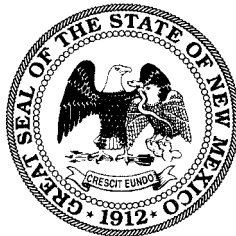


STATE OF NEW MEXICO



NEW MEXICO ENVIRONMENT DEPARTMENT
SURFACE WATER QUALITY BUREAU

Request For Proposals

RFP #: FY10-SWQB RERI

River Ecosystem Restoration Initiative

***Focus: Projects that Restore Instream Ecosystem
Function and Watershed Health to Major River
Basins***

PROPOSALS DUE: AUGUST 10, 2009, 3:00 PM

RFP Release Date: June 26, 2009



New Mexico Environment Department
Surface Water Quality Bureau



BILL RICHARDSON
GOVERNOR

State of New Mexico
Environment Department
SURFACE WATER QUALITY BUREAU

1190 St. Francis Drive, PO Box 5469
Santa Fe, New Mexico 87502-5469



RON CURRY
SECRETARY

www.nmenv.state.nm.us

NOTICE OF REQUEST FOR PROPOSAL

RFP #: FY10-SWQB RERI

PROPOSALS MUST BE RECEIVED AT THE LOCATION BELOW BY:

AUGUST 10, 2009, 3:00 PM MOUNTAIN DAYLIGHT TIME (LATE OFFERS WILL NOT BE CONSIDERED)

Proposal Delivery Location:

New Mexico Environment Department
Surface Water Quality Bureau, Room N2050
1190 St. Francis Drive
PO Box 5469
Santa Fe, NM 87502-5469

Indicate on outside of envelope: RFP Number: FY10-SWQB RERI

In accordance with **Chapter 13 Sections 13-1-28 through 13-1-199 NMSA 1978**, competitive sealed proposals for the services specified will be accepted by the New Mexico Environment Department at the specified location until the time and date cited above. Offers must be in possession of the New Mexico Environment Department, Surface Water Quality Bureau no later than **3:00 PM MDT, Monday, August 10, 2009**. Offers received by the correct time and date will be opened after 3:00 PM MDT. Late offers **will not** be considered.

Offers (grant proposals) must be submitted in the format found in Section III of this RFP in a sealed package with the Request For Proposals (RFP) number and the Project Applicant's name and address clearly indicated on the package.

PROJECT APPLICANTS ARE STRONGLY ENCOURAGED TO CAREFULLY READ THE ENTIRE RFP.

Appendix C contains an Acknowledgement of Receipt Form that should be completed and submitted to NMED at the address below by July 23, 2009. Upon receipt of the Acknowledgement of Receipt Form, NMED will create a distribution list of potential offerors for the purpose of sending additional information about this RFP. Failure to return the Acknowledgement of Receipt Form shall constitute a presumption of receipt and rejection of the RFP, and the potential offeror shall not appear on the distribution list. Failure to return the Acknowledgement of Receipt Form does not preclude a potential offeror from submitting a proposal.

Written questions (faxes and emails are acceptable) regarding this RFP are to be submitted by July 23, 2009 to the Procurement Manager. Please make sure to place the RFP number and project name on any questions submitted to the Surface Water Quality Bureau.

Procurement Manager	Contract Officer
Karen Menetrey, New Mexico Environment Department Harold Runnels Building Room N2050 1190 St. Francis Drive P.O. Box 5469 Santa Fe, NM 87502-5469 Karen.Menetrey@state.nm.us Phone: (505) 827-0194, FAX (505) 827-0160	Tammy Kesler New Mexico Environment Department Harold Runnels Building Room N2050 1190 St. Francis Drive P.O. Box 5469 Santa Fe, NM 87502-5469 Phone: (505) 827-0669, FAX (505) 827-0160

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I. INTRODUCTION

A. PURPOSE OF THIS REQUEST FOR PROPOSAL

The River Ecosystem Restoration Initiative (RERI) is an opportunity to protect and restore river systems across the state. This initiative is part of Governor Richardson's 2009 legislative agenda. The source of the funding is through severance tax bonds appropriated to the New Mexico Environment Department during the 2009 legislative session.

In this RFP, the New Mexico Environment Department (NMED) Surface Water Quality Bureau (SWQB) is requesting proposals for the purpose of implementing physical projects that restore instream ecosystem function and watershed health to major New Mexico river basins.

Examples of activities that may be funded through this RFP include, but are not limited to: physical habitat restoration within a stream; enhancement of environmental flow; improvement of riparian vegetative cover for the purpose of river restoration; reduction of pollutants to rivers; promoting the hydrologic interaction between the river channel and floodplain including bank lowering; and restoring dynamic channel processes such as accretion on new banks, bar building, and channel sinuosity. The removal of non-native phreatophytes will not be funded except as part of a more comprehensive river restoration project. Projects on government land will be considered. Projects on private land will be considered if there is a measurable benefit to the State of New Mexico and the public.

The funding cycle for the projects is up to four years, from FY10-FY13. Projects must be consistent with requirements for capital projects funded by severance tax bonds (2.61.6 NMAC) and must not violate the Anti-Donation Clause of the State of New Mexico Constitution (N.M. Const., Article IX, Section 14.)

Appendix C contains an Acknowledgement of Receipt Form that should be completed and submitted to NMED at the address below by July 23, 2009. Upon receipt of the Acknowledgement of Receipt Form, NMED will create a distribution list of potential offerors for the purpose of sending additional information about this RFP. Failure to return the Acknowledgement of Receipt Form shall constitute a presumption of receipt and rejection of the RFP, and the potential offeror shall not appear on the distribution list. However, failure to return the Acknowledgement of Receipt Form does not preclude a potential offeror from submitting a proposal.

B. SCOPE OF WORK

Through this RFP the Department desires to establish Intergovernmental Agreements or Contracts with qualifying entities, per terms listed in Section II - C. Project implementation will be through Intergovernmental Agreements or Contracts with NMED, as appropriate, to perform specific well-defined services by an eligible entity. Examples of eligible entities may include, but are not limited to: soil and water conservation districts; watershed management associations; tribes; local, state or federal government agencies; and river ecosystem advocacy groups.

A successful RERI proposal should have the following characteristics:

- The proposal conforms to the RFP format.
- The project is a physical project addressing restoration of instream ecosystem function and watershed health to major New Mexico river basins.
- The proposal clearly describes how the project will accomplish measurable objectives.
- The project will maximize the conservation of biological diversity.
- The project is listed as a priority in a local and/or state planning document.
- The proposal is supported by sound and established scientific, hydrological and biological studies.
- The proposal demonstrates that adequate planning has been completed to ensure feasibility and timely implementation.

- The project has a high likelihood of sustainability, including considerations of natural viability and a commitment for long-term land stewardship.
- The proposal includes a plan for validation and verification (i.e. monitoring), including pre-and post implementation activities directly related to the stated project objectives.
- The project will benefit the State of New Mexico and the public.
- The proposal includes a detailed, reasonable, and justified budget.
- The project adds value or links to another existing or planned restoration project.
- The proposal provides a plan for education and outreach.
- The project applicant, partners and subcontractors have sufficient technical and financial qualifications to complete the project.
- The project has multiple and diverse partners working in collaboration.
- The proposal demonstrates that the project is supported by affected stakeholders.
- The proposal describes how any new net water depletions created by the project will be addressed.

