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PROFESSIONAL SERVICES AGREEMENT With Individual Task Authorization

THIS PROFESSIONAL SERVICES AGREEMENT (this “**Agreement**”) effective the ____ day of _____ (“**Effective Date**”) is between _____, a _____ (the “**Contractor**”) and **PUBLIC SERVICE COMPANY OF NEW MEXICO**, a New Mexico corporation (“**PNM**”). Contractor and PNM may be referred to collectively as the “**Parties**” or individually as a “**Party**.”

RECITALS

WHEREAS, Contractor has represented to PNM that it is specifically qualified to perform services of the nature contemplated by this Agreement; and

WHEREAS, PNM desires to engage the services (“**Services**”) of Contractor as may be authorized from time to time and Contractor desires to perform such services for PNM.

NOW THEREFORE, in consideration of the mutual terms, covenants and conditions set forth in this Agreement, Contractor and PNM agree as follows:

1. **Services.** Contractor agrees to perform the Services as may be assigned from time to time to Contractor through the issuance of an individual task authorization (“**ITA**”) attached hereto as **Exhibit A (Form of ITA)** in a timely manner and in accordance with the terms and conditions of this Agreement. Contractor shall furnish, at its own expense, all labor, transportation, materials, consumables, qualified supervisory personnel, to properly perform the Services, except as otherwise provided in each ITA.

2. **Compensation.**

*2.1 PNM shall pay Contractor for the Services performed under this Agreement (“**Compensation**”) in accordance with the terms of each ITA, plus applicable New Mexico gross receipts taxes which are payable by Contractor to the relevant taxing authority and reimbursable by PNM pursuant to **Section 11 “Taxes.”***

3. **Changes to Scope of Services.** PNM or Contractor may propose changes to the ITA to the other Party, but such proposed changes will only become effective upon obtaining the written approval of the other Party by change order (“**Change Order**”).

4. **Term and Period of Performance.**

4.1 This Agreement shall remain in full force and effect as measured from the Effective Date to _____, unless earlier terminated as provided herein.

4.2 Contractor shall commence the Services required by any ITA on or before the commencement date set forth in the applicable ITA and shall diligently prosecute the Services to achieve the completion date set forth in such ITA (“**Period of Performance**”). Contractor acknowledges and agrees that time is of the essence.

5. **Termination.**

5.1 **Termination by PNM for Cause.** In the event of a default by Contractor and if PNM elects to terminate this Agreement and/or any ITA issued hereunder, then PNM shall give written notice of termination to Contractor specifying the date of termination. PNM may, at its option, (a) take possession of the work done, including any documents, plans, drawings, specifications, manuals, reports, studies or other work product (“**Work Product**”) created by Contractor to maintain the orderly progress of, and to finish the Services; or (b) finish the Services by whatever other reasonable method determined by PNM.

5.1.1 If the unpaid balance of the Compensation under any ITA for Services performed prior to the date of termination exceeds the cost of finishing the Services and any other extra costs or Damages incurred by PNM in completing the Services, or otherwise as a result of Contractor’s default, such excess shall be paid to Contractor. If such costs exceed the unpaid balance of Compensation for Services performed prior to the date

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of termination, Contractor shall pay the difference to PNM. These obligations for payment survive termination.

5.1.2 Termination of this Agreement and/or any ITA issued hereunder in accordance with this **Section 5.1** shall not relieve Contractor of any responsibilities for Services performed.

5.1.3 If PNM terminates this Agreement and/or any ITA issued hereunder for default under this **Section 5.1** and it is later determined that Contractor was not in default, then such termination shall be deemed a termination for convenience pursuant to **Section 5.2 “Termination by PNM for Convenience.”**

5.2 Termination by PNM for Convenience. PNM may, upon advance written notice to Contractor, suspend, abandon, or terminate this Agreement and/or any ITA issued hereunder, or any portion of the Services, for any reason whatsoever including for the convenience of PNM without regard to whether or not Contractor has defaulted or failed to comply with the provisions of this Agreement and/or any ITA. In such event, PNM shall pay Contractor for the parts of the Services done prior to the effective date of termination, including materials or other Work Product provided, in conformity with this Agreement. Contractor shall not be entitled to any other costs or Damages whatsoever arising out of Contractor’s performance of the Services and the termination by PNM for convenience of this Agreement and/or any ITA issued hereunder. The remedy and measure of Damages set forth in this Section shall be the sole and exclusive remedy and measure of Damages for such termination, and Contractor hereby waives, releases and discharges any and all other remedies, claims, Damages and losses, at law or in equity.

5.3 Termination by Contractor for PNM Default. Subject to PNM’s right of set-off, if PNM fails to pay Contractor any undisputed amount due hereunder, and such failure continues for thirty (30) days following receipt of written notice thereof from Contractor, then Contractor shall be entitled to suspend further performance of the Services until the undisputed amount due has been paid. If such failure continues for an additional period of thirty (30) days, then Contractor shall be entitled to terminate this Agreement or the applicable ITA. The termination by Contractor of this Agreement or the applicable ITA, as the case may be, and payment of its Compensation earned prior to the date of termination, shall be the sole and exclusive remedy and measure of Damages for the events and circumstances described and termination of this Agreement or the applicable ITA, and Contractor hereby waives, releases and discharges any and all other remedies, claims, Damages and losses, at law or in equity.

5.4 Termination by Contractor for Convenience. Contractor may, upon ____ (___) days prior written notice to PNM, terminate this Agreement for any reason whatsoever including for the convenience of Contractor without regard to whether or not PNM has defaulted or failed to comply with the provisions of this Agreement. In the event of termination by Contractor, PNM may elect to require Contractor to perform any or all Services required by any ITA then outstanding. PNM will pay Contractor for Services performed and any reimbursable costs incurred in accordance with this Agreement prior to the effective date of termination and Contractor shall deliver to PNM all reports, drawings or other documents prepared or received in connection with the Services, and all other Work Product completed for PNM under this Agreement.

