



# REQUEST FOR PROPOSAL (RFP)

**REENTRY EMPLOYMENT OPPORTUNITY (REO)**

## CHANCES

Issued: October 7, 2022  
Procurement No. 2023-03

**Proposal Due Time/Date: Monday, November 21, 2022 NLT 5:00 p.m. (MST)**

## CHANCES Request-for-Proposal



### REQUEST FOR PROPOSAL (RFP) REENTRY EMPLOYMENT OPPORTUNITY (REO) SERVICES SCHEDULE

<b>RFP Issued</b>	October 7, 2022 posted at <a href="https://www.wccnm.org/wccnm-board">https://www.wccnm.org/wccnm-board</a> under Board Events. Also advertised in ABQ Journal 10/9/2022 and 10/16/2022
<b>Mandatory Pre-Proposal Meeting</b>	Wednesday October 19, 2022 10:00am - 11:30am MDT @ MRCOG Board Room, 809 Copper Avenue NW, Albuquerque, NM 87102
<b>Last Day to Submit Questions (Email to <a href="mailto:trowland@mrcog-nm.gov">trowland@mrcog-nm.gov</a>)</b>	Tuesday October 25, 2022 by 5:00pm MDT
<b>Responses to Questions Posted at <a href="https://www.wccnm.org/wccnm-board">https://www.wccnm.org/wccnm-board</a> under Board Events</b>	Thursday October 27, 2022 by 5:00pm MDT
<b>Proposals Due via Email to <a href="mailto:trowland@mrcog-nm.gov">trowland@mrcog-nm.gov</a></b>	Monday November 21, 2022 NLT 5:00pm MST (PDF or Word)
<b>WCCNM Proposal Evaluations</b>	November 22 – December 9, 2022
<b>Award Notification(s)</b>	Week of December 12, 2022
<b>Contract Start; Awardee Orientation; CHANCES Program and GPMS Training</b>	January 2023 (Days/Time TBD)
<b>Period of Performance</b>	January 2023 – December 2025

The Workforce Connection of Central New Mexico is an equal opportunity employer and is committed to equal opportunity in its contracting process. Auxiliary aids and services are available upon request to individuals with disabilities.

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## 1. Introduction

The Workforce Connection of Central New Mexico (WCCNM) is the local Workforce Development Board in the four-county region of Central New Mexico (which includes Bernalillo, Sandoval, Torrance and Valencia Counties). WCCNM was established July 1, 2000, under the authority of the New Mexico Workforce Development Act.<sup>1</sup> With over 40% of the state's population residing in the central region, WCCNM is the largest workforce development board in New Mexico.

The WCCNM successfully leads the development of the regional Workforce Innovation and Opportunity Act (WIOA) four-year Workforce Development Plan; selects the region's Administrative Entity/Fiscal Agent (AE/FA), New Mexico Workforce Connection (NMWC) Career OneStop Operator, Adult/Dislocated Worker (A/DW) Service Provider, and Youth Service Provider; oversees program monitoring; and develops the budget for implementing the WIOA program within New Mexico's Central Region. The Mid-Region Council of Governments (MRCOG) serves the WCCNM as the AE/FA, Central Region OneStop Operator, and A/DW Service Provider.

The *Collaborative Haven for Achievements, Nurturing, Careers, Employability and Success* (CHANCES) program is funded through the United States Department of Labor, Employment and Training Administration (USDOL), Pathway Home 3 Funding Opportunity Announcement (FOA-ETA-22-04), which was awarded to the WCCNM (Federal Award ID # PE-38620-22-60-A-35; CFDA #17.270-Reintegration of Ex-Offenders).

The Pathway Home Grant Program builds on the findings of the Linking Employment Activities Pre-Release (LEAP) implementation study. By providing for reentry services to begin while participants are still incarcerated and to continue post-release, these projects are designed to eliminate the time gap between release from prison and enrollment into a workforce development reentry program leading to skills-based employment. The final LEAP implementation report can be found at <https://www.dol.gov/sites/dolgov/files/OASP/legacy/files/LEAP-Final-Report.pdf>.

The CHANCES program will serve adults aged 18 or older who have been convicted of non-violent crimes under federal, state, or local law and are incarcerated in state correctional facilities or local or county jails with scheduled release dates within 20 to 270 days of enrollment in the program.

Through a partnership with the Bernalillo County Metropolitan Detention Center (MDC), the CHANCES program will assist 200 convicted and incarcerated men and women who will enter the program to prepare for returning to their communities and to enter employment following release. Additional correctional facility partners will be identified during program development.

In addition, through a partnership with WIOA Title I (Adult) and WIOA Title II (Adult Education and Family Literacy Act), eligible CHANCES participants will be co-enrolled in training services including, but not limited to, pre-release Adult Basic Education (ABE) leading

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<sup>1</sup> Chapter 50, Article 14 NMSA 1978; and the federal Workforce Investment Act of 1998 and currently the 2014 reauthorized Workforce Innovation Opportunity Act (WIOA)

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to core academic skill development, High School Diploma or equivalent, family literacy, workforce preparation, (pre-release training may continue post-release, as needed), and post-release skill-building services, such as Registered Apprenticeships, transitional jobs, On-the-Job Training (OJT), internships, or other occupational training in in-demand industries, as determined by WCCNM local area need, that lead to industry-recognized credentials.

Additional partnerships will be cultivated to facilitate access to existing programs, wrap-around, and supportive services designed to serve justice-involved individuals and maximize program efficiencies through leveraged resources.

### 2. Eligible Applicants

The WCCNM is issuing this Request-for-Proposal (RFP) for respondents with applicable experience providing pre-and post-release workforce development and employment for justice-involved individuals in Central New Mexico.

For-profit and nonprofit organizations, public agencies, consortiums, and/or a collaboration of these organizations are all encouraged to apply. Consortiums, joint ventures, or collaboration of organizations with complementary skills and experience are encouraged to apply, but proposals need to clearly identify one legal entity as the prime respondent that will hold grant subrecipient contracting responsibilities and liabilities. Respondents must also clearly distinguish which partnerships represented in a response are subcontracts and which are non-financial collaborations.

The WCCNM is seeking organizations whose staff have lived experience of incarceration and are able to build non-judgmental relationships with participants based upon shared experiences (encouraged but not required). These staff can model trust, commitment, stability, and a sustainable career pathway after successful reentry. Participants must be able to maintain the same Reentry Coordinator pre- and post-release, which was suggested as a "best practice" in the LEAP Implementation Study.

In addition, the WCCNM seeks respondents who are interested in assisting in the development of an innovative program that identifies and strengthens existing reentry networks and resources and reduces recidivism through workforce training and sustainable employment. Successful offerors should demonstrate their ability to develop sustainable solutions that will continue to be successful long after the grant period ends.

WCCNM may award more than one contract by awarding separate items or groups of items to various proposers. Awards will be made for items, or combinations of items, which best meet the WCCNM's requirements. The additional administrative costs associated with awarding more than one Contract will be considered in the determination.

### 3. CHANCES Program Goals

- a. Reduce recidivism for previously incarcerated populations
- b. Support both system alignment and partnerships between correctional partners, workforce development service providers, and a range of community-based resources

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- c. Reduce employment barriers and provide basic need stabilization that better prepares justice-involved individuals to re-enter the workforce and improve opportunities for finding suitable employment immediately after training completion, if applicable, and/or immediate employment upon release for 200 participants
- d. Meet and/or exceed required Performance Outcome Goals as follows:
  - i. Employment Rate – Second Quarter After Exit. (Goal is to achieve an outcome of at least 55 percent)
  - ii. Employment Rate – Fourth Quarter After Exit. (Goal is 45 percent)
  - iii. Median Earnings – Second Quarter After Exit. (Goal is \$6,000 for service areas where the minimum wage is \$10 per hour or more. Goal is \$5,000 for service areas where the minimum wage is \$9.99 per hour or less)
  - iv. Credential Attainment (Goal is 60 percent)
  - v. Measurable Skill Gains (Goal is 65 percent)

The CHANCES program seeks to develop innovative, evidence-based solutions to best serve the justice-involved population. In coordination with multiple partners, successful applicants will facilitate reentry transition, provide housing and basic need stabilization, facilitate job readiness training, participant job placement, and reduce recidivism in the Central Region.

### 4. Participant Eligibility Requirements

Participants eligible to receive the reentry and training services described in this RFP include diverse participants from a variety of backgrounds who:

- Are at least 18 years old;
- Were convicted of non-violent crimes under federal, state, or local law and are incarcerated;
- Reside, at the time of enrollment in the project, in a state correctional facility or local or county jail for adults; please note that the CHANCES grant cannot support projects in a federal facility or juvenile facility;
- Have a release date scheduled between 20 to 270 days of the individual's enrollment in the program;
- Upon release, are scheduled to return to reside in Bernalillo, Sandoval, Valencia or Tarrant County (Central Region); and
- Are legally eligible to work in the United States.

CHANCES participants are eligible for the Federal Bonding Program (FBP). The fidelity bonds, issued by the FBP, give employers a peace of mind when hiring job candidates considered higher risk. For more information on how to collaborate with state bonding coordinators, visit [www.bonds4jobs.com](http://www.bonds4jobs.com).

