

## **REQUEST FOR PROPOSALS**

### **ISSUED BY THE STATE OF NEW MEXICO, ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT, FOR HAZARDOUS FUELS MITIGATION PROJECTS**

#### **ARTICLE I. STATEMENT OF WORK**

The New Mexico Energy, Minerals and Natural Resources Department (EMNRD), Forestry Division (Division) is requesting proposals for the planning and implementation of hazardous fuels mitigation projects that will reduce the fire threat in Wildland Urban Interface (WUI) areas in New Mexico. Funding will be awarded through a competitive process administered by the Western Wildland Fire Protection Committee (WWFPC), with emphasis on hazardous fuel reduction, information and education and community and homeowner action. The Division plans to award multiple contracts as a result of this Request for Proposals (RFP).

The Division is soliciting RFP responses from governmental entities that are surrounded by hazardous forest fuels that pose a threat in the event of a wildland fire. The Division may consider projects not funded through the WWFPC process for other federal hazardous fuels reduction funding that may become available. Each grant request is limited to \$300,000. EMNRD encourages communities that are new to the program and small projects under \$75,000.00 to apply. Nationally, 25% of available grant funds may be awarded to new projects.

Proposal responses shall consider all elements required to implement on the ground treatments, including assessment/scoping, planning, information/education, implementation/treatment, monitoring/evaluation, and acquisition of the necessary permits and consultations necessary to complete the project. WWFPC grant criteria requires all proposals to be located within an approved Community Wildfire Protection Plan (CWPP) area submitted for approval in December 2009. The 10-year Comprehensive Strategy of the National Fire Plan (NFP) focuses on assisting people and communities in WUI areas to moderate the threat of catastrophic fire through the four broad goals of improving prevention and suppression, reducing hazardous fuels, restoring fire-adapted ecosystems, and promoting community assistance. This funding opportunity provides successful Offerors financial assistance for hazardous fuels and educational projects furthering those four goals.

The Division shall evaluate and prioritize proposals on a competitive basis addressing one or more of the following categories. These project categories may be complementary to one another. Offerors are encouraged to identify local needs and submit proposals using one or a combination of the grant focus elements. Needs in any community depend on local fuels, topography, organization, public knowledge of the issues, and the will to address the issues.

### **Goal #1 - Improve Prevention:**

Reduce the risks to homes and private property through expanded outreach and education about wildfire prevention through the use of programs such as Firewise®. Homeowners and local governments bear much of the responsibility for improving the defensibility of homes in the interface, but may lack the knowledge and information regarding what needs to be done and how to do it. Additionally, they may lack the experience and expertise to deliver educational outreach programs to individuals and communities. Types of projects include: development, printing, and distribution of fire prevention educational materials by partnering between homeowners, communities, insurance companies, and government agencies; “Living with Fire” newspaper inserts; fire education components to Project Learning Tree; and the Firewise® programs.

### **Goal #2 - Reduce Hazardous Fuels:**

Fuel reduction projects and vegetation removal projects, such as those that remove or modify fuels in or adjacent to WUI development treatments, have been identified in a CWPP as a means of mitigating wildfire hazards. Effective fuels mitigation treatments can be implemented across jurisdictional boundaries, on adjoining projects on state, federal, and private lands or within the respective communities. The overall purpose is to modify or break up the fuels in such a way as to lessen catastrophic fire and its threat to public and firefighter safety and damage to property. RFP responses shall consider all elements required to implement treatments on the ground, including acquiring the necessary permits, consultations needed to complete plans and assessments, and inspections of treatments. Types of projects include: defensible space around homes and structures, shaded fuel breaks, fuels reduction beyond defensible space, and slash removal (including piling, burning, mulching, grinding, etc.).

### **Goal #3 – Restore Fire-Adapted Ecosystems:**

Millions of acres of forest and rangeland face high risks of catastrophic fire due to deteriorating ecosystem health and drought. One way to prevent future large, catastrophic wildfires from threatening communities is by carrying out appropriate treatments (such as prescribed burning or thinning) to restore and rehabilitate forest and grassland health in and adjacent to the WUI. Such treatments have reduced the severity of wildfires, and may have additional desirable outcomes, such as providing sustainable environmental, social, and economic benefits. Projects require planning, consultation, design, and sometimes contracting and may take several years to fully implement. Monitoring and evaluating effectiveness of treatments is usually necessary. Types of projects include: fuels reduction beyond defensible space, removal of slash (including piling and burning, mulching, pruning and grinding), general thinning, prescribed fire, and promoting the establishment of native plants.

#### **Goal #4 – Promote Community Assistance:**

Creating conditions in and around individual structures that will limit the transmission of fire from wildland to structures is basic to reducing the fire hazard in the WUI and is the responsibility of homeowners and communities. Types of projects include: homeowner association sponsored fuels reduction projects; municipal, fire district, or county coordination of slash disposal; and multi-jurisdictional hazard reduction projects.

