

**STATE PURCHASING DIVISION
OF THE
GENERAL SERVICES DEPARTMENT
AND
NEW MEXICO ENVIRONMENT DEPARTMENT**

REQUEST FOR PROPOSALS (RFP)

2019 River Stewardship Program



RFP#

SPD#90-667-18-27657

NMED RFP #19 667 2060 0001

Release Date: December 20, 2018

Due Date: February 21, 2019



New Mexico Environment Department
Surface Water Quality Bureau

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I. INTRODUCTION

A. PURPOSE OF THIS REQUEST FOR PROPOSALS

The purpose of this procurement is to solicit proposals to establish contractual obligations through competitive negotiations for the procurement of services to design and construct projects that improve surface water quality or river habitat state-wide.

B. BACKGROUND INFORMATION

The 2018 New Mexico Legislature appropriated funding to the New Mexico Environment Department (NMED) “to plan, design and construct projects to improve surface water quality and river habitat state-wide.” This appropriation was in response to the NMED’s request to fund the River Stewardship Program to address a critical surface water quality need for New Mexico and to ensure that New Mexico continues to receive federal Clean Water Act funds. The state funds were appropriated in House Bill 306. The reversion date for the funds is June 30, 2022, and projects must be completed prior to the reversion date. In the event that other funds become available for the River Stewardship Program during the term of this RFP, such funds may also be used for projects selected through this RFP. The use of such funds will be governed by the language of the appropriation.

A comprehensive proposal will include all aspects of managing a physical project: developing, designing, obtaining permits, constructing, implementing, managing finances, verifying results, and reporting. Examples of project tasks that will be included within individual scopes of work shall include, but not limited to:

- surveying, environmental monitoring, and earthmoving;
- constructing and fencing;
- removing non-native vegetation and planting native vegetation; and
- Physical activities may also be accompanied by changes in land or water management practices.

Successful River Stewardship Program proposals will:

- describe projects located instream, on the banks, on the flood plain, and/or within riparian areas along streams and rivers that improve surface water quality and/or stream habitat;
- demonstrate a clear need for restoration action based on a local, regional or state planning document;
- demonstrate the support and commitment of the community and applicable stakeholders such local governments, natural resource agencies and landowners/land managers;
- describe a scientifically sound and sustainable project;
- provide clear, measurable, achievable objectives; and
- propose a budget that is justified, fair and provides good value for project work.

Types of eligible potential Offerors interested in submitting a Project Proposal in response to this RFP include the following:

- soil/water conservation districts and irrigation districts,
- Indian Nations, Pueblos and Tribes
- towns, cities, and counties,
- for-profit and not-for profit organizations, and Indian Nations, Pueblos and Tribes.

State and federal agencies are not eligible for funding through this RFP.

C. SCOPE OF PROCUREMENT

Through this procurement, NMED seeks to establish intergovernmental agreements in which government to government exchanges of funds shall be executed through a Capital Outlay Agreement or Professional Service Contract for projects throughout the State of New Mexico that improve surface water quality or river habitat.

NMED is procuring a mix of professional services, general services and goods necessary for the completion of the projects. The procurement will result in the award of several Capital Outlay Agreements and/ or Professional Service Contracts.

The successful Offer(s) under contract will perform services that include project development and management, design, permitting and implementation of restoration techniques, and pre-and post-implementation monitoring. Work plans shall be attached to the executed Capital Outlay Agreement or the Professional Service Contract and are required to contain all pertinent information regarding work activities, schedules, progress reports, and deliverables. All work plans developed by the successful Offeror(s) must be approved by the Agency prior to initiation of any work.

The successful Offeror(s) are required to register as a vendor for the state with the New Mexico Department of Finance and Administration and either:

1. be a registered business with the New Mexico Taxation and Revenue Department; or
2. be a non-profit organization registered with the US Internal Revenue Service and NM Attorney General's office; or be a local government entity.

Proposals will be selected based on the evaluation criteria in this RFP.

D. PROCUREMENT MANAGER

1. 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: Karen Menetrey, Procurement Manager
Address: New Mexico Environment Department
Surface Water Quality Bureau
Harold Runnels Building, N2050
1190 St. Francis Drive (87505)

P.O. Box 5469, Santa Fe, NM 87502-5469
Telephone: (505) 827-0194
Fax: (505) 827-0160
Email: karen.menetrey@state.nm.us

2. All deliveries of responses via express carrier must be addressed as follows (except for electronic submissions through SPD's electronic procurement system eProNM):

Name: Karen Menetrey, Procurement Manager
c/o Michael Saavedra
RFP Name: 2019 River Stewardship Program SPD #90-667-18-27657
Address: State Purchasing Division
1100 St. Francis Dr. Room 2016
Santa Fe, New Mexico 87505

3. **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 SPD. **Protests of the solicitation or award must be delivered by mail to the Protest Manager.** A Protest Manager has been named in this Request for Proposals, pursuant to NMSA 1978, § 13-1-172, **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. Emailed protests will not be considered as properly submitted nor will protests delivered to the Procurement Manager be considered properly submitted.

E. DEFINITION OF TERMINOLOGY

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

“**Agency**” means the State Purchasing Division of the General Services Department or that State Agency sponsoring the Procurement action.

“**Authorized Purchaser**” means an individual authorized by a Participating Entity to place orders against this contract.

“**Award**” means the final execution of the contract document.

“**Business Hours**” means 8:00 AM thru 5:00 PM Mountain Standard or Mountain Daylight Time, whichever is in effect on the date given.

“**Close of Business**” means 5:00 PM Mountain Standard or Daylight Time, whichever is in use at that time.

“**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 NMSA 1978 57-3-A-1 to 57-3A-7. See NMAC 1.4.1.45. As one example, no information that could be obtained from a source outside this request for proposals can be considered confidential information.

“**Contract**” means any agreement for the procurement of items of tangible personal property, services or construction.

“**Contractor**” means any business having a contract with a state agency or local public body.

“**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.

“**Desirable**” the terms "may", "can", "should", "preferably", or "prefers" to identify a desirable or discretionary item or factor.

“**Electronic Version/Copy**” means a digital form consisting of text, images or both readable on computers or other electronic devices that includes all content that the Original and Hard Copy proposals contain. The digital form may be submitted using a compact disc (cd) or USB flash drive. The electronic version/copy can NOT be emailed.

“**Evaluation Committee**” means a body appointed to perform the evaluation of Offerors’ proposals.

“**Evaluation Committee Report**” means a report prepared by the Procurement Manager and the Evaluation Committee for contract award. It will contain written determinations resulting from the procurement.

“**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.

“**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.

“**IT**” means Information Technology.

“**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 will result in the rejection of the Offeror’s proposal.

“**Minor Technical Irregularities**” means anything in the proposal that does not affect the price, quality, and quantity or any other mandatory requirement.

“Multiple Source Award” means an award of an indefinite quantity contract for one or more similar services, items of tangible personal property or construction to more than one Offeror.

“Offeror” is any person, corporation, or partnership who chooses to submit a proposal.

“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.

“Procurement Manager” means any person or designee authorized by a state agency or local public body to enter into or administer contracts and make written determinations with respect thereto.

“Procuring Agency” means all State of New Mexico agencies, commissions, institutions, political subdivisions and local public bodies allowed by law to entertain procurements.

“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.

“Redacted” means a version/copy of the proposal with the information considered confidential as defined by NMAC 1.4.1.45 and defined herein and outlined in Section II.C.8 of this RFP blacked out BUT NOT omitted or removed.

“Request for Proposals (RFP)” means all documents, including those attached or incorporated by reference, used for soliciting proposals.

“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.

“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.

“Sealed” means, in terms of a non-electronic submission, that the proposal is enclosed in a package which is completely fastened in such a way that nothing can be added or removed. Open packages submitted will not be accepted except for packages that may have been damaged by the delivery service itself. The State reserves the right, however, to accept or reject packages where there may have been damage done by the delivery service itself. Whether a package has been damaged by the delivery service or left unfastened and should or should not be accepted is a determination to be made by the Procurement Manager. By submitting a proposal, the Offeror

agrees to and concurs with this process and accepts the determination of the Procurement Manager in such cases.

“**SPD**” means State Purchasing Division of the New Mexico State General Services Department.

“**Staff**” means any individual who is a full-time, part-time, or an independently contracted employee with the Offerors’ company.

“**State (the State)**” means the State of New Mexico.

“**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 state purchasing agent but does not include local public bodies.

“**State Purchasing Agent**” means the director of the purchasing division of the general services department.

“**Statement of Concurrence**” means an affirmative statement from the Offeror to the required specification agreeing to comply and concur with the stated requirement(s). This statement shall be included in Offerors proposal. (E.g. “We concur”, “Understands and Complies”, “Comply”, “Will Comply if Applicable” etc.)

“**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.

“**Written**” means typewritten on standard 8 ½ x 11-inch paper. Larger paper is permissible for charts, spreadsheets, etc.

F. 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 the electronic version of this document through your own internet connection or by contacting the Procurement Manager and scheduling an appointment. The library contains information listed below:

Procurement Regulations and Request for Proposal – RFP instructions:

<https://www.generalservices.state.nm.us/statepurchasing/active-procurements.aspx>.

River Stewardship Program webpage:

<https://www.env.nm.gov/swqb/RiverStewards/>

II. CONDITIONS GOVERNING THE PROCUREMENT

This section of the RFP contains the schedule, description and conditions governing the procurement.

A. SEQUENCE OF EVENTS

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

| Action | Responsible Party | Due Date |
|--|------------------------------------|------------------------------|
| 1. Issue RFP | State Purchasing Division | December 20, 2018 |
| 2. Acknowledgement of Receipt Form | Potential Offerors | January 30, 2019 |
| 3. Deadline to submit Questions | Potential Offerors | January 30, 2019 |
| 4. Response to Written Questions | NMED and State Purchasing Division | February 6, 2019 |
| 5. <i>Submission of Proposal</i> | Potential Offerors | February 21, 2019 |
| 6. Proposal Evaluation | Evaluation Committee | February 22-March 8, 2019 |
| 7. Selection of Finalist(s) / Letters to finalists and courtesy letters to non-finalists | Evaluation Committee | March 12, 2019 |
| 8. Best and Final Offers | Finalist Offerors | March 14, 2019 |
| 9. Oral Presentations/Field Site Visits – Optional TBA | Finalist Offerors | March 25-27, 2019 |
| 10. Finalize Contract / Project Agreements | NMED / Finalists | March 31, 2019 |
| 11. Contract Awards | NMED/Finalists | May 15, 2019 |
| 12. Protest Deadline | State Purchasing Division | 15 days after contract award |

B. EXPLANATION OF EVENTS

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

1. Issuance of RFP

This RFP is being issued on behalf of the **New Mexico Environment Department** on **December 20, 2018**.

2. Acknowledgement of Receipt

Potential Offerors should hand deliver, return by facsimile or registered or certified mail the "Acknowledgement of Receipt of Request for Proposals Form" that accompanies this document, APPENDIX A, to have their organization placed on the procurement distribution list. The form should be signed by an authorized representative of the organization, dated and returned to the Procurement Manager by 3:00 pm Mountain Standard Time (MST) on January 30, 2019.

The procurement distribution list will be used for the distribution of written responses to questions. Failure to return the Acknowledgement of Receipt form shall constitute a presumption of receipt and rejection of the RFP, and the potential Offeror's organization name shall not appear on the distribution list.

3. 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 Mountain Standard Time/Daylight Time as indicated in the sequence of events. All written questions must be addressed to the Procurement Manager as declared in Section I, Paragraph 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.

4. Response to Written Questions

Potential Offerors may submit written questions to the Procurement Manager as to the intent or clarity of this RFP until the date indicated Section II.A. Table 1, Sequence of Events until by 3:00 pm Mountain MST All written questions must be addressed to the Procurement Manager as declared in Section I.B. Questions shall be clearly labeled and shall cite the Section(s) in the RFP or other document which form the basis of the question.

An e-mail copy will be sent to all Offeror's that provide Acknowledgement of Receipt Forms described in Section II.B.2 before the deadline.

