

**PROFESSIONAL SERVICES AGREEMENT  
FOR ON DEMAND GEOLOGICAL/HYDROLOGICAL SERVICES  
BETWEEN  
SANDOVAL COUNTY AND  
NEW MEXICO INSTITUTE OF MINING AND TECHNOLOGY**

THIS AGREEMENT is made and entered into by and between SANDOVAL COUNTY, a political subdivision in the State of New Mexico, hereinafter referred to as (the "COUNTY"), and NEW MEXICO INSTITUTE OF MINING AND TECHNOLOGY, a public university organized under the laws of New Mexico, hereinafter referred to as (the "CONTRACTOR").

**WHEREAS**, the COUNTY needs Geology and Mineral Resources Services regarding policy development, review of oil and gas drilling and production applications, field inspections, reports, and presentations to public bodies; and

**WHEREAS**, the COUNTY desires to engage CONTRACTOR to render certain services in connection therewith, and the CONTRACTOR is willing to provide such services; and

**WHEREAS**, the Sandoval County Board of County Commissioners has approved this contract;

**NOW, THEREFORE**, in consideration of the premises and mutual obligations herein, the parties do mutually agree as follows:

**1. Scope of Work**

A. The COUNTY requires on-demand Geological/Mineral Resources Services and advising services to include the following:

1. Provide geologic and mineral resource analyses of areas in which oil and gas wells are drilled or proposed to be drilled.
2. Provide geological information that contribute toward the development of public policy by the County.
3. Review the geologic setting of proposed wells, producing wells, and transportation systems regarding oil and gas applications within the County.

4. Provide reports and maps regarding oil and gas resources as required by the County, including locations and depths of wells drilled, well status (producing, plugged, etc.), and volume of oil or gas produced.
5. Provide assistance to County in understanding and managing water resource issues, particularly focusing on water quantity and quality.
6. Provide assistance to the County in assessing, documenting, and understanding mineral resources within the county as part of county-wide inventory.
7. Make presentations to various public bodies as required by the County.
8. Services will be performed within the COUNTY Jurisdiction.

## 2. Compensation.

- A. COUNTY shall pay the CONTRACTOR in full for services satisfactorily performed as set forth in Task Order/Work Order agreements. 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 County. Invoices will be provided monthly for work performed on a cost reimbursement basis with overhead applied at the CONTRACTOR's Federally negotiated rate. CONTRACTOR's payment terms are NET30. Invoices will be received by the COUNTY in the month following expenditure of funds. Expenditures made in the final month of the COUNTY's fiscal year will by necessity be invoiced in the month that follows.
- B. CONTRACTOR must submit a monthly expenditure detail accounting for all services performed. If the COUNTY 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 COUNTY 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.

3. **Term of Agreement.**

This Agreement shall become effective on the date of execution by all parties and shall continue for a four (4) year period unless terminated by either party pursuant to the termination provisions contained herein (See Paragraph 4). This agreement shall not exceed a four (4) year term.

4. **Termination.**

A. **Termination for Cause:** If, through any cause, either party fails to fulfill its obligations under this Agreement in a timely and proper manner, or if either party violates any of the covenants, agreements or stipulations of any part of this Agreement, either party shall have the right to terminate the Agreement. The COUNTY reserves the right to recover any excess costs incurred by deduction from an unpaid balance due to the CONTRACTOR, or by any other legal method. By such termination, neither party may nullify obligations already incurred for performance or failure to perform prior to the date 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 COUNTY. Termination for Cause shall be accomplished by providing written Notice of Termination to the other party. The Notice of Termination shall include the effective date of termination. Written notice shall be given to the parties at the addresses listed in Paragraph 23 of this Agreement.

*THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE COUNTY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.*

B. **Termination for Lack of Appropriations:** The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Sandoval County Board of County Commissioners, or Governing Body, for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Sandoval County Board of County Commissioners, or the Governing Body, this Agreement shall terminate immediately upon written notice being given by the COUNTY to the CONTRACTOR. The COUNTY'S decision as to whether sufficient appropriations are available shall be accepted by the CONTRACTOR and shall be final.

- C. Termination for Convenience of COUNTY: The COUNTY may terminate this Agreement at any time by providing at least thirty (30) calendar days' notice in writing to the CONTRACTOR. If the Agreement is terminated by the COUNTY as provided herein, the CONTRACTOR will be paid for expenses incurred up to the date of termination, less payments previously made.
- D. Termination by CONTRACTOR: The CONTRACTOR may terminate this Agreement at any time by providing at least thirty (30) calendar days' notice in writing to the COUNTY.
- E. Termination Management: Immediately upon receipt by either the COUNTY 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 COUNTY, 2) comply with all reasonable directives issued by the COUNTY in the notice of termination as to the performance of work under this Agreement, and 3) take such action as the COUNTY shall direct for the protection, preservation, retention or transfer of all property titled to the COUNTY 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 COUNTY upon termination and shall be submitted to the COUNTY as soon as practicable.

