

# ATTACHMENT E

## FORM OF AGREEMENT

### ELDORADO AREA WATER & SANITATION DISTRICT

#### AGREEMENT TO PROVIDE PROFESSIONAL ENGINEERING AND ARCHITECTURAL SERVICES

**THIS AGREEMENT** is made and entered into on this \_\_\_\_ day of \_\_\_\_\_, 2024, by and between the Eldorado Area Water & Sanitation District, a governmental subdivision of the State of New Mexico, hereinafter referred to as the “District,” and \_\_\_\_\_, a New Mexico corporation, hereinafter referred to as the “Engineer.”

**WHEREAS**, the District has found it necessary and appropriate to retain a single qualified engineering consulting firm to provide professional consulting and project services in connection with specific tasks and projects for the District; and

**WHEREAS**, it is necessary to ensure that the firm providing such services be knowledgeable and experienced in engineering and architectural services and have personnel who are registered Professional Engineers with appropriate PE stamp; and

**WHEREAS**, it is necessary to ensure that the firm providing such services be knowledgeable regarding the District’s water utility system; and

**WHEREAS**, the District pursuant to a Request for Proposals and a competitive qualifications-based selection process has selected Engineer to provide the specified engineering and architectural services; and

**WHEREAS**, the Board of Directors of the District has authorized the General Manager to enter into this Agreement for the purposes herein set forth by Resolution No. \_\_\_\_\_ on \_\_\_\_\_, 2024; and

**WHEREAS**, Engineer is willing to provide the services described in its proposal and herein in accordance with the terms of this Agreement.

**NOW, THEREFORE, IT IS HEREBY AGREED** by and between the parties to this Agreement, that:

1. Scope of Services. Engineer shall conduct engineering and architectural services for the District water utility under the supervision and direction of the District General Manager (“GM”), including services for specific Capital Improvement Projects (“CIPs”), and task-defined services for support of utility maintenance, operations, replacements and additions. Services shall generally include: planning, evaluating design options, designing, engineering, preparing construction invitations for bid and evaluating bids, project management support, construction oversight and inspection, day-to-day technical consulting services for the utility system, and general utility support tasks. The specific Tasks and Services are the following:

- a. **Develop Water System Improvements**: Engineering design and construction support services as required for water system extensions or upgrades. Includes design review and approval of water line extensions, preparation of drawings and specifications for upgrade or replacement of existing water system components, and review of preliminary and final subdivision drawings, specifications, and descriptions of proposed customer water service requests for compliance with District design standards and industry standards, and inspection of same during construction. Coordinate, update, and develop District design standards as may be required.
- b. **Rehabilitation and Repair of Existing Facilities**: Engineering planning, design, and construction support services as required to analysis, design, bid, and construct needed improvements to existing facilities including water storage tanks, wells, booster pump stations and pressure regulating and other flow control or isolating valves.
- c. **Planning Support**: Conduct investigations and analyses of technical issues, provide comparative assessments of alternative options to various planning scenarios, answer 'what if' questions to assess planning options, develop preliminary plans and designs, develop preliminary cost estimates of the options, evaluate options, including cost effectiveness, for system upgrades and capital improvement projects, develop cost estimates and schedules of selected options, prepare special reports as required, recommend selected option to the GM and APM, and make presentations about the same to the District Board and the public.
- d. **Permitting/Compliance Support**: Conduct surveys and mapping projects, assist in obtaining easements and rights-of-way, conduct environmental and cultural studies, and obtain project permits as needed for utility support tasks or projects.
- e. **Master Plan**: Prepare a new Utility Master Plan (UMP) or update of the existing UMP (September 2022) to define and prioritize system deficiencies and needed Capital Improvement Projects (CIPs) to correct system deficiencies, to upgrade components and subsystems as required, to meet projected customer demand for the planning period, and provide efficient, reliable water service to customers. The Utility Master Plan and selected individual CIPs identified as being required from the Master Plan are to be prepared in USDA RUS Preliminary Engineering Report (PER) format as required for EAWSD to seek state and federal funds for its CIPs.
- f. **CIP - Drill and Fully Develop New Well 9**: This project will construct a new well to replace an existing nonoperating Well 10 in the Galisteo Basin. Based on recommendations from EAWSD's Hydrogeologist, the new well will be constructed in the immediate vicinity of the District's existing Well 9. Water produced from the Galisteo basin is drawn from a shallow alluvium the recharge of which is highly dependent on the amount of snowpack in the Sangre de Cristo mountains. Construction of the new well will ensure the Eldorado Area Water and Sanitation District can maximize the use of this important intermittent but renewable source of water supply for the Eldorado Community.
- g. **CIP - Well 14 and 15 Connection to Tank 2**: Design and construct a new water pipeline to convey water from Wells 14 and 15 to Tank 2. When completed this

project will improve the ability to distribute water throughout the system thereby improving the reliability and efficiency of system operation.

**h. CIP - Meter Reading Network Communication System:** This project will design and install the District's own new meter reading fixed network communications system to replace the existing cellular system. Meter reading communication using cellular service providers is costly and less reliable than installing a new fixed network communication system that would be owned and operated by the District. Having our own communication system would give the District more options in selecting suppliers for automated meter reading transmitters.

**i. CIP - Tank 4 to Tank 2 Transmission Line:** This project will design and construct a new water transmission pipeline to convey water from the District's Tank 4 to Tank 2. When completed this pipeline will increase the system's ability to convey Santa Fe County water deliveries to Tank 4 to other parts of the Eldorado Area Water & Sanitation District service area thereby increasing the overall reliability of the system.

**j. CIP - Tank Site Improvements including New Mixers:** This project will design and construct the following improvements: installation of solar powered tank mixers in five existing water storage tanks; grading and drainage improvements at Tank 1, 3, and 4, and installation of a new security fence at the Tank 2 site.

**k. CIP - Distribution Line Replacements:** As described in the September 2022 Utility Master Plan, provide engineering services as required to prioritize, design and construction replacements of portions of the District's aging water distribution system.

The Engineer must have demonstrated experience with drinking water supply (ground water) and distribution systems and must be a registered Professional Engineer with an appropriate PE Stamp. Engineer must be able to conduct analyses using EAWSD's GIS system and its hydraulic model, operable with EPANET or WaterGEMS software. Engineer will be providing services as a Contractor to, not an Employee of EAWSD.

2. Administrative Requirements (general; specific requirements will be more fully delineated in each Task Order or Project Contract, which together with this Agreement will constitute a binding contract between the parties).

Engineer shall:

- a. Appoint an Engineer Representative and a Task Manager for each particular service requested within the Tasks and Projects in this Agreement (one person may be appointed to multiple tasks or projects, if agreed by the GM).
- b. Provide a sufficient number of qualified Engineer personnel who possess the necessary managerial, administrative, and technical skills to perform the Tasks and Projects specified in this Agreement.
- c. Engineer shall remove from involvement with the Work, upon receipt of District's written request, any Engineer personnel determined to be unsuitable by the District. Any removal and replacement of Engineer personnel shall be at Engineer's sole expense.
- d. Require Engineer's personnel and personnel of its subcontractors engaged in the Tasks and