



PROFESSIONAL SERVICES AGREEMENT (PSA)

Agreement / Purchase Order Number: _____

THIS AGREEMENT, made and entered into this ____ day of _____, 20__ by and between New Mexico Institute of Mining and Technology, hereinafter called New Mexico Tech, and

Vendor Name:

Address:

Hereinafter called the "Contractor"

WITNESSETH:

NOW THEREFORE, in consideration of the premises and of the mutual and reciprocal promises of the parties hereto, is hereby covenanted and agreed by and between parties:

1. That the Contractor will render the following professional services to New Mexico Tech:

2. That the Contractor represents and warrants that the Contractor is professionally qualified to render the consultant services required by New Mexico Tech and possess any licenses and / or certifications required under state or federal law to perform the services required under this Agreement.

3. If the work to be performed under this Agreement is funded wholly or in part by the federal government, the Contractor represents and warrants that neither Contractor nor any employee of Contractor nor any subcontractor of Contractor are employees of the funding agency.

4. That the Contractor will devote the necessary hours each week to the performance of such duties that may be assigned to him / her by New Mexico Tech.

5. That the Contractor shall provide written progress reports and schedules in sufficient detail to the Department at a frequency agreed upon between the parties.

6. That the Contractor will serve New Mexico Tech diligently and faithfully, and according to its ability and in all respects will use his / her utmost endeavors to promote the interest of New Mexico Tech.

7. That the Contractor will maintain records indicating the date and length of time such services are rendered. These records shall be subject to inspection by the designated agent of New Mexico Tech. If federal funds are used under this Agreement, the Contractor and its subcontractors shall preserve fiscal records and supporting documentation for a period of three (3) years from the date of termination of this Agreement if an audit to the satisfaction of 2 CFR 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards has occurred by that time. If such audit has not occurred by that time, the records must be retained until an audit has occurred or for a period of five (5) years from the date of termination of this Agreement, whichever comes first. If any litigation, claim, or audit is started before the expiration of the retention period, the records shall be retained until all litigations, claims, or audit findings involving the records have been resolved. The Contractor shall make its fiscal records and supporting documentation available for audit by New Mexico Tech and /

or the Federal Government and any persons or entities hired by the above named. The Contractor shall refund any costs disallowed by such audit to New Mexico Tech.

8. That services rendered by the Contractor shall be performed at _____ or where New Mexico Tech shall designate. Contractor shall provide written notification to the Department when the costs incurred exceeds seventy-five percent (75%) of the total amount obligated under this Agreement.

9. That for the services rendered satisfactory, New Mexico Tech agrees to pay the Contractor compensation as follows, at the following rate (hourly or daily) of \$ _____ plus expenses (if applicable) as follows: _____ . Such compensation and expenses not to exceed \$ _____ including tax, payable by New Mexico Tech upon receipt of a signed invoice or Payee Claim for Reimbursement. The Contractor will pay the State of New Mexico the Gross Receipts Tax levied on the amounts payable under this Agreement.

10. Invoices shall be sent to New Mexico Tech, Accounts Payable, 801 Leroy Place, Socorro, NM 87801. Invoices shall be presented at the beginning of each month covering services and / or expenses incurred during the previous month, all applicable taxes shall be shown as a separate line item. The purchase order number shall be clearly marked on all invoices.

11. New Mexico Tech understands and agrees that the contractor may request additional funding to cover the day-to-day workflow activities that exceed the agreed amount on this document; the Contractor will request such additional funding upon previous discussion and approval from New Mexico Tech and Sponsor. Additional funding will be provided only on the issuance of an approved change order to the purchase order. No verbal approval shall be given.

12. That the Contractor is an independent contractor/ /corporation, is not an employee of the Sponsor, performing professional services for New Mexico Tech. The Contractor is responsible for any applicable state or federal taxes, a Form 1099 Nonemployee Compensation will be issued for any payments made. The Contractor shall not accrue leave, retirement, insurance, or any other benefits afforded to employees of New Mexico Tech as a result of this Agreement.