EMNRD will give priority to activities that tie back to an established CWPP. CWPPs are created by local communities and may address issues such as wildfire response, hazard mitigation, community preparedness, structure protection, or a combination of the above. The process of developing these plans can help a community clarify and refine its priorities for the protection of life, property, and critical infrastructure in the wildland-urban interface. The Healthy Forest Restoration Act minimum requirements for a CWPP are: 1) Collaboration (must be developed by local and state government representatives in collaboration with federal agencies and other interested parties; 2) Prioritized Fuel Reduction (plan must identify and prioritize areas for hazardous fuel reduction treatments and recommend the types and methods of treatment); and 3) Treatment of Structural Ignitability (must recommend measures that homeowners and communities can take to reduce the ignitability of structures throughout the area addressed in the plan). A copy of the CWPP handbook can be found at

<http://www.safnet.org/policyandpress/cwpphandbook.pdf>

#### **ARTICLE II. PROJECT ELIGIBILITY REQUIREMENTS**

Projects must contain a non-federal cash or in-kind match of 50%.

**For example:**

<b>Grant Share</b>	<b>\$ 300,000 (50%)</b>
<b>In-Kind</b>	<b>\$ 300,000 (50%)</b>
<b>Total:</b>	<b>\$ 600,000 (100%)</b>

	<b>Grant Share</b>	<b>In-Kind</b>	<b>In-Kind</b>	<b>In-Kind</b>	<b>TOTAL</b>
	\$ 300,000				\$ 300,000
Contributors		Applicant	Landowner	Other	
Dollars Hard Match		\$ 150,000	\$ 100,000		\$ 250,000
Soft Match				\$ 50,000	\$ 50,000
<b>TOTAL</b>	<b>\$ 300,000</b>	<b>\$ 150,000</b>	<b>\$ 100,000</b>	<b>\$ 50,000</b>	<b>\$ 600,000</b>

Types of expenditures eligible for coverage by the U.S. Departments of Agriculture and the Interior National Fire Plan in **2011** include labor, supplies, travel, and materials.

**Purchases of land, equipment, and buildings are not eligible expenditures.**

### **ARTICLE III. CONTRACT DURATION**

The contract period shall extend from the date of contract approval by EMNRD, or the Department of Finance and Administration, if applicable, for one year, with a possible extension if the successful Offerors show substantial progress.

### **ARTICLE IV. CONTRACT TERMS**

EMNRD may award contracts in accordance with the terms of the attached draft Governmental Services Agreement (**EXHIBIT A**) or Joint Powers Agreement (**EXHIBIT B**), **the Application (EXHIBIT C)** and this RFP. EMNRD will act as the fiscal agent for successful New Mexico grant recipients.

### **ARTICLE V. ADMINISTRATIVE REQUIREMENTS**

A. Offerors shall examine all contract documents, noting particularly all stipulations that in any way affect contract work. Failure of an Offeror to acquaint itself fully with the amount and nature of the work required to fulfill all terms of the contract documents shall not be considered as a basis for extra compensation after a contract has been awarded.

B. If an Offeror finds discrepancies, omissions, or ambiguities in the contract documents, it will at once notify EMNRD, which will send written corrections or explanations to all Offerors. EMNRD will not be responsible for any oral instructions.

C. If an Offeror's proposal substantially adds to, subtracts from, or otherwise changes this RFP's provisions, the proposal shall be void.

D. Proposals must certify that all entities responsible for authorizing Offeror's activities have agreed that their proposal should be submitted as written.

E. Proposals must certify that funds awarded to the Offeror by EMNRD through any contract issued pursuant to this RFP will not be used to supplant funds that the Offeror may have at its disposal from other sources.

F. Proposals must indicate acceptance of terms required by this RFP in a transmittal letter signed by the individual with authority to bind the entity to these requirements.

### **ARTICLE VI. PROPOSAL FORMAT, CRITERIA, AND EVALUATION**

Offerors shall submit proposals using the application format included as (**EXHIBIT C**) to this RFP. Each Offeror may submit only one application. EMNRD shall evaluate proposals based on how the project categories (Article I) correlate with applicant and project eligibility requirements (Article II), given 11 possible points as specified below. In addition, the Division may rank applications to assure an equitable geographic

distribution statewide.

<b>Meets the grant criteria*</b>		<b>Yes = Eligible for scoring</b>	<b>No = Ineligible</b>
<b>Meets the 50/50 match requirement**</b>		<b>Yes = Eligible for scoring</b>	<b>No = Ineligible</b>
<b>1</b>	<b>Is this project achievable? (time, goals, budget, etc.)</b>		
	Yes clearly = 2	Yes but needs more info/inaccurate budget/etc. = 1	No = 0
<b>2</b>	<b>Is this project measurable? (# of acres treated, # of education/outreach programs, etc.)</b>		
	Clearly defined outputs = 2	Mentioned but no clear #s/measurables = 1	Not measurable = 0
<b>3</b>	<b>Is the applicant clearly showing collaborative elements and partners? (confidence level)</b>		
a	Collaborators input is clearly defined = 2	Collaborators listed but roles not defined = 1	Not there = 0
b	Is this a landscape scale project (adjacent to treatments on other jurisdictions)?		Yes = 1 No = 0
<b>4</b>	<b>Is this project implemented from an existing community plan or is the request to develop the plan? (Note: preference will be given to those projects that are incorporated in a completed plan)</b>		
	Plan completed = 2	Plan in progress = 1	No plan = 0
<b>5</b>	<b>Is the applicant clearly demonstrating project longevity? (Note: preference will be given to those projects clearly showing how it will remain effective over time)</b>		
	Clearly Defined = 2	Mentioned not defined = 1	None = 0

## ARTICLE VII. CONTACT PERSON AND PROPOSAL DEADLINE

**Questions regarding this RFP should be addressed to:** Donald Griego, State Fire Manager, EMNRD, Forestry Division, P.O. Box 1948, Santa Fe, N.M., 87504, Telephone: (505) 476-3349. Physical Address: EMNRD, Forestry Division, Wendell Chino Building, 1220 S. St. Francis Drive, Santa Fe, NM 87505.

