3) NMAC. Maxwell raises a separate structural and contractual matter bearing upon that same determination. Because Part 4 requires the Hearing Officer to file a recommended decision on a disqualification motion within five days, followed by an order from the Secretary within five days of the recommendation, separate and successive qualification proceedings concerning the same Hearing Officer would unnecessarily duplicate briefing and decisional processes. 20.1.4.100(E)(3)(b)(ii) NMAC.

Maxwell does not contend at the outset that the presently available ERG records establish actual bias, a disqualifying financial interest, or an improper contractual arrangement. They instead establish a sequence of events and relationships while leaving material facts concerning the operation of that relationship unanswered. Those facts should be developed as part of the pending qualification determination.

I. MAXWELL SUBSTANTIALLY SUPPORTS THE JOINT MOTION’S CUMULATIVE IMPARTIALITY CONCERN, WHILE DISTINGUISHING PROCEDURAL ERROR FROM PROOF OF SUBJECTIVE BIAS.

Part 4 requires the Hearing Officer to “conduct a fair and impartial proceeding,” assure that the facts are fully elicited, avoid delay, and take measures necessary for efficient, fair, and impartial adjudication. 20.1.4.100(E)(2) NMAC. A Hearing Officer “shall not perform any function” in a matter in which the Hearing Officer has personal bias or prejudice concerning a party or the application. 20.1.4.100(E)(3)(a)(i) NMAC.

Maxwell does not adopt every factual characterization or legal conclusion in Movants’ Joint Motion. In particular, an adverse ruling, or even a succession of adverse rulings, does not by itself establish personal bias. *Albuquerque Bernalillo Cnty. Water Util. Auth. v. N.M. Pub. Regul. Comm’n*, 2010-NMSC-013, ¶ 42. At the same time, the Court has framed the relevant prejudgment inquiry objectively, asking whether the circumstances present a possible temptation for an average decisionmaker to try the matter with bias for or against an issue or party. *Id.* ¶ 44.

The first principle does not require the tribunal to disregard the cumulative administration of the proceeding. The present concern arises from the interaction among several substantial procedural changes, an increasingly compressed schedule, parties' reliance upon procedures later withdrawn, and the requirement that opposing parties present complete affirmative technical cases while important factual material remains unavailable or is deferred until later stages.

A) The September hearing date ultimately received a stated rationale; the relevant concern is the change in the balance struck between the decision deadline and the parties' preparation rights.

Movants correctly identify a substantial change in the hearing schedule, but the complete Hearing Record should be stated accurately.

The July 16 Scheduling Order established an October 19 hearing, with direct technical testimony due October 1 and rebuttal due October 12. Hearing Record, *Scheduling Order* ¶¶ 1–3 (July 16, 2026).

Prehearing motions were due September 28, responses October 9, and formal discovery was contemplated upon order of the Hearing Officer. *Id.* ¶¶ 6–7. At the July 27 status conference, after Applicant requested an August hearing, the Hearing Officer retained the October 19 date. In explaining that determination, he stated that the proposed source required a “pretty thorough examination before we commit to it” and expressly associated the additional preparation time with due-process considerations. *Joint Mot.* at 5 (quoting July 27 conference at 1:04:23–1:05:25). Two days later, the July 29 Amended Scheduling Order reset the hearing to September 14. Direct technical testimony became due August 24 and rebuttal September 3. *Amended Scheduling Order* ¶¶ 1–3 (July 29, 2026). The Order also required all prehearing motions, including dispositive motions and motions to exclude evidence, by August 24, with responses September 3. *Id.* ¶ 6. The July 29 Order initially explained the change by stating that,

after additional consideration of the parties’ arguments, including their due-process arguments, “the best interest of all the parties” would be served by September 14. *Joint Mot.* at 5–6.

The Hearing Officer subsequently supplied a more specific rationale.

After Movants filed their July 31 Motion to Restore the October 19 Hearing Schedule and Preserve Due Process, the Hearing Officer entered an August 3 Order. He adopted NMED’s account of how hearings proceed under Part 4, rejected Movants’ assertion that he possessed authority under the facts presented to extend the November 23, 2026 decision deadline on due-process grounds, and concluded that, without extending that deadline, an October 19 hearing would leave insufficient time for the parties and Deputy Secretary to complete the post-hearing procedures prescribed by 20.1.4.500 NMAC. *Order* at 1 (Aug. 3, 2026).

Maxwell therefore does not characterize the September reset as ultimately unexplained.

The more precise concern is that the Hearing Officer initially balanced the proceeding in favor of an October schedule because of the need for thorough examination and due-process preparation, but subsequently adopted a materially different balance based upon his conclusion concerning the November 23 decision date and the time necessary to complete the § 500 process.

Whether that legal conclusion was correct is distinct from whether the scheduling reversal establishes bias. But the practical effect of the change remains relevant to the cumulative impartiality inquiry.

The resulting schedule requires opposing parties to commit their complete affirmative technical cases by August 24—less than four weeks after issuance of the July 29 draft permitting materials—and requires dispositive motions the same day. Movants subsequently placed in the Hearing Record NMED’s stated intention to provide the Administrative Record on August 24, the same date their direct technical cases are due. *Motion to Restore October 19 Hearing Schedule* at 4–5 (July 31, 2026).

The scheduling history therefore contributes to the cumulative concern not because no rationale was supplied, but because the later rationale materially displaced the due-process and preparation considerations the Hearing Officer himself had previously identified, while substantially accelerating the point at which opposing parties must commit their affirmative cases.

B) The discovery history presents a separate reliance and fairness concern.

The discovery history is similarly more significant than a simple disagreement over statutory interpretation.

The July 16 Scheduling Order expressly contemplated formal discovery upon order of the Hearing Officer. *Scheduling Order* ¶ 7.

After the July 27 conference, the Hearing Officer separately entered a July 29 Order finding that discovery “should be allowed in the case,” while the contemporaneous Amended Scheduling Order again provided that formal discovery would be allowed upon order of the Hearing Officer. *Order* at 2 (July 29, 2026); *Amended Scheduling Order* ¶ 7.

Parties thereafter prepared and litigated discovery requests in reliance upon that procedural framework.

On August 12, after reviewing the requests, responses, authorities, and Part 4, the Hearing Officer concluded that his “initial interpretation of discovery under Rule 4 was incorrect” and held that “discovery is not allowed in air quality permit proceedings.” *Order* at 1 (Aug. 12, 2026).

That Order contained a stated legal rationale. It adopted Applicant’s argument that Part 4 expressly provides discovery procedures for Solid Waste Act hearings, that the Solid Waste Act itself expressly authorizes discovery procedures, and that the Air Quality Control Act expressly refers to discovery in enforcement proceedings but not air-permit proceedings. *Id.* at 1–2.

Maxwell does not rely upon a proposition that the August 12 Order contained no explanation. He has separately disagreed with the breadth and legal sufficiency of that reasoning.

The relevant cumulative concern is the sequence. Discovery was repeatedly represented as available by order; parties structured preparation and motion practice around that understanding; and the avenue was then categorically eliminated shortly before complete affirmative technical cases became due.

That sequence is especially consequential because the same accelerated schedule requires opposing parties to produce the affirmative evidence supporting their positions at a time when they have been attempting to obtain underlying information necessary to understand or test NMED's and Applicant's technical positions.

The elimination of a previously available avenue of factual development therefore remains part of the objective fairness inquiry even if the Hearing Officer acted upon a sincerely held revised interpretation of Part 4.

C) Maxwell opposed NEE's requested dismissal, but sought to preserve—not terminate—the factual development ordered on August 5.

Movants' treatment of the New Energy Economy fuel-supply issue also warrants a more precise account of Maxwell's position and of what changed when the Hearing Officer later withdrew the August 5 procedure.

NEE moved to dismiss the Application based principally upon the State Land Office's denial of rights-of-way and a related business lease associated with the proposed Green Chili Lateral. NEE's theory required more than the existence of that denial. To obtain dismissal on the existing record, it also had to establish that the affected pipeline was indispensable to the

proposed source or that the State Land Office action otherwise made completion of construction within a reasonable time unlikely.

The Hearing Officer did not grant dismissal on August 5. Instead, he directed Applicant and NMED to address factual questions concerning fuel supply, alternative arrangements, the effect of the State Land Office decision, whether the project remained capable of construction as proposed, and whether the proposed source could still be completed within a reasonable time. *Order* at 1–2 (Aug. 5, 2026).

Maxwell opposed NEE’s requested dispositive relief. His August 7 Response argued that the State Land Office action established a material obstacle, but not the impossibility NEE asserted. The Application did not identify the Green Chili Lateral as the exclusive fuel-delivery route, and NEE’s evidence did not establish that the affected segments could not be rerouted, that another interconnection was unavailable, or that another legally obtainable delivery arrangement did not exist. *Maxwell Response in Opposition to NEE Motion to Dismiss and Objection to August 5 Order* (“*Maxwell Aug. 7 Resp.*”) at 2–3.

But Maxwell’s opposition to dismissal was expressly not opposition to further factual development. His filing stated:

“Mr. Maxwell does not object to factual development concerning fuel supply or construction timing.”

Maxwell explained that those matters could be relevant under 20.2.72.208(G) NMAC and that his objection concerned “the manner in which the issue was presented and the evidentiary consequences of the Order,” not whether Applicant and NMED should answer the factual questions. *Maxwell Aug. 7 Resp.* at 1.

Indeed, Maxwell affirmatively recognized the usefulness of the August 5 inquiry. Addressing NEE’s failure to establish pipeline exclusivity, he stated that “[t]he August 5 Order

seeks facts necessary to evaluate that issue; it does not convert NEE's disputed premises into findings." *Id.* at 3.

Maxwell's objection instead concerned the way NEE's alternative request and the August 5 Order framed those facts. The questions were present-tense and open-ended. They could permit Applicant to first identify a conceptual reroute, new commercial arrangement, revised construction schedule, or other alternative after NEE filed its challenge, and could likewise permit NMED to rely upon newly obtained information that had not supported the July 29 draft permitting materials. Maxwell did not argue that such later-acquired information was necessarily irrelevant. He argued that its timing and status had to remain visible in the record so that a later-developed answer would not silently be treated as though it had already supported the Application or NMED's earlier permit review. *Id.* at 5.

His requested relief therefore sought to preserve and discipline the factual-development process, not terminate it. Among other safeguards, Maxwell asked that Applicant and NMED answer separately; identify the source and timing of material factual assertions; distinguish preexisting information from information first developed after the motion; support material assertions with competent evidence rather than attorney argument alone; preserve Applicant's nonshifting burden; make newly relied-upon information available to opposing parties; and allow a short opportunity to address material new matter before any dispositive ruling. *Id.* at 11–13.

Most importantly for the present disqualification issue, Maxwell expressly stated that his objection "does not seek to stay the duty to respond." *Id.* at 1–2.

Later in the same filing, he reiterated that he was proceeding "[w]ithout seeking to stay Applicant's or NMED's duty to respond." *Id.* at 11.

Near the conclusion, he stated again:

“This objection does not seek to delay the September 14 hearing or excuse Applicant or NMED from answering the Hearing Officer’s questions.”

Id. at 14.

The Hearing Officer subsequently withdrew that factual-response procedure before the ordered responses were due.

The distinction between the substantive premise and the procedural disposition is important. The Sua Sponte Order rested in part upon a substantive conclusion consistent with one aspect of Maxwell’s opposition to dismissal: NEE had not established that the Green Chili Lateral was the sole legally or technically available means of supplying natural gas. But the Hearing Officer did not preserve the factual-development procedure Maxwell had requested. Instead, he withdrew the August 5 process and concluded that the unresolved facts “should be developed through testimony presented under oath rather than through argument of counsel in briefs” and more appropriately developed at the September 14 hearing. *Sua Sponte Order* at 1 (Aug. 10, 2026).

The procedural disposition therefore departed from Maxwell’s requested relief. Maxwell had asked that the already-ordered factual inquiry continue, subject to safeguards governing the source, timing, evidentiary support, supplementation, and responsive use of newly supplied information. The Hearing Officer instead cancelled that mechanism and deferred development of the relevant facts to later sworn testimony.

That was not the disposition Maxwell requested.

The August 12 reconsideration Order subsequently clarified that Applicant continued to bear the burden of demonstrating that the permit application satisfies applicable requirements and stated that the August 10 Order had “simply” shifted “the time when this matter should be heard.” *Order* at 1–2 (Aug. 12, 2026).

The Order contemplated the pipeline issue being addressed in Applicant's August 24 technical testimony, followed by a potential motion and evidentiary hearing at which the parties could present sworn evidence and conduct cross-examination. *Id.*

Maxwell therefore does not adopt the Joint Motion to the extent it can be read to say that the Hearing Officer simply transferred Applicant's ultimate permitting burden to NEE.

But that clarification does not eliminate the procedural change that actually occurred. Maxwell had opposed dismissal while preserving the factual inquiry. The Hearing Officer accepted a substantive reason for withholding dismissal, but simultaneously eliminated the factual-development procedure that Maxwell had expressly asked be retained.

The timing compounds the significance of that change. At nearly the same time, the Hearing Officer also concluded that formal discovery was categorically unavailable in this air-permit proceeding. Thus, facts that the Hearing Officer initially determined warranted immediate development through directed responses were instead deferred to later sworn testimony, while parties were simultaneously denied a principal prehearing mechanism for obtaining underlying information before their own complete affirmative technical cases became due.

Maxwell does not contend that either procedural choice, standing alone, proves personal bias. But the sequence is properly considered with the other procedural changes identified by Movants when determining whether the proceeding, viewed cumulatively, continues to satisfy Part 4's requirement of fair and impartial adjudication.

D) Maxwell substantially supports the Joint Motion without enlarging the present evidence.

Maxwell also does not enlarge several additional circumstances beyond what they presently establish.

At the July 27 conference, the Hearing Officer stated:

“Once this facility is in place, it has the potential to be extraordinarily beneficial to the state of New Mexico - extraordinarily beneficial.”

Joint Mot. at 5 (quoting July 27 conference at 1:04:07).

That statement is relevant context in a cumulative impartiality inquiry. Maxwell does not, however, agree with a characterization that it was an express determination that Permit No. 10883 should issue. The same quoted passage reflects that the Hearing Officer immediately emphasized the importance of thoroughly investigating the proposed source before “we commit to it” and relied upon due-process considerations in retaining the October schedule.

The State’s policy toward Project Jupiter is likewise relevant institutional context. Movants cite a Memorandum of Understanding stating that the State, including NMED, “desires the development and construction” of the relevant infrastructure and campuses and intends to devote resources to timely processing of correctly completed applications and approvals. *Joint Mot.* at 1–2, 13–14.

Maxwell does not equate that development policy with a commitment to approve Permit No. 10883. A State policy favoring development and timely lawful processing is not itself a predetermined regulatory result.

Likewise, the Hearing Record reflects Movants’ observation that the Governor’s public calendar contained an Oracle meeting on the afternoon of July 27. *Joint Mot.* at 5 & Attachment 2.

The present record does not establish a communication between that meeting and Mr. Shepherd, that he knew of the meeting when he entered the July 29 Order, or that the meeting caused the scheduling change. Maxwell therefore does not rely upon that chronology as proof of influence.

These distinctions do not place Maxwell in opposition to the Joint Motion. They identify why Maxwell substantially supports its central cumulative concern while asking that the qualification determination rest upon the strongest available facts rather than upon inferences the record does not yet establish.

Once the Hearing Officer's qualification is squarely before the tribunal, a separate body of objective facts not addressed in the Joint Motion becomes material:

the contractual mechanism through which Mr. Shepherd came to serve as the adjudicator in an NMED proceeding in which NMED itself is a party.

The presently available documents tell that story in several stages.

II. THE CURRENT ERG CONTRACT BEGAN AS A BROAD NMED SUPPORT CONTRACT, NOT AS A NEUTRAL-ADJUDICATOR CONTRACT.

In 2024, NMED issued Request for Proposals No. 24-667-4091-27739, Technical, Regulatory, and Administrative Tasks, attached as Exhibit A.

The procurement sought multidisciplinary professional services for NMED's Environmental Protection Division, including the Air Quality Bureau and Climate Change Bureau. Among the identified functions was "Legislation Development, Regulation Development and Hearing Support." That work expressly included technical analysis and support of regulatory hearings through written and oral expert testimony, exhibits, and technical and background materials. The RFP separately contemplated permitting support involving review of permit applications, operations plans, emission inventories, monitoring data, and other regulated-industry materials. *Ex. A.*

The 2024 procurement did not identify a Hearing Officer labor category or otherwise describe the contractor as the supplier of the neutral adjudicator.

NMED thereafter entered Professional Services Contract No. 25-667-4091-44019 with ERG, attached as Exhibit B.

The original contract continued that broad agency-support function. Its Scope of Work included legislation and regulation development; technical analyses concerning economic impacts, health, emissions, and other subjects identified by NMED; support for regulatory hearings through written and oral expert testimony and exhibits; air-quality and climate-program support; permitting; data analysis; and air-dispersion, emissions-inventory, and related modeling. *Ex. B, Attachment A.*

The financial relationship is substantial. The agreement authorizes total payment of up to \$9,500,000, including expenses and applicable gross-receipts tax, and requires ERG to invoice NMED for services rendered. That figure is a contractual maximum; it is not a representation that NMED will necessarily purchase \$9.5 million in services. *Ex. B, Attachment B.*

The master contract also contains provisions characteristic of a customer-contractor relationship. ERG and its personnel act as independent contractors; assignment of an interest in the agreement requires NMED's prior written approval; and ERG may not subcontract covered services without NMED's prior written approval. *Ex. B §§ 6–8.*

The presently available record does not establish whether Mr. Shepherd's later "new service contract" constitutes a subcontract governed by Section 8, some other contractual instrument, or a different form of engagement. Maxwell therefore does not infer from the subcontracting provision that NMED necessarily approved Mr. Shepherd's individual agreement. The provision instead reinforces why the legal and practical nature of that agreement should be identified.

The master contract also contains a general conflict-of-interest warranty. ERG represents that it has no interest, and will acquire no interest during the contract, that would conflict "in any manner or degree" with performance of the required services. *Ex. B § 12(A).*

That is a relevant contractual safeguard and should not be ignored. It does not, however, itself disclose how potential role conflicts are screened or managed when one portion of the same contractual relationship authorizes substantive technical and evidentiary support for NMED and another later authorizes ERG to supply the adjudicator.

None of these provisions, standing alone, establishes anything improper.

Their significance arises from what NMED subsequently added to the same contractual relationship.

III. NMED LATER AMENDED THE SAME CONTRACT TO MAKE ERG THE SUPPLIER OF “INDEPENDENT AND NEUTRAL” HEARING OFFICERS.

On September 12, 2025, NMED and ERG executed Amendment No. 01 to Contract No. 25-667-4091-44019, attached as Exhibit C.

The amendment expressly added new services and a Hearing Officer labor category for Years 2 through 4, while providing that “[a]ll other articles of this contract remain the same.” *Ex. C* at 1.

The new function was materially different from technical, regulatory, legal, or hearing support. ERG would now supply persons exercising adjudicatory authority in NMED proceedings.

The amended Scope of Work states:

“ERG shall supply qualified personnel, hereafter referred to as ‘Hearing Officers,’ who are independent and neutral.”

Ex. C at 3.

The ERG-supplied Hearing Officers are assigned core adjudicatory duties. They establish hearing dates, conduct prehearing conferences, accept testimony and written filings, administer oaths, rule upon motions and objections, assure an impartial hearing, interpret and apply technical evidence, advise the Secretary or designee concerning evidence and legal issues,

manage technical and expert testimony, and prepare Hearing Officer reports and recommended decisions. *Id.* ERG is also directed to work with the Secretary and Deputy Secretary, NMED's Office of Public Facilitation, and the Boards and Commissions Administrator to coordinate and schedule hearings. *Id.*

The amendment additionally placed a Hearing Officer labor category on ERG's rate sheet. The published hourly figures are ERG billing rates to NMED; Maxwell does not represent them as Mr. Shepherd's personal compensation.

There is a further connection to this proceeding. The executed amendment bears Deputy Secretary John Rhoderick's handwritten signature on the NMED signature line printed for Cabinet Secretary James C. Kenney. *Ex. C* at 2. Mr. Rhoderick was subsequently designated to exercise final decisional authority in AQB 26-57(P).

Maxwell does not contend that Mr. Rhoderick's execution of the amendment establishes bias or impropriety. It establishes that the official now exercising final decisional authority participated on NMED's behalf in execution of the amendment adding the ERG Hearing Officer function.

Nor does Maxwell through this filing ask the Hearing Officer or Secretary to adjudicate whether Amendment No. 01 was lawfully procured, whether the amendment was within the original procurement, or whether its execution complied with the Procurement Code. Any such procurement-law issue is separate from the qualification issue presented here and is not submitted for determination in AQB 26-57(P).

The amendment matters here for a narrower reason. It establishes the contractual structure NMED actually put into operation: an existing NMED professional-services contractor providing substantive services to the Department became responsible, under the same master

agreement, for supplying Hearing Officers whom that agreement itself describes as “independent and neutral.”

The present record instead shows NMED adding that function to the existing master contract; it does not identify a separate ERG agreement devoted only to neutral adjudicatory services. The amendment retained the other articles of the master agreement.

The amendment states the required result.

It does not disclose the mechanism by which that independence is maintained.

IV. IN THIS PROCEEDING, FORMAL APPOINTMENT WAS NOT ENOUGH FOR MR. SHEPHERD TO ACT; HE ALSO REQUIRED AN ERG “NEW SERVICE CONTRACT”.

The institutional question becomes specific to AQB 26-57(P) through the contemporaneous July correspondence attached as Exhibit D.

On July 2, NMED Assistant General Counsel Brian Yardman-Frank circulated the signed Notice of Docketing and explained that the Notice served both “to appoint the hearing officer and delegate decision authority to Deputy Secretary John Rhoderick.” *Ex. D.*

The appointment is also identified in the Hearing Record. *See Notice of Docketing, Appointment of Hearing Officer, and Delegation of Final Decision Authority* (July 2, 2026), cited in *Joint Mot.* at 3.

Part 4 authorizes the Secretary to appoint Hearing Officers. 20.1.4.100(E)(2) NMAC. The July 2 Notice therefore supplied the formal governmental appointment.