### 5. Applicant Requirements

WCCNM may choose to award more than one contract by awarding separate roles or groups of roles to various proposers. Applicants must select and clearly identify one or more roles being proposed from the following list (Role A; Role B, Role C, and/or Role D):

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**Role A: Dedicated Reentry Coordinator** (case manager(s)). The Reentry Coordinator's role includes, but is not limited to, the following:

- Based on staggered participant enrollments and exits of 200 individuals over a 24-month period and staggered Follow-Up activities over a 12-month period, provide proposed number of dedicated Reentry Coordinators needed to coordinate and facilitate all pre- and post-release participant services, including participant employment. Successful applicants will propose to assign one Reentry Coordinator dedicated to work with their originally assigned participants throughout life of the grant funding period (January 2023 through December 2025).
- Work with WCCNM to develop and implement USDOL Reentry Employment Opportunity (REO) and Grantee Performance Management System (GPMS) training, and processes and procedures.
- Help promote the CHANCES program through networking and social media and coordinate all program referrals.
- Adhere to WCCNM Administrative Entity and Financial Agent Policies.
- Serve as central point of contact for coordinating all program referrals, collecting all participant data, GPMS data entry input, tracking and reporting to WCCNM.
- Communicate regularly with appropriate correctional facility staff to document all assessments and services participants are receiving while incarcerated, as well as any referrals made by correctional facility staff to other services (to accurately track all participant pre- and post-release services, follow-up activities, and for accurate case noting and data reporting purposes).
- Work with WCCNM and correctional facility partners and community to promote the CHANCES program, recruit participants, conduct eligibility screenings and orientations, and participant co-enrollments. All final participant referrals will be approved by CHANCES Program Manager (WCCNM) prior to participant program enrollment.
- Work with correctional facility staff to facilitate 3 or 4 (per year) group presentations to incarcerated individuals to promote the CHANCES program and maximize participant recruitment.
- Work closely with WCCNM, correctional facility staff including MDC's Inmate Benefits and Social Services Program Manager, Social Services Supervisor, Social Service Coordinator, MDC Classification Staff, Reentry Resource Center (RCC) Special Projects Coordinator and RCC Program Supervisor, justice/parole staff, and community partners to facilitate pre-release services for convicted and incarcerated individuals 20 to 270 days prior to their release.
- Within one week of participant assignment, work with correctional facility to coordinate first in-person participant meeting at the correctional facility. Each eligible participant will receive at least one (1) but possible more in-person visits with their assigned Reentry Coordinator within the last 270 days of their incarceration. Number of in-person visits determined by participant assessment of need as documented in the Individual Development Plan (IDP).
- Provide pre-release services including job preparation, developing IDPs that identify barriers to employment, career exploration and planning, experience and skill matching, counseling, assistance obtaining state identification required for employment, and assistance with linking incarcerated individuals to the social services required to help them transition back to their communities. Pre-release occupational training resulting in

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credentials and/or certifications is highly encouraged.

- Work with correctional facility partners to schedule correctional facility space for Reentry Coordinators to hold recruitment presentations, and space to work with participants on any pre-release training or other in-person participant services as needed.
- Work closely with WCCNM, correctional facility partners, employers, and community partners to leverage and facilitate post-release and follow-up participant services, including services to address barriers to reentry, such as housing, mental health, and substance abuse treatment ensuring a continuum of services. To the greatest extent possible, the Reentry Coordinator will identify and facilitate leveraged resources to cover participant services. Emergency Support Services grant funds in the amount of \$100,000 are also available through the WCCNM to help offset these costs.
- Working with WIOA Title I partner, facilitate post-release activities including skill-building services, such as Registered Apprenticeships, transitional jobs, On-the-Job Training (OJT), internships, or other occupational training in in-demand industries, as determined by WCCNM local area need, that lead to industry-recognized credentials.
- Based on participant eligibility, co-enroll participants in WCCNM WIOA Title I, Title II, and Department of Vocational Rehabilitation (DVR) programs to receive paid training, supportive services, and employment resources. Track and report all co-enrollments as Leveraged Resources. Grant funds for stipends and incentives in the amount of \$300,000 are available to help participants while they are in training.
- Track and prepare a write-up of each participant success story.

**Role B: Reentry Navigator.** The Reentry Navigator's role includes, but is not limited to, the following:

- Work with WCCNM, correctional facility partners, and Reentry Coordinator(s) to identify participants who likely face overwhelming and extreme barriers to successful reentry, both pre- and post-release, making them high-risk for recidivism.
- Help promote the CHANCES program through networking and social media. Coordinate all new program referrals with the Reentry Coordinator.
- Assist the Reentry Coordinator in the development of the IDP, including participant assessments to determine each individual's risk of recidivism, their level of job readiness, the development of transition plans, etc.
- Based on personal experience navigating the reentry process, serve as mentor and advocate to assist participants in identifying and circumventing both known and possible barriers.
- Assist high-risk participants in building self-confidence (e.g. assist in development of post-release transition plans; focus on identifying and sharpening participant's transferrable skills, offer motivational examples and approaches, and help participants make the best choices to achieve the smoothest possible reentry, and quickly gain sustainable employment).
- Work with WCCNM and Reentry Coordinator(s) to participate in 3 or 4 (per year) small group presentations to the highest-risk incarcerated individuals, if/as appropriate, to promote the CHANCES program and the unique Reentry Navigator support available to eligible participants.
- Work closely with Reentry Coordinator to facilitate and coordinate communications with correctional facility staff including MDC's Inmate Benefits and Social Services Program

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Manager, Social Services Supervisor, Social Service Coordinator, MDC Classification Staff, Reentry Resource Center (RCC) Special Projects Coordinator and RCC Program Supervisor, justice/parole staff, and community partners to facilitate pre- and post-release services for participants at the highest risk of recidivism.

- To eliminate any duplication of services, remain in regular communication with Reentry Coordinator and ensure a clear understanding of who is responsible for providing specific participant services as defined in the IDP and detailed case notes.
- Work closely with WCCNM, Reentry Coordinator(s), employers, and community partners to leverage, facilitate, and advocate for post-release and follow-up emergency and supportive services for high-risk participants, such as best housing options, mental health and substance abuse treatment, and other extreme barriers as identified in the IDP. To the greatest extent possible, the Reentry Navigator will identify and facilitate leveraged resources to cover or offset the cost of these participant services. Emergency Support Services grant funds in the amount of \$100,000 are also available through the WCCNM to help offset these costs.
- To ensure complete and accurate participant data and reporting, regularly provide Reentry Coordinator with detailed typed case notes. Provide details of all participant meetings and conversations, including the date and time, location, discussion/conversation topics and summary of each, details on any recommendations and/or referrals to additional resources, and the due date of any commitments or follow-up activity promised to the participant.
- Provide WCCNM and Reentry Coordinator with monthly reports detailing all leveraged resources for that month with the associated dollar amount for each.
- Adhere to WCCNM Administrative Entity and Fiscal Agent Policies.
- Track and prepare a write-up of your participant success stories.

**Role C: Pre-Release Job Readiness Training Provider**. The Pre-Release Job Readiness Training provider role includes, but is not limited to, the following:

- In coordination with WCCNM and the Reentry Coordinators, provide pre-release Job Readiness Training (e.g.: Adult Basic Education, Soft Skills; and Occupational Skill Training, etc.) as applicable, allowable and feasible prior to participant release, and post-release, if needed for participant completion. Pre-release training that results in a certificate or credential attainment is strongly encouraged.
- Communicate regularly with Reentry Coordinator on participant progress, assessments, measurable skill gains, training completion, and certificate/credential attainment.
- Help promote the CHANCES program through networking and social media. Coordinate all program referrals with the Reentry Coordinator.
- To ensure complete and accurate participant data and reporting, regularly provide Reentry Coordinator with detailed typed case notes. Provide details of all participant trainings, including the date and time, location, progress report and summary of each training, details on any recommendations and/or referrals to additional resources, and the due date of any commitments or follow-up activity promised to the participant.
- Track and prepare a write-up of all participant success stories.

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**Role D: Employment Specialist.** The Employment Specialist role includes, but is not limited to, the following:

- Work with Reentry Coordinator to ensure link to IDP employment plan and training requirements, including any required credentials or certifications.
- Work with WCCNM and New Mexico Workforce Connection One-Stop partners to identify any transitional job opportunities, OJTs, internships, Registered Apprenticeships, or other paid occupational training opportunities in in-demand industries that lead to industry-recognized credentials, or direct employment.
- Conduct outreach (social media and networking) to employers, unions, and community organizations to promote the CHANCES program and the hiring of participants (e.g. skilled trades, CDL, IT, healthcare, culinary arts, etc.).
- To ensure complete and accurate participant data and reporting, regularly provide Reentry Coordinator with detailed typed case notes. Provide details of all participant job interviews (including date, employer name, contact, address, etc.), employer-driven trainings (e.g. Registered Apprenticeships, OJTs, internships, transitional jobs, etc.) including the date and time, location, progress report and summary of each occupational training including certification and credential attainment, provide details on any recommendations and/or referrals to additional employment and/or training resources, and the due date of any commitments or follow-up activity promised to the participant.
- Help promote the CHANCES program through networking and social media. Refer any program referrals with the Reentry Coordinator.
- In coordination with WCCNM and Reentry Coordinator, offer employment readiness, counseling and advocacy to participants, as needed.
- Communicate regularly with Reentry Coordinator on participant follow-up and employment progress, including employer follow-up to verify participant's employment status 2<sup>nd</sup> and 4<sup>th</sup> Quarter after exit.
- Track and prepare a write-up of all participant success stories.

Please note: Additional correctional facilities will be added during the program development phase, which will take place post-award in January 2023.

### 6. Proposal Organization and Evaluation

Proposals are limited to a maximum of 25 pages with 1-inch margins and no smaller than a 12-point font. Each page must be numbered. Any pages numbered page 26 or above will not be considered. The completed Budget Template, which includes the Budget Narrative, will not be counted toward the page limit. Proposals will be evaluated based on a 0-100 point scale, with a score of 100 being the highest and meeting all requirements.

The following provides the required proposal format with the maximum possible points associated with each section.

#### A. Signed Cover Letter – 0 Points

Offerors must indicate their acceptance of the “Conditions Governing the Procurement” in their Cover Letter. Offerors must read, complete, sign, date and attach Attachment 3 - Acknowledgement of RFP Form and Attachment 4 - Assurances and Certifications with their proposals. Attachments 3 and 4 are not included in the 25-page limit.

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### B. Applicant Introduction and Proposed Service Role(s) – Up to 20 Points

1. Applicant must identify the role(s) they propose to provide.
2. Applicants must demonstrate experience working with correctional facilities and justice-involved individuals in their proposals, including expertise in pre- and post-release service delivery. Additional correctional facility partners will be identified during the post-award program development phase. Please see Section 4. Participant Eligibility.
3. WCCNM requires a comprehensive accountability system to determine the effectiveness of services. The selected sub recipient(s) agrees to work closely with WCCNM to develop and implement program procedures and performance measures to attain the prescribed standards as defined in the grant award for the delivery of services.
4. Successful offerors should demonstrate their ability to develop sustainable solutions that will continue to be successful long after the grant period ends.