Offerors must use the 2011 Western States Wildland Urban Interface Grant application form (**EXHIBIT C**) to submit their proposals. Offerors may download this form from EMNRD's Forestry Division web site: [www.nmforestry.com](http://www.nmforestry.com). Upon request, the Division will provide a copy of the application on a disk.

All proposals shall be on white 8.5 x 11" paper. Offerors must also submit an electronic copy of the proposal on a CD-ROM disk or a 3.5-inch computer disk. Offerors shall submit the computer disk, one paper original and four paper copies of the proposal at the address above no later than 5 p.m., Mountain Daylight Time, **August 25, 2010**. All information pertaining to the project must be included on the application, which cannot exceed four pages in length, and must be single sided, single spaced, 9-point type, and accompanied by a cover letter signed by an individual with authority to bind the Offeror to the terms of this RFP. **Absolutely no exceptions** will be made for proposals not received at the above location by the appointed time. **Proposals MAY NOT be sent by facsimile or e-mail.**

## **ARTICLE VIII. NOTICES**

The Division shall rank New Mexico applications and submit them to the WWFPC Grant Committee, which shall make grant selections in mid-October 2010. Award of agreements is contingent upon sufficient appropriations and authorization being made by the U.S. Department of Agriculture and the State of New Mexico.

Discussions may be conducted with Offerors who submit proposals, but proposals may be accepted without such discussions.

Offerors must factor in Governmental Gross Receipts Tax (GGRT) costs as part of their responses where applicable. Any response that does not clearly indicate GGRT is included in the cost section may be deemed non-responsive and rejected.

This RFP may be cancelled and any and all proposals may rejected when it is in the best interest of the State of New Mexico. The Procurement Code, NMSA 1978, Sections 13-1-28 through 13-1-199, imposes civil and misdemeanor criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities, and kickbacks.

**Exhibit A**

**STATE OF NEW MEXICO  
GOVERNMENTAL SERVICES AGREEMENT  
BETWEEN THE  
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT  
AND  
CONTRACTOR**

**THIS AGREEMENT** is made and entered into by and between the State of New Mexico Energy, Minerals, and Natural Resources Department (EMNRD) and **(Insert Contractor name. Remove this instruction.)** (Contractor).

**THE PARTIES MUTUALLY AGREE:**

1. Scope of Work: Contractor shall:

**(Insert brief description of work. Remove this instruction.)**

Contractor shall also provide brief written progress reports to EMNRD on a *(weekly, bi-weekly, monthly, quarterly, annual, with each request for payment/reimbursement or some other time frame)* basis. *(All contracts must have reporting requirements, or the program manager must justify the lack of reports in a written memo to the file for auditing purposes.)*

2. Compensation: *(For paragraph a, select option 1, 2, 3 or 4)*

**Option 1: Work Product. If you choose this option, delete this Option 1 heading and delete the optional Paragraph A's below.**

A. EMNRD shall pay Contractor for services satisfactorily performed pursuant to the Scope of Work in an amount not to exceed \_\_\_\_\_ (\$ \_\_\_\_\_), including New Mexico gross receipts taxes, if any, and any travel necessary, pursuant to Paragraph B of this Compensation Section. EMNRD shall make payment upon the satisfactory and timely completion of the work described in the Scope of Work and for no more than the maximum amount set forth below for each deliverable:

*(Insert deliverables/payment schedule here. Delete this instruction)*

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 EMNRD when the services provided under this Agreement reach the total compensation amount. In no event shall the Contractor be paid for

services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided. EMNRD MUST receive all invoices no later than 15 days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date SHALL NOT BE PAID.

**Option 2: Lump Sum Amount Upon Completion of All Work. If you choose this option, delete Paragraph B of this Compensation Section as well and re-letter successive paragraphs accordingly. Delete the paragraph above it. Delete this Option 2 heading.**

A. EMNRD shall pay Contractor for services satisfactorily performed pursuant to the Scope of Work in an amount not to exceed \_\_\_\_\_ (\$ \_\_\_\_\_), including New Mexico gross receipts taxes, if any, and any travel, pursuant to Paragraph B of this Compensation Section. 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 EMNRD when the services provided under this Agreement reach the total compensation amount. In no event shall the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided. EMNRD MUST receive all invoices no later than 15 days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date SHALL NOT BE PAID.