13. The performance of this Agreement by New Mexico Tech is contingent upon availability of sufficient funds and sufficient appropriations and authorizations being made by the funding entity(s) for such performance. New Mexico Tech's decision as to whether sufficient funds are available and whether sufficient appropriations and authorizations have been made shall be made in good faith and in its sole discretion, shall be accepted unconditionally by the Contractor, and shall be final. If New Mexico Tech decides that sufficient funds are not available and / or sufficient appropriations and / or authorizations have not been made, it shall notify the Contractor of its decision in writing and may either terminate this Agreement or propose modifications to accommodate the insufficient funds and/or appropriations and/or authorizations. If NMT proposes modifications, the Contractor shall within thirty (30) days after receiving New Mexico Tech's notice give New Mexico Tech written notice that it has elected either to (i) accept the proposed modifications or (ii) terminate this Agreement. If the Contractor fails timely to give such notice, it shall be deemed to have accepted the proposed modifications. In no event shall New Mexico Tech be liable for any financial or other penalty on account of any termination or modification of this Agreement as a result of insufficient funds, appropriations or authorizations.

14. That the Contractor shall not assign any interest in this Agreement or transfer any interest in same or assign any claim for money due or to become due under this Agreement without the prior written consent of New Mexico Tech.

15. That either party, independent or in concert, may terminate this Agreement by giving thirty (30) days written notice to the other party.

16. That this Agreement incorporates all of the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof and that 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 embodied in this Agreement.

17. That this Agreement shall not be altered, changed, or amended except by the instrument in writing executed by the parties hereto. The foregoing being clearly understood and agreed to, the parties hereto have set their hands and seals.

18. That this Agreement shall be deemed to be an Agreement made in accordance with the laws of the State of New Mexico.

19. Each party will be solely responsible for its liability for bodily injury, including death, or damage to property under the common law or statutory law of New Mexico and for only its own attorney fees and costs arising from the act or failure to act of such party or of its regents,

directors, members, shareholders, officers, agents and employees pursuant to this Agreement; provided however, the foregoing obligation is a statement of responsibility pursuant to common and statutory law only and does not constitute an agreement to indemnify. The liability and responsibility of New Mexico Institute of Mining and Technology shall be subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, Sections 41-4- through 41-4-27, and of any amendments thereto, and shall be construed and applied in accordance with the laws of the State of New Mexico, irrespective of the conflict of law and choice of law principles of New Mexico or any other jurisdiction.

20. Throughout the period of this Agreement, copies of all correspondence, work products, specifications, estimates and other material prepared by the Contractor should be directed to the Department Contact Person. Direct contact or communication by the Contractor with other New Mexico Tech offices or any other state or governmental entity concerning the Agreement shall be made only with the prior knowledge and approval of the Department Contact Person.

21. All documents which are prepared by the Contractor or any subcontractor that form a part of its services under this Agreement shall be the property of New Mexico Tech and shall be delivered to New Mexico Tech upon termination of this Agreement if so requested by New Mexico Tech. The Contractor shall be responsible for the protection and / or replacement of any original documents in its possession. New Mexico Tech shall receive all original drawings and documentation.

22. For the consideration payable under this Agreement, the work product required by this Agreement shall be considered a work made for hire within the meaning of that term under the copyright laws of the United States, applicable common law and corresponding laws of other countries. New Mexico Tech shall have sole right and authority to seek statutory copyright protection and to enjoy the benefit of ownership of the work. The party performing the work hereby assigns all rights, title and interest in and to the work to New Mexico Tech and shall require all subcontractors to agree in writing that they assign all right, title and interest in work product to New Mexico Tech required by the Agreement.

23. For the consideration payable under this Agreement, the Contractor agrees to report to New Mexico Tech any invention arising out of the work required by this Agreement. New Mexico Tech shall have sole right and authority to seek statutory patent protection under United States and foreign patent laws to enjoy the benefits of ownership of the invention, whether or not the invention was required of the Contractor or subcontractor as part of the performance of the Agreement. The Contractor hereby assigns all right, title and interest in and to inventions made in the course of the Agreement and agrees to execute and deliver all documents and do any and all things necessary and proper to effect such assignment. Contractor shall require all subcontractors to agree in writing that they will execute and deliver all documents and do any and all things necessary and proper to effect assignment of inventions arising out of the Agreement.

24. Confidential information provided by New Mexico Tech to Contractor shall not be disclosed by Contractor, its officers, employees or agents, to any third party, without the express written consent of New Mexico Tech.