Written responses to written questions will be distributed as indicated in the sequence of events to all potential Offerors whose organization name appears on the procurement distribution list. An e-mail copy will be sent to all Offeror's that provide Acknowledgement of Receipt Forms described in II.B.2 before the deadline. Additional

copies will be posted to:

http://www.generalservices.state.nm.us/statepurchasing/ITBs_RFPs_and_Bid_Tabulation.aspx.

5. Submission of Proposal

ALL OFFEROR PROPOSALS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE PROCUREMENT MANAGER OR DESIGNEE NO LATER THAN 3:00 PM MOUNTAIN STANDARD TIME/DAYLIGHT TIME ON **February 21, 2019**. Proposals received after this deadline will not be accepted. The date and time of receipt will be recorded on each proposal.

Proposals must be addressed and delivered to the Procurement Manager at the address listed in Section I, Paragraph D2 (except for electronic submissions through SPD's electronic procurement system). Proposals must be sealed and labeled on the outside of the package to clearly indicate that they are in response to the 2019 River Stewardship Program **SPD# 90-667-18-27657**. Proposals submitted by facsimile, or other electronic means other than through the SPD electronic e-procurement system, will not be accepted.

A public log will be kept of the names of all Offeror organizations that submitted proposals. Pursuant to NMSA 1978, § 13-1-116, 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.

6. Proposal Evaluation

An Evaluation Committee will perform the evaluation of proposals. This process will take place as indicated in the 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.

7. Selection of Finalists

The Evaluation Committee will select, and the Procurement Manager will notify the finalist Offerors as per schedule II. A. Table 1, Sequence of Events or as soon as possible. A schedule for the oral presentation and demonstration will be determined at this time.

8. 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 Table 1., Sequence of Events or as soon as possible. Best and final offers may also be clarified and amended at finalist Offeror's oral presentation and demonstration.

9. Oral Presentations/Field Site Visit Schedule

Finalist Offerors may be required to conduct an oral presentation or field site visit at a location to be determined as per schedule Section II.A., Table 1, Sequence of Events or as soon as possible. Whether or not oral presentations/field site visits will be help is at the discretion of the Evaluation Committee and SPD.

10. Finalize Contractual Agreements

Any Contractual agreement(s) resulting from this RFP will be finalized with the most advantageous Offeror(s) as per schedule Section II. A. Table 1, Sequence of Events or as soon thereafter as possible. This date is subject to change at the discretion of the State Purchasing Division or relevant Agency Procurement office. In the event mutually agreeable terms cannot be reached with the apparent most advantageous Offeror in the time 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

After After review of the Evaluation Committee Report and the signed contractual agreement, the Agency Procurement office will award as per the schedule in Section II. A. Table 1, Sequence of Events, or as soon as possible thereafter. This date is subject to change at the discretion of the State Purchasing Division or relevant Agency Procurement office.

The contract shall be awarded to the Offeror (or Offerors) whose proposals are most advantageous to the State of New Mexico and the New Mexico Environment Department, taking into consideration the evaluation factors set forth in this RFP. The most advantageous proposal may or may not have received the most points. The award is subject to appropriate Department and State approvals.

12. Protest Deadline

Any protest by an Offeror must be timely and in conformance with NMSA 1978, § 13-1-172 and applicable procurement regulations. As a Protest Manager has been named in this Request for Proposals, pursuant to NMSA 1978, § 13-1-172, 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 award of contracts and will end at 5:00 pm Mountain Standard Time/Daylight Time (as appropriate) 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 delivered to:

Mark Hayden-Legal Services Bureau Chief
State Purchasing Division

1100 South St. Francis Drive, Room 2016
Santa Fe, New Mexico 87505

Protests received after the deadline will not be accepted.

C. GENERAL REQUIREMENTS

1. Acceptance of Conditions Governing the Procurement

Potential Offerors must indicate their acceptance of the Conditions Governing the Procurement section in the letter of transmittal. Submission of a proposal constitutes acceptance of the Evaluation Factors contained in Section V of this RFP.

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. The 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.

7. Proposal Offer Firm

Responses to this RFP Responses to this RFP, including proposal prices for services, will be considered firm for three hundred sixty (360) days after the due date for receipt of proposals or three hundred (300) 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

- A. Proposals will be kept confidential until negotiations and the award are completed by the Agency. At that time, all proposals and documents pertaining to the proposals will be open to the public, except for material that is clearly marked proprietary or confidential. The Procurement Manager will not disclose or make public any pages of a proposal on which the potential Offeror has stamped or imprinted "proprietary" or "confidential" subject to the following requirements:
- B. Proprietary or confidential data shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal.
- C. Confidential data is restricted to:
 - 1. confidential financial information concerning the Offeror's organization;
 - 2. and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, NMSA 1978 § 57-3A-1 to 57-3A-7.
 - 3. PLEASE NOTE: 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 data for which an Offeror has made a written request for confidentiality, the State Purchasing Division or the Agency shall examine the Offeror's 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 confidential data.

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 Agency through the Procurement Manager or in this RFP should be used as the basis for the preparation of Offeror proposals.

15. Contract Terms and Conditions

The contract between an agency and a contractor will follow the format specified by the Agency and contain the terms and conditions set forth in the Sample Contract Appendix C. However, the contracting agency reserves the right to negotiate provisions in addition to those contained in this RFP (Appendices C, D and E) 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 Sample Contract. Such exceptions may cause a proposal to be rejected as nonresponsive when, in the sole judgment of the Agency (and its evaluation team), 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 Sample Contract (Appendix C, D or E, as appropriate) 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 Sample Agreement/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. Please 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 NMSA 1978, § 13-1-83 and 13-1-85.

19. Right to Waive Minor Irregularities

The Evaluation Committee reserves the right to waive minor irregularities. 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, NMSA 1978, § 13-1-28 through 13-1-199, imposes civil, 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.

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.4, 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://www.generalservices.state.nm.us/statepurchasing/active-procurements.aspx>

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
<http://www.insurenemexico.state.nm.us/>.

- 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 disqualification.

30. Letter of Transmittal

Offeror's proposal must be accompanied by the Letter of Transmittal Form located in APPENDIX E which must be completed and signed by an individual person authorized to obligate the company. The letter of transmittal MUST:

1. Identify the submitting business entity.
2. Identify the name, title, telephone, and e-mail address of the person authorized by the Offeror organization to contractually obligate the business entity providing the Offer.
3. Identify the name, title, telephone, and e-mail address of the person authorized to negotiate the contract on behalf of the organization (if different than (2) above).
4. Identify the names, titles, telephone, and e-mail addresses of persons to be contacted for clarification/questions regarding proposal content.
5. Identify sub-contractors (if any) anticipated to be utilized in the performance of any resultant contract award.
6. Describe the relationship with any other entity which will be used in the performance of this awarded contract.
7. Identify the following with a check mark and signature where required:
 - a. **Explicitly** indicate acceptance of the Conditions Governing the Procurement stated in Section II. C.1;
 - b. **Explicitly** indicate acceptance of Section V of this RFP; and
 - c. Acknowledge receipt of any and all amendments to this RFP.
8. Be signed by the person identified in para 2 above.

31. Pay Equity Reporting Requirements

- A. If the Offeror has ten (10) or more employees OR eight (8) or more employees in the same job classification, Offeror must complete and submit the required reporting form (PE10-249) if they are awarded a contract. Out-of-state Contractors that have no facilities and no employees working in New Mexico are exempt if the contract is

directly with the out-of-state contractor and fulfilled directly by the out-of-state contractor, and not passed through a local vendor.

- B. For contracts that extend beyond one (1) calendar year or are extended beyond one (1) calendar year, Offeror must also agree to complete and submit the required form annually within thirty (30) calendar days of the annual bid or proposal submittal anniversary date and, if more than 180 days has elapsed since submittal of the last report, at the completion of the contract.
- C. Should Offeror not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, Offeror must agree to provide the required report within ninety (90) calendar days of meeting or exceeding the size requirement.
- D. Offeror must also agree to levy these reporting requirements on any subcontractor(s) performing more than 10% of the dollar value of this contract if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of the contract. Offeror must further agree that, should one or more subcontractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, offer will submit the required report, for each such subcontractor, within ninety (90) calendar days of that subcontractor meeting or exceeding the size requirement.

32. 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 State Purchasing Agent or other party to this Agreement if, 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.
- F. 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 State

Purchasing Agent 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 State Purchasing Agent or Central Purchasing Officer may terminate the involved contract for cause. Still further the State Purchasing Agent or Central Purchasing Officer may suspend or debar the Contractor from eligibility for future solicitations until such time as the matter is resolved to the satisfaction of the State Purchasing Agent or Central Purchasing Officer.

33. New Mexico Preferences

To ensure adequate consideration and application of NMSA 1978, § 13-1-21 (as amended), Offerors must include a copy of their preference certificate with their proposal. Certificates for preferences must be obtained through the New Mexico Department of Taxation & Revenue <http://www.tax.newmexico.gov/Businesses/in-state-veteran-preference-certification.aspx>.

- A. **New Mexico Business Preference**
A copy of the certification must accompany your proposal.
- B. **New Mexico Resident Veterans Business Preference**
A copy of the certification must accompany your proposal.

An agency shall not award a business both a resident business preference and a resident veteran business preference.

The New Mexico Preferences shall not apply when the expenditures for this RFP includes federal funds.

34. Eligible Reimbursement Items

Items eligible for reimbursement under an awarded River Stewardship Program contract include:

- 1) Itemized hourly wages for work on the project, supplies that are permanently affixed to the project, equipment rental, administrative costs, travel, and subcontractor services as approved in the project work plan.
- 2) Implementation of on-the-ground measures to improve surface water quality and wildlife habitat as approved in the project work plan, e.g. earthmoving, construction, non-native plant removal, planting, fencing.
- 3) Planning and partner coordination exclusively within the context of the project, as approved in the project work plan.
- 4) Pre-implementation surveys of on-site conditions.
- 5) Post-construction verification of completion and validation of environmental results within the agreement/contract period, as approved in project work plan.
- 6) Costs to prepare permit applications, clearances and surveys that are required by law.
- 7) Contractor and subcontractor rates must reflect current fair market rates.
- 8) Gross receipts tax.

35. Ineligible Reimbursement Items

- 1) Salaries or percentages of salaries.
- 2) Wages for government employees (in-house labor).
- 3) Equipment or supplies that are not permanently affixed to the project.
- 4) Ongoing maintenance and monitoring beyond the contract period.
- 5) Education and outreach.
- 6) Planning projects where a plan is the exclusive end product.
- 7) Research projects.
- 8) Funding for projects required under administrative and/or judicial order.
- 9) Costs, including personnel costs, of securing additional sources of project funds.
- 10) Indirect costs (e.g. overhead percentage, administrative fees or penalty fees).
- 11) Lobbying.
- 12) Fellowships or scholarships.

36. Leveraging of Federal Funds

NMED intends to use River Stewardship Program funds to match grant funds under the federal Clean Water Act. Offerors are not authorized to claim the funds as match for any type of federal funding.

37. Reports

Contractors under the River Stewardship Program shall prepare and submit progress reports to the Department on a semi-annual basis (October and April). Reports shall be submitted electronically by e-mail or by regular mail in the form of a USB flash drive or compact disk (CD) in Windows Microsoft (MS) Word, Adobe portable document format (.pdf), or other Department approved software. The reports shall consist of a narrative of project progress including a discussion of each project task as outlined in the project work plan. At the end of the project term, a final report shall be submitted which includes a complete description of all activities completed, photographs, and analysis of monitoring data and project outcomes.

38. Payments

Contractors will be reimbursed for costs incurred upon submittal of detailed invoices (See end of Sample Agreement/Contract in Appendices C, D and E) citing direct cost amounts and backup documentation (e.g. subcontractor invoices, timesheets, receipts). After Department review, payment will be made upon receipt of a complete invoice package. Payment may be withheld for failure to complete timely semi-annual reports. Final project invoice payments will be withheld until the project's Final Report is received by NMED.