**Option 3: Time and Materials. If you choose this option, delete this Option 3 heading and the paragraphs above it.**

A. EMNRD shall pay Contractor for services rendered and amount not to exceed \_\_\_\_\_ (\$ \_\_\_\_\_) per (hour, day, week, month), such compensation not to exceed \_\_\_\_\_ (\$ \_\_\_\_\_) in total, which amount includes travel as shown in within this Paragraph 2. EMNRD shall reimburse Contractor for the cost of materials necessary under this Agreement for an amount not to exceed \_\_\_\_\_ (\$ \_\_\_\_\_). This amount is a maximum and not a guarantee that the work assigned to Contractor under this Agreement to be performed shall equal the amount stated herein. EMNRD MUST receive all invoices no later than 15 days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date SHALL NOT BE PAID. Payment shall not relieve the Contractor of any unperformed obligations under the Scope of Work. Contractor shall not be entitled to receive any payment unless supported by appropriate billing statements and documentation as provided within this Section.

B. EMNRD shall pay such travel expenses as may be incurred in, and

that are necessary for, this Agreement's performance at the rates established in the New Mexico Per Diem and Mileage Act, NMSA 1978, §§ 10-8-1, *et seq.* as implemented by the current Department of Finance and Administration (DFA) rule and the current EMNRD travel policy.

C. Contractor shall be responsible for paying New Mexico Governmental Gross Receipts taxes, if any, levied on amounts payable under this Agreement.

D. Contractor must submit detailed statements accounting for all services performed, goods obtained, and expenses incurred. (*Vouchers must be supported by approved purchase order or equivalent document and invoice by the supplier, evidencing the propriety of each claim for payment. Wage amounts charged shall be based upon payrolls maintained by Contractor and must be supported by time and attendance sheets.*) If EMNRD finds that the statement, services, goods, or expenses are not acceptable, within 30 days after the date of receipt of written notice from the Contractor that payment is requested, it shall provide the Contractor a letter of exception explaining the defect or objection to the statement, services, goods, or expenses, and outlining steps the Contractor may take to provide remedial action. Upon EMNRD's certification that the statement, services, goods or expenses have been received and accepted, EMNRD shall tender payment to the Contractor within 30 days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, EMNRD shall not incur late charges, interest, or penalties, for failure to make payment within the time specified herein.

**Option 4: Advance of Funds. If you choose this option, delete all the previous choices. Delete this Option 4 heading.**

A. Within XX days following this Agreement's effective date, EMNRD shall transfer to Contractor \_\_\_\_\_ (\$ \_\_\_\_\_), which shall include New Mexico Governmental Gross Receipts Taxes, if applicable, for completion of the Tasks described in the Scope of Work above. Payment shall not relieve Contractor of any unperformed obligations under the Scope of Work.

B. Upon expiration or termination of this Agreement, if either party has property or funds in its possession belonging to the other, it shall return the property or funds in proportion to the parties' original contribution.

C. Contractor shall be responsible for paying New Mexico Governmental Gross Receipts taxes levied on amounts payable under this Agreement, if applicable.

3. Term: This Agreement becomes effective when executed by an authorized representative of Contractor and of EMNRD and when DFA encumbers funds for this Agreement. It shall terminate on **(Insert date. Delete this instruction)**, unless earlier

terminated pursuant to the Termination Section 4, Termination, or Section 5, Appropriations, below.

4. Termination:

A. Either party may terminate this Agreement upon written notice delivered to the other at least 10 days prior to the intended termination date. Except as otherwise allowed or provided under this Agreement, EMNRD's sole liability upon such termination shall be to pay for acceptable work performed prior to the Contractor's receipt of the notice of termination. The Contractor shall submit an invoice for such work within 30 days of receiving the notice of termination. By such termination, neither party may nullify obligations or duties accrued prior to the termination date.

B. Immediately upon receipt by either EMNRD or the Contractor of notice of termination of this Agreement, the Contractor shall:

1) not incur any further obligations for salaries, services, or any other expenditure of funds under this Agreement without EMNRD's written approval;

2) comply with all directives EMNRD issues in the notice of termination as to the performance of work under this Agreement; and

3) take such action as EMNRD directs for the protection, preservation, retention, or transfer of all property titled to EMNRD and records generated under this Agreement.

C. Any non-expendable personal property or equipment provided to or purchased by the Contractor with Agreement funds shall become EMNRD's property upon termination and Contractor shall submit such property or equipment to EMNRD as soon as practicable.

5. Appropriations: This Agreement's terms are contingent upon the New Mexico State Legislature (*option - and insert name of federal funding agency*) granting sufficient appropriation and authorization. If sufficient appropriation or authorization is not granted, EMNRD may terminate this Agreement, or in the alternative suspend performance pending approval of sufficient appropriation or authorization, upon written notice from EMNRD to Contractor. EMNRD's decision as to whether sufficient appropriations are available shall be at its sole and absolute discretion and shall be final, binding and accepted by Contractor.

6. Status of Contractor: The Contractor and its agents and employees are independent contractors performing professional services for EMNRD 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 written authority.

7. Assignment: 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 EMNRD's prior written approval.

8. Subcontracting: Contractor shall not subcontract any portion of the services to be performed under this Agreement or obligate itself in any manner to any third party, with respect to any rights or responsibilities under this Agreement, without EMNRD's prior written approval. EMNRD may disallow costs incurred by the Contractor in relation to a subcontract if Contractor does not obtain prior written approval.