C. PROPOSAL SUBMISSION FORMAT

Proposals not meeting the following proposal submission format requirements will not be evaluated as described in Section II.B.8.

1. Proposal Length

Each proposal is limited to 15 pages of text (11 point size minimum). This does not include maps or appendices.

2. Number of Copies

Each response to this RFP (FY10-SWQB RERI) shall contain:

- One (1) proposal with original signatures. This will be considered the original proposal.
- One(1) proposal in electronic format (CD) in MS Word or .pdf format; and
- Five (5) paper copies of the original proposal.

D. PROCUREMENT MANAGER

NMED has designated a Procurement Manager who is responsible for conducting this River Ecosystem Restoration Initiative funding process and whose name, address and telephone number follows. All deliveries via US Mail, delivery service, or express carrier should be sent to this address.

Procurement Manager:	Mailing Address:
Karen Menetrey New Mexico Environment Department Surface Water Quality Bureau	Karen Menetrey, Environmental Scientist/Specialist River Ecosystem Restoration Initiative NMED, Surface Water Quality Bureau Harold Runnels Building Room N2050 1190 St. Francis Drive PO Box 5469 Santa Fe, New Mexico 87502-5469
	Phone: (505) 827-0194, FAX (505) 827-0160 e-mail: Karen.Menetrey@state.nm.us

Any inquiries or requests regarding this procurement must be submitted to the Procurement Manager in writing (faxes or emails are acceptable).

E. BACKGROUND INFORMATION

NMED Mission Statement: Our mission is to provide the highest quality of life throughout the state by promoting a safe, clean, and productive environment.

F. DEFINITION OF TERMS

This section contains definitions that are used throughout this procurement document, including appropriate abbreviations.

"Agency" or "Department" means Environment Department, State of New Mexico, acting through the Water and Waste Management Division, Surface Water Quality Bureau.

"Contract" means an agreement for the procurement of items of tangible personal property or services.

"Contractor" shall mean successful offeror(s).

"Determination" means the written documentation of a decision of a procurement manager including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains.

"DFA" means the Department of Finance and Administration for the State of New Mexico.

"Evaluation Committee" means a body appointed by the Governor's Office to perform the evaluation of offeror proposals.

"Intergovernmental Agreement" is a contract between the Department and a public entity (state or federal agency, tribe, municipality or other quasi-governmental agencies) for project implementation.

"Mandatory" The terms "must", "shall", "will", "is required", or "are required", identify a mandatory item or factor. Failure to meet a mandatory item or factor will result in the rejection of the offeror proposal.

"Offeror or Project Applicant" is any person, corporation, or partnership who chooses to submit a proposal.

"Prefers" The terms "may", "can", "should", "preferably", or "desirable" identify a preferable or discretionary item or factor.

"Procurement Code" means Chapter 13, Sections 13-1-28 through 13-1-199 NMSA 1978.

"Procurement Manager" means the person or designee authorized by the Agency to manage or administer a procurement requiring the evaluation of competitive sealed proposals.

"Request for Proposals" or "RFP" means all documents, including those attached or incorporated by reference, used for soliciting proposals.

"Responsible Offeror" means an offeror who submits a responsive proposal and who has furnished, when required, information and data to prove that his financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services or items of tangible personal property described in the proposal.

"Responsive Offer" or "Responsive Proposal" means an offer or proposal 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.

"Scope of Work" means a summary document that defines the work objectives, outlines proposed work tasks, a preliminary cost estimate, and proposal schedule.

"Subcontractor" refers to a private party or firm hired by the contractor to perform specific project tasks. Subcontractors must be approved by NMED, per terms of the contract.

“Work Plan” refers to the detailed document, which directs a contractor to deliver services pursuant to an existing contract. Work plans outline the site conditions, site history, river ecosystem problem to be addressed, scope of work to be performed, deliverables, and the schedule and time frame within which work will be performed. Work plans will be accepted by return letter from the Contractor explaining costs not to be exceeded by the contractor for each project. Not to exceed cost estimate will conform to contract General Cost Detail Form negotiated and agreed to by NMED and the contractor and shall identify costs for each task within the work plan. Work will not begin until NMED notifies the contractor that it agrees to the contractor’s quoted prices, the Project Applicant has secured access to the property, and NMED and the Project Applicant have agreed upon a date to commence.

II. CONDITIONS GOVERNING THE PROCUREMENT

This section of the RFP contains the schedule for the procurement, describes the major procurement events and the conditions governing the procurement.

A. SEQUENCE OF EVENTS

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

<u>Action</u>	<u>Responsibility</u>	<u>Date</u>
Issue RFP	NMED / SWQB	June 26, 2009
Informational Meetings: <u>SANTA FE</u> : July 14, 2009, 3:00 PM - 4:30 PM, NMED Hazardous Waste Bureau, Conference Room A, 2905 Rodeo Park Dr., East Building 1. <u>SOCORRO</u> : July 15, 2009, 3:00 PM - 4:30 PM, Bureau of Land Management Office, 901 So. Hwy 85.	NMED/SWQB	July 14, 2009 July 15, 2009
Deadline to Submit Acknowledgement of Receipt Form	Project Applicant	July 23, 2009
Deadline for Receipt of Written Questions	Project Applicant	July 23, 2009
Response to Written Questions/ RFP Amendments	Department	July 24, 2009
Deadline for Proposal Submission	Project Applicant	August 10, 2009, 3:00 PM MDT
Proposal Evaluation	Evaluation Committee	August-September 2009
Discussion with Offerors / Best and Final Offer	Department, Project Applicant	September 2009
Selection of Finalist(s) / Letters	Evaluation Committee	September 2009
Finalize Contract / Project Agreements	Department	October-December 2009
Announcement of Winning Projects and Notification Letter to Unsuccessful Applicants	Department	October 2009
Contract / Intergovernmental Agreement Awards	Department	October-December 2009
Protest Deadline	Offeror	15 days following written notification that the proposal was unsuccessful
Withdrawal of Proposal	Project Applicant	At any time (in writing)

B. EXPLANATION OF EVENTS

Schedule Description: The following paragraphs further describe activities listed in the preceding table.

1. **Issuance of the RFP will occur on June 26, 2009.**

Copies of the RFP can be obtained from the Procurement Manager and on the SWQB website:
www.nmenv.state.nm.us/SWQB/RFP.

2. Informational Meetings

NMED will hold two informational meetings to introduce the RERI grant process and answer questions from those who wish to submit proposals:

SANTA FE: July 14, 2009, 3:00 PM- 4:30 PM, NMED Hazardous Waste Bureau, Conference Room A, [2905 Rodeo Park Dr.](#), East Building 1.

SOCORRO: July 15, 2009, 3:00 PM - 4:30 PM, Bureau of Land Management Office, [901 So. Hwy 85](#).

Answers to any questions posed at the meetings will also be included in the response to written questions that is posted on the NMED website and emailed to all who submit an Acknowledgement of Receipt form.

