

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

**REQUEST FOR PROPOSALS (RFP)**

**River Stewardship Program FY2021**



**RFP # 10-66700-21-27670**

RFP Release Date: April 30, 2021

Proposal Due Date: June 29, 2021

**ELECTRONIC-ONLY PROPOSAL SUBMISSION**

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# **I. INTRODUCTION**

## **A. PURPOSE OF THIS REQUEST FOR PROPOSALS**

The purpose of the Request for Proposals (RFP) is to solicit sealed proposals to establish a contract 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 2020 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 349. The reversion date for the 2020 appropriation is June 30, 2024, and projects must be completed prior to the reversion date. In the event that other funds are available or 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.

## **C. SCOPE OF PROCUREMENT**

Through this procurement, NMED seeks to establish Capital Outlay Agreements or Contracts 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 (to government entities) and/or Contracts (to non-government entities). This procurement will result in contractual agreements between two parties; the procurement may ONLY be used by those two parties exclusively.

The successful Offeror(s) under contractual agreement will perform services that include project development, management, design, permitting, and construction/implementation of restoration techniques, and pre-and post-implementation monitoring and reporting. The detailed scope of work is project-specific and will be described in a work plan attachment to the executed Capital Outlay Agreement or Contract. Work plan attachments 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. Examples of project tasks that will be included within individual scopes of work include, but are not limited to: surveying, environmental monitoring, earthmoving, constructing, fencing, removing non-native vegetation; planting native vegetation; and changing land or water management practices if necessary for long-term project success.

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:

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

#### **D. PROCUREMENT MANAGER**

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

Name: Kate Lacey, Procurement Manager  
Address: New Mexico Environment Department  
Surface Water Quality Bureau  
Harold Runnels Building, N2050  
1190 St. Francis Drive, P.O. Box 5469  
Santa Fe, NM 87502-5469  
Telephone: (505) 946-8863  
Email: Kathryn.Lacey@state.nm.us

1. **Any inquiries or requests** regarding this procurement should be submitted, in writing, to the Procurement Manager. Offerors may contact **ONLY** the Procurement Manager regarding this procurement. Other state employees or Evaluation Committee members do not have the authority to respond on behalf of the SPD.
2. **Protests of the solicitation or award must be submitted in writing to the Protest Manager identified in Section II.B.10.** As a Protest Manager has been named in this Request for Proposals, pursuant to §13-1-172, NMSA 1978 and 1.4.1.82 NMAC, **ONLY** protests delivered directly to the Protest Manager in writing and in a timely fashion will be considered to have been submitted properly and in accordance with statute, rule and this Request for Proposals. Protests submitted or delivered to the Procurement Manager will **NOT** be considered properly submitted.

#### **E. PROPOSAL SUBMISSION**

Submissions of all proposals must be accomplished via SPD's eProNM electronic procurement system. Refer to Section III.B.1 for instructions.

#### **F. DEFINITION OF TERMINOLOGY**

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

1. “**Agency**” means the State Purchasing Division of the General Services Department or that State Agency sponsoring this Procurement.
2. “**Award**” means the final execution of the contract document.
3. “**Business Hours**” means 8:00 AM thru 5:00 PM MST/MDT, whichever is in effect on the date given.
4. “**Close of Business**” means 5:00 PM Mountain Standard or Daylight Time, whichever is in use at that time.
5. “**Confidential**” means confidential financial information concerning Offeror’s organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act §§57-3-A-1 through 57-3A-7, NMSA 1978,. See also NMAC 1.4.1.45. The following items may **not** be labelled as confidential: Offeror’s submitted Cost response, Staff/Personnel Resumes/Bios (excluding personal information such as personal telephone numbers and/or home addresses), and other submitted data that is **not** confidential financial information or that qualifies under the Uniform Trade Secrets Act.
6. “**Contract**” means any agreement for the procurement of items of tangible personal property, services or construction.
7. “**Contractor**” means any business having a contract with a state agency or local public body.
8. “**Determination**” means the written documentation of a decision of a procurement officer including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains.
9. “**Electronic Submission**” means a successful submittal of Offeror’s proposal in the eProNM system, in such cases where eProNM submissions are accepted.
10. “**Evaluation Committee**” means a body appointed to perform the evaluation of Offerors’ proposals.
11. “**Evaluation Committee Report**” means a report prepared by the Procurement Manager and the Evaluation Committee to support the Committee’s recommendation for contract award(s). It will contain scores and written evaluations of all responsive Offeror proposals.
12. “**Final Award**” means, in the context of this Request for Proposals and all its attendant documents, that point at which the final required signature on the contract(s) resulting from the procurement has been affixed to the contract(s) thus making it fully executed.
13. “**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.

14. “**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.
15. “**Mandatory**” – the terms “must,” “shall” “will,” “is required,” or “are required,” identify a mandatory item or factor. Failure to meet a mandatory item or factor may result in the rejection of the Offeror’s proposal.
16. “**Minor Irregularities**” means anything in the proposal that does not affect the price, quality and/or quantity, or any other mandatory requirement.
17. “**NMED**” means New Mexico Environment Department.
18. “**Offeror**” is any person, corporation, or partnership who chooses to submit a proposal.
19. “**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.
20. “**Procuring Agency**” means all State of New Mexico agencies, commissions, institutions, political subdivisions and local public bodies allowed by law to entertain procurements.
21. “**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.
22. “**Redacted**” means a version/copy of the Offeror’s proposal with the information considered proprietary or confidential (as defined by §§57-3A-1 to 57-3A-7, NMSA 1978 and NMAC 1.4.1.45 and summarized herein and outlined in Section II.C.8 of this RFP) blacked-out BUT NOT omitted or removed.
23. “**Request for Proposals (RFP)**” means all documents, including those attached or incorporated by reference, used for soliciting proposals.
24. “**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.
25. “**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.

26. **“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.
27. **“SPD”** means State Purchasing Division of the New Mexico State General Services Department.
28. **“Staff”** means any individual who is a full-time, part-time, or an independently contracted employee with the Offerors’ company.
29. **“State (the State)”** means the State of New Mexico.
30. **“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.
31. **“State Purchasing Agent”** means the Director of the Purchasing Division of the General Services Department.
32. **“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.
33. **“Written”** means typewritten or formatted to be printed on standard 8 ½ x 11 inch paper. Larger paper is permissible for charts, spreadsheets, etc.

## **G. PROCUREMENT LIBRARY**

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

Electronic version of RFP, Questions & Answers, RFP Amendments, etc.

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

For more information on the River Stewardship Program, please visit the following website:

<https://www.env.nm.gov/surface-water-quality/river-stewardship-program/>

## II. CONDITIONS GOVERNING THE PROCUREMENT

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

### A. SEQUENCE OF EVENTS

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

Action	Responsible Party	Due Date
1. Issue RFP	SPD	April 30, 2021
2. Acknowledgement of Receipt Form	Potential Offerors	May 20, 2021
3. Deadline to submit Questions	Potential Offerors	May 20, 2021
4. Response to Written Questions	Procurement Manager	May 27, 2021
<b>5. Submission of Proposal</b>	<b>Potential Offerors</b>	<b>June 29, 2021 at 3:00 pm local time</b>
6.* Proposal Evaluation	Evaluation Committee	June 30, 2021 to September 30, 2021
7.* Selection of Finalists	Evaluation Committee	October 8, 2021
8.* Finalize Contractual Agreements	NMED / Finalist Offerors	October 12, 2021 to December 10, 2021
9.* Contract Awards	NMED / Finalist Offerors	December 10, 2021
10.* Protest Deadline	SPD	15 days after Contract Award

\*Dates indicated in Events 6 through 10 are estimates only, and may be subject to change without necessitating an amendment to the RFP.

### B. EXPLANATION OF EVENTS

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

#### 1. Issuance of RFP

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

## 2. Acknowledgement of Receipt

Potential Offerors may e-mail the Acknowledgement of Receipt Form (APPENDIX A), to the Procurement Manager identified in Section I.D, Procurement Manager, to have their organization placed on the procurement Distribution List. The Procurement Manager will submit all Acknowledgement of Receipt Forms to the SPD Buyer by the date indicated in Section II.A, Sequence of Events. The form must be returned to the Procurement Manager by Close of Business on the date indicated in Section II.A, Sequence of Events.

The procurement distribution list will be used for the distribution of written responses to questions, and/or any amendments to the RFP. Failure to return the Acknowledgement of Receipt Form does not prohibit potential Offerors from submitting a response to this RFP. However, by not returning the Acknowledgement of Receipt Form, the potential Offeror's representative shall not be included on the distribution list, and will be solely responsible for obtaining from the Procurement Library (Section I.G.) responses to written questions and any amendments to the RFP.

## 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 Close of Business as indicated in Section II.A, Sequence of Events. All written questions must be addressed to the Procurement Manager as declared in Section I.D. Questions shall be clearly labeled and shall cite the Section(s) in the RFP or other document which form the basis of the question.

