
Federal Clean Water Act Section 319 Grant Federal Fiscal Year 2022: Implementation

Solicitation for Applications (SFA)

Attachment B: Sample Sub-Grant Agreement

SUB-GRANT AGREEMENT

**NEW MEXICO ENVIRONMENT DEPARTMENT
CLEAN WATER ACT SECTION 319
WATERSHED PROJECT IMPLEMENTATION FUNDS
FEDERAL ASSISTANCE AGREEMENT C9 996101-20**

NMED SUB-GRANT: [AGREEMENT NUMBER] – [Sub-Recipient name], [City], [State]

- I.** This SUB-GRANT AGREEMENT (“Agreement”) is entered into between the New Mexico Environment Department of the State of New Mexico, hereinafter referred to as “NMED” or the “Agency,” and [Sub-Recipient Name], hereinafter referred to as the “Grantee” or the “Sub-Recipient,” and is effective as of the date that it is executed by NMED (“Effective Date”).

Listed below are the parties’ contacts:

Grantee’s Name and Address: [Sub-Recipient Organization Name] [Address] [City, State, Zip Code]	Agency’s Name and Address: New Mexico Environment Department Surface Water Quality Bureau Watershed Protection Section P.O. Box 5469 Santa Fe, NM 87502-5469
Grantee’s Contact Information: [First name, last name of point of contact] [Sub-Recipient Organization Name] [Address] [City, State, Zip Code] Phone: [10-digit phone number] Fax: [10-digit fax number, if available] Email: [email address for point of contact]	Agency’s Contact Information: Abraham Franklin, Program Manager 505-827-2793 abraham.franklin@state.nm.us [Name], Project Manager [10-digit phone number] [email address] Annette Romero, Financial Manager Surface Water Quality Bureau 505-827-2158 Annette.Romero3@state.nm.us

II. INCORPORATED DOCUMENTS

Attached and incorporated herein as part of this Agreement are the following documents:

Attachment A: Project Work Plan

The terms of this Agreement shall control the interpretation and enforcement of the incorporated documents. These incorporated documents are enforceable to the same extent as this Agreement.

III. PROJECT DESCRIPTION

The purpose of the Project is to [enter a brief summary of the project, in about three sentences].

IV. GRANT AMOUNT

NMED has received an award of federal funds from the U.S. Environmental Protection Agency (“EPA”) under Section 319 of the Clean Water Act (“Section 319”) to support watershed project implementation in New Mexico. Subject to the terms and conditions set forth in this Agreement, NMED, as the pass-through entity, agrees to reimburse the Grantee for approved costs to complete the Project in a principal amount not to exceed [spell out the grant amount then enter it numerically in dollars and cents] (\$##.##). This amount represents no more than 60% of the total Project cost as itemized in the Project Budget found in Attachment A. The remaining 40% or more of the Project cost shall be provided by the Grantee as itemized the Project Budget as the matching amount required pursuant to 33 U.S.C. Section 1329(h).

By executing this Agreement and accepting grant funds, the Grantee is a sub-recipient of the Clean Water Act Section 319 grant and is subject to 2 C.F.R. part 200 and Clean Water Act Section 319 grant requirements enumerated in Section VII of this Agreement.

V. TERM OF AGREEMENT

This Agreement shall not take effect until accepted and signed by all parties. This Agreement shall terminate on [Month day, year], unless terminated pursuant to Paragraph IX.A., Termination, or Paragraph IX.B., Appropriations, or unless extended pursuant to Paragraph IX.Q., Amendment.