3. Public Notice

A public notice regarding the RFP will be advertised in newspapers of general circulation in Albuquerque, Farmington, Santa Fe, Las Cruces, and Silver City. A public notice and the RFP will also be placed on the SWQB website at www.nmenv.state.nm.us/SWQB/RFP.

4. Deadline to Submit Acknowledgement of Receipt Form

Appendix C contains an Acknowledgement of Receipt form that should be completed and submitted to NMED at the address below by July 23, 2009. Upon receipt of the Acknowledgement of Receipt form, NMED will create a distribution list of potential offerors for the purpose of sending additional information about this RFP. Failure to return the Acknowledgement of Receipt Form shall constitute a presumption of receipt and rejection of the RFP, and the potential offeror shall not appear on the distribution list. Failure to return the Acknowledgement of Receipt Form does not preclude a potential offeror from submitting a proposal.

5. Deadline to Submit Written Questions

Potential Offerors may submit written questions (email or faxes are acceptable) as to the intent or clarity of this RFP. The last day written questions will be accepted will be July 23, 2009. All written questions must be addressed to the Procurement Manager (see Section I-D).

6. Response to Written Questions/RFP Amendments

Responses to written questions and any RFP amendments will be distributed by July 24, 2009 to each potential Offeror whose organization appears on the procurement distribution list, and will also be posted on the SWQB website at www.nmenv.state.nm.us/swqb.

7. Deadline for Submission of Proposal

ALL PROPOSALS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE PROCUREMENT MANAGER NO LATER THAN 3:00 PM MOUNTAIN DAYLIGHT TIME (MDT) on August 10, 2009. The date and time of receipt will be recorded on each proposal. Proposals must be addressed and delivered to the Procurement Manager only at the address listed in Section I of this RFP. Proposals must be sealed and labeled on the outside of the package clearly indicating it is for the FY10-SWQB RERI. Proposals submitted by facsimile or email, and those received after the prescribed deadline will not be accepted.

Proposals will be opened on August 10, 2009 at 3:00 PM MDT. The name of each Project Offeror and the Project Title shall be recorded in the presence of at least one witness. A public log recording the names of all Project Offerors will be maintained by the Procurement Manager. All information contained in the offer shall be made known only to the Department and Evaluation Committee members. After any resulting Intergovernmental Agreement or Contract execution, the proposals and the evaluation documentation shall be open for public inspection.

8. Proposal Evaluation

The initial proposal evaluation process will begin with screening conducted by NMED. The staff will verify that RFP submittals meet prescribed Scope of Work and Proposal Submission Format requirements described in Section I of this document, and meet prescribed the Proposal Format and Organization requirements described in Section III of this document. Those proposals eligible for the next phase of review will be forwarded to the Evaluation Committee. All other

proposals not meeting minimum guidance requirements will be eliminated from further consideration.

The Procurement Manager will convene an Evaluation Committee to perform a detailed review of eligible proposals. The Evaluation Committee is selected by the Office of the Governor and may include representatives of: NMED; Department of Finance and Administration; Office of the State Engineer/New Mexico Interstate Stream Commission; Energy, Minerals and Natural Resources Department; New Mexico Department of Game and Fish; New Mexico Department of Agriculture; and knowledgeable professionals from universities or other government agencies.

The Evaluation Committee will make recommendations to the Office of the Governor regarding proposals that best meet the proposal evaluation criteria listed in Section IV of this document. The Office of the Governor will approve the final project selections. NMED, the Evaluation Committee and the Office of the Governor will not accept or respond to discussions initiated by the Offerors during the proposal evaluation process. The evaluation process is anticipated to occur during the months of August and September 2009.

9. Discussions With Offerors / Best and Final Offers

In accordance with **NMSA Section 13-1-115**, the Procurement Manager may initiate discussions with Offerors for proposal and budget clarification or the proposals may be accepted without any discussion.

10. Selection of Project Finalists and Notification Letter

Based on the decision of the Office of Governor, the Procurement Manager will notify proposal finalists that they have been selected to proceed to work plan development. Funding constraints will be factored into the selection process. In addition, the overall selection of projects will provide for geographic diversity around the state. Written notification that the Project Applicant is selected to proceed to work plan development will be provided.

11. Finalize Project Agreements and Agreement Awards

Contracts or Intergovernmental Agreements are expected to be developed and finalized for selected projects during October through December 2009. This date is subject to change pending completion of agreement development and appropriate state approvals.

12. Public Announcement of Winning Projects / Unsuccessful Notification Letters

Winning projects will be announced after Intergovernmental Agreements / Contracts approval. All RFP respondents who submitted unsuccessful proposals will be notified in writing, return receipt requested.

13. Protests

Protests must be in conformance with **Section 13-1-172 NMSA 1978** and applicable procurement regulations and be filed in writing within 15 days of receipt of written notification that the proposal was unsuccessful. The fifteen (15) day protest period for RFP respondents shall begin on the day following receipt of the notification letter. Protests must include the name and address of the protestor and the Request for Proposals number. It must contain a statement of grounds for protest including appropriate supporting documentation or exhibits. Protests received after the deadline will not be accepted. The protest must be delivered to:

Karen Menetrey
Surface Water Quality Bureau
New Mexico Environment Department
Harold Runnels Building, Rm N2050
1190 St. Francis Drive
P.O. Box 5469
Santa Fe, New Mexico 87502-5469

14. Withdrawal of Proposal

A Project Applicant (or designated representative) may withdraw their proposal in writing at any time.

15. Proposal Offer Firm

Responses to this RFP, including proposal cost schedules and prices, will be considered firm for ninety (90) days after work plan approval.

C. GENERAL INFORMATION

This procurement will be conducted in accordance with the State Purchasing Agent's procurement regulations, 1NMAC5.2.

1. Intergovernmental Agreement/Contract Period

The term of any resultant Intergovernmental Agreement/Contract shall become effective upon execution by the contractor, the Department and DFA and shall continue for a period up to June 30, 2013, unless terminated or canceled as otherwise provided herein. The contractor shall submit written, documented justification for a time extension to the Department at least 60 days prior to Intergovernmental Agreement/Contract termination.

2. Contract and Intergovernmental Agreement Final Billing

May 1st of every year is anticipated to be the final billing date for the current fiscal year (July 1 through June 30). Invoices must be dated on or before the final billing date in order to receive reimbursement for activities that have taken place during the previous twelve-month period. After the final billing date, NMED will no longer accept invoices for that fiscal year. (Invoices for work occurring after the final billing date may be submitted after July 1 for payment within the new state fiscal year), except for the final year of the contractual agreement (June 30, 2013).

As a project is nearing completion, NMED reserves the right to withhold final invoice reimbursement until such time as the Final Report deliverable is submitted to NMED for the project.

3. Task Implementation

Implementation of work plan tasks must begin within thirty (30) days after the effective date of the Contract or Intergovernmental Agreement and must proceed in accordance with approved work plan schedules. The Department reserves the right to cancel any Contract or Intergovernmental Agreement based on untimely implementation.

