
Federal Clean Water Act Section 319 Grant Federal Fiscal Year 2025: Watershed Project Implementation

Request for Applications (RFA)

Attachment C: Memorandum of Agreement Template for Local Public Bodies

**MEMORANDUM OF AGREEMENT
BETWEEN
THE NEW MEXICO ENVIRONMENT DEPARTMENT
AND
[INSERT DEPARTMENT OR AGENCY]**

[TO BE USED WHEN MONEY IS EXCHANGED BETWEEN AGENCIES]

This **MEMORANDUM OF AGREEMENT** (“Agreement”) is entered into by and between the **State of New Mexico, Environment Department**, hereinafter referred to as the “Department” or “NMED,” and **[Insert Name of Public Entity]**, hereinafter referred to as “[Insert Abbreviated Name of Public Entity],” and is effective as of the date of the last signatory authority.

WHEREAS, NMED is an executive agency of the State of New Mexico created under the Department of Environment Act, NMSA 1978, Sections 9-7A-1 to -15, and is authorized by [Insert Statute or Regulation] to enter into this Agreement to/for [Insert Purpose];

WHEREAS, [Insert Public Entity] is a public agency created under the [Insert Enabling Act], and is authorized by the [Insert United States Congress or the New Mexico Legislature] for the performance of this Agreement under [Insert enabling statute], to implement the project titled [Insert Project Title], hereinafter referred to as the “Project”;

WHEREAS, this agreement is exempt from the provisions of the Procurement Code in accordance with the NMSA 1978, Section 13-1-98(A); and

WHEREAS, NMED and [Insert Public Entity] desire to enter into this Agreement to accomplish the Project in the most cost-effective and administratively efficient manner.

NOW, THEREFORE, the parties mutually agree as follows:

1. Purpose.

The purpose of the Project is to: [Insert Purpose].

2. Scope of Work.

[Insert Public Entity] shall complete the Project in accordance with the Scope of Work [incorporated into this Agreement *OR* shown in Attachment A]. [*Choose one option. Note: If Scope of Work is included as an attachment, delete Subparagraphs A and B below.*]

A. [Insert Public Entity] shall perform the following work:

B. Services will be performed (AT)(WITHIN)(LOCATION).

3. Disbursement of Funds.

A. NMED shall transfer to [Insert Public Entity] funds in an amount not to exceed \$[Insert Dollar Amount] to reimburse [Insert Public Entity] for costs actually incurred in carrying

out the Project in accordance with the Scope of Work.

B. [Insert Public Entity] shall submit to NMED invoices [monthly, quarterly, after the completion of each deliverable, etc.], including receipts, for costs actually incurred in carrying out the Project in accordance with the Scope of Work. Invoices/receipts shall be submitted to:

[Insert Project Officer]
[Insert Bureau]
New Mexico Environment Department
P.O. Box 5469
Santa Fe, New Mexico 87502-5469
[Insert Bureau Phone Number]
[Insert Bureau E-Mail]

4. Term.

This Agreement shall not take effect until accepted and signed by all parties. This Agreement shall terminate on [Insert Date], unless terminated pursuant to paragraphs 9 or 13.

5. Reports.

[Insert Public Entity] shall provide reports to NMED, including but not limited to task completion progress, reasons for delay of task implementation (if any), expenditures on Project implementation, and results of Project implementation. Reports will be provided to NMED [Insert Monthly, Quarterly, Annually, etc.]. Upon request, such reports shall also be provided to members of the public.

6. Strict Accountability.

[Insert Public Entity] shall maintain fiscal records consistent with generally accepted accounting principles (“GAAP”) and shall account for all receipts and disbursements of funds transferred pursuant to this Agreement. Along with NMED, [Insert Public Entity] shall be strictly accountable for all receipts and disbursements under this Agreement through the end of the fiscal year following the termination of the Agreement.