VI. FINANCIAL REQUIREMENTS

- A.** For satisfactory performance of all tasks required under the terms of this Agreement, the Agency shall disburse grant funds to the Grantee upon receipt of disbursement requests for approved, actual costs incurred a total amount not to exceed [amount of the sub grant]. The Agency shall disburse to the Grantee upon receipt of a grant disbursement request with a detailed statement of accounting of funds expended for activities undertaken to complete the Project. Grant disbursement requests shall include a report of matching non-federal funds and in-kind labor pursuant to Section 319. Grant disbursement requests shall be certified by the Grantee authenticating that the requests accurately reflect tasks completed, amount due, remaining Agreement balance, and NMED Agreement Number. All expenses shall be actual rather than estimated and shall be listed on the grant disbursement request as charged. All grant disbursement requests shall be accompanied by a Disbursement Summary form

provided to the Grantee by the Agency. The Grantee may submit grant disbursement requests at its discretion during the term of this Agreement, but not more than once in any 30-day period.

- B.** Allowed expenses for grant disbursement include those expenses itemized in Attachment A. Unallowable expenses shall be paid by Grantee.
- C.** Within 30 days after the date the Agency receives written notice from the Grantee that grant disbursement is requested for activities performed, the Agency shall issue a written certification of complete or partial approval or rejection of the activities. If the Agency finds that the activities completed are not approvable, it shall, within 30 days after the date of receipt of written notice from the Grantee that grant disbursement is requested, provide to the Grantee a letter of exception explaining the defect or objection to the activities along with details of how the Grantee may proceed to provide remedial action. Upon certification by the Agency that the activities have been approved, grant disbursement shall be tendered to the Grantee within 30 days after the date of certification.
- D.** Final project invoice payments will be withheld until the project's Notice of Completion and Final Report are received by NMED.
- E.** All tasks performed for which grant funds are used and the receipt of any grant funds under this Agreement are conditioned upon the Grantee's full compliance with this Agreement and all incorporated documents.
- F.** Grantee's actual costs shall not exceed any of the expenses itemized in the Project Budget without the prior written approval of NMED.
- G.** The Grantee agrees to maintain financial and programmatic records pertaining to all matters relative to this Agreement in accordance with generally accepted accounting principles and procedures in a manner that assures proper and efficient administration of the grant and to retain all of its records and supporting documentation applicable to this Agreement for three years following the termination of this Agreement. All such records and supporting documents shall be made available, upon request, for inspection or audit by the NMED or its representatives.

VII. PROJECT CONDITIONS

- A.** The Grantee agrees to the following Project Conditions:
 - 1. Grantee shall commence work on the Project within 60 days of the Effective Date of this Agreement, and shall achieve Project Completion in accordance with the Project Schedule and Project Budget.
 - 2. The Grantee shall verify that the Project is complete by submitting a Notice of Completion and Final Report to NMED. The Notice of Completion and Final Report shall contain certification that the Project is completed in accordance with the terms and conditions of this Agreement, and shall record the actions taken, resources committed, and problems encountered in completing the Project, if any,

in accordance with applicable EPA guidance. Project Completion is the date that NMED approves in writing the Notice of Completion, Final Report, and applicable watershed-based plan revision benchmarks.

3. All monitoring data generated during the course of the Project will be provided to NMED.
- B.** The Grantee shall provide NMED with copies of all bids, contracts, and subcontracts for all work required under the Agreement.
- C.** The Project shall have a Project Manager approved in writing by NMED.

VIII. EPA GRANTEE CONDITIONS

The Grantee is a Sub-recipient of the Clean Water Act Section 319 grant and is subject to the following EPA Sub-recipient Conditions and Federal Grant Requirements.