4. Contractors and Subcontractors

Use of contractors/subcontractors must be explained in the proposal, and all must be identified by name. The prime contractor shall be wholly responsible for the project performance, whether or not subcontractors are used. Both contractor and subcontractor are responsible for proposal costs that are reasonable in a fair and openly competitive market. If a contractor/subcontractor is required to complete work, its cost and activity must be explained. Use of subcontractors not identified in the proposal will require prior written approval of the Department.

5. Submittal of Confidential Information

Proprietary or confidential data shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal. Confidential data are normally restricted to proprietary financial information concerning the Offeror's organization or data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, **57-3A-1 to 57-3A-7 NMSA 1978**. The price of products offered or the cost of services proposed shall not be designated as proprietary or confidential information.

If a request is received for disclosure of data for which an Offeror has made a written request for confidentiality, the Department shall examine the Offeror's request and make a written determination that specifies which portions of the proposal should be disclosed. Unless the Offeror takes legal action to prevent the disclosure, the proposal will be so disclosed. The proposal shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential data.

6. Cancellation of Request for Proposals

The Department reserves the right to cancel this solicitation at anytime. In the event the RFP is canceled, notice of cancellation shall be sent to all RFP respondents by certified mail, return receipt requested.

7. Sufficient Appropriation

Any Intergovernmental Agreement/Contract awarded as a result of this RFP process may be terminated if sufficient appropriations or authorizations are not available. Notification of Intergovernmental Agreement/Contract termination will occur in writing. The Department's decision as to whether sufficient appropriations and authorizations are available will be accepted by the contractor as final.

8. Number of Responses

Each Project Applicant may submit more than one response to this RFP for separate projects.

9. Department Audits

The Department may at any time review and audit requests for payment and make adjustments 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 Intergovernmental Agreement/Contract termination.

10. Insurance

Depending on the nature of the proposed work, prior to commencing work plan tasks, the contractor may be required to furnish State certification from insurer(s) for coverage in the minimum amounts as stated below. The coverage shall be maintained in full force and effect during the term of the Intergovernmental Agreement and shall not serve to limit any liabilities or any other contractor obligations.

General Liability including: Comprehensive Form, Premises Operations, Contractual, Personal Injury, and Limits of Liability minimum - each occurrence.

BODILY INJURY		
Per Person	\$1,000,0	00
Each Occurrence	\$2,000,0	00
PROPERTY DAMAGE	\$1,000,0	00
BODILY INJURY & PROPERTY DAMAGE COMBINED		\$1,000,000
WORKMEN'S COMPENSATION AND EMPLOYER'S		
LIABILITY-STATUTORY (EACH ACCIDENT)	\$100,0	00

The State of New Mexico and the Department must be added as additional insureds as required by statute, Intergovernmental Agreement or other request. It is agreed that any insurance available to the contractor shall be primary of other sources that may be available.

It is further agreed that no policy shall expire, be canceled or materially changed to affect the coverage available to the State without thirty (30) days written notice to the State. **THE INSURANCE CERTIFICATE IS NOT VALID UNLESS COUNTERSIGNED BY AN AUTHORIZED REPRESENTATIVE OF THE INSURANCE COMPANY.** If notified that insurance is required, within fifteen (15) days following award of Intergovernmental Agreement, certificates of insurance must be submitted to the Department Procurement Office clearly stating the applicable Intergovernmental Agreement number, effective date(s) of coverage, and limits of liability required pursuant to the Intergovernmental Agreement.

11. New Mexico Employees Health Coverage

- a. If the contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, the contractor must:

- i. have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2008 if the expected annual value in the aggregate of any and all contracts between the contractor and the State exceed one million dollars or;
 - ii. have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2009 if the expected annual value in the aggregate of any and all contracts between the contractor and the State exceed \$500,000 dollars or;
 - iii. have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2010 if the expected annual value in the aggregate of any and all contracts between the contractor and the State exceed \$250,000 dollars.
- b. The contractor must 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. The contractor must advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: <http://insurenewmexico.state.nm.us/>.
 - d. For Indefinite Quantity, Indefinite Delivery contracts (price agreements without specific limitations on quantity and providing for an indeterminate number of orders to be placed against it); the contractor must agree that these requirements will 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, \$500,000 or \$1,000,000, depending on the dollar value threshold in effect at that time.

12. Ownership of Information

Title to all reports, information, data, computer data elements, and software prepared by the contractor in performance of the Scope of Work shall vest in the Department. Subject to applicable State and Federal laws and regulations the contractor shall have full and complete rights to reproduce, duplicate, disclose and otherwise use all such information. Commercial use of such information requires written approval of the Department prior to such use.

13. Suspension or Debarment Status

If the firm, business or person submitting a proposal has been debarred, suspended or otherwise lawfully precluded from participating in any public procurement activity with any local, state or federal government, the Project Applicant must include a letter with its proposal setting forth the name and address of the government unit, the effective date of the suspension or debarment, the duration of the suspension or debarment, and the relevant circumstances relating to the suspension or debarment. Failure to supply the letter or to disclose all pertinent information regarding a suspension or debarment shall result in rejection of the offer or cancellation of the Intergovernmental Agreement or Contract. The Department may exercise any other remedy available by law.

14. Project Termination

In the event the Department determines that the project is not being implemented in accordance with the approved work plan, the Intergovernmental Agreement or Contract may be terminated and/or monies reallocated to other projects.

15. Intergovernmental Agreement/Contract Terms and Conditions

The Intergovernmental Agreement/Contract between the Agency and a contractor must follow the format specified by the Department and contain the terms set forth in Section II-C. The Department reserves the right to negotiate provisions contained in this RFP with a successful 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 the Intergovernmental Agreement/Contract.

Should an Offeror object to any of the Department's terms, as contained in Section II-C of this RFP, that 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 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.

16. Intergovernmental Agreement/Contract Deviations

Any additional terms and conditions, which may be the subject of negotiation, will be discussed only between the Department and the selected Offeror and shall not be deemed an opportunity to amend the Offeror's proposal.

17. Offeror Qualifications

The Department may make such investigations as necessary to determine the ability of the Offeror to adhere to the requirements specified within this RFP. The Department will reject the proposal of any Offeror who is not a responsible Offeror or fails to submit a responsive offer as defined in **Sections 13-1-83 and 13-1-85 NMSA 1978**.

18. Right to Waive Minor Irregularities

The Department reserves the right to waive minor irregularities. The Department 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 Department.

19. Eligible Reimbursement Items

Items eligible for reimbursement under an awarded contract include:

- Costs directly related to the implementation tasks of the physical project (Itemized personnel, supplies, equipment purchase, rental, or lease fees, travel, and Department approved subcontractor services). Contractor and subcontractor rates must reflect current fair market rates.
- Other costs will be evaluated on an item-by-item basis.