39. Department Audits

The Department may at any time review and audit requests for payment and adjust for, but not limited to, math errors, items not built or purchased, unacceptable construction or performance, or lack of conformance with approved work plans and schedules. The contractor and all subcontractors shall retain all records relating to the project for a period of five (5) years from the date of Capital Outlay Agreement/Contract termination in accordance with the provisions of the Office of Management and Budget (OMB) Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations," published in the Federal Register on June 30, 1997, non-federal entities.

State-wide Distribution. The River Stewardship Program is a state-wide program for New Mexico. Therefore, final program selections will take into account the geographic distribution of projects.

III. RESPONSE FORMAT AND ORGANIZATION

A. NUMBER OF RESPONSES

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

B. NUMBER OF COPIES

1. Hard Copy Responses

Offeror's proposal must be clearly labeled and numbered and indexed as outlined in **Section III.C. Proposal Format**. Proposals must be submitted as outlined below. The original copy shall be clearly marked as such on the front of the binder. Each portion of the proposal (technical/cost) must be submitted in separate binders and must be prominently displayed on the front cover. Envelopes, packages or boxes containing the original and the copies must be clearly labeled and submitted in a sealed envelope, package, or box bearing the following information:

Offerors should deliver:

1. **Technical Proposals** – One (1) ORIGINAL, three (3) HARD COPY, and two (2) electronic copy of the proposal containing ONLY the Technical Proposal; ORIGINAL and COPY shall be in separate labeled binders. **The electronic version/copy can NOT be emailed.**

Proposals containing confidential information **must** be submitted as two separate binders:

- **Unredacted** version for evaluation purposes
- **Redacted** version (information blacked out and not omitted or removed) for the public file

2. **Cost Proposals** – One (1) ORIGINAL, five (5) HARD COPY, and two (2) electronic copy of the proposal containing ONLY the Cost Proposal; ORIGINAL and COPY of Cost Proposal shall be in separate labeled binders from the Technical Proposals. **The electronic copy can NOT be emailed.**

The electronic version/copy of the proposal **must** mirror the physical binders submitted (i.e. Two (2) **unredacted cd/usb**, two (2) **redacted cd/usb**). **The electronic version can NOT be emailed.**

The original, hard copy and electronic copy information **must** be identical. In the event of a conflict between versions of the submitted proposal, the Original hard copy shall govern.

Any proposal that does not adhere to the requirements of this Section and **Section III.C.1 Response Format and Organization**, may be deemed non-responsive and rejected on that basis.

OR IN THE ALTERNATIVE TO THE SUBMISSION FORMAT AND REQUIREMENTS OF SECTION III.B.1:

2. Electronic Responses (SPD’s E-procurement System eProNM)

The State Purchasing Division is NOT accepting Proposals through its eProNM website.

C. PROPOSAL FORMAT

All proposals must be submitted as follows:

Hard copies must be typewritten on standard 8 ½ x 11-inch paper (larger paper is permissible for charts, spreadsheets, etc.) and placed within binders with tabs delineating each section.

The narrative portion of the proposal (Section IV.A) is limited to 25 pages and fold outs no larger than 8 ½ X 17 will count as 2 pages.

Organization of folders/envelopes for hard copy proposals and electronic copy proposals:

1. Proposal Content and Organization

Direct reference to pre-prepared or promotional material may be used if referenced and clearly marked. Promotional material should be minimal. The proposal must be organized and indexed in the following format and must contain, at a minimum, all listed items in the sequence indicated.

Technical Proposal (Volume I/Binder 1):

- A. Signed Letter of Transmittal
- B. Table of Contents
- C. Proposal Summary (Optional)
- D. Response to Contract Terms and Conditions
- E. Offeror’s Additional Terms and Conditions
- F. Response to Specifications (**except cost information which shall be included in Cost Proposal/Binder 2 only**)
 - 1. Organizational Experience
 - 2. Signed Campaign Contribution Form
 - 3. New Mexico Preferences (If applicable)
- G. Other Supporting Material (If applicable)

Cost Proposal (Volume II/ Binder 2):

- 1. Completed Cost Response Form

Within each section of the proposal, Offerors should address the items in the order indicated above. All forms provided in this RFP must be thoroughly completed and

included in the appropriate section of the proposal. All discussion of proposed costs, rates or expenses must occur only in Volume II/Binder #2 on the cost response form.

The proposal summary may be included by potential Offerors 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.

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

IV. SPECIFICATIONS

Offerors should respond in the form of a thorough narrative to each specification, unless otherwise instructed. The narratives, including required supporting materials will be evaluated and awarded points accordingly.

A. DETAILED SCOPE OF WORK

Project Proposal General Information:

Project Tasks Requirements: Offeror(s) shall be responsible for all aspects of managing a physical project that improves surface water quality and stream habitat. Projects shall be located instream, on the banks, on the flood plain, and/or within riparian areas along streams and rivers in New Mexico. The scope of work for these projects is not prescriptive. Rather, the scope of work for a project is based on identified impairments to surface water quality and stream habitat, and best management practices to address the impairments. The Offeror shall be responsible for all materials, supplies, and labor necessary for the project. Project activities may include but are not limited to: surveying for current site conditions, environmental monitoring, earthmoving, construction, fencing, removing non-native vegetation, and planting native vegetation.

Project Management: Offerors will conduct administrative duties include scheduling project work, establishing sub-contracts, establishing land access agreements, reporting to NMED, tracking and managing finances, and preparing and submitting invoices to NMED.

Surveying to Assess Site Conditions: Offerors will assess site conditions by reviewing existing studies and information on the project area, identifying geographic coordinates for the project area including the number of stream miles that will be directly affected. Background information on applicable pollutants and causes of poor surface water quality, including prior attempts to address the impairments, will be assessed to thoroughly understand the environmental problem. A clear need for restoration action will be demonstrated based on a local, regional or state planning document. Field surveys and assessments will be conducted as necessary for: property boundaries, hydrology, geomorphology, vegetation, soils, and wildlife.

Design: Offerors will create a scientifically sound and sustainable project design that is based on established hydrology, ecology, land management and engineering principles.

Planning/Permitting: Offerors will conduct project planning meetings as necessary with applicable stakeholder such as NMED, local governments, natural resource managers and land owners/managers. Offerors will provide design documents and other information necessary to comply with environmental laws for the project, such as: National Environmental Policy Act (NEPA), Clean Water Act Section 404/401, and State Historic Preservation Act.

Implementation: Offerors will be responsible for project implementation, including scheduling, mobilizing/demobilizing, operating equipment, in accordance with the NMED-approved project design and any conditions imposed by the land owner/manager.

Monitoring: Offerors will be responsible for pre-and post-implementation monitoring to demonstrate that the project was completed according to Contract/Agreement, and to demonstrate that project environmental goals are being met. Goals must be clear, measurable, and achievable. NMED will conduct field inspections to verify project progress and completion. Monitoring techniques will be project-specific based on project goals; however, appropriate monitoring methods include before/after photo documentation, geomorphic monitoring, and vegetation monitoring. Other monitoring may be proposed by the Offeror as appropriate to the project.

Cost/Budget Planning: A written schedule and budget must be submitted describing time frames for completing each phase of work for a project, as well as the number of hours, costs, and personnel to be dedicated to the assignment, including any subcontractor. The proposed schedule and budget must reflect time management, solutions, and cost estimate for completing the assigned tasks, as well as an estimated completion date for each task when applicable. Costs must be justified, fair market, and allowable per Sections II.C 34 and 35 of this RFP.

Capacity and Capability: Offerors must have at least five years of experience working on similar successful projects for the improvement of surface water quality and stream habitat. If an Offeror does not possess the in-house capabilities to perform a component of the Scope of Work, the response should demonstrate Offeror's ability to prepare and administer a subcontract or to work jointly with another firm having the requisite expertise to accomplish that component of the project. Any work performed under a subcontract, joint venture, partnership, or other joint undertaking with another firm must comply with State Procurement Code procedures and NMED contracting requirements.

Regarding the following sections, Offerors should respond in the form of a thorough narrative to each specification, unless otherwise instructed. The narratives, including required supporting materials will be evaluated and awarded points accordingly.

1. Project Area

This section must demonstrate that the proposed project area is located appropriately to meet the objectives of the River Stewardship Program.

- a. Indicate the project location using one or more 12-digit Hydrologic Unit Codes (HUCs), as appropriate, and geographic coordinates.
- b. Identify with a map, at an appropriate scale, the critical areas for identified pollutant sources or stream habitat impairments in which project actions will be implemented, including the number of stream miles and riparian acres that will be directly affected.
- c. State the rationale for selecting the project area. Indicate the project area's land. Ownership/management and whether there is public access to the entire project area. Disclose the relationship (if any) between the Offeror and any private landowner.
- d. If proposed project is not wholly on government-owned land that is accessible to the public, explain the public benefit that will be derived from working on privately owned

land. Describe any mitigating circumstances and explain why working on privately owned land is necessary to solve the water quality or habitat problem.

2. Problem Statement:

This section must demonstrate the need to perform the proposed project by describing the impairments to water quality or stream habitat that will be addressed by the project.

Provide background information on the project area. Indicate the applicable pollutants and causes of poor surface water quality and stream habitat that will be addressed by the project. Briefly describe land use, nonpoint sources of pollution, related water quality problems and/or stream habitat issues in the watershed. Identify prior surface water quality or stream habitat projects that are in progress or have been completed in the project area.

3. Planning/Permitting:

This section must demonstrate that adequate planning has been completed to ensure feasibility and timely completion of the project.

- a. Cite one or more sections of a local, regional, state, tribal or federal planning document that support the problem statement, the selection of the project area, and the rationale for project activities (i.e. the proposed solution). Provide a web address for documents that are available online, and provide page numbers within the document, if applicable.
- b. List any permits, certifications, and environmental or cultural clearances that will be needed to implement the project. Describe any progress that has already been made to obtain those permits, certifications and clearances.

4. Project Goals, Methods and Implementation:

This section of the proposal must explain how the project will produce a measurable improvement in water quality or steam habitat.

- a. State one or more project goals and objectives to improve surface water quality or stream habitat. Objectives should be achievable and measurable, and a brief explanation of how the objective was developed should be included. Examples of project objectives are: improving stream channel geometry and ability to accommodate flooding as measured by entrenchment ratio; reducing pollutant load for specific pollutants as measured by water quality sampling; increasing vegetation abundance and diversity as measured by canopy cover and surveys; and increasing aquatic, avian, or terrestrial animal species as measured by species abundance and diversity surveys.
- b. Explain the methods that will be used restore or maintain the chemical, physical and biological integrity of streams and rivers in a manner that is self-sustaining. Describe how the proposed methods are supported by sound, established hydrologic, geomorphologic and ecologic principles and research.
- c. Describe the tasks needed to achieve project results. Task descriptions must include the person responsible for implementation, expected task completion dates, a deliverable for each task, and a brief description of how each task will be accomplished. Include a task for reporting progress semi-annually and submitting a final report. See Section II.C.38 for more information on reporting.

5. Measures of Success:

This section of the proposal must explain the monitoring that will be used to demonstrate achievement of project goals.

Describe the indicators that will be used to document project success. The indicators should correspond to project goals. Indicators may be quantitative, such as water quality analyses, geomorphological measurements, and/or vegetation and animal species surveys. Indicators may also be qualitative such as repeat photo point photography. Offerors are encouraged to select the most practical and effective means of documenting project success. Direct environmental measurements may not always be practical, as the scientific rigor required to detect statistically significant changes can be resource intensive. Therefore, quantitative environmental monitoring should be adequately planned and supported.

6. Stakeholder Support:

This section of the proposal must demonstrate that the project has stakeholder support for implementation and ongoing stewardship.

- a. Describe how the project has the support of stakeholders, such as applicable community organizations, landowners/ land managers, local governments, and essential partners. Essential partners are those who have committed to contribute time or resources to the project, or those whose concurrence is required for project success. Include letters of support from the stakeholders in the Other Supporting Material section of the proposal.
- b. Describe any commitment or support by the partners to provide any project outreach, ongoing monitoring and long-term maintenance of the project beyond the contract term. This support may be included in the Other Funds column of Appendix E: Cost Response Form.