### C. Service Delivery Approach for Proposed Role(s) – Up to 35 Points

Based on the role descriptions as outlined in Section 4. Applicant Requirements, provide a service delivery overview for each proposed role. Applicants must describe their proposed approach including, but not limited to, the following, which are not presented in any order of priority, as all are equally important to participant success.

1. **Service Delivery Approach:** Applicants must address their approach to delivering the services associated with the role or roles selected in Section 4. Applicant Requirements.
2. **Correctional Facility Familiarity:** Applicants must define in their proposals a clear understanding of correctional facility processes and procedures, including any recent and relevant examples of working with MDC, or other correctional facilities, WCCNM, other workforce development and community-partners, and description of the approach to coordinating the provision of the required direct services to participants. Additional correctional facility partners will be identified during the post-award program development phase.
3. **Wrap-Around Services Delivery:** As applicable to proposed role(s), applicants must identify and explain how they will provide wrap-around services, which, at a minimum, includes all of the following employment and career services pre-release: job preparation, comprehensive case management, developing IDPs using state and local labor market information (LMI) that identify barriers to employment (additional information regarding “career” services, as defined in WIOA, can be found in Section 134(c)(2) and in TEGl 19-16), needs assessment, career exploration and planning, assistance with obtaining state identification, legal assistance (e.g., modification of child support orders, expungement proceedings, securing participant licenses, child custody assistance, and protective and restraining order assistance), trauma informed care, mental health and academic counseling, and referrals to the legal and social services required to help them transition back to their communities. Pre-release occupational training is highly encouraged.

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4. **Program Access and Training Curriculum:** Describe how you will ensure that all program participants have adequate opportunities to access the pre-release services, and, if proposing to provide Role C: Pre-Release Job Readiness Training Provider, or any other training services, identify the curriculum that will be utilized for employability skills and job readiness development activities.
5. **Participant Engagement and IDP Development:** Applicants must identify and explain how they will keep participants engaged post-release and how they will provide in-person and digital post-release skill-building services, including Registered Apprenticeships and occupational training in in-demand industries that lead to industry-recognized credentials. Explain how the IDP links to employment. Explain how participants will be connected to training opportunities. Explain how stipend and incentive amounts will be determined and how payments will be disbursed to participants as they are completing their training.
6. **IDP Links to Partner Services:** Applicants must describe how the IDP links to post-release and follow-up services including approach to securing services to address barriers to reentry, such as housing, mental health, and substance abuse treatment ensuring a continuum of services. Explain how you will connect post-release participants to stable housing and physical and mental health services.
7. **Assessments:** Explain how assessments, including an assessment of each individual's risk of recidivism and their level of job readiness, etc. will be incorporated into the IDP.
8. **Reentry Coordinator, Reentry Navigator, and Transition Plan:** Applicants must clearly and realistically describe the following: how the same caseworker providing pre-release services for a participant will be retained and engaged post-release; what services, if any, will be delivered to the participant during his or her first 72 hours of the transition from correctional custody to the community, and how follow-up activities will be delivered and by whom. Follow-up services must include more than contacts solely to secure performance outcome documentation.
9. **Employer Outreach and Job Placement:** Applicants must describe how they will conduct employer outreach and facilitate direct job placements. What strategies will be implemented to secure employer commitments to hire participants (e.g. USDOL Federal Bonding Program (FBP), strategies to reduce employer risk, etc.)?
10. **Timeline of Proposed Service Delivery:** Applicants must provide a clear, coherent and realistic timeline of key events including, but not limited to, participant and employer outreach and recruitment milestones, enrollment milestones, participant training milestones, employment milestones, and partnership milestones to meet stated performance goals and outcomes (See Section 3. CHANCES Program Goals).
11. **Leveraged Resources:** The CHANCES program is committed to securing \$1.1M in Leveraged Resources. Applicants must describe how they will maximize leveraged resources and identify any proposed leveraged resources for housing, utilities, transportation, childcare, healthcare, supportive and wrap-around services, co-enrollments, etc. As one example, for eligible participants, the WCCNM will leverage the training and supportive services resources of its Title I WIOA Adult Service Provider; Title II Adult Basic Education (ABE)

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Service Providers, Division of Vocational Rehabilitation (DVR), and other partners, with an estimated reportable leveraged resource amount of over \$600,000.

### D. Past Performance – Up to 30 Points

Applicants must provide three (3) relevant and recent descriptions of projects/programs completed within the past 4 years, or currently in progress. Please use the Past Performance Template in Attachment 1.

<b>Name of Previous Grantor/Funding Organization:</b>
<b>Grantor Contact Name, Title, E-mail Address, and Telephone Number:</b>
<b>Project Title and Grant Number:</b>
<b>Project Period of Performance:</b>
<b>Provide Number of Participants Proposed to Complete Program and Number of Participants that Actually Completed Program:</b>
<b>Population Served:</b>
<b>Project/Program Description, Including Actual Performance Outcomes compared to Performance Goals:</b>

### E. Estimated Budget for Each Proposed Role – Up to 15 Points (see breakdown below)

Applicants must provide an estimated budget and budget narrative for each proposed role. The required Budget and Budget Narrative Template is included in Attachment 2 and is **not** included in the 25 maximum page limit. **Offerors may receive up to 5 points for items 1 and 2.**

1. Complete the Proposed Program and Personnel Budget Template (Attachment 2) for the services you want to be funded. Costs should reflect the level of services and the outcomes proposed. Completed Budget Template will not count toward the 25-page limit.
2. Provide a narrative description of your budget, including an explanation that justifies the line items. Included in the Budget Template in Attachment 2 and not counted toward the 25-page limit.

In addition, in this Section, provide a response to the following (included in 25-page limit): **Offerors may receive up to 10 points for items 3 and 4.**

3. Describe how your agency manages finances, including any financial systems you use.
4. Describe how you will ensure general accounting principles are in place to ensure your agency can safeguard funding from this award.

Total proposed direct costs including taxes and fees for all services identified in this RFP should not exceed \$900,000.

### F. Proposal Submittal

Applicants shall email proposals and all required attachments no later than 5:00pm (MST) on November 21, 2022 to Tawnya Rowland: [trowland@mrcog-nm.gov](mailto:trowland@mrcog-nm.gov).

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### G. Subrecipient Contracting/Procurement

WCCNM has designated a Procurement Manager who is responsible for the conduct of this procurement. The Procurement Manager is:

Tawnya Rowland  
MRCOG/WCCNM  
809 Copper N.W.  
Albuquerque, NM 87102  
Phone : 505-724-3658, Fax : 505-247-1753  
E-mail : trowland@mrcog-nm.gov

Any subrecipient contract inquiries regarding this procurement should be submitted to the Procurement Manager in writing. Offerors may contact ONLY the Procurement Manager regarding the procurement. Other MRCOG employees do not have the authority to respond on behalf of the WCCNM or MRCOG.

#### Definitions

This section contains definitions and abbreviations that are used throughout this RFP.

"Close of Business" means 5:00 PM local time.

"Subrecipient Contract" means a written agreement for the procurement of items of tangible personal property or services.

"Subrecipient/Contractor" means a successful Offeror who enters into a binding contract.

"Determination" means the written documentation of a decision by the Procurement Manager or WCCNM Board including findings of fact supporting a decision. A determination becomes part of the procurement file.

"Desirable" The terms "may", "can", "should", "preferably", or "prefers" identifies a desirable or discretionary item or factor (as opposed to "mandatory").

"Evaluation Committee" means a body appointed by the WCCNM Board Chair to evaluate Offerors Proposals.

"Evaluation Committee Report" means a document prepared by the Procurement Manager and the Evaluation Committee for submission to the WCCNM Board Chair for subrecipient contract award. It contains all written determinations resulting from the procurement.

"Finalist" is defined as an Offeror whose offer complies with all the mandatory specifications of this RFP and whose score on evaluation factors is sufficiently high to merit further consideration by the Evaluation Committee.

"Mandatory" The terms "must", "shall", "will", "is required", or "are required", identify a

## CHANCES Request-for-Proposal

mandatory item or factor (as opposed to “desirable”). Failure to comply with a mandatory item or factor will result in the rejection of the Offerors Proposals.

“WCCNM” means the Workforce Connection of Central New Mexico. "MRCOG" means the Mid-Region Council of Governments.

"Offeror" is any person, corporation, or partnership who submits a Proposals.

"Procurement Manager" means the person or designee authorized by the WCCNM Board to manage and administer procurements and contracts.

"Procurement Officer" means the person or designee designated by the WCCNM to oversee all WCCNM procurement.

"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 that conforms in all material respects to the requirements set forth in the Request for Proposal. Material respects of a Request for Proposal includes, but is not limited to, price, quality, quantity or delivery requirements.

### 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.

### Sequence of Events

The Procurement Manager will make every effort to adhere to the Procurement Schedules shown in this RFP. The time frames shown however may be subject to change at the discretion of the WCCNM Board.

<b>RFP Issued</b>	October 7, 2022 posted at <a href="https://www.wccnm.org/wccnm-board">https://www.wccnm.org/wccnm-board</a> under Board Events. Also advertised in ABQ Journal 10/9/2022 and 10/16/2022
<b>Mandatory Pre-Proposal Meeting</b>	Wednesday October 19, 2022 10:00am - 11:30am MDT @ MRCOG Board Room, 809 Copper Avenue NW, Albuquerque, NM 87102
<b>Last Day to Submit Questions (Email to <a href="mailto:trowland@mrcog-">trowland@mrcog-</a></b>	Tuesday October 25, 2022 by 5:00pm MDT

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nm.gov)	
<b>Responses to Questions Posted at <a href="https://www.wccnm.org/wccnm-board">https://www.wccnm.org/wccnm-board</a> under Board Events</b>	Thursday October 27, 2022 by 5:00pm MDT
<b>Proposals Due via Email to <a href="mailto:trowland@mrcog-nm.gov">trowland@mrcog-nm.gov</a></b>	Monday November 21, 2022 NLT 5:00pm MST (PDF or Word)
<b>WCCNM Proposal Evaluations</b>	November 22 – December 9, 2022
<b>Award Notification(s)</b>	Week of December 12, 2022
<b>Contract Start; Awardee Orientation; CHANCES Program and GPMS Training</b>	January 2023 (Days/Time TBD)
<b>Period of Performance</b>	January 2023 – December 2025

### Explanation of Events

A mandatory Pre-Proposal Meeting will be held Wednesday, October 19, 2022 10:00 a.m. – 11:30 a.m. MDT @ MRCOG Board Room, 809 Copper Avenue NW, Albuquerque, NM 87102.