EPA Sub-recipient Conditions:

1. GENERAL FEDERAL REQUIREMENTS:

- a) The Sub-recipient shall comply with all applicable federal and state laws and requirements, including but not limited to the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. part 200, and Quality Assurance, 2 C.F.R. part 1500.11.
- b) The Sub-recipient agrees to comply with Executive Order 13202 (Feb. 22, 2001, 66 Fed. Reg. 11225) of February 17, 2001, entitled “Preservation of Open Competition and Government Neutrality Towards Government Contractors’ Labor Relations on Federal and Federally-funded Construction Projects,” as amended by Executive Order 13208 (April 11, 2001, 66 Fed. Reg. 18717) of April 6, 2001, entitled “Amendment to Executive Order 13202, Preservation of Open Competition and Government Neutrality Towards Government Contractors’ Labor Relations on Federal and Federally Funded Construction Projects.”
- c) The Sub-recipient agrees to federal cross-cutting requirements including, but not limited to; MBE/WBE requirements found at 40 C.F.R. 33; OSHA Worker Health and Safety Standard 29 C.F.R. 1910.120; the Uniform Relocation Act; National Historic Preservation Act; Endangered Species Act; permits required by Section 404 of the Clean Water Act; Executive Order 11246, Equal Employment Opportunity, and implementing regulations at 41 C.F.R. 60-4; Contract Work Hours and Safety Standards Act, as amended (40 U.S.C. 327-333); the Anti Kickback Act (40 U.S.C. 276c); and Section 504 of the Rehabilitation Act of 1973, as implemented by Executive Orders 11914 and 11250.

2. **PROCUREMENT STANDARDS:**

The Sub-recipient shall use its own procurement procedures which reflect applicable state and local laws and regulations, provided that the procurements conform to applicable federal law, the standards identified in this section, and if applicable, 2 C.F.R. 200.317 to - 200.326, which establishes consistency and uniformity among federal agencies in the administration of grants and Cooperative Agreements to non-federal entities.

The Sub-recipient shall ensure that every purchase order or other contract includes any clause required by federal statutes under 2 C.F.R. part 200 and executive orders and their implementing regulations. Other sub-recipients shall also follow this section.

3. **DRUG-FREE WORKPLACE CERTIFICATION FOR ALL EPA SUB-RECIPIENTS:**

The Sub-recipient of this Clean Water Act Section 319 Grant shall make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in Title 2 C.F.R. 1536.10 – 1536.505. Additionally, in accordance with these regulations, the Sub-recipient shall identify all known workplaces under its federal awards and keep this information on file during the performance of the award. The consequences for violating this condition are detailed under Title 2 C.F.R. 1536.500 and 1536.505. Sub-recipients may access the Code of Federal Regulations Title 2 Part 1536 at:

<https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>.

4. **LOBBYING AND LITIGATION:**

The chief executive officer of this Sub-recipient shall ensure that no grant funds awarded under this Agreement are used to engage in lobbying of the federal government or in litigation against the United States unless authorized under existing law. The Sub-recipient shall abide by 2 C.F.R. 200.450, which prohibits the use of federal grant funds for litigation against the United States or for lobbying or other political activities.

5. **RESTRICTIONS ON LOBBYING:**

The Sub-recipient agrees to comply with Title 40 CFR Part 34, New Restrictions on Lobbying. In accordance with the Byrd Anti-Lobbying Amendment, any Sub-recipient who makes a prohibited expenditure under Title 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.

6. **RECYCLING AND WASTE PREVENTION;**

In accordance with the polices set forth in EPA Order 1000.25 the Sub-recipient agrees to use recycled paper and double sided printing for all reports which are prepared as a part of this Agreement and will be delivered to EPA. This requirement does not apply to reports prepared on forms supplied by EPA,

or to Standard Forms, which are printed on recycled paper and are available through the General Services Administration.

7. SINGLE AUDITS:

In accordance with 2 C.F.R. 200.501 and the Single Audit Act, the Sub-recipient agrees to obtain a single audit from an independent auditor if it expends \$750,000 or more in total federal funds in any fiscal year. Within nine months after the end of a Sub-recipient's fiscal year or 30 days after receiving the report from the auditor, the Sub-recipient shall submit a copy of the SF-SAC and a Single Audit Report Package. For fiscal periods 2008 and beyond, the Sub-recipient SHALL submit a copy of the SF-SAC and a Single Audit Report Package, using the Federal Audit Clearinghouse's Internet Data Entry System. Complete information on how to accomplish the 2008 and beyond Single Audit Submissions is available on the Federal Audit Clearinghouse Web site: <https://harvester.census.gov/facweb/>.