5.5 Delivery of Documents. Upon the suspension, abandonment, or termination of this Agreement or any ITA, in whole or in part, Contractor shall execute and deliver all such instruments and take all such steps, including assignment of its contractual and intellectual property rights with third parties, as may be required to fully vest in PNM all right, title, and interest in all Services or products, including but not limited to all plans, specifications, drawings, materials, and equipment procured and all contractual and intellectual property rights, and/or cancel or terminate, at PNM’s option, such of those contractual and intellectual property rights.

6. Contractor Representations and Corrective Action.

6.1 Contractor represents and covenants to PNM now and upon execution of each ITA that:

- (a) Contractor has performed similar Services and possesses the specific training, skills, knowledge, necessary personnel and legal right to perform the Services. Contractor shall provide, in connection with the Services, the standard of care, skill, and diligence normally provided by a contractor in the performance of similar services and represents that all such Services shall be performed in accordance with sound and accepted industry or professional standards and practices, and in accordance with all applicable federal, tribal, state and local laws, statutes, regulations, rules and ordinances, as amended from time to time (including but not limited to all applicable environmental, health and safety, cultural preservation and natural resources management laws, statutes, regulations, rules, and ordinances, as amended from time to time) (“**Applicable Laws**”).

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- (b) Contractor's employees performing or supervising the Services have all necessary certifications and licenses and are fully qualified to perform their respective tasks.
- (c) The Compensation is reasonable compensation for the performance of the Services and the Period of Performance is adequate for the performance of the Services, as represented by this Agreement and the applicable ITA and Contractor's independent investigation of site conditions, if applicable.
- (d) Contractor is financially solvent, able to pay its debts as they mature, and possesses sufficient working capital to complete the Services and perform Contractor's obligations required by this Agreement and any ITA.
- (e) Contractor is able to furnish the labor required to complete the Services and perform the obligations required by this Agreement or any ITA and has sufficient experience and competence to do so and is properly insured and licensed to perform the Services.
- (f) Contractor is the holder of or will take the necessary action to obtain and maintain all exemptions, consents, licenses, permits, or other authorizations required to allow it to operate or conduct its business now and as contemplated by this Agreement in compliance with all Applicable Laws. Contractor is and shall at all times be in compliance with all Applicable Laws.
- (g) Neither Contractor, nor any of its employees has been, is not presently, nor shall be a party or person with whom a "U.S. Person" (as defined in Executive Order 13224) is prohibited from transacting business with under Applicable Laws. All evidence of identity provided by Contractor to PNM is true and accurate.

6.2 Contractor shall remedy, at its own expense, any problems or Damages arising out of Contractor's failure to perform the Services in accordance with this Agreement. If Contractor does not take the necessary corrective action within a reasonable time after receipt of PNM's written notice of the problem, PNM may take such corrective action through itself or through contract with others, and shall charge Contractor for all such costs incurred by PNM. The rights and remedies of PNM provided for in this **Section 6** are in addition to and do not limit any other rights and remedies available to PNM at law or in equity.

- 7. Regulatory Proceedings.** Contractor shall testify, when requested by PNM, in any court or governmental or regulatory agency hearings or proceedings relative to the Services performed under this Agreement, subject to payment of reasonable compensation.
- 8. Independent Contractor.** In performing the Services, Contractor is acting and shall be deemed for all purposes to be an independent contractor. PNM and Contractor are not partners, agents or joint venturers with each other, and this Agreement is not intended to nor shall it be construed to create a partnership, joint venture, or agency relationship between PNM and Contractor. Contractor shall complete the Services according to Contractor's own means and methods of work, which shall be in the exclusive charge and control of Contractor, and which shall not be subject to the control and supervision of PNM, except as to the results of the Services. Contractor shall be entirely and solely responsible for its acts and the acts of its employees, subcontractors and agents while engaged in the performance of the Services. Contractor, its employees and agents shall not hold themselves out as employees or agents of PNM. Contractor and its employees are hereby expressly precluded from and not entitled to any employee benefits from PNM. For the purpose of clarifying the ineligibility of Contractor under PNM's employee benefits plans or programs, Contractor and its employees are hereby specifically excluded from any eligibility.
- 9. Reservation of Rights.** Notwithstanding any other provisions to the contrary, Contractor shall provide workers qualified and specialized, if required, in the Services to which they are assigned. Contractor, at PNM's request, shall perform security and background checks, as well as drug and alcohol tests, for the purpose of determining a worker's suitability for the assignment. PNM reserves all rights to deny placement of any of Contractor's or its subcontractor's workers on PNM premises, property, equipment, work sites or projects at its sole discretion. Such denial of placement of subject workers shall be conveyed subject to the provisions of **Section 28 "Notices and Invoices"** and/or consistent with the normal custom between PNM and Contractor.
- 10. Taxes.** Contractor shall pay all taxes and contributions for unemployment insurance, old age retirement benefits, pensions, annuities, and similar benefits, which may now or hereafter be imposed on Contractor by law or collective bargaining agreements with respect to persons employed by Contractor for performance of the Services. Contractor shall be liable for and shall pay and shall indemnify, defend, and hold harmless PNM and its Affiliates and their respective directors, officers, employees, representatives, agents, advisors, consultants and counsel from and against

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any and all such taxes and contributions or any interest accrued and penalties imposed, and reasonable attorney fees (including but not limited to, income, margin, franchise, withholding, gross receipts, compensating, sales, use, property and all other taxes of whatsoever kind and whatsoever nature), excises, assessments, and other charges levied by any governmental agency or authority on Contractor with respect to or because of the Services, or on any materials, equipment, services, or supplies furnished in the performance of the Services. On all invoices, Contractor shall separately show all New Mexico gross receipts, compensating, sales, and other similar taxes charged to PNM, provided that in no event will interest or penalties on such taxes be reimbursable by PNM. Contractor shall also separately itemize services performed outside the State of New Mexico. Contractor shall utilize appropriate New Mexico Nontaxable Transaction Certificates, or similar certificates from other states, where applicable, to minimize such gross receipts, compensating, sales, and other similar taxes. If the sale of goods or performance of services by Contractor takes place on tribal land, Contractor will comply with applicable state and tribal laws governing the reporting and payment of gross receipts taxes on those transactions.