7. Access to Records.

NMED, [Insert Public Entity], the New Mexico Department of Finance and Administration, or the State Auditor, through any authorized representative, shall be granted access to and have the right to examine all books, papers, or documents related to this Agreement.

8. Amendment.

This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto. Neither NMED nor [Insert Public Entity] is obligated to fund any changes and/or modifications not approved in writing by both parties.

9. Termination.

A. Termination. This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the proposed termination date. This Agreement may be terminated immediately upon written notice to [Insert Public Entity] if [Insert Public Entity] becomes unable to perform the services within the Scope of Work, as determined by NMED or if, during the term of this Agreement, [Insert Public Entity] or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of state funds or due to the Appropriations paragraph, paragraph 13, herein. **THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE STATE'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY [INSERT PUBLIC ENTITY]'S DEFAULT/ BREACH OF THIS AGREEMENT.**

B. Termination Management. Immediately upon receipt by either NMED or [Insert Public Entity] of notice of termination of this Agreement, [Insert Public Entity] shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of NMED; 2) comply with all directives issued by NMED in the notice of termination as to the performance of work under this Agreement; and 3) take such action as NMED shall direct for the protection, preservation, retention or transfer of all property titled to NMED and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by [Insert Public Entity] with contract funds shall become property of NMED upon termination and shall be submitted to NMED as soon as practicable.

10. 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, Section 38-3-1(G). By execution of this Agreement, [Insert Public Entity] 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. Any procurement made by [Insert Public Entity] pursuant to this Agreement shall be made in accordance with applicable procurement policies and procedures, applicable federal laws and regulations, and applicable provisions in the Scope of Work.

11. Liability.

Each party shall be liable for its own actions incurred as a result of its negligence, acts or omissions in connection with this Agreement. *[If Federal Department: Liability of the (Name of Federal Public Entity) shall be governed by the Federal Tort Claims Act, 28 U.S.C. §§ 2671-2680.]* Any liability incurred by *[If MOU is with federal government: NMED] [If MOU is with state public entity: either party]* in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, Sections 41-4-1 to -30.

12. Equal Opportunity Compliance.

A. [Insert Public Entity] shall abide by all state and federal laws and regulations pertaining to equal employment opportunity. In accordance with these laws and regulations, [Insert Public Entity] shall assure that no person in the United States shall, on the grounds of race, color, national origin, sex, age, sexual preference or handicap, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity related to this Agreement. If [Insert Public Entity] is found not to be in compliance with these requirements during the life of the Agreement, [Insert Public Entity] agrees to take appropriate steps to correct

these deficiencies.

B. Any person, group, or organization that signs this Agreement shall comply with the following federal statutes: Title VI of the Civil Rights Act of 1964, Section 13 of the Federal Water Pollution Control Act Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972 and their implementing regulations at 40 C.F.R. Parts 5 and 7, where applicable.

13. Appropriations.

The terms of this Agreement are contingent upon sufficient appropriations and authorization from the [Choose one or both: New Mexico State Legislature and the U.S. Environmental Protection Agency]. If authorization or sufficient appropriations are not granted, this Agreement shall be terminated upon written notice from NMED. The decision as to whether sufficient appropriations/authorizations are available is at the sole discretion of NMED and shall be final and binding.

14. Participation in Similar Projects.

This Agreement in no way restricts [Insert Public Entity] or NMED from entering into other Agreements with other public or private agencies, organizations, and individuals, or participating in similar projects.

15. Authority.

The representatives of the public entities below represent that they have the authority to bind their department or agency, and that no further action, resolution, or approval is necessary to enter into this Agreement.

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT:

STATE OF NEW MEXICO, ENVIRONMENT DEPARTMENT

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

By: _____ Date: _____
Miranda Ntoko, Chief Financial Officer
New Mexico Environment Department

Approved as to Form and Legal Sufficiency:

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

[INSERT PUBLIC ENTITY]

By: _____ Date: _____
(Signatory Authority)