## 4. Response to Written Questions

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

An electronic version of the Questions and Answers will be posted to:

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

## 5. Submission of Proposal

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

ALL OFFEROR PROPOSALS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE PROCUREMENT MANAGER OR DESIGNEE NO LATER THAN **3:00 PM** MST ON THE DATE INDICATED IN SECTION II.A, SEQUENCE OF EVENTS. **PROPOSALS RECEIVED AFTER THIS DEADLINE WILL NOT BE ACCEPTED.** The date and time of receipt will be recorded on each proposal. Proposals will be time-stamped in the system when the Offeror clicks "OK" after "Review and Submit." Such electronic submissions will be considered sealed in accordance with statute.

*It is the Offeror's responsibility to ensure all documents are completely uploaded and submitted electronically via the eProNM system by the deadline set forth in this RFP. The eProNM system will automatically cease uploading data at the date and time of the deadline. Please ensure that you, as the Offeror, **allow adequate time for large uploads and to fully complete your submittal by the deadline.** A submission that is not both: (1) fully complete; and (2) received, via the eProNM system by the deadline, will be deemed late. Further, a submission that is not fully complete and received via the eProNM system by the deadline because the response was captured, blocked, filtered, quarantined or otherwise prevented from reaching the proper destination server by any anti-virus or other security software will be deemed late. In accordance with statute and rule, **NO LATE PROPOSAL CAN BE ACCEPTED.***

**Proposals must be submitted electronically through SPD's eProNM electronic procurement system. Refer to Section III.B.1 for instructions.** Proposals submitted by facsimile, or other electronic means other than through the SPD electronic e-procurement system, will not be accepted.

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

## **6. Proposal Evaluation**

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

## **7. Selection of Finalists**

The Evaluation Committee will select, and the Procurement Manager will notify the finalist Offerors as per schedule Section II.A, Sequence of Events or as soon as possible thereafter. Finalists will be comprised of the Offerors receiving the highest cumulative scores in the following Sections: Section IV.B.1 Organizational Experience, Section IV.B.2 Mandatory Specifications, Section IV.C.3 Cost, and Section IV.C.4 New Mexico Preferences.

## **8. Finalize Contractual Agreements**

After approval of the Evaluation Committee Report, any contractual agreement(s) resulting from this RFP will be finalized with the most advantageous Offeror(s), taking into consideration the evaluation factors set forth in this RFP, as per Section II.A., Sequence of Events, or as soon as possible thereafter. The most advantageous proposal may or may not have received the most points. In the event mutually agreeable terms cannot be reached with the apparent most advantageous Offeror in the timeframe specified, the State reserves the right to finalize a contractual agreement with the next most advantageous Offeror(s) without undertaking a new procurement process.

## **9. Contract Awards**

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

## **10. Protest Deadline**

Any protest by an Offeror must be timely submitted and in conformance with §13-1-172, NMSA 1978 and applicable procurement regulations. As a Protest Manager has been named in this Request for Proposals, pursuant to §13-1-172, NMSA 1978 and 1.4.1.82 NMAC, ONLY protests delivered directly to the Protest Manager in writing and in a timely fashion will be considered to have been submitted properly and in accordance with statute, rule and this Request for Proposals. The 15-calendar day protest period shall begin on the day following the notice of award of contract(s) and will end at Close of Business on the 15<sup>th</sup> 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:

Mr. Mark Hayden, State Purchasing Agent  
State Purchasing Division  
General Services Department  
1100 St. Francis Drive, Suite 2016  
Santa Fe, NM 87505  
Email: [Mark.Hayden@state.nm.us](mailto:Mark.Hayden@state.nm.us)

**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 these Conditions Governing the Procurement, Section II.C, by completing and signing the Letter of Transmittal form, pursuant to the requirements in Section II.C.30, located in APPENDIX G.

### 2. Incurring Cost

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

### 3. Prime Contractor Responsibility

Any contractual agreement that may result from this RFP shall specify that the prime contractor is solely responsible for fulfillment of all requirements of the contractual agreement with a State Agency which may derive from this RFP. The State Agency entering into a contractual agreement with a vendor will make payments to only the prime contractor.

### 4. Subcontractors/Consent

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

### 5. Amended Proposals

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

## 6. Offeror's Rights to Withdraw Proposal

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

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

## 7. Proposal Offer Firm

Responses to this RFP, including proposal prices for services, will be considered firm for 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

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

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

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

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

## **9. No Obligation**

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

## **10. Termination**

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

## **11. Sufficient Appropriation**

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

## **12. Legal Review**

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

## **13. Governing Law**

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

## **14. Basis for Proposal**

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

## **15. Contract Terms and Conditions**

The contract between an agency and a contractor will follow the format specified by the Agency and contain the terms and conditions set forth in the Draft Contract, APPENDIX C. However, the contracting agency reserves the right to negotiate provisions in addition to those contained in this RFP (Draft Contract) with any Offeror. The contents of this RFP, as revised and/or supplemented, and the successful Offeror's proposal will be incorporated into and become part of any resultant contract.

The Agency discourages exceptions from the contract terms and conditions as set forth in the RFP Draft Contract. Such exceptions may cause a proposal to be rejected as nonresponsive when, in the sole judgment of the Agency (and 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 Draft Contract (APPENDIX C) strongly enough to propose alternate terms and conditions in spite of the above, the Offeror must propose **specific** alternative language. The Agency may or may not accept the alternative language. General references to the Offeror's terms and conditions or attempts at complete substitutions of the Draft Contract are not acceptable to the Agency and will result in disqualification of the Offeror's proposal.

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

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

## **16. Offeror's Terms and Conditions**

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

## **17. Contract Deviations**

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

## **18. Offeror Qualifications**

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

## **19. Right to Waive Minor Irregularities**

The Evaluation Committee reserves the right to waive minor irregularities, as defined in Section I.F.16. The Evaluation Committee also reserves the right to waive mandatory requirements, provided that **all** of the otherwise responsive proposals failed to meet the same mandatory requirements and the failure to do so does not otherwise materially affect the procurement. This right is at the sole discretion of the Evaluation Committee.

## **20. Change in Contractor Representatives**

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

## **21. Notice of Penalties**

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

## **22. Agency Rights**

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

## **23. Right to Publish**

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

## **24. Ownership of Proposals**

All documents submitted in response to the RFP shall become property of the State of New Mexico. If the RFP is cancelled, all responses received shall be destroyed by the Agency or SPD unless the Offeror either picks up, or arranges for pick-up, the materials within three (3) business days of notification of the cancellation. Offeror is responsible for all costs involved in return mailing/shipping of proposals.

## **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>  
or

<https://bids.sciquest.com/apps/Router/PublicEvent?CustomerOrg=StateOfNewMexico&tap=PHX>

## **28. New Mexico Employees Health Coverage**

- A. If the Offeror has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Offeror must agree to have in place, and agree to maintain for the term of the contract, health insurance for those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.
- B. Offeror must agree to maintain a record of the number of employees who have (a) accepted health insurance; (b) decline health insurance due to other health insurance coverage already in place; or (c) decline health insurance for other reasons. These records are subject to review and audit by a representative of the state.

- C. Offeror must agree to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information <https://bewellnm.com>.
- D. For Indefinite Quantity, Indefinite Delivery contracts (price agreements without specific limitations on quantity and providing for an indeterminate number of orders to be placed against it); these requirements shall apply the first day of the second month after the Offeror reports combined sales (from state and, if applicable, from local public bodies if from a state price agreement) of \$250,000.

## 29. Campaign Contribution Disclosure Form

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

## 30. Letter of Transmittal

Offeror's proposal must be accompanied by an **unaltered** Letter of Transmittal Form (APPENDIX G), which must be **completed** and **signed** by the individual authorized to contractually obligate the company, identified in #2 below. **DO NOT LEAVE ANY OF THE ITEMS ON THE FORM BLANK** (N/A, None, Does not apply, etc. are acceptable responses).

The Letter of Transmittal MUST:

1. Identify the submitting business entity (its Name, Mailing Address and Phone Number);
2. Identify the Name, Title, Telephone, and E-mail address of the person authorized by the Offeror's organization to (A) contractually obligate the business entity providing the Offer, (B) negotiate a contract on behalf of the organization; and/or (C) provide clarifications or answer questions regarding the Offeror's proposal content (*A response to B and/or C is only required if the responses differs from the individual identified in A*);
3. Identify sub-contractors, if any, anticipated to be utilized in the performance of any resultant contract award;
4. Describe any relationship with any other entity (such as State Agency, reseller, etc., that is not a sub-contractor identified in #3), if any, which will be used in the performance of this awarded contract; and
5. Be signed and dated by the person identified in #2 above; attesting to the veracity of the information provided, and acknowledging (a) the organization's acceptance of the Conditions Governing the Procurement stated in Section II.C.1, (b) the organizations acceptance of the Section V Evaluation Factors, and (c) receipt of any and all amendments to the RFP.