But the correspondence establishes that the appointment was not sufficient, standing alone, for Mr. Shepherd to begin performing Hearing Officer duties.

On July 7, Mr. Shepherd advised NMED personnel and Susan Day at ERG:

“I am currently waiting for Susan Day at ERG to complete my new service contract. Until that contract is in place I am [sic] cannot perform any hearing officer duties.”

He further stated that he had contacted Ms. Day concerning when the contract would be completed. *Ex. D.*

Two days later, NMED Assistant General Counsel Yardman-Frank followed up directly with Mr. Shepherd, copying Ms. Day:

“I just wanted to check to see if your new service contract is in place. If so, the Department is looking forward to setting up the scheduling conference.”

Ex. D.

The documentary sequence therefore establishes two distinct events.

Secretary Kenney formally appointed Mr. Shepherd to perform the governmental adjudicatory function. After that appointment, however, Mr. Shepherd understood completion of a separate contractual relationship through ERG to be necessary before he could perform any duties pursuant to that appointment. NMED counsel appearing in the proceeding knew of that contractual prerequisite and followed up on its status before the scheduling conference proceeded.

The existing record does not explain the relationship between those two events.

It does not establish whether ERG first identified Mr. Shepherd for NMED; whether NMED selected him and then caused ERG to engage him; whether ERG independently assigned him from a roster; whether NMED approved his individual ERG engagement; what kind of instrument Mr. Shepherd meant by his “new service contract”; whether that agreement is treated as a subcontract under the master contract; what terms govern the individual relationship; who may terminate or decline to continue it; what authority, if any, ERG possesses concerning his engagement, evaluation, continuation, or future assignments; or who determines whether he receives another NMED Hearing Officer assignment.

Nor does the record establish Mr. Shepherd's legal employment status with ERG. Maxwell therefore does not characterize ERG as Mr. Shepherd's "employer" where the presently available documents establish only that his ability to perform Hearing Officer duties depended upon completion of an individual service-contract arrangement through ERG.

The documents establish the formal governmental appointment at one end and the necessary ERG contractual relationship at the other.

What the record does not say is who controlled the space between those events.

V. THAT UNANSWERED SPACE MATTERS BECAUSE ERG'S RELATIONSHIP WITH NMED DID NOT BEGIN WHEN ERG BECAME A SUPPLIER OF NEUTRAL HEARING OFFICERS.

The absence of that information would be relevant in any outsourced adjudicatory arrangement. It is particularly significant here because ERG is not an organization whose relationship with NMED began when NMED asked it to supply neutral Hearing Officers.

Long before the September 2025 amendment, ERG had served NMED in substantive technical, regulatory, economic, and evidentiary roles.

A) In 2021, ERG personnel testified affirmatively in support of an NMED regulatory proposal.

In EIB 21-27(R), concerning NMED's proposed oil-and-gas ozone-precursor regulations, NMED offered ERG Senior Economist Susan Day as a technical witness. Relevant portions of that testimony are attached as Exhibit E.

Ms. Day identified herself as an ERG Senior Economist and stated that she had been asked to provide testimony "in support of" NMED's proposed air-quality regulations. Her testimony described substantive analysis performed by ERG using information supplied by NMED. The same testimony further states that, in developing the proposed small-business-

facility definition, the Department evaluated ERG's report and selected regulatory thresholds based in part upon data compiled by ERG. *Ex. E.*

The significance is not merely that NMED cited background work prepared by an outside consultant. ERG personnel participated affirmatively in NMED's evidentiary presentation supporting a substantive regulatory position.

That history now has a concrete connection to this proceeding. Susan Day is the ERG representative whom Mr. Shepherd identified as completing the individual "new service contract" he considered necessary before he could perform Hearing Officer duties.

Maxwell does not infer from that fact that Ms. Day selected Mr. Shepherd, directs him, evaluates him, or acted improperly. The present documents establish none of those propositions.

They do establish why the identity of the ERG representative whom Mr. Shepherd identified as completing his individual contractual arrangement makes the historical NMED-ERG relationship materially relevant rather than merely background.

Years before ERG became a supplier of neutral NMED adjudicators, ERG professionals—including the person later identified in Mr. Shepherd's own contract correspondence—were performing substantive analytical and evidentiary work for NMED in contested proceedings.

B) In 2022, ERG publicly described NMED as part of an established relationship it intended to expand.

On September 6, 2022, ERG announced the opening of a Santa Fe office. A copy of that announcement is attached as Exhibit F.

ERG stated that the office was intended to expand its support to New Mexico state agencies and other regional clients. It specifically described several preceding years of work for NMED involving oil-and-gas air-pollution regulations, wastewater permitting, and wastewater-

surveillance activities and stated that the new local presence would allow ERG to “build on this work.” *Ex. F.*

That public statement is relevant for a limited reason. It is ERG’s own contemporaneous characterization of NMED not as an isolated engagement, but as part of an established governmental-client relationship upon which ERG intended to build.

There is nothing improper about that objective. A professional-services company ordinarily has a commercial interest in maintaining and expanding successful client relationships.

The significance arises because NMED later made that same contractor responsible for supplying neutral adjudicators over proceedings in which the client itself appears as a party.

C) In 2023, NMED expressly presented an ERG professional as a Department consultant and technical witness.

The relationship again became visible in the 2023 Advanced Clean Cars II proceeding, EIB 23-56(R). Relevant portions of NMED’s Notice of Intent, exhibit list, and the November 14 hearing transcript are attached as Exhibit G.

NMED’s Notice of Intent identified John Koupal as a Senior Scientist with ERG and “a consultant for the Department’s Climate Change Bureau.” It identified his direct testimony as NMED Exhibit 45. NMED’s exhibit list additionally identified an economic, health, and environmental assessment as NMED Exhibit 47 and hundreds of pages of supporting emissions and economic documentation as Exhibits 47a through 47c, expressly describing those supporting materials as documentation for the “ERG Report.” *Ex. G.*

During the November 14, 2023 hearing, Maxwell questioned Mr. Koupal concerning ERG. Mr. Koupal confirmed that he was an ERG vice president and acknowledged that a “good chunk” of ERG’s work was for the public sector. *Ex. G, Nov. 14, 2023 Tr. at 567.*

Maxwell then asked what steps Mr. Koupal had taken to assure objectivity. Mr. Koupal responded:

“ERG is very committed to conflict of interest -- avoiding any conflict of interest, and it’s something that is part of our contractual relationships with clients”

Id. at 568.

That answer has particular relevance now.

In 2023, Mr. Koupal was speaking as an ERG professional providing substantive analysis and testimony for NMED. The present issue concerns a materially different ERG function—not supporting NMED before an adjudicator, but supplying through ERG the adjudicator before whom NMED and the other parties appear.

The pre-2024 history does not establish that ERG, Mr. Shepherd, Ms. Day, or anyone else is partial. It establishes why the boundary between those roles matters.

ERG has an established financial and professional relationship with NMED. ERG personnel have supplied substantive consulting services and evidentiary support for NMED positions. ERG publicly described its New Mexico expansion as an opportunity to build upon existing NMED work. And an ERG vice president previously testified that avoiding conflicts of interest is addressed through ERG’s contractual relationships with clients.

The current master contract itself contains a general conflict-of-interest warranty. But neither that provision nor the 2025 Hearing Officer amendment identifies the particular organizational mechanism that separates ERG’s substantive NMED client-service work from its administration of the neutral Hearing Officer function.

D) The contractual structure presents an additional evidentiary-separation question if ERG performs substantive work for NMED in a proceeding adjudicated by an ERG-supplied Hearing Officer.

The structural concern does not end with ERG's ordinary commercial interest in maintaining NMED as a client.

The original procurement and master contract affirmatively authorize ERG to perform substantive work for NMED that may become part of an administrative case. That work includes technical analysis, permit review, modeling, written and oral expert testimony, exhibits, and other hearing-support services. *Exs. A–B.*

The September 2025 amendment then made ERG responsible under that same master contractual relationship for supplying the person who may adjudicate an NMED proceeding, rule upon evidence and objections, interpret technical material, manage expert testimony, and prepare a recommended decision. *Ex. C.*

Depending upon how work is actually assigned, ERG therefore has the contractual capacity to occupy positions on both sides of the evidentiary process: ERG personnel or ERG-generated work product may support NMED's substantive position, while a different individual supplied and contractually engaged through ERG presides over the proceeding in which that material may be offered, challenged, admitted, excluded, weighed, or addressed in a recommended decision.

Maxwell does not presently contend that ERG is in fact supplying technical testimony, modeling, analysis, exhibits, permit support, or other substantive evidence to NMED in AQB 26-57(P). The presently available record does not establish whether it is.

That unanswered fact is itself material to the structural inquiry.

If ERG is performing no substantive work for NMED concerning AQB 26-57(P), disclosure can establish that fact and materially narrow the concern.

If ERG is performing substantive work in this proceeding, however, a further question necessarily arises:

What organizational, contractual, informational, and management safeguards separate the ERG personnel serving NMED’s substantive case from the ERG personnel or contractual mechanisms responsible for engaging, compensating, evaluating, retaining, replacing, or potentially assigning future work to the presiding Hearing Officer?

The issue is especially material because the public record does not yet disclose what authority ERG itself possesses under Mr. Shepherd’s individual service arrangement. The fact that ERG supplies a Hearing Officer does not establish that ERG directs that Hearing Officer’s adjudicatory decisions, and Maxwell alleges no such fact.

But if ERG has authority concerning the individual Hearing Officer’s contractual engagement, evaluation, continuation, replacement, or future assignments, and ERG simultaneously supplies substantive services to NMED whose evidence that Hearing Officer must adjudicate, the practical separation between those functions becomes directly relevant to the amendment’s promise of an “independent and neutral” adjudicator.

The present proceeding therefore raises a concrete question:

What contractual or institutional safeguards separate ERG’s financial interest in maintaining and expanding its NMED client relationship, and ERG’s substantive work performed for that client, from ERG’s separate responsibility to supply, engage, compensate, retain, and potentially reassign the “independent and neutral” Hearing Officers who adjudicate matters in which NMED is a party—including proceedings in which technical analyses, testimony, exhibits, modeling, or other work product prepared or supplied by ERG itself may be presented to the ERG-supplied Hearing Officer for evidentiary or merits determination?

The September 2025 amendment does not answer that question.

Neither does the presently available correspondence.

VI. A PRIOR NMED PROCEEDING INVOLVING MR. SHEPHERD ALSO PRODUCED A CONTRACT-BASED DISQUALIFICATION CHALLENGE.

There is a further reason to develop the contractual record now.

Mr. Shepherd previously served as NMED's Hearing Officer in the Waste Isolation Pilot Plant permit proceeding that resulted in *Nuclear Waste Partnership, LLC v. Nuclear Watch New Mexico*, 2022-NMCA-014, 505 P.3d 886.

On appeal, Southwest Research and Information Center and Nuclear Watch New Mexico argued that Mr. Shepherd should have been disqualified because of his contract with NMED. The Court described their argument as resting solely upon Mr. Shepherd's hourly NMED contract and their contention that the compensation arrangement gave him an incentive to conduct hearings to NMED's satisfaction. *Id.* ¶ 10.

The Court did not adjudicate whether that contractual arrangement required disqualification.

Instead, it declined to reach the issue because the challengers had failed to preserve it during the administrative proceeding. The challenge was not raised until after NMED issued its order. *Id.*

That history has direct procedural significance here.

The present filing does what the earlier appellants did not. Maxwell raises the contractual-independence issue before the hearing and before final agency action, places the presently available contractual materials into the Hearing Record, and seeks development of the discrete additional facts necessary to evaluate the relationship while those facts can still be developed administratively.

The current issue is also materially broader than the theory described in *Nuclear Waste Partnership*. There, the stated theory concerned Mr. Shepherd's hourly compensation under a direct NMED contract.

Here, the documents present an intermediary commercial entity—ERG—with its own longstanding and substantial client relationship with NMED; a master contract authorizing

substantive technical and evidentiary services to that client; a later amendment under which the same contractor supplies neutral Hearing Officers; a formal governmental appointment followed by an additional ERG “new service contract” that Mr. Shepherd considered necessary before he could act; and unanswered questions concerning individual selection, engagement, compensation, evaluation, continuation, replacement, future assignments, structural separation, and whether ERG is also supplying substantive work in the present proceeding.

The Court of Appeals’ preservation holding therefore counsels strongly in favor of developing those facts now rather than postponing the matter until after final agency action.

VII. MAXWELL RAISED THE PRESENT QUESTIONS BEFORE MOVANTS FILED THEIR DISQUALIFICATION MOTION.

Maxwell did not formulate these concerns in response to Movants’ August 19 filing.

On August 12, 2026—one week before the Joint Motion—Maxwell served the written inquiry attached as Exhibit H upon NMED Assistant General Counsel Christopher Vigil and Brian Yardman-Frank, with the proceeding’s participants copied.

The inquiry expressly identified the documentary sequence already apparent from public records: NMED’s ERG contract had been amended to add a Hearing Officer labor category and provide for “independent and neutral” Hearing Officers; Secretary Kenney appointed Mr. Shepherd on July 2; and Mr. Shepherd subsequently advised NMED that he could not perform Hearing Officer duties until Susan Day at ERG completed his “new service contract.” *Ex. H*.

Maxwell asked whether NMED, including the Secretary, Deputy Secretary, Office of General Counsel, Office of Public Facilitation, Air Quality Bureau, or other personnel:

1. requested, recommended, nominated, selected, or approved Mr. Shepherd specifically for AQB 26-57(P), or whether ERG independently selected and assigned him;
2. approved or otherwise authorized Mr. Shepherd’s individual contractual relationship with ERG for Hearing Officer services;

3. has authority or a practical role in approving, rejecting, replacing, evaluating, renewing, or otherwise affecting Mr. Shepherd's present assignment or eligibility for future NMED Hearing Officer work; and
4. reviews, approves, accepts, or otherwise acts upon billing attributable to Mr. Shepherd's individual Hearing Officer services.

Ex. H.

Maxwell requested a response as soon as reasonably practicable and identified August 28 as a reasonable courtesy date. He expressly stated:

"That date is intended as a reasonable courtesy period rather than a waiver of the need for an earlier response should developments in the proceeding require the issue to be addressed sooner. I therefore reserve the ability to request an earlier response on reasonable notice if circumstances warrant."

Ex. H.

Maxwell does not contend that the absence of an answer before that courtesy date establishes anything concerning the ultimate merits.

Movants' August 19 filing has, however, created precisely the intervening circumstance contemplated by Maxwell's reservation. The Hearing Officer's qualification must now be addressed under a rule requiring an expedited recommended decision. Information materially bearing upon that determination can no longer reasonably await August 28.

The pending qualification motion also makes one additional factual question immediately material that was implicit in Maxwell's original structural inquiry but should now be answered expressly:

Whether ERG, any ERG personnel, consultant, subcontractor, or ERG-generated work product has been used, is presently being used, or is expected to be used to provide substantive technical, analytical, modeling, evidentiary, testimony, rebuttal, permit-review, or other case-support services to NMED in AQB 26-57(P).

That question follows directly from the functions authorized by the master contract and the qualification issue now before the tribunal.

VIII. THE DOCUMENTS PRESENT AN INSTITUTIONAL FINANCIAL RELATIONSHIP, AN INDIVIDUAL CONTRACTUAL RELATIONSHIP, AND A POTENTIAL THIRD ROLE IN THE EVIDENTIARY PROCESS; THE MISSING FACTS FALL INTO FOUR CONCRETE CATEGORIES.

The issue should not be reduced to the proposition that Mr. Shepherd receives compensation for professional work.

Compensation for professional Hearing Officer services is not, standing alone, unusual or evidence of bias.

The record instead presents an established institutional financial relationship, an individual contractual relationship whose operative financial terms remain unknown, and a potentially overlapping substantive role—all of which need to be understood.

The first concerns Mr. Shepherd individually: the terms under which he is engaged through ERG, including the terms governing any compensation for that service, and the extent to which his continuation or prospects for future NMED Hearing Officer assignments depend upon ERG, NMED, or both.

The second concerns ERG institutionally. ERG is not merely an administrative payment intermediary created to compensate neutral adjudicators. It is a commercial contractor with a longstanding substantive client relationship with NMED, while the current master contract authorizes as much as \$9.5 million in services extending far beyond neutral adjudication.

The third potential role concerns the evidentiary process itself. The same master agreement authorizes ERG to supply substantive technical analyses, permit review, modeling, testimony, exhibits, and related services to NMED. The record does not presently establish whether ERG performs any such work in AQB 26-57(P). If it does, ERG would not merely be

the commercial entity through which the Hearing Officer is supplied; ERG could also be a source of substantive work product or personnel supporting a party whose evidence the ERG-supplied Hearing Officer must adjudicate.

As a commercial contractor, ERG has an ordinary economic interest in maintaining and expanding customer relationships. That fact is not misconduct and does not establish that ERG has any financial stake in whether YGI receives Permit No. 10883. Maxwell alleges no such stake.

Nor does Maxwell contend on the present record that ERG's ordinary commercial interest can simply be attributed to Mr. Shepherd as a "financial interest in the proceeding or facility" under 20.1.4.100(E)(3)(a)(ii) NMAC.

The relevant question is instead whether ERG's broader financial relationship with NMED, or ERG's substantive services for that client, can affect directly or indirectly the circumstances under which an individual adjudicator is selected, engaged, compensated, evaluated, retained, replaced, or provided future work.

The missing facts fall into four concrete categories.

First, selection and assignment. The record does not reveal whether NMED requested Mr. Shepherd, ERG independently selected him, NMED approved an ERG selection, or some other process occurred.

Second, contractual and financial control. The record does not disclose the legal nature of Mr. Shepherd's "new service contract," the terms governing any compensation for his Hearing Officer services, whether NMED approval was required, what authority ERG possesses concerning his individual engagement, or how NMED's contractual acceptance and billing functions operate with respect to Hearing Officer services. The master contract's restriction on

subcontracting makes identification of the individual agreement's legal nature particularly relevant, without establishing that the agreement is in fact a subcontract.

Third, evaluation, replacement, and future work. The record does not disclose who can cause an ERG-supplied Hearing Officer to be replaced, whether NMED provides evaluative feedback, how ERG evaluates Hearing Officer performance, or who determines whether Mr. Shepherd receives future NMED assignments.

Fourth, structural and evidentiary separation. The record does not disclose whether ERG personnel responsible for NMED's substantive technical, regulatory, permitting, modeling, evidentiary, or other client-service work participate in administering the Hearing Officer function; whether ERG presently performs any substantive work for NMED concerning AQB 26-57(P); whether ERG-generated analysis, testimony, exhibits, modeling, or other work product may be presented to an ERG-supplied Hearing Officer in this proceeding; or what firewall, conflict-screening procedure, separate management structure, assignment restriction, information barrier, or other safeguard separates ERG personnel serving NMED's substantive interests from the ERG personnel or contractual mechanisms responsible for engaging, compensating, evaluating, retaining, replacing, or assigning the adjudicator.

There may be substantial safeguards addressing every category. ERG may also be performing no substantive work at all concerning AQB 26-57(P). If so, disclosure would materially clarify the record and could substantially resolve the concern.

But the phrase "independent and neutral" does not itself establish how those safeguards operate.

The September 2025 amendment promises independence.

The present issue is what makes that promise true in practice.

That question concerns not only whether NMED can influence an individual Hearing Officer. It also concerns whether the contractor responsible for supplying and contractually engaging that Hearing Officer may simultaneously serve the NMED program whose evidence the Hearing Officer is required to receive, rule upon, and weigh—and, if so, what prevents those two ERG functions from intersecting.

IX. PART 4 IMPOSES QUALIFICATION REQUIREMENTS INDEPENDENT OF THE NARROWLY WORDED PARTY-MOTION PROVISION.

Part 4 addresses qualification and disqualification in two related provisions that should not be conflated.

Subparagraph 20.1.4.100(E)(3)(a) NMAC is framed as an affirmative qualification restriction. It provides that the Secretary or Hearing Officer “shall not perform any function” under Part 4 in a matter in which the official has personal bias or prejudice concerning a party or application, has a financial interest in the proceeding or facility, is related to a party, or is an officer, director, or trustee of a party.

Subparagraph (E)(3)(b)(i), by contrast, supplies a party-initiated motion procedure and expressly refers to cause under Subparagraph (a)(i)—personal bias or prejudice.

Maxwell does not ask the tribunal to rewrite that text or to assume that Subparagraph (b)(i) expressly authorizes a party motion under every separate ground listed in Subparagraph (a).

Nor, as stated above, does Maxwell contend on the present incomplete record that ERG’s commercial interest can simply be attributed to the Hearing Officer as a “financial interest in the proceeding or facility” under Subparagraph (a)(ii). The presently demonstrated ERG interest concerns its broader customer relationship with NMED, not a demonstrated economic interest in the YGI permit or facility.

But the limitation in the party-motion language does not erase the separate qualification command in Subparagraph (a), nor the Hearing Officer's independent duty under Paragraph (E) (2) to conduct a fair and impartial proceeding and fully elicit the facts.

A disqualification motion under Subparagraph (b)(i) is already pending. The qualification of this Hearing Officer is therefore already before the tribunal. Maxwell's supplemental issue asks that the tribunal obtain a limited set of existing facts bearing upon the same official's independence and qualification before completing that expedited determination.

That request does not depend upon first concluding that a disqualifying financial interest exists.

It depends upon recognizing that the present factual record is insufficient to determine how the individual and institutional contractual relationships actually operate and whether those relationships bear materially upon the pending personal-bias or impartiality inquiry.

Disclosure should therefore precede conclusion.

X. LIMITED EXPEDITED DISCLOSURE CAN ANSWER THE QUESTIONS WITHOUT REOPENING GENERALIZED MERITS DISCOVERY.

The needed factual development is narrow and principally concerns information already within NMED's contractual or administrative possession.

Maxwell does not seek discovery into unrelated ERG customers, unrelated NMED projects, Mr. Shepherd's private finances unrelated to Hearing Officer service, or ERG's internal affairs generally.