### Deadline to Submit Additional Questions

Potential Offerors may submit additional written questions as to the intent or clarity of this solicitation to Tawnya Rowland at [trowland@mrcog-nm.gov](mailto:trowland@mrcog-nm.gov) no later than 5:00pm MDT on October 25, 2022.

### Submission of Proposal

All proposals must be received **no later than November 21, 2022, 5:00 p.m. (MST)**. Proposals received after this deadline will not be accepted. The date and time will be recorded on each proposal as it is received. Offerors shall email proposals and all required attachments to Tawnya Rowland: [trowland@mrcog-nm.gov](mailto:trowland@mrcog-nm.gov).

A public log will be kept of the names of all Offeror organizations that submitted proposals. Pursuant to Section 13-1-116 NMSA 1978, the contents of any proposal shall not be disclosed to competing Offerors prior to Contract award.

### Proposal Evaluation

An Evaluation Committee comprised of WCCNM Board and MRCOG Administrative staff will evaluate proposals from November 22 through December 9, 2022. During this time, the WCCNM may initiate discussions with Offerors who submit responsive or potentially responsive proposals for the purpose of clarifying aspects of the proposals, but proposals may be accepted and evaluated without such discussion. The Offerors **SHALL NOT** initiate discussions. Potentially responsive proposals are proposals that could reasonably be anticipated as capable of being made responsive.

### Selection of Finalists

The WCCNM Evaluation Committee will provide the list of finalists to the WCCNM Board Chair. The WCCNM Administrative Entity/Purchasing Officer will notify the finalist Offerors of their selections during the week of December 12, 2022. Only finalists

## **CHANCES Request-for-Proposal**

will be invited to participate in the subsequent steps of the procurement.

### **Oral Presentation by Finalists (Optional)**

Finalist Offerors may be required to present their proposals to the Evaluation Committee. The Procurement Manager will schedule the time for each Offeror presentation. All Offeror presentations will be held at the address noted herein. Each presentation will be limited to one hour with an additional fifteen minutes for questions and answers.

### **Best and Final Offers from Finalists**

Finalist Offerors may be asked to submit revisions to their proposals for the purpose of obtaining best and final offers.

### **Contract Negotiations**

The Contract is subject to negotiations with the Finalist Offerors selected for award by the WCCNM Chair. In the event that mutually agreeable terms cannot be reached within a reasonable time, defined herein as within fifteen (15) calendar days from the date that the Finalist Offeror is notified of the award, the WCCNM reserves the right to negotiate a Contract with another Finalist Offeror without undertaking a new procurement process. The WCCNM also reserves the right to make multiple Contract awards.

### **Contract Award**

The Contract shall be awarded to the Finalist Offeror or Offerors whose scores on the evaluation factors specified herein is sufficiently high and who negotiates a Contract of mutually agreeable terms within a reasonable time as defined in this solicitation. Contract award may be to multiple Offerors.

Contracts are not valid until signed by all parties to the Contract issued in response to this RFP.

### **Protest of Award**

An Offeror who has submitted a responsive Offer on this RFP may protest the award of a Contract resulting from the RFP. The protest must be timely and in conformance with Section 13-1-172 NMSA 1978 and applicable procurement regulations. The protest period will begin on the day following the Contract award and will end at close of business on the following fifteenth calendar day. Protests must be written and must include the name and address of the protestor and the Request for Proposal number. It must also contain a statement of grounds for protest including appropriate supporting exhibits and it must specify the ruling requested from the Procurement Officer. The protest must be delivered to the Procurement Officer.

Tawnya Rowland  
MRCOG/WCCNM  
809 Copper Ave., N.W.  
Albuquerque, NM 87102  
Phone : 505-724-3658, Fax : 505-247-1753  
E-mail : trowland@mrcog-nm.gov

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Protests received after the deadline will not be accepted.

### **General Requirements**

This procurement will be conducted in accordance with the procurement policy the New Mexico State Procurement Code and all applicable federal procurement laws and regulations. For more information on federal laws and regulations, applicants are encouraged to review Federal Transit Administration Circular 4220.1F.

This requires that all Offerors agree to be bound by the “General Requirements” contained in this RFP. Any Offeror concerns must be promptly brought to the attention of the Procurement Manager.

### **Acceptance of Conditions Governing the Procurement**

Offerors must indicate their acceptance of the “Conditions Governing the Procurement” in their Cover Letter. Offerors must also read, complete, sign and date Attachment 3 – Acknowledgement of RFP Form and Attachment 4 - Assurances and Certifications.

### **Incurring Cost**

Any cost incurred by the Offeror in preparation, transmittal, presentation of any Proposals or material submitted in response to this RFP shall be borne solely by the Offeror.

### **Prime Contractor Responsibility (WCCNM)**

Any Offeror awarded a subrecipient contract as a result of this RFP will be solely responsible for fulfillment of the subrecipient contract with WCCNM. WCCNM will make contract payments to the subrecipient.

### **Subrecipient**

Intended use of subcontractors must be clearly explained in the Proposals, and major subcontractors must be identified by name. The Subrecipient shall be solely responsible for the entire performance of the contract whether or not subcontractors are identified in the Proposal or used in the performance of the contract.

### **Amended Proposals**

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

### **Offerors' Rights to Withdraw Proposals**

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

### **Proposals Offer Firm**

Responses to this RFP will be considered firm for ninety calendar days after the due date

## **CHANCES Request-for-Proposal**

for receipt of Proposals.

### **Disclosure of Proposal Contents**

The Proposals will be kept confidential until a contract is awarded. At that time, all Proposals and documents pertaining to the Proposals will be open to the public, except for the material that is proprietary or confidential. The Procurement Manager will not disclose or make public any pages of a Proposals on which the Offeror has stamped or imprinted "proprietary" or "confidential" subject to the following requirements.

Proprietary or confidential data shall be readily separable from the Proposals in order to facilitate eventual public inspection of the non-confidential portion of the Proposals.

Confidential data is normally restricted to confidential financial information concerning the Offerors organization and 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 Procurement Officer shall examine the Offerors request and make a written determination that specifies which portions of the Proposals should be disclosed. Unless the Offeror takes legal action to prevent the disclosure, the Proposals will be so disclosed. The Proposals shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential or proprietary data.

### **No Obligation**

This procurement in no manner obligates the WCCNM to the use of any proposed professional services until a valid written contract is awarded and approved by the appropriate authorities.

### **Termination of RFP**

This RFP may be canceled at any time and any and all Proposals may be rejected in whole or in part when the WCCNM determines such action to be in the best interest of the RFP.

### **Sufficient Appropriation**

Any contract awarded as a result of this RFP process may be terminated if sufficient appropriations or authorizations do not exist. Sending written notice to the subrecipient will affect such termination. The contractor will accept the WCCNM's decision as to whether sufficient appropriations and authorizations are available as final.

### **Governing Law**

The laws of the state of New Mexico shall govern this procurement and any agreement with Offerors that may result.

### **Basis for Proposals**

Only information supplied by the WCCNM in writing through the Procurement Manager

## **CHANCES Request-for-Proposal**

or in this RFP should be used as the basis for the preparation of Offeror Proposals.

### **Contract Terms and Conditions**

The contract between the WCCNM and a subrecipient will follow the format specified by the WCCNM. However, the WCCNM reserves the right to negotiate with a successful Offeror any provisions in addition to those contained in this RFP.

Should an Offeror object to any of the WCCNM's terms and conditions, as contained herein, that Offeror must propose specific alternative language. The WCCNM may or may not accept the alternative language. General references to the Offerors terms and conditions or attempts at substantive or complete substitutions are not acceptable to the WCCNM and will result in disqualification of the Offerors Proposals.

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

### **Approval of Subrecipient Personnel**

Personnel proposed in the Subrecipient's written proposal to the WCCNM are considered material to any work performed under this RFP and subsequent contract.

During this procurement and after the contract has been signed, no changes of personnel will be made by the Subrecipient without prior written consent of the WCCNM. Replacement of any subrecipient personnel, if approved, shall be with personnel of equal ability, experience and qualifications. The subrecipient will be responsible for any expenses incurred in familiarizing the replacement personnel to insure their being productive immediately upon receiving assignments.

Approval of the replacement personnel shall not be unreasonably withheld.

The WCCNM shall retain the right to request the removal of any of the subrecipient's personnel at any time.

### **Contract Deviations**

Any additional terms and conditions, which may be the subject of negotiation, will be discussed only between the WCCNM and the selected Offerors and shall not be deemed an opportunity to amend the Offerors' Proposals.

### **Offeror Qualifications**

The WCCNM may make such investigations as necessary to determine the ability of the Offeror to adhere to the requirements specified within this RFP. The WCCNM will reject the Proposals 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.

### **Right to Waive Technical Irregularities**

The WCCNM reserves the right to waive technical irregularities. The WCCNM also reserves the right to waive mandatory requirements provided that all of the otherwise responsive Proposals failed to meet the mandatory requirements and/or doing so does not

## **CHANCES Request-for-Proposal**

otherwise materially affect the procurement. This right is at the sole discretion of the WCCNM.

### **Project Team Prohibited Activities**

MRCOG employees or MRCOG committee or board members or volunteers are prohibited from participating directly or indirectly in the preparation of this procurement when the employee knows that the individual or any member of the individual's family has a financial interest in the business seeking or obtaining a contract.

### **Notice – Civil and Criminal Penalties**

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

### **MRCOG Rights**

The WCCNM reserves the right to accept all or a portion of the Proposal of an Offeror selected for award.

### **Right to Publish**

Throughout the duration of this procurement process and contract term, potential Offerors, and subrecipients must secure from the WCCNM written approval prior to the release of any information that pertains to the potential work or activities covered by this procurement or the subsequent contract. Failure to adhere to this requirement may result in disqualification of the Offerors Proposals or termination of the contract.

### **Ownership of Proposals**

All documents submitted in response to this RFP shall become the property of the WCCNM. However, any technical or user documentation submitted with the Proposals of non-selected Offerors shall be returned after the expiration of the protest period. Offerors not selected for award of a contract may pick up the documentation at the MRCOG office within a fifteen-day period following the protest period.