**Failure to respond to ALL items as indicated above, will result in Offeror's disqualification.**

### **31. Disclosure Regarding Responsibility**

- A. Any prospective Contractor and any of its Principals who enter into a contract greater than sixty thousand dollars (\$60,000.00) with any state agency or local public body for professional services, tangible personal property, services or construction agrees to disclose whether the Contractor, or any principal of the Contractor's company:
1. is presently debarred, suspended, proposed for debarment, or declared ineligible for award of contract by any federal entity, state agency or local public body;
  2. has within a three-year period preceding this offer, been convicted in a criminal matter or had a civil judgment rendered against them for:
    - a. the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) contract or subcontract;
    - b. violation of Federal or state antitrust statutes related to the submission of offers; or
    - c. the commission in any federal or state jurisdiction of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violation of Federal criminal tax law, or receiving stolen property;
  3. is presently indicted for, or otherwise criminally or civilly charged by any (federal state or local) government entity with the commission of any of the offenses enumerated in paragraph A of this disclosure;
  4. has, preceding this offer, been notified of any delinquent Federal or state taxes in an amount that exceeds \$3,000.00 of which the liability remains unsatisfied. Taxes are considered delinquent if the following criteria apply.
    - a. The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge of the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.
    - b. The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.
    - c. Have within a three-year period preceding this offer, had one or more contracts terminated for default by any federal or state agency or local public body.)
- B. Principal, for the purpose of this disclosure, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity or related entities.
- C. The Contractor shall provide immediate written notice to the 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.

### **32. New Mexico Preferences**

To ensure adequate consideration and application of §13-1-21, NMSA 1978 (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 Offeror's proposal.

**B. New Mexico Resident Veterans Business Preference**

A copy of the certification must accompany Offeror's proposal.

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

### **33. Eligible Reimbursement Items**

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

- A. 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.
- B. 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.
- C. Planning and partner coordination exclusively within the context of the project, as approved in the project work plan.
- D. Pre-implementation surveys of on-site conditions.
- E. Post-construction verification of completion and validation of environmental results within the agreement/contract period, as approved in project work plan.
- F. Costs to prepare permit applications, clearances and surveys that are required by law.
- G. Contractor and subcontractor rates must reflect current fair market rates.
- H. Gross receipts tax.

### **34. Ineligible Reimbursement Items**

The following items are not eligible for reimbursement under an awarded River Stewardship Program contract:

- A. Salaries or percentages of salaries
- B. Wages for government employees (in-house labor).
- C. Equipment or supplies that are not permanently affixed to the project.
- D. Ongoing maintenance and monitoring beyond the contract period.
- E. Education and outreach.
- F. Planning projects where a plan is the exclusive end product.

- G. Research projects.
- H. Funding for projects required under administrative and/or judicial order.
- I. Costs, including personnel costs, of securing additional sources of project funds.
- J. Indirect costs (e.g. overhead percentage, administrative fees or penalty fees).
- K. Lobbying.
- L. Fellowships or scholarships.

### **35. Leveraging of Federal Funds**

NMED intends to use River Stewardship Program funds to match grant funds under the federal Clean Water Act. NMED will complete this reporting internally, separate from this procurement. Offerors are not authorized to claim the funds as match for any type of federal funding.

### **36. Reports**

Contractors under the River Stewardship Program shall prepare and submit progress reports to NMED on a semi-annual basis (October and April). The reporting periods will be April 1 through September 30, due by October 31<sup>st</sup>, and October 1 through March 31, due April 30<sup>th</sup> of each year. Reports shall be submitted electronically by e-mail in Windows Microsoft (MS) Word, Adobe portable document format (.pdf), or other NMED 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 and photographs of project progress. 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. The final report shall be submitted before the contract is terminated.

### **37. Payments**

Contractors will be reimbursed for costs incurred upon submittal of detailed invoices (See end of Draft Agreements in APPENDIX D and APPENDIX E) citing direct cost amounts and backup documentation (e.g. subcontractor invoices, timesheets, receipts). After NMED 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.

### **38. Audits**

NMED 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 or 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.

### **39. 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.

### **40. Anti-Donation**

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."

### **41. Private Landowner Agreements**

If a project is selected that includes work on private land, the landowner must sign a separate landowner agreement, on a template provided by the Agency, that requires the landowner to protect the project for a period of ten (10) years.

### 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. ELECTRONIC SUBMISSION ONLY Responses (SPD's E-procurement System eProNM)

**Proposals in response to this RFP must be submitted through State Purchasing's electronic procurement system ONLY:**

**(<https://bids.scquest.com/apps/Router/PublicEvent?CustomerOrg=StateOfNewMexico>)**

The Offeror need only submit one single electronic copy of each portion of its proposal (Technical and Cost) as outlined below. *EXCEPTION: Single electronic files that exceed 50mb may be submitted as multiple uploads, which must be the least number of uploads necessary to fall under the 50mb limit.* Separate the proposals as described below into separate electronic files for submission.

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

- a) **Technical Proposals** – One (1) ELECTRONIC upload must be organized in accordance with **Section III.C.1. Proposal Format**. All information for the Technical Proposal **must be combined into a single file/document for uploading**. *EXCEPTION: Single electronic files that exceed 50mb may be submitted as multiple uploads, which must be the least number of uploads necessary to fall under the 50mb limit.* The Technical Proposals **SHALL NOT** contain any cost information.
  - i. **Confidential Information**: If Offeror's proposal contains confidential information, as defined in Section I.F.5 and detailed in Section II.C.8, Offeror **must** submit **two (2) separate ELECTRONIC technical files**:
    - One (1) ELECTRONIC version of the requisite proposals identified in Section III.B.1.a above as **unredacted** (def. Section I.F.32) versions for evaluation purposes; and
    - One (1) **redacted** (def. Section I.F.22) ELECTRONIC. for the public file, in order to facilitate eventual public inspection of the non-confidential version of Offeror's proposal. Redacted versions **must** be clearly marked as "REDACTED" or "CONFIDENTIAL" on the first page of the electronic file;

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

For technical support issues contact (505) 827-0467 or (505) 827-0472 or  
[GSD.SPDeProcurement@state.nm.us](mailto:GSD.SPDeProcurement@state.nm.us)

The ELECTRONIC proposal submission **must be fully uploaded** in SPD's eProNM system by the submission deadline in Section II.B.5.

*It is the Offeror's responsibility to ensure all documents are completely uploaded and submitted electronically via the eProNM system by the deadline set forth in this RFP. The eProNM system will automatically cease uploading data at the date and time of the deadline. Please ensure that you, as the Offeror, **allow adequate time for large uploads and to fully complete your submittal by the deadline**. A submission that is not both: (1) fully complete; and (2) received, via the eProNM system by the deadline, will be deemed late. Further, a submission that is not fully complete and received via the eProNM system by the deadline because the response was captured, blocked, filtered, quarantined or otherwise prevented from reaching the proper destination server by any anti-virus or other security software will be deemed late. In accordance with statute and rule, **NO LATE OFFER CAN BE ACCEPTED**.*

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

## **C. PROPOSAL FORMAT**

All proposals must be submitted as follows:

Organization of files for 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 must 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. The Technical Proposal should be no longer than 25 pages, excluding the Letter of Transmittal, Campaign Contribution Form, New Mexico Preferences documentation, and any letters of support for the proposed project.

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

- A. Signed Letter of Transmittal
- B. Signed Campaign Contribution Form
- C. Table of Contents
- D. Proposal Summary (Optional)
- E. Response to Contract Terms and Conditions (from Section II.C.15)
- F. Offeror's Additional Terms and Conditions (from Section II.C.16)
- G. Response to Specifications (**except Cost information which shall be included ONLY in Cost Proposal/Binders 2**)
  - 1. Organizational Experience
  - 2. Mandatory Specifications
  - 3. New Mexico Preferences (if applicable)
- H. Other Supporting Material (if applicable)

**Cost Proposal (Binder 2):**

- A. Completed Cost Response Form (APPENDIX F)

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. **Any and all discussion of proposed costs, rates or expenses must occur ONLY in Binder 2.**

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

## 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 Task Requirements:* Offeror(s) shall be responsible for all aspects of managing a physical project that improves surface water quality and river 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 river 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 including 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 river 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 with applicable stakeholders as necessary for community support of the project. Examples of applicable stakeholders include: NMED, local governments, natural resource managers, landowners or land managers, grazing permittees, recreation-user organizations, soil and water conservation districts and conservation organizations. 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, Endangered Species Act, 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 landowner or land manager.

Monitoring: Offerors will be responsible for pre-and post-implementation monitoring to demonstrate that the project was completed according to the Contract or 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 and 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 33 and 34 of this RFP.

Capacity and Capability: Offerors must have at least five (5) years of experience working on similar successful projects for the improvement of surface water quality and river 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.