20. Ineligible Reimbursement Items

Items not eligible for reimbursement include:

- Research projects
- Funding for projects required under administrative and/or judicial order
- Expenditure of personnel time or project budget to secure additional sources of project funds
- Food and drink
- Indirect costs
- Lobbying
- Fellowships or scholarships
- Education and outreach
- Costs included in an operating budget of the organization (e.g. government agency salaries)

21. Reports

Reports shall be prepared and submitted to the Department on a semi-annual basis. Reports shall be submitted by regular mail in hard copy or electronically by e-mail or in the form of compact disk in Windows M.S. Word or other Department approved software. All electronic reports shall be submitted free of computer viruses. The reports shall include, but are not limited to, budget expenditures, and a narrative of the project progress, as applicable. The semi-annual narrative progress report shall include a discussion of each project task as outlined in the project work plan. At the end of the project term, a final report shall be submitted which includes an analysis and assessment of the project, slides or pictures of sites, and a written analysis of

project successes and failures that can be used as guidance for similar endeavors. Note that future funding decisions will be based in part on meeting past work plans and schedules.

22. Payments

Project Applicants will be reimbursed per task completion by certified detailed "Expenditure/Request for Funds" invoice (Appendix B) indicating direct costs. After Department review, payment will be made upon approval by the Department. As described in Section II-C.2 above, **final project invoice payments will be withheld until the project's Final Report is received by NMED.**

III. PROPOSAL FORMAT AND ORGANIZATION

A. NUMBER OF COPIES:

Each response to this RFP shall contain:

- One (1) proposal with original signatures. This will be considered the original proposal;
- One (1) proposal in electronic format (compact disk) in MS Word; and
- Five (5) paper copies of the original proposal.

B. PROPOSAL COMPONENTS:

The following describes how each proposal is to be organized. Each proposal is limited to 15 pages of text (11 point size minimum). This does not include maps or other required appendices. Only complete proposals addressing the goals of this RFP (Section I-A ,B, C) will be evaluated. Proposals that do not meet the required deadline, do not adhere to both the prescribed content and format specified below, or omit requested information will be rejected and will not be evaluated. Any assumptions used in the proposal should be clearly stated.

1. Project Title

The title should be concise, one line at most, and descriptive of the project. In addition to the title, provide a brief (50 words or less) synopsis of the project (e.g. *Project Applicant* requests # dollars to ...*briefly describe project*)

2. Project Applicant

Describe the organization or governmental entity that the Project Applicant is representing, if any. Indicate the Project Applicant name, address, telephone and fax numbers, e-mail address, and state tax identification number.

3. Project Area

Indicate the area where the project will occur, including key GIS coordinates in decimal degrees and the eight digit Hydrologic Unit. Submit miles or acres of area affected by project. Identify land ownership and/or management responsibility. Include a regional map indicating the project area, and a map of the project site that identifies project boundaries. Identify if the project is located in an Outstanding National Resource Water (ONRW) - see 20.6.4.9.D NMAC. Projects located in an ONRW must meet the requirements of 20.6.4.8.A NMAC.

4. Project Manager

A Project Manager must be identified who will be responsible for implementation of the approved project including: subcontract administration; providing liaison with affected landowners; ensuring technical viability of the project; ensuring all funds expended are within the budget; obtaining any necessary permits; providing semi-annual fiscal and technical progress reports to NMED as well as a final report; and long term maintenance and monitoring oversight.

5. Start and End Dates

Indicate the proposed beginning and ending dates of the project (actual start dates will be contingent on execution of a contract/intergovernmental agreement, and projects must be complete by June 30, 2013).

6. Problem Statement

Clearly describe what you know about the river ecosystem. Include information on flow, flora, fauna, pollutants, geomorphology, and water quality issues, as appropriate. Describe how the project will restore and improve the river ecosystem. Justify the need for the project. Cite applicable scientific studies about the location and the project. Describe how the project provides benefits consistent with the goals or priorities identified in relevant local and state planning documents. "Local planning document" means a watershed restoration action strategy or other watershed-based planning document. "State planning document" means a plan, strategy, initiative or other document in which a state agency has set forth priorities for

landscape, water, wildlife or ecosystem preservation and restoration. For a list of pertinent examples of state planning documents see the following text box.

- **2008-2010 State of New Mexico CWA §303(d)/§305(b) Integrated Report**
<http://www.nmenv.state.nm.us/swqb/303d-305b/2008-2010/>
- **Forest and Watershed Health Plan**
<http://www.emnrd.state.nm.us/FD/FWHPlan/documents/FWHPLAN033005.pdf>
- **Non-native Phreatophyte/Watershed Management Plan**
http://www.nmda.nmsu.edu/animal-and-plant-protection/tamarisk-salt-cedar/2005_nmnpwmp.pdf
- **Comprehensive Wildlife Conservation Strategy for New Mexico**
http://www.wildlife.state.nm.us/conservation/comp_wildlife_cons_strategy/index.htm
- **Outstanding National Resource Waters**
<http://www.nmenv.state.nm.us/SWQB/ONRW/index.html>
- **Aquatic Invasive Species Management Plan**
http://www.wildlife.state.nm.us/documents/NMAISMgmt%20Plan_Final_Oct_08.pdf
- **State Water Plan**
<http://www.ose.state.nm.us/water-info/NMWaterPlanning/2003StateWaterPlan.pdf>

7. Key persons

Identify key individuals who will be responsible for completing work plan objectives or tasks, and provide their qualifications. Briefly describe any similar projects that have been completed by the Project Applicant. Briefly list the major participating organizations or agencies, and their specific roles in the project. Include documentation of Cooperator commitments to the work plan, including a public entity's commitment to serve as fiscal agent for the project (if applicable).

8. Proposal Description

The River Ecosystem Restoration Initiative proposal must address each of the following items:

- Define the project's goals and measurable objectives. Explain how the project will restore instream ecosystem function and watershed health to a major New Mexico river basin.
- Describe how the project meets the evaluation criteria in Section IV.
- List any permits, certifications and clearances that will be needed to implement the project.
- Describe coordination with affected agencies, landowners and other interested parties that has already taken place.
- Identify ongoing or completed restoration projects in the same vicinity.
- Describe how any new net depletions are being addressed.
- Describe how the project provides benefits to the State of New Mexico and the public.

9. Implementation Plan and Schedule

Describe the tasks needed to achieve project objectives. Tasks must clearly describe how the project will be implemented, the person responsible for implementation, expected task completion dates, and a brief description of how the task will be accomplished. Describe interim measures of success that will be used to verify that the project is on target with regard to timing and cost of implementation. Include a detailed description of monitoring and compliance assurance methods to verify and validate results (e.g. pre-project and post-project data collection, photo documentation and/or physical measurements monitoring).

10. Fiscal Accounting Responsibility

This is a reimbursement program. The proposal must provide documentation that the applicant is qualified to provide fiscal accounting for the project, or that a federal, state or local public entity acting as fiscal agent, or a non-profit organization acting as fiscal agent, understands the role of fiscal agent, is qualified to provide fiscal accounting services, and has agreed to provide those services.

11. Budget

Provide a detailed and comprehensive project budget that shows the costs associated with each task. Budgets must include a detailed schedule of costs for each phase of work broken out into the following categories:

- Personnel (identify each person, his/her area of expertise, anticipated hours and hourly rate). The Department must approve changes to personnel and hourly rates in advance.
- Equipment (tangible items purchased to complete project tasks).
- Travel (mileage reimbursements and per diem costs, per State Regulations Governing the Per Diem and Mileage Act [2.42.2 NMAC]).
- Supplies (specify the type, quantity and costs of supplies needed).
- Contractual/ Subcontracts (identify the subcontractor and all costs to be incurred by the contractors).