8. SUSPENSION AND DEBARMENT:

Sub-recipient shall fully comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Responsibilities of Participants Regarding Transactions (Doing Business with Other Persons)." Sub-recipient is responsible for ensuring that any lower tier covered transaction as described in Subpart B of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Covered Transactions," includes a term or condition requiring compliance with Subpart C. Sub-recipient is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. Sub-recipient acknowledges that failing to disclose the information as required at 2 CFR 180.335 may result in the delay or negation of this Agreement, or pursuance of legal remedies, including suspension and debarment. Sub-recipient may access the System for Award Management (SAM) at <https://www.sam.gov/portal/SAM/##11>. This term and condition supersedes EPA Form 5700-49, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters."

9. TRAFFICKING VICTIM PROTECTION ACT OF 2000:

To implement requirements of Section 106 of the Trafficking Victims Protection Act of 2000, as amended, the following provisions apply to this award:

- a) EPA or NMED may unilaterally terminate this Agreement, without penalty, if a Sub-recipient that is a private entity:
 - i) Is determined to have violated an applicable prohibition in the Prohibition Statement below; or
 - ii) Has an employee who is determined by the Agency official authorized to terminate the Agreement to have violated an applicable prohibition in the Prohibition Statement through conduct that is either:
 - (1) Associated with performance under this award; or

- (2) Imputed to the Sub-recipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR Part 180, “OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Non-procurement),” as implemented by EPA at 2 CFR Part 1532. The Sub-recipient shall inform EPA or NMED immediately of any information Sub-recipient receives from any source alleging the violation of a prohibition in the Prohibition Statement below.
- b) EPA’s or NMED’s right to terminate unilaterally that is described in paragraph (a) of this section implements Section 106(g) of the Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. § 7104(g)), and is in addition to all other remedies for noncompliance that are available to NMED or EPA under this Agreement.
 - c) The Sub-recipient shall include the requirements of the Prohibition Statement below in any award Sub-recipient makes to a private entity.
 - d) Sub-recipient shall inform NMED immediately of any information Sub-recipient receives from any source alleging a violation of a prohibition in the Prohibition Statement.

Prohibition Statement:

Sub-recipient under this Agreement, and Sub-recipient’s employees may not engage in severe forms of trafficking in persons during the period of time that the award is in effect; procure a commercial sex act during the period of time that the Agreement is in effect; use forced labor in the performance of the Agreement; or engage in acts that directly support or advance trafficking in persons.

10. FALSE CLAIM:

The Sub-recipient shall promptly refer to EPA’s Inspector General any credible evidence that a principal, employee, agent, Sub-recipient Contractor, subcontractor, grant recipient, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving funds provided under this grant to the Sub-recipient.

The Sub-recipient is advised that providing false, fictitious, or misleading information with respect to the receipt and disbursement of EPA grant funds may result in criminal, civil, or administrative fines and/or penalties.

11. PAYMENT TO CONSULTANTS:

EPA participation in the salary rate (excluding overhead) paid to individual consultants retained by Sub-recipient or by Sub-recipient’s Contractor or the Contractor’s subcontractors shall be limited to the maximum daily rate for a Level IV of the Executive Schedule (formerly GS-18), to be adjusted annually. This limit applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. As of January 1, 2019, the limit is \$640.38 per day and \$80.04 per hour. This rate does not include

transportation and subsistence costs for travel performed (the Sub-recipient shall pay these in accordance with their normal travel reimbursement practices).

Sub-agreements with firms for services which are awarded using the procurement requirements in 2 C.F.R. 200, as applicable, are not affected by this limitation unless the terms of the contract provide the Sub-recipient with responsibility for the selection, direction, and control of the individuals who will be providing services under the contract at an hourly or daily rate of compensation. 2 C.F.R. § 200.318.