## **B. TECHNICAL SPECIFICATIONS**

### **1. Organizational Experience**

Offerors must:

- a) Provide a brief description of relevant project team experience with state government and private sector, documenting at least five (5) years of continuous experience working on similar projects. The experience of all proposed subcontractors must be described, as well as the roles of all participating organizations or agencies. The narrative must thoroughly describe how the Offeror has supplied expertise for similar contracts to the agency within the past five years and must include the extent of their experience, expertise and knowledge as a provider of surface water and river habitat improvement projects. All surface water and river habitat services provided to the private sector will also be considered.

- b) Provide a brief bio of all key personnel Offeror proposes to use in performance of the resulting contract, should Offeror be awarded. Key personnel are those who will be responsible for completing work tasks and actions, including fiscal responsibility. Offeror must include key personnel education, work experience, and relevant or applicable certifications and licenses.
- c) Describe at least two project successes and two failures of the Offeror's surface water quality or river habitat projects. Include how each experience improved the Offeror's services.
- d) State the business status of the Offeror: a government entity; a non-profit organization registered with the New Mexico Attorney General's Office; or as a business registered with the New Mexico Department of Taxation and Revenue.

## **2. Mandatory Specifications**

### a) Problem Statement:

This section must demonstrate the need to perform the proposed project in the specific project area by describing the impairments to water quality or stream habitat that will be addressed by the project. This includes also demonstrating that the proposed project area is located appropriately to meet the objectives of the River Stewardship Program.

- i. Indicate the project location instream, on the banks, on the flood plain, and/or within riparian areas along streams and rivers in New Mexico using one or more 12-digit Hydrologic Unit Codes (HUCs), as appropriate, and geographic coordinates.
- ii. Identify with a map, at an appropriate scale, the critical areas for identified pollutant sources or river habitat impairments in which project actions will be implemented, including the number of stream miles and riparian acres that will be directly affected.
- iii. Provide background information on the project area. Indicate the applicable pollutants and causes of poor surface water quality and river habitat that will be addressed by the project. Briefly describe land use, nonpoint sources of pollution, related water quality problems and/or river habitat issues in the watershed. Identify prior surface water quality or river habitat projects that are in progress or have been completed in the project area.
- iv. 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.

- v. 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.
- vi. 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.

b) Planning:

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

- i. 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.
- ii. Identify relevant stakeholders and describe community support for implementation and ongoing stewardship. Examples of applicable stakeholders include: NMED, local governments, natural resource managers, landowners/managers, grazing permittees, recreation-user organizations, soil and water conservation districts and conservation organizations. Essential partners must be included in the description. 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.
- iii. Describe any commitment or support by the essential 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 F: Cost Response Form.

c) Project Goals and Design Methods:

This section of the proposal must explain goals and methods to produce a measurable improvement in water quality or river habitat.

- i. State one or more project goals and objectives to improve surface water quality or river 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: improve river channel geometry and ability to accommodate flooding as measured by entrenchment ratio; reduce pollutant load for specific pollutants as measured by water quality sampling; increase vegetation abundance and diversity as measured by canopy cover and surveys; and increase aquatic, avian, or terrestrial animal species as measured by species abundance and diversity surveys.
- ii. 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. Include Best Management Practices that will be utilized.

d) Implementation and Monitoring:

This section of the proposal must provide an achievable implementation plan and schedule and explain the monitoring that will be used to demonstrate achievement of project goals and objectives.

- i. Describe the tasks needed to achieve project goals. 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 tasks for reporting progress semi-annually and submitting a final report. See Section II.C.36 for more information on reporting.
- ii. 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.

## **C. BUSINESS SPECIFICATIONS**

### **1. Letter of Transmittal Form**

The Offeror's proposal **must** be accompanied by the Letter of Transmittal Form located in APPENDIX G. The form **must** be completed and must be signed by the person authorized to obligate the company. **Failure to respond to ALL items, as indicated in Section II.C.30 and APPENDIX G, and to return a signed, unaltered form will result in Offeror's disqualification.**

## 2. Campaign Contribution Disclosure Form

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

## 3. Cost

Offerors must complete the Cost Response Form in APPENDIX F. 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. For the Travel category, if applicable, enter one or more rows for per diem, mileage, lodging, and/or meals, using rates in accordance with your organization's written travel reimbursement policies, or use the rates applicable to New Mexico state employees, at 2.42.2 NMAC.
- b. Equipment rental (specify the type of rental, rate and time period).
- c. Supplies (specify the type, quantity and costs of supplies that will be permanently affixed to the project).
- d. Contractual/subcontracts (if possible, identify subcontractors and detailed costs to be incurred by subcontractors).
- e. Other (e.g. permit fees, copy services).
- f. Gross receipts tax.

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, in this section, of its NM Resident preference certificate, as issued by the New Mexico Taxation and Revenue Department.

## 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.

Table 1: Evaluation Point Summary

<b>Evaluation Factors</b> <i>(Correspond to Sections IV.B and IV.C)</i>	<b>Points Available</b>
<b>B. Technical Specifications</b>	
B. 1. Organizational Experience	200
B. 2. Mandatory Specifications	
a. Problem Statement	125
b. Planning	125
c. Project Goals and Design Methods	125
d. Implementation and Monitoring	125
<b>C. Business Specifications</b>	
C. 1. Letter of Transmittal	Pass/Fail
C. 2. Campaign Contribution Disclosure Form	Pass/Fail
C. 3. Cost	300
C. 3. a. Anti-Donation Clause Review <i>(applicable to projects on private land)</i>	Pass/Fail
<b>TOTAL POINTS AVAILABLE</b>	<b>1,000</b>
C.4.A. New Mexico Preference - Resident Vendor Points per Section IV.C.4	<b>50</b>
C.4.B. New Mexico Preference - Resident Veterans Points per Section IV.C.4	<b>100</b>

## **B. EVALUATION FACTORS**

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

Points will be awarded based on the thoroughness, clarity and veracity of Offeror's response to the items specified in Section IV.B.1. The Evaluation Committee will also weigh the relevancy and extent of Offeror's experience, expertise and knowledge; and of personnel education, experience and certifications/licenses. In addition, points will be awarded based on Offeror's candid and well-thought-out response to successes and failures, as well as the ability of the Offeror to learn from its failures and grow from its successes.

### **2. B.2 Mandatory Specifications (See Table 1)**

- a) Problem Statement. Points will be awarded based on the thoroughness, clarity and veracity of Offeror's response to the items specified in Section IV.B.2. The Evaluation Committee will also weigh the relevancy and extent of the cited problem as to whether it can reasonably be addressed by physical improvements to surface water quality or river habitat.
- b) Planning. Points will be awarded based on the thoroughness, clarity and veracity of Offeror's response to the items specified in Section IV.B.2. The Evaluation Committee will also weigh the relevancy and extent of the cited problem as to whether sufficient planning actions have been identified/or conducted, to ensure the long-term success of the proposed project.
- c) Project Goals and Design Methods. Points will be awarded based on the thoroughness, clarity and veracity of Offeror's response to the items specified in Section IV.B.2. The Evaluation Committee will also weigh the scientific and technical feasibility of the project goals and design methods.
- d) Implementation and Monitoring. Points will be awarded based on the thoroughness, clarity and veracity of Offeror's response to the items specified in Section IV.B.2. The Evaluation Committee will also weigh the relevancy and the feasibility of the implementation and monitoring schedule, and whether proposed monitoring will demonstrate project success.

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

Pass/Fail only. No points assigned.

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

Pass/Fail only. No points assigned.

## **5. C.3 Cost (See Table 1)**

Points will be awarded based on the thoroughness, clarity and veracity of Offeror's response to the items specified in Section IV.C.3. The Evaluation Committee will also weigh the relevancy and allowability of costs and whether costs are fair market value.

## **6. C.3.a Anti-Donation Clause Review (See Table 1)**

Pass/Fail only. No points assigned. The Evaluation Committee will review project proposals to ensure projects on private lands comply with conditions specified in Section II.C.40 of this RFP.

## **7. C.4 New Mexico Preferences**

Percentages will be determined based upon the point-based system outlined in NMSA 1978, § 13-1-21 (as amended).

### **A. New Mexico Resident Business Preference**

If the Offeror has provided a copy of their Preference Certificate, the Preference Points for a New Mexico Resident Business is 5% of the total points available in this RFP.

### **B. New Mexico Resident Veterans Business Preference**

If the Offeror has provided a copy of their Preference Certificate, the Preference Points for a New Mexico Resident Veteran Business is 10% of the total points available in this RFP.

## **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.6.
3. Responsive proposals will be evaluated on the factors in Section IV, which have been assigned a point value in Section V. The responsible Offerors with the highest scores will be selected as finalist Offerors, based upon the proposals submitted. In accordance with 13-1-117 NMSA 1978, the responsible Offerors whose proposals are most advantageous to the State taking into consideration the Evaluation Factors in Section V will be recommended for award (as specified in Section II.B.7). 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**

**APPENDIX A**  
**REQUEST FOR PROPOSAL**

River Stewardship Program FY2021  
RFP # 10-66700-21-27670

**ACKNOWLEDGEMENT OF RECEIPT FORM**

This Acknowledgement of Receipt Form should be signed and submitted to the State Purchasing Buyer (Listed Below) no later than 5:00 pm Mountain Daylight Time (MDT) on May 20, 2021. Only potential Offerors who elect to return this form will receive copies of all submitted questions and the written responses to those questions, as well as any RFP amendments, if any are issued.