### **Electronic mail address required**

A large part of the communication regarding this procurement will be conducted by electronic mail (e-mail). Offeror must have a valid e-mail address to receive this correspondence.

### **Use of Electronic Versions of this RFP**

This RFP is available by electronic means at the following website:

<http://www.wccnm.org/wccnm-board>

This RFP is being made available by electronic means. If accepted by such means, the Offeror acknowledges and accepts full responsibility to ensure that no changes are made to the RFP. In the event of conflict between a version of the RFP in the Offerors possession and the version maintained by the WCCNM, the version maintained by the WCCNM shall govern.

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**Attachment 1 – Past Performance Template**

Applicants must provide three (3) relevant and recent descriptions of projects/programs completed within the past 4 years, and/or currently in progress. Please complete the Past Performance Template for each of the three (3) required projects and copy and paste into body of your proposal under Section D. Past Performance.

<b>Name of Previous Grantor/Funding Organization:</b>
<b>Grantor Contact Name, Title, E-mail Address, and Telephone Number:</b>
<b>Project Title and Grant Number:</b>
<b>Project Period of Performance:</b>
<b>Provide Number of Participants Proposed to Complete Program and Number of Participants that Actually Completed Program:</b>
<b>Population Served:</b>
<b>Project/Program Description, Including Actual Performance Outcomes compared to Performance Goals (use additional space if needed, but not to exceed 25-page limit):</b>

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**Attachment 2 - (not counted in 25-page limit)**

**Budget and Budget Narrative Template**

<b>Budget Summary</b>				
<b>Budget Line Items</b>	<b>Year One</b>	<b>Year Two</b>	<b>Year Three</b>	<b>Total</b>
<b>Program Costs</b>				
Personnel Wages & Salaries				
Personnel Fringe Benefits				
Travel In-State				
Materials & Supplies				
Facility Rental				
Miscellaneous Costs				
Professional Services				
Indirect Costs				
<b>TOTAL</b>				

<b>PROGRAM COSTS</b>				
<b>Personnel Wages and Salaries</b>				
<b>Position Title</b>	<b>Salary X Hourly</b>	<b>% of Time on Program</b>	<b>Number Annually</b>	<b>TOTAL AMOUNT</b>
<b>Total – Personnel Wages and Salaries (Budget)</b>				<b>\$</b>

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<b>PERSONNEL FRINGE BENEFITS</b>				
<b>Type of Benefit</b>	<b>Percent</b>	<b>Times</b>	<b>Amount (In Dollars)</b>	<b>Total Cost</b>
		X		
		X		
		X		
		X		
		X		
		X		
		X		
<b>Total Cost of fringe benefits for staff (</b>				<b>\$</b>

<b>Program In-State Staff Travel Expenses</b>				
<b>In-State Travel</b>				
<b>Mileage Data</b>				
<b>No. of Miles Traveled</b>	<b>Cost Per Mile</b>	<b>No. of Weeks</b>	<b>Destination</b>	<b>Total In-State Staff Mileage Expense</b>
<b>Per Diem and Actual Cost Data</b>				
<b>No. of Days of Per Diem Used</b>	<b>Cost per Day</b>	<b>Actual Cost (In Lieu of Per Diem)</b>	<b>Destination</b>	<b>Total In-State Per Diem Expenses</b>
<b>Total In-State Mileage &amp; Per Diem Cost (Budget Item)</b>				<b>\$</b>

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<b>Program Materials, Supplies and Property Costs</b>			
Materials and Supplies – List below all materials and supplies that are estimated as necessary for performance of this program:			
<b>Item</b>	<b>Quantity</b>	<b>Unit Price</b>	<b>Total</b>
<b>TOTAL – Materials and Supplies (Budget Item)</b>			<b>\$</b>
<b>Comments:</b>			

<b>Program Facility Rental and Miscellaneous Costs</b>						
<b>Facility Rental</b>						
<b>Type of Facility</b>	<b>Location</b>	<b>No. of Staff Housed</b>	<b>No. Sq. Feet</b>	<b>Times</b>	<b>Rates/Sq. Ft/Yr.</b>	<b>Total Rent</b>
Utilities/Custodial Services (if not included in rent) Premises Expense						
<b>Total Facilities Rental Cost (Budget Item)</b>						

<b>Miscellaneous Costs</b>				
<b>Type of Service</b>	<b>Amount Per Month</b>	<b>Times</b>	<b>No. of Months</b>	<b>Total</b>
		<b>X</b>		
		<b>X</b>		
		<b>X</b>		
<b>TOTAL – Miscellaneous Cost</b>				<b>\$</b>

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<b>Program</b>		
<b>Professional Services and Indirect Costs</b>		
<b>Professional Services</b> – List below professional services costs that are estimated as necessary for performance of this program (e.g. accounting, audit, other)		
Type of Service	Justification	Cost
<b>Total - Professional Services Cost (Budget Item)</b>		

<b>Indirect Cost</b>			
List below the indirect cost that is estimated as applicable for performance of this program. If indirect costs are included, the provider must attach an approved indirect cost negotiation agreement and an explanation of how the amount was derived.			
Total Direct Costs	Times	Approved Indirect Cost Rate	Total Indirect Cost
	<b>X</b>		
	<b>X</b>		
<b>Total Indirect Cost</b>			<b>\$</b>
<b>Comments:</b>			
<b>Total Program Costs</b>			
Workforce Investment Area: Bernalillo, Sandoval, Tarrant, Valencia Counties			
<b>TOTAL BUDGET</b>			<b>\$</b>

**Please provide a narrative description of the line-by-line program costs you provided above. Add additional pages as needed.**

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### Attachment 3 (Not counted in 25-page limit)

### ACKNOWLEDGEMENT OF RFP FORM

### RFP #2023-03

In acknowledging the receipt of this Request for Proposal, the undersigned agrees that a complete solicitation has been received, beginning with the title page and table of contents, and ending with Attachment 5.

The acknowledgement of receipt should be signed and returned to the Procurement Officer. Only potential Offerors who elect to return this form completed with the indicated intention of submitting a bid for the procurement checked below at least five (5) working days prior to the bid due date, will receive copies of all potential Offeror written questions and the written responses to those questions as well as solicitation amendments, if any, that are issued.

I (We) accept the Conditions Governing the Procurement.

I (We) acknowledge receipt of any and all amendments to this RFP.

Firm/Individual				
Represented By				Title
Phone No.				Fax No.
Email Address				
Street Address				
City/State/Zip				
Tax/Legal Status	<input type="checkbox"/> Corporation	<input type="checkbox"/> For Profit	<input type="checkbox"/> Not for Profit	<input type="checkbox"/> Government
Federal ID Number				
State ID Number				
Signature				
Date				

\* Formal signature required - e-mail transmittal with scanned signature is acceptable.

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

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

Email to: Tawnya Rowland  
MRCOG/WCCNM  
809 Copper Ave. N.W., Albuquerque, NM 87102  
Phone : 505-247-1750 ; Fax : 505-247-1753  
Email: [trowland@mrcog-nm.gov](mailto:trowland@mrcog-nm.gov)

**Attachment 4 (not counted in 25-page limit)**

**Assurances and Certifications**

The Workforce Connection of Central NM (WCCNM) will not award a grant or agreement where the subrecipient has failed to accept the ASSURANCES AND CERTIFICATIONS contained in this section. In performing its responsibilities under the Agreement, the Subrecipient hereby certifies and assures that it will fully comply with the following:

**Debarment and Suspension Certification (20 CFR Part 98)**

**Certification Regarding Lobbying (29 CFR Part 93)**

**Drug Free Workplace Certification (29 CFR Part 98)**

**Nondiscrimination & Equal Opportunity Assurance (29 CFR Part 37)**

**Financial Capability Certification**

By signing the face sheet of this Agreement, the Subrecipient is providing the above assurances and certifications as detailed below:

**A. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS - PRIMARY COVERED TRANSACTIONS.**

The prospective primary Subrecipient certifies to the best of its knowledge and belief, that the Subrecipient and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three-year period preceding this proposal been convicted or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (A)(2) of this certification; and
4. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

Where the prospective primary Subrecipient is unable to certify to any of the statements in this certification, such prospective Subrecipient shall attach an explanation to this proposal.

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### **B. CERTIFICATION REGARDING LOBBYING - Certification for Contracts, Grants, Loans, and Cooperative Agreements**

By accepting this Agreement, the Subrecipient hereby certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.
2. If any funds other than 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 in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit **Standard Form - LLL, "Disclosure Form to Report Lobbying,"** in accordance with its instructions.
3. The signer shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into.

### **C. CERTIFICATION REGARDING DRUG FREE WORKPLACE REQUIREMENTS.**

The Drug-Free Workplace Certification is required pursuant to Government Code Sections 8350 et seq., the Drug-Free Workplace Act of 1990. The Drug-Free Workplace Act of 1990 requires that every person or organization awarded a contract for the procurement of any property or services from any State agency must certify that it will provide a drug-free workplace by doing certain specified acts. In addition, the Act provides that each contract awarded by a State agency may be subject to suspension of payments or termination of the contract, additionally the LWDB may be subject to suspension of payments or termination of the contract, and the LWDB may be subject to debarment from future contracting, if the state agency determines that specified acts have occurred.

1. The Subrecipient certifies that it will or will continue to provide a drug-free workplace by:
  - a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Subrecipient's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

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- b. Establishing an ongoing drug-free awareness program to inform employees about –
  - i. The dangers of drug abuse in the workplace;
  - ii. The Subrecipient's policy of maintaining a drug-free workplace;
  - iii. Any available drug counseling, rehabilitation, and employee assistance programs; and
  - iv. The penalties that may be imposed upon employees for drug abuse violation occurring in the workplace;
- c. Making it a requirement that each employee to be engaged in the performance of the Agreement be given a copy of the statement required by paragraph (1) (A);
- d. Notifying the employee in the statement required in paragraph (1) (A) that, as a condition of employment under the grant, the employee will
  - i. Abide by the terms of the statement; and
  - ii. Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
- e. Notifying the grantor agency in writing, within ten (10) calendar days after receiving notice under subparagraph (D) (2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose activity the convicted employee was working, unless the agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant.
- f. Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (D) (2) with respect to any employee who is so convicted –
  - i. Taking appropriate personnel action against such an employee, up to and including termination consistent with the requirements of the Rehabilitation Act of 1973, as amended, or;
  - ii. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency;
- g. Making a good faith effort to continue to maintain a drug-free workplace through implementation of this entire certification.