Due to state procurement limitations, the purchase of Information Technology equipment will be considered on a case by case basis.

The following spreadsheet is the preferred budget format. The breakdown of categories may include, but is not limited to, the examples shown below.

12. Campaign Contribution Disclosure Form

Include with the proposal a completed Campaign Contribution Disclosure Form (see Appendix D). This form is required pursuant to **NMSA 1978, § 13-1-191.1 (2006)**.

BUDGET FORMAT <i>Please add lines to provide detail regarding each anticipated cost, broken out by task</i>	RERI Funding Request	*Other Available Funds (federal, private, other state funds)	TOTAL
Personnel:			
Project Manager			
Other personnel, by task			
Equipment:			
Field equipment			
Travel:			
Lodging / per diem (currently @ maximum \$85/night in-state travel rate)			
Mileage reimbursement (currently @ \$0.40/mile per 2.42.2 NMAC-mileage rate is allowed per vehicle, not per person)			
Supplies:			
Field supplies			
Other supplies			
Contractual – Direct Labor, Outside Services:			
Technical consultants			
Field labor			
Other			
<i>% Of Adjusted Total</i>	<i>%</i>	<i>%</i>	<i>100%</i>

* This is not a required match, instead it solely provides information on other funds that will contribute to the success of the project.

IV. PROPOSAL EVALUATION

In accordance with the New Mexico **Procurement Code Section 13-1-117** (Competitive Sealed Proposals), awards shall be made to the Project Applicant(s) whose proposal is determined to offer the best opportunities for achieving the goal of this Request for Proposals, as discussed in Section I. The Evaluation Committee will consider the following factors in selecting projects for funding:

	RERI Evaluation Criteria	Maximum Points
A.	Alignment with RERI 1. Does the project address RERI's goal of restoring instream ecosystem function and watershed health to a New Mexico river basin? 2. Does the proposal include measurable restoration objectives and tasks that will accomplish the objectives? 3. Will the project maximize the conservation of biological diversity? 4. Does the proposal accurately describe and cite how the project provides benefits consistent with goals or priorities in a local and/or state planning document?	300
B.	Technical Merit 1. Is the proposal supported by sound and established scientific, hydrological and biological studies? 2. Has adequate planning been completed to ensure feasibility and timely implementation? 3. Does the project have a high likelihood of sustainability, including considerations of natural viability and a commitment for long term land stewardship? 4. Does the plan for validation and verification (i.e. monitoring) include pre-and post implementation activities directly related to the stated project objectives?	300
C.	Value 1. Will the project benefit the State of New Mexico and the public? 2. Are the cost estimates in the budget detailed, focused on appropriate activities, well-justified and reasonable? 3. Does the project link to or add value to another restoration project? 4. *Is there a plan to provide education and outreach about the project?	200
D.	Organizational Strength 1. Does the Project Applicant (including identified partners and subcontractors) have sufficient technical qualifications to complete the project? 2. Does the applicant have sufficient financial qualifications (or a qualified fiscal agent) to complete the project? 3. Does the project have multiple and diverse partners working in collaboration? 4. Is there a demonstration that affected stakeholders support this project?	200
	Total Possible Score	1000

*Note that reimbursement for these education and outreach activities is not allowable using the RERI severance tax bonds, however an education and outreach plan is required.

APPENDICES

REQUEST FOR PROPOSAL

- A. Sample Contracts
 - A1. Professional Services Contract
 - A2. Intergovernmental Agreement
- B. Expenditure / Request for Funds
- C. Acknowledgment of Receipt Form
- D. Campaign Contribution Disclosure Form

APPENDIX A1

STATE OF NEW MEXICO

NAME OF AGENCY

PROFESSIONAL SERVICES CONTRACT # _____

THIS AGREEMENT is made and entered into by and between the State of New Mexico, **NAME OF AGENCY**, hereinafter referred to as (the "Agency") and **NAME OF CONTRACTOR**, hereinafter referred to as (the "Contractor"), and is effective as of the date set forth below upon which it is executed by the Department of Finance and Administration ("DFA")

IT IS AGREED BETWEEN THE PARTIES:

1. Scope of Work.

A. The Contractor shall perform the following work:

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

C. Performance Measures.

Contractor shall substantially perform the following Performance Measures:

1.

2.

(or reference an Attachment 1, see below)

2. Compensation.

A. **The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed (AMOUNT). This amount is a maximum and not a guarantee that the work assigned to Contractor under this Agreement to be performed shall equal the amount stated herein.**

B. The Agency shall pay to the Contractor in full payment for services satisfactorily performed at the rate of _____ dollars (\$_____) per hour (OR BASED UPON DELIVERABLES, MILESTONES, BUDGET, ETC.), such compensation not to exceed (AMOUNT) (as set forth in Paragraph A) excluding gross receipts tax. The New Mexico gross receipts tax levied on the amounts payable under this Agreement totaling (AMOUNT) shall be paid by the Agency to the Contractor. Payment is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work, and to approval by the DFA. All invoices MUST BE received by the Agency no later than fifteen (15) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date WILL NOT BE PAID.

CHOICE – MULTI-YEAR – The Agency shall pay to the Contractor in full payment for services satisfactorily performed pursuant to the Scope of Work at the rate of _____

dollars (\$_____) in FYXX (USE FISCAL YEAR NUMBER TO DESCRIBE YEAR; DO NOT USE FY1, FY2, ETC.). The New Mexico gross receipts tax levied on the amounts payable under this Agreement in FYXX totaling (AMOUNT) shall be paid by the Agency to the Contractor. **The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed (AMOUNT) in FYXX.**

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

Payment in FYXX, FYXX, FYXX, and FYXX is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work, and to approval by the DFA. All invoices MUST BE received by the Agency no later than fifteen (15) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date WILL NOT BE PAID.

C. Contractor must submit a detailed statement accounting for all services performed and expenses incurred. If the Agency finds that the services are not acceptable, within thirty days after the date of receipt of written notice from the Contractor that payment is requested, it shall provide the Contractor a letter of exception explaining the defect or objection to the services, and outlining steps the Contractor may take to provide remedial action. Upon certification by the Agency that the services have been received and accepted, payment shall be tendered to the Contractor within thirty days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, the agency shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

3. **Term.**

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE DFA. This Agreement shall terminate on **DATE** unless terminated pursuant to paragraph 4, infra, or paragraph 5. In accordance with Section 13-1-150 NMSA 1978, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

4. **Termination.**

A. Termination. This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. Except as otherwise allowed or provided under this Agreement, the Agency's sole liability upon such termination shall be to pay for acceptable work performed prior to the Contractor's receipt of the notice of termination, if the Agency is the terminating party, or the Contractor's sending of the notice of termination, if the Contractor is the terminating party; 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. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor if the Contractor becomes unable to perform the services contracted for, as determined by the Agency or if, during the term of this Agreement, the Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or

other crime due to misuse of state funds or due to the Appropriations paragraph herein. *THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE STATE'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.*

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

5. **Appropriations.**

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

6. **Property Improvements.**

Improvements to real property pursuant to this Contract shall become the property of the landowner. The Contractor shall not remove any property improvements made under this Agreement for at least ten years after installation of the improvements and completion of the project. The Contractor shall ensure the landowner will not remove any property improvements made under this Agreement for at least ten years after installation of the improvements and completion of the project.