12. UTILIZATION OF SMALL, MINORITY AND WOMEN'S BUSINESS ENTERPRISES:

- a) General Compliance, 40 CFR Part 33.
Sub-recipient agrees to comply with the requirements of EPA's Program for Utilization of Minority and Women's Business Enterprises ("MBE/WBE") in procurement under assistance agreements, contained in 40 CFR Part 33.
- b) Six Good Faith Efforts, 40 C.F.R. Part 33, Subpart C.
Pursuant to 40 C.F.R. 33.301, the Sub-recipient agrees to make the following good faith efforts whenever procuring construction, equipment, services, and supplies under an EPA financial assistance agreement, and to require that the Contractor, subcontractors, and grant recipients also comply. Records documenting compliance with the six good faith efforts shall be retained:
 - i) Require that Disadvantaged Business Enterprises ("DBEs") are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian tribal, state, and local government sub-recipients, this shall include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.
 - ii) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
 - iii) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian tribal, state, and local government sub-recipients, this shall include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
 - iv) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.

- v) Use the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce in finding DBEs.
 - vi) If the Contractor awards subcontracts, require the Contractor to take the steps in paragraphs i) through vi) of this section.
- c) MBE/WBE Reporting, 40 C.F.R. §§ 33.502 and 33.503.
The Sub-recipient agrees to complete and submit EPA Form 5700-52A, "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements and Interagency Agreements," beginning with the federal fiscal year reporting period the Sub-recipient receives the award, and continuing until the Project is completed. Reporting is only required if the total dollar amount of the financial assistance agreements from EPA in the current federal fiscal year is \$250,000 or more. Only procurements with certified MBE/WBEs are counted toward a Sub-recipient's MBE/WBE accomplishments. The reporting period is annual, the reporting period ends September 30th and the report shall be submitted within 30 days of the end of the reporting period, October 30th.

Sub-recipients of financial assistance agreements that capitalize revolving loan programs agree to require entities receiving identified grant funds to submit their MBE/WBE participation reports on an annual basis to the financial assistance agreement recipient, rather than to EPA. Reports shall be sent to the Regional MBE/WBE Coordinator. Final MBE/WBE reports shall be submitted within 90 days after the Project period of the grant ends. The sub-recipient's sub-grant cannot be officially closed without all MBE/WBE reports. EPA Form 5700-52A may be obtained from the EPA Office of Small Business Program's Home Page on the Internet at <https://www.epa.gov/resources-small-businesses>.

- d) Contract Administration Provisions, 40 C.F.R. 33.302.
The Sub-recipient agrees to comply with the contract administration provisions of 40 C.F.R. 33.302.
- e) Bidders List, 40 C.F.R. 33.501 (b) and (c).
The Sub-recipient shall create and maintain a bidders list. Please see 40 C.F.R. 33.501 (b) and (c) for specific requirements and exemptions.

13. INELIGIBLE USES OF THE GRANT FUNDS FOR THE GRANTEE- Please see Subpart E of 2 C.F.R. Part 200, 2 C.F.R. 200.400 to 200.475, for general allowable direct and indirect cost guidelines.

IX. GENERAL CONDITIONS OF STATE OF NEW MEXICO

A. Termination

This Agreement may be terminated by the Agency upon written notice delivered to Grantee at least 30 days prior to the intended date of termination. Except as

otherwise allowed or provided under this Agreement, the Agency's sole liability upon such termination shall be to pay for approvable work performed prior to the Grantee's receipt of the notice of termination; provided, however, that neither party may nullify obligations already incurred for performance or failure to perform prior to the date of termination. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Grantee, if the Grantee becomes unable to perform the services provided for in the grant, as determined by the Agency or if, during the term of this Agreement, the Grantee or any of its officers, employees, or agents is indicted for fraud, embezzlement, or other crime due to misuse of grant funds. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE AGENCY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE GRANTEE'S DEFAULT/BREACH OF THIS AGREEMENT.