Nor does Maxwell seek through this Supplemental Motion to reopen the separate dispute over technical merits discovery resolved by the August 12 Order. The present inquiry concerns facts material to a disqualification motion that Part 4 requires to be decided on an abbreviated schedule.

NMED can first answer the four questions already presented in Exhibit H. In addition, NMED can identify and produce or describe existing records sufficient to resolve the four categories identified above.

Those records would include, to the extent they exist, any task order, work order, assignment record, engagement authorization, or similar instrument concerning Mr. Shepherd and AQB 26-57(P); the “new service contract” Mr. Shepherd referenced, or those portions sufficient to establish its operative terms concerning his NMED Hearing Officer engagement; any NMED approval associated with that arrangement; policies or procedures governing ERG Hearing Officer selection, assignment, evaluation, replacement, or future work; conflict-of-interest or structural-separation procedures applicable to ERG’s Hearing Officer services; and records sufficient to establish how Mr. Shepherd’s Hearing Officer charges are submitted, reviewed, accepted, and approved.

NMED should also identify the role, if any, of Secretary Kenney, Deputy Secretary Rhoderick, NMED counsel, the Office of Public Facilitation, other NMED personnel, and ERG in selecting, approving, assigning, replacing, evaluating, or determining future assignments for Mr. Shepherd.

The present disqualification motion additionally warrants a concise answer to this question:

Whether ERG, an ERG employee, consultant, subcontractor, or ERG-generated work product has been used, is presently being used, or is expected to be used in connection with NMED’s substantive preparation or presentation in AQB 26-57(P), including technical analysis, permit review, air-dispersion or other modeling, expert testimony, exhibits, rebuttal preparation, or other evidentiary support.

If the answer is yes, NMED need not through this qualification motion produce every substantive work product merely because ERG created it. Maxwell instead requests identification

of the general nature of that work and the contractual or institutional safeguards separating the persons performing it from the ERG personnel or mechanisms responsible for Mr. Shepherd's engagement, compensation, evaluation, continuation, replacement, or future Hearing Officer assignments.

That request is directed to the qualification issue, not to generalized merits discovery. To the extent NMED relies upon safeguards maintained internally by ERG, NMED should identify those safeguards and any existing contractual, policy, or other documentation upon which NMED relies to ensure separation between ERG's substantive client-service activities for NMED and its Hearing Officer function.

To the extent material facts necessary to complete the qualification record concern matters within Mr. Shepherd's personal knowledge that NMED cannot establish through the foregoing disclosure, Maxwell requests that those facts also be placed upon the Hearing Record, including facts concerning his selection for this proceeding, the nature of the ERG "new service contract" he referenced, and his understanding of how his assignment, continuation, replacement, and eligibility for future NMED Hearing Officer work are determined.

If no responsive record exists or a requested fact is not known to NMED after reasonable inquiry, NMED can state that rather than create a new record.

Legitimately confidential personal information unrelated to the qualification inquiry may be redacted. Any privilege may likewise be preserved through a particularized identification sufficient to establish what has been withheld and the basis for withholding it.

XI. PART 4'S FIVE-DAY QUALIFICATION PROCEDURE HAS OVERTAKEN MAXWELL'S AUGUST 28 COURTESY PERIOD AND WARRANTS TEMPORARY PROTECTION OF THE AUGUST 24 DEADLINES.

Section 20.1.4.100(E)(3)(b)(ii) NMAC provides that the Hearing Officer “shall file a recommended decision” on a disqualification motion within five days and that the Secretary shall file an order within five days after the recommendation.

The Hearing Clerk has returned Movants’ Joint Motion as filed August 19, 2026.

Under § 100(F)(1), the triggering day is excluded, intermediate weekend days are counted, and a deadline falling on a Saturday, Sunday, or legal state holiday extends to the next working day. Using the Clerk’s August 19 filing date, August 20 is Day 1, August 21 Day 2, August 22 Day 3, August 23 Day 4, and August 24 Day 5.

Maxwell understands that the Joint Motion was transmitted after 5:00 p.m. on August 19. Section 100(H)(1)(c) ordinarily provides that a document received after the close of business is deemed filed on the next business day. If that rule instead makes August 20 the technical filing date, the fifth day would be August 25.

Maxwell does not seek separate relief concerning that one-day filing-date distinction. It does not change the present problem.

Under either calculation, the Hearing Officer’s recommended decision is due before Maxwell’s original August 28 courtesy date for NMED’s response.

Using the Clerk’s docketed date, the problem is particularly direct: the Hearing Officer’s recommendation concerning whether he may continue presiding is due on the same day that parties intending to present technical evidence must commit their complete affirmative technical cases and all prehearing motions. *Amended Scheduling Order* ¶¶ 2, 6.

If the Hearing Officer files the recommendation on August 24, the Secretary’s fifth day falls on Saturday, August 29 and therefore extends to Monday, August 31. If August 25 governs the recommendation, the Secretary’s fifth day falls on Sunday, August 30 and likewise extends to

August 31. Thus, under either calculation, the Part 4 qualification process can reach a Secretary's order before the presently scheduled September 14 hearing.

The ordinary motion-response provisions underscore the special nature of the problem. Section 200(D)(4) ordinarily gives a party fifteen days after service of an opposed motion to respond. A motion served August 19 would therefore ordinarily permit responses after the Hearing Officer's special five-day recommendation period has already expired.

The specific five-day disqualification provision necessarily requires expedited handling if party positions and readily ascertainable facts are to meaningfully inform the decision.

Maxwell accordingly requests that NMED provide the limited contractual information as soon as practicable and before the Hearing Officer files his recommendation, if reasonably possible.

If those facts cannot reasonably be obtained before the mandatory recommendation deadline, the recommendation should expressly identify the material contractual questions that remain unresolved rather than resolving them through assumptions in either direction. The Secretary can then determine whether an additional, narrowly expedited procedure under § 100(E)(1) is necessary before entry of the Secretary's order.

That alternative respects rather than extends Part 4's mandatory decisional sequence.

Maxwell also substantially agrees with Movants that interim protection is warranted, although his requested stay is narrower than an indefinite suspension of the entire proceeding.

Requiring parties to commit their affirmative technical cases and dispositive prehearing positions while the presiding Hearing Officer's qualification remains under mandatory review risks unnecessary prejudice and duplication.

If the Secretary ultimately orders disqualification, a successor Hearing Officer will inherit a proceeding in which major affirmative-case deadlines expired while the qualification of the prior presiding adjudicator remained unresolved.

If disqualification is denied, brief preservation of those deadlines while the special qualification procedure runs causes materially less disruption than requiring substantial filings that may immediately need corresponding reconsideration or adjustment.

Maxwell therefore requests that the August 24 deadline for direct technical testimony, exhibits, and prehearing motions, together with immediately dependent deadlines, be suspended or adjusted through the Secretary's disposition of the pending disqualification motion, after which the remaining schedule may be established as necessary.

Maxwell does not presently join a request for an indefinite general stay of the September 14 hearing merely because the challenged procedural rulings are disputed. Whether that date remains workable can be determined after the Secretary decides whether the present Hearing Officer will continue and after the resulting effect upon technical-filing and response deadlines is known.

This is a limited preservation measure.

XII. CONCURRENCE.

Pursuant to 20.1.4.200(D)(3) NMAC, Maxwell sought the positions of the parties concerning the supplemental relief requested in this filing. NMED and Applicant indicated opposition, and Bruce Wetherbee indicated support, for the contemplated supplemental motion.

No other party indicated a position. The supplemental motion is opposed.

XIII. REQUEST FOR RELIEF.

WHEREFORE, Maxwell respectfully requests that the Hearing Officer and Secretary, as applicable:

1. consider this Response and Supplemental Motion together with the pending Joint Motion for Disqualification, including the additional contractual and institutional facts identified herein;
2. direct expedited disclosure sufficient to complete the qualification record, including NMED's answers to the questions contained in Maxwell's August 12 inquiry, the nature and administration of Mr. Shepherd's ERG contractual relationship, the respective roles of NMED and ERG in his selection, assignment, compensation, evaluation, replacement, and future work, and whether ERG, ERG personnel, or ERG-generated work product has been used, is presently being used, or is expected to be used to provide substantive technical or evidentiary support to NMED in AQB 26-57(P);
3. to the extent necessary to complete that record, request disclosure of material facts within Mr. Shepherd's personal knowledge concerning his selection, ERG contractual relationship, and present or future NMED Hearing Officer assignments;
4. consider the resulting factual record before completing the pending disqualification determination and grant the relief required by Part 4 if that record establishes circumstances inconsistent with the applicable qualification requirements or the obligation to conduct a fair and impartial proceeding; and
5. preserve or adjust the August 24 technical-filing and prehearing-motion deadlines, together with immediately dependent deadlines, as necessary to permit the expedited qualification process to be completed meaningfully, and thereafter establish any corresponding schedule required by the disposition of the disqualification motion.

Before the pending qualification determination is completed, the existing factual gap should therefore be filled.

Respectfully submitted,

By -s- Nicholas Maxwell
Mr. Nicholas R. Maxwell
P.O. Box 1064
Hobbs, New Mexico 88241
Telephone: (575) 441-3560
Email: inspector@sunshineaudit.com

EXHIBIT LIST

Exhibit A — New Mexico Environment Department Request for Proposals No. 24-667-4091-27739, Technical, Regulatory, and Administrative Tasks

Exhibit B — New Mexico Environment Department Professional Services Contract No. 25-667-4091-44019 with Eastern Research Group, LLC

Exhibit C — Professional Services Contract No. 25-667-4091-44019, Amendment No. 01, executed September 12, 2025

Exhibit D — July 2–10, 2026 correspondence concerning appointment of Hearing Officer and ERG “new service contract”

Exhibit E — NMED Exhibit 102, Direct Testimony of Susan Day and Elizabeth Bisbey-Kuehn, EIB 21-27(R) (2021), pp. 1–3, 11–12

Exhibit F — Eastern Research Group, Inc., ERG Opens New Office in Santa Fe, New Mexico (Sept. 6, 2022), <https://www.erg.com/news/erg-opens-new-office-santa-fe-new-mexico> (accessed Aug. 21, 2026).

Exhibit G — New Mexico Environment Department, Notice of Intent to Present Direct Technical Testimony, EIB 23-56(R) (Oct. 24, 2023), pp. 1–2, 7; and Transcript of Proceedings, Vol. II (Nov. 14, 2023), pp. 566–568.

Exhibit H — Maxwell’s August 12, 2026 inquiry concerning NMED’s role in the selection and contractual arrangement applicable to Hearing Officer Max Shepherd

CERTIFICATE OF SERVICE

I certify that on August 21, 2026, I served by email upon the Hearing Clerk and all parties of record a true and correct copy of the foregoing Response in Substantial Support of Joint Emergency Motion for Disqualification and Stay, and Supplemental Motion for Expedited Disclosure Concerning the ERG Contractual Relationship, together with the Exhibit List and Exhibits A through H. A hard copy will be mailed upon request.

-s- Nicholas Maxwell
Mr. Nicholas R. Maxwell

**STATE OF NEW MEXICO
ENVIRONMENT DEPARTMENT**

REQUEST FOR PROPOSALS (RFP)

Technical, Regulatory, and Administrative Tasks



RFP#24-667-4091-27739

RFP Release Date: June 5, 2024

Proposal Due Date: July 12, 2024

ELECTRONIC-ONLY PROPOSAL SUBMISSION

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I. INTRODUCTION

A. PURPOSE OF THIS REQUEST FOR PROPOSALS

The purpose of the Request for Proposal (RFP) is to solicit sealed proposals to establish a contract(s) through competitive negotiations for the procurement of multidisciplinary expertise to perform a variety of technical, regulatory, and administrative tasks to support the New Mexico Environment Department's (NMED or Agency) Environmental Protection Division including the Air Quality Bureau and Climate Change Bureau.

B. BACKGROUND INFORMATION

New Mexico Environment Department's (NMED or Agency) Environmental Protection Division including the Air Quality Bureau and Climate Change Bureau is responding to and or implementing new federal and state regulations as well as new grants. This procurement will allow the Division and respective bureaus to be responsive and timely.

C. SCOPE OF PROCUREMENT

This RFP may result in multiple awards and in a contractual agreement (for each award) between two parties; the procurement may **ONLY** be used by those two parties exclusively. Each offeror may submit responses to the entire list of services (Tasks) or one or more service (Task).

D. PROCUREMENT MANAGER

The New Mexico Environment Department has assigned a Procurement Manager who is responsible for the conduct of this procurement whose name, address, telephone number and e-mail address are listed below:

Name: Jessica Tapia, Procurement Manager
Telephone: (505) 795-0783
Email: Jessica.Tapia@env.nm.gov

1. **Any inquiries or requests** regarding this procurement should be submitted, in writing, to the Procurement Manager. Offerors may contact **ONLY** the Procurement Manager regarding this procurement. Other state employees or Evaluation Committee members do not have the authority to respond on behalf of the Agency.
2. **Protests of the solicitation or award must be submitted in writing to the Protest Manager identified in Section II.B.13.** As a Protest Manager has been named in this Request for Proposals, pursuant to §13-1-172 NMSA 1978 and 1.4.1.82 NMAC, **ONLY** protests delivered directly to the Protest Manager in writing and in a timely fashion will be considered to have been submitted properly and in accordance with statute, rule

and this Request for Proposals. Protests submitted or delivered to the Procurement Manager will **NOT** be considered properly submitted.

3. Offerors may download a copy of the RFP from NMED's Bonfire Procurement portal at:

<https://env-nm.bonfirehub.com/portal/?tab=openOpportunities>

E. PROPOSAL SUBMISSION

Submissions of all proposals must be accomplished via NMED's Bonfire Procurement Portal. Only electronic submittals in the Bonfire Procurement Portal will be accepted for this RFP.

F. DEFINITION OF TERMINOLOGY

This section contains definitions of terms used throughout this procurement document, including appropriate abbreviations:

1. **"Agency"** means the State Purchasing Division of the General Services Department or that State Agency sponsoring this Procurement.
2. **"Award"** means the final execution of the contract document.
3. **"Business Hours"** means weekdays (Monday – Friday) 8:00 AM thru 5:00 PM MST/MDT, whichever is in effect on the date given.
4. **"Close of Business"** means weekdays (Monday – Friday) 5:00 PM MST/MDT, whichever is in effect on the date given.
5. **"Confidential"** means confidential financial information concerning Offeror's organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act §§57-3-A-1 through 57-3A-7 NMSA 1978,. See also NMAC 1.4.1.45. The following items may **not** be labelled as confidential: Offeror's submitted Cost response, Staff/Personnel Resumes/Bios (excluding personal information such as personal telephone numbers and/or home addresses), and other submitted data that is **not** confidential financial information or that qualifies under the Uniform Trade Secrets Act.
6. **"Contract"** means any agreement for the procurement of items of tangible personal property, services or construction.
7. **"Contractor"** means any business having a contract with a state agency or local public body.
8. **"Determination"** means the written documentation of a decision of a procurement officer including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains.

9. **“Desirable”** – the terms “may,” “can,” “should,” “preferably,” or “prefers” identify a desirable or discretionary item or factor.
10. **“Electronic Submission”** means a successful submittal of Offeror’s proposal in the env-nm.bonfirehub system.
11. **“Electronic Version/Copy”** means a digital format consisting of text, images or both, readable on computers or other electronic devices, which includes all content that the Original document contains. The electronic version/copy CANNOT be emailed.
12. **“Evaluation Committee”** means a body appointed to perform the evaluation of Offerors’ proposals.
13. **“Evaluation Committee Report”** means a report prepared by the Procurement Manager and the Evaluation Committee to support the Committee’s recommendation for contract award. It will contain scores and written evaluations of all responsive Offeror proposals.
14. **“Final Award”** means, in the context of this Request for Proposals and all its attendant documents, that point at which the final required signature on the contract(s) resulting from the procurement has been affixed to the contract(s) thus making it fully executed.
15. **“Finalist”** means an Offeror who meets all the mandatory specifications of this Request for Proposals and whose score on evaluation factors is sufficiently high to merit further consideration by the Evaluation Committee, as explained in Section II.B.8.
16. **“Hourly Rate”** means the proposed fully loaded maximum hourly rates that include travel, per diem, fringe benefits and any overhead costs for contractor personnel, as well as subcontractor personnel if appropriate.
17. **“IT”** means Information Technology.
18. **“Mandatory”** – the terms “must,” “shall” “will,” “is required,” or “are required,” identify a mandatory item or factor. Failure to meet a mandatory item or factor may result in the rejection of the Offeror’s proposal.
19. **“Minor Irregularities”** means anything in the proposal that does not affect the price, quality and/or quantity, or any other mandatory requirement.
20. **“Multiple Source Award”** means an award of a contract for one or more items of tangible personal property, services or construction to more than one Offeror.
21. **“Offeror”** is any person, corporation, or partnership who chooses to submit a proposal.
22. **“Price Agreement”** means a definite quantity contract or indefinite quantity contract which requires the contractor to furnish items of tangible personal property, services or construction

to a state agency or a local public body which issues a purchase order, if the purchase order is within the quantity limitations of the contract, if any.

23. **“Procurement Manager”** means any person or designee authorized by a state agency or local public body with the responsibility, authority, and resources to conduct the RFP procurement, make written determinations regarding the RFP procurement, and/or enter into or administer contracts as a result of the RFP procurement.
24. **“Procuring Agency”** means all State of New Mexico agencies, commissions, institutions, political subdivisions and local public bodies allowed by law to procure items of tangible personal property, services or construction from the agreement(s) awarded as a result of this RFP.
25. **“Project”** means a temporary process undertaken to solve a well-defined goal or objective with clearly defined start and end times, a set of clearly defined tasks, and a budget. The project terminates once the project scope is achieved and project acceptance is given by the project executive sponsor.
26. **“Redacted”** means a version/copy of the Offeror’s proposal with the information considered proprietary or confidential (as defined by §§57-3A-1 to 57-3A-7 NMSA 1978 and NMAC 1.4.1.45 and summarized herein and outlined in Section II.C.8 of this RFP) blacked-out BUT NOT omitted or removed.
27. **“Request for Proposals (RFP)”** means all documents, including those attached or incorporated by reference, used for soliciting proposals.
28. **“Responsible Offeror”** means an Offeror who submits a responsive proposal and who has furnished, when required, information and data to prove that his financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services, or items of tangible personal property described in the proposal.
29. **“Responsive Offer”** or means an offer which conforms in all material respects to the requirements set forth in the request for proposals. Material respects of a request for proposals include, but are not limited to price, quality, quantity or delivery requirements.
30. **“Sealed”** means, in terms of electronic submission, an Offeror’s proposal and all accompanying documents has been completely and successfully uploaded into NMED’s env-nm.bonfirehub system prior to the submission deadline stated in the RFP.
31. **“Single Source Award”** means an award of contract for items of tangible personal property, services or construction to only one Offeror.
32. **“Staff”** means any individual who is a full-time, part-time, or an independently contracted employee with the Offerors’ company.

33. **“State (the State)”** means the State of New Mexico.
34. **“State Agency”** means any department, commission, council, board, committee, institution, legislative body, agency, government corporation, educational institution or official of the executive, legislative or judicial branch of the government of this state. “State agency” includes the Purchasing Division of the General Services Department and the New Mexico Environment Department but does not include local public bodies.
35. **“New Mexico Environment Department”** means the Director of the Purchasing Division of the General Services Department.
36. **“Statement of Concurrence”** means an affirmative statement from the Offeror indicating its response to a required Section IV specification agreeing to comply and concur with the stated requirement(s). This statement shall be included in Offerors proposal, pursuant to Section III.C.1. (E.g. “We concur,” “Understands and Complies,” “Comply,” “Will Comply if Applicable,” etc.)
37. **“Unredacted”** means a version/copy of the proposal containing all complete information; including any that the Offeror would otherwise consider confidential, such copy for use only for the purposes of evaluation.
38. **“Written”** means typed in standard 8 ½ x 11-inch document format, by common electronic means (such as Microsoft Word, Adobe PDF, etc.). A larger size document is permissible for charts, spreadsheets, etc.

G. PROCUREMENT LIBRARY

A procurement library has been established. Offerors are encouraged to review the material contained in the Procurement Library by selecting the link provided in this document through your own internet connection. The library contains information listed below:

RFP, Questions & Answers, RFP Amendments, etc.

<https://env-nm.bonfirehub.com/projects>

[https://www.env.nm.bov/requests for proposals/](https://www.env.nm.bov/requests%20for%20proposals/)

Other relevant links:

[Climate Change Bureau \(nm.gov\)](https://climatechange.nm.gov/)

[Air Quality Bureau \(nm.gov\)](https://airquality.nm.gov/)

[New Mexico Climate Change Action \(nm.gov\)](https://climatechange.nm.gov/)

[Climate Pollution Reduction Grant – New Mexico Climate Change Action \(nm.gov\)](https://climatechange.nm.gov/)

II. CONDITIONS GOVERNING THE PROCUREMENT

This section of the RFP contains the schedule of events, the descriptions of each event, and the conditions governing this procurement.

A. SEQUENCE OF EVENTS

The Procurement Manager will make every effort to adhere to the following schedule:

Action	Responsible Party	Due Dates These are sample time frames only. Adjust to suit Agency need. Use only dates; do not insert days of the week)
1. Issue RFP	NMED	6/5/2024
2. Acknowledgement of Receipt Form	Potential Offerors	6/15/2024
3. Pre-Proposal Conference	Agency	N/A
4. Deadline to submit Written Questions	Potential Offerors	6/17/2024
5. Response to Written Questions	Procurement Manager	6/19/2024
6. Submission of Proposal	Potential Offerors	7/12/2024
7.* Proposal Evaluation	Evaluation Committee	7/8/2024 to 7/18/2024
8.* Selection of Finalists	Evaluation Committee	7/18/2024
9.* Oral Presentation(s)	Finalist Offerors	N/A
10.* Best and Final Offers	Finalist Offerors	8/1/2024
11.* Finalize Contractual Agreements	Agency/Finalist Offerors	8/2/2024-8/9/2024
12.* Contract Awards	Agency/ Finalist Offerors	8/9/2024
13.* Protest Deadline	NMED	+15 days

* Dates indicated in Events 7 through 13 are estimates only, and may be subject to change without necessitating an amendment to the RFP.