B. TECHNICAL SPECIFICATIONS

1. Organizational Experience

Offerors **must**:

- a) Offerors must explain who will be involved in completing the project and demonstrate their qualifications for performing the work. Describe key individuals who will be responsible for completing work plan tasks/actions, including fiscal responsibility. Briefly describe qualifications of each key person. Briefly list the major participating organizations or agencies, and their specific roles in the project.
- b) Offerors must submit a description of relevant project team experience documenting at least five (5) years of continuous experience working on similar projects.
- c) Offerors must state their business status: a government entity; a non-profit organization registered with the NM Attorney General's Office; or as a business registered with the NM Department of Taxation and Revenue.

C. BUSINESS SPECIFICATIONS

1. Letter of Transmittal Form

The Offeror's proposal **must** be accompanied by the Letter of Transmittal Form located in APPENDIX F. The form **must** be completed and must be signed by the person authorized to obligate the company.

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)

3. Cost

Offerors must complete the Cost Response Form in APPENDIX G. The completed Cost Response Form must include costs of work divided into the following categories:

- a. Personnel and benefits (identify each person, his/her area of expertise, anticipated hours and hourly rates). After execution of a contract, the Agency must approve changes to personnel and hourly rates in advance. Professional services hourly rates must reflect current market value. Note that wages for government employees cannot be paid with capital outlay funding because they are usually already part of an operating budget, so include those government employee personnel costs in the Other Funds column. The Other Funds category should also include volunteers, other agency representatives, supplies and equipment that are necessary for completion of the project but that will be paid for by other sources. Travel (per diem costs for food and lodging not to exceed \$85 per night, and mileage not to exceed the current state rate of 43 cents per mile).
- b. Equipment Rental (specify the type of rental, rate and time period)
- c. Supplies (specify the type, quantity and costs of supplies needed)
- d. Contractual/Subcontracts (if possible, identify subcontractors and costs to be incurred by subcontractors)
- e. Other (e.g. permit fees, copy services).

The RSP Funds column must include all state funds that are being requested for the project. The Other Funds column should include any other sources of funding that are necessary to complete the project and have already been procured (other funds are not a requirement and some proposals will not include other funds). The Total column should be the sum of the RSP Funds column and the Other Funds column.

4. Resident Business or Resident Veterans Preference

To ensure adequate consideration and application of NMSA 1978, § 13-1-21 (as amended), Offerors must include a copy of their preference certificate in this section.

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.

| A. | PROJECT PROPOSAL NARRATIVE | Possible points 1000 |
|-----------|---|---------------------------------|
| A.1 | Project Area | 100 |
| A.2 | Problem Statement. | 100 |
| A.3 | Planning/Permitting | 100 |
| A.4 | Project Goals, Methods and Implementation | 100 |
| A.5 | Measures of Success | 100 |
| A.6 | Stakeholder Support | 100 |
| B. | ORGANIZATIONAL EXPERIENCE AND REFERENCES | |
| B.1 | Organizational Experience | 100 |
| C. | BUSINESS SPECIFICATIONS | |
| C.1 | Letter of Transmittal | PASS/FAIL |
| C.2 | Campaign Contribution Disclosure Form | PASS/FAIL |
| C.3 | Cost Response Form/Budgeting | 300 |
| C.4 | Resident Business or Resident Veterans Preference | 0 or 50 or 100 |
| | Total Possible Points | 1,100 |

Table 1: Evaluation Point Summary

B. EVALUATION FACTORS

1. Section A: Project Proposal Narrative (See Table 1)

Points will be awarded based on the thoroughness and clarity of the response of the engagements cited and the perceived validity of the response for the following:

- a. **Project Area (See Table 1)** - Points will be awarded based on the response provided to Section IV.A.1. Project Area.
- b. **Problem Statement (See Table 1)** - Points will be awarded based on the response provided Section IV.A.2 Problem Statement.
- c. **Planning/Permitting (See Table 1)** - Points will be awarded based on the response provided to Section IV.A.3 Planning/Permitting.
- d. **Goals, Methods and Implementation (See Table 1)** - Points will be awarded based on the response provided to Section IV.A.4 Goals, Methods and Implementation.
- e. **Measures of Success (See Table 1)** - Points will be awarded based on the response provided to Section IV.A.5 Measures of Success.
- f. **Stakeholder Support (See Table 1)** – Points will be awarded based on the response provided to Section IV.A.6 Cost Response/Budgeting.

Lack of a response will be awarded zero (0) points.

2. Section B: Organizational Experience (See Table 1)

Points will be awarded based upon an evaluation of the responses submitted for organization experience.

- a. **B.1 Organizational Experience (See Table 1)** -Points will be awarded based on the thoroughness and clarity of the response of the engagements cited and the perceived validity of the response.

3. Section C: Business Specifications: (See Table 1)

The following sub-sections shall be scored as follows:3

- a. **C.1 Letter of Transmittal (See Table 1)** - Mandatory Pass/Fail only. No points assigned. A pass will be awarded for submitting the form.
- b. **C.2 Campaign Contribution Disclosure Form (See Table 1)** - Mandatory Pass/Fail only. No points assigned. A Pass will be awarded for submitting the form.
- c. **C.3 Cost Response Form (See Table 1)** - Points will be awarded based on the response provided to Section IV.A.6 Cost Response/Budgeting.
- d. **C.4. New Mexico Preferences** -Percentages will be determined based upon the point-based system outlined in NMSA 1978, § 13-1-21 (as amended).

- 1) New Mexico Business Preference - If the Offeror has provided a copy of their Preference Certificate the Preference Points for a New Mexico Business is 5%.
- 2) New Mexico Resident Veterans Business Preference - If the Offeror has provided a copy of their Preference Certificate the Preference Point is 10%.

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. The Evaluation Committee may use other sources of to perform the evaluation as specified in Section II. C.18.
4. Responsive proposals will be evaluated on the factors in Section IV, which have been assigned a point value. The responsible Offerors with the highest scores will be selected as finalist Offerors, based upon the proposals submitted. The responsible Offerors whose proposals are most advantageous to the State taking into consideration the evaluation factors in Section IV will be recommended for award (as specified in Section II. B.8). 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

ACKNOWLEDGEMENT OF RECEIPT FORM

REQUEST FOR PROPOSAL

NMED - 2019 River Stewardship Program

SPD#90-667-18-27657
NMED RFP #19 667 2060 0001

ACKNOWLEDGEMENT OF RECEIPT FORM

In acknowledgement of receipt of this Request for Proposal the undersigned agrees that s/he has received a complete copy, beginning with the title page and table of contents, and ending with APPENDIX G.

The acknowledgement of receipt should be signed and returned to the Procurement Manager no later than 3:00 pm Mountain Standard Time (MST) on January 30, 2019. Only potential Offerors who elect to return this form completed with the indicated intention of submitting a proposal will receive copies of all Offeror written questions and the written responses to those questions as well as RFP amendments, if any are issued.

FIRM: _____

REPRESENTED BY: _____

TITLE: _____ PHONE NO.: _____

E-MAIL: _____ FAX NO.: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

SIGNATURE: _____ DATE: _____

This name and address will be used for all correspondence related to the Request for Proposal.

Firm does/does not (circle one) intend to respond to this Request for Proposal.

APPENDIX B

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Campaign Contribution Disclosure Form

Pursuant to NMSA 1978, § 13-1-191.1 (2006), any person seeking to enter into a contract with any state agency or local public body for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources must file this form with that state agency or local public body. This form must be filed even if the contract qualifies as a small purchase or a sole source contract. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars (\$250) over the two year period.

Furthermore, the state agency or local public body shall void an executed contract or cancel a solicitation or proposed award for a proposed contract if: 1) a prospective contractor, a family member of the prospective contractor, or a representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or 2) a prospective contractor fails to submit a fully completed disclosure statement pursuant to the law.

THIS FORM 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 either statewide or local office. “Campaign Contribution” includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or

solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

“Family member” means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law.

“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.

“Person” means any corporation, partnership, individual, joint venture, association or any other private legal entity.

“Prospective contractor” means a person who is subject to the competitive sealed proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person qualifies for a sole source or a small purchase contract.

“Representative of a prospective contractor” means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

DISCLOSURE OF CONTRIBUTIONS:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Name of Applicable Public Official: _____

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 C

SAMPLE AGREEMENT FOR GOVERNMENT ENTITIES

**STATE OF NEW MEXICO
NEW MEXICO ENVIRONMENT DEPARTMENT
FUND 89200 CAPITAL APPROPRIATION PROJECT**

THIS AGREEMENT is made and entered into as of this [] day of [], 20[], by and between the New Mexico Environment Department, hereinafter called the “Department” or “NMED”, and [name of grantee], hereinafter called the “Grantee”. This Agreement shall be effective as of the date it is executed by the Department.

RECITALS

WHEREAS, in the Laws of 2018, Chapter 80, Section 44, the Legislature made an appropriation to the Department to plan, design and construct projects to improve surface water quality and river habitat statewide, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

WHEREAS, NMED reserves the right to claim the funds to match its own federal grants under the Clean Water Act and the Grantee shall not claim the funds as match to a federal grant; and

WHEREAS, NMED is authorized by NMSA 1978, §74-6-9. A to receive and expend funds appropriated for the purpose consistent with the Water Quality Act and the appropriation; and

WHEREAS, NMED and the Grantee desire to enter into this “Agreement” to accomplish the Project in the most cost-effective and administratively efficient manner; and

NOW, THEREFORE, the parties mutually agree as follows:

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION DATE

A. The project that is the subject of this Agreement is described as follows:

DFA Project # A18C2723 \$ (amount of the \$500,000.00 appropriation for this project)

APPROPRIATION REVERSION DATE: 30-JUN-2022

Laws of 2018, Chapter 80, Section 44, five hundred thousand dollars, \$500,000.00, to plan, design and construct projects to improve surface water quality and river habitat state-wide.

The Grantee's total reimbursements shall not exceed the appropriation amount [insert the appropriation amount in words] \$[insert amount of appropriation] (the "Appropriation Amount").

In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited above in this Article I(A), the language of the laws cited herein shall control.

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I(A) is referred to collectively throughout the remainder of this Agreement as the "Project Description." Attachment A sets forth additional or more stringent requirements and conditions, which are incorporated by this reference as if set forth fully herein. If Attachment A imposes more stringent requirements than any requirement set forth in this Agreement, the more stringent requirements of Attachment A shall prevail, in the event of irreconcilable conflict. The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse¹ Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:

- (i) Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and
- (ii) The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and
- (iii) The Grantee's expenditures were made pursuant to the State Procurement Code and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of

¹ "Reimburse" as used throughout this Agreement includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee.

tangible personal property and real property for the Project, hereinafter referred to as “Third Party Obligations”; and

- (iv) The Grantee’s submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement; and
- (v) In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:
 - a. must be approved by the applicable oversight entity (if any) in accordance with law; or
 - b. if no oversight entity is required to approve the transaction, the Department must approve the transaction as complying with law.

Prior to the sale, lease, license, or operating agreement being approved pursuant to Articles II(A)(v)(a) and II(A)(v)(b) herein, the Department may, in its sole and absolute discretion and unless inconsistent with State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and

- (vi) The Grantee’s submission of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department’s issuance and the Grantee’s receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement shall be governed by the following:
 - a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party **but prior to execution by the Grantee.**
 - b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such obligations.
 - c. The Department may, in its sole and absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee’s expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 2.
 - d. The date the Department signs the Notice of Obligation is the date that the Department’s Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party to begin work. Payment for any work performed or goods received prior to the effective date of the Notice of Obligation is wholly and solely the obligation of the Grantee.

B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.

C. Project funds shall not be used for purposes other than those specified in the Project Description.

D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES

Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.