11. Liability.

12.1 Indemnification.

12.1.1 Contractor Indemnification. To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless PNM and its Affiliates, and their respective directors, officers, employees, representatives, agents, advisors, consultants and counsel, collectively **“PNM’s Indemnified Persons,”** from and against any and all damages, losses, claims, obligations, demands, assessments, penalties, liabilities, costs, and expenses (including attorney fees and expenses) (**“Damages”**), arising out of or resulting from performance of the Services or any breach of this Agreement by Contractor, its subcontractors or either of their respective Affiliates. For purposes of this Agreement, **“Affiliate”** of a Party means any other person that, directly or indirectly, controls, is controlled by, or is under common control with such Party and any person in which a Party has an ownership interest and to which the Party or an Affiliate of the Party provides services. For the purposes of this **Section 12**, **“control”** means the power to direct the management or policies directly or indirectly whether through the ownership of voting securities, by contract, or otherwise.

12.1.2 PNM Indemnification. To the fullest extent permitted by law, PNM shall indemnify, defend and hold harmless Contractor and its Affiliates, and their respective directors, officers, employees, representatives, agents, advisors, consultants and counsel, collectively **“Contractor’s Indemnified Persons,”** from and against any and all Damages, arising out of or resulting from any breach of this Agreement by PNM or its Affiliates.

12.2 Compliance with Laws. Contractor shall comply with all Applicable Laws. Contractor shall indemnify, defend, and hold harmless the Indemnified Persons from and against any and all Damages asserted or awarded against or incurred by such indemnitees arising out of, resulting from or relating to the violation by Contractor of any Applicable Laws.

12.3 Intellectual Property Rights Infringement Indemnity. Contractor warrants that none of the Services, or the results thereof, performed by Contractor, or any subcontractor, or the Work Product, and goods or equipment designed by Contractor, or any subcontractor, pursuant to this Agreement, infringe upon or violate any patent, copyright, trade secret, or any other intellectual or property rights of any third party. If any third party makes a claim or commences a proceeding against PNM or any of its Affiliates alleging such an infringement or violation, Contractor shall indemnify, defend and hold harmless the Indemnified Persons from and against any and all Damages asserted or awarded against or incurred by such indemnitees. PNM will notify Contractor if any such claim is made or proceeding is commenced. PNM may, at its option, be represented by separate legal counsel in any such claim or proceeding. Contractor shall reimburse PNM the costs and expenses incurred by PNM in being so represented, including reasonable attorney fees. If the use of any of the Services, or the results of such Services, or the Work Product, and goods or equipment, or any part thereof, furnished under this Agreement is held in any such claim or proceeding to constitute an infringement and/or is enjoined, whether temporarily or permanently, Contractor shall, at its sole cost and expense, either:

- (a) procure for PNM the right to use the results of such Services or such Work Product, and goods or equipment; or
- (b) replace the results of such Services or such Work Product, and goods or equipment with non-infringing results, Work Product, and goods or equipment having the equivalent functionality as the infringing or allegedly infringing results, documents, goods or equipment; or

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- (c) modify the results of such Services or such Work Product, and goods or equipment so as to make them non-infringing, but equivalent in functionality.

12.3.1 Commercially Reasonable Efforts. Contractor shall use its commercially reasonable efforts to obtain for the benefit of PNM identical intellectual property rights indemnification protection in all subcontracts, and other agreements entered into under this Agreement. The requirements of this **Section 12.3.1** are not intended to abridge, abrogate, amend, or otherwise affect Contractor's obligations under **Section 12.3 "Intellectual Property Rights Infringement Indemnity."**

12. Insurance.

13.1 Contractor's Insurance. Prior to commencement of the Services, Contractor shall obtain the insurance required by this Agreement and all insurance that may be required under any Applicable Laws, written by insurance companies with a rating of at least an "A-VIII" in the latest edition of A.M. Best. Unless otherwise indicated below, each insurance policy of Contractor shall be written on an occurrence basis. Prior to commencing the performance of Services under this Agreement and upon renewal of any of policies required in **Section 13.2**, Contractor shall furnish to PNM a completed certificate of insurance coverage which references this Agreement number and evidences the required minimum insurance and extensions as specified in **Section 13.2**. Contractor shall specifically provide thirty (30) days prior notice to PNM of cancellation, termination, non-renewal, or any material change of any such insurance policy. If Contractor fails to obtain and keep in force the insurance required hereunder, PNM may obtain and maintain the required insurance in the name of Contractor and the cost thereof shall be payable by Contractor to PNM on demand. Failure to maintain the insurance coverage required in **Section 13.2** or failure to comply fully with any of the insurance provisions as may be necessary to carry out the terms and provisions of this Agreement shall be deemed to be a material breach of this Agreement. Insurance requirements in this Agreement are independent of, and in addition to, Contractor's liability under this Agreement. Nothing in this Agreement shall be deemed to limit Contractor's liability under this Agreement to the limits of the insurance coverages required hereunder. Contractor shall be solely responsible for payment of all deductible or retention amounts pertaining to any insurance required hereby.

13.2 Minimum Coverage. Without limiting any of the liabilities or other obligations of Contractor under this Agreement, including but not limited to **Section 12 "Liability,"** Contractor shall obtain and maintain in effect, at its sole cost and expense, with forms and insurers acceptable to PNM, until all the obligations under this Agreement or any ITA are satisfied, at least the following minimum insurance, which shall be independent of, and in addition to, Contractor's liability under this Agreement:

- (a) **Workers' Compensation Insurance,** to cover Contractor's obligations with respect to employee injuries sustained during the course and scope of employment as imposed by all applicable federal and state statutes and regulations, and Employer's Liability Insurance with a minimum limit of One Million Dollars (\$1,000,000) each accident for bodily injury by accident and One Million Dollars (\$1,000,000) each employee and policy limit for bodily injury by disease.
- (b) **Commercial General Liability Insurance,** or the equivalent, with a minimum limit of One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury and property damage, One Million Dollars (\$1,000,000) each organization or person for personal and advertising injury, Two Million Dollars (\$2,000,000) general aggregate. The insurance shall provide severability of interests or cross liability provisions permitting one insured to bring a claim against another insured, and shall be endorsed to include PNM and its Affiliates and their respective directors, officers, managers, representatives, agents and employees as additional insureds with respect to Services performed under this Agreement, limited only to the extent required, if applicable, by NMSA 1978 § 56-7-1, as amended. The insurance maintained by Contractor shall be primary with respect to the interest of PNM, and any other insurance or self-insurance maintained by PNM or its Affiliates is in excess and shall not contribute to Contractor's insurance in all instances regardless of any like insurance that PNM or any of its Affiliates may have. Minimum Commercial General Liability insurance can be satisfied through a combination of primary Commercial General Liability and Excess Liability insurance policies.
- (c) **Commercial Automobile Liability Insurance,** or the equivalent, with limit of not less than One Million Dollars (\$1,000,000) per accident with respect to any vehicle used in the performance of any Services required to be performed by Contractor pursuant to the Agreement or any ITA. The insurance shall be endorsed to include PNM and its Affiliates and their respective directors, officers, managers, representatives, agents and employees as additional insureds, limited only to the extent required, if applicable, by NMSA 1978 § 56-7-1, as amended. The insurance maintained by Contractor shall be primary with respect to the interest of PNM, and any other insurance or self-

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insurance maintained by PNM or its Affiliates is in excess and shall not contribute to Contractor's insurance policies in all instances regardless of any like insurance coverage that PNM or any of its Affiliates may have. Minimum Commercial Automobile Liability insurance can be satisfied through a combination of primary Commercial Automobile Liability and Excess Liability insurance policies.

- (d) **Professional Liability Insurance** covering errors and omissions committed in the performance of professional services as provided under the ITA, with limits not less than Two Million Dollars (\$2,000,000) per claim. Such insurance shall provide coverage for professional services performed by Contractor, its subcontractors, or anyone directly or indirectly employed by any of them. Such insurance may be written on a claims-made basis rather than an occurrence basis as long as the policy (a) has a retroactive date prior to the date of project commencement, and (b) is maintained by Contractor throughout the performance of the Services under the ITA and for at least three (3) years thereafter either through policies in force or through an extended reporting period.

13.3 Waiver of Subrogation. Contractor waives on behalf of itself and its insurers all rights of any recovery or subrogation against PNM, its Affiliates and consultants, and their respective directors, officers, managers, representatives, agents and employees. All insurance policies required in **Section 13.2** in any way related to the Services and secured and maintained by Contractor shall include clauses stating each insurer waives all rights of recovery, by subrogation or otherwise, against PNM and its Affiliates and their respective directors, officers, managers, representatives, agents and employees.

13.4 Subcontractors. Contractor shall require that each subcontractor comply with the insurance requirements set forth in **Section 13.2 "Minimum Coverage."** Before permitting any of its subcontractors to perform any Services, Contractor shall obtain a certificate of insurance from each such subcontractor evidencing that such subcontractor has obtained the required minimum insurance and has added PNM and its Affiliates and their respective directors, officers, managers, representatives, agents and employees, and Contractor, as additional insureds with respect to the Commercial General Liability and Commercial Automobile Liability insurance, and any other insurance required in **Section 13.2** and each ITA in which additional insured status is required for PNM and its Affiliates and their respective directors, officers, manager, representatives, agents and employees. All policies of subcontractors shall include a waiver of any right of subrogation of the insurers thereunder against Contractor and PNM and its Affiliates and their respective directors, officers, managers, representatives, agents and employees.

13. Uncontrollable Forces. Neither Party shall be considered to be in default in respect to any obligation hereunder, if delays in or failure of performance shall be due to Uncontrollable Forces. The term "**Uncontrollable Forces**" shall mean any cause beyond the control of the Party affected and not due to its fault or negligence, including, but not limited to, acts of God, flood, earthquake, storm, fire, lightning, epidemic, war, terrorist activity, riot, civil disturbance, sabotage, inability to obtain permits, licenses, and authorizations from any local, state, tribal, or federal agency for any of the materials, supplies, equipment, or services required to be provided hereunder, fuel shortages, breakdown or damage to generation and transmission facilities belonging to PNM or any of its Affiliates, failure of facilities, strikes or other labor disputes, or restraint by court or public authority, any of which by exercise of due foresight such Party could not reasonably have been expected to avoid, and which by the exercise of due diligence it is unable to overcome. Neither Party shall, however, be relieved of liability for failure of performance if such failure is due to removable or remediable causes which it fails to remove or remedy with reasonable dispatch. Nothing contained herein, however, shall be construed to require either Party to prevent or settle a strike or other labor disputes against its will. The Party whose performance hereunder is so affected shall immediately notify the other Party of all pertinent facts and take all reasonable steps to promptly and diligently prevent such causes if feasible to do so, or to minimize or eliminate the effect thereof without delay. Contractor shall make no claim and hereby waives, releases and discharges any and all claims for additional compensation or Damages by reason of any delay or additional services due to an Uncontrollable Force.

14. Confidentiality. Any information or data of PNM provided to Contractor or to which Contractor is given access during the term of this Agreement, whether such information is in written, verbal, electronic or any other form, is proprietary to PNM and shall be treated as confidential and not disclosed by Contractor to any third party, without PNM's prior written consent. Contractor may disclose such information and data to its employees and subcontractors, but only on a "need to know" basis. Such information and data may only be used for the purpose of performing the Services that are required of Contractor pursuant to this Agreement, and for no other purpose. Such information and data may not be copied except as required to perform the Services and, upon completion of the Services, Contractor shall destroy all copies in its possession. Further, Contractor acknowledges and agrees that all data and information collected, produced or generated, and all reports, test results, plans, models, documents and other written materials produced pursuant to this Agreement or in connection with any services to be performed hereunder shall be and remain the sole property of PNM, shall be confidential, shall not be copied or reproduced in any way, except for the use by Contractor for the Services, and shall not be disclosed or communicated, verbally or in writing, by Contractor to any

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third party, or used in any way except as required by law or for the purposes required or intended by the Agreement. If required by PNM, Contractor and any of its employees or agents performing Services under or in connection with this Agreement shall execute confidentiality and nondisclosure agreements in the form required by PNM. If Contractor is served with process of law, including but not limited to subpoenas requiring Contractor to produce, release or disclose information of a confidential nature received, collected, produced or generated by Contractor pursuant to this Agreement, Contractor shall immediately notify PNM and allow PNM, at its sole expense and cost, to challenge the process of law, including any subpoena. The duties of this **Section 15** will survive the expiration or early termination of this Agreement for a period of twenty-four (24) months following such expiration or early termination.