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

ORGANIZATION: \_\_\_\_\_

CONTACT NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_ PHONE NO.: \_\_\_\_\_

E-MAIL: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP CODE: \_\_\_\_\_

This contact information will be used for all correspondence related to the Request for Proposal.

**Submit Acknowledgement of Receipt Form to:**

To: **Mark Lujan**

E-mail: **Mark.Lujan@state.nm.us**

Subject Line: **River Stewardship Program Projects 10-52100-21-06036 APPENDIX A**

**APPENDIX B**

**CAMPAIGN CONTRIBUTION DISCLOSURE FORM**

## APPENDIX B

### CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to the Procurement Code, Sections 13-1-28, *et seq.*, NMSA 1978 and NMSA 1978, § 13-1-191.1 (2006), as amended by Laws of 2007, Chapter 234, any prospective contractor seeking to enter into a contract with any state agency or local public body **for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources** must file this form with that state agency or local public body. This form must be filed even if the contract qualifies as a small purchase or a sole source contract. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars (\$250) over the two year period.

Furthermore, the state agency or local public body may cancel a solicitation or proposed award for a proposed contract pursuant to Section 13-1-181 NMSA 1978 or a contract that is executed may be ratified or terminated pursuant to Section 13-1-182 NMSA 1978 of the Procurement Code if: 1) a prospective contractor, a family member of the prospective contractor, or a representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or 2) a prospective contractor fails to submit a fully completed disclosure statement pursuant to the law.

The state agency or local public body that procures the services or items of tangible personal property shall indicate on the form the name or names of every applicable public official, if any, for which disclosure is required by a prospective contractor.

**THIS FORM MUST BE INCLUDED IN THE REQUEST FOR PROPOSALS AND MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.**

The following definitions apply:

**“Applicable public official”** means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

**“Campaign Contribution”** means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received

by an applicable public official or any person authorized to raise, collect or expend contributions on that official's behalf for the purpose of electing the official to statewide or local office.

"Campaign Contribution" includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

**"Family member"** means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law of (a) a prospective contractor, if the prospective contractor is a natural person; or (b) an owner of a prospective contractor.

**"Pendency of the procurement process"** means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals.

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

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

Note: A prospective contractor shall make **separate** disclosures of all campaign contributions given by (1) the prospective contractor, or (2) a family member or (3) representative of the prospective contractor, or shall complete the non-disclosure statement, as applicable.

**DISCLOSURE OF CONTRIBUTIONS:**

<b>Contribution Made By:</b>			
<b>Relation to Prospective Contractor:</b>			
<b>Name of Applicable Public Official:</b>		Governor _____	
<b>Contribution(s) Date(s)</b>	<b>Contribution Amount(s):</b>	<b>Nature of Contribution(s):</b>	<b>Purpose of Contribution(s):</b>
	\$		
	\$		
	\$		
	\$		
	\$		

(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**

### **DRAFT CONTRACT**

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

**DRAFT CONTRACT**



**State of New Mexico  
General Services Department  
State Purchasing Division**

**Contract Cover Page**

**Awarded Vendor:**

**Email:** \_\_\_\_\_  
**Telephone No.:** \_\_\_\_\_

Contract Number: **10-66700-21-27670**

Payment Terms: **Net 30**

F.O.B.: **Destination**

Delivery: \_\_\_\_\_

**Ship To:**

Procurement Specialist: **Mark Lujan**

Telephone No.: **505-469-1610**

Email: **Mark.Lujan@state.nm.us**

**Invoice:**

**For questions regarding this contract please contact:  
Kathryn Lacey (505) 946-8863**

**Title: River Stewardship Program Projects**

**Term:**

**The attached Contract is made subject to the “terms and conditions” as indicated.**

**State of New Mexico**

**Environment Department**

Contract No. 10-66700-21-27670

THIS Agreement (“Agreement”) is made by and between the State of New Mexico, **New Mexico Environment Department**, hereinafter referred to as the “Procuring Agency” and **[Insert Contractor Name]**, hereinafter referred to as the “Contractor” and collectively referred to as the “Parties”.

WHEREAS, pursuant to the Procurement Code, NMSA 1978 13-1-28 *et. seq.* and Procurement Code Regulations, NMAC 1.4.1 *et. seq.* the Contractor has held itself out as an entity with the ability to provide the required services to implement the Scope of Work as contained herein and the Procuring Agency has selected the Contractor as the offeror most advantageous to the State of New Mexico; and

WHEREAS, all terms and conditions of the **RFP # 10-66700-21-27670** and the Contractor’s response to such document(s) are incorporated herein by reference; and

NOW, THEREFORE, THE FOLLOWING TERMS AND CONDITIONS ARE MUTUALLY AGREED BETWEEN THE PARTIES:

1. **Definitions.**

- A. "Business Hours" means 8:00 a.m. to 5:00 p.m. Mountain Time.
- B. "New Mexico State Purchasing Agent" or "NMSPA" means the purchasing agent for the State of New Mexico or a designated representative. May be used interchangeably with "State Purchasing Agent" or "SPA".
- C. "Procuring Agency" means any state agency or local public body that enters into an Agreement to procure products or services.
- D. “RFP” means Request for Proposals as defined in statute and rule.

2. **Scope of Work.**

The Contractor shall perform the work as outlined in Exhibit A, attached hereto and incorporated herein by reference.

3. **Compensation.**

- A. **Compensation Schedule.** The Procuring Agency shall pay to the Contractor based upon fixed prices for each Deliverable, per the schedule outlined in Exhibit A, less retainage, if any, as identified in paragraph D of this Clause.

B. Payment. The total compensation under this Agreement shall not exceed [**Insert Dollar Amount**] including New Mexico gross receipts tax. **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 Procuring 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 services, in excess of the total compensation amount being provided.**

Payment shall be made upon Acceptance of each Deliverable and upon the receipt and Acceptance of a detailed, certified Payment Invoice. Payment will be made to the Contractor's designated mailing address. In accordance with Section 13-1-158 NMSA 1978, payment shall be tendered to the Contractor within thirty (30) days of the date of written certification of Acceptance. All Payment Invoices **MUST BE** received by the Procuring Agency no later than fifteen (15) days after the termination of this Agreement. Payment Invoices received after such date **WILL NOT BE PAID**.

C. Taxes. The Contractor shall be reimbursed by the Procuring Agency for applicable New Mexico gross receipts taxes, excluding interest or penalties assessed on the Contractor by any authority. **PLEASE NOTE NO PROPERTY TAX WILL BE PAID TO THE CONTRACTOR BY THE STATE.** The payment of taxes for any money received under this Agreement shall be the Contractor's sole responsibility and should be reported under the Contractor's Federal and State tax identification number(s).

Contractor and any and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall require all subcontractors to hold the Procuring Agency harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal and/or state and local laws and regulations and any other costs, including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

D. Retainage. Not Applicable. The Parties agree there is no retainage.

E. Performance Bond. Not Applicable. The Parties agree there is no Performance Bond.

#### 4. Term.

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE FINAL REQUIRED SIGNATORY. This Agreement shall begin on the date approved by the Final Required Signatory and shall end on **(DATE)** unless terminated pursuant to this Agreement's Termination Clause or Appropriations Clause. The Procuring Agency reserves the right to renew

the Agreement through a written amendment signed by all required signatories and in accordance with the term of the request for proposals, if this contract was based on a request for proposals.

5. **Termination**

A. **Grounds.** The Procuring Agency may terminate this Agreement for convenience or cause. The Contractor may only terminate this Agreement based upon the Procuring Agency's uncured, material breach of this Agreement.

B. **Notice; Procuring Agency Opportunity to Cure.**

1. Except as otherwise provided in sub-paragraph A of this Clause and the Appropriations Clause of this Agreement, the Procuring Agency shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.

2. Contractor shall give Procuring Agency written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the Procuring Agency's material breaches of this Agreement upon which the termination is based and (ii) state what the Procuring Agency must do to cure such material breaches. Contractor's notice of termination shall only be effective (i) if the Procuring 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 Procuring 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 Procuring 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 the Appropriations Clause of this Agreement.

C. **Liability.** Except as otherwise expressly allowed or provided under this Agreement, the Procuring 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 PROCURING AGENCY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.**

6. **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 Procuring Agency to the Contractor. The Procuring Agency's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the Procuring 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.

7. **Status of Contractor.**

The Contractor and its agents and employees are independent contractors performing professional or general services for the Procuring 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.