B. EXPLANATION OF EVENTS

The following paragraphs describe the activities listed in the Sequence of Events shown in Section II.A., above.

1. Issue RFP

This RFP is being issued on behalf of the State of New Mexico Environment Department on the date indicated in Section II.A, Sequence of Events.

2. Acknowledgement of Receipt

Potential Offerors must register through NMED Bonfire Procurement Portal to have their organization placed on the procurement Distribution List.

The procurement distribution list will be used for the distribution of written responses to questions, and/or any amendments to the RFP. Failure to register on the NMED Bonfire Procurement Portal WILL prohibit potential Offerors from submitting a response to this RFP.

3. **Potential Offeror(s) may submit written questions to the Procurement Manager** (see Section I.D). The identity of the organization submitting the question(s) will not be revealed. All questions answered will be considered **unofficial** until they are posted in writing. All written questions will be addressed in writing on the date listed in Section II.A, Sequence of Events.

4. Deadline to Submit Written Questions

Potential Offerors may submit written questions to the Procurement Manager as to the intent or clarity of this RFP until 3:00 PM MST/MDT as indicated in Section II.A, Sequence of Events. All written questions must be addressed to the Procurement Manager as declared in Section I.D. Questions shall be clearly labeled and shall cite the Section(s) in the RFP or other document which form the basis of the question.

5. Response to Written Questions

Written responses to the written questions will be provided via e-mail, on or before the date indicated in Section II.A, Sequence of Events, to all potential Offerors who timely submitted an Acknowledgement of Receipt Form (Section II.B.2 and APPENDIX A).

The Questions and Answers will be posted to:

<https://env-nm.bonfirehub.com/>

6. Submission of Proposal

At this time, only **electronic** proposal submission is allowed. **Do not** submit hard copies until further notice.

ALL PROPOSALS MUST BE RECEIVED BY THE PROCUREMENT MANAGER OR DESIGNEE NO LATER THAN 3:00 PM MST/MDT ON THE DATE INDICATED IN SECTION II.A, SEQUENCE OF EVENTS. **NO LATE PROPOSAL CAN BE ACCEPTED.** The date and time of receipt will be recorded on each proposal. Proposals will be time-stamped in the system when the Offeror clicks “OK” after “Review and Submit.” Such electronic submissions will be considered sealed in accordance with statute.

*It is the Offeror's responsibility to ensure all documents are completely uploaded and submitted electronically via the **env-nm.bonfirehub** system by the deadline set forth in this RFP. The **env-nm.bonfirehub** system will automatically cease uploading data at the date and time of the deadline. Please*

*ensure that you, as the Offeror, allow adequate time for large uploads and to fully complete your submittal by the deadline. A submission that is not both: (1) fully complete; and (2) received, via the **env-nm.bonfirehub** system by the deadline, will be deemed late. Further, a submission that is not fully complete and received via the **env-nm.bonfirehub** system by the deadline because the response was captured, blocked, filtered, quarantined or otherwise prevented from reaching the proper destination server by any anti-virus or other security software will be deemed late. In accordance with statute and rule, **NO LATE PROPOSAL CAN BE ACCEPTED.***

A log will be kept of the names of all Offeror organizations that submitted proposals. Pursuant to §13-1-116 NMSA 1978, the contents of proposals shall not be disclosed to competing potential Offerors during the negotiation process. The negotiation process is deemed to be in effect until the contract is awarded pursuant to this Request for Proposals. Awarded in this context means the final required state agency signature on the contract(s) resulting from the procurement has been obtained.

7. Proposal Evaluation

An Evaluation Committee will perform the evaluation of proposals. This process will take place as indicated in Section II.A, Sequence of Events, depending upon the number of proposals received. During this time, the Procurement Manager may initiate discussions with Offerors who submit responsive or potentially responsive proposals for the purpose of clarifying aspects of the proposals. However, proposals may be accepted and evaluated without such discussion. Discussions SHALL NOT be initiated by the Offerors.

8. Selection of Finalists

The Evaluation Committee will select and the Procurement Manager will notify the finalist Offerors as per schedule Section II.A, Sequence of Events or as soon as possible thereafter. A schedule for Oral Presentation, if any, will be determined at this time. Finalists will be selected based on highest cumulative scores on Section IV.B.1, Organizational Experience and Section IV.B.2, Organizational References, that is, demonstration of their ability to successfully to provide services in all areas or areas specifically indicated by the offeror.

9. Best and Final Offers

Finalist Offerors may be asked to submit revisions to their proposals for the purpose of obtaining best and final offers by as per schedule Section II. A., Sequence of Events or as soon as possible. Best and final offers may also be clarified and amended at finalist Offeror's oral presentation.

10. Finalize Contractual Agreements

After approval of the Evaluation Committee Report, any contractual agreement(s) resulting from this RFP will be finalized with the most advantageous Offeror(s), taking into consideration the evaluation factors set forth in this RFP, as per Section II.A., Sequence of Events, or as soon as possible thereafter. The most advantageous proposal may or may not

have received the most points. In the event mutually agreeable terms cannot be reached with the apparent most advantageous Offeror in the timeframe specified, the State reserves the right to finalize a contractual agreement with the next most advantageous Offeror(s) without undertaking a new procurement process.

11. Contract Awards

Upon receipt of the signed contractual agreement, the Agency Procurement office will award as per Section II.A., Sequence of Events, or as soon as possible thereafter. The award is subject to appropriate Department and State approval.

12. Protest Deadline

Any protest by an Offeror must be timely submitted and in conformance with §13-1-172 NMSA 1978 and applicable procurement regulations. As a Protest Manager has been named in this Request for Proposals, pursuant to §13-1-172 NMSA 1978 and 1.4.1.82 NMAC, ONLY protests delivered directly to the Protest Manager in writing and in a timely fashion will be considered to have been submitted properly and in accordance with statute, rule and this Request for Proposals. The 15-calendar day protest period shall begin on the day following the notice of award of contract(s) and will end at 5:00 pm MST/MDT on the 15th day. Protests must be written and must include the name and address of the protestor and the request for proposal number. It must also contain a statement of the grounds for protest including appropriate supporting exhibits and it must specify the ruling requested from the party listed below. The protest must be directed to:

Tatiana Engelmann, Assistant General Counsel

PROTESTS RECEIVED AFTER THE DEADLINE WILL NOT BE ACCEPTED.

C. GENERAL REQUIREMENTS

1. Acceptance of Conditions Governing the Procurement

Offerors must indicate their acceptance to be bound by the Conditions Governing the Procurement, Section II.C, and Evaluation, Section V, by completing and signing the Letter of Transmittal form, pursuant to the requirements in Section II.C.30, located in **APPENDIX D**.

2. Incurring Cost

Any cost incurred by the potential Offeror in preparation, transmittal, and/or presentation of any proposal or material submitted in response to this RFP shall be borne solely by the Offeror. Any cost incurred by the Offeror for set up and demonstration of the proposed equipment and/or system shall be borne solely by the Offeror.

3. Prime Contractor Responsibility

Any contractual agreement that may result from this RFP shall specify that the prime contractor is solely responsible for fulfillment of all requirements of the contractual

agreement with a State Agency which may derive from this RFP. The State Agency entering into a contractual agreement with a vendor will make payments to only the prime contractor.

4. Subcontractors/Consent

The use of subcontractors is allowed. The prime contractor shall be wholly responsible for the entire performance of the contractual agreement whether or not subcontractors are used. Additionally, the prime contractor must receive approval, in writing, from the agency awarding any resultant contract before any subcontractor is used during the term of this agreement.

5. Amended Proposals

An Offeror may submit an amended proposal before the deadline for receipt of proposals. Such amended proposals must be complete replacements for a previously submitted proposal and must be clearly identified as such in the transmittal letter. **Agency personnel will not merge, collate, or assemble proposal materials.**

6. Offeror's Rights to Withdraw Proposal

Offerors will be allowed to withdraw their proposals at any time prior to the deadline for receipt of proposals. The Offeror must submit a written withdrawal request addressed to the Procurement Manager and signed by the Offeror's duly authorized representative.

The approval or denial of withdrawal requests received after the deadline for receipt of the proposals is governed by the applicable procurement regulations, 1.4.1.5 & 1.4.1.36 NMAC.

7. Proposal Offer Firm

Responses to this RFP, including proposal prices for services, will be considered firm for one-hundred eighty (180) days after the due date for receipt of proposals or one hundred twenty (120) days after the due date for the receipt of a best and final offer, if the Offeror is invited or required to submit one.

8. Disclosure of Proposal Contents

The contents of all submitted proposals will be kept confidential until the final award has been completed by the Agency. At that time, all proposals and documents pertaining to the proposals will be available for public inspection, *except* for proprietary or confidential material as follows:

- a. ***Proprietary and Confidential information is restricted to:***
 1. confidential financial information concerning the Offeror's organization; and
 2. information that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, §§57-3A-1 through 57-3A-7 NMSA 1978.
- b. An additional but separate redacted version of Offeror's proposal, as outlined and identified in Section III.B.2.a, shall be submitted containing the blacked-out proprietary or confidential information, in order to facilitate eventual public inspection of the non-confidential version of Offeror's proposal.

IMPORTANT: The price of products offered or the cost of services proposed **SHALL NOT** be designated as proprietary or confidential information.

If a request is received for disclosure of proprietary or confidential materials, the Agency shall examine the request and make a written determination that specifies which portions of the proposal should be disclosed. Unless the Offeror takes legal action to prevent the disclosure, the proposal will be so disclosed. The proposal shall be open to public inspection subject to any continuing prohibition on the disclosure of proprietary or confidential information.

9. No Obligation

This RFP in no manner obligates the State of New Mexico or any of its Agencies to the use of any Offeror's services until a valid written contract is awarded and approved by appropriate authorities.

10. Termination

This RFP may be canceled at any time and any and all proposals may be rejected in whole or in part when the Agency determines such action to be in the best interest of the State of New Mexico.

11. Sufficient Appropriation

Any contract awarded as a result of this RFP process may be terminated if sufficient appropriations or authorizations do not exist. Such terminations will be affected by sending written notice to the contractor. The Agency's decision as to whether sufficient appropriations and authorizations are available will be accepted by the contractor as final.

12. Legal Review

The Agency requires that all Offerors agree to be bound by the General Requirements contained in this RFP. Any Offeror's concerns must be promptly submitted in writing to the attention of the Procurement Manager.

13. Governing Law

This RFP and any agreement with an Offeror which may result from this procurement shall be governed by the laws of the State of New Mexico.

14. Basis for Proposal

Only information supplied in writing by the Procurement Manager or contained in this RFP shall be used as the basis for the preparation of Offeror proposals.

15. Contract Terms and Conditions

The contract between the Agency and a contractor will follow the format specified by the Agency and contain the terms and conditions set forth in the Draft Contract Appendix C. However, the contracting agency reserves the right to negotiate provisions in addition to those contained in this RFP (Draft Contract) with any Offeror. The contents of this RFP, as

revised and/or supplemented, and the successful Offeror's proposal will be incorporated into and become part of any resultant contract.

The Agency discourages exceptions from the contract terms and conditions as set forth in the RFP Draft Contract. Such exceptions may cause a proposal to be rejected as nonresponsive when, in the sole judgment of the Agency (and the Evaluation Committee), the proposal appears to be conditioned on the exception, or correction of what is deemed to be a deficiency, or an unacceptable exception is proposed which would require a substantial proposal rewrite to correct.

Should an Offeror object to any of the terms and conditions as set forth in the RFP Draft Contract (APPENDIX C) strongly enough to propose alternate terms and conditions in spite of the above, the Offeror must propose **specific** alternative language. The Agency may or may not accept the alternative language. General references to the Offeror's terms and conditions or attempts at complete substitutions of the Draft Contract are not acceptable to the Agency and will result in disqualification of the Offeror's proposal.

Offerors must provide a brief discussion of the purpose and impact, if any, of each proposed change followed by the specific proposed alternate wording.

If an Offeror fails to propose any alternate terms and conditions during the procurement process (the RFP process prior to selection as successful Offeror), no proposed alternate terms and conditions will be considered later during the negotiation process. Failure to propose alternate terms and conditions during the procurement process (the RFP process prior to selection as successful Offeror) is an **explicit agreement** by the Offeror that the contractual terms and conditions contained herein are **accepted** by the Offeror.

16. Offeror's Terms and Conditions

Offerors must submit with the proposal a complete set of any additional terms and conditions they expect to have included in a contract negotiated with the Agency. See Section II.C.15 for requirements.

17. Contract Deviations

Any additional terms and conditions, which may be the subject of negotiation (such terms and conditions having been proposed during the procurement process, that is, the RFP process prior to selection as successful Offeror), will be discussed only between the Agency and the Offeror selected and shall not be deemed an opportunity to amend the Offeror's proposal.

18. Offeror Qualifications

The Evaluation Committee may make such investigations as necessary to determine the ability of the potential Offeror to adhere to the requirements specified within this RFP. The Evaluation Committee will reject the proposal of any potential Offeror who is not a Responsible Offeror or fails to submit a Responsive Offer as defined in §13-1-83 and §13-1-85 NMSA 1978.

19. Right to Waive Minor Irregularities

The Evaluation Committee reserves the right to waive minor irregularities, as defined in Section I.F.19. The Evaluation Committee also reserves the right to waive mandatory requirements, provided that all of the otherwise responsive proposals failed to meet the same mandatory requirements and the failure to do so does not otherwise materially affect the procurement. This right is at the sole discretion of the Evaluation Committee.

20. Change in Contractor Representatives

The Agency reserves the right to require a change in contractor representatives if the assigned representative(s) is (are) not, in the opinion of the Agency, adequately meeting the needs of the Agency.

21. Notice of Penalties

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

22. Agency Rights

The Agency in agreement with the Evaluation Committee reserves the right to accept all or a portion of a potential Offeror's proposal.

23. Right to Publish

Throughout the duration of this procurement process and contract term, Offerors and contractors must secure from the agency written approval prior to the release of any information that pertains to the potential work or activities covered by this procurement and/or agency contracts deriving from this procurement. Failure to adhere to this requirement may result in disqualification of the Offeror's proposal or removal from the contract.

24. Ownership of Proposals

All documents submitted in response to the RFP shall become property of the State of New Mexico. If the RFP is cancelled, all responses received shall be destroyed by the Agency.

25. Confidentiality

Any confidential information provided to, or developed by, the contractor in the performance of the contract resulting from this RFP shall be kept confidential and shall not be made available to any individual or organization by the contractor without the prior written approval of the Agency.

The Contractor(s) agrees to protect the confidentiality of all confidential information and not to publish or disclose such information to any third party without the procuring Agency's written permission.

26. Electronic mail address required

A large part of the communication regarding this procurement will be conducted by electronic mail (e-mail). Offeror must have a valid e-mail address to receive this correspondence. (See also Section II.B.5, Response to Written Questions).

27. Use of Electronic Versions of this RFP

This RFP is being made available by electronic means. In the event of conflict between a version of the RFP in the Offeror's possession and the version maintained by the agency, the Offeror acknowledges that the version maintained by the agency shall govern. Please refer to: <https://vendor.bonfirehub.com/>

28. New Mexico Employees Health Coverage

- A. If the Offeror has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Offeror must agree to have in place, and agree to maintain for the term of the contract, health insurance for 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. Offeror must agree to maintain a record of the number of employees who have (a) accepted health insurance; (b) decline health insurance due to other health insurance coverage already in place; or (c) decline health insurance for other reasons. These records are subject to review and audit by a representative of the state.
- C. Offeror must agree to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: <https://bewellnm.com>.
- D. For Indefinite Quantity, Indefinite Delivery contracts (price agreements without specific limitations on quantity and providing for an indeterminate number of orders to be placed against it); these requirements shall apply the first day of the second month after the Offeror reports combined sales (from state and, if applicable, from local public bodies if from a state price agreement) of \$250,000.

29. Campaign Contribution Disclosure Form

Offeror must complete, sign, and return the Campaign Contribution Disclosure Form (APPENDIX B) as a part of their proposal. This requirement applies regardless whether a covered contribution was made or not made for the positions of Governor and Lieutenant Governor or other identified official. **Failure to complete and return the signed, unaltered form will result in Offeror's disqualification.**

30. Letter of Transmittal

Offeror's proposal must be accompanied by a Letter of Transmittal Form (APPENDIX E), which must be **signed** by the individual authorized to contractually obligate the company, identified in #2 below.

Provide the following information:

1. Identify the submitting business entity; Name, Mailing Address, Phone Number, Federal Tax ID Number (TIN), and New Mexico Business Tax ID Number (BTIN, formerly CRS); as the resulting contract(s) may be funded by federal funds, **Offeror must be registered with and possess an “active” status with the federal governments System for Award Management (SAM.gov); Failure to be registered with and hold an active status at SAM.gov will result in Offeror’s disqualification.**
2. Identify the Name, Title, Telephone, and E-mail address of the person authorized by the Offeror’s organization to (A) contractually obligate the business entity providing the Offer, (B) negotiate a contract on behalf of the organization; and/or (C) provide clarifications or answer questions regarding the Offeror’s proposal content *(A response to B and/or C is only necessary if the responses differs from the individual identified in A);*
3. Identify any subcontractor/s that may be utilized in the performance of any resultant contract award;
4. Identify any other entity/-ies (such as State Agency, reseller, etc., that is not a subcontractor identified in #3) that may be used in the performance of this awarded contract; and
5. The individual identified in #2 above, must sign and date the form, attesting to the veracity of the information provided, and acknowledging (a) the organization’s acceptance of the Conditions Governing the Procurement stated in Section II.C.1, (b) the organizations acceptance of the Section V Evaluation Factors, and (c) receipt of any and all amendments to the RFP.

Failure to submit a signed Letter of Transmittal Form (Appendix E) will result in Offeror’s disqualification.

31. Disclosure Regarding Responsibility

- A. Any prospective Contractor and any of its Principals who enter into a contract greater than sixty thousand dollars (\$60,000.00) with any state agency or local public body for professional services, tangible personal property, services or construction agrees to disclose whether the Contractor, or any principal of the Contractor’s company:
 1. is presently debarred, suspended, proposed for debarment, or declared ineligible for award of contract by any federal entity, state agency or local public body;
 2. has within a three-year period preceding this offer, been convicted in a criminal matter or had a civil judgment rendered against them for:
 - a. the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) contract or subcontract;
 - b. violation of Federal or state antitrust statutes related to the submission of offers; or
 - c. the commission in any federal or state jurisdiction of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violation of Federal criminal tax law, or receiving stolen property;

3. is presently indicted for, or otherwise criminally or civilly charged by any (federal state or local) government entity with the commission of any of the offenses enumerated in paragraph A of this disclosure;
 4. has, preceding this offer, been notified of any delinquent Federal or state taxes in an amount that exceeds \$3,000.00 of which the liability remains unsatisfied. Taxes are considered delinquent if the following criteria apply.
 - a. The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge of the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.
 - b. The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.
 - c. Have within a three-year period preceding this offer, had one or more contracts terminated for default by any federal or state agency or local public body.)
- B. Principal, for the purpose of this disclosure, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity or related entities.
- C. The Contractor shall provide immediate written notice to the New Mexico Environment Department, at any time during the term of this Agreement, the Contractor learns that the Contractor's disclosure was at any time erroneous or became erroneous by reason of changed circumstances.
- D. A disclosure that any of the items in this requirement exist will not necessarily result in termination of this Agreement. However, the disclosure will be considered in the determination of the Contractor's responsibility and ability to perform under this Agreement. Failure of the Contractor to furnish a disclosure or provide additional information as requested will render the Offeror nonresponsive.
- E. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the disclosure required by this document. The knowledge and information of a Contractor is not required to exceed that which is the normally possessed by a prudent person in the ordinary course of business dealings.
32. The disclosure requirement provided is a material representation of fact upon which reliance was placed when making an award and is a continuing material representation of the facts during the term of this Agreement. If during the performance of the contract, the Contractor is indicted for or otherwise criminally or civilly charged by any government entity (federal, state or local) with commission of any offenses named in this document the Contractor must provide immediate written notice to the New Mexico Environment Department or other party to this Agreement. If it is later determined that the Contractor knowingly rendered an erroneous disclosure, in addition to other remedies available to the Government, the New Mexico Environment Department's Purchasing Officer may terminate the involved contract

for cause. Still further the New Mexico Environment Department may suspend or debar the Contractor from eligibility for future solicitations until such time as the matter is resolved to the satisfaction of the New Mexico Environment Department.

33. New Mexico/Native American Resident Preferences

The New Mexico/Native American Resident Preferences shall not apply because the expenditures for this RFP includes federal funds.

III. RESPONSE FORMAT AND ORGANIZATION

A. NUMBER OF RESPONSES

Offerors shall submit only one proposal in response to this RFP.

ONLY ELECTRONIC SUBMISSION VIA env-nm.bonfirehub system IS PERMITTED:

<https://vendor.bonfirehub.com/>

B. NUMBER OF COPIES

For proposals submitted through NMED's electronic procurement system, the Offeror need only submit one single electronic copy* of each portion of its proposal (Technical and Cost) as outlined below. Separate the proposals as described below into separate electronic files for submission.

Proposals must be submitted in the manner outlined below. Technical and Cost portions of Offerors proposal must be submitted in separate uploads as indicated below in this section, and must be prominently identified as "Technical Proposal," or "Cost Proposal," on the front page of each upload.

Any proposal that does not adhere to the requirements of this **Section II.B** and **Section III.C Proposal Content and Organization** may be deemed non-responsive and rejected on that basis.