The Grantee designates the person(s) listed below, or their successor, as their official representative(s) concerning all matters related to this Agreement:

Grantee: _____
Name: _____
Title: _____
Address: _____
Email: _____
Telephone: _____

The Grantee designates the person(s) listed below, or their successor, as their Fiscal Officer or Fiscal Agent concerning all matters related to this Agreement:

Grantee: _____
Name: _____
Title: _____
Address: _____
Email: _____
Telephone: _____

The Department designates the persons listed below, or their successors, as the Points of Contact for matters related to this Agreement.

Department: _____
Name: _____
Title: _____
Address: _____
Email: _____
Telephone: _____

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by email or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five calendar days after mailing, whichever shall first occur. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

ARTICLE IV. REVERSION DATE, TERM, DEADLINE TO EXPEND FUNDS

A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the “Reversion Date.” Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on June 30, 2022, the Reversion Date, unless Terminated Before Reversion Date (“Early Termination”) pursuant to Article V herein.

B. The Project’s funds must be expended on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to encumber the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are expended and an expenditure has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date particular services are rendered for the Grantee. Funds are *not* expended and an expenditure has *not* occurred as of the date they are encumbered by the Grantee pursuant to a contract or purchase order with a third party.

ARTICLE V. EARLY TERMINATION

A. Early Termination Before Reversion Date Due to Completion of the Project or Complete Expenditure of the Adjusted Appropriation or Violation of this Agreement

Early Termination includes:

- (i) Termination due to completion of the Project before the Reversion Date; or
- (ii) Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or
- (iii) Termination for violation of the terms of this Agreement; or
- (iv) Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, and conflicts of interest.

Either the Department or the Grantee may early terminate this Agreement prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days’ advance, written notice of early termination. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(A).

B. Early Termination Before Reversion Date Due to Non-appropriation

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. Throughout this Agreement the term “non-appropriate” or “non-appropriation” includes the following actions by the New Mexico Legislature: deauthorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to in Article I and, if that occurs, the Department shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of such termination, and such termination shall be effective as of the effective date of the law making the non-

appropriation. The Department's decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(B).

C. Limitation on Department's Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination

In the event of Early Termination of this Agreement by either party, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth Article II.

ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS

A. The Department may choose, in its sole and absolute discretion, to provide written notice to the Grantee to suspend entering into new and further obligations. Upon the receipt of such written notice by the Grantee:

- (i) The Grantee shall immediately suspend entering into new or further written obligations with third parties; and
- (ii) The Department will suspend the issuance of any new or further Notice of Obligation under this Agreement; and
- (iii) The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI(D) herein.

B. In the event of Suspension of this Agreement, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.

C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

D. Corrective Action Plan in the Event of Suspension

In the event that the Department chooses, in its sole and absolute discretion to direct the Grantee to suspend entering into new or further written obligations with third parties pursuant to Article VI(A), the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the Department and be signed by the Grantee. Failure to sign a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V(A)(iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

ARTICLE VII. AMENDMENT

This Agreement shall not be altered, changed, or amended except by instrument in writing duly executed by both the parties hereto.

ARTICLE VIII. REPORTS

A. Database Reporting

The Grantee shall report monthly Project activity by entering such Project information as the Department and the Department of Finance and Administration may require, such information entered directly into a database maintained by the Department of Finance and Administration (<http://cpms.dfa.state.nm.us>). Additionally, the Grantee shall certify on the Request for Payment form (Exhibit 1) that updates have been maintained and are current in the database. The Grantee hereby acknowledges that failure to perform and/or certify updates into the database will delay or potentially jeopardize the reimbursement of funds. The Department shall give Grantee a minimum of thirty (30) days' advance written notice of any changes to the information the Grantee is required to report.

Monthly reports shall be due on the last day of each month, beginning with the first full month following execution of this Agreement by the Department and ending upon the submission of the final request for reimbursement for the Project.

B. Requests for Additional Information/Project Inspection

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII, the Department may:

- (i) request such additional information regarding the Project as it deems necessary; and
- (ii) conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project.

Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department.

ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES

A. The Grantee shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit 1. Payment requests are subject to the following procedures:

- (i) The Grantee must submit a Request for Payment; and
- (ii) Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee showing that the expenditures are valid or are liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee for services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its sole and absolute discretion, agrees to do so and in accordance with any special conditions imposed by the Department.
- (iii) In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement

and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing. The Grantee is required to certify to the Department proof of payment to the third party contractor or vendor within ten (10) business days from the date of receiving reimbursement from the Department.

B. The Grantee must obligate 5% of the Adjusted Appropriation Amount within six months of acceptance of the grant agreement and must have expended no less than 85% of the Adjusted Appropriation Amount six months prior to the reversion date.

C. **Deadlines**

Requests for Payments shall be submitted by Grantee to the Department on the earlier of:

- (i) Immediately as they are received by the Grantee but at a minimum thirty (30) days from when the expenditure was incurred or liability of the Grantee was approved as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor; or
- (ii) July 15 of each year for all unreimbursed expenditures incurred during the previous fiscal year; or
- (iii) Twenty (20) days from date of Early Termination; or
- (iv) Twenty (20) days from the Reversion Date.

D. The Grantee's failure to abide by the requirements set forth in Article II and Article IX herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement, including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II herein to provide Third Party Obligations and the Deadlines set forth in Article IX herein. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to Grantee's violation of this Agreement.

ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES

A. The following general conditions and restrictions are applicable to the Project:

- (i) The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the State Procurement Code (or local procurement ordinance, where applicable).
- (ii) The Project must be implemented in accordance with the New Mexico Public Works Minimum Works Act, Section 13-4-10 through 13-4-17 NMSA 1978, as applicable. Every contract or project in excess of sixty thousand dollars (\$60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public

works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 (B) NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.

- (iii) The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the "Anti-Donation Clause."
 - (iv) The Grantee shall not for a period of 10 years from the date of this agreement convert any property acquired, built, renovated, repaired, designed or developed with the Project's funds to uses other than those specified in the Project Description without the Department's and the Board of Finance's express, advance, written approval, which may include a requirement to reimburse the State for the cost of the project, transfer proceeds from the disposition of property to the State, or otherwise provide consideration to the State.
 - (v) The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.
- B. The Grantee hereby represents and warrants the following:
- (i) The Grantee has the legal authority to receive and expend the Project's funds.
 - (ii) This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.
 - (iii) This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which the Grantee is subject.

- (iv) The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.
- (v) The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.
- (vi) The Grantee shall abide by New Mexico laws regarding conflicts of interest, governmental conduct and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during their tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed or goods to be received, pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.
- (vii) No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS; PROJECT RECORDS

A. The Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.

B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.

C. The Grantee shall make all Project records available to the Department, the Department of Finance and Administration, and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor or the Department of Finance and Administration finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

ARTICLE XII. IMPROPERLY REIMBURSED FUNDS

If the Department determines that part or all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

ARTICLE XIII. LIABILITY

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to immunities and limitations of the New Mexico Tort Claims Act.

ARTICLE XIV. SCOPE OF AGREEMENT

This Agreement constitutes the entire and exclusive agreement between the Grantee and Department concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

The Grantee acknowledges, warrants, and agrees that Grantee shall include a “non-appropriations” clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:

“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, the [Grantee’s name] may immediately terminate this Agreement by giving Contractor written notice of such termination. The [Grantee’s name]’s decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against the [Grantee’s name] or the New Mexico Environment Department or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the [Grantee’s name] or the Department”

ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

Grantee acknowledges, warrants, and agrees that Grantee shall include the following termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:

“This contract is funded in whole or in part by funds made available under a New Mexico Environment Department Grant Agreement. Should the New Mexico Environment Department early terminate the grant agreement, the [Grantee’s name] may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the [Grantee’s name] only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date.”

Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department.

XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.

A. Throughout the term of this Agreement, Grantee shall:

1. submit all reports of annual audits and agreed upon procedures required by Section 12-6-3(A)-(B) NMSA 1978 by the due dates established in 2.2.2 NMAC, reports of which must be a public record pursuant to Section 12-6-5(A) NMSA 1978 within forty-five days of delivery to the State Auditor;
2. have a duly adopted budget for the current fiscal year approved by its budgetary oversight agency (if any);
3. timely submit all required financial reports to its budgetary oversight agency (if any); and
4. have adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds.

B. In the event Grantee fails to comply with the requirements of Paragraph A of this Article XVII, the Department may take one or more of the following actions:

1. suspend new or further obligations pursuant to Article VI(A) of this Agreement;
2. require the Grantee to develop and implement a written corrective action plan pursuant to Article VI(D) of this Agreement to remedy the non-compliance;
3. impose special grant conditions to address the non-compliance by giving the Grantee notice of such special conditions in accordance with Article III of this Agreement; the special conditions shall be binding and effective on the date that notice is deemed to have been given pursuant to Article III; or
4. terminate this Agreement pursuant to Article V(A) of this Agreement.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date of execution by the Department.

GRANTEE

Signature of Official with Authority to Bind Grantee

Entity Name

By: _____
(Type or Print Name)

Its: _____
(Type or Print Title)

Date

NEW MEXICO ENVIRONMENT DEPARTMENT

By:

Its: Cabinet Secretary or Designee

Date

| STATE OF NEW MEXICO CAPITAL GRANT PROJECT Request for Payment Form Exhibit 1 | | | | | | | |
|---|---|-----------|-----|--------------------------------|---|--|--|
| I. Grantee Information | | | | II. Payment Computation | | | |
| (Make sure information is complete & accurate) | | | | | | | |
| A. | Grantee: | | | A. | Payment Request No. | | |
| B. | Address: | | | B. | Grant Amount: | | |
| (Complete Mailing, including Suite, if applicable) | | | | C. | AIPP Amount (If Applicable): | | |
| | | | | D. | Funds Requested to Date: | | |
| | | | | E. | Amount Requested this Payment: | | |
| | City | State | Zip | F. | Reversion Amount (If Applicable): | | |
| C. | Phone No: | | | G. | Grant Balance: | | |
| D. | Grant No: | | | H. | <input type="checkbox"/> GF <input type="checkbox"/> GOB <input type="checkbox"/> STB (attach wire if first draw) | | |
| E. | Project Title: | | | I. | <input type="checkbox"/> Final Request for Payment (if Applicable) | | |
| F. | Grant Expiration Date: | | | | | | |
| III. Fiscal Year : | | | | | | | |
| (The State of NM Fiscal Year is July 1, 20XX through June 30, 20XX of the following year) | | | | | | | |
| IV. | Reporting Certification: I hereby certify to the best of my know ledge and belief, that database reporting is up to date; to include the accuracy of expenditures and grant balance, project status, project phase, achievements and milestones; and in compliance w ith Article VIII of the Capital Outlay Grant Agreement. | | | | | | |
| <input type="checkbox"/> | | | | | | | |
| V. | Compliance Certification: Under penalty of law , I hereby certify to the best of my know ledge and belief, the above information is correct; expenditures are properly documented, and are valid expenditures or actual receipts; and that the grant activity is in full compliance w ith Article IX, Sec. 14 of the New Mexico Constitution know n as the "anti donation" clause. | | | | | | |
| <input type="checkbox"/> | | | | | | | |
| Grantee Fiscal Officer | | | | Grantee Representative | | | |
| or Fiscal Agent (if applicable) | | | | | | | |
| Printed Name | | | | Printed Name | | | |
| Date: | | | | Date: | | | |
| (State Agency Use Only) | | | | | | | |
| Vendor Code: | | Fund No.: | | Loc No.: | | | |
| I certify that the State Agency financial and vendor file information agree with the above submitted information. | | | | | | | |
| Division Fiscal Officer | | | | Division Project Manager | | | |
| Date | | | | Date | | | |

**NOTICE OF OBLIGATION TO REIMBURSE GRANTEE
EXHIBIT 2**

Notice of Obligation to Reimburse Grantee [# 1]

DATE: [REDACTED]

TO: Department Representative:

[REDACTED]

FROM: Grantee:

[REDACTED]

Grantee Official Representative:

[REDACTED]

SUBJECT: Notice of Obligation to Reimburse Grantee

Grant Number:

[REDACTED]

Grant Termination Date:

[REDACTED]

As the designated representative of the Department for Grant Agreement number [REDACTED] entered into between Grantee and the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party's authorized representative:

Vendor or Contractor:

[REDACTED]

Third Party Obligation Amount:

[REDACTED]

Vendor or Contractor:

[REDACTED]

Third Party Obligation Amount:

[REDACTED]

Vendor or Contractor:

[REDACTED]

Third Party Obligation Amount:

[REDACTED]

I certify that the State is issuing this Notice of Obligation to Reimburse Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant

Agreement.