7. **Status of Contractor.**

The Contractor and its agents and employees are independent contractors performing professional services for the Agency and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

8. **Assignment.**

The Contractor shall not assign or transfer any interest in this Agreement or assign any

claims for money due or to become due under this Agreement without the prior written approval of the Agency.

9. Subcontracting.

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

10. Release.

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

11. Confidentiality.

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the Agency.

12. Product of Service -- Copyright.

All materials developed or acquired by the Contractor under this Agreement shall become the property of the State of New Mexico and shall be delivered to the Agency no later than the termination date of this Agreement. Nothing developed or produced, in whole or in part, by the Contractor under this Agreement shall be the subject of an application for copyright or other claim of ownership by or on behalf of the Contractor.

13. Conflict of Interest; Governmental Conduct Act.

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

14. Amendment.

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

15. 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.

16. Penalties for violation of law.

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

17. 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.

18. 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 Section 38-3-1 (G) NMSA 1978. 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.

19. Workers Compensation.

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

20. Records and Financial Audit.

The Contractor shall maintain detailed time and expenditure records that indicate the date; time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the Agency, the Department of Finance and Administration and the State Auditor. The Agency shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Agency to recover excessive or illegal payments

21. Indemnification.

The Contractor shall defend, indemnify and hold harmless the Agency and the State of New Mexico from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the Agency and the Risk Management Division of the New Mexico General Services Department by certified mail.

22. New Mexico Employees Health Coverage.

A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Contractor certifies, by signing this agreement, to:

(1) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2008 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed one million dollars or;

(2) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2009 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$500,000 dollars or;

(3) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2010 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.

B. Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.

C. Contractor agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: <http://insurenemexico.state.nm.us/>.

D. For Indefinite Quantity, Indefinite Delivery contracts (price agreements without specific limitations on quantity and providing for an indeterminate number of orders to be placed against it); Contractor agrees 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, \$500,000 or \$1,000,000, depending on the dollar value threshold in effect at that time.

23. Invalid Term or Condition.

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

24. Enforcement of Agreement.

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

25. Notices.

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

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

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

26. Authority.

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

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of signature by the DFA Contracts Review Bureau below.

By: _____ Date: _____
Agency

By: _____ Date: _____
Agency's Legal Counsel –Certifying legal sufficiency

By: _____ Date: _____
Contractor

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

ID Number: **00-000000-00-0**

By: _____ Date: _____
Taxation and Revenue Department

This Agreement has been approved by the DFA Contracts Review Bureau:

By: _____ Date: _____
DFA Contracts Review Bureau

Attachment 1

Scope of Work

Performance Measures

(Performance Measures should be based on the Scope of Work and must be tied to the Agency's Strategic Plan. The Plan should be referenced in the Measures and the applicable part of the Strategic Plan copied below or in an attachment. To the extent possible based on the nature of the work to be performed, the Measures should be "Output" oriented and specify an "Outcome.")

Performance Measures in Scope of Work shall contain measurable goals and objectives that are linked to the performance measures of the Agency's Strategic Plan:

Example: Goal: Reduce or Increase or Other Service [insert blank].¹

Objective: To reduce or increase or Other Service [insert blank] by [blank] percent or by a certain time.²

Activities: [Insert what services the Contractor is expected to perform to accomplish goals and objectives including an evaluation of the process and the outcome as well as provides efficiency measures that relate efforts to outputs of services].

OR: Through satisfactory completion of the Scope of Work set forth above and submission of acceptable Deliverables, the Contractor will assist the Agency to meet the portions of its Strategic Plan set forth below ***(insert additional language if necessary to describe how Contractor's work will assist the Agency to fulfill its duties)***.

1 A goal is an "output" measure. It measures the quantity of a service provided. For example, the number of students graduated or promoted; the number of two-lane highways repaired; or the number of crimes investigated. It also can measure the quantity of a service provided that meets a certain quality requirement. For example, the number of students graduated or promoted who meet a minimum preset level of achievement; the number of miles of roads repaired to a minimum safety standard; or the number of criminal investigations performed that result in identification of a prime suspect.

2 An accomplishment is an "outcome" measure. These indicators measure accomplishments or results that occur (at least partially) because the services were provided. For example, the percentage of students achieving a specified skill level in reading, the percentage of miles of roads in excellent, good or fair condition; or the percent reduction in serious crimes or the percent of residents who perceive their neighborhoods as safe.

APPENDIX A2

INTERGOVERNMENTAL AGREEMENT BETWEEN THE NEW MEXICO ENVIRONMENT DEPARTMENT AND [INSERT DEPARTMENT OR AGENCY]

This **INTERGOVERNMENTAL AGREEMENT** ("Agreement") is made and entered into by and between the State of New Mexico, Environment Department, hereinafter referred to as (the "Department" or "NMED") and **[INSERT NAME OF DEPARTMENT OR AGENCY]**, hereinafter referred to as (the "Name of Agency"), and is effective as of the date set forth below upon which it is executed by the New Mexico Environment Department ("NMED").

WHEREAS, the [Insert Federal Department or Local or State Agency] is a public entity that is authorized by the United States Congress and/or the New Mexico Legislature for the performance of this Agreement, under the authority of (Federal or State Statute), to implement the project titled [Insert Project Title], hereinafter referred to as the "Project";

WHEREAS, this Agreement is exempt from the provisions of the procurement code in accordance with the NMSA 1978, Section 13-1-98A;

WHEREAS, NMED and the [Insert Federal Department or State Agency] desire to enter into this "Agreement" to accomplish the Project in the most cost-effective and administratively efficient manner; and

WHEREAS, NMED is authorized by [Insert Statute or Regulation] to enter into this Agreement to/for [Insert Purpose].

NOW, THEREFORE, the parties mutually agree as follows:

A. Purpose.

The Project will address: [Insert overall goal of the program.] The purpose of the Project/Task is to: [Insert Purpose]. The Project is mutually beneficial because [State mutual benefit to the agencies.]

B. Disbursement of Funds.

1. NMED shall transfer to the [Insert Federal Department or State Agency] funds in an amount not to exceed \$ _____ to reimburse the [Insert Federal Department or State Agency] for costs actually incurred in carrying out the Project in accordance with the Scope of Work.
2. The [Insert Federal Department or State Agency] shall submit to NMED receipts for costs actually incurred in carrying out the Project in accordance with the Project Work Plan. Invoices/receipts shall be submitted to:

[Insert NMED Project Officer]

[Insert Bureau]

New Mexico Environment Department
PO Box 5469
Santa Fe, New Mexico 87502-5469
[Insert Bureau Phone Number]

C. Scope of Work.

The [Insert Federal Department or State Agency] shall complete the Project in accordance with this Scope of Work incorporated into this Agreement [or Insert as Attachment A].