15. Conflict of Interest. Contractor shall exercise reasonable care and diligence to prevent any actions or conditions which would result in a conflict with PNM's interest.

16. Intellectual Property.

17.1 Intellectual Property Rights. Contractor agrees that all inventions, works of authorship and other proprietary data, and all other materials (as well as the copyrights, patents, trade secrets, and similar rights attendant thereto) conceived, reduced to practice, authored, developed or delivered by Contractor or any subcontractor and their respective employees, agents, consultants, contractors, and representatives either solely or jointly with others, during and in connection with the performance of the Services under this Agreement and that relate to the business of PNM, shall be owned by PNM ("**Intellectual Property**"). Neither Contractor nor any subcontractor nor their respective employees, agents, consultants, contractors or representatives shall have the right to disclose or use any of the Intellectual Property for any purpose whatsoever or to communicate to any third party the nature of or details relating to the Intellectual Property. Contractor hereby grants, assigns and conveys to PNM all right, title, and interest in and to the Intellectual Property. Contractor agrees that it will not seek, and that it will require each subcontractor and all of Contractor's and its subcontractors' employees, agents, consultants, contractors, and representatives not to seek patent, copyright, trademark, registered design, or other protection for any rights in any Intellectual Property. Contractor agrees that it shall do and that it will require its subcontractors and all of Contractor's and its subcontractors' employees, agents, consultants, contractors, and representatives to do, at PNM's expense, all things and execute all documents as PNM may reasonably require to vest in PNM or its nominees the rights referred to herein and to secure for PNM or its nominees all patent, trademark, or copyright protection, including but not limited to, assisting in preparing applications, signing all necessary documents, testifying in court proceedings, and retaining secret information concerning any of the Intellectual Property that is not public knowledge. Contractor represents that it has or will have the right, through written agreements with its employees, to secure for PNM the rights called for in this Section. Further, in the event Contractor uses any subcontractor, consultant, or other third party to perform any of the Services under this Agreement, Contractor agrees to enter into and provide to PNM such written agreements with such third party, and to take such other steps as are or may be required to secure for PNM the rights called for in this Section. Contractor further agrees to provide the names and addresses of all agents, contractors, consultants, representatives, or other third parties who perform work on behalf of Contractor under this Agreement.

17.2 License of Pre-Existing Intellectual Property. Contractor hereby grants to PNM and its Affiliates a fully paid and non-exclusive irrevocable, perpetual license to use and copy, and to create derivative works of, any pre-existing copyrighted, patented and/or proprietary work that is incorporated into the Services or the results of the Services, or into the Work Product, and goods and equipment designed, by Contractor or any subcontractor pursuant to this Agreement, including the right to create sub-licenses without any duty to account to Contractor or any subcontractor. If so requested by PNM, Contractor and subcontractor shall cooperate with PNM in executing all such assignments, oaths, declarations and other documents as may be prepared by PNM to effect and evidence the foregoing. Contractor agrees to enter into and provide to PNM such written agreements with such third party, and to take such other steps as are or may be required to secure for PNM the rights called for in this Section.

17.3 Survival of Obligations. Contractor's obligations under this Section shall survive expiration or termination of this Agreement and any amendments hereto.

17. EEO Clauses. PNM is an equal opportunity employer. If applicable, the Parties hereby incorporate and agree to abide by the requirements set forth in 41 CFR §§ 60-1.4(a), 60-1-4(b), 60-250.5(a) and 41 CFR 60-741.5(a).

18. Drug and Alcohol Policy.

19.1 Contractor, in the performance of any Work requiring the physical presence of its employees on PNM's property or on the property of others for which PNM has acquired access rights, shall take steps necessary to ensure that a work environment is maintained that is free from the use, consumption, possession, sale, or distribution of illegal drugs or alcohol, and from the misuse of legal drugs on PNM's premises and Work sites, including Contractor vehicles used on PNM property or Work sites.

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19.2 Contractor shall comply with all Applicable Laws concerning drug and alcohol use, including, if applicable, requirements of the United States Department of Transportation. Contractor shall require that each Subcontractor complies with the requirements set forth in Section 19.1 above and Applicable Laws as set forth herein.

19.3 PNM may remove a Contractor's employee from any Work or Work site if PNM reasonably suspects the employee is under the influence of controlled substances or alcohol until such time as Contractor confirms by testing that the employee is fit for duty

19. Safety. Contractor shall comply with all Applicable Laws governing safety and the safe operation of commercial motor vehicles and the safe performance of the Services.

20. Safety Precautions. Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs concerning the performance of the Services in accordance with all Applicable Laws. Contractor shall provide and be directly responsible for its own safety program for its employees and for the safe operation of its and its subcontractor's vehicles and equipment.

21.1 Accident Reporting. In case of an accident involving Contractor or the Services, an investigative report shall be prepared by Contractor and one copy thereof given to PNM within twenty-four (24) hours of the occurrence of the accident. Verbal notification of any fatal injury, or serious injury that may require overnight hospitalization, shall be provided within one (1) hour of the injury.

21. Hazardous Materials.

22.1 No Hazardous Materials to Be Brought on to Work Site. Contractor shall not, nor shall it permit or allow any of its subcontractor or suppliers to bring any Hazardous Materials on the work site and or release or dispose of any Hazardous Materials at the work site; provided, however, that Contractor may bring onto the work site such Hazardous Materials as are necessary to perform the Services so long as the same is done in compliance with Applicable Laws. Contractor shall remain responsible and strictly liable for all Hazardous Materials brought on to or generated at the work site by Contractor and/or its subcontractors and suppliers For purposes of this Agreement, "**Hazardous Materials**" means oil, petroleum products and substances, flammable substances, explosive materials, radioactive materials and any other materials, wastes or substances defined as hazardous materials, wastes or substances, toxic wastes or substances as defined under any environmental laws, and all similar and related federal, state, tribal and local laws, rules, regulations and ordinances, as amended from time to time, and any other materials, substances and wastes which, even if not regulated, may or could pose a hazard to human health and safety or to the environment.