8. **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 any way 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 Procuring Agency employee while such employee was or is employed by the Procuring Agency and participating directly or indirectly in the Procuring 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 Procuring 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 Procuring Agency.

C. Contractor's representations and warranties in paragraphs A and B of this Clause are material representations of fact upon which the Procuring Agency relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the Procuring 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 Clause 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 Clause 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 Procuring Agency and notwithstanding anything in the Agreement to the contrary, the Procuring Agency may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this Agreement.

9. **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 Procuring 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 the Terminations Clause of this Agreement, or to agree to the reduced funding.

10. **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.

11. **Penalties for violation of law.**

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

12. **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.

13. **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 Procuring Agency.

14. **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.

15. **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 Procuring Agency, the Department of Finance and Administration and the State Auditor. The Procuring Agency shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Procuring Agency to recover excessive or illegal payments

16. **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.

17. **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.

18. **Non-Collusion**

In signing this Agreement, the Contractor certifies the Contractor has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with this offer submitted to the State Purchasing Agent or agency or entity.

19. **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 Procuring Agency:

Kate Lacey, River Stewardship Program Coordinator  
New Mexico Environment Department – Surface Water Quality Bureau  
P.O. Box 5469  
Santa Fe, NM 87502-5469  
Kathryn.Lacey@state.nm.us  
(505) 946-8863

To the Contractor:

[insert name, address and email].

20. **Succession**

This Agreement shall extend to and be binding upon the successors and assigns of the parties.

21. **Headings**

Any and all headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement. Numbered or lettered provisions, sections and subsections contained herein, refer only to provisions, sections and subsections of this Agreement unless otherwise expressly stated.

22. **Default/Breach.**

In case of Default and/or Breach by the Contractor, for any reason whatsoever, the Procuring Agency and the State of New Mexico may procure the goods or Services from another source and hold the Contractor responsible for any resulting excess costs and/or damages, including but not limited to, direct damages, indirect damages, consequential damages, special damages and the Procuring Agency and the State of New Mexico may also seek all other remedies under the terms of this Agreement and under law or equity.

23. **Equitable Remedies.**

Contractor acknowledges that its failure to comply with any provision of this Agreement will cause the Procuring Agency irreparable harm and that a remedy at law for such a failure would be an inadequate remedy for the Procuring Agency, and the Contractor consents to the Procuring Agency's obtaining from a court of competent jurisdiction, specific performance, or injunction, or any other equitable relief in order to enforce such compliance. Procuring Agency's rights to obtain equitable relief pursuant to this Agreement shall be in addition to, and not in lieu of, any other remedy that Procuring Agency may have under applicable law, including, but not limited to, monetary damages.

24. **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 this Agreement, Contractor certifies, by signing this agreement, to have in place, and agree to maintain for the term of the Agreement, 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: <https://bewellnm.com>.

25. **Indemnification.**

The Contractor shall defend, indemnify and hold harmless the Procuring 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, 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 Procuring Agency and the Risk Management Division of the New Mexico General Services Department by certified mail.

26. **Default and Force Majeure.**

The State reserves the right to cancel all or any part of any orders placed under this Agreement without cost to the State, if the Contractor fails to meet the provisions of this Agreement and, except as otherwise provided herein, to hold the Contractor liable for any excess cost occasioned by the State due to the Contractor's default. The Contractor shall not be liable for any excess costs if failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Contractor; such causes include, but are not restricted to, acts of God or the public enemy, acts of the State or Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of subcontractors due to any of the above, unless the State shall determine that the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery scheduled. The rights and remedies of the State provided in this Clause shall not be exclusive and are in addition to any other rights now being provided by law or under this Agreement.

27. **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 Procuring Agency.

28. **Subcontracting.**

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the Procuring 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.

29. **Inspection of Plant.**

The State Purchasing Agent or agency or entity that is a party to this Agreement may inspect, at any reasonable time during Contractor's regular business hours and upon prior written notice, the Contractor's plant or place of business, or any subcontractor's plant or place of business, which is related to the performance of this Agreement.

30. **Commercial Warranty.**

The Contractor agrees that the tangible personal property or services furnished under this Agreement shall be covered by the most favorable commercial warranties the Contractor gives to any customer for such tangible personal property or services, and that the rights and remedies provided herein shall extend to the State and are in addition to and do not limit any rights afforded to the State by any other Clause of this Agreement or order. Contractor agrees not to disclaim warranties of fitness for a particular purpose or merchantability.

31. **Condition of Proposed Items.**

Where tangible personal property is a part of this Agreement, all proposed items are to be NEW and of most current production, unless otherwise specified.

32. **Release.**

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

33. **Confidentiality.**

Any Confidential Information provided to the Contractor by the Procuring Agency or, developed by the Contractor based on information provided by the Procuring Agency 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 Procuring Agency. Upon termination of this Agreement, Contractor shall deliver all Confidential Information in its possession to the Procuring Agency within thirty (30) Business Days of such termination. Contractor acknowledges that failure to deliver such Confidential Information to the Procuring Agency will result in direct, special and incidental damages.

34. **Contractor Personnel.**

A. **Key Personnel.** Contractor's key personnel shall not be diverted from this Agreement without the prior written approval of the Procuring Agency. Key personnel are those individuals considered by the Procuring Agency to be mandatory to the work to be performed under this Agreement. Key personnel shall be:

[Insert Contractor Staff Name(s)]

B. Personnel Changes. Replacement of any personnel shall be made with personnel of equal ability, experience, and qualification and shall be approved by the Procuring Agency. For all personnel, the Procuring Agency reserves the right to require submission of their resumes prior to approval. If the number of Contractor's personnel assigned to the Project is reduced for any reason, Contractor shall, within ten (10) Business Days of the reduction, replace with the same or greater number of personnel with equal ability, experience, and qualifications, subject to Procuring Agency approval. The Procuring Agency, in its sole discretion, may approve additional time beyond the ten (10) Business Days for replacement of personnel. The Contractor shall include status reports of its efforts and progress in finding replacements and the effect of the absence of the personnel on the progress of the Project. The Contractor shall also make interim arrangements to assure that the Project progress is not affected by the loss of personnel. The Procuring Agency reserves the right to require a change in Contractor's personnel if the assigned personnel are not, in the sole opinion of the Procuring Agency, meeting the Procuring Agency's expectations.

35. **Incorporation by Reference and Precedence.**

If this Agreement has been procured pursuant to a request for proposals, this Agreement is derived from (1) the request for proposal, (including any written clarifications to the request for proposals and any agency response to questions); (2) the Contractor's best and final offer; and (3) the Contractor's response to the request for proposals.

In the event of a dispute under this Agreement, applicable documents will be referred to for the purpose of clarification or for additional detail in the following order of precedence: (1) amendments to the Agreement in reverse chronological order; (2) the Agreement, including the scope of work and all terms and conditions thereof; (3) the request for proposals, including attachments thereto and written responses to questions and written clarifications; (4) the Contractor's best and final offer if such has been made and accepted by the SPA or Procuring Agency or entity; and (5) the Contractor's response to the request for proposals.

36. **Inspection.**

If this Agreement is for the purchase of tangible personal property (goods), final inspection and acceptance shall be made at Destination. Tangible personal property rejected at Destination for non-conformance to specifications shall be removed at Contractor's risk and expense promptly after notice of rejection and shall not be allowable as billable items for payment.

37. **Inspection of Services.**

If this Agreement is for the purchase of services, the following terms shall apply.

A. Services, as used in this Clause, include services performed, workmanship, and material furnished or utilized in the performance of services.

B. The Contractor shall provide and maintain an inspection system acceptable to the

State Purchasing Agent or other party to this Agreement covering the services under this Agreement. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the State Purchasing Agent or other party to this Agreement during the term of performance of this Agreement and for as long thereafter as the Agreement requires.

C. The State Purchasing Agent or other party to this Agreement has the right to inspect and test all services contemplated under this Agreement to the extent practicable at all times and places during the term of the Agreement. The State Purchasing Agent or other party to this Agreement shall perform inspections and tests in a manner that will not unduly delay or interfere with Contractor's performance.

D. If the State Purchasing Agent or other party to this Agreement performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in Agreement price, all reasonable facilities and assistance for the safe and convenient performance of such inspections or tests.

E. If any part of the services do not conform with the requirements of this Agreement, the State Purchasing Agent or other party to this Agreement may require the Contractor to re-perform the services in conformity with the requirements of this Agreement at no increase in Agreement amount. When the defects in services cannot be corrected by re-performance, the State Purchasing Agent or other party to this Agreement may:

(1) require the Contractor to take necessary action(s) to ensure that future performance conforms to the requirements of this Agreement; and

(2) reduce the Agreement price to reflect the reduced value of the services performed.

F. If the Contractor fails to promptly re-perform the services or to take the necessary action(s) to ensure future performance in conformity with the requirements of this Agreement, the State Purchasing Agent or other party to this Agreement may:

(1) by Agreement or otherwise, perform the services and charge to the Contractor any cost incurred by the State Purchasing Agent or other party to this Agreement that is directly related to the performance of such service; or

(2) terminate the Agreement for default.