Grant Amount (Minus AIPP if applicable):

[REDACTED]

The Amount of this Notice of Obligation:

[REDACTED]

The Total Amount of all Previously Issued Notices of Obligation:

[REDACTED]

The Total Amount of all Notices of Obligation to Date:

[REDACTED]

Note: Contract amounts may exceed the total grant amount, but the invoices paid by the grant will not exceed the grant amount.

Department Rep. Approver:

[REDACTED]

Title:

[REDACTED]

Signature:

[REDACTED]

Date:

[REDACTED]

¹ Administrative and/or Indirect Cost – generally, the legislation authorizing the issuance of bonds prohibits the use of its proceeds for indirect expenses (e.g. penalty fees or damages other than pay for work performed, attorney fees, and administrative fees). Such use of bond proceeds shall not be allowed unless specifically authorized by statute

APPENDIX D

SAMPLE AGREEMENT FOR TRIBAL ENTITIES

STATE OF NEW MEXICO
NEW MEXICO ENVIRONMENT DEPARTMENT
FUND 89200 CAPITAL APPROPRIATION PROJECT

THIS AGREEMENT is made and entered into by and between the New Mexico Environment Department, hereinafter called the “Department” or “NMED”, and [name of grantee], hereinafter called the “Grantee.”

RECITALS

WHEREAS, in the Laws of 2018, Chapter 80, Section 44, the Legislature made an appropriation to the Department to plan, design and construct projects to improve surface water quality and river habitat state-wide, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

WHEREAS, the Department is granting to Grantee, and the Grantee is accepting the grant of, funds from this appropriation, in accordance with the terms and conditions of this Agreement; and;

WHEREAS, the Grantee is an Indian nation, tribe or pueblo, or is a subdivision of an Indian nation, tribe or pueblo that has authority pursuant to the law of that Indian nation to enter into this agreement, and;

WHEREAS, NMED reserves the right to claim the funds to match its own federal grants under the Clean Water Act and the Grantee shall not claim the funds as match to a federal grant; and

WHEREAS, NMED is authorized by NMSA 1978, §74-6-9. A to receive and expend fund appropriated for the purpose consistent with the Water Quality Act and the appropriation; and

WHEREAS, NMED and the Grantee desire to enter into this “Agreement” to accomplish the Project in the most cost-effective and administratively efficient manner.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION DATE

A. The project that is the subject of this Agreement is described as follows:

DFA Project # A18C2723 \$ (amount of the \$500,000.00 appropriation for this project)

APPROPRIATION REVERSION DATE: 30-JUN-2022

Laws of 2018, Chapter 80, Section 44, five hundred thousand dollars, \$500,000.00, to plan, design and construct projects to improve surface water quality and river habitat state-wide.

The Grantee’s total reimbursements shall not exceed [insert the amount of the appropriation for this project in words] \$[insert amount of appropriation] (the “Appropriation Amount”)

In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited above in this Article I(A), the language of the laws cited herein shall control.

This project is referred to throughout the remainder of this Agreement as the “Project”; the information contained in Article I(A) is referred to collectively throughout the remainder of this Agreement as the “Project Description.” Attachment A sets forth additional or more stringent requirements and conditions, which are incorporated by this reference as if set forth fully herein. If Optional Attachment A imposes more stringent requirements than any requirement set forth in this Agreement, the more stringent requirements of Attachment A shall prevail, in the event of irreconcilable conflict. The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

ARTICLE II. LIMITATION ON DEPARTMENT’S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, this Grant Agreement and the disbursement of any and all

amounts of the above referenced Appropriation Amount are expressly conditioned upon the following:

5. The Grantee's submittal of documentation of all Third-Party Obligations and amendments thereto (including terminations), to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement as follows:
 - (vii) A "Third Party Obligation" is a written obligation between Grantee and a third-party contractor or vendor, including force account labor as defined in Article XVII. herein, for the provision of services, including professional services, or for the purchase of tangible personal property and/or for real property for the Project.
 - (viii) A Notice of Obligation is a writing issued by the Department that establishes its obligation to reimburse the Grantee for a specified amount of qualifying expenditures incurred pursuant to a specific Third-Party Obligation, in accordance with the terms and conditions of this Agreement.
 - (ix) The Grantee shall submit to the Department one copy of all Third-Party Obligations and amendments thereto (including terminations), as soon as possible after execution by the Third Party but prior to execution by the Grantee.
 - (x) Grantee acknowledges and agrees that if it chooses to enter into a Third-Party Obligation prior to receiving a Notice of Obligation for the Third-Party Obligation, it shall be solely responsible for expenditures under the Third-Party Obligation in the event the Department does not issue a Notice of Obligation.
 - (xi) The Department may not unreasonably refuse to issue a Notice of Obligation; provided however, that this restriction in no way limits the Department's discretionary rights under Article VI. By way of illustration, the following are examples of circumstances under which the Department's refusal to issue a Notice of Obligation would be reasonable:
 - a. This Agreement is suspended, or a notice of termination has been issued;
 - b. The amount of the Third-Party Obligation plus the amounts of previously issued Notice(s) of Obligation exceeds the Appropriation Amount;
 - c. The Third-Party Obligation is not within the Project Description;
 - d. The Third-Party Obligation was not incurred in accordance with the Grantee's procurement code and/or procurement policies; or
 - e. The Grantee has not provided affirmative proof of the existence of the Third-Party Obligation.
 - (xii) If there are not questions about or deficiencies in Grantee's request and supporting material or questions about the Grantee's compliance with this Agreement, Notices of Obligation shall ordinarily be issued within seven (7) business days of the Department's receipt of Grantee's request. The Department shall not be liable in the event Notices of Obligation are issued later than seven (7) days.
 - (xiii) The date the Department sends by mail, facsimile, or email the Notice of Obligation is the date that the Department's Notice of Obligation is effective.

6. Irrespective of any Notice of Obligation, the Grantee's expenditures, as defined in Article IV, shall be incurred on or before the Reversion Date and, if applicable, an Early Termination Date.
7. The total amount received by the Grantee shall not exceed the total of all amounts stated in the Notice(s) of Obligation.
8. The Grantee's expenditures were made pursuant to the Grantee's legal procurement and execution of binding Third Party Obligations.
9. The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth Article IX. herein.
10. In the event that capital assets acquired with Project funds are to be leased or licensed to or operated by another entity, the Department must approve of the lease, license, or operating agreement as complying with law and as providing the Grantee with adequate consideration in exchange for the capital assets. Prior to the Department approving the lease, license, or operating agreement, the Department may, in its discretion and unless inconsistent with New Mexico State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures incurred to develop the Project sufficiently to make the lease, license, or operating agreement commercially feasible, such as plan and design expenditures.

B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.

C. Project funds shall not be used for purposes other than those specified in the Project Description.

D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES

Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.

The Grantee and the Department hereby designate the persons listed below as their official representative concerning all matters related to this Agreement:

Grantee: _____

Name: _____

Title: _____

Address: _____

Email: _____

Telephone: _____

FAX: _____

Department: _____

Name: _____

Title: _____

Address: _____

Email: _____

Telephone: _____

FAX: _____

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above-named persons by facsimile, email, or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five (5) calendar days after mailing, whichever shall first occur. In the case of facsimile transmissions, the notice shall be deemed to have been given and received on the date reflected on the facsimile confirmation indicating a successful transmission of all pages included in the writing. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

ARTICLE IV. REVERSION DATE, TERM, EARLY TERMINATION

A. The Effective Date of this Agreement is the date of last signature by either the Department or the Grantee.

B. As referenced in Article I. A., the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this

Agreement as the “Reversion Date.” This Agreement shall terminate on the Reversion Date in Article I.A. unless Terminated before Reversion Date (“Early Termination”) pursuant to Article V. herein.

C. The Project’s funds must be “expended” on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement.

- (i) For purposes of this Agreement, an entity has "expended funds" and made an "expenditure" on the day it accepts services rendered or accepts title for goods or property.
- (ii) Entering into a contract for services, goods, or property does not constitute funds being expended or an expenditure being made. “Encumbering” Project funds on the Grantee’s books to pay for services, goods, or property not yet rendered or the title to which the Grantee has not yet accepted does not constitute funds being expended or an expenditure being made.

ARTICLE V. EARLY TERMINATION

A. Early Termination Before Reversion Date

Early Termination includes:

- (iv) Termination due to completion of the Project before the Reversion Date; or
- (v) Termination due to complete expenditure of the Appropriation Amount before the Reversion Date; or
- (vi) Termination for violation of the terms of this Agreement; or
- (vii) Termination for mishandling of public funds, including but not limited to, fraud, waste, abuse, conflicts of interest.

Either the Department or the Grantee may early terminate this Agreement for the reasons described above prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days advance, written notice of early termination.

B. Early Termination Before Reversion Date Due to Non-appropriation

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. Throughout this Agreement the term “non-appropriate” or “non-appropriation” includes the following actions by the New Mexico Legislature: deauthorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-

appropriate the Appropriation referred to Article I. and, if that occurs, the Department shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of such termination, as of the effective date of the law making the non-appropriation. The Department's decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final.

C. Limitation on Department's Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination

In the event of Early Termination of this Agreement by either party, the Department's sole obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II.

ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS

A. The Department may direct the Grantee to suspend entering into new and further Third-Party Obligations.

- e. The Grantee shall immediately suspend entering into new or further written obligations with third parties upon the date the Grantee receives written notice given by the Department; and
- f. The Department is, upon the date the Grantee receives written notice given by the Department, suspending issuance of any new or further Notice of Obligation under this Agreement; and
- g. The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI.D. herein.

B. In the event of Suspension of this Agreement, the Department's sole obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II. herein.

C. A suspension of new or further Third-Party Obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V. herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

D. Corrective Action Plan in the Event of Suspension

In the event that the Department directs the Grantee to suspend entering into new or further Third-Party Obligations pursuant to Article VI.A. and the reason for such suspension is

Grantee's action or inaction, the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the Department, which approval shall not be unreasonably withheld, and be signed by the Grantee. Failure to develop a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V. A. (iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

ARTICLE VII. AMENDMENT

This Agreement shall not be altered, changed, or amended except by instrument in writing duly executed by both the parties hereto.

ARTICLE VIII. REPORTS

A. Periodic Reports

1. In order that the Department may adequately monitor Project activity, the Grantee shall submit to the Department Periodic Reports for the Project. Periodic Reports shall be submitted by entering such Project information as the Department may require directly into a database maintained by the Department of Finance and Administration. The information currently required to be reported into the database is set forth in Exhibit 1. The Department shall provide the Grantee with a minimum of thirty (30) days' advance written notice of any change to the Periodic Report format or content.

The Periodic Report shall be due monthly on the last day of each month, beginning with the first full month following execution of this Agreement by the Department and ending upon the submission of a Final Report for the Project. The Department may change the reporting period by giving Grantee a minimum of thirty (30) days' advance, written notice of any change to the reporting period; provided, however, that in no event shall the reporting period be less than one month.

2. A Grantee may request to submit paper reports in lieu of reporting of information directly into the database. Such requests shall be submitted in writing to the Department. If the Department approves a request to submit Paper Periodic Reports, the reports shall be submitted on a form prescribed by the Department and shall be due monthly on the last day of each month, beginning with the first full month following approval of the request to submit Paper Periodic Reports.

B. Paper Final Report

The Grantee shall submit to the Department and the Department of Finance and Administration a Final Report for the Project. The Final Report shall be submitted on a form provided by the Department and contain such information as the Department may require. The Final Report form is attached hereto as Exhibit 2. The Department shall provide Grantee with a minimum of thirty (30) days' advance, written notice of any change to the Final Report format or content. The Paper Final Report must be submitted within twenty (20) days after the Project's Reversion Date or within twenty (20) days of the date of Early Termination, whichever ever first occurs.