1. Electronic Submission Requirements

- a. **Register in env-nm.bonfirehub well in advance of the submission deadline** - In order to submit a response to this RFP, Offeror must be fully registered in the env-nm.bonfirehub System. *It is the Offeror's responsibility to ensure the registration process is completed in enough time to upload its proposal documents by the deadline set forth in this RFP.* The registration page may be accessed via the following link: <https://env-nm.bonfirehub.com/projects>
- b. **Follow all submission instructions** - Proposals must be submitted in the manner outlined in Sections III.B.2 and III.B.3 and organized in accordance with Section III.C. Technical and Cost portions of Offerors proposal must be submitted as **separate uploads**, and must be prominently identified as "Technical Proposal," or "Cost Proposal," on the front page of each upload.
- c. **Complete proposal upload prior to submission deadline** - *It is the Offeror's responsibility to ensure all documents are completely uploaded and submitted electronically via the env-nm.bonfirehub system by the deadline set forth in this RFP. The env-nm.bonfirehub system will automatically cease uploading data at the date and time of the deadline. Please ensure that you, as the Offeror, allow adequate time for large uploads and to fully complete your submittal by the deadline. A submission that is not both: (1) fully complete; and (2) received, via the env-nm.bonfirehub system by the*

*deadline, will be deemed late. Further, a submission that is not fully complete and received via the env-nm.bonfirehub system by the deadline because the response was captured, blocked, filtered, quarantined or otherwise prevented from reaching the proper destination server by any anti-virus or other security software will be deemed late. In accordance with statute and rule, **NO LATE OFFER CAN BE ACCEPTED**.*

- d. **Upload a single Technical file and a single Cost file, unless a document exceeds 50MB** - The Offeror need only submit one single electronic copy of each portion of its proposal (one Technical and one Cost), as outlined in Sections III.B.2 and III.B.3. *EXCEPTION: Single electronic files that exceed 50MB may be submitted as multiple uploads, which must be **the least number of uploads necessary to fall under the 50mb limit**.*
 - e. **DO NOT upload .zip files** - In accordance with the State of New Mexico's Information Technology (IT) policies and procedures, we are unable to accept .zip files. See Section II.B.1.d, above, requirements for uploading large files.
 - f. **DO NOT password-protect proposal documents** – The env-nm.bonfirehub system is secure, and accessible only to NMED personnel, through a password-protected login. Confidential information must adhere to the requirements of Section II.C.8 and must be submitted pursuant to Section II.B.2.a.
 - g. **env-nm.bonfirehub Technical Support**
For assistance with completing the registration process, uploading a proposal, or other technical support issues, please contact Bonfire Help at <https://vendorsupport.gobonfire.com/>
2. **Technical Proposal** – One (1) ELECTRONIC upload must be organized in accordance with **Section III.C.1. Proposal Format**. All information for the Technical Proposal must be combined into a single file/document for uploading. *EXCEPTION: Single electronic files that exceed 50mb may be submitted as multiple uploads, which must be **the least number of uploads necessary to fall under the 50mb limit**. **The Technical Proposal SHALL NOT contain any Cost information.***
- a. **Confidential Information**: If Offeror's proposal contains confidential information, as defined in Section I.F.5 and detailed in Section II.C.8, Offeror **must** submit **two (2) separate ELECTRONIC technical files**:
 - i. One (1) ELECTRONIC version of the requisite proposals identified in Section III.B.2, above, as an **unredacted** (def. Section I.F.38) version for evaluation purposes; **and**
 - ii. One (1) **redacted** (def. Section I.F.26) ELECTRONIC for the public file, in order to facilitate eventual public inspection of the non-confidential version of Offeror's proposal. Redacted versions **must** be clearly marked as "REDACTED" or "CONFIDENTIAL" on the first page of the electronic file;

3. **Cost Proposal** – One (1) ELECTRONIC upload of the proposal containing **ONLY** the Cost Proposal. All information for the cost proposal must be combined into a single file/document for uploading. **EXCEPTION:** *Single electronic files that exceed 50mb may be submitted as multiple uploads, which must be the least number of uploads necessary to fall under the 50mb limit*

B. PROPOSAL CONTENT AND ORGANIZATION

All proposals must be submitted as follows:

Direct reference to pre-prepared or promotional material may be used if referenced and clearly marked. Promotional material must be minimal. Within each section of the proposal, Offerors must organize and address the RFP requirements in the order indicated below. All forms provided in this RFP must be thoroughly completed and included in the appropriate section of Offeror's proposal. **Any and all discussion of proposed costs, rates or expenses must occur ONLY in the Cost Proposal.**

Technical Proposal – DO NOT INCLUDE ANY COST INFORMATION IN THE TECHNICAL PROPOSAL.

1. Signed Letter of Transmittal
2. Signed Campaign Contribution Form
3. Table of Contents
4. Proposal Summary in which the offeror identifies the services in the scope of work they are responding to.
5. Response to Contract Terms and Conditions (from Section II.C.15)
6. Offeror's Additional Terms and Conditions (from Section II.C.16)
7. Response to Specifications (**except Cost information which shall be included ONLY in Cost Proposal**)
 - a. Organizational Experience
 - b. Organizational References
 - c. Mandatory Specification
 - d. Desirable Specification
 - e. Financial Stability –(Financial information considered confidential, as defined in Section I.F. and detailed in Section II.C.8, should be placed in the **Confidential Information** file, per Section III.B.2.a, as applicable)
 - f. Performance Surety Bond (if applicable)
 - g. New Mexico/Native American Resident Preferences (if applicable)
8. Other Supporting Material (if applicable)

A Proposal Summary may be included in Offeror's Technical Proposal, to provide the Evaluation Committee with an overview of the proposal; however, this material will not be used in the evaluation process unless specifically referenced from other portions of the Offeror's proposal. **DO NOT INCLUDE COST INFORMATION IN THE PROPOSAL SUMMARY.**

Cost Proposal:

1. Completed Cost Response Form (APPENDIX D)

IV. SPECIFICATIONS

A. DETAILED SCOPES OF WORK

The purpose and goal of this Scope of work is the provision of multidisciplinary expertise to perform a variety of technical, regulatory, and administrative tasks for the Agency's Environmental Protection Division including the Air Quality Bureau and Climate Change Bureau. **The contractor may respond to one, more than one, or the entire scope of work and shall be evaluated accordingly.** The Contractor support is needed to meet state and federal requirements in multiple areas including, but not limited to, Ozone Precursor Rule, Ozone Initiative, greenhouse gas emission reductions, climate strategy planning, climate action execution, Advanced Clean Cars II/Advanced Clean Trucks/Heavy-Duty Omnibus, clean transportation fuel standard, and the execution of the Climate Pollution Reduction Grant. (Note some work under the Climate Pollution Reduction Grant will be performed at NMED's direction in conjunction with the Climate Change Bureau at Energy Minerals and Natural Resources Department consisted with MOA No. 24-667-4091-100523.) The Contractor shall comply with all federal and state laws, regulations, policies, and procedures applicable to the respective funding programs and NMED.

Contractor Activities

The Contractor shall perform the work in the following areas including core program support:

1. **Legislation Development, Regulation Development and Hearing Support:** The Contractor will provide support for all aspects of legislation and regulation development and implementation (including to hearing), including but not limited to:
 - a. draft proposed legislation and regulations.
 - b. provide technical analysis on economic impact, business use cases, health impacts, emissions and others identified by the Agency to support development of legislation and regulations.
 - c. identify gap analysis and strategies to address the same.
 - d. support regulatory hearings with written and oral expert testimony and other documents including exhibits, including technical and background information documents.
 - e. develop content for, participate in and execute stakeholder and community outreach and engagement.
 - f. develop guidelines, standard operating procedures, and process documents for implementing legislation and regulations.
 - g. project management of the rulemaking process including identifying and tracking timelines.
 - h. other tasks as required for the success of the project.
2. **Technical Analysis of Proposed Legislation and Regulations:** The Contractor shall analyze draft governmental (*e.g.* federal, state, etc.) air quality and climate-related legislation and regulations for the purpose of developing NMED comments:
 - a. The Contractor shall provide comments, summaries, explanations, and recommendations with an emphasis on but not limited to i) alignment and divergence from current regulatory framework, ii) impact on the state program, and iii) technical considerations.

- b. Perform analysis of existing (could include international, national or other state/local/Tribal rules) and proposed rules.
 - c. Performing gap analysis.
 - d. Work may require the Contractor to conduct economic or other technical analysis as specifically directed by the Agency.
 - e. This task deliverables may be subject to short turn around times.
3. **Program Support**
- a. **Air Emission Regulation Support:** The Contractor shall assist with performing inspections and analyzing affirmative defense demonstrations, excess emissions reports, stack test reports, and compliance monitoring and reporting documentation, such as semi-annual deviation reports, annual compliance certification reports, monitoring data, and other actions as directed by the Agency.
 - b. **Permitting Support:** The Contractor shall support permitting functions including but not limited to reviews of permit applications, operations plans, emission inventories, monitoring data, and other relevant construction, planning, and operations documents required by the regulated industry under the jurisdiction of NMED.
 - c. **Field Data Collection and Verification Program Development and Implementation Support:** The Contractor shall support air monitoring data collection and all aspects of air quality monitoring projects by the Agency, as well as the specification, design and build of a mobile van to support data verification (not limited to NAAQS, hazardous air pollutants, ozone precursors and methane) and source attribution. This task shall require the development of standard operating procedures, quality assurance plans, quality management plans, health and safety procedures, checklists and other relevant documentation. The standard of acceptance is to support hearings and legal challenges.
 - d. **Support for Developing Climate Actions and Climate Action Plans:** The Contractor shall support the development, review, and analysis of state climate change strategies, the projected greenhouse gas (GHG) emissions reduction, the review of authority needed to implement the strategies, the estimated cost to implement strategies, the impacts of the strategies on communities, the review of other funding opportunities, and/or the workforce analyses and strategies in collaboration and cooperation with Energy Minerals and Natural Resources staff and the New Mexico Climate Change Task Force. The Contractor may compile results into a climate action plan, such as the Comprehensive Climate Action Plan required by the NMED's Climate Pollution Reduction planning grant.
 - e. **Oil and Gas Industry Regulation Support:** The Contractor shall provide expertise in emissions from the oil and gas industry, share educational material and training, provide policy advice, develop monitoring and verification systems and programs, evaluate technology, and provide quality assurance on oil and gas emissions inventories. This includes analysis of useful life of equipment, strategies to reduce emissions including but not limited to NAAQS, hazardous air pollutants, ozone precursors and methane. The standard of acceptance is to support hearings and legal challenges.
 - f. **Data Management and Analysis Support:** The Contractor shall provide support for the collection, management, analysis, reporting, and communication of relevant

sociological, health, economic, transportation, and industry data, including but not limited to population, income, environmental, health outcomes, vehicle populations, work force, macro and micro econometrics, and locational data (e.g. from Geographic Information Systems). This task also requires the Contractor to test applications, portals and other data aggregation from various sources. The standard of acceptance is to support hearings and legal challenges.

- g. **Legal Support:** The Contractor shall develop legal analyses, including review of authorities, needed authorities for program initiatives, and strategies and arguments for legal challenges.

4. **Program Support related to Implementing the Clean Transportation Fuels Standard including but not limited to:**

- a. **Fuel Lifecycle Emissions Modeling Support:** The Contractor shall perform New Mexico-based fuel emissions modeling using the appropriate national fuel emissions models adapted to New Mexico, including but not limited to determining statewide baseline lifecycle emissions for gasoline, diesel, electricity consumed in New Mexico, and other fuels with distinct lifecycles. The Contractor shall make models and results publicly available and assist the Agency in providing technical information to stakeholders, advisory committee, and the public as needed. The Contractor shall update the New Mexico models and the assumptions therein periodically and develop pathways for new clean fuels consumed in New Mexico. Such analyses can include but are not limited to development of a GREET-NM model that adapts the Argonne GREET model to New Mexico-specific transportation fuel pathways, and/or additional modeling of land-use change and other environmental effects from the production of biofuels.
- b. **Clean Fuel Credit Market Management Support:** The Contractor shall provide support for managing the clean fuel credit market established under the clean fuel standard program, including third-party brokerage of deals between clean fuels generators and purchasers, facilitation of credit transactions between buyers and sellers, public listing of credit bid and offer prices, and supplying of all transaction records to aggregators including for the purpose of public reporting.
- c. **Support for Aggregating Clean Fuel Credits:** The Contractor shall provide support for tracking clean fuels credits and deficits generated by transportation fuels suppliers in New Mexico, receiving transaction data from buyers and sellers of clean fuels credits as well as third-party brokers, aggregating credit sales prices and volumes for public listing, and accounting for any remaining deficits and/or credits from overcompliance that can be banked for future periods the clean fuel standard program.

5. **Program Support related Clean Transportation Programs including but not limited to**

- a. **Fleet Transition Advisor:** The Contractor shall provide support to fleet managers for the transition of vehicle fleets to low-greenhouse gas alternatives including biofuels, battery electric vehicles and fuel cell hydrogen vehicles. The Contractor shall provide expertise in technology and infrastructure for alternative fuels transportation.

- b. **Support for Technical Assistance Centers:** The Contractor shall provide support to fleet managers for federal, state, and other transportation-related incentives and financing options.
 - c. **Third-Party Reviewer and Commissioning Management Services of Energy Savings Performance Contracts:** The Contractor shall provide third-party review and commissioning management services for building energy efficiency and renewable energy projects, including conducting technical on-site evaluations, review of audit findings and energy efficiency measures, inspecting and verifying the retrofits, providing a commissioning report, and providing measurement and verification report.
 - d. **Electric Vehicle Registration Data Support:** The Contractor shall provide support verifying the registration in New Mexico or other states of zero emission or partial zero emission vehicles reported as delivered for sale in New Mexico.
 - e. **Fleet Use Reporting Support:** The Contractor shall provide support to fleet owners reporting vehicle ownership, location and use data to NMED. This support may include explaining requirements, supporting user difficulties, collecting details of technical issues and reporting to NMED, and providing vehicle fleet owner education. Support may be delivered by phone, email, online chat, and/or virtual or in person support sessions.
 - f. **Transportation Infrastructure Support:** The Contractor shall provide technical professional engineering services to review and oversee transportation infrastructure projects.
6. **Modeling and Greenhouse Gas Emission Quantification Support**
- a. **Air Dispersion Modeling Support:** The Contractor shall perform dispersion modeling, including conducting modeling in support of statewide and regional initiatives, reviews of modeling submitted in support of permit applications and other regulatory requirements (such as enforcement or emission event-related activities), and review and analysis of proposed amendments to state and federal modeling guidance. The standard of acceptance is to support hearings and legal challenges.
 - b. **Emission Inventory and Quantification Support:** The Contractor shall perform and/or support tracking, monitoring, reporting, reviewing, quality assuring, forecasting, and hindcasting related to but not limited to greenhouse gas and air pollutant emissions, emission reductions from measures and regulations, and lifecycle emissions. The Contractor shall support the review of emission inventory and inventory methodology. The Contractor shall support the comparison of emission inventory methods as required by, but not limited to, the requirements of Quality Assurance Project Plans for federal grants. The Contractor shall recommend methods to quantify emissions or emission reductions. The Contractor shall recommend sources of data for emissions or emission reduction calculations based on existing data sources. The Contractor may make recommendations for future programmatic data collection that would be helpful in the quantification of emissions or emission reductions. The standard of acceptance is to support hearings and legal challenges.
 - c. **Regional Modeling and Relative Source Apportionment** The Contractor shall determine the modeled National Ambient Air Quality Standards (NAAQS) values in specified areas, evaluate regional modeling with monitored data or observations and

analyze relative source apportionment. The contractor shall perform additional regional modeling or post-processing of modeling as needed. The standard of acceptance is to support hearings and legal challenges.

- d. **As directed:** The Contractor shall develop technical analyses, including economic, health, and environmental impacts, complete lifecycle analysis of community benefits, and workforce development solutions for legislative, regulatory, and other programmatic needs. Deliverables may include communication and outreach materials and presenting at hearings and meetings before boards, committees, other governmental agencies, Tribes, and the public. The standard of acceptance is to support hearings and legal challenges.
7. **Stakeholder and Public Outreach and Engagement Support:** The Contractor shall develop outreach/engagement strategies and plans; conduct surveys; prepare presentations and outreach/engagement materials; arrange and coordinate meetings; provide process facilitation; summarize outcomes from engagement activities, and identify next steps for Agency stakeholder, advisory committees, the regulated community, municipal entities, Tribal governments and communities, and the public. Required skills include but are not limited to
 - a. familiarity with and implementation of various communication methods to collect and consolidate information.
 - b. Meeting facilitation.
8. **Communication and Media Support:** The Contractor shall provide communication support including media campaigns for program initiatives but not limited including developing content and production for outreach materials, branding, storytelling, logos and taglines, identifying venues and strategies for effective outreach to collect and distribute information, and coaching presenters. The Contractor shall
 - a. develop campaign strategies that include projected budget, media, scheduling and content creation and productions as well as goal metrics, audience identification and segment tactics, working set of questions and key messages.
 - b. develop advertising strategies and spend plans
 - c. use of traditional, social media, and other marketing strategies.
9. **Organizational Development Support:** The Contractor shall provide support to establish, improve, and optimize communication, effectiveness, workflow, and other business processes including but not limited to diplomacy, deep dialogue facilitation, communication, personnel development, organizational development, leadership training, strategic planning, strategic project planning change management, project management, standards, operating procedures, and technological solutions. This may include services such as teaching and coaching of wellness techniques to support staff well-being.
10. **Projects and Program Management Support:** The contractor shall provide support for managing projects and programs including but not limited to scheduling, critical path analysis, status updates, reporting, and staff support. This task includes the Contractor to test applications, portals and other data aggregation from various sources that are part of program implementation. This task also includes general and administrative support for program development such as development or organizational charts, functional statements, project plans. This task shall require the development of standard operating procedure,

quality assurance plans, quality management plans, health and safety procedures, checklists and other relevant documentation.

11. **Federal Grant and General Administration Support:** The Contractor shall provide support for seeking, securing, and administering federal grants, including identification of funding sources, writing and submittals for grant applications, compliance on all grant requirements, and project management and oversight. This task shall require the development of standard operating procedures, quality assurance plans, quality management plans, health and safety procedures, checklists and other relevant documentation.

12. **Other work the Agency may require in meeting its mission.** The Agency reserves the right to add this work to the contract by Task Order without amendment to the contract.

B. TECHNICAL SPECIFICATIONS

1. Organizational Experience

Offeror **must**:

- a) provide a detailed description of relevant corporate experience with state government and private sector. The experience of all proposed subcontractors must be described. The narrative **must** thoroughly describe how the Offeror has supplied expertise for similar contracts and must include the extent of their experience, expertise and knowledge as a provider of technical, regulatory, and administrative support services. All technical, regulatory, and administrative support services provided to private sector will also be considered;
- b) provide a brief resume/bio of all key personnel Offeror proposes to use in performance of the resulting contract, should Offeror be awarded. Key personnel is identified as the project lead or technical staff who will be responsible for the work. Offeror must include key personnel education, work experience, relevant/applicable certifications/licenses, and list of projects where they performed similar work.
- c) indicate how many similar projects have been completed including a list of deliverables for the projects in the last two years.
- d) describe at least two project successes and failures similar work or projects completed or participated in. Include how each experience improved the Offeror's services.

2. Organizational References

Offeror must provide a list of a minimum of three (3) external references from similar projects/programs performed for private, state or large local government clients within the last three (3) years.

Offeror shall include the following Business Reference information as part of its proposals:

- a) Client name;
- b) Project description;
- c) Project dates (starting and ending);
- d) Technical environment (i.e., Technical, Regulatory, or Administrative);
- e) Staff assigned to reference engagement that will be designated for work per this RFP; and
- f) Client project manager name, telephone number, fax number and e-mail address.

Offeror is required to submit APPENDIX F, Organizational Reference Questionnaire (“Questionnaire”), to the business references it lists. **The business references must submit the Questionnaire directly to the designee identified in APPENDIX F. The business references must not return the completed Questionnaire to the Offeror.** It is the Offeror’s responsibility to ensure the completed forms are submitted on or before the date indicated in Section II.A, Sequence of Events, for inclusion in the evaluation process.

Organizational References that are not received or are not complete, may adversely affect the Offeror’s score in the evaluation process. Offerors are encouraged to specifically request that their Organizational References provide detailed comments.

C. BUSINESS SPECIFICATIONS

1. Letter of Transmittal Form

The Offeror’s proposal **must** be accompanied by the Letter of Transmittal Form located in APPENDIX E. The form **must** be completed and must be signed by the person authorized to obligate the company. **Failure to submit a signed form will result in Offeror’s disqualification.**

2. Campaign Contribution Disclosure Form

The Offeror must complete an unaltered Campaign Contribution Disclosure Form and submit a signed copy with the Offeror’s proposal. This must be accomplished whether or not an applicable contribution has been made. (See APPENDIX B). **Failure to complete and return the signed, unaltered form will result in Offeror’s disqualification.**

3. Cost

Offerors must complete the Cost Response Form in APPENDIX D. Cost will be measured by TOTAL PROPOSED COST. All charges listed on APPENDIX D must be justified and evidence of need documented in the proposal.

V. EVALUATION

A. EVALUATION POINT SUMMARY

The following is a summary of evaluation factors with point values assigned to each. These weighted factors will be used in the evaluation of individual potential Offeror proposals by sub-category.

Evaluation Factors <i>(Correspond to Sections IV.B and IV.C)</i>	Points Available
B. Technical Specifications 700 Points)	
B. 1. Organizational Experience	700
B. 2. Organizational References	Pass/Fail
C. Business Specifications 300 Total Points)	
C.1. Letter Of Transmittal	Pass/Fail
C.2. Campaign Contribution Disclosure Form	Pass/Fail
C.3. Cost	300
TOTAL POINTS AVAILABLE	1,000

Table 1: Evaluation Point Summary

B. EVALUATION FACTORS

1. B.1 Organizational Experience (See Table 1)

Points will be awarded based on the thoroughness and clarity of Offeror's response in this Section. The Evaluation Committee will also weigh the relevancy and extent of Offeror's experience, expertise and knowledge; and of personnel education, experience and certifications/licenses. In addition, points will be awarded based on Offeror's candid and well-thought-out response to successes and failures, as well as the ability of the Offeror to learn from its failures and grow from its successes.

2. B.2 Organizational References (See Table 1)

Points will be awarded based upon an evaluation of the responses to a series of questions on the Organizational Reference Questionnaire (Appendix F). Offeror will be evaluated on references that show positive service history, successful execution of services and evidence of satisfaction by each reference. References indicating significantly similar services/scopes of work and comments provided by a submitted reference will add weight and value to a recommendation during the evaluation process. Points will be awarded for each individual response up to 1/3 of the total points for this category. Lack of a response will receive zero (0) points.