*THE PROVISIONS OF THIS CLAUSE ARE NOT EXCLUSIVE AND DO NOT WAIVE THE STATE PARTIES' TO THIS AGREEMENT OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.*

38. **Insurance.**

If the services contemplated under this Agreement will be performed on or in State facilities or property, Contractor shall maintain in force during the entire term of this Agreement, the following insurance coverage(s), naming the State of New Mexico, General Services Department or other party to this Agreement as additional insured.

A. Workers Compensation (including accident and disease coverage) at the statutory limit. Employers liability: \$100,000.

B. Comprehensive general liability (including endorsements providing broad form property damage, personal injury coverage and contractual assumption of liability for all liability the Contractor has assumed under this Agreement). Limits shall not be less than the following:

- a. Bodily injury: \$1,000,000 per person /\$1,000,000 per occurrence.
- b. Property damage or combined single limit coverage: \$1,000,000.
- c. Automobile liability (including non-owned automobile coverage): \$1,000,000.
- d. Umbrella: \$1,000,000.

C. Contractor shall maintain the above insurance for the term of this Agreement and name the State of New Mexico, General Services Department or other party to this Agreement as an additional insured and provide for 30 days cancellation notice on any Certificate of Insurance form furnished by Contractor. Such certificate shall also specifically state the coverage provided under the policy is primary over any other valid and collectible insurance and provide a waiver of subrogation.

IN WITNESS WHEREOF, the Parties hereby execute this Agreement, which will take effect on the last signature date of the required approval authorities below. Each of the signatories, below, may execute this Agreement by hard copy original, facsimile, digital or electronic signature, any of which shall be deemed to be a true and original signature hereunder.

STATE OF NEW MEXICO  
ENVIRONMENT DEPARTMENT:

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

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Marlene Velasquez, Chief Financial Officer  
New Mexico Environment Department

Approved for legal sufficiency:

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Jennifer L. Hower, General Counsel  
New Mexico Environment Department

Contractor:

By: \_\_\_\_\_ Date: \_\_\_\_\_  
[Insert Contractor Name, Title]  
[Company Name]

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

CRS ID Number: \_\_\_\_\_

**NOTE: Taxation and Revenue is only verifying the registration and will not confirm or deny taxability statements contained in this contract.**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Taxation & Revenue Department

This Agreement has been approved by the State Purchasing Agent:

By:

Mark Hayden, State Purchasing Agent  
State of New Mexico

Date:

## **APPENDIX D**

### **DRAFT CAPITAL OUTLAY AGREEMENT FOR GOVERNMENT ENTITIES**

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

# DRAFT CAPITAL OUTLAY AGREEMENT

STATE OF NEW MEXICO  
DEPARTMENT OF ENVIRONMENT  
FUND [insert fund number] CAPITAL APPROPRIATION PROJECT

THIS AGREEMENT is made and entered into as of this [ ] day of [ ], 20[ ], by and between the Department [New Mexico Environment Department], hereinafter called the “Department” or abbreviation such as “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 Chapter 81, Section 26 of New Mexico Laws 2020, 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 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, 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;

## 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:

APPROPRIATION REVERSION DATE: 30-JUN-2024

In New Mexico Laws of 2020, Chapter 81, Section 26, one million two hundred fifty thousand dollars (\$1,250,000), to plan, design and construct projects that improve surface water quality and river habitat statewide.

The Grantee's total reimbursements shall not exceed [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 Reimburse<sup>1</sup> 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

---

<sup>1</sup> "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.

- (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 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: New Mexico Environment Department  
Name: Kate Lacey  
Title: River Stewardship Program Coordinator  
Address: Surface Water Quality Bureau, P.O. Box 5469 Santa Fe NM, 87502  
Email: Kathryn.Lacey@state.nm.us  
Telephone: 505-946-8863

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, 2024, 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.

- D. 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.

**ARTICLE XVIII. [OPTIONAL IF THE APPROPRIATION IS FUNDED BY SEVERANCE TAX BONDS OR GENERAL OBLIGATION BONDS] SEVERANCE TAX BOND AND GENERAL OBLIGATION BOND PROJECT CLAUSES**

A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond or general obligation bond appropriation, and that the associated bond proceeds are administered by the New Mexico State Board of Finance (SBOF), an entity separate and distinct from the Department. Grantee acknowledges and agrees that (i) it is Grantee's sole and absolute responsibility to determine through SBOF staff what (if any) conditions are currently imposed on the Project; (ii) the Department's failure to inform Grantee of a SBOF imposed condition does not affect the validity or enforceability of the condition; (iii) the SBOF may in the future impose further or different conditions upon the Project; (iv) all SBOF conditions are effective without amendment of this Agreement; (v) all applicable SBOF conditions must be satisfied before the SBOF will release to the Department funds subject to the condition(s); and (vi) the Department's obligation to reimburse Grantee from the Project is contingent upon the then current SBOF conditions being satisfied.

B. Grantee acknowledges and agrees that the SBOF may in its sole and absolute discretion remove a project's assigned bond proceeds if the project doesn't proceed sufficiently. Entities must comply with the requirement to encumber five percent (5%) of Project funds within six months of bond issuance as certified by the grantee in the Bond Questionnaire and Certification documents submitted to the SBOF. Failure to comply may result in the bond proceeds reassignment to a new ready project. If this should occur this grant agreement will be suspended until the entity has demonstrated readiness as determined by the SBOF and the Department.

C. Grantee acknowledges and agrees that this Agreement is subject to the SBOF's Bond Project Disbursements rule, NMAC 2.61.6, as may be amended or re-codified. The rule provides definitions and interpretations of grant language for the purpose of determining whether a particular activity is allowable under the authorizing language of the agreement.

[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**

\_\_\_\_\_  
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**

<b>I. Grantee Information</b>				<b>II. Payment Computation</b>			
(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:		
				F.	Reversion Amount (If Applicable):		
				G.	Grant Balance:		
				H.	<input type="checkbox"/> GF <input type="checkbox"/> GOB <input type="checkbox"/> STB (attach wire if first draw)		
				I.	<input type="checkbox"/> Final Request for Payment (if Applicable)		
C.	Phone No:	City	State				
D.	Grant No:		Zip				
E.	Project Title:						
F.	Grant Expiration Date:						
<b>III. Fiscal Year :</b>							
(The State of NM Fiscal Year is July 1, 20XX through June 30, 20XX of the following year)							
<b>IV.</b>	<b>Reporting Certification:</b> 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"/>							
<b>V.</b>	<b>Compliance Certification:</b> 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"/>							
<b>Grantee Fiscal Officer</b>				<b>Grantee Representative</b>			
or <b>Fiscal Agent (if applicable)</b>							
Printed Name				Printed Name			
Date:				Date:			
<b>(State Agency Use Only)</b>							
<b>Vendor Code:</b>		<b>Fund No.:</b>		<b>Loc No.:</b>			
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]

<sup>1</sup> 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.

## **Optional ATTACHMENT A SPECIAL CONDITIONS**

The capital outlay oversight requires grantees' accounting methods and procedures, including their internal control framework, to be scrutinized, so as to safeguard State capital outlay appropriations and assets acquired with such appropriations.

This Capital Outlay Special Grant Condition(s) **Attachment A** is necessary pursuant to Executive Order 2013-006 (2.A.2.a-c, if applicable), due to the Grantees' material weaknesses, significant deficiencies, or findings that raised concerns as to the ability to expend grant funds in accordance with applicable law in the organization's FY [20XX] audit. The Special Conditions identified below apply to the authorized agent, [insert the Grantee or Fiscal Agent name].

**Procurement** - All purchases or contracts the Grantee enters that shall use funding from the Department capital appropriations grant must be approved by the Department prior to the initiation of implementing purchasing documents. The Grantee shall receive such prior approval via official correspondence from the Department, which may be through letter or email. The Grantee shall submit the following to the Department in pursuit of prior approval: purchasing policies and procedures, CFO certification, documentation of management and program approval, policies and procedures governing purchasing and contracting, a copy of the current procurement and contracting policies, and documentation regarding informing staff responsible for purchasing and contracting on such policies and procedures.

**Budget** - Provide documentation of approval of your current budget from DFA Local Government or other authoritative agency. Provide policies and procedures on who is responsible for and how annual budgets (expenditures and revenue) are established, monitored and adjusted. Provide a corrective action plan on how budget issues identified in your audit will be/have been addressed. Also include documentation on how staff responsible for budgeting is informed on budget policies and procedures.

**Capital Assets** - Provide a complete list of inventory including inventory control numbers and current location. Provide policies and procedures on capital assets and inventory and specify how the proposed purchased items will be included, tagged, and tracked in capital asset inventory. Also include documentation on how staff responsible for capital assets is informed on capital asset policies and procedures.