C. Requests for Additional Information/Project Inspection

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII., the Department may (i) request such additional information regarding the Project as it deems necessary and (ii) conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project. Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department. Requests made pursuant to this subparagraph C, are in addition to and not in lieu of the periodic and final reporting described in subparagraphs A and B of this Article VIII.

ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES

A. The Grantee shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit 3 or such other form as the Department may prescribe. Payment requests are subject to the following procedures:

- (vi) The Grantee must submit one original and one copy of each Request for Payment.
- (vii) Each request for payment must contain a notarized certification that:
 - a. The information contained in the request is accurate;
 - b. The expenditures included in the request are valid and for proper purposes under this Agreement;
 - c. The expenditures included in the request have been paid or, if the expenditures have been incurred but not yet paid, the Grantee's representation that the expenditure will be paid within fifteen (15) calendar days of receiving payment from the Department;
 - d. None of the expenditures included in the request has been previously reimbursed;
 - e. That the Project activity is in full compliance with the Grant Agreement; and
 - f. Such other representations as the Department may reasonably require.

- (viii) All notarized certifications must be made by the Grantee's designated representative in Article III. of this Agreement; a person designated by such representative in writing on a Department prescribed form as being authorized to submit such certifications; or the person designated by tribal law as being authorized to submit such certifications.
- (ix) As an additional condition precedent to payment, the Department may, in its discretion, require the Grantee to submit with its Request(s) for Payment invoices showing the amount and type of expenditures and proof of payment (e.g., cancelled warrant or check).

B. Deadlines

Requests for Payment shall be submitted by Grantee to the Department on the earlier of:

- (iv) Immediately as they are received by the Grantee but at a minimum twenty (20) days from the end of the calendar quarter in which the expenditure was incurred, if total unreimbursed expenditures at calendar quarter end exceed \$25,000; or
- (v) July 15 of each year for all unreimbursed expenditures incurred during the previous State fiscal year, which runs from July 1 to June 30; provided, however, that, if Requests for Payment cannot be submitted by July 15 despite Grantee's good faith and reasonable efforts to do so, the Department may allow the Grantee to:
 - i. submit a good faith and documented estimate of its unreimbursed expenditures by July 15; and
 - ii. submit Requests for Payment with all required supporting documentation by a later date established by the Department in accordance with deadlines promulgated by the Department of Finance and Administration Financial Control Division.
- (vi) Twenty (20) days from date of Early Termination; or
- (vii) Twenty (20) days from the Reversion Date.

C. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement, including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II. herein to provide Third Party Obligations. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department under this Agreement.

ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS;
REPRESENTATIONS AND WARRANTIES

The Grantee hereby represents and warrants that all of the following general conditions and restrictions are applicable to the Project:

- (v) The Project’s funds must be spent in accordance with all applicable laws, regulations, policies, and guidelines, including, but not limited to, the Grantee’s procurement code and/or processes.
- (vi) The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the so-called “Anti-Donation Clause.”
- (vii) The Grantee shall not at any time convert any property acquired or developed with the Project’s funds to uses other than those specified in the Project Description without the Department's express, advance, written approval.
- (viii) Ownership of property acquired with funds made available under this Agreement shall remain with the tribal entity and/or its local governmental entities throughout the useful life of the property.
- (ix) The Grantee has the legal authority to receive and expend the Project’s funds.
- (x) This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.
- (xi) This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's constitution or federal law (if applicable), or any judgment or decree to which it is subject.
- (xii) The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.
- (xiii) The Grantee’s governing body has duly adopted or passed as an official act a law, resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement.
- (xiv) If applicable to the Project, the Grant will be conducted and administered in conformity with:
 1. The policies of the National Environmental Policy Act of 1969 and other provisions of law which further the purposes of such Act and as issued pursuant to section 104 (g) of the Housing and Urban Development Act and contained in 24 CFR Part 58.

2. The requirements of the Flood Disaster Protection Act of 1973 (Public Law 93-234; as amended) and if necessary with the participation requirements of the National Flood Insurance Program.
3. The prohibition against the use of lead-based paint of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4831 (b)). Such prohibitions are contained in 24 CFR Part 35, Subpart B, and are applicable to residential structures.

(xv) The Grantee shall abide by all applicable federal whistle-blower laws.

(xvi) The Grantee certifies, to the best of its knowledge and belief, no funds have been paid or will be paid to or for the benefit of an elected official, officer, or employee of the Grantee in connection with the awarding of any Third-Party Obligation.

ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS; PROJECT RECORDS

A. The Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles and maintain a separate fund with a separate organizational code for the funds to assure separate budgeting and accounting of the funds.

B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records related to the Project as the Department shall prescribe.

C. The Grantee shall make all Project records available to the Department of Finance and Administration and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

ARTICLE XII. IMPROPERLY REIMBURSED FUNDS

If the Department determines that part of all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

ARTICLE XIII. LIABILITY

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to immunities and limitations of the New Mexico Tort Claims Act. Any liability of the Grantee is subject to immunities and limitations of applicable federal and tribal law.

All of the privileges and immunities from liability, exemptions from laws, ordinances and rules, all pension, relief, disability, workmen's compensation and other benefits which apply to the activity of officers, agents or employees of the parties to this Agreement, shall apply to them to the same extent while engaged extraterritorially in the performance of any of their functions and duties under the provisions of this Agreement.

ARTICLE XIV. SCOPE OF AGREEMENT

This Agreement constitutes the entire and exclusive agreement between the Grantee and the Department concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

The Grantee shall include a "non-appropriations" clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:

"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, the [Grantee's name] may immediately terminate this Agreement by giving the Contractor written notice of such termination. The [Grantee's name]'s decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.”

ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

Grantee shall include the following or a termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:

“This contract is funded in whole or in part by funds made available under a New Mexico Environment Department Grant Agreement. Should the New Mexico Environment Department early terminate the grant agreement, the [Grantee's name] may early terminate this contract by providing contractor written notice of such termination. In the event of termination pursuant to this paragraph, the [Grantee's name] only liability shall be to pay contractor or vendor for acceptable goods delivered and services rendered before the termination date.”

ARTICLE XVII. FORCE LABOR ACCOUNTS

The Grantee may utilize force labor accounts for the Project and such force labor accounts constitute Third Party Obligations within the meaning of this Agreement. Force labor accounts are defined as the hiring of temporary employees to work specifically on the Project. In the case of force labor accounts, the Department shall issue a Notice of Obligation in accordance with the following:

1. The Grantee must submit a notarized certification stating:
 1. the amount to be used to pay force labor working on the Project;
 2. that the labor is being hired specifically for the Project;
 3. that the labor is being hired in accordance with the Grantee's procurement or employment code and/or processes; and
 4. that the labor will be hired within a reasonable time after the Grantee's receipt of a Notice of Obligation.

The certification required under this paragraph must be made by the Grantee's designated representative in Article III. of this Agreement; a person designated by such representative in writing on a Department prescribed form as being authorized to submit such certifications; or the person designated by tribal law as being authorized to submit such certifications.

2. Grantee shall submit Requests for Payment concerning force labor account expenditures in accordance with the provisions in Article IX, above, and the Department will accept pay stubs in lieu of invoices.
3. Grantee must submit in the final report required by Article VIII written documentation, such as a labor distribution report, that shows all force labor account expenditures;
4. In the event that the Grantee will expend less on force labor account than is stated in the Notice of Obligation concerning such labor, it must immediately notify the Department of such fact. In that event, the Department shall issue an amended Notice of Obligation reflecting the reduced level of force labor account expenditures.
5. A Notice of Obligation issued for force labor account expenditures cannot be used for any other purpose unless the tribal entity has obtained an amended or new Notice of Obligation for another Third-Party Obligation.

XVIII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.

A. Throughout the term of this Agreement, Grantee shall:

1. timely submit to the federal government all forms and federal single audit documentation required under the federal Single Audit Act of 1984, as amended, and Office of Management and Budget Circular No. A-133. The parties acknowledge and agree that a federal single audit report is timely submitted for purposes of this subparagraph if submitted by any extended due date granted by the Grantee's federal cognizant agency;
2. notify the Department if Grantee requests from its federal cognizant agency an extension to the federal single audit report submission due date and the reasons for the request;
3. in the event the publicly available Data Collection Form for Reporting on federal single audits (Form SF-SAC or its successor forms) demonstrates that the Grantee's audit report for its most recent fiscal year contained an opinion other than an unqualified opinion, a significant deficiency, a material weakness, a material noncompliance, or questioned costs, provide the Department, upon request, copies of the relevant sections of the single audit report and documentation and information concerning the development and implementation of any corrective action(s); provided, however, that the Grantee is not required to provide the Department with copies of the financial statements, notes to financial statements, or supplementary information sections of the single audit report; and
4. have adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds. "Adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds" means that the design and operation of the Grantee's internal controls allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, on a timely basis: (i) noncompliance with applicable laws, policies, and procedures related to the expenditure of grant funds, including, but not limited to, expending grant funds after

expiration of the expenditure period; (ii) misstatements regarding grant funds, including, but not limited to, the failure to timely and accurately record and report grant revenue and expenditures; (iii) unauthorized or unsupported expenditures of grant funds; and (iv) the misappropriation of grant funds or assets acquired by grant funds, including, but not limited to, theft of grant funds or assets acquired by grant funds and the use of grant funds or assets acquired by grant funds for other than allowable purposes.

B. In the event Grantee fails to comply with the requirements of Paragraph A of this Article XVIII, the Department may, depending upon the nature and cause of the noncompliance, take one or more of the following actions:

1. suspend new or further obligations pursuant to Article VI(A) of this Agreement;
2. require the Grantee to develop and implement a written corrective action plan pursuant to Article VI(D) of this Agreement to remedy the non-compliance; provided, however, that the Department shall consider and give due deference to any corrective action plan submitted to or approved by a federal agency making an award to the Grantee;
3. impose special grant conditions to address the non-compliance by giving the Grantee notice of such special conditions in accordance with Article III of this Agreement; the special conditions shall be binding and effective on the date that notice is deemed to have been given pursuant to Article III; or
4. terminate this Agreement pursuant to Article V(A) of this Agreement.

The Department shall provide Grantee with written notice of the noncompliance and, prior to taking one of the actions specified in subparagraphs 2, 3, and 4 of this Paragraph B, an opportunity to respond to the notice of noncompliance and proposed action.

ARTICLE XIX. [OPTIONAL IF THE APPROPRIATION IS FUNDED BY SEVERANCE TAX BONDS OR GENERAL OBLIGATION BONDS – NOT TO BE USED FOR GENERAL FUNDS] BOND PROJECT CLAUSES

A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond or general obligation bond, which is administered by the New Mexico State Board of Finance (BOF), an entity separate and distinct from the Department. Grantee acknowledges and agrees that (i) the Department’s failure to inform Grantee of a BOF imposed condition does not affect the validity or enforceability of the condition; (ii) the BOF may in the future impose further or different conditions upon the Project; (iii) all BOF conditions are effective without amendment of this Agreement; (iv) all applicable BOF conditions must be satisfied before the BOF will release to the Department funds subject to the condition(s); (v) the Department’s obligation to reimburse Grantee from the Project is contingent upon the then current BOF conditions being satisfied; and (vi) all applicable BOF conditions must be satisfied prior to the Project’s Reversion Date.

B. Grantee acknowledges and agrees that this Agreement is subject to the BOF's Bond Project Disbursements rule, 2.61.6 NMAC, as such may be amended or re-codified.

[THIS SPACE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date of execution by the Department.