Immediately upon receipt by the Grantee of notice of termination of this Agreement, the Grantee 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 and any non-expendable personal property or equipment purchased by the Grantee with Agreement funds shall be dispensed pursuant to Subpart D of 2 C.F.R. Part 200. On the date the notice of termination is received, the Grantee shall furnish to the Agency a complete, detailed inventory of non-expendable personal property purchased with funds provided under the existing and previous Agency agreements with the Grantee; the property listed in the inventory report shall include client records and a final closing of the financial records and books of accounts which were required to be kept by the Grantee under this Agreement regarding financial records

B. Appropriations

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

C. Status of Grantee

The Grantee and its agents and employees are sub-grantees of a federal grant are not employees of the State of New Mexico. The Grantee 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 Grantee acknowledges that all sums received hereunder are

reportable by the Grantee for tax purposes, including without limitation, self-employment and business income tax. The Grantee agrees not to purport to bind the State of New Mexico unless the Grantee has express written authority from the State of New Mexico to do so, and then only within the strict limits of that authority.

D. Assignment

The Grantee 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.

E. No Warranty by NMED

For purposes of this Agreement, NMED's inspection, review, and approval of the Project are only for the purposes of determining compliance with applicable state regulations implemented by NMED. NMED approval shall not be interpreted as any warranty or guarantee of the work or workmanship of the Grantee, its Contractor, or its Contractor's subcontractors. Approval of the plans and design of the Project means only that plans are complete under the terms of this Agreement. NMED will use its best efforts to bring to the Grantee's attention any obvious defects in the Project's design, materials or workmanship, but all such defects and their correction shall be the responsibility of the Grantee, its Contractors, and the Contractor's subcontractors. Any questions raised by NMED shall be resolved exclusively by the Grantee, its Contractor, and the Contractor's subcontractors, who shall remain responsible for the completion and success of the Project.

F. Compliance with Applicable Laws

The Grantee warrants, represents, and agrees that it, and its Contractor, the Contractor's subcontractors, employees, and representatives shall comply with all applicable State and federal laws and regulations, and the requirements set forth in this Agreement or any amendment to the Agreement.

G. Grantee Responsibility

If the Grantee seeks additional funding from any other entity for the Project, the Grantee agrees that the Grantee is solely responsible for satisfying any requirements arising as a result of funding from that other entity.

H. No False Statements

The Grantee warrants that the internal financial statements provided to NMED by the Grantee for approval do not contain false material statements, representations, certifications, or omissions of material fact.

I. NEPA

For any phase of the Project which requires National Environmental Policy Act (NEPA) review, NMED shall not disburse any funds for that phase until the appropriate NEPA review is completed.

J. Disadvantaged Businesses

The Grantee agrees to take the affirmative action necessary to assure qualified disadvantaged business enterprises are used when possible as sources for construction and service.

K. OSHA

The Grantee agrees that it shall take affirmative action to ensure that the Project is constructed in compliance with federal and state occupational health and safety laws and that inspectors authorized by NMED's Occupational Health and Safety Bureau (OSHA) shall be given free access to the Project sites.

L. Fiscal Records

The Grantee agrees to make all fiscal records related to the Project available to NMED, EPA, the United States General Accounting Office, and the State Auditor for inspection and audit.

M. Grant Restrictions

Disbursements of the Grant shall be used for the Project and for no other purpose.

N. Subdivision Act

The Grant shall not be used by the Grantee on any project constructed in fulfillment, in whole or in part, of requirements made of a subdivider by the provisions of the Land Subdivision Act, NMSA 1978, Sections 47-5-1 to 47-5-8.