## 2. NONDISCRIMINATION & EQUAL OPPORTUNITY ASSURANCE:

As a condition of the award of financial assistance from the USDOL under Title I of WIOA, the Subrecipient assures that it will comply with the nondiscrimination and equal opportunity provisions of the following laws:

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- a. Workforce Innovation and Opportunity Act prohibits discrimination against all individuals in the United States on the basis of race, color, religion, sex, national origin, age, disability, political affiliation, or belief, and against beneficiaries on the basis of either citizenship/status as a lawfully admitted immigrant authorized to work in the United States or participation in an WIOA Title I - financially assisted program or activity;
- b. Title VI of the Civil Rights of 1964, as amended, which prohibits discrimination on the basis of race, color and national origin;
- c. Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of age; and individuals with disabilities.
- d. The Age Discrimination Act of 1975, as amended, which prohibits discrimination on the basis of age; and
- e. Title IX of the Education Amendments of 1972, as amended, which prohibits the discrimination on the basis of sex in educational programs.

The Subrecipient also assures that it will comply with 29 CFR Part 37 and all other regulations implementing the laws listed above. This assurance applies to the Subrecipient's operation of the WIOA Title I - financially assisted program or activity, and to all agreements the Subrecipient makes to carry out the WIOA Title I - financially assisted program or activity. The Subrecipient understands that the United States has the right to seek judicial enforcement of this assurance.

### 3. FINANCIAL CAPABILITY CERTIFICATION

- a. The Subrecipient certifies the organization has a financial management system capable of tracking and accounting for WIOA funds received and disbursed.
- b. The Subrecipient certifies the organization has the fiscal capability of providing services pending payment or reimbursement.
- c. The Subrecipient certifies the organization has resolved all questioned/disallowed costs from prior monitoring or audit reviews.
- d. The Subrecipient certifies all prior year audits have been resolved.

By signing the Agreement and on the line below, the Subrecipient's signatory officials are providing the certifications and assurances referenced therein as detailed in the attached documents.

Contractor

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

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

## Attachment 5 – Sample Contract

### PROFESSIONAL SERVICES AGREEMENT (SAMPLE)

**This Agreement** (the "Agreement") made and entered into on the date last entered below, by and between the **Workforce Connection of Central New Mexico** (hereafter “WCCNM”) and (XYZ Company) (hereafter “Contractor”).

In consideration of the premises and mutual obligations herein, the parties hereto do mutually agree as follows:

#### **Section 1. Miscellaneous Representations.**

**A.** The Contractor is licensed or otherwise authorized to conduct the business activities described in this Agreement by all governmental agencies having jurisdiction over Contractor, and Contractor has the experience and expertise to perform the work or services required in this Agreement; and

**B.** WCCNM has the right and power to enter into this Agreement.

#### **Section 2. Scope of Services.**

The Contractor shall personally perform the following services (hereinafter referred to as the "Services") in a satisfactory and proper manner, and shall provide all necessary personnel, material, and facilities and perform all matters necessary or incidental to the Services as determined by WCCNM:

**A.** Contractor shall provide professional services to the WCCNM as described in the Scope of Work attached hereto as **Exhibit A**.

**B. Staffing.** WCCNM designates its Chair, as Project Manager. The Contractor shall keep the Project Manager fully informed on all aspects of its performance of the Services. The Project Manager will review and approve Contractor’s invoices prior to payment. In the absence of the Project Manager, the WCCNM’s Executive Board or its designee shall serve as Project Manager. Contractor designates XYZ Company as Contractor’s Project Manager. Contractor’s Project Manager shall transmit all work products and invoices to WCCNM’s Project Manager and shall attend meetings as requested by WCCNM.

#### **Section 3. Compensation and Method of Payment.**

**A. Compensation.** For performing the Services specified in Section 2 hereof, WCCNM agrees to pay Contractor a total of **Amount (\$000,000)** for the PYXX year. Contractor shall not expend any amount in a budget expenditure line item or category to pay any other budget line item or category without the prior written consent of the WCCNM Project Manager in each instance. WCCNM shall have the right to decrease or increase the amount provided during the term of this Agreement based on utilization of funds, the Contractor’s performance and the availability of funding.

**B. Expenses.** The amounts to be paid in paragraph A. of this section shall include any applicable gross receipts taxes and shall constitute full and complete compensation for Contractor's Services under this Agreement, including all expenditures made and expenses incurred by Contractor in performing the Services.

**C. Method of Payment.** Amounts due Contractor shall be paid to Contractor upon receipt by WCCNM of properly documented invoices for payment as determined by the budgetary and fiscal guidelines of WCCNM and upon receipt of payment by WCCNM from the federal Workforce Investment Act administered by the Department of Workforce Solutions.

**D. Verification of Invoices.** WCCNM shall be entitled to verify the personnel time charges and other costs charged to WCCNM pursuant to the provisions of Section 9 of this Agreement.

#### **Section 4. Independent Contractor.**

Neither Contractor nor its employees are considered to be employees of WCCNM for any purpose whatsoever. Contractor is an independent contractor at all times in the performance of the Services described in Section 2. Contractor further agrees that neither it nor its employees are entitled to any benefits from WCCNM under the provisions of the Workers' Compensation Act of the State of New Mexico, or to any of the benefits granted to employees of WCCNM.

#### **Section 5. Personnel.**

**A.** Contractor represents that it has, or will secure at its own expense, all personnel required in performing all of the Services required under this Agreement. Such personnel shall not be employees of nor have any contractual relationship with WCCNM.

**B.** All the Services required hereunder will be performed by Contractor or under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state and local law to perform such Services.

**C.** None of the work or the Services covered by this Agreement shall be subcontracted without the prior written approval of WCCNM. Any work or Services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this Agreement.

## Section 6. Insurance.

**A. General Requirements.** The Contractor shall, at its own cost and expense, procure and maintain in full force and effect during the term of this Agreement, such insurance as is required in this Agreement. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico, and policies of insurance shall be on forms properly filed and approved by the Superintendent of Insurance, State of New Mexico. When requested by the WCCNM, Contractor shall provide to the WCCNM copies of any or all policies of insurance for the insurance coverage required in this Section. Policies of insurance shall be procured for all required coverage limits of such policies of insurance and shall not be reduced or replaced in part or in whole by self-insurance, including self-insurance retention amounts, except as provided hereinafter.

If the Contractor sublets, or assigns or otherwise transfers any interest in any part of this Agreement, the Contractor shall include any or all transferees in the Contractor's insurance policies or require such transferees to secure insurance to cover all hazards enumerated in this Agreement that are not covered by the Contractor's insurance policies.

The Contractor shall not violate the terms or prohibitions of insurance policies required to be furnished by the Contractor. The Contractor shall promptly notify the WCCNM of any claim or loss exceeding the amount of the deductible under such insurance policies, and certify that proper notice has been given the appropriate insurance carrier.

The Contractor shall furnish the WCCNM with certificates of insurance and shall deliver said certificates to the Project Manager at the WCCNM office. All insurance certificates shall provide that thirty (30) days written notice be given to the Project Manager before a policy is canceled, materially changed, or not renewed. Various types of required insurance may be written in one or more policies. A certificate or policy which states that the failure to give WCCNM notice imposes no liability or obligation on the insurer shall not be in compliance with this Section. For instance, certificates or policies stating that the insurance company shall "endeavor to notify" and that "failure to give such notice imposes no obligation" on the insurance company are unacceptable to WCCNM. *Further clarification of the required Certificates of Insurance shall be provided upon contract award.* Documents establishing the continuation or replacement of insurance shall be received by the WCCNM no less than 30 days prior to the expiration of the insurance coverage.

**B. Approval of Insurance.** Even though a "notice to proceed" may have been given, neither the Contractor nor any contractors, assignees or other transferees of the Contractor shall begin any operations pursuant to this Agreement until the required insurance has been obtained and proper certificates of insurance delivered to the Project Manager. Neither approval nor failure to disapprove insurance certificates of insurance by the WCCNM shall relieve the Contractor or any transferees of full responsibility to maintain the required insurance in full force and effect.

**C. Commercial General Liability Including Automobile.** The Contractor shall procure and maintain policies of insurance for commercial general liability insurance and vehicle liability insurance for all vehicles used in its operation, as further described below. All such policies of insurance shall have liability limits in amounts not less than Two Million Dollars

(\$2,000,000) single limit liability for bodily injury, including death, and property damage in any one occurrence. Said policies of insurance shall include coverage for premises (if applicable), operations, the Contractor's contractual liability to the WCCNM hereunder, and claims arising out of or from the Contractor's performance of this Agreement. Contractual liability coverage shall specifically insure the indemnification provision of this Agreement. The insurance policies shall contain "products" and "completed operations" coverage (if applicable) and shall not be written on a "claims made" form. The insurance policies shall include coverage for all use of, activities on, or operations with respect to WCCNM premises, coverage for the use of all owned, non-owned, hired automobiles, vehicles, and other equipment, both on and off work. WCCNM reserves the right to review and modify the limits stated above at one-year intervals to give effect to the changing risk management environment and inflationary trends.

**D. Increased Limits.** If, during the term of this contract, the legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act (Sections 41-4-1 through 41-4-27, NMSA 1978) to an amount greater than that required for commercial general liability including auto above, the WCCNM may require Contractor to increase the limits of any insurance required herein to an amount equal to such increased Tort Claim Act maximum limits of liability.

**E. Additional Insured.** The WCCNM shall be named as an additional insured on each insurance policy required for commercial general liability including auto above.

**F. Workers' Compensation Insurance.** The Contractor shall comply with the provisions of the New Mexico Workers' Compensation Act, the Subsequent Injury Act, and the New Mexico Occupational Disease Disablement Law. The Contractor shall procure and maintain during the term of this Agreement complete Workers' and Employer's Liability Insurance in accordance with New Mexico laws and regulations. Such insurance shall include coverage permitted under Section 52-1-10, NMSA 1978, for safety devices. With respect to Workers' Compensation Insurance, if the Contractor elects to be self-insured, the Contractor shall comply with the applicable requirements of law. If any portion of the work is to be sublet, the Contractor shall require the subtenants similarly to provide such coverage (or qualify as a self-insured) for all the latter's employees to be engaged in such work. The Contractor hereby covenants and agrees that the WCCNM, its officers, or employees will not be liable or responsible for any claims or actions occasioned by the Contractor's failure to comply with the provisions of this subparagraph and that the indemnification provision of this Agreement shall apply to this paragraph. It is expressly agreed that the employees of Contractor are not WCCNM employees for any purpose.