22. Fair Labor Standards Act. Contractor represents that all Services and all wages, hours and other forms or compensation have been provided, in compliance with the requirements of the Fair Labor Standards Act of 1938, 29 U.S.C.A. § 201, *et seq.*, as amended, and regulations and orders pursuant thereto issued by the U.S. Department of Labor.

23. Utilization of Small Disadvantaged Businesses. PNM is a supplier of services to the federal government, and as such, must include the following flow down provisions in its contracts that exceed Six Hundred Fifty Thousand Dollars (\$650,000). Contractor shall comply with all the requirements of FAR 52.219-9(d)(9) entitled "Utilization Of Small Business Concerns And Small Disadvantaged Business Concerns." Contractor shall: (i) cooperate in any studies or surveys as may be required by PNM or the government; (ii) submit periodic reports as requested by PNM providing information regarding its use of small disadvantaged businesses; and (iii) submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and/or (SF) 295, Summary Subcontract Reporting in accordance with instructions on the forms; and any requirements in addition thereto.

24. Dispute Resolution. If the Parties are unable to resolve any dispute within thirty (30) days after written notice by one Party to the other Party of the occurrence of the event or circumstances giving rise to the dispute, the dispute may be submitted to mediation upon the mutual agreement of the Parties. In the event the Parties do not agree to mediate the dispute or are unable to resolve the dispute through mediation and the aggregate amount of the claim (including counterclaims) is less than One Hundred Thousand Dollars (\$100,000), then the dispute shall be resolved by binding arbitration. Except as set forth herein, such arbitration shall be governed by the Commercial Rules of the American Arbitration Association, as amended from time to time. A Party demanding arbitration shall give the other Party timely notice of such election pursuant to **Section 28 "Notices and Invoices,"** with a copy to PNMR Services Company-Legal Department, 414 Silver Ave SW, MS 0805, Albuquerque, New Mexico 87158, and such notice shall describe the nature of the dispute and the amount in controversy. The Parties shall then jointly select an arbitrator and failing such mutual agreement within ten (10) days after written notice demanding arbitration, the arbitrator shall be appointed by the Chief District Court Judge from Bernalillo County, New Mexico. The arbitration shall be held in Albuquerque, New Mexico. Discovery shall be by agreement of the Parties or as ordered by the arbitrator, provided that the Parties

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shall comply with the following minimum discovery requirements: at least ten (10) calendar days prior to the arbitration, the Parties shall exchange copies of all exhibits to be used at the arbitration and a list of witnesses and a summary of the matters as to which each witness is expected to testify.

25.1 Disputes In Excess of \$100,000. In the event the Parties do not agree to mediate the dispute or are unable to resolve the dispute through mediation, and if the aggregate amount of the claim in dispute equals or exceeds One Hundred Thousand Dollars (\$100,000), then the Parties may agree to submit the matter to binding arbitration under the Commercial Rules of the American Arbitration Association, as amended from time to time, and failing such agreement, either Party may bring an action in the federal or state courts of New Mexico.

25.2 Costs and Other Provisions. All costs of mediation or arbitration, including the fees of the mediator or arbitrator, shall be split equally by the Parties, except that the Parties shall be responsible for payment of their own attorney fees, expert fees, preparation fees, travel, and similar costs. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law of the State of New Mexico. Indemnity claims are not subject to mandatory arbitration. Nothing in this **Section 25** shall affect restrict, condition, or otherwise limit a Party's right to terminate this Agreement pursuant to **Section 5 "Termination."**

25.3 Payment of Undisputed Amounts; Other Remedies. When any dispute occurs, Contractor shall continue the Services in accordance with the terms hereof and PNM shall continue to make payments of undisputed amounts in accordance with this Agreement, and the Parties shall otherwise continue to exercise their rights, and fulfill their respective obligations, under this Agreement. While any consultations, mediation or arbitration is pending, neither Party shall exercise any other remedies hereunder arising by virtue of the matters in dispute; provided, however, PNM's right to terminate under this Agreement shall not be suspended.

26. Non-Exclusive Relationship. Contractor expressly acknowledges and agrees that PNM may enter into similar contractual arrangements with other parties and that PNM may assign similar services to such other parties. Further, PNM acknowledges and agrees that Contractor may enter into contractual arrangements with other parties during the term of this Agreement provided that the obligations of Contractor pursuant to such contractual arrangements do not in any manner interfere or conflict with Contractor's performance of its obligations to PNM pursuant to this Agreement.

27. Prohibition Against Assignment and Subcontracting. PNM has chosen Contractor based on Contractor's qualifications to perform services of the nature contemplated by this Agreement. Accordingly, Contractor shall not assign, transfer, subcontract or otherwise dispose of any of its obligations pursuant to this Agreement without first obtaining the written consent of PNM, which consent may be withheld if PNM, in its sole opinion, considers that it is not in its best interests, economic or otherwise, to do so. PNM may, at its option and at any time, assign this Agreement, in whole or in part. PNM shall promptly notify Contractor in writing of any such assignment, unless such assignment is to an Affiliate of PNM because of the reorganization of the assets, business function or structure of PNM. In the event PNM assigns this Agreement, it shall be relieved of all financial responsibility related to the portion of this Agreement so assigned.

28. Notices and Invoices. Except as expressly provided otherwise herein, any formal notice, demand, consent or request provided for in this Agreement, or any ITA, shall be in writing and shall be deemed properly made if personally delivered, delivered by courier, sent by first-class mail, postage prepaid, sent by facsimile transmission to the facsimile number to the person specified below, or sent by PNM through DocuSign, and shall be deemed received, if personally delivered, or delivered by courier, upon delivery, and if mailed, on the third day following deposit in the U.S. mail, and if sent by facsimile, upon transmission as evidenced by a confirmation report generated by the facsimile device and if by DocuSign, upon receipt in recipient's email inbox as evidenced by DocuSign's history report.