**Option - if federal funding is involved, include the following subparagraphs A and B. Delete this instruction.**

A. Contractor is required to provide EMNRD with evidence of competitive procurement for any subcontract, including records of advertisement of bid, proposals received, and methods used to select each subcontractor.

B. Any subcontract shall include provisions necessary to allow Contractor to meet its obligations and requirements under this Agreement.

**Option: Include paragraph below if Subcontractor will be reimbursed for travel expenses. Delete this instruction.**

C. Travel expense reimbursement requested for subcontractors, if applicable, will be reimbursed in accordance with rates established in the New Mexico Per Diem and Mileage Act, NMSA 1978, § 10-8-1, *et seq.*, as implemented by the current DFA Rule and the current EMNRD Travel Policy.

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

**Option: Use only if contract involves proprietary information or there is a statutory basis for confidentiality. If not using this section, delete it and renumber successive sections accordingly. Delete this instruction.**

10. Confidentiality: *(Option: Use only if contract involves proprietary information or there is a statutory basis for confidentiality. If there is Delete this instruction.)* Any confidential information provided to or developed by Contractor in the performance of this Agreement shall be kept confidential and shall not be made

available by Contractor to any individual or organization without EMNRD's prior written approval.

**Option: Include the following if acknowledgment required. If not, delete this section and renumber successive accordingly. Delete this instruction.**

11. Acknowledgment: Contractor shall acknowledge EMNRD (*option - and insert name of federal funding agency*) as a co-sponsor and funding source in all news releases, programs, proceedings and related publicity/publications for the Project. (See additional acknowledgement requirements in Attachment 2, ARRA Contractual Requirements Required by DOE.)

12. Product of Services; Copyright: All materials developed or acquired by Contractor under this Agreement shall become the State of New Mexico's property and be delivered to EMNRD no later than this Agreement's expiration date. Nothing Contractor produces, in whole or in part, under this Agreement shall be the subject of a copyright application or other claim of ownership by or on behalf of Contractor.

13. Conflict of Interest: Contractor warrants that it presently has no interest and that it shall not acquire any interest, direct or indirect, which would conflict in any manner with performance or other services required under this Agreement. Contractor certifies that the requirements of the Governmental Conduct Act, NMSA 1978, §§ 10-16-1 through -18, regarding contracting with a public officer or state employee have been followed.

14. Amendment: This Agreement shall not be altered, changed, or amended except by written instrument executed and approved by the parties hereto.

If EMNRD proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, Contractor shall have the option to terminate the Agreement, or to agree to the reduced funding, within 30 days of receipt of the proposed amendment.

15. Waiver: No waiver of any breach of this Agreement or any of the terms or conditions hereof shall be a waiver of any other or subsequent breach; no waiver shall be valid or binding unless the same be in writing and signed by the party alleged to have granted the waiver.

16. 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, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless as embodied in this Agreement.

17. Penalties for Violation of Law: The Procurement Code, NMSA 1978, §§ 13-1-28 through 13-1-199, imposes civil and criminal penalties for its violation. In

addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities, and kickbacks.

18. Equal Opportunity Compliance: 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.

19. 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.

20. Compliance with Law and Funding Source Conditions: Contractor shall comply with all applicable state and federal statutes, regulations or rules, including without limitation those imposed as a consequence of funding pursuant to this Agreement.

**Option: If agreement is with a state agency do not include the following provision because all state agencies are covered by Risk Management Division. Delete this Section (and this instruction) and renumber successive sections accordingly. If agreement is with a county, municipality, state university or public school, determine whether it has insurance coverage. If it does, keep the following. If the county, municipality, state university or public school does not have coverage, discuss the situation with legal as to how it should be addressed. Delete this instruction.**

21. Insurance Coverage: By signing this Agreement, Contractor certifies that the activities described in the Scope of Work are covered by insurance as set forth below, secured in accordance with any method allowed by applicable law, including self-insurance, pooling of self-insured reserves, or insurance provided by a third party. Contractor shall maintain continuous coverage of the activities described in the Scope of Work, so long as this Agreement is in effect. Failure to maintain such coverage is reason for immediate termination of this Agreement. Contractor shall notify EMNRD prior to cancellation or expiration of any insurance required under this Agreement.

A. Worker's Compensation protection that complies with the requirements of the New Mexico Worker's Compensation Act, NMSA 1978, §§ 52-1-1, *et seq.*, if applicable. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, EMNRD may terminate this Agreement.

B. Comprehensive public liability protection covering property damage and personal injury liability that may arise under this Agreement and any amendments hereto, in amounts equal or greater than liability limits set forth in NMSA 1978, § 41-4-19, as it may be amended from time to time.