5. Status of CONTRACTOR.

The CONTRACTOR and its agents and employees are independent contractors performing professional services for the COUNTY and are not employees of the COUNTY. 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 COUNTY as a result of this Agreement. The COUNTY shall not provide any liability coverage to the CONTRACTOR. 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

COUNTY unless the CONTRACTOR has express written authority to do so, and then only within the strict limits of that authority.

**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 COUNTY.

**6. Subcontracting.**

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

**7. Release of Claims.**

Subject to the limitations of Paragraph 20, final payment of the amounts due under this Agreement shall operate as a release of the COUNTY, its elected officials, and employees, from all claims and obligations whatsoever arising from or under this Agreement.

**8. Confidentiality.**

Any confidential information provided to or developed by the either Party in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization for any purpose other than in the performance of the agreement without the prior written approval of the other Party. The obligations of the confidentiality set forth in this paragraph shall survive termination or expiration of this agreement for a period of five (5) years unless otherwise agreed by the Parties.

**9. Product of Service -Copyright.**

**A. Definitions**

1. "Computer software" means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae and related material that would

enable the software to be reproduced, recreated, or recompiled.

2. "CONTRACTOR" means the entity or person who is contracting with COUNTY under this sub-award.

3. "Data" means recorded information regardless of form or the medium on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing or management information.

4. "Invention" means any invention or discovery, which is or may be patentable or otherwise protectable under Title 35 of the United States Code.

5. "Subject invention" means any invention of the sub-recipient conceived or first actually reduced to practice in the performance of work under this contract.

6. "Technical data" means recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software documentation). The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing or management information.

7. "Unlimited rights" means rights to use, modify, reproduce, perform, display, release, or disclose data or a work in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so.

8. "Works" means computer data bases, computer software, or computer software documentation: literary, musical, choreographic or dramatic compositions: pantomimes; pictorial, graphic or sculptural compositions; motion pictures and other audiovisual compositions; sound recordings in any medium; or, items of similar nature.

#### B. Data

1. Grant of unlimited rights. COUNTY shall have unlimited rights in data that are

- a. Data pertaining to an item, component, or process which has been or will be developed exclusively with COUNTY funds;
  - b. Studies, analyses, test data, or similar data produced for this contract, when the study, analysis, test, or similar work was specified as an element of performance;
  - c. Created exclusively with COUNTY funds in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes;
  - d. Data that describes the required overall physical, functional, and performance characteristics of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items;
  - e. Necessary for installation, operation, maintenance, or training purposes (other than detailed manufacturing or process data);
  - f. Corrections or changes to data furnished to the CONTRACTOR by COUNTY;
  - g. Otherwise publicly available or have been released or disclosed by the CONTRACTOR without restrictions of further use, release or disclosure, other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the data to another party or the sale or transfer of some or all of a business entity or its assets to another party; or
  - h. Data in which COUNTY has obtained unlimited rights under another COUNTY contractor as a result of negotiations.
2. Mixed funding. Rights in data created with funds from both COUNTY and the CONTRACTOR and not otherwise within the scope of paragraph B1 above, shall be allocated by means of good faith negotiations between the Parties.
  3. Mix of funding and expertise. Rights in data created with funds solely from the CONTRACTOR but where the expertise of employees of COUNTY is used in the creation of data shall be allocated by means of

good faith negotiations between the Parties.

### C. Patents

1. Rights to subject inventions.
  - a. The CONTRACTOR agrees to assign to COUNTY the entire right, title, and interest throughout the world in and to each subject invention covered by Section B 1. a-h, inclusive.
  - b. The CONTRACTOR agrees to assign to COUNTY that portion of the entire right, title and interest throughout the world which is agreed to between the parties as to any data created by mixed funding or by mix of funding and COUNTY expertise.
2. Invention disclosure. The CONTRACTOR shall disclose each subject invention to COUNTY within six months after the CONTRACTOR becomes aware that a subject invention has been made.