25. The Contractor shall follow the Immigration Reform and Control Act of 1986, Pub L 99-603 (8 USC 1324a). More information regarding the employment requirements can be found at the following website: <http://www.uscis.gov/files/form/i-9.pdf> NMT E-Verify Company ID Number is 165512.

CONTRACTOR INFORMATION

NAME

MAILING ADDRESS

TELEPHONE NUMBER

CITY / ST/ ZIP CODE

EMAIL ADDRESS

DEPARTMENT INFORMATION

DEPARTMENT

CONTACT PERSON

TELEPHONE NUMBER

EFFECTIVE DATE: _____

TERMINATION DATE: _____

TOTAL AMOUNT THIS AGREEMENT SHALL NOT EXCEED: \$ _____

THIS AGREEMENT BETWEEN NEW MEXICO TECH AND _____

HAS BEEN APPROVED BY:

SIGNATURE OF CONTRACTOR

SIGNATURE OF PURCHASING REPRESENTATIVE

SIGNATURE OF DEPARTMENT

SIGNATURE OF VICE PRESIDENT FOR ADMINISTRATION
AND FINANCE

____ THIS AGREEMENT IS NOT A FEDERALLY FUNDED PROJECT.

____ THIS AGREEMENT IS A FEDERALLY FUNDED PROJECT AND THE ATTACHED FEDERAL ACQUISITION REGULATIONS (FAR) CERTIFICATIONS, and FLOW-DOWN PROVISIONS APPLY.

Allowability of Costs under Sponsor's prime contract will be determined in accordance with 2 CFR 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. Allowability of subcontractor costs, if commercial entity, will be determined in accordance with FAR 31.2 Cost Principles for Contracts with Commercial Organizations. In the event any subcontractor costs are disallowed under the prime contract because of a conflict between the provisions of 2 CFR 200 and FAR 31.2, the provisions of 2 CFR 200 shall govern.

THE FOLLOWING MUST BE CERTIFIED FOR ALL AGREEMENTS \$25,000 OR GREATER USING FEDERAL FUNDS

CONFLICT OF INTEREST

The authorized Person, Firm and / or Corporation states that to the best of his/her belief and knowledge:

No employee or Regent of New Mexico Tech (or close relative), with the exception of the person(s) identified below, has a direct or indirect financial interest in the Contractor or in the proposed transaction. Contractor neither employs, nor is negotiating to employ, any New Mexico Tech employee, Regent or close relative, with the exception of the person(s) identified below. Contractor did not participate, directly or indirectly, in the preparation of specifications upon which the quote or offer is made. If the Contractor is a New Mexico State Legislator or if a New Mexico State Legislator holds a controlling interest in Contractor, please identify the legislator(s):

List below the name(s) of any New Mexico Tech employee, Regent or close relative who now or within the preceding twelve (12) months

- (1) works for the Contractor;
- (2) has an ownership interest in the Contractor (other than as an owner of less than 1% of Contractor's stock, if Contractor is a publicly traded corporation);
- (3) is a partner, officer, director, trustee or consultant to the Contractor;
- (4) has received grant, travel, honoraria or other similar support from Contractor; or
- (5) has a right to receive royalties from the Contractor.

NAME OF INDIVIDUAL(S)

DEBARMENT/SUSPENSION STATUS

The Contractor certifies that it is not suspended, debarred or ineligible from entering into contracts with the Executive Branch of the Federal Government, or in receipt of a notice or proposed debarment from any Agency per FAR 52.209-5. The Contractor agrees to provide immediate notice to the New Mexico Tech Purchasing Department in the event of being suspended, debarred or declared ineligible by any department or federal agency, or upon receipt of a notice of proposed debarment that is received after the submission of the quote or offer but prior to the award of the purchase order or contract.

CERTIFICATION

The undersigned hereby certifies that he/she has read the above CONFLICT OF INTEREST and DEBARMENT/SUSPENSION Status requirements and that he/she understands and will comply with these requirements. The undersigned further certifies that they have the authority to certify compliance for the Contractor named and that the information contained in this document is true and accurate to the best of their knowledge.