**Travel and Per Diem** - Provide policies and procedures on travel and per diem. Also include how staff who travel and those responsible for travel reimbursement are informed on travel and per diem policies and procedures.

**Timely Audits** – Provide policies and procedures on annual audits. Provide documentation on how and who is responsible for insuring that annual audits are completed timely. Also include documentation on how staff responsible for the annual audit is informed on audit policies and procedures.

**Cash Management** – policies and procedures on cash management of federal funds. Provide procedures used to draw and disburse federal funds. Provide procedures to reconcile draw amounts, deposits and disbursements; and to prepare federal cash reporting documents to ensure compliance with federal regulations.

## **APPENDIX E**

### **DRAFT CAPITAL OUTLAY AGREEMENT FOR TRIBAL ENTITIES**

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

# **DRAFT CAPITAL OUTLAY AGREEMENT FOR TRIBAL ENTITIES**

## **STATE OF NEW MEXICO DEPARTMENT OF ENVIRONMENT FUND [insert fund number] CAPITAL APPROPRIATION PROJECT**

**THIS AGREEMENT** is made and entered into by and between the Department [insert state agency name and address], New Mexico, 87501, hereinafter called the “Department” or abbreviation such as “abbreviation for state agency”, and [name of grantee], hereinafter called the “Grantee”.

### **RECITALS**

**WHEREAS**, in Chapter 81, Section 26 of New Mexico Laws 2020, 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 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**, 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

**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.

### **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-COB Project # A20E2223

APPROPRIATION REVERSION DATE: 30-JUN-2024

In New Mexico Laws of 2020, Chapter 81, Section 26, one million two hundred fifty thousand dollars (\$1,250,000), to plan, design and construct projects that improve surface water quality and river habitat statewide.

The Grantee's total reimbursements under this Agreement shall not exceed [insert the amount in words] \$[insert amount in numbers], which is hereinafter referred to as "Appropriation Amount."

B. In the event the Appropriation Amount in this Agreement is greater than the amount stated in the laws cited in Article I.A. above, Grantee acknowledges and agrees that the amount stated in those laws is the maximum amount available to it under this Agreement.

In the event of a conflict between the Reversion Date and/or the purpose of the Project and/or the Reversion Date as set forth in this Agreement, and the corresponding appropriation language in the laws cited herein 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." The Project Description includes Attachment A to this Agreement, which is incorporated by this reference as if fully set forth herein. In the event of an irreconcilable conflict between the terms of Attachment A and the other terms of this Agreement, the other terms of this Agreement shall prevail over the terms in Attachment A; provided, however, that Attachment A may limit allowable expenditures to a subset of the expenditures that would otherwise be permissible under the appropriation language.

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:

(vii) 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:

e. 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.
- f. 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.
  - g. 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.
  - h. 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.
  - i. 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.
  - j. 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.
  - k. 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.
- (viii) 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.
- (ix) The total amount received by the Grantee shall not exceed the total of all amounts stated in the Notice(s) of Obligation.
- (x) The Grantee's expenditures were made pursuant to the Grantee's legal procurement and execution of binding Third Party Obligations.
- (xi) The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth Article IX. herein.
- (xii) 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: New Mexico Environment Department  
Name: Kate Lacey  
Title: River Stewardship Program Coordinator  
Address: Surface Water Quality Bureau, P.O. Box 5469 Santa Fe NM, 87502  
Email: Kathryn.Lacey@state.nm.us  
Telephone: 505-946-8863

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:

- (v) Termination due to completion of the Project before the Reversion Date; or
- (vi) Termination due to complete expenditure of the Appropriation Amount before the Reversion Date; or
- (vii) Termination for violation of the terms of this Agreement; or
- (viii) 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.

- (iv) 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
- (v) 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
- (vi) 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, which 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:

- (iv) The Grantee must submit one original and one copy of each Request for Payment.
- (v) 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.
- (vi) 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.
- (vii) 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:

- (v) 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
- (vi) 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.
- (vii) Twenty (20) days from date of Early Termination; or
- (viii) 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:

- (vi) 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.
- (vii) 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."
- (viii) 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.
- (ix) 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.
- (x) The Grantee has the legal authority to receive and expend the Project's funds.

- (xi) 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.
- (xii) 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.
- (xiii) 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.
- (xiv) 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.
- (xv) If applicable to the Project, the Grant will be conducted and administered in conformity with:
  - a. 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.
  - b. 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.
  - c. 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.
- (xvi) The Grantee shall abide by all applicable federal whistleblower laws.
- (xvii) 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 [Department’s name] Grant Agreement. Should the [Department’s name] 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:

- A. The Grantee must submit a notarized certification stating:
  - i. the amount to be used to pay force labor working on the Project;
  - ii. that the labor is being hired specifically for the Project;
  - iii. that the labor is being hired in accordance with the Grantee’s procurement or employment code and/or processes; and
  - iv. 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.

- B. 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.

- C. 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;
- D. 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.
- E. 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**

\_\_\_\_\_  
Signature of Official with Authority to Bind Grantee

By: \_\_\_\_\_  
(Type or Print Name)

Its: \_\_\_\_\_  
(Type or Print Title)

\_\_\_\_\_  
Date

**NEW MEXICO ENVIRONMENT DEPARTMENT**

\_\_\_\_\_  
By:

Its: [INSERT TITLE OF PERSON SIGNING AGREEMENT WHO HAS AUTHORITY TO BIND THE DEPARTMENT]

\_\_\_\_\_  
Date

**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.

*Third Party Obligations*

Purchase Order or Contract # \_\_\_\_\_

Name of Contractor or Vendor: \_\_\_\_\_

Amount of Third Party Obligation: \_\_\_\_\_

Date Executed: \_\_\_\_\_

Termination Date: \_\_\_\_\_

*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

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

<b>Grantee Fiscal Officer</b>		<b>Grantee Representative</b>	
Printed Name		Printed Name	
Date:		Date:	
SWORN TO AND SUBSCRIBED		SWORN TO AND SUBSCRIBED	
before me on this _____ day		before me on this _____ day	
of _____, 20__		of _____, 20__	
Notary Public _____		Notary Public _____	
My Commission expires _____		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 F**

**COST RESPONSE FORM**

## COST RESPONSE FORM

**Include all costs, including all gross receipts taxes. Add lines if needed to provide categories not listed, and to provide budget details.**

BUDGET CATEGORIES	RSP Funds	Other Funds (specify source)	TOTAL
<b>Personnel and Benefits:</b>			
Project Coordinator			
Other paid staff - (identify each person)			
Volunteer participation, planning, monitoring			
<b>Travel:</b>			
If applicable, enter one or more rows for per diem, mileage, lodging, and/or meals, using rates in accordance with your organization's written travel reimbursement policies, or use the rates applicable to New Mexico state employees, at 2.42.2 NMAC			
<b>Equipment Rental:</b>			
Construction equipment, field equipment			
<b>Supplies:</b>			
Field supplies/ rocks/ logs/ fencing/ seed / plants / signs			
Monitoring Supplies			
Materials donations			
<b>Contractual: Direct Labor, Outside Services; include all applicable gross receipts tax</b>			
Engineering/Design/Permitting Services			
Construction Services Contractors/Subcontractors			
Survey/ Monitoring/ Archaeological Services			
<b>Other:</b>			
e.g. permitting fees, map and photo duplication; postage/ mailing costs			
<b>TOTAL</b>			

## **APPENDIX G**

### **LETTER OF TRANSMITTAL FORM**

**APPENDIX G**

***LETTER OF TRANSMITTAL FORM***

**ITEMS #1 to #4 EACH MUST BE COMPLETED IN FULL (pursuant to Section II.C.30).  
FAILURE TO RESPOND TO ALL FOUR (4) ITEMS WILL RESULT IN THE  
DISQUALIFICATION OF OFFEROR'S PROPOSAL! DO NOT LEAVE ANY ITEM BLANK!  
(N/A, None, Does not apply, etc. are acceptable responses.)**

**RFP#: 10-66700-21-27670**

**1. Identify the following information for the submitting organization:**

<b>Offeror Name</b>	
<b>Mailing Address</b>	
<b>Telephone</b>	
<b>FED ID#</b>	
<b>NM CRS#</b>	

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

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

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

**3. Use of subcontractors (Select one):**

- No subcontractors will be used in the performance of any resultant contract, OR  
 The following subcontractors will be used in the performance of any resultant contract:

\_\_\_\_\_  
 (Attach extra sheets, as needed)

**4. Describe any relationship with any entity (such as a State Agency, reseller, etc. that is not a subcontractors listed in #3 above), if any, which will be used in the performance of any resultant contract. (N/A, None, Does not apply, etc. are acceptable responses to this item.)**

\_\_\_\_\_  
 (Attach extra sheets, as needed)

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

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

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

\_\_\_\_\_, 20\_\_\_\_\_  
 Authorized Signature and Date (*Must be signed by the individual identified in item #2.A, above.*)