### D. Copyrights

1. Applicability. This section applies to data and works first created, generated, or produced and required to be delivered under this contract.
2. License rights.
  - a. COUNTY shall have unlimited rights in data and works first produced, created, or generated and required to be delivered under this contract.
  - b. When data or a work is first produced, created, or generated under this contract, and such data or work is required to be delivered under this contract, the CONTRACTOR shall assign copyright in those data or works to COUNTY.
  - c. The CONTRACTOR grants to COUNTY a royalty-free, world-wide, non-exclusive, irrevocable license to reproduce, prepare derivative works from, distribute, perform, or display, and to have or authorize others to do so, the CONTRACTOR's copyrighted data and works not first produced, created, or generated under this contract that have been incorporated into the works deliverable under this contract.

## 11. Record Ownership.

It shall be clearly understood and agreed between the parties that the COUNTY is and shall be the owner of all invoices, backup documentation, and technical reporting submitted by CONTRACTOR pertaining to this Agreement. CONTRACTOR will retain ownership of its own records and source documents and agrees to retain all financial records, supporting documents, statistical records, and all other records pertinent to this Agreement for a minimum of three years from the date of the CONTRACTOR's submission of the final expenditure report.

The retention period will be extended if litigation, claim or audit commences prior to the expiration of the three-year period, in which case the records must be kept until all litigation, claims, or audit findings involving the records are resolved.

CONTRACTOR agrees to comply with the requirements of 2 CFR 200, FAR 52.215-2 or other applicable regulations that ensure proper expenditure of funds. Upon COUNTY's request a copy of the CONTRACTOR's most recently released financial statement and independent audit shall be provided, including "Findings and Recommendations", along with the executed copy of this instrument.

In the absence of such an audit, COUNTY may employ other means (such as performance reviews) to ensure the CONTRACTOR's compliance with applicable laws and regulations. If COUNTY's review of the CONTRACTOR's audit report detects instances of noncompliance with Federal laws and regulations, COUNTY will notify the CONTRACTOR that appropriate corrective action must be taken within six months. Failure to make progress toward such corrective action may result in the suspension or termination of this agreement, as well as the return of expenses reimbursed to that point in the subcontract period.

The CONTRACTOR agrees that COUNTY and/or the Federal Government or any of their duly authorized representatives shall have access to and the right to inspect or audit any directly pertinent books, documents, papers and records of the CONTRACTOR involving transactions related to this agreement and/or to ensure compliance with the terms and conditions of this Article.

12. **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.

13. **Amendment.**

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

14. **Merger.**

This Agreement incorporates all the Agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, Agreements and understandings have been merged into this written Agreement. No prior Agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

15. **Penalties for Violation of Law.**

The Procurement Code, 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.

16. **Equal Opportunity Compliance.**

The CONTRACTOR agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the CONTRACTOR assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious

medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If CONTRACTOR is found not to be in compliance with these requirements during the life of this Agreement, CONTRACTOR agrees to take appropriate steps to correct these deficiencies.

**17. Applicable Law.**

The laws of the State of New Mexico and Sandoval County 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.

**18. Workers Compensation.**

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

**19. Records and Financial Audit.**

The CONTRACTOR shall maintain detailed time and expenditure records for hourly personnel and after-the-fact certification of faculty or salaried staff effort that indicate the 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 COUNTY, the Department of Finance and Administration and the State Auditor. The COUNTY shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the COUNTY to recover excessive or illegal payments.

**20. Liability.**

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.

**21. 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.

**22. 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.

23. 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 COUNTY: Phillip Rios, County Manager  
Sandoval County  
P.O. Box 40, Bernalillo, N.M. 87004  
Office phone: (505) 867-7533  
prios@sandovalcountynm.gov

To the CONTRACTOR: Richard Cervantes, Vice President  
Administration and Finance  
New Mexico Institute of Mining & Technology  
801 Leroy Place  
Socorro, New Mexico 87801  
Phone (575) 835-5606  
Richard.cervantes@nmt.edu

24. Authority.

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

**IN WITNESS WHEREOF, this agreement shall become fully executed upon the date of the final signature below.**

  
\_\_\_\_\_  
Richard Cervantes, Vice President Administration & Finance  
New Mexico Institute of Mining & Technology

Date: 7/13/10

Phillip Rios  
Phillip Rios, County Manager  
Sandoval County

Date: 7/27/16

Cassandra Herrera for C.H. 7/26/16  
Cassandra Herrera, Finance Director/ Chief Procurement Officer  
Sandoval County

Date: 7/26/16

**APPROVED AS TO FORM:**

Natalia Downey  
Natalia Downey, County Attorney  
Sandoval County

Date: 7-26-2016

Eileen Garbagnini  
Eileen Garbagnini, County Clerk  
Date: 7-26-16