22. Records and Audit:

A. 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 until three years after the date specified in Section 3, Term. **(Option: If you are using federal funding, the Contractor must retain the records for three years after the funding expires, even if the contract ends prior to the funding expiring. Revise this paragraph to indicate a date certain by which the Contractor must retain the records. Delete this instruction.)** These records shall be maintained and available within the State of New Mexico if the Contractor has an office within the state; otherwise, Contractor shall make such records available to EMNRD within 10 days upon EMNRD's request. During this time, such records shall be subject to inspection by EMNRD, DFA and the State Auditor (*and insert name of federal funding agency*). Contractor further agrees to include in all subcontracts hereunder the same right of inspection and audit against all subcontractors. EMNRD shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose EMNRD's right to recover excessive or illegal payments. The periods of inspection and audit may be extended for records, which relate to litigation or settlement of claims arising out of performance of this Agreement (*and costs and expenses related to this Agreement for which exception is under consideration by insert name of federal funding agency or any authorized representative*) and shall continue until all potential litigation, appeals, claims, or exceptions have expired or been resolved.

**Option: Are you using federal funds to pay for this contract? If yes, you need to include the following paragraph in your contract because the requirements are cumulative. If not, delete this paragraph. Delete this instruction.**

B. If Contractor receives \$500,000 or more in federal funding from all sources in the aggregate in a fiscal year, Contractor's financial records involving services and procurement under this Agreement shall be audited annually pursuant to all federal, state and local government audit requirements (*insert specific requirements, if any*), 2 C.F.R. Part 225 and OMB Circular and A-133, as prescribed by the Single Audit Act of 1984, or any subsequent OMB Circular. Contractor shall provide EMNRD with a copy of the independent financial audit, either in hard copy format or on disk, no

more than 45 days after the audit's completion for each fiscal year this Agreement is in effect.

**Option: If you are using federal funds to pay for this contract, does the contract create a subrecipient relationship between your Division and the contractor? "Subrecipient" is defined as someone who is acting as an extension of your Division's capacity to meet the terms of your Division's federal grant. If the answer is "yes," you need to include the following language in your contract. Delete this instruction. If the answer is "no," delete the text and this instruction. If you are unsure whether the contract creates a subrecipient relationship or not, please contact the EMNRD Chief Financial Officer.**

C. Because this Agreement creates a subrecipient relationship between EMNRD and Contractor, the following financial and performance compliance requirements apply:

1. Contractor shall maintain payroll records and provide them to EMNRD as specified in this Agreement. (*Compensation Paragraph, this Records and Audit Paragraph*).

2. Contractor shall maintain records of purchase of fixed assets under this Agreement and provide them to EMNRD as specified in this Agreement. (*Procurement, Utilization and Disposition of Property Paragraph and Records and Audit Paragraph*).

3. Contractor shall maintain financial records related to this Agreement and provide them to EMNRD as specified in this Agreement. (*Compensation Paragraph; Records and Audit Paragraph*).

23. 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 with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, §§ 41-4-1, *et seq.*, as amended.

24. Procurement, Utilization, and Disposition of Property: Contractor shall report acquisition of any capital property (property with an expected life of at least one year) to EMNRD within one month following the acquisition. If upon termination of this Agreement Contractor has any property in its possession belonging to EMNRD, Contractor shall account for the property and dispose of it as EMNRD directs. (*Option - if federal funding is involved include the following statement. Otherwise delete it and this instruction*) *All property acquired by the Contractor or procured under this Agreement shall be used and disposed of in accordance with the federal funding agency's regulations governing disposal of property.*

25. Minimum Wage Rate: If applicable, Contractor shall comply with minimum wage rates as established by the New Mexico Department of Workforce Solutions,

Labor and Industrial Division, and with all other applicable requirements of that Division, including posting of the wage rates in a prominent location on the site for hiring and performing of this Agreement.

26. Attorney's Fees and Costs: Contractor agrees that if a court of competent jurisdiction finds Contractor has breached this Agreement, or amendments hereto, or to have committed any tortious act relating to this Agreement's scope, EMNRD may recover from Contractor reasonable attorneys' fees and costs in connection with litigation brought to obtain the judicial determination.

27. 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.

28. 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 waiver of a specified right by a party shall be effective to waive any other rights.

29. Authority: The individual(s) signing this Agreement on behalf of Contractor represent and warrant that he or she has the power and authority to bind Contractor, and that no further action, resolution, or approval from Contractor or any other entity is necessary to enter into a binding contract.

**IN WITNESS WHEREOF**, the parties hereto have herein below executed this Agreement.

**STATE OF NEW MEXICO, ENERGY, MINERALS AND NATURAL RESOURCES  
DEPARTMENT**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Cabinet Secretary or Designee

**CONTRACTOR NAME**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Authorized Representative Signature

\_\_\_\_\_  
Contractor's Printed Name and Title

**Exhibit B**  
**JOINT POWERS AGREEMENT**  
**BETWEEN THE**  
**NEW MEXICO ENERGY, MINERALS AND**  
**NATURAL RESOURCES DEPARTMENT**  
**AND**  
**(INSERT AGENCY NAME)**

**THIS AGREEMENT** is made and entered into by the New Mexico Energy, Minerals and Natural Resources Department (EMNRD) and (agency name), (\_\_\_\_\_) pursuant to the Joint Powers Agreements Act, NMSA 1978, §§ 11-1-1, *et seq.* The common power to be exercised is as follows:

EMNRD and (*Agency Name*) are public agencies and are authorized by law to enter into this Joint Powers Agreement; and