The Evaluation Committee may contact any or all business references for validation of information submitted. If this step is taken, the Procurement Manager and the Evaluation Committee must all be together on a conference call with the submitted reference so that the Procurement Manager and all members of the Evaluation Committee receive the same information. Additionally, the Agency reserves the right to consider any and all information available to it (outside of the Organizational Reference information required herein), in its evaluation of Offeror responsibility per Section II.C.18.

3. C.1 Letter of Transmittal (See Table 1)

Pass/Fail only. No points assigned.

4. C.2 Campaign Contribution Disclosure Form (See Table 1)

Pass/Fail only. No points assigned.

5. C.3 Cost (See Table 1)

The evaluation of each Offeror's cost proposal will be conducted using the following formula:

$$\frac{\text{Lowest Responsive Offeror's Cost}}{\text{Each Offeror's Cost}} \times \text{Available Award Points}$$

C. EVALUATION PROCESS

1. All Offeror proposals will be reviewed for compliance with the requirements and specifications stated within the RFP. Proposals deemed non-responsive will be eliminated from further consideration.
2. The Procurement Manager may contact the Offeror for clarification of the response as specified in Section II. B.7.
3. Responsive proposals will be evaluated on the factors in Section IV, which have been assigned a point value in Section V. The responsible Offerors with the highest scores may be selected as finalist Offerors, based upon the proposals submitted. In accordance with §13-1-117 NMSA 1978, the responsible Offerors whose proposals are most advantageous to the State taking into consideration the Evaluation Factors in Section V will be recommended for award (as specified in Section II.B.12). Please note, however, that a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.

APPENDIX A

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to the Procurement Code, Sections 13-1-28, et seq. NMSA 1978 and § 13-1-191.1 NMSA 1978 (2006), as amended by Laws of 2007, Chapter 234, a prospective contractor subject to this section shall disclose all campaign contributions given by the prospective contractor or a family member or representative of the prospective contractor to an applicable public official of the state or a local public body during the two years prior to the date on which a proposal is submitted or, in the case of a sole source or small purchase contract, the two years prior to the date on which the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor or a family member or representative of the prospective contractor to the public official exceeds two hundred fifty dollars (\$250) over the two-year period. A prospective contractor submitting a disclosure statement pursuant to this section who has not contributed to an applicable public official, whose family members have not contributed to an applicable public official or whose representatives have not contributed to an applicable public official shall make a statement that no contribution was made.

A prospective contractor or a family member or representative of the prospective contractor shall not give 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 during the pendency of negotiations for a sole source or small purchase contract.

Furthermore, a solicitation or proposed award for a proposed contract may be canceled 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 if a prospective contractor fails to submit a fully completed disclosure statement pursuant to this section; or a prospective contractor or family member or 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.

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 a 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 [Sections [13-1-28](#) through [13-1-199](#) NMSA 1978] or is not required to submit a competitive sealed proposal because that person or business qualifies for a sole source or 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.

Name(s) of Applicable Public Official(s) if any:

Governor Michelle Lujan-Grisham and/or Lieutenant Governor Howie Morales

DISCLOSURE OF CONTRIBUTIONS BY PROSPECTIVE CONTRACTOR:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Date Contribution(s) Made: _____

Amount(s) of Contribution(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)

APPENDIX B

DRAFT CONTRACT

The Agreement included in this Appendix C represents the contract the Agency intends to use to make awards. The State of New Mexico and the Agency reserve the right to modify the Agreement prior to, or during, the award process, as necessary.

**STATE OF NEW MEXICO
ENVIRONMENT DEPARTMENT
PROFESSIONAL SERVICES CONTRACT # _____**

THIS AGREEMENT is made and entered into by and between the State of New Mexico, **ENVIRONMENT DEPARTMENT**, hereinafter referred to as the “Agency,” and **NAME OF CONTRACTOR**, hereinafter referred to as the “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.

The Contractor shall perform the **Scope of work – Attachment A, which by reference is incorporated herein.**

2. Compensation.

A. The Agency shall pay the Contractor in full payment for services satisfactorily performed as outlined **Attachment B – Budget**, which by reference is incorporated herein. **The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed (Amount). 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 the Contractor to continue to provide services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the Agency when the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for services provided more than the total compensation amount without this Agreement being amended in writing prior to those services more than the total compensation amount being provided.**

B. Payment is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work, and to approval by the GSD/SPD. All invoices **MUST BE** received by the Agency no later than fifteen (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. Contractor must submit a detailed statement accounting for all services performed and expenses incurred. If the Agency finds that the services are not acceptable, within thirty days after the date of receipt of written notice from the Contractor that payment is requested, it shall provide the Contractor a letter of exception explaining the defect or objection to the services, and outlining steps the Contractor may take to provide remedial action. Upon certification by the Agency that the services have been received and accepted, payment shall be tendered to the Contractor within thirty 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, the agency shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

3. Term.

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE GSD/SPD Contracts Review Bureau. This Agreement shall terminate on _____, unless terminated pursuant to paragraph 4 (Termination), or paragraph 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. The Agency may terminate this Agreement for convenience or cause. The Contractor may only terminate this Agreement based upon the Agency's uncured, material breach of this Agreement.

B. Notice; Agency Opportunity to Cure.

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

2. Contractor shall give Agency written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the Agency's material breaches of this Agreement upon which the termination is based and (ii) state what the Agency must do to cure such material breaches. Contractor's notice of termination shall only be effective (i) if the Agency does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the Agency does not, within the thirty (30) day notice period, notify the Contractor of its 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 the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by the Agency; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the State Purchasing Agent; or (iii) the Agreement is terminated pursuant to Paragraph 5, "Appropriations", of this Agreement.

C. Liability. Except as otherwise expressly allowed or provided under this Agreement, the Agency's sole liability upon termination shall be to pay for acceptable work performed prior to the 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. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE AGENCY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.

D. Termination Management. Immediately upon receipt by either the Agency or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the Agency; 2) comply with all directives issued by the Agency in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the Agency shall direct for the protection, preservation, retention or transfer of all property titled to the Agency and records generated under this Agreement. Any non-expendable personal property or

equipment provided to or purchased by the Contractor with contract funds shall become property of the Agency upon termination and shall be submitted to the agency 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 the Agency to the Contractor. The Agency's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the Agency proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

6. Status of Contractor.

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

7. Assignment.

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

8. Subcontracting.

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

9. Release.

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

10. Confidentiality.

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

11. Product of Service -- Copyright.

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

12. Conflict of Interest; Governmental Conduct Act.

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

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978. 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, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any Agency employee while such employee was or is employed by the Agency and participating directly or indirectly in the Agency's contracting process;

2) this Agreement complies with NMSA 1978, § 10-16-7(A) because (i) the Contractor is not a public officer or employee of the State; (ii) the Contractor is not a member of the family of a public officer or employee of the State; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee of the State, a member of the family of a public officer or employee of the State, or a business in which a public officer or employee of the State or the family of a public officer or employee of the State has a substantial interest, public notice was given as required by NMSA 1978, § 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) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the State within the preceding year and whose official act directly resulted in this Agreement and (ii) the Contractor is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the State whose official act, while in State employment, directly resulted in the Agency's making this Agreement;

4) this Agreement complies with NMSA 1978, § 10-16-9(A) because (i) the Contractor is not a legislator; (ii) the Contractor is not a member of a legislator's family; (iii) the Contractor is not a business in which a legislator or a legislator's family has a substantial interest; or (iv) if the Contractor is a legislator, a member of a legislator's family, or a business in which a legislator or a legislator's family has a substantial interest, disclosure has been made as required by NMSA 1978, § 10-16-7(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, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and

6) in accordance with NMSA 1978, § 10-16-3 and § 10-16-13.3, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the Agency.

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

D. All terms defined in the Governmental Conduct Act have the same meaning in this Article 12(B).

13. Amendment.

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

B. If the Agency proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in Article 4 herein, or to agree to the reduced funding.

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 illegal bribes, gratuities and kickbacks.

16. Equal Opportunity Compliance.

The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor assures

that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

17. Applicable Law.

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its 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 jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

18. Workers Compensation.

The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the Agency.

19. Records and Financial Audit.

The 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 three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the Agency, the General Services Department/State Purchasing Division and the State Auditor. The Agency shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Agency to recover excessive or illegal payments

20. Indemnification.

The Contractor shall defend, indemnify and hold harmless the Agency 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 the Contractor, its officers, employees, servants, subcontractors 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 or any officer, agent, employee, servant or subcontractor 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 the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the Agency and the Risk Management Division of the New Mexico General Services Department by certified mail.

21. New Mexico Employees Health Coverage.

A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Contractor certifies, by signing this agreement, to have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.

B. Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) 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.

22. 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.

23. 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 compliance 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.

24. 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 the Agency:

Insert Name, Address and Email Information

To the Contractor:

Insert Name, Address and Email Information

25. Authority.

If Contractor is other than a natural person, the individual(s) signing this Agreement on behalf of 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 contract.

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

By: _____ Date: _____
James C. Kenney, Cabinet Secretary
New Mexico Environment Department

By: _____ Date: _____
Tatiana Engelmann, Assistant General Counsel
New Mexico Environment Department
Certifying Legal Sufficiency

By: _____ Date: _____
Miranda Ntoko, Deputy Director & CFO
New Mexico Environment Department

By: _____ Date: _____
Contractor

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

ID Number: _____

By: _____ Date: _____
Taxation and Revenue Department

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

By: _____ Date: _____
GSD/SPD Contracts Review Bureau

Attachment A – Scope of Work
(name of Contractor)

Purpose/Goal:

The purpose and goal of this Scope of work is the provision of multidisciplinary expertise to perform a variety of technical, regulatory, and administrative tasks to the Agency's Environmental Protection Division including the Air Quality Bureau and Climate Change Bureau.

Contractor Activities

The Contractor shall perform the work in the following areas:

Attachment B – Budget

The total amount payable to the Contractor under this Agreement shall not exceed _____ (amount) including expenses and applicable gross receipts tax.

The Agency shall pay to the Contractor in full payment for services satisfactorily performed at pursuant to the Scope of Work the rate of _____ dollars (\$ _____) per hour (, such compensation not to exceed the amount stated herein.

Contractor shall submit invoices on the 15th of each month billing for services provided in the previous month.

APPENDIX C

COST RESPONSE FORM

All costs provided by the Offeror must include all labor, materials, equipment, transportation, travel, training, construction, design, and profit to provide the goods and/or services described in Section IV.A, (as amended by any current RFP amendments for the period specified).

Please fill out the following for the positions that will be needed to perform the tasks you're proposing to work on. Include any applicable taxes either in the hourly rates or as a separate line item:

Projected Expenses				
Projected Personnel Expenses (include columns for multiple years if applicable)				
Key Personnel Name	Key Personnel Position Title	Approximant # of Billable Hours	Hourly Rate	Cost
Total Projected Personnel Expenses				\$
Projected Non-Personnel Expenses (include columns for multiple years if applicable)		(List projected non-personnel expenses to include all project costs, supplies, equipment, travel, design, construction, assembly, subcontractors, etc. OR can be one all-inclusive number.)		
Type of Expense		Description		Cost
Total Projected Non-Personnel Expenses				\$
Projected Grand Total				\$

OR You may provide your company's fee schedule and identify any projected annual increases.

Please include a line item(s) for New Mexico Gross Receipts Tax, local option taxes, etc., if applicable.

Remember! If the goods or services are not included in the Offeror's proposal, they cannot be added later!

APPENDIX D

LETTER OF TRANSMITTAL FORM

APPENDIX D

Letter of Transmittal Form

Please complete this form in its entirety. Failure to **sign and/or submit** this form will result in the disqualification of Offeror's proposal.

RFP#: #24-667-4091-27739

1. Identify the following information for the submitting organization:

Offeror Name	
Mailing Address	
Telephone	
FED TIN#	
NM BTIN#	
Unique Entity Identifier (SAM.gov)	

2. Identify the individual(s) authorized by the organization to (A) contractually obligate, (B) negotiate, and/or (C) clarify/respond to queries on behalf of this Offeror:

	A Contractually Obligate	B Negotiate*	C Clarify/Respond to Queries*
Name			
Title			
E-mail			
Telephone			

* If the individual identified in Column A also performs the functions identified in Columns B & C, then no response is required for those Columns. If separate individuals perform the functions in Columns B and/or C, they must be identified.

3. Will any subcontractor/s be used in the performance of any resultant contract? (Select one):

☐ No.
☐ Yes. Identify subcontractor/s: _____

4. Will any other entity/-ies (such as a State Agency, reseller, etc., that is not a subcontractor identified in #3 above) be used in the performance of any resultant contract? (Select one)

☐ No.
☐ Yes. Identify entity/-ies: _____

By signing the form below, the Authorized Signatory attests to the accuracy and veracity of the information provided on this form, and explicitly acknowledges the following:

- On behalf of the submitting-organization identified in item #1, above, I accept the Conditions Governing the Procurement, as required in Section II.C.1. of this RFP;
- I concur that submission of our proposal constitutes acceptance of the Evaluation Factors contained in Section V of this RFP; and
- I acknowledge receipt of any and all amendments to this RFP, if any.

Sign: _____ Date: _____
(Must be signed by the individual identified in item #2.A, above.)

APPENDIX E

ORGANIZATIONAL REFERENCE QUESTIONNAIRE

The State of New Mexico, as a part of the RFP process, requires Offerors to list a minimum of three (3) organizational references in their proposals. The purpose of these references is to document Offeror's experience relevant to the Section IV.A, Detailed Scope of Work in an effort to evaluate Offeror's ability to provide goods and/or services, performance under similar contracts, and ability to provide knowledgeable and experienced staffing.

Offeror is required to send the following Organizational Reference Questionnaire to each business reference listed in its proposal, as per Section IV.B.2. The business reference, if it chooses to respond, is required to submit its response to the Organizational Reference Questionnaire directly to: Jessica.Tapia@env.nm.gov by July 5, 2024 at 5 p.m. MDT for inclusion in the evaluation process. The Questionnaire and information provided will become a part of the submitted proposal. Businesses/Organizations providing references may be contacted for validation of content provided therein.

RFP # 24-667-4091-27739
ORGANIZATIONAL REFERENCE QUESTIONNAIRE
FOR:

(Name of Offeror)

This form is being submitted to your company for completion as a reference for the organization listed above. Submit this Questionnaire to the State of New Mexico, New Mexico Environment Department via e-mail at:

Name: Jessica Tapia, Procurement Manager
Email: Jessica.Tapia@env.nm.gov
Telephone: (505) 795-0783

Forms must be submitted no later than July 5, 2024 at 5 p.m. MDT (Mountain Daylight Time), and **must not** be returned to the organization requesting the reference. References are **strongly encouraged** to provide comments in response to organizational ratings. The comments you provide will help the State evaluate the above-referenced Offeror's service history, successful execution of services and evidence of customer/client satisfaction.

For questions or concerns regarding this form, please contact the State of New Mexico **Procurement Manager** at the contact information listed above. When contacting the Procurement Manager, include the Request for Proposal number provided at the top of this page.

Organization providing reference	
Contact name and title/position	
Contact telephone number(s)	
Contact e-mail address	
Project description	
Project dates (start and end dates)	
Technical Type of environment for the project you're providing a reference (i.e., Technical, Regulatory, Administrative or Other). If Other, please describe.	

QUESTIONS:

1. In what capacity have you worked with this vendor in the past?

COMMENTS:

2. How would you rate this firm's knowledge and expertise?

_____ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

COMMENTS:

3. How would you rate the vendor's flexibility relative to changes in the project scope and timelines?

_____ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

COMMENTS:

4. What is your level of satisfaction with hard-copy materials produced by the vendor?

_____ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable, N/A = Not applicable)

COMMENTS:

5. How would you rate the dynamics/interaction between vendor personnel and your staff?

_____ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

COMMENTS:

6. Who are/were the vendor's principal representatives involved in your project and how would you rate them individually? Would you, please, comment on the skills, knowledge, behaviors or other factors on which you based the rating?

_____ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

Name: _____ Rating: _____

Name: _____ Rating: _____

Name: _____ Rating: _____

Name: _____ Rating: _____

COMMENTS:

7. How satisfied are/were you with the products developed by the vendor?

_____ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable, N/A = Not applicable)

COMMENTS:

8. With which aspect(s) of this vendor's services are/were you most satisfied?

COMMENTS:

9. With which aspect(s) of this vendor's services are/were you least satisfied?

COMMENTS:

10. Would you recommend this vendor's services to your organization again?

COMMENTS:

Potential Non-Personnel Expenses	
Other	Rate
Construction	Actual Cost
Design	Actual Cost
Laboratory Services	Actual Cost
Field Infrastructure installation	Actual Cost
Power Drop/Electrical installation	Actual Cost
Long distance telephone	Actual Cost
Training	Actual Cost

Contract ID# 25-667-4091-44019

STATE OF NEW MEXICO

**ENVIRONMENT DEPARTMENT
PROFESSIONAL SERVICES CONTRACT # 25-667-4091-44019**

THIS AGREEMENT is made and entered into by and between the State of New Mexico, **ENVIRONMENT DEPARTMENT**, hereinafter referred to as the “Agency,” and **EASTERN RESEARCH GROUP, LLC**, hereinafter referred to as the “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.

The Contractor shall perform the **Scope of work – Attachment A**, which by reference is incorporated herein.

2. Compensation.

A. The Agency shall pay to the Contractor in full payment for services satisfactorily performed as outlined **Attachment B – Budget**, which by reference is incorporated herein. **The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed NINE MILLION FIVE HUNDRED THOUSAND DOLLARS and ZERO CENTS (\$9,500,000.00). 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 the Contractor to continue to provide services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the Agency when the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for services provided more than the total compensation amount without this Agreement being amended in writing prior to those services more than the total compensation amount being provided.**

B. Payment is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work, and to approval by the GSD/SPD. All invoices **MUST BE** received by the Agency no later than fifteen (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. Contractor must submit a detailed statement accounting for all services performed and expenses incurred. If the Agency finds that the services are not acceptable, within thirty days after the date of receipt of written notice from the Contractor that payment is requested, it shall provide the Contractor a letter of exception explaining the defect or objection to the services, and outlining steps the Contractor may take to provide remedial action. Upon certification by the Agency that the services have been received and accepted, payment shall be tendered to the Contractor within thirty days after the date of acceptance. If payment is made by mail, the payment

Contract ID# 25-667-4091-44019

shall be deemed tendered on the date it is postmarked. However, the agency shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

3. Term.

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE GSD/SPD Contracts Review Bureau. This Agreement shall terminate on **October 31, 2028**, unless terminated pursuant to paragraph 4 (Termination), or paragraph 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. The Agency may terminate this Agreement for convenience or cause. The Contractor may only terminate this Agreement based upon the Agency's uncured, material breach of this Agreement.

B. Notice; Agency Opportunity to Cure.

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

2. Contractor shall give Agency written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the Agency's material breaches of this Agreement upon which the termination is based and (ii) state what the Agency must do to cure such material breaches. Contractor's notice of termination shall only be effective (i) if the Agency does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the Agency does not, within the thirty (30) day notice period, notify the Contractor of its 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 the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by the Agency; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the State Purchasing Agent; or (iii) the Agreement is terminated pursuant to Paragraph 5, "Appropriations", of this Agreement.

C. Liability. Except as otherwise expressly allowed or provided under this Agreement, the Agency's sole liability upon termination shall be to pay for acceptable work performed prior to the 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. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE AGENCY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.

D. Termination Management. Immediately upon receipt by either the Agency or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the Agency; 2) comply with all directives issued by the Agency in the notice

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of termination as to the performance of work under this Agreement; and 3) take such action as the Agency shall direct for the protection, preservation, retention or transfer of all property titled to the Agency and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the Contractor with contract funds shall become property of the Agency upon termination and shall be submitted to the agency 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 the Agency to the Contractor. The Agency's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the Agency proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

6. Status of Contractor.

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

7. Assignment.

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

8. Subcontracting.

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

9. Release.

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

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10. Confidentiality.

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

11. Product of Service -- Copyright.

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

12. Conflict of Interest; Governmental Conduct Act.

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

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978. 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, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any Agency employee while such employee was or is employed by the Agency and participating directly or indirectly in the Agency's contracting process;

2) this Agreement complies with NMSA 1978, § 10-16-7(A) because (i) the Contractor is not a public officer or employee of the State; (ii) the Contractor is not a member of the family of a public officer or employee of the State; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee of the State, a member of the family of a public officer or employee of the State, or a business in which a public officer or employee of the State or the family of a public officer or employee of the State has a substantial interest, public notice was given as required by NMSA 1978, § 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) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the State within the preceding year and whose official act directly resulted in this Agreement and (ii) the Contractor is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the State whose official act, while in State employment, directly resulted in the Agency's making this Agreement;

4) this Agreement complies with NMSA 1978, § 10-16-9(A) because (i) the Contractor is not a legislator; (ii) the Contractor is not a member of a legislator's family; (iii) the Contractor is not a business in which a legislator or a legislator's family has a substantial interest; or (iv) if the Contractor is a legislator, a member of a legislator's

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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, § 10-16-7(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, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and

6) in accordance with NMSA 1978, § 10-16-3 and § 10-16-13.3, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the Agency.

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

D. All terms defined in the Governmental Conduct Act have the same meaning in this Article 12(B).

13. Amendment.

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

B. If the Agency proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in Article 4 herein, or to agree to the reduced funding.

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 illegal bribes, gratuities and kickbacks.

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16. Equal Opportunity Compliance.

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

17. Applicable Law.

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its 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 jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

18. Workers Compensation.

The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the Agency.

19. Records and Financial Audit.

The 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 three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the Agency, the General Services Department/State Purchasing Division and the State Auditor. The Agency shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Agency to recover excessive or illegal payments

20. Indemnification.

The Contractor shall defend, indemnify and hold harmless the Agency 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 the Contractor, its officers, employees, servants, subcontractors 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 or any officer, agent, employee, servant or subcontractor 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 the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable

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but no later than two (2) days after it receives notice thereof, notify the legal counsel of the Agency and the Risk Management Division of the New Mexico General Services Department by certified mail.

21. New Mexico Employees Health Coverage.

A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Contractor certifies, by signing this agreement, to have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.

B. Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) 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.