To Contractor: Attention: _____
 Mailing Address: _____
 Street Address: _____
 Phone: _____
 Facsimile Number: _____

To PNM: Attention: _____
Public Service Company of New Mexico
Mailing Address: _____
 Street Address: _____
 Phone: (505) _____
 Facsimile Number: (505) _____

Contractor shall promptly submit invoices to PNM referencing this Agreement number and ITA number, together with such documentation as PNM may require at the following address:

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**PNMR Services Company
414 Silver Ave. SW, MS 1055
Albuquerque, New Mexico 87158
Attention: Accounts Payable**

If an invoice is incomplete or in improper form, then within seven (7) days of receipt, PNM will notify Contractor in writing regarding in what ways the invoice is incomplete and/or in improper form. Following such written notice, PNM shall have no further duty to pay the incomplete and/or improperly formatted invoice until it is resubmitted in complete and proper form. In the event PNM disputes any of the substantive items included in invoice, then within seven (7) days of receipt, PNM will notify Contractor in writing, identifying which specific items in the invoice are being disputed, so that Contractor may re-submit the invoice reflecting only those items which are undisputed (“Undisputed Invoice”). PNM shall subject to the terms and conditions set forth herein, pay the Undisputed Invoice, less amounts that PNM is entitled to withhold, deduct, retain or offset, within twenty-one (21) days of receipt of the Undisputed Invoice and any other documents to be delivered in connection with such invoice. When the accuracy of the items identified as disputed is established or an adjustment has been agreed upon between the Parties, PNM shall pay Contractor for such items agreed upon (less the other amounts that PNM is entitled to withhold, deduct, retain or offset). If the Parties are unable to agree, the matter shall be resolved in accordance with **Section 25 “Dispute Resolution.”**

The Parties may change their addresses, contact persons, or facsimile numbers to which notices are to be sent by providing the other Party with notice of such changes in the manner provided in this **Section 28**. Nothing contained herein shall preclude the transmission of routine invoices or correspondence, messages and information between the Parties by a representative of a Party in the ordinary course of performing their respective obligations under this Agreement.

29. No Waiver. No delay, failure or refusal on the part of a Party to exercise or enforce any right under this Agreement shall impair such right or be construed as a waiver of such right or any obligation of the other Party, nor shall any single or partial exercise of any right hereunder preclude other or further exercise of any right. The failure of a Party to give notice to the other Party of a breach of this Agreement shall not constitute a waiver thereof. Any waiver of any obligation or right hereunder shall not constitute a waiver of any other obligation or right, then existing or arising in the future. To be effective, a waiver of any obligation or right must be in writing and signed by the Party waiving such obligation or right.

30. Gratuities and Anti-Kickback Provisions.

31.1 Contractor shall not, under any circumstances, extend any gratuity or special favor to employees of PNM that might be reasonably constructed as an attempt to influence the recipients in the conduct of their official duties.

31.2 Contractor agrees to abide by the Anti-Kickback Act of 1986, 41 U.S.C.A. § 51, *et seq.*, which prohibits any person from (1) providing, attempting to provide or offering to provide any kickback; (2) soliciting, accepting, or attempting to accept any kickback; or (3) including, directly or indirectly, the amount of any kickback in the cost of work charged to PNM by the Contractor. It is also agreed that Contractor will not engage the services of any individual who has been convicted after September 29, 1988, or for a period of five (5) years after the date of conviction, of fraud or any other felony arising out of a contract with the Federal Government. Such person(s) is(are) prohibited from working in a management or supervisory capacity, serving as a consultant, or serving on the board of directors.

31. Employment Eligibility Verification. If required by an ITA issued under this Agreement, the requirements of Section 48 C.F.R. 52.222-54 of the Federal Acquisition Regulations concerning Employment Eligibility Verification (“**E-Verify**”) requirements are hereby incorporated by reference. In addition, Contractor and its subcontractors shall include this provision in all subcontracts and comply with all E-Verify requirements.

32. NERC Compliance. If required by an ITA issued under this Agreement, the following provisions shall apply. Pursuant to the North American Electric Reliability Corporation’s (“**NERC**”) reliability standards for Critical Infrastructure Protection, no employee or agent of Contractor shall have unescorted physical access or cyber-electronic access to PNM Critical Cyber Assets (“**CCA**”), as defined by PNM per NERC Standards, except as set forth herein. Contractor shall obtain, pay for and electronically deliver to PNM at the email address specified in the applicable ITA the following for each of Contractor’s employees or agents who will require unescorted physical access or cyber/electronic access to PNM CCA: (i) background checks acceptable to PNM prepared by PNM-approved vendors consisting of identity verification with all names and social security numbers used, or similar identification information, and a ten (10) year physical address and criminal record check; and (ii) certification that cyber security training, as required by PNM, has been completed by such employee or agent. Background checks must be updated at least every seven (7) years, or upon PNM’s request, in its sole and absolute discretion. If Contractor has not provided the necessary information, as identified in (i) and (ii) above, to PNM at the time unescorted physical access is requested, Contractor shall either, if permitted by an ITA, (i) provide an escort having the requisite training and background

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checks on file with PNM; or (ii) request, subject to availability, a PNM escort and reimburse PNM for the cost of such escort. In the event that Contractor terminates, for cause or otherwise, any of Contractor's employees or agents that maintain approved unescorted physical access or approved cyber/electronic access to PNM, Contractor shall provide same day notice to PNM by electronic delivery to NERC.ComplianceCommittee@pnmresources.com that Contractor has terminated such employee or agent.