GRANTEE

By: _____

Date: _____

Name, Title

Entity Name

NEW MEXICO ENVIRONMENT DEPARTMENT

By: _____

Date: _____

Butch Tongate, Cabinet Secretary

New Mexico Environment Department

By: _____

Date: _____

Jennifer L. Hower, General Counsel

New Mexico Environment Department

By: _____

Date: _____

Marlene Velasquez, Chief Financial Officer

New Mexico Environment Department

**STATE OF NEW MEXICO
CAPITAL GRANT PROJECT
DATABASE PERIODIC REPORT
EXHIBIT 1**

The Capital Projects Monitoring Systems (CPMS) can be found at: <http://cpms.dfa.state.nm.us>. Below are screenshots from the website on required fields for Local Entities. Please contact your program manager for Login and Password information.

| Local Data | |
|---|-----|
| ICIP Project # | |
| ICIP Priority | |
| Expended Amount (Local Entity) | \$0 |
| Current Balance (Local Entity) | \$0 |
| Project Status (Local Entity) | |
| Project Phase (Local Entity) | |
| Goal/Milestone achieved last quarter | |
| Goal/Milestone for next quarter | |
| Valid Contracts in Place (True/False) | |
| No activity for month being reported (True/False) | |
| Last Submission Date (Local) | |
| Last Update (Local) | |

| | Date Completed, Expected Completion Date or N/A | Amount Funded to Date | Future Funding Amounts | Funding Sources | Contractor Name | Contract Amount | Comments |
|------------------------|---|-----------------------|------------------------|-----------------|-----------------|-----------------|----------|
| Grant Agreement Issued | | | | | | | |
| Water Rights | | | | | | | |
| Easement & ROW | | | | | | | |
| Acquisition | | | | | | | |
| Archaeological Studies | | | | | | | |
| Environmental Studies | | | | | | | |
| Planning | | | | | | | |
| Design | | | | | | | |
| Construction | | | | | | | |
| Furnish/Equipment | | | | | | | |
| Total | | | | | | | |

STATE OF NEW MEXICO

**CAPITAL GRANT PROJECT
Paper Periodic/Final Report
Exhibit 2**

PERIODIC REPORT FINAL REPORT

Grantee: _____

Project Number: _____ Reporting Period: _____

1. Please provide a detailed status of project referenced above.

1. ***Third Party Obligations***

Purchase Order or Contract # _____

Name of Contractor or Vendor: _____

Amount of Third Party Obligation: _____

Date Executed: _____

Termination Date: _____

2. **Project Phase**

Bonds Sold Plan/Design Bid Documents Construction

(provide anticipated date of commencement and completion for each phase)

2. Grant Amount adjusted for AIPP if applicable: _____

Total Amount of all Notices of Obligation to Reimburse: _____

Total Grant Amount Expended by Grantee to Date: _____

Grant Balance as of this Date: _____

Amount of Other Unexpended Funding Sources: _____

PERIODIC REPORT

I hereby certify that the aforementioned Capital Grant Project funds are being expended in accordance with all requirements of the Grant Agreement, and in compliance with all other applicable requirements.

FINAL REPORT

I hereby certify that the aforementioned Capital Grant Project funds have been completed and funds were expended in accordance with all requirements of the Grant Agreement, and in compliance with all other applicable state/regulatory requirements.

Grantee Representative/Title

Date

| |
|---|
| STATE OF NEW MEXICO CAPITAL GRANT PROJECT Request for Payment Form Exhibit 3 |
|---|

| | |
|---|--|
| I. Grantee Information (Make sure information is complete & accurate) | II. Payment Computation |
| A. Grantee: | A. Grant Amount: |
| B. Address: <small>Complete Mailing, including Suite, if applicable</small> | B. AIPP Amount (If Applicable) |
| <small>City State Zip</small> | C. Funds Requested to Date: |
| C. Phone No: | D. Amount Requested this Payment: |
| D. Grant No: | E. Grant Balance: \$0.00 |
| E. Project Title: | F. <input type="checkbox"/> GF <input type="checkbox"/> GOB <input type="checkbox"/> STB (attach wire if 1st draw) |
| F. Grant Expiration Date: | G. Payment Request No. |
| III. Fiscal Year Expenditure Period Ending: | |
| (check one) | (Jan-Jun) <input type="checkbox"/> Fiscal (Jul-Dec) <input type="checkbox"/> Year |

IV. Certification: Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct; expenditures are properly documented, and are valid expenditures or actual receipts; and that the grant activity is in full compliance with Article X, Sec. 14 of the New Mexico Constitution known as the "anti donation" clause.

| | |
|--|--|
| Grantee Fiscal Officer Printed Name _____ Date: _____ SWORN TO AND SUBSCRIBED before me on this _____ day of _____, 20____ | Grantee Representative Printed Name _____ Date: _____ SWORN TO AND SUBSCRIBED before me on this _____ day of _____, 20____ |
| Notary Public _____ My Commission expires _____ | Notary Public _____ My Commission expires _____ |

(Department Use Only)

| | |
|--|---|
| Vendor Code: _____ | Fund No.: _____ |
| Loc No.: _____ | |
| Division Fiscal Officer Date | Division Project Manager Date |
| I certify that the Grantee financial and vendor file information agree with the above submitted information. | I certify that the Grantee records and related appropriation laws agree with the above submitted information. |

APPENDIX E

SAMPLE AGREEMENT FOR NON-GOVERNMENT ENTITIES

STATE OF NEW MEXICO

NEW MEXICO ENVIRONMENT DEPARTMENT

CONTRACT # _____

THIS AGREEMENT is made and entered into by and between the State of New Mexico, **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 Agency.

IT IS AGREED BETWEEN THE PARTIES:

1. Scope of Work.

The Contractor shall perform the following work:

2. Compensation.

A. The Agency shall pay to the Contractor in full payment for services satisfactorily performed at the rate of _____ dollars (\$_____) per hour (OR BASED UPON DELIVERABLES, MILESTONES, BUDGET, ETC.), such compensation not to exceed (AMOUNT), excluding gross receipts tax. The New Mexico gross receipts tax levied on the amounts payable under this Agreement totaling (AMOUNT) shall be paid by the Agency to the Contractor. **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 in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided.**

B. Payment 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. 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.**

(—OR—)

(CHOICE – MULTI-YEAR)

A. The Agency shall pay to the Contractor in full payment for services satisfactorily performed pursuant to the Scope of Work at the rate of _____ dollars (\$_____) in FYXX (USE FISCAL YEAR NUMBER TO DESCRIBE YEAR; DO NOT USE FY1, FY2, ETC.). The New Mexico gross receipts tax levied on the amounts payable under this Agreement in FYXX

totaling (AMOUNT) shall be paid by the Agency to the Contractor. **The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed (AMOUNT) in FYXX.**

(REPEAT LANGUAGE FOR EACH FISCAL YEAR COVERED BY THE AGREEMENT -- USE FISCAL YEAR NUMBER TO DESCRIBE EACH YEAR; DO NOT USE FY1, FY2, ETC.).

B. Payment in FYXX, FYXX, FYXX, and FYXX 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. 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 AGENCY. This Agreement shall terminate on (**DATE**) 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 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

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 programs by providing each employee with, as a minimum, the following web site link to additional information: <http://insurenwemexico.state.nm.us/>.

22. Employee Pay Equity Reporting.

Contractor agrees if it has ten (10) or more New Mexico employees OR eight (8) or more employees in the same job classification, at any time during the term of this contract, to complete and submit the PE10-249 form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. If contractor has (250) or more employees contractor must complete and submit the PE250 form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. For contracts that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, contractor also agrees to complete and submit the PE10-249 or PE250 form, whichever is applicable, within thirty (30) days of the annual contract anniversary date of the initial submittal date or, if more than 180 days has elapsed since submittal of the last report, at the completion of the contract, whichever comes first. Should contractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size

requirement for reporting, contractor agrees to provide the required report within ninety (90 days) of meeting or exceeding the size requirement. That submittal date shall serve as the basis for submittals required thereafter. Contractor also agrees to levy this requirement on any subcontractor(s) performing more than 10% of the dollar value of this contract if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of the contract. Contractor further agrees that, should one or more subcontractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, contractor will submit the required report, for each such subcontractor, within ninety (90 days) of that subcontractor meeting or exceeding the size requirement. Subsequent report submittals, on behalf of each such subcontractor, shall be due on the annual anniversary of the initial report submittal. Contractor shall submit the required form(s) to the State Purchasing Division of the General Services Department, and other departments as may be determined, on behalf of the applicable subcontractor(s) in accordance with the schedule contained in this paragraph. Contractor acknowledges that this subcontractor requirement applies even though contractor itself may not meet the size requirement for reporting and be required to report itself.

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

23. Invalid Term or Condition.

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

24. Enforcement of Agreement.

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict 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.

25. Notices.

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

To the Agency:
[insert name, address and email].

To the Contractor:
[insert name, address and email].

26. 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 Agency below.

By: _____

Date: _____

Butch Tongate, Cabinet Secretary
New Mexico Environment Department

By: _____

Date: _____

Jennifer L. Hower, General Counsel
New Mexico Environment Department - Certifying legal sufficiency

By: _____

Date: _____

Marlene Velasquez, Chief Financial Officer
New Mexico Environment Department

By: _____

Date: _____

Contractor

By: _____

Date: _____

State Purchasing Agent

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: **00-000000-00-0**

By: _____
Taxation and Revenue Department

Date: _____

APPENDIX F

COST REPOSE FORM

| BUDGET CATEGORIES | RSP Funds | Other Funds (specify source) | TOTAL |
|--|------------------|-------------------------------------|--------------|
| Personnel and Benefits: | | | |
| Project Coordinator | | | |
| Other paid staff - (identify each person) | | | |
| Volunteer participation, planning, monitoring | | | |
| | | | |
| Travel: | | | |
| Lodging / per diem (maximum \$85/night in-state travel rate, or \$135/night in Santa Fe) | | | |
| Mileage reimbursement @ 43 cents/mile (2018 NM state mileage rate) | | | |
| | | | |
| Equipment Rental: | | | |
| Construction equipment, field equipment | | | |
| | | | |
| Supplies: | | | |
| Field supplies/ rocks/ logs/ fencing/ seed / plants / signs | | | |
| Monitoring Supplies | | | |
| Materials donations | | | |
| | | | |
| Contractual: Direct Labor, Outside Services; <u>include gross receipts tax</u> | | | |
| Engineering/Design/Permitting Services | | | |
| Construction Services Contractors/Subcontractors | | | |
| Survey/ Monitoring/ Archaeological Services | | | |
| | | | |
| Other: | | | |
| e.g. permitting fees, map and photo duplication; postage/ mailing costs | | | |
| | | | |
| TOTAL | | | |

APPENDIX G

LETTER OF TRANSMITTAL FORM

Letter of Transmittal Form

RFP#: _____

Offeror Name: _____ **FED ID#** _____

Items #1 to #7 EACH MUST BE COMPLETED IN FULL Failure to respond to all seven items WILL RESULT IN THE DISQUALIFICATION OF THE PROPOSAL!

1. **Identity (Name) and Mailing Address** of the submitting organization:

2. For the person authorized by the organization to contractually obligate on behalf of this Offer:

Name _____

Title _____

E-Mail Address _____

Telephone Number _____

3. For the person authorized by the organization to negotiate on behalf of this Offer:

Name _____

Title _____

E-Mail Address _____

Telephone Number _____

4. For the person authorized by the organization to clarify/respond to queries regarding this Offer:

Name _____

Title _____

E-Mail Address _____

Telephone Number _____

5. Use of Sub-Contractors (Select one)

___ No sub-contractors will be used in the performance of any resultant contract OR

___ The following sub-contractors will be used in the performance of any resultant contract:

(Attach extra sheets, as needed)

6. Please describe any relationship with any entity (other than Subcontractors listed in (5) above) which will be used in the performance of any resultant contract.

(Attach extra sheets, as needed)

7. ___ On behalf of the submitting organization named in item #1, above, I accept the Conditions Governing the Procurement as required in Section II. C.1.

___ I concur that submission of our proposal constitutes acceptance of the Evaluation Factors contained in Section V of this RFP.

___ I acknowledge receipt of any and all amendments to this RFP.

_____, 2019
Authorized Signature and Date (Must be signed by the person identified in item #2, above.)