22. 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.

23. 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 compliance 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.

24. 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 the Agency:

Kolt Vaughn, Climate Change Bureau
New Mexico Environment Department
525 Camino De Los Marquez
Santa Fe, NM 87505
Kolt.vaughn@env.nm.gov

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To the Contractor:

Parik Deshukh
Eastern Research Group, Inc.
125 Lincoln Ave. Suite 305
Santa Fe, NM 87501
Parik.deshumkh@erg.com

25. Authority.

If Contractor is other than a natural person, the individual(s) signing this Agreement on behalf of 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 contract.

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Attachment A – Scope of Work**Contractor Activities**

1. Legislation Development, Regulation Development and Hearing Support, including drafting proposed legislation and regulations; providing technical analysis on economic impact, business use cases, health impacts, emissions and others identified by the Division to support the development of legislation and regulations; identifying gap analysis and strategies to address the same; supporting regulatory hearings with written and oral expert testimony and other documents including exhibits; developing content for, participate in and execute stakeholder and community outreach and engagement; developing guidelines, standard operating procedures, and process documents for implementing legislation and regulations; managing the rulemaking process; and other tasks as required for the success of the project.

2. Technical Analysis of Proposed Legislation and Regulations, including providing comments, summaries, explanations, and recommendations with an emphasis on but not limited to alignment and divergence from current regulatory framework, impact on the state program, and technical considerations; performing analysis of existing and proposed rules; performing gap analysis; and conducting economic or other technical analysis. This scope's deliverables may be subject to short turnaround times.

3. Air Quality and Climate Change Program Support, including for air emission regulation; permitting; field data collection and verification program development and implementation; development of climate actions and climate action plans; oil and gas industry regulation; data management and analysis; and legal.

4. Clean Transportation Fuels Standard Program Support including for fuel lifecycle emissions modeling; clean fuel credit market management; and aggregating clean fuel credits.

5. Transportation Program Support, including for fleet transition advisor; technical assistance centers; third-party reviewer and commissioning management services of energy savings performance contracts; electric vehicle registration data; fleet use reporting; and transportation infrastructure.

6. Modeling and Greenhouse Gas Emission Quantification Support including for air dispersion modeling; emission inventory and quantification; and regional modeling and relative source apportionment.

7. Stakeholder and Public Outreach and Engagement Support including use of various communication methods to collect and consolidate information and meeting facilitation.

8. Communication and Media Support for the development of campaign strategies including projected budget, media, scheduling and content creation and productions, goal metrics, audience identification and segment tactics, working set of questions and key messages; development of advertising strategies and advertising spend plans; and use of traditional, social media, and other marketing strategies.

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9. Organizational Development Support

10. Projects and Program Management Support

11. Federal Grant and General Administration Support

12. Other Work as the Division may require in meeting its mission

RATE SHEET

Projected Personnel Expenses				
Labor Category Description	YEAR 1* Billing Rate	YEAR 2 Billing Rate	YEAR 3 Billing Rate	YEAR 4 Billing Rate
Principal Regulatory Engineer	\$218.25	\$228.07	\$238.33	\$249.05
Senior Regulatory Engineer	\$181.17	\$189.32	\$197.84	\$206.74
Intermediate Regulatory Engineer	\$132.30	\$138.25	\$144.47	\$150.97
Associate Regulatory Engineer	\$114.10	\$119.23	\$124.60	\$130.21
Principal Regulatory Scientist	\$201.18	\$210.23	\$219.69	\$229.58
Senior Regulatory Scientist	\$163.26	\$170.61	\$178.29	\$186.31
Intermediate Regulatory Scientist	\$139.55	\$145.83	\$152.39	\$159.25
Associate Regulatory Scientist	\$104.63	\$109.34	\$114.26	\$119.40
Principal Measurements Specialist	\$214.26	\$223.90	\$233.98	\$244.51
Senior Measurements Specialist	\$153.10	\$159.99	\$167.19	\$174.71
Intermediate Measurements Specialist	\$114.76	\$119.92	\$125.32	\$130.96
Associate Measurements Specialist	\$82.64	\$86.36	\$90.25	\$94.31
Principal Climate Change & Sustainability Scientist	\$226.20	\$236.38	\$247.02	\$258.14
Senior Climate Change & Sustainability Scientist	\$156.10	\$163.12	\$170.46	\$178.13
Principal Data Management & Analysis Specialist	\$221.52	\$231.49	\$241.91	\$252.80
Senior Data Management & Analysis Specialist	\$157.91	\$165.02	\$172.45	\$180.21
Intermediate Data Management & Analysis Specialist	\$125.36	\$131.00	\$136.90	\$143.06
Associate Data Management & Analysis Specialist	\$89.68	\$93.72	\$97.94	\$102.35
Principal Clean Transportation Expert	\$211.14	\$220.64	\$230.57	\$240.95
Senior Clean Transportation Expert	\$167.01	\$174.53	\$182.38	\$190.59
Intermediate Clean Transportation Expert	\$125.10	\$130.73	\$136.61	\$142.76
Associate Clean Transportation Expert	\$73.39	\$76.69	\$80.14	\$83.75
Principal Communications & Outreach Specialist	\$213.60	\$223.21	\$233.25	\$243.75
Senior Communications & Outreach Specialist	\$169.02	\$176.63	\$184.58	\$192.89
Intermediate Communications & Outreach Specialist	\$113.54	\$118.65	\$123.99	\$129.57

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RATE SHEET

Projected Personnel Expenses				
Labor Category Description	YEAR 1* Billing Rate	YEAR 2 Billing Rate	YEAR 3 Billing Rate	YEAR 4 Billing Rate
Associate Communications & Outreach Specialist	\$61.81	\$64.59	\$67.50	\$70.54
Principal Grants Management Specialist	\$202.31	\$211.41	\$220.92	\$230.86
Projects Facilitator III	\$129.80	\$135.64	\$141.74	\$148.12
Projects Facilitator II	\$103.12	\$107.76	\$112.61	\$117.68
Projects Facilitator I	\$79.33	\$82.90	\$86.63	\$90.53
Supervisory Projects Lead	\$222.92	\$232.95	\$243.43	\$254.38
Projects Lead	\$174.66	\$182.52	\$190.73	\$199.31
Legal Analysis Support	\$335.87	\$350.98	\$366.77	\$383.27

*An annual escalation rate of 4.50% prorated for Year 1. Billing rates are valid through August 31, 2025. An annual 4.5% escalation factor will be applied to subsequent contract years.

Potential Non-Personnel Expenses	
Travel expenses	Rate
Taxi/Uber (daily)	Actual Cost
Airfare (per ticket)	Actual Cost
Lodging plus taxes per diem (per night)	Actual Cost
Meals per diem (full day)	Actual Cost
Airport Parking (Daily rate)	Actual Cost
Ground Transportation (mileage)	Actual Cost
Parking	Actual Cost
Metro	Actual Cost
Tolls	Actual Cost
Privately owned vehicle (POV) Mileage	\$0.67 per mile
Equipment	Rate
Instrument purchases	Actual Cost
Consumables & Supplies	Actual Cost
Rentals	Actual Cost
Repairs	Actual Cost
Calibration Gases	Actual Cost
Field infrastructure/setup	Actual Cost
Miscellaneous Parts	Actual Cost
Computer/Software	Rate
Computer Supplies	Actual Cost
Computer Equipment	Actual Cost
Printing Costs	Actual Cost
Software access costs	Actual Cost
Amazon Web Services	Actual Cost
Annual subscriptions costs	Actual Cost
Data purchases	Actual Cost
Conference/Outreach	Rate
Translation services	Actual Cost
Interpretation services	Actual Cost
Language services	Actual Cost
Facility/Meeting room expenses	Actual Cost
Printing costs	Actual Cost
Photography costs	Actual Cost
Conference/Meeting supplies	Actual Cost
Paid media buys	Actual Cost
Stock images and video footage	Actual Cost
Postage/freight	Actual Cost
Audio/Visual Equipment Purchasing/Rental	Actual Cost
Advertising costs	Actual Cost

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Attachment B – Budget

The total amount payable to the Contractor under this Agreement shall not exceed NINE MILLION FIVE HUNDRED DOLLARS and ZERO CENTS (\$9,500,000.00) including expenses and applicable gross receipts tax.

The Agency shall pay to the Contractor in full payment for services satisfactorily performed at pursuant to the Scope of Work BASED UPON DELIVERABLES within Attachment A Scope of Work such compensation not to exceed the amount stated herein.

The Contractor shall submit invoices on the 15th of each month billing for services rendered in the previous month.

Contract No. 25 667 4091 44019

STATE OF NEW MEXICO
ENVIRONMENT DEPARTMENT
PROFESSIONAL SERVICES CONTRACT AMENDMENT No. 01

THIS AGREEMENT is made and entered into by and between the State of New Mexico, **ENVIRONMENT DEPARTMENT**, hereinafter referred to as the "Agency," and **EASTERN RESEARCH GROUP, LLC** hereinafter referred to as the "Contractor."

IT IS MUTUALLY AGREED BETWEEN THE PARTIES THAT THE FOLLOWING PROVISIONS OF THE ABOVE-REFERENCED CONTRACT ARE AMENDED AS FOLLOWS:

Section 1, Scope of Work, is hereby amended to read as follows:

1. Scope of Work.

The Contractor shall provide the following additional services in **Scope of Work – Attachment A**, which by reference is incorporated herein.

The contract Rate Sheet is amended to add a Hearing Officer labor category with hourly rates for Years 2 through 4 of the contract.

All other articles of this contract remain the same.

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

By: John Rhoderick Date: 9/12/2025
James C. Kenney, Cabinet Secretary
Environment Department

By: Tatiana Engelmann Date: 9/12/2025
Tatiana Engelmann, Agency's Legal Counsel – Certifying legal sufficiency
Environment Department

By: Miranda Ntoko Date: 9/12/2025
Miranda Ntoko, Chief Financial Officer
Environment Department

By: Parik Deshukle Date: 9/12/2025
Eastern Research Group, Inc.

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

ID Number: **03-187153-00-4**

By: Ann Marie Lucero Date: 9/12/2025
Taxation and Revenue Department

This Agreement has been approved by the GSD Contracts Review Bureau:

By: Ray Maestas Date: 9/12/2025
GSD/SPD Contracts Review Bureau

Attachment A – Scope of Work

Overview

ERG will provide professional services to support the conduct of administrative and adjudicatory hearings for the New Mexico Environment Department ensuring transparency, fairness, and due process in all proceedings. ERG shall supply qualified personnel, hereafter referred to as “Hearing Officers,” who are independent and neutral, and who will preside over various types of hearings related to the Agency’s programs.

Scope of Services

ERG shall be responsible for providing all necessary personnel, services, and deliverables to fulfill the following tasks:

1. Work with the Secretary and Deputy Secretary of the Agency, the Agency Office of Public Facilitation, and the Boards and Commissions Administrator for the Agency to coordinate and schedule hearings as the need arises.
2. Conduct hearings in various locations (sometimes virtual), establish hearing dates, issue subpoenas, conduct pre-hearing conferences, accept testimony and written filings, administer oaths and affirmations, rule on motions and objections (both prior to and during the hearing) to assure an impartial hearing, and explain issues and applicable laws to parties involved.
3. Ensure that hearings are held in a timely manner and are conducted fairly and ethically and in accordance with all applicable procedural rules, statutes and guidelines.
4. Assure observation of all parties’ due process rights and offer the public a reasonable opportunity to be heard, when applicable.
5. Facilitate pre-hearing conferences to clarify issues and streamline the hearing process.
6. Conduct research and analyze complex statutes, rules, and case law to ensure decisions are legally sound and consistent with precedent. Interpret and apply technical evidence, including scientific and engineering reports, as relevant.
7. Advise the Secretary, designees, or Board or Commission as to evidence presented; advise the Secretary on legal issues surrounding specific proceedings, as necessary.
8. Prior to hearings, coordinate with Agency to comply with proper notice requirements and other tasks as necessary to conduct hearings.
9. During proceedings, the Hearing Officer will be expected to be capable of managing multiple participants, including the public. The Hearing Officer will also be expected to properly manage technical and/or expert testimony and public participation.
10. Consider evidence, argument, and research and prepare timely Hearing Officer Reports and recommended decisions for proposed final orders.
11. Work with Boards and Commissions Administrator and the Hearing Clerk to ensure proper administration of hearings, filings and other proceedings.
12. Provide scripts and other procedural assistance for Secretary or designees or Board/Commission members designated as Hearing Officers.

ERG shall ensure that all personnel assigned as Hearing Officers meet the following qualifications:

- J.D. from an accredited law school

- Licensed (active) to practice law in New Mexico
- Certificate of good standing in every jurisdiction in which they are admitted to practice law
- Expertise in the following legal areas: (a) Administrative Law; (b) Environmental Law; (c) Public Health Law; (d) Natural Resources Law; (e) Hearing Procedures (Judicial or Administrative); (f) Rules of Evidence; and (g) Rules of Civil Procedure.

Attachment B – Rate Sheet

Projected Personnel Expenses				
Labor Category Description	YEAR 1* Billing Rate	YEAR 2 Billing Rate	YEAR 3 Billing Rate	YEAR 4 Billing Rate
Principal Regulatory Engineer	\$218.25	\$228.07	\$238.33	\$249.05
Senior Regulatory Engineer	\$181.17	\$189.32	\$197.84	\$206.74
Intermediate Regulatory Engineer	\$132.30	\$138.25	\$144.47	\$150.97
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Principal Regulatory Scientist	\$201.18	\$210.23	\$219.69	\$229.58
Senior Regulatory Scientist	\$163.26	\$170.61	\$178.29	\$186.31
Intermediate Regulatory Scientist	\$139.55	\$145.83	\$152.39	\$159.25
Associate Regulatory Scientist	\$104.63	\$109.34	\$114.26	\$119.40
Principal Measurements Specialist	\$214.26	\$223.90	\$233.98	\$244.51
Senior Measurements Specialist	\$153.10	\$159.99	\$167.19	\$174.71
Intermediate Measurements Specialist	\$114.76	\$119.92	\$125.32	\$130.96
Associate Measurements Specialist	\$82.64	\$86.36	\$90.25	\$94.31
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Senior Climate Change & Sustainability Scientist	\$156.10	\$163.12	\$170.46	\$178.13
Principal Data Management & Analysis Specialist	\$221.52	\$231.49	\$241.91	\$252.80
Senior Data Management & Analysis Specialist	\$157.91	\$165.02	\$172.45	\$180.21
Intermediate Data Management & Analysis Specialist	\$125.36	\$131.00	\$136.90	\$143.06
Associate Data Management & Analysis Specialist	\$89.68	\$93.72	\$97.94	\$102.35
Principal Clean Transportation Expert	\$211.14	\$220.64	\$230.57	\$240.95
Senior Clean Transportation Expert	\$167.01	\$174.53	\$182.38	\$190.59
Intermediate Clean Transportation Expert	\$125.10	\$130.73	\$136.61	\$142.76
Associate Clean Transportation Expert	\$73.39	\$76.69	\$80.14	\$83.75
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Projected Personnel Expenses				
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Projects Facilitator II	\$103.12	\$107.76	\$112.61	\$117.68
Projects Facilitator I	\$79.33	\$82.90	\$86.63	\$90.53
Supervisory Projects Lead	\$222.92	\$232.95	\$243.43	\$254.38
Projects Lead	\$174.66	\$182.52	\$190.73	\$199.31
Legal Analysis Support	\$335.87	\$350.98	\$366.77	\$383.27
Hearing Officer		550.00	574.75	600.61

*An annual escalation rate of 4.50% prorated for Year 1. Billing rates are valid through August 31, 2025. An annual 4.5% escalation factor will be applied to subsequent contract years.

Potential Non-Personnel Expenses	
Travel expenses	Rate
Taxi/Uber (daily)	Actual Cost
Airfare (per ticket)	Actual Cost
Lodging plus taxes per diem (per night)	Actual Cost
Meals per diem (full day)	Actual Cost
Airport Parking (Daily rate)	Actual Cost
Ground Transportation (mileage)	Actual Cost
Parking	Actual Cost
Metro	Actual Cost
Tolls	Actual Cost
Privately owned vehicle (POV) Mileage	\$0.67 per mile
Equipment	Rate
Instrument purchases	Actual Cost
Consumables & Supplies	Actual Cost
Rentals	Actual Cost
Repairs	Actual Cost
Calibration Gases	Actual Cost
Field infrastructure/setup	Actual Cost
Miscellaneous Parts	Actual Cost
Computer/Software	Rate
Computer Supplies	Actual Cost
Computer Equipment	Actual Cost

Printing Costs	Actual Cost
Software access costs	Actual Cost
Amazon Web Services	Actual Cost
Annual subscriptions costs	Actual Cost
Data purchases	Actual Cost
Conference/Outreach	Rate
Translation services	Actual Cost
Interpretation services	Actual Cost
Language services	Actual Cost
Facility/Meeting room expenses	Actual Cost
Printing costs	Actual Cost
Photography costs	Actual Cost
Conference/Meeting supplies	Actual Cost
Paid media buys	Actual Cost
Stock images and video footage	Actual Cost
Postage/freight	Actual Cost
Audio/Visual Equipment Purchasing/Rental	Actual Cost
Advertising costs	Actual Cost
Potential Non-Personnel Expenses	
Other	Rate
Construction	Actual Cost
Design	Actual Cost
Laboratory Services	Actual Cost
Field Infrastructure installation	Actual Cost
Power Drop/Electrical installation	Actual Cost
Long distance telephone	Actual Cost
Training	Actual Cost

Re: [EXTERNAL] RE: Yucca Growth Infrastructures, LLC Permit Application 10883 (IDEA ID No. 41351 - PRN20260001) - Public Hearing Determination



From Nick Maxwell <inspector@sunshineaudit.com>
To Lopez, Luis, ENV <luis.lopez@env.nm.gov>
Cc Yardman-Frank, Brian, ENV <brian.yardman-frank@env.nm.gov>, Jones, Pamela, ENV <Pamela.Jones@env.nm.gov>, Susan Day <susan.day@erg.com>, Vigil, Christopher J, ENV <Christopher.J.Vigil@env.nm.gov>, <editor@thecandlepublishing.com>, <joe@progressnownm.org>, <max.shepherd@comcast.net>, <inspector@sunshineaudit.com>
Date 2026-07-10 11:18

Greetings,

I had seen dates in this email chain for a scheduling conference. I am available on both the 13th and the 15th. Please let me know if a time has already been decided upon.

Thanks,
Nick Maxwell

On 2026-07-10 11:07, Lopez, Luis, ENV wrote:

Hi Brian,

Do you have contact information for the permit applicant's counsel?

They will need to receive notification of the Scheduling Conference also.

Thank you!
Luis

Luis Lopez

Paralegal

Office of Public Facilitation

Direct: (505) 490-0186

From: Yardman-Frank, Brian, ENV <brian.yardman-frank@env.nm.gov>
Sent: Thursday, July 9, 2026 3:01 PM
To: max.shepherd@comcast.net; Lopez, Luis, ENV <luis.lopez@env.nm.gov>
Cc: Jones, Pamela, ENV <Pamela.Jones@env.nm.gov>; Susan Day <susan.day@erg.com>; Vigil, Christopher J, ENV <ChristopherJ.Vigil@env.nm.gov>
Subject: Re: [EXTERNAL] RE: Yucca Growth Infrastructures, LLC Permit Application 10883 (IDEA ID No. 41351 - PRN20260001) - Public Hearing Determination

Hello Mr. Hearing Officer,

I hope you are doing well. I just wanted to check to see if your new service contract is in place. If so, the Department is looking forward to setting up the scheduling conference.

Thank you,

Brian Yardman-Frank (he/him)

Assistant General Counsel, AQB

New Mexico Environment Department

Office of General Counsel

1190 St Francis Drive

Santa Fe, NM 87503

Cell Phone: 505-709-8671

brian.yardman-frank@env.nm.gov

www.env.nm.gov [1]

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From: max.shepherd@comcast.net <max.shepherd@comcast.net>
Sent: Tuesday, July 7, 2026 12:51 PM
To: Lopez, Luis, ENV <luis.lopez@env.nm.gov>; Yardman-Frank, Brian, ENV <brian.yardman-frank@env.nm.gov>; Vigil, Christopher J, ENV

<ChristopherJ.Vigil@env.nm.gov>

Cc: Jones, Pamela, ENV <Pamela.Jones@env.nm.gov>; Susan Day
<susan.day@erg.com>

Subject: [EXTERNAL] RE: Yucca Growth Infrastructures, LLC Permit
Application 10883 (IDEA ID No. 41351 - PRN20260001) - Public Hearing
Determination

You don't often get email from max.shepherd@comcast.net. Learn why
this is important [2] CAUTION: This email originated outside of our organization. Exercise
caution prior to clicking on links or opening attachments.

Luis,

I am currently waiting for Susan Day at ERG to complete my new service
contract. Until that contract is in place I am cannot perform any
hearing officer duties.

I have contacted Susan to try to get a date when my new contract will
be in place, and I will let you know as soon as I have that
information.

As you must know Susan is very good, so I expect things will happen
fairly quickly.

Max Shepherd

From: Lopez, Luis, ENV <luis.lopez@env.nm.gov>

Sent: Tuesday, July 07, 2026 11:58 AM

To: max.shepherd@comcast.net; Yardman-Frank, Brian, ENV
<brian.yardman-frank@env.nm.gov>; Vigil, Christopher J, ENV
<ChristopherJ.Vigil@env.nm.gov>

Cc: Jones, Pamela, ENV <Pamela.Jones@env.nm.gov>

Subject: RE: Yucca Growth Infrastructures, LLC Permit Application
10883 (IDEA ID No. 41351 - PRN20260001) - Public Hearing Determination

Dear Mr. Hearing Officer and Counsel:

Please see the file-stamped copies of a memorandum and notice attached
hereto.

This matter has been docketed in our office as: "AQB 26-57(P)".

Please let me know your availability to attend a virtual Scheduling
Conference on July 9th, 10th, 13th or 15th between 9:00AM and 4:30PM.