**G. Self-Insurance Retention/Deductibles.** In the event any of the insurance policies required in this Section 6 (except as allowed by New Mexico law regarding Workers' Compensation) contain a self-insurance retention provision (whether or not in the form of a deductible), for each such amount, the Contractor shall post a bond or an irrevocable letter of credit made exclusively for the benefit of the WCCNM and held by a bank authorized to do business in New Mexico which is acceptable to WCCNM.

**H. Contents Insurance.** Contractor shall be solely responsible for obtaining insurance policies that provide coverage for losses of Contractor owned property. Such property insurance

shall include adequate IT insurance coverage to protect the WCCNM and the State Agency management data base from being hacked and to preserve the integrity of the data. WCCNM shall not be required to provide such insurance coverage or be responsible for payment of Contractor's cost for such insurance.

### **Section 7. Reports and Information and Ownership of and Use of Documents.**

**A. Reports and Information.** During the performance of this Agreement and upon the completion or earlier termination of the services required under this Agreement, Contractor shall furnish to WCCNM such statements, records, reports, data and information as requested by WCCNM pertaining to matters covered by this Agreement.

**B. Release of Information.** Contractor shall not release any data, reports or other information of any nature whatsoever to any entity or person other than to WCCNM unless specifically authorized to do so in writing in advance by WCCNM.

**C. Ownership and Use of Documents.** Contractor's work product produced pursuant to this Agreement shall become the sole property of the WCCNM. Such work product shall include but not be limited to reports, background data, drawings, calculations, technical data, data related specifically to this Agreement, specifications, manuals and/or related documents.

**D. Computer Program Licensing Agreements.** WCCNM shall have the option to require (at WCCNM's cost) that the Contractor provide any and all computer licensing agreements necessary to permit WCCNM to use computer programs and data related to the services performed by Contractor under this Agreement.

**E. Future Use.** WCCNM's use of computer programs and computer stored data developed under the requirements of this Agreement for purposes other than the services required of Contractor as specified in this Agreement shall be at WCCNM's risk, and Contractor shall be held harmless for such use. Contractor does not represent that the computer programs and computer data developed under this Agreement are suitable for reuse under different conditions. This paragraph shall not apply to the performance of this Agreement nor in instances where the Contractor is retained to perform subsequent services using the work product developed pursuant to this Agreement.

**F. Publication, Reproduction and Use of Materials.** No materials or documents produced in whole or in part under this Agreement shall be subject to copyright in the United States or in any other country. The WCCNM shall have the unrestricted authority and right to copyright, publish, disclose, distribute and otherwise use, in whole or in part, any reports, data, or other materials (hereafter "Materials") prepared under this Agreement. Contractor may use materials created under this Agreement as reference and research materials and as representations of the services performed under this agreement only after the materials are completed and accepted by WCCNM, provided that such materials shall not include the WCCNM's confidential or proprietary information, to the extent the WCCNM provides Contractor with notice that such materials are considered confidential or proprietary by the WCCNM. The WCCNM shall provide

professional credit for Contractor in promotional materials for services rendered pursuant to this Agreement, if so requested in writing by Contractor.

## **Section 8. Establishment and Maintenance of Records.**

Contractor shall maintain records in accordance with applicable law and requirements prescribed by WCCNM with respect to all matters covered by this Agreement. Except as otherwise authorized by WCCNM, such records shall be maintained for a period of five (5) years after receipt of final payment under this Agreement or as required by law.

**Section 9. Audits and Inspections.** At any time during normal business hours and as often as WCCNM may deem necessary, there shall be made available to WCCNM for examination all of Contractor's records with respect to all matters covered by this Agreement. Contractor shall permit WCCNM to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement. Contractor shall maintain such records at its office and provide them to the WCCNM at the WCCNM offices in Albuquerque, New Mexico, within fifteen days after receiving a written request for such records by the WCCNM. In the event Contractor does not wish to make its books and records available at the WCCNM offices, then Contractor shall pay reasonable travel and accommodation expenses for the WCCNM staff or its duly authorized representatives to travel to Contractor's offices to conduct the audit.

**Section 10. Changes.** WCCNM may, from time to time, request changes in the Services to be performed hereunder. Such changes, including any increase or decrease in the amount of Contractor's compensation, that are mutually agreed upon by and between WCCNM and Contractor shall be incorporated in written amendments to this Agreement.

## **Section 11. Suspension**

**A. Suspension of Work.** WCCNM shall be entitled at any time to suspend, delay, or interrupt all or any part of the Services required of Contractor by this Agreement. Such order shall be in writing and identified as a "Suspension of Work Order". Contractor shall incur no further costs allocable to the Services during the period of suspension, delay, or interruption. Contractor shall be reimbursed for all services performed up to the time of its receipt of the Suspension of Work Order, to the extent such services are accepted pursuant to Section 3 of this Agreement.

**B. Resumption of Work.** In the event WCCNM cancels a Suspension of Work Order, Contractor shall resume performing the Services in a timely manner and shall be entitled to an equitable adjustment in compensation but only if WCCNM determines that the Suspension of Work Order resulted in additional costs to Contractor in its performance of the Services and Contractor asserts a claim for such additional costs within thirty days after the cancellation of the Suspension of Work Order.

## Section 12. Termination.

**A. Unless this Agreement is otherwise terminated, the term of this Agreement is for one year with the availability of two one-year extensions.**

**B Termination by WCCNM for Cause, Ten Days' Notice.** If through any cause Contractor shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if Contractor shall violate any of the covenants, agreements or stipulations of this Agreement, WCCNM shall thereupon have the right to terminate this Agreement by giving written notice to Contractor of such termination and specifying the effective date thereof at least ten (10) days before the effective date of such termination.

Notwithstanding the above, Contractor shall not be relieved of liability to WCCNM for damages sustained by WCCNM by virtue of any breach of this Agreement by Contractor, and WCCNM may withhold any payment to Contractor for the purposes of set-off until such time as the exact amount of damages due WCCNM from Contractor is determined.

**C Termination by WCCNM: 20 Days' Notice.** WCCNM may terminate this Agreement at any time by giving at least twenty (20) days' notice in writing to Contractor. The twenty (20) days shall run from the day on which Contractor received such notice of termination. In the event this Agreement is terminated by WCCNM as provided herein, the Contractor shall be paid an amount that bears the same ratio to the total compensation as the Services actually performed bear to the total Services of Contractor covered by this Agreement, less payments of compensation previously made. If this Agreement is terminated due to the fault of Contractor, Section 12B hereof, relative to termination, shall apply.

**D Work Product.** In the event of termination under the provisions of Section 12, all finished or unfinished documents, data, maps, studies, surveys, drawings, models, photographs and reports prepared by Contractor under this Agreement shall, at the option of the WCCNM, become the property of the WCCNM, and Contractor shall deliver such work product to WCCNM within thirty (30) days of receipt of the request of the WCCNM.

**E Termination by Contractor: 30-Days' Notice.** The Contractor shall be entitled to terminate this Agreement in the event of a default by the WCCNM in the performance of any covenant or agreement herein required to be performed by the WCCNM and the failure of the WCCNM to remedy such default for a period of thirty (30) days after receipt from the Contractor of written notice to remedy the same; provided, however, that no notice of termination, as above provided, shall be of any force or effect if the WCCNM shall have remedied the default prior to receipt of the Contractor's notice of termination.

**F Non-Funding.** The performance of this Agreement is contingent upon the State Office of Workforce Training making the appropriations and authorizations necessary for the performance of this Agreement. If sufficient appropriations and authorizations are not made, this Agreement may be terminated by WCCNM by giving notice to Contractor. Such event shall not constitute an event default by WCCNM. All payment obligations of the WCCNM shall cease upon the date of termination. The WCCNM's decision as to whether sufficient appropriations are

available or sufficient shall be binding on Contractor and shall be final. The date of termination issued pursuant to this paragraph shall be the date a notice of termination is received by Contractor.

## Section 13 General Conditions.

### A. Contract Interpretation.

1) **Separability.** In the event any covenant, condition or provision herein is held to be invalid, illegal, or unenforceable by any court of competent jurisdiction, such covenant, condition or provision shall be deemed amended to conform to applicable laws so as to be valid or enforceable or, if it cannot be so amended without materially altering the intention of the parties, it shall be stricken. If stricken, all other covenants, conditions and provisions of this Agreement shall remain in full force and effect provided that the striking of such covenants, conditions or provisions does not materially prejudice either the WCCNM or the Contractor in its respective rights and obligations contained in the valid covenants, conditions, or provisions of this Agreement.

2) **Waiver.** No provision of this Agreement shall be deemed to have been waived by either party unless such waiver is in writing, signed by the party making the waiver and addressed to the other party, nor shall any custom or practice which may evolve between the parties in the administration of the terms of this Agreement be construed to waive or lessen the right of either party to insist upon the performance of the other party in strict accordance with the terms of this Agreement. Further, the waiver by any party of a breach by the other party or any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition thereof.

3) **Gender, Singular/Plural.** Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

4) **Captions and Section Headings.** The captions, section headings, and table of contents contained in this Agreement are for convenience of reference only, and in no way limit, define, or enlarge the terms, scope, and conditions of this Agreement.

5) **Entire Agreement.** This Agreement represents the entire contract between the parties and, except as otherwise provided herein, may not be amended, changed, modified, or altered without the written consent of the parties hereto. This Agreement incorporates all of the conditions, agreements, and understandings between the parties concerning the subject matter of this contract, and all such conditions, understandings and agreements have been merged into this written Agreement. No prior condition, agreement, or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this written Agreement.

6) **Relationship of Contract Documents.** All documents attached to this Agreement or incorporated into this Agreement are complementary, and any requirement of one contract document shall be as binding as if required by all.