Pursuant to NMSA 1978, § \_\_\_\_\_, EMNRD is responsible for \_\_\_\_\_  
\_\_\_\_\_; and

Pursuant to NMSA 1978, § \_\_\_\_\_, (agency name) is responsible for \_\_\_\_\_  
\_\_\_\_\_; and

**WHEREAS**, EMNRD and (*Agency Name*) desire to enter into this Agreement for administrative efficiency so that the project can be carried out through a single program,

**NOW, THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES THAT THE METHOD BY WHICH THIS PURPOSE SHALL BE ACCOMPLISHED IS AS FOLLOWS:**

*(OPTION – IF NO MONEY WILL CHANGE HANDS, THE JPA WILL BE REVISED TO ADDRESS EACH AGENCY’S RESPONSIBILITIES, CONTRIBUTION, ACCOUNTING, ETC. CONTACT LEGAL TO HAVE THE JPA REVISED BASED ON THE CIRCUMSTANCES THAT WILL BE ADDRESSED BY THE PROPOSED AGREEMENT.)*

1. (*Agency Name*) shall:

A.

B.

C. Provide brief written progress reports to EMNRD on a (*weekly, bi-weekly, monthly, quarterly, annual, with each request for payment/reimbursement or some other time frame*) basis. (*All contracts must have reporting requirements, or the program manager must justify the lack of reports in a written memo to the file for auditing purposes.*)

2. EMNRD shall:

A. (Reimburse) (Pay) (Agency Name) for all costs incurred under this Agreement for materials and labor up to a total maximum of \_\_\_\_\_ (\_\_\_\_\_) that shall include New Mexico Governmental Gross Receipts Taxes, if applicable, and travel expenses as may be incurred in the performance of this Agreement at the rates established in the New Mexico Per Diem and Mileage Act, NMSA 1978, § 10-8-1, *et seq.* as implemented by the current Department of Finance and Administration Rule and current EMNRD travel policy.

B. Make all disbursements for costs by voucher supported by approved purchase order or equivalent document and invoice from (agency name) evidencing the propriety of each payment. Amounts charged for personal services will be based on payrolls maintained by (agency name) and supported by time and attendance sheets.

3. **Term: THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE SECRETARY OF THE NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION (DFA) OR WHEN DFA ENCUMBERS FUNDS FOR THIS AGREEMENT, WHICHEVER DATE IS LATER.** It shall expire on [insert date] unless earlier terminated pursuant to Section 4, Termination, or Section 5, Appropriations, below.

4. **Termination:**

A. Either party may terminate this Agreement upon written notice delivered to the other at least 10 days prior to the intended termination date. Except as otherwise allowed or provided under this Agreement, EMNRD's sole liability upon such termination shall be to pay for acceptable work performed prior to the Contractor's receipt of the notice of termination. The Contractor shall submit an invoice for such work within 30 days of receiving the notice of termination. By such termination, neither party may nullify obligations or duties accrued prior to the termination date.

B. Immediately upon receipt by either EMNRD or the Contractor of notice of termination of this Agreement, the Contractor shall:

1) not incur any further obligations for salaries, services, or any other expenditure of funds under this Agreement without EMNRD's written approval;

2) comply with all directives EMNRD issues in the notice of termination as to the performance of work under this Agreement; and

3) take such action as EMNRD directs for the protection, preservation, retention, or transfer of all property titled to EMNRD and records generated under this Agreement.

C. Any non-expendable personal property or equipment provided to or purchased by the Contractor with Agreement funds shall become EMNRD's property upon termination and Contractor shall submit such property or equipment to EMNRD as soon as practicable.

5. **Appropriations:** The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico and *(insert name of federal funding entity)* for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature and *(insert name of federal funding entity)*, this Agreement shall terminate immediately upon written notice being given by EMNRD to the Contractor. Either party's decision as to whether sufficient appropriations are available shall be accepted by the other and shall be final.

6. **Subcontracting:** *(Agency Name)* shall not subcontract any portion of the services it performs under this Agreement or obligate itself in any manner to any third party, with respect to any rights or responsibilities under this Agreement, without EMNRD's prior written approval.

*(OPTION - If federal funding is involved, include paragraphs A and B below)*

A. *(Agency Name)* is required to provide EMNRD with evidence of competitive procurement for any subcontract, including records of advertisement of bid, proposals received, and methods to select each subcontractor.

B. Any subcontract shall include provisions necessary to allow *(agency name)* to meet its obligations and requirements under this Agreement.

*(OPTION - Include paragraph below if subcontractor will be reimbursed for travel expenses)*

C. Travel expense reimbursement requested for subcontractors, if applicable, will be reimbursed in accordance with rates established in the New Mexico Per Diem and Mileage Act, NMSA 1978, § 10-8-1, *et seq.*, as implemented by the current Department of Finance and Administration Rule and current EMNRD travel policy.