Thank you!
Luis

Luis Lopez

Paralegal

Office of Public Facilitation

Direct: (505) 490-0186

From: Yardman-Frank, Brian, ENV <brian.yardman-frank@env.nm.gov>

Sent: Thursday, July 2, 2026 5:18 PM

To: Jones, Pamela, ENV <Pamela.Jones@env.nm.gov>; Lopez, Luis, ENV
<luis.lopez@env.nm.gov>

Cc: Vigil, Christopher J, ENV <ChristopherJ.Vigil@env.nm.gov>

Subject: Re: Yucca Growth Infrastructures, LLC Permit Application
10883 (IDEA ID No. 41351 - PRN20260001) - Public Hearing Determination

Hello Again Pamela and Luis,

Apologies for the repeat and late emails. Here is the signed Notice of
Docketing. The Notice also serves to appoint the hearing officer and
delegate decision authority to Deputy Secretary John Rhoderick.

Thank you,

Brian Yardman-Frank (he/him)

Assistant General Counsel, AQB

EXHIBIT D

New Mexico Environment Department

Office of General Counsel

1190 St Francis Drive

Santa Fe, NM 87503

Cell Phone: 505-709-8671

brian.yardman-frank@env.nm.gov

www.env.nm.gov [1]

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From: Yardman-Frank, Brian, ENV
Sent: Thursday, July 2, 2026 4:32 PM
To: Jones, Pamela, ENV <Pamela.Jones@env.nm.gov>; Lopez, Luis, ENV <Luis.Lopez@env.nm.gov>
Cc: Vigil, Christopher J, ENV <ChristopherJ.Vigil@env.nm.gov>
Subject: Yucca Growth Infrastructures, LLC Permit Application 10883 (IDEA ID No. 41351 - PRN20260001) - Public Hearing Determination

Hello Pamela and Luis,

Please see the attached Public Hearing Determination regarding the above titled Air Quality permit application. This is a new permit application that was submitted after the applicant in AQB 26-26(P) withdrew those previous applications. Could you please create a new docketed matter for this application and close the AQB-26-26 one?

I am currently drafting the Notice of hearing, appointment of hearing officer, and delegation order for Secretary Kenney to sign this afternoon. Let me know if you have any questions for me or if I can be of any help.

Brian Yardman-Frank (he/him)

Assistant General Counsel, AQB

New Mexico Environment Department

Office of General Counsel

1190 St Francis Drive

Santa Fe, NM 87503

Cell Phone: 505-709-8671

brian.yardman-frank@env.nm.gov

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Links:

[1] <http://www.env.nm.gov/>

[2] <https://aka.ms/LearnAboutSenderIdentification>

**STATE OF NEW MEXICO
ENVIRONMENTAL IMPROVEMENT BOARD**

IN THE MATTER OF PROPOSED NEW REGULATION,
20.2.50 NMAC – Oil and Gas Sector – Ozone Precursor Pollutants

No. EIB 21-27 (R)

DIRECT TESTIMONY OF SUSAN DAY AND ELIZABETH BISBEY-KUEHN

Susan Day

My name is Susan Day, and I am the Senior Economist with ERG, Inc. I have been asked to provide testimony in support of the New Mexico Environment Department’s (“Department” or “NMED”) proposed new air quality regulations at 20.2.50 NMAC (“Part 50”). My testimony is set forth in Sections I.A and III below, and addresses the compilation of the data used to develop the proposed definition of “small business facility” in 20.2.50.7.OO.

Elizabeth Bisbey-Kuehn

My name is Elizabeth Bisbey-Kuehn. I am the Bureau Chief of the Department’s Air Quality Bureau (“Bureau”). My testimony is set forth in Sections I.B, II, and IV below, and addresses the basis for the proposed definition of “small business facility” in 20.2.50.7.OO, and the regulatory requirements for such facilities in Section 20.2.50.125.

I. QUALIFICATIONS

A. Susan Day

I hold a BA in Economics from Colby College and an MS in Resource Economics from the University of Rhode Island. I am an economist and project manager with 34 years of experience conducting and managing economic, regulatory, and data analyses that support environmental regulations under the Toxic Substances Control Act, Emergency Planning and Community Right-to-Know Act, Pollution Prevention Act, Clean Water Act, and the Safe Drinking Water Act. I have

1 also conducted benefit cost analyses in support of worker health and safety regulations for the U.S.
2 Occupational Safety and Health Administration. My work includes preparing pre-rulemaking
3 options analyses; estimating regulatory compliance costs; characterizing potential benefits
4 associated with regulatory and nonregulatory options; evaluating small business impacts in
5 accordance with Small Business Regulatory Enforcement Fairness Act requirements; tracking,
6 organizing, and summarizing public comments; and preparing information collection requests.

7 My full background and qualifications are set forth in my resume, which is marked as
8 NMED Exhibit 103.

9 **B. Elizabeth Bisbey-Kuehn**

10 A summary of my background and qualifications is provided in my other pre-filed
11 testimony at NMED Exhibit 5. My full background and qualifications are set forth in my resume,
12 which is marked as NMED Exhibit 6.

13 **II. SMALL BUSINESS FACILITY DEFINITION (Kuehn)**

14 Under the proposed rule, a small business facility is defined as a source that is
15 independently owned or operated by a company that is not a subsidiary or a division of another
16 business, that employs no more than 10 employees at any time during the calendar year, and that
17 has a gross annual revenue of less than \$250,000. Employees include part-time, temporary, or
18 limited-service workers.

19 **III. DATA ANALYSIS FOR SMALL BUSINESS FACILITY DEFINITION (Day)**

20 The small business definition proposed in 20.2.50.7.OO includes, among other factors, an
21 indication of the position of the facility (highest level) in the overall corporate hierarchy. For the
22 purposes of the analysis conducted by ERG, the term “global ultimate parent company” is used
23 to define the highest level in the corporate family tree. As discussed below, in conducting this

1 analysis ERG identified the global ultimate parent associated with a list of New Mexico Oil and
2 Gas well owners/operators potentially subject to the proposed rulemaking. Additionally, ERG
3 obtained information on the revenues and employment associated with these global ultimate
4 parent companies.

5 **A. Master List of Well Owners/Operators, and Other Affected Facilities**

6 NMED provided ERG with the names and addresses for well owners/operators and other
7 affected facilities compiled from the NMED Equipment Data and NM Oil Conservation Division
8 data.¹ Using this data, ERG created a master list of 535 well owners/operators and
9 owners/operators of other affected facilities (hereafter collectively referred to as
10 “owners/operators”) by combining the two lists and eliminating duplicate entries. *See* NMED
11 Exhibit. 104 – Owner Address List Final Spreadsheet.

12 Global Ultimate Parent Data

13 As input to the determination of whether facilities can be classified as “small business
14 facilities” under Part 50, information on ownership by a global ultimate parent company and the
15 revenue and employment data linked to each global ultimate parent company is required. Using
16 information on industry classification signified by North American Industry Classification
17 System (“NAICS”) code, as well as name and address, facilities can be identified and linked to
18 global ultimate parent companies in commercially available business databases such as Dun and
19 Bradstreet (“D&B”). Information on revenues and employment for global ultimate parent
20 companies can also be obtained from D&B. D&B is a fee for service operation, typically dealing
21 in transactions for large scale queries (e.g., an entire industry sector). Due to the limited size of
22 the universe of facilities covered by Part 50, it was cost effective for ERG to purchase the needed

¹ http://gotech.nmt.edu/gotech/Petroleum_Data/allwells.aspx

1 assistance and a tiered fee schedule that gives a 50% reduction in initial and annual permit fees.
2 These programs were developed because small businesses frequently lack the technical expertise
3 and financial resources necessary to evaluate complex regulations, to finance the initial and
4 ongoing compliance requirements, and to pay the full cost of recurring permitting fees.

5 **A. Use of Data Compiled by ERG**

6 In developing the definition of small business facility in Part 50, the Department
7 evaluated the report prepared by ERG and sorted the companies by the annual Global Ultimate
8 (GULT) Parent revenue and staffing levels. The thresholds established in the rule were chosen
9 because the data compiled by ERG indicated that those thresholds balanced the costs of
10 compliance with Part 50 against a company's ability to finance the costs of compliance, and
11 would not put the majority of companies at risk of becoming insolvent and therefore cause wells
12 to be abandoned without remediation.

13 The Department estimated the annual average cost of compliance for a representative
14 well site facility to determine the number of companies that could finance those compliance
15 costs. The representative facility was assumed to have facility-wide emissions greater than 5
16 TPY VOC, requiring quarterly LDAR monitoring under Section 20.2.50.116; a storage vessel
17 emitting greater than 2 TPY, requiring a control device, and an annual inspection of the storage
18 vessel under Section 20.2.50.123. The annual average cost of compliance for the representative
19 facility was estimated at \$37,945 (based on an average cost of \$32,400 to control a storage
20 vessel, \$4,385 for quarterly LDAR monitoring, and \$1,160 for an annual inspection). Because
21 the cost estimates are based on the average cost of compliance for companies operating
22 throughout the sector, the cost estimates are conservative and may overestimate the true cost of
23 compliance for an individual facility. The Department then ranked the companies by GULT

1 revenue from highest to lowest revenue and screened the companies that reported \$1,000,000 or
2 less and \$250,000 or less to determine how many of those companies had per well site revenue
3 less than the cost of compliance for the representative facility. Based on this review, the
4 Department determined that 96 companies reporting a GULT revenue of \$1,000,000 and less had
5 a calculated revenue per well less than \$37,945. These companies operate approximately 9,277
6 wells or 18% of the total wells (9,277/50,866). The Department determined that 54 companies
7 reporting a GULT revenue of \$250,000 and less had a calculated revenue per well less than
8 \$37,945. These companies operate approximately 4,638 wells or 9% of the total wells
9 (4,638/50,866).

10 The Department then determined the average annual cost of compliance for a facility
11 meeting the small business definition at \$4,385 (based on a conservative quarterly LDAR
12 monitoring requirement). According to the report, few companies have a revenue of less than
13 \$4,385 per well.

14 Based on the above, the Department established \$250,000 as the revenue threshold to
15 meet the small business definition. This is based on the need to require robust emission reduction
16 requirements for a majority of wells and facilities; to tailor the requirements for companies with
17 low annual revenue; and to reduce the potential early abandonment of wells that will result in
18 increased uncontrolled air emissions and significant public cost to remediate those wells.

19 Based on the ERG report and the proposed definition, a total of 82 companies that
20 operate 4,638 wells would qualify as small business facilities under the thresholds established in
21 the rule. Therefore, under the proposed definition, 15% of the total number of companies
22 (82/535) subject to Part 50 would be considered owners/operators of small business facilities,

ERG Opens New Office in Santa Fe, New Mexico



ERG is pleased to announce the opening of a new office in Santa Fe, New Mexico, to expand our support to New Mexico's state agencies and other clients in the region. For the past few years, ERG and its sister company PG Environmental have supported the New Mexico Environment Department (NMED) in developing air pollution control regulations for the oil and gas sector, evaluating the National Pollutant Discharge Elimination System (NPDES) wastewater permitting program, and developing and implementing a COVID-19 wastewater sampling program. With a local presence in Santa Fe, ERG and PG are now positioned to build on this work and support New Mexico's transportation, air quality, and other environmental and public health initiatives.

Contact Joanna Kind (Joanna.Kind@erg.com) for more information or to schedule a visit.

[Newer](#) [Older](#)

**STATE OF NEW MEXICO
ENVIRONMENTAL IMPROVEMENT BOARD**

IN THE MATTER OF PROPOSED AMENDMENTS TO
20.2.91 NMAC – *New Motor Vehicle Emission Standards*

No. EIB 23-56 (R)

**NEW MEXICO ENVIRONMENT DEPARTMENT’S
NOTICE OF INTENT TO PRESENT DIRECT TECHNICAL TESTIMONY**

Pursuant to 20.1.1.302 NMAC and the *Pre-Hearing Order* issued by the Hearing Officer on September 20, 2023, the New Mexico Environment Department (“Department” or “NMED”) submits this Notice of Intent to Present Direct Technical Testimony for the hearing in this matter currently scheduled to begin on November 13, 2023.

1. Entity for whom the witnesses will testify

The witnesses will testify for the Climate Change Bureau of the Environmental Protection Division of the Department.

2. Identity of witnesses

The Department will call the following witnesses to present technical testimony at the hearing:

Claudia Borchert is the Bureau Chief of the Department’s Climate Change Bureau. Her resume is attached as NMED Exhibit 2. Ms. Borchert’s direct written testimony is attached as NMED Exhibit 1.

Dr. Angela Raso is an Environmental Scientist and Specialist (Advanced) in the Department’s Climate Change Bureau. Her resume is attached as NMED Exhibit 8. Dr. Raso’s direct written testimony is attached as NMED Exhibit 7.

Michelle Miano is the Division Director of the Department's Environmental Protection Division. Her resume is attached as NMED Exhibit 15. Ms. Miano's direct written testimony is attached as NMED Exhibit 14.

Bonney Hughes is the Planning and Operations Program Manager of the Department's Climate Change Bureau. Her resume is attached as NMED Exhibit 36. Ms. Hughes' written direct testimony is attached as NMED Exhibit 35.

Kolt Vaughn is an Environmental Scientist and Specialist (Advanced) with the Department's Climate Change Bureau. His resume is attached as NMED Exhibit 48. Mr. Vaughn will be available as a sworn witness to answer questions but will not be providing written direct testimony.

John Koupal is a Senior Scientist with Eastern Research Group, Inc. and a consultant for the Department's Climate Change Bureau. His resume is attached as NMED Exhibit 46. Mr. Koupal's direct written testimony is attached as NMED Exhibit 45.

3. Estimated duration of direct oral testimony of witnesses

Per the Pre-Hearing Order, each witness will have 30 minutes to provide a summary of their direct written testimony.

4. List of exhibits to be offered by the Department at the hearing

A list of exhibits that the Department intends to offer into evidence in this matter is attached to this Notice. The Department reserves the right to call any additional witnesses to provide rebuttal testimony and introduce and move for admission of any other exhibit in support of rebuttal testimony, at the hearing in this matter.

NMED Exhibit 36	Resume of Bonney Hughes	4
NMED Exhibit 37	Notice of Proposed Rulemaking, published in English and Spanish	7
NMED Exhibit 38	Notice of Proposed Rulemaking, Published	26
NMED Exhibit 39	Notice of Proposed Rulemaking, Other Ways Notice was Provided	20
NMED Exhibit 40	NMED Transportation Web Page	5
NMED Exhibit 41	NMED E-Bulletins - Notice and Public Meetings	25
NMED Exhibit 42	NMED Press Releases	4
NMED Exhibit 43	Outreach to Land Grants, Council of Governments, Colonias, and US Environmental Protection Agency	3
NMED Exhibit 44	Information Provided to Pueblos, Tribes, and Nations	16
NMED Exhibit 45	Direct Testimony of John Koupal	18
NMED Exhibit 46	Resume of John Koupal	2
NMED Exhibit 47	New Mexico Advanced Clean Cars II, Advanced Clean Trucks, and Heavy-Duty Omnibus Rules: Assessment of Economic, Health and Environmental Impacts	84
NMED Exhibit 47a	Documentation Supporting Emissions Analysis for NM ACCII ACT HDO ERG Report	330
NMED Exhibit 47b	Documentation Supporting SRIA Economic Analysis for NM ACCII ACT HDO ERG Report	250
NMED Exhibit 47c	Documentation Supporting REMI Economic Analysis for NM ACCII ACT HDO ERG Report	4
NMED Exhibit 48	Resume of Kolt Vaughn	1

1 already answered it.

2 MR. MAXWELL: You would agree there's no public
3 hearings or community feedback sessions that directly
4 supported that claim?

5 MS. MIANO: I disagree. In the governor's first
6 term the governor convened the Climate Change Task Force,
7 an interagency task force that I describe throughout my
8 written testimony and that is supported by exhibits in the
9 record demonstrating years of feedback and working with
10 different members throughout the state to inform climate
11 change policy for the administration, and the Advanced
12 Clean Cars II rule is part of that -- were part of those
13 discussions and part of that plan.

14 MR. MAXWELL: Thank you.

15 Mr. Koupal, you previously worked for Nissan
16 Motor Company, correct?

17 MR. KOUPAL: That is correct.

18 MR. MAXWELL: In your role at Nissan, is it true
19 that you dealt with environmental and energy regulatory
20 issues?

21 MR. KOUPAL: That is correct.

22 MR. MAXWELL: Would you agree that your work at
23 Nissan involved advocating for the company's interests in
24 regulatory matters?

25 MR. KOUPAL: That is correct.

1 MR. MAXWELL: And during your tenure at Nissan,
2 how did the company's interests in regulatory matters
3 interact with environmental policies?

4 MR. KOUPAL: I feel like that is a matter of
5 confidentiality within the business that I'm not at
6 liberty to answer.

7 MR. MAXWELL: Thank you. You are currently a
8 vice president at eastern research group, an environmental
9 consulting firm, correct?

10 MR. KOUPAL: That is -- that is correct.

11 MR. MAXWELL: Does ERG primarily provide
12 services to government clients on environmental issues?

13 MR. KOUPAL: I can't answer the specific
14 contribution. I -- I know that a good chunk -- a good
15 chunk of our work, yes, is not only environmental, but in
16 general for the public sector.

17 MR. MAXWELL: Can you tell me how your
18 experience at Nissan has influenced your approach to the
19 analysis and testimony you provided at ERG?

20 MR. KOUPAL: My testimony is drawing from my
21 entire career, informed by work within the EPA working
22 with auto companies, working within Nissan, and working
23 with clients within ERG, so I cannot parse out the
24 specific contribution of Nissan to my current testimony.

25 MR. MAXWELL: What steps have you taken to

1 ensure objectivity in your current analysis and testimony
2 given your past association with an auto manufacturer?

3 MR. KOUPAL: ERG is very committed to conflict
4 of interest -- avoiding any conflict of interest, and it's
5 something that is part of our contractual relationships
6 with clients and is not influenced by any employment with
7 an auto company over two decades ago.

8 MR. MAXWELL: Thank you for your time. No
9 further questions from me.

10 HEARING OFFICER ORTH: Thank you very much,
11 Mr. Maxwell.

12 Mr. Domenici, do you have any questions at all
13 of this panel?

14 MR. DOMENICI: Madam Hearing Officer and members
15 of the board, may I proceed?

16 HEARING OFFICER ORTH: Yes, please.

17 MR. DOMENICI: I'm going to first direct
18 questions to Ms. Miano, and I'd like to see if I -- if you
19 could put up Exhibit -- NMED Exhibit 15.

20 So -- so that's -- that is your resume, and I'm
21 going to go ahead ask my -- start with my questions while
22 we're trying to get that.

23 So if I understand your resume, until -- your
24 most recent job prior to NMED was with the -- I'll call
25 them the Barnhouse law firm; is that correct?

AQB 26-57 (P) - Maxwell 8/12 Inquiry to NMED



From Nick Maxwell <inspector@sunshineaudit.com>
To <brian.yardman-frank@env.nm.gov>, <ChristopherJ.Vigil@env.nm.gov>, <inspector@sunshineaudit.com>
Cc 'Mariel Nanas' <mnanasi@newenergyeconomy.org>, <mlor@liuna.org>, <chris@fayerbergdodd.com>, <dobbin.cc@gmail.com>, <editor@thecandlepublishing.com>, <joe@progressnownm.org>, 'izemke' <izemke@smwlu49.org>, 'Gail Evans' <GEvans@biologicaldiversity.org>, 'Chakeres, Nathaniel, OSE' <Nathaniel.Chakeres@ose.nm.gov>, 'Chen, Yiwei, EDD' <yiwei.chen@edd.nm.gov>, <andre@ualocal412.org>, <mlocke@nmelc.org>, <ejantz@nmelc.org>, 'Jennifer Bradfute' <jennifer@bradfutelaw.com>, 'david' <david@bradfutelaw.com>, <courtenaye@ualocal412.org>, <joan@ualocal412.org>, 'Carlos Romo' <cromo@williamsweese.com>, 'Esperanza Chairez Uriarte' <esperanza@yuccanm.org>, <alfonso@ibew611.org>, <markgtrujillo@ibew611.org>, <smaeznm@gmail.com>, 'Ogaz, Zachary, ENV' <zachary.ogaz@env.nm.gov>, <jbiever@williamsweese.com>, <Darrell.deaguero@liuna16.org>, 'Colin Cox' <ccox@biologicaldiversity.org>, <kelsea@roblesrael.com>
Date 2026-08-12 15:32

Chris and Brian,

I serve the following inquiry concerning NMED's role in the selection and contractual arrangement applicable to Hearing Officer Max Shepherd.

Public records show that NMED Professional Services Contract No. 25-667-4091-44019 with Eastern Research Group, LLC ("ERG") was amended in September 2025 to add a Hearing Officer labor category and to provide that ERG would supply "independent and neutral" Hearing Officers. In this proceeding, Secretary Kenney appointed Mr. Shepherd as Hearing Officer on July 2, 2026. In subsequent scheduling correspondence, Mr. Shepherd stated that he could not perform Hearing Officer duties until Susan Day at ERG completed his "new service contract."

In light of those records, please advise whether NMED, including the Secretary, Deputy Secretary, Office of General Counsel, Office of Public Facilitation, Air Quality Bureau, or other NMED personnel:

1. requested, recommended, nominated, selected, or approved Mr. Shepherd specifically for appointment in AQB 26-57(P), or whether ERG independently selected and assigned him;
2. approved or otherwise authorized Mr. Shepherd's individual contractual relationship with ERG for purposes of providing Hearing Officer services;
3. has authority or a practical role in approving, rejecting, replacing, evaluating, renewing, or otherwise affecting Mr. Shepherd's individual Hearing Officer assignment or his eligibility for future NMED Hearing Officer work; or
4. reviews, approves, accepts, or otherwise acts upon billing attributable to Mr. Shepherd's individual Hearing Officer services.

Given the rapidly developing prehearing schedule, I would appreciate a response as soon as reasonably practicable. In any event, I presently request a response on or before August 28, 2026. That date is intended as a reasonable courtesy period rather than a waiver of the need for an earlier response should developments in the proceeding require the issue to be addressed sooner. I therefore reserve the ability to request an earlier response on reasonable notice if circumstances warrant.

Thank you,

Mr. Nicholas R. Maxwell
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