O. Separate Account

The Grantee agrees to maintain separate Project accounts in accordance with generally accepted government accounting principles and, if requested by NMED, to conduct an audit of the financial records pertaining to the Project.

P. Conflict of Interest; Governmental Conduct Act

The Grantee warrants that it presently has no interest, and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under this Agreement. The Grantee certifies that the requirements of the Governmental Conduct Act, NMSA 1978, Sections 10-16-1 to 10-16-18, regarding contracting with a public officer or state employee or former state employee have been followed.

Q. Amendment

This Agreement and the documents incorporated herein shall not be altered, changed or amended except by instrument in writing executed by the parties hereto.

R. 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 Agreement. No prior agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless set forth in this Agreement.

S. Penalties for Violation of Law

The Procurement Code, NMSA 1978, Sections 13-1-28 to 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.

T. Equal Opportunity Compliance

The Grantee 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 Grantee 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 the Grantee is found not to be in compliance with these requirements during the term of this Agreement, the Grantee agrees to take appropriate steps to correct these deficiencies.

U. 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, the Grantee 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. The terms of this Agreement shall not serve to waive or otherwise limit the Grantee's right to raise any applicable claims of privilege, including the attorney-client privilege or work product doctrine.

V. Workers Compensation

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

W. Records and Financial Audit

The Grantee shall maintain detailed time and expenditure records that indicate the date, time, nature, and cost of services rendered during the Agreement's term and retain them for a period of three years from the date of final payment under this Agreement. The records shall be subject to inspection by the Agency, the Department of Finance and Administration, 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.

X. New Mexico Employees Health Coverage

If the Grantee has, or grows to, six or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six month period during the term of this Agreement, the Grantee certifies, by signing this Agreement, to:

- a) have in place, and agree to maintain for the term of this Agreement, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2008, if the expected annual value in the aggregate of any and all agreements between the Grantee and the State exceed \$1,000,000 or;
- b) have in place, and agree to maintain for the term of this Agreement, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2009, if the expected annual value in the aggregate of any and all contracts between the Grantee and the State exceed \$500,000 or;
- c) have in place, and agree to maintain for the term of this Agreement, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2011, if the expected annual value in the aggregate of any and all contracts between the Grantee and the State exceed \$250,000.
- d) The Grantee 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.
- e) The Grantee agrees 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: www.hsd.state.nm.us/Centennial_Care.aspx.

Y. Liability

As between the parties, each party acknowledges that it shall be responsible for claims or damages arising from personal injury or damage to persons or property to the extent they result from negligence of its employees. The liability of the parties shall be subject in all cases to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, Sections 41-4-1 et seq., as amended.

Z. Indemnification

The Grantee shall defend, indemnify, and hold harmless the Agency and the State of New Mexico from all actions, proceedings, claims, demands, costs, damages, attorneys' fees, and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement caused by the negligent act or failure to act of the Grantee its Contractor; the Contractor's subcontractors; or their respective officers, employees, and agents.

X. 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:
[Name], Project Manager
New Mexico Environment Department
[Bureau]
[Program or Section]
P.O. Box 5469
Santa Fe, NM 87502-5469
[10-digit phone number]
[email address]

To the Grantee:
[First name, last name of point of contact]
[Sub-Recipient Organization Name]
[Address]
[City, State, Zip Code]
Phone: [10-digit phone number]
Fax: [10-digit fax number, if available]
Email: [email address for point of contact]

XI. AUTHORITY

If the Grantee is other than a natural person, the individual(s) signing this Agreement on behalf of the Grantee represents and warrants that he/she has the power and authority to bind the Grantee, and that no further action, resolution, or approval from the Grantee is necessary to enter into this agreement.

The parties have executed this Agreement on the dates set forth by their respective names.

Grant Issued and Administered by:

James C. Kenney, Cabinet Secretary
New Mexico Environment Department

Date

[Name], [Title]
[Sub-recipient organization name]

Date