Signature

Title

Date

Printed Name

Company Name

Address

City / State / Zip Code

THE FOLLOWING MUST BE CERTIFIED FOR ALL AGREEMENTS \$100,000 OR GREATER USING FEDERAL FUNDS
CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS
(September, 2005)

1. In accordance with FAR 52.102, the definitions and prohibitions contained in the clause at FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, included in this solicitation, are hereby incorporated by reference in this certification.

2. The offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief that on or after; December 23, 1989

A. No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to Influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract.

B. If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal Transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, OMB Standard Form LLL, Disclosure of Lobbying Activities, to the Contracting Officer; and

C. He or she will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

3. Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by Section 1352, Title 31, United States Code. Any person who makes expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

The undersigned company agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.)

CERTIFICATION

The undersigned hereby certifies that he / she has read the above CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTION (APR 1991) and CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT requirements and that he / she understands and will comply with these requirements. The undersigned further certifies that they have the authority to certify compliance for the Contractor named below.

Signature

Title

Date

Printed Name

Company Name

Address

City / State / Zip Code

GOVERNMENT FLOW-DOWN PROVISIONS

The resulting order is subcontracted under a U.S. Government Prime Contract, the applicable clauses listed below are incorporated into, and form a part, of the terms and conditions of the resulting order. In the event of any conflict between previously referenced terms and conditions and the Government Flow-Down Provisions, the Government Flow-Down Provisions take precedence. The clauses contained in the following paragraphs of the Federal Acquisition Regulations (FAR) are incorporated herein by reference. For purposes of this Purchase Order, in the following clauses, the term “contract” shall mean “this order”, the term “contractor” shall mean “Seller” and the term “Government” and “Contracting Officer” shall mean “New Mexico Institute of Mining and Technology (NMIMT) and the “Chief Procurement Officer” respectively. The following provisions of the FAR apply at the specified order dollar amounts:

Title	Applicability	FAR Reference
Equal Employment Opportunity	All Orders	52.222-26 (Sept 2016)
Debarment and Suspension	All Orders	52.209-6 (Jun 2020)
Rights in Data Alt IV	All R&D Orders	52.227-14 (May 2014)
Anti-Kickback Act	Construction Over \$2K	52.203-7 (Jun 2020)
Limitations on Payments to Influence Certain Federal Transactions	Orders exceeding \$150K	52.203-12 (Jun 2020)
Audit & Negotiations Alt II	All Orders Over \$100K	52-215-2 (Jun 2020)
Davis Bacon Act	Construction Over \$2K	52.222-6 (Aug 2018)
Contract Work Hours & Safety Standards	Construction and Labor Hour Contracts Over \$2.5K	52.222-4 (Mar 2018)
E-Verification	All Orders	52.222-54 (Oct 2015)
Certification and Disclosure Regarding Payments to Influence Certain Transactions	All Orders Over \$150K	52.203-11 (Sept 2007)
Patent Rights	All Orders	
Ownership by the Contractor		52.227-11 (May 2014)
Ownership by the Government		52.227-13 (Dec 2007)
Buy American Act	All Orders over \$3K	52.225-2 (May 2014)
Contract Terms & Conditions, Commercial Items	All Orders over \$10K	52.212-4 (Oct 2018)
Energy Efficiency in Energy-Consuming Products	All Orders and Services with Energy Consuming Products	52.223-15 (May 2020)
Contract Provisions for Non-Federal Entity Contracts Under Federal Awards	All Orders over \$150K	CFR200.236
Small Business Subcontracting Plan	All Orders over \$700K	52.219-9 (June 2020)
Subcontractor Certified Cost or Pricing	All Orders over \$750K	52.215-12 (June 2020)
Requiring Certified Cost or Pricing Data	All Orders over \$750K	15.403-4
Disclosure and Consistency of Cost Acctg	All Orders over \$750K	52.230-3 (June 2020)
Recovered Material	Biobased products that use USDA designated items	52.223-1 (May 2012)
Recovered Material	Biobased products that do not use USDA designated items	52.223-2 (Sept 2013)
Recovered Material	EPA Designated items except off the shelf Items less than \$150K	52.223-4 (May 2008)
Recovered Material	EPA Designated items except off the shelf Items greater than \$150K	52.223-9 (May 2008)
Recovered Material	EPA-designated items Service and Construction	52.223-17 (Aug 2018)