7) **Exhibits Certificates, Documents Incorporated and Attachments.** **Incorporation by Reference.** All certificates, documents, exhibits, attachments, riders, and addenda referred to in this Agreement are hereby incorporated into this Agreement by reference and made a part hereof as though set forth in full in this Agreement to the extent they are consistent with its conditions and terms.

8) **Applicable Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New Mexico, and the laws, rules and regulations of WCCNM.

9) **Successors.** All covenants, stipulations and agreements in this Agreement shall extend to and bind the legal representatives, successors, and assigns of the respective parties hereto.

10) **Governmental Rights and Powers.** Nothing in this Agreement shall be construed or interpreted as limiting, relinquishing, or waiving any rights of ownership enjoyed by WCCNM, or waiving or limiting the WCCNM's control over the management, operations, or maintenance of its property, except as specifically provided in this Agreement, or impairing, exercising or defining governmental rights and the police powers of the WCCNM.

## **B. Discrimination Prohibited.**

1) **General.** In the use and occupation of the WCCNM owned or leased premises, the Contractor shall not discriminate against any person or class of persons by reason of race, color, religion, sex, national origin or ancestry, age, or physical or mental handicap.

2) **Civil/Human Rights Laws.** In the operation and use of the WCCNM owned or leased premises, the Contractor shall not on the grounds of race, color, religion, sex, national origin or ancestry, age, or physical or mental handicap, discriminate or permit discrimination against any person or group of persons in any manner prohibited by Title 49 CFR Parts 21 and 23 of the Civil Rights Act of 1964, as amended, the Equal Pay Act of 1963, the Rehabilitation Act of 1973, and the New Mexico Human Rights Act, NMSA 1978 § 28-1-1 through 28-1-15 (2005) (NMHRA). Without limiting the generality of the foregoing, the Contractor agrees to not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin or ancestry, age, or physical or mental handicap. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, national origin or ancestry, age, or physical or mental handicap. Such action shall include, but not be limited to: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; selection for training; and disciplinary actions and grievances. The Contractor agrees to post in conspicuous places available to employees, and applicants for employment, notice to be provided setting forth the provisions of this non-discrimination clause.

3) The Contractor, for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration of this Agreement, does hereby covenant and

agree that: (1) no person on the grounds of race, color, religion, sex, national origin or ancestry, age, or physical or mental handicap shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, religion, sex, national origin or ancestry, age, or physical or mental handicap shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Contractor shall use the WCCNM facilities (when applicable) in compliance with all other requirements imposed by, or pursuant to, the NMHRA, and 49 CFR Parts 21 and 23, and as said regulations may be amended.

4) Contractor's violation of this Section shall be deemed a material breach of this Agreement.

5) Contractor shall include the provisions of this Section 13B in every subcontract, including procurement of materials and leases of equipment (unless exempt by the above referenced regulations or orders of instructions issued pursuant thereto), in the performance of this Agreement.

### C. **Indemnification Agreement.**

1) **General Indemnification.** The Contractor agrees to defend, indemnify and hold the WCCNM and its officers and employees harmless from and against all suits, actions, proceedings, claims, demands, fines, liabilities, settlements, costs, damages, and expenses (including but not limited to Contractor's fees, attorney's fees court costs and litigation expenses) of whatever kind or nature, known or unknown, contingent or otherwise, brought against the WCCNM because of any injury, including death, at any time resulting from bodily injury, damages for care and loss of services, or damages received or sustained by any person, persons, or property from any source that may arise out of the Contractor's use or occupancy of any portion of the WCCNM, or on account of any matter arising from the services performed by Contractor under this Agreement, if caused by an act or omission of the Contractor, its officers, employees, servants or agents.

2) **Insurance.** The indemnity required herein shall not be limited by the specification of insurance coverages in this Agreement.

3) **Survives the Term.** This indemnification agreement shall survive the term of this Agreement.

4) **Scope of Indemnification.** With respect to any claims, actions, suits, damages or judgments caused by or resulting from acts, omissions, or operations of Contractor, its agents, servants, or employees, Contractor shall: (a) investigate or cause the investigation of such claims, actions, or suits, (b) negotiate or cause to be negotiated all claims made, even when Contractor considers such claims to be groundless, false or fraudulent in the name of the WCCNM and on behalf of the WCCNM, (c) and satisfy judgments finally establishing the liability of the WCCNM in all actions defendant by Contractor pursuant to this section, and (d) pay, or cause to be paid: (1) all costs assessed against WCCNM in any legal proceeding defended or caused to be defended by Contractor as required above, (2) any interest accruing up to the date of payment by

Contractor, (3) all premiums charged upon appeal bonds required in such proceedings, and (4) all expenses incurred by WCCNM for investigation, negotiation, and defense, including but not limited to expert witnesses' and attorneys' fees incurred, should Contractor fail to provide the defense and indemnification required herein.

5) **Miscellaneous.** WCCNM shall, promptly upon receipt, give Contractor every demand, notice, summons, or other process received in any claim or legal proceeding for which Contractor is required to indemnify and defend WCCNM. In the event WCCNM fails to give Contractor notice of any such demand, notice, summons, or other process received by WCCNM, and such failure to give said notice shall result in prejudice to Contractor in its defense of any action or legal proceeding in which Contractor is required to indemnify and defend the WCCNM, then such failure or delay shall release Contractor of its liability as set forth in this Indemnification Agreement, but only insofar as the particular claim or legal proceeding is concerned, and only to the extent of such prejudice. Nothing in this subsection shall be deemed a change or modification in any manner whatsoever of the method or conditions of preserving, asserting, or enforcing any claim or legal liability against the WCCNM. This section shall not be construed as a waiver of the WCCNM's immunity. The provisions of this section shall not be construed to prohibit Contractor from seeking contribution or indemnity from any third party which may have caused or contributed to the event for which Contractor indemnifies the WCCNM.

D. **Assignment and Subletting.** The Contractor shall not assign or otherwise transfer, in whole or in part, any of the rights granted in this Agreement without the prior written approval of the WCCNM. The WCCNM shall not be required to approve any assignment or other transfer of this Agreement that would result in the Services required in this Agreement being performed by any other person or entity than the Contractor.

E. **Ethics.**

1) **Conflict of Interest.** Upon execution of this Agreement, or within five (5) days after the acquisition of any interest described in this section during the term of this Agreement, the Contractor shall disclose in writing to the WCCNM whether any member of the WCCNM Board of Directors, officer, or employee of the WCCNM has or hereafter acquires any direct, indirect, legal, or beneficial interest in the Contractor or in any contract, lease, or agreement between the WCCNM and the Contractor, or in any franchise, concession, right, or privilege of any nature granted by the WCCNM to the Contractor in this Agreement or otherwise.

2) **Fair Dealing.** The Contractor covenants and warrants that the only person or firm interested in this Agreement as principal (or principals) are named in this Agreement and that no other person or firm has any interest in this Agreement, and this Agreement is entered into by the Contractor without collusion on the part of the Contractor with any person or firm, without fraud and in good faith. The Contractor also covenants and warrants that no gratuities, in the form of entertainment, gifts or otherwise, were, or during the term of this Agreement, shall be, offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the WCCNM with a view toward securing this Agreement or for securing more favorable treatment with respect to making any determinations with respect to performing this Agreement. The state Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978,



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**H. No Partnership or Agency.** Nothing contained in this Agreement is intended or shall be construed in any respect to create or establish any relationship other than that of owner and contractor, and nothing herein shall be construed to establish any partnership, joint venture or association or to make Contractor the general representative or agent of WCCNM for any purpose whatsoever.

**I. Force Majeure.** Except as expressly provided in this Agreement, neither WCCNM nor Contractor shall be deemed to be in default hereunder if either party is prevented from performing any of the obligations, other than payment of rentals, fees and charges hereunder, by reason of strikes, boycotts, labor disputes, embargoes, shortages of energy or materials, acts of the public enemy, weather conditions and the results of acts of nature, riots, rebellion, sabotage, or any other similar circumstances for which it is not responsible or which are not within its control.

**J. Forum Selection.** Any cause of action, claim, suit, demand, or other case or controversy arising from or related to this Agreement shall only be brought in a state district court located in Bernalillo County, New Mexico or in a federal district court located in New Mexico. The parties irrevocably admit themselves to, and consent to, the jurisdiction of either or both of said courts. The provisions of this section shall survive the termination of this Agreement.

**K. Compliance with Law.** The Contractor shall comply with all applicable laws, ordinances, regulations and procedures of federal, state, and local governments, including, but not limited to WCCNM rules. The Contractor shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101) and federal regulations promulgated there under (28 C.F.R. Parts 35, 36, and 37).

**L. Patents and Trademarks.** Contractor represents that it is the owner or fully authorized to use any and all services, processes, machines, articles, marks, names or slogans used by it in its performance under this Agreement. Contractor agrees to defend, indemnify and hold harmless the WCCNM, pursuant to the Indemnification Agreement above, from any loss, liability, expense, suit, or claim for damages in connection with any actual or alleged infringement of any patent, trademark, copyright, trade secret or proprietary right, or arising from any alleged or actual unfair competition or other similar claim arising out the performance of this Agreement by Contractor. In the event a claim is made that the use of materials is such an infringement, the Contractor shall either procure for WCCNM the right to continue using such materials, make modifications resulting in the elimination of the infringement (and continue to meet the requirements of this Agreement) or replace such material with non-infringing materials of a like functionality that meet the requirements of this Agreement.

**M. Savings.** WCCNM and Contractor acknowledge and agree that they have thoroughly read this Agreement, including all exhibits thereto, and have sought and received whatever competent advice and counsel was necessary for them to form a full and complete understanding of all rights and obligations herein. WCCNM and Contractor further acknowledge that the Agreement is the result of negotiations between them and that this

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Agreement shall not be construed against either party by reason of that party’s preparation of all or part of this Agreement.

**N. Administration of Agreement.** The Chair of the WCCNM, or his authorized representative, shall administer this Agreement for the WCCNM.

**O. Approval of Agreement.** This Agreement shall not become effective or binding until signed by the WCCNM's Chair and appropriate state agency, if applicable.

**IN WITNESS WHEREOF**, the WCCNM has caused this Agreement to be executed by its Chair and the Contractor has caused the same to be executed by its appropriate and authorized officer.

**WCCNM**

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

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

**Contractor:**

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