1. The [Insert Federal Department or State Agency] shall perform the following work:
2. Services will be performed (AT)(WITHIN)(LOCATION):

D. Reports.

The [Insert Federal Department or State Agency] shall provide reports, including but not limited to task completion progress, reasons for delay of task implementation (if any), expenditures on Project implementation, and results of Project implementation, to NMED or other organizations or members of the public upon request. Reports will be provided Semi-annually.

E. Property Improvements.

Improvements to real property pursuant to this Agreement shall become the property of the landowner. The [Insert Federal Department or State Agency] shall not remove any property improvements made under this Agreement for at least ten years after installation of the improvements and completion of the project. The [Insert Federal Department or State Agency] shall ensure the landowner will not remove any property improvements made under this Agreement for at least ten years after installation of the improvements and completion of the project.

F. Strict Accountability.

The [Insert Federal Department or State Agency] shall maintain fiscal records consistent with generally accepted accounting principles (GAAP); shall account for all receipts and disbursements of funds transferred pursuant to this Agreement and along with NMED, shall be strictly accountable for all receipts and disbursements under this Agreement through the end of the fiscal year following the termination of this Agreement.

G. Access to Records.

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

H. Amendment.

Any and all amendments, changes, and/or modifications of this Agreement shall be made in writing, signed and dated by both parties before becoming effective. Neither NMED nor the [Insert Federal Department or State Agency] is obligated to fund any changes and/or modifications not approved in writing by both parties.

I. Termination.

1. Termination. This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the proposed termination date. This Agreement may be terminated immediately upon written notice to the [Insert Federal Department or State Agency] if the [Insert Federal Department or State Agency] becomes unable to perform the services within the Scope of Work, as determined by NMED or if, during the term of this Agreement, the [Insert Federal Department or State Agency] or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of state funds or due to the Appropriations paragraph, Section M, herein. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE STATE'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/ BREACH OF THIS AGREEMENT.
2. Termination Management. Immediately upon receipt by either NMED or the [Insert Federal Department or State Agency] of notice of termination of this Agreement, the [Insert Federal Department or State Agency] shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of NMED; 2) comply with all directives issued by NMED in the notice of termination as to the performance of work under this Agreement; and 3) take such action as NMED shall direct for the protection, preservation, retention or transfer of all property titled to NMED and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the [Insert Federal Department or State Agency] with contract funds shall become property of NMED upon termination and shall be submitted to the agency as soon as practicable.

J. Applicable Law.

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978, Section 38-3-1 (G). By execution of this Agreement, [Insert Federal Department or State Agency] acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement. Any procurement made by the [Insert Federal Department or State Agency], pursuant to this Agreement shall be made in accordance with applicable procurement policies and procedures, applicable federal laws and regulations, and applicable provisions in the Scope of Work.

K. Liability.

Each party shall be solely responsible for fiscal or other sanctions occasioned as a result of its own violation or alleged violation of requirements applicable to the performance of this Agreement. Each party shall be liable for its own actions incurred as a result of its

negligence, acts or omissions in connection with this Agreement. [If Federal Department: Liability of the Federal Department shall be governed by the Federal Tort Claims Act, 28 U.S.C. §§ 2671-2680.] [If State Agency: Any liability incurred by State Agency in connection with this Agreement is subject to the immunities and limitation of the New Mexico Tort Claims Act]. Any liability incurred by NMED in connection with this Agreement is subject to the immunities and limitation of the New Mexico Tort Claims Act.

L. Equal Opportunity Compliance.

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

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

M. Term.

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL SIGNED AND ACCPETED BY ALL PARTIES. This Agreement shall terminate on **[INSERT DATE]** unless terminated pursuant to paragraph 4, infra, or paragraph 5.

N. Appropriations.

The terms of this Agreement are contingent upon sufficient appropriations and authorization from the New Mexico State Legislature and/or the United States Environmental Protection Agency. If sufficient appropriations or authorization are not granted, this Agreement shall be terminated upon written notice from NMED. The decision as to whether sufficient appropriations/ authorizations are available is it's the sole discretion of NMED and shall be final and binding.

O. Participation in Similar Projects.

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

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT:

STATE OF NEW MEXICO

By: _____ Date: _____
Ron Curry, Secretary
New Mexico Environment Department

Approved as to Form and Legal Sufficiency

By: _____ Date: _____
Tracy Hughes, General Counsel
New Mexico Environment Department

[INSERT FEDERAL DEPARTMENT OR STATE AGENCY]:

By: _____ Date: _____
(Signatory Authority)

APPENDIX B

EXPENDITURE/REQUEST FOR FUNDS

New Mexico Environment Department
Surface Water Quality Bureau
P.O. Box 5469
1190 St. Francis Drive
Runnels Bldg. Room N-2100
Santa Fe, NM 87502-5469

1. Contractor's Name_____ ☐ Monthly Report ☐ Quarterly Report ☐ Final Report
☐ Other

2. Contract ID Number_____

Project Title:_____

Address:_____

3. Time Period: From_____ To_____

Include copies of equipment purchases, time sheets, and other accounting documents.

4. Amount Due

5. Identify Completed Tasks

6. Contractor's Certification:

I certify that this report and supporting documentation has been examined by me, and to the best of my knowledge and belief, the reported expenditures are valid, based upon our official accounting records (books of account) and are consistent with the terms of the contract/agent. It is also understood that the payments are calculated by the NMED based upon information provided in this report and as designated in said contract.

Authorized Contractor Signature

Title

Date

7. NMED Project Officer Certification:

☐ Performance satisfactory for payment.

☐ No payment due.

Project Officer Signature / Date

APPENDIX C

Request for Proposal: FY10-SWQB RERI

ACKNOWLEDGEMENT OF RECEIPT FORM

In acknowledgement of receipt of this Request for Proposals, the undersigned agrees that he/she has received a complete copy, beginning with the title page and table of contents, and ending with Appendix D.

The acknowledgement of receipt should be signed and returned to the Procurement Manager no later than **5:00 PM, July 23, 2009**. Only potential offerors who elect to return this form completed with the indicated intention of submitting a proposal will receive copies of all offeror written questions and the Agency's written responses to those questions, as well as RFP amendments, if any are issued.

FIRM: _____

REPRESENTED BY: _____

TITLE: _____

PHONE NO: _____ FAX NO: _____

EMAIL ADDRESS: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

SIGNATURE: _____ DATE: _____

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

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

Karen Menetrey
Surface Water Quality Bureau
New Mexico Environment Department
Harold Runnels Building Room N2050
1190 St. Francis Drive
P.O. Box 5469
Santa Fe, NM 87502-5469
Karen.Menetrey@state.nm.us
Phone: (505) 827-0194, FAX (505) 827-0160

APPENDIX D

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.

Name(s) of Applicable Public Official(s) if any: _____
(Completed by State Agency or Local Public Body)

DISCLOSURE OF CONTRIBUTIONS BY PROSPECTIVE CONTRACTOR:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Date Contribution(s) Made: _____

Amount(s) of Contribution(s) _____

Nature of Contribution(s) _____

Purpose of Contribution(s) _____

(Attach extra pages if necessary)

Signature Date

Title (position)

--OR--

NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS (\$250) WERE MADE to an applicable public official by me, a family member or representative.

Signature Date

Title (Position)