7. **Strict Accountability for Receipts and Disbursements:**

A. The *(Agency Name)* shall be strictly accountable for receipts and disbursements relating hereto and shall make all relevant financial records available to EMNRD, DFA, the New Mexico State Auditor, and *the federal funding agency* upon request, and shall maintain all such records for three years from the date specified in Section 3, Term. *(Option: If you are using federal funding, the Contractor must retain the records for three years after the funding expires, even if the contract ends prior to the funding expiring. Revise this paragraph to indicate a date certain by which the Contractor must retain the records.)*

*(Note: Are you using federal funds to pay for this contract? If yes, you need to include the following paragraph in your contract because the requirements are cumulative. If not, delete this paragraph).*

B. If Contractor receives \$500,000 or more in federal funding from all sources in the aggregate in a fiscal year, Contractor's financial records involving services and procurement under this Agreement shall be audited annually pursuant to all federal, state, and local government audit requirements *(insert specific requirements, if any)*, 2 C.F.R. Part 225 and OMB Circular and A-133, as prescribed by the Single Audit Act of 1984, or any subsequent OMB Circular. Contractor shall provide EMNRD with a copy of the independent financial audit, either in hard copy format or on disk, no more than 45 days after the audit's completion for each fiscal year this Agreement is in effect.

*(Note: If you are using federal funds to pay for this contract, does the contract create a subrecipient relationship between your Division and the contractor? "Subrecipient" is defined as someone who is acting as an extension of your Division's capacity to meet the terms of your Division's federal grant. If the answer is "yes," you need to include the following language in your contract. If the answer is "no," delete the text. If you are unsure whether the contract creates a subrecipient relationship or not, please contact the EMNRD Chief Financial Officer.)*

C. Because this Agreement creates a subrecipient relationship between EMNRD and Contractor, the following financial and performance compliance requirements apply:

1. Contractor shall maintain payroll records and provide them to EMNRD as specified in this Agreement. *(Compensation Paragraph, this Records and Audit Paragraph).*

2. Contractor shall maintain records of purchase of fixed assets under this Agreement and provide them to EMNRD as specified in this Agreement. *(Procurement, Utilization and Disposition of Property Paragraph and Records and Audit Paragraph).*

3. Contractor shall maintain financial records related to this Agreement and provide them to EMNRD as specified in this Agreement. *(Compensation Paragraph; Records and Audit Paragraph).*

8. **Disposition, Division, or Distribution of Property; Return of Surplus Funds:** Upon expiration or termination of this Agreement, if either party has property or funds in its possession belonging to the other, it shall return the property or funds in proportion to the parties' original contribution.

9. **Equal Opportunity Compliance:** *(Agency Name)* 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, (*Agency Name*) 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, 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 (*Agency Name*) is found not to be in compliance with these requirements during the life of this Agreement, (*Agency Name*) agrees to take appropriate steps to correct these deficiencies.

10. **Compliance with Funding Source Conditions:** (*Agency Name*) shall comply with all applicable state and federal statutes and rules or regulations the funding source imposes.

*(OPTION - IF THE JPA IS WITH ANOTHER NEW MEXICO STATE AGENCY DO NOT USE THE PARAGRAPH BELOW AS THOSE AGENCIES ARE COVERED BY RISK MANAGEMENT. INSTEAD, DELETE THE PARAGRAPH AND RENUMBER PARAGRAPH 12 AS 11. IF THE JPA IS WITH A COUNTY, CITY OR OTHER LOCAL AGENCY, USE THIS PARAGRAPH. IF THE JPA IS WITH A FEDERAL AGENCY, ANOTHER STATE OR A TRIBE OR A TRIBALLY OWNED ENTITY, CONTACT LEGAL REGARDING HOW THE JPA SHOULD BE REVISED. GENERALLY THEY HAVE SOVEREIGN IMMUNITY UNLESS SPECIFICALLY WAIVED.)*

11. **Insurance Coverage:** By signing this Agreement, (*Agency Name*) certifies that the activities described in Section 1 above are covered by insurance as specified within this Section, secured in accordance with any method allowed by applicable law, including self-insurance, pooling of self-insured reserves or insurance provided by a third party. (*Agency Name*) shall maintain continuous insurance coverage as specified below of the activities described in Section 1 above so long as this Agreement is in effect. Failure to maintain such coverage is reason for this Agreement's immediate termination. (*Agency Name*) shall notify EMNRD prior to cancellation or expiration of any insurance required under this Agreement.

A. Worker's Compensation protection that complies with the requirements of the New Mexico Worker's Compensation Act, NMSA 1978, §§ 52-1-1, *et seq.*, if applicable. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, EMNRD may terminate this Agreement.

B. Comprehensive public liability protection covering property damage and personal injury liability that may arise under this Agreement and any amendments hereto, in amounts equal or greater than liability limits set forth in NMSA 1978, § 41-4-19, as it may be amended from time to time.

12. **Amendment:** This Agreement shall not be altered, changed, or amended except by instrument in writing executed by the parties hereto and approved by the DFA Secretary.

**IN WITNESS WHEREOF**, the parties have herein set their hand.

**STATE OF NEW MEXICO, ENERGY, MINERALS AND NATURAL RESOURCES  
DEPARTMENT**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Cabinet Secretary or Designee

**CONTRACTOR NAME**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Authorized Representative Signature

\_\_\_\_\_  
Contractor's Printed Name and Title

**STATE OF NEW MEXICO, DEPARTMENT OF FINANCE AND ADMINISTRATION**

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

**Exhibit C**  
**2011 Application**