33. FERC Compliance. If required by an ITA issued under this Agreement, the following provisions shall apply. Pursuant to the regulations and orders of the Federal Energy Regulatory Commission ("**FERC**") regarding the FERC Standards of Conduct ("**SoC**") and the FERC Code of Conduct ("**CoC**"), employees and agents of Contractor shall not disclose restricted transmission or customer information of PNM, as defined under SoC regulations, or non-public market information of PNM, as defined under CoC regulations, that comes into the possession of Contractor, its employees or agents. Contractor shall obtain, pay for and electronically deliver to PNM at the email address specified in the applicable ITA the following for each of Contractor's employees or agents who will have access to such restricted information of PNM: (i) certification that SoC or CoC training, as applicable, or as may be required by PNM, has been completed by such employee or agent that will or could have access to such restricted information during the course of providing the services under the applicable ITA; (ii) certification that each of Contractor's employees or agents who will have access to such restricted information of PNM will not act as a conduit of such information for others.

34. Severability. If a court or regulatory agency having jurisdiction over the Parties determines that a condition of this Agreement, or any part thereof, or any ITA, is void, illegal or unenforceable, said condition or part shall be deemed to have been severed from this Agreement, and the remaining conditions, or parts, shall be unaffected and shall be enforced to the fullest extent allowed by Applicable Law. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Agreement a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

35. Binding Effect. This Agreement and all provisions hereof shall inure to the benefit of and be binding upon the Parties, their successors, and permitted assigns.

36. Governing Law and Venue. The entire relationship of the Parties, this Agreement, any remedies of the Parties, and any litigation or legal proceedings (whether grounded in tort, contract, statutory, equitable, or other law) between, involving, or arising among, the Parties, shall be governed by, interpreted in accordance with, and construed consistent with, the laws of the State of New Mexico, without regard to the choice of law principles which may otherwise dictate the application of the laws of another state. Any lawsuit or other legal proceeding (whether at law or in equity) between, involving, or arising among the Parties, or relating to this Agreement, shall be commenced and pursued solely in the state or federal courts located in Bernalillo County, New Mexico, and the Parties hereby waive any challenge they may have to the jurisdiction of such courts, consent to jurisdiction and venue in such courts, and relinquish any right to seek a change of venue or forum for any reason, including the alleged inconvenience of the venue or forum.

37. Counterparts. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument. PNM and Contractor may retain a duplicate copy (e.g. electronic image, photocopy, facsimile) of this Agreement, which shall be considered an equivalent to this original.

38. Survival of Obligations. In addition to the continuation of confidentiality obligations as specified in **Section 15 "Confidentiality,"** Contractor's representations and warranties under **Section 6 "Contractor Representations and Corrective Action,"** intellectual property and other obligations contained in **Section 17 "Intellectual Property,"** indemnity obligations, including those under **Section 12 "Liability,"** and **Section 19 "Drug and Alcohol Policy"** of this Agreement, shall survive the expiration or any termination of the Agreement, it being agreed that said obligations are and shall be of a continuing nature.

39. Agreement Authors. The Parties have agreed to this Agreement and no ambiguity shall be construed against any Party based on the identity of the author or authors of this Agreement.

40. Entire Agreement. This Agreement, any amendments, any ITA and any Change Orders represent the entire agreement and understanding between PNM and Contractor with respect to the subject matter hereof and performance of the Services, and supersede any prior understandings, representations or agreements, whether verbal or written, prior to execution of this Agreement. If any Services were performed by Contractor under verbal agreement or under a limited notice to proceed prior to the execution of this Agreement, then this Agreement shall apply thereto in the same manner as if made before such Services were performed.

41. Amendments. This Agreement may not be amended except by a writing signed by duly authorized representatives of all Parties hereto.

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42. No Consequential Damages. In no event shall PNM, Contractor or any of their respective Affiliates be liable under any provision of this Agreement for any indirect, consequential, special, punitive or incidental damages or costs of the other Party or its Affiliates, whether based in contract, tort (including, without limitation, negligence or strict liability), or otherwise, and the Parties hereby waive, release and discharge any and all indirect, consequential, special, punitive and incidental damages and costs. Consequential damages shall include, without limitation, loss of revenue, loss of profits, cost of capital, loss of business reputation and opportunity.

43. Miscellaneous. Unless the context of this Agreement otherwise requires: (a) the headings contained in this Agreement are used solely for convenience and do not constitute a part of this Agreement between the Parties, nor should they be used to aid in any manner to construe or interpret this Agreement; (b) the gender of all words used herein shall include the masculine, feminine and neuter and the number of all words shall include the singular and plural words; (c) the terms "hereof", "herein" "hereto" and similar words refer to this entire Agreement and not to any particular Article, Section, Exhibit, ITA or any other subdivision of this Agreement; (d) reference to "Agreement," "Individual Task Authorization," "ITA," "Change Order," or any other agreement or document shall be construed as a reference to such agreement or document as the same may be amended, modified, supplemented or restated, and shall include a reference to any document which amends, modifies, supplements or restates, or is entered into, made or given pursuant to or in accordance with its terms; (e) references to any law, statute, rule, regulation or other Applicable Law shall be construed as a reference to the same as on the date hereof and as may from time to time be, amended, modified, enacted or re-enacted; (f) references to any person shall be construed as a reference to such person's successors and permitted assigns; and (g) references to "includes," "including" and similar phrases shall mean "including, without limitation."

44. IRCA Compliance. Contractor agrees to comply with the Immigration and Reform Control Act of 1986 (IRCA) and all other federal and state laws governing identity and employment authorization verification. Contractor agrees to require immigration compliance in all written agreements with any subcontractor employed by Contractor to provide services connected with this Agreement. Contractor agrees to complete the Certificate of Immigration Compliance attached as Exhibit B to this Agreement. No performance under this Agreement may take place until the completed Certificate is provided to PNM. Failure to submit the Certificate shall render the Agreement void.

45. Former PNM Employees. Absent specific written approval from PNM, individuals previously employed by PNM or its Affiliates will not be allowed to work on this Agreement. Contractor's failure to obtain such written approval shall be considered a material breach.

IN WITNESS WHEREOF, Contractor and PNM have caused this Agreement to be executed on their behalves by their duly authorized representatives as of the Effective Date set forth above.

CONTRACTOR

PUBLIC SERVICE COMPANY OF NEW MEXICO
Executed by PNMR Services Company as Agent

By: _____

By: _____

Printed name: _____

Printed name: _____

Title: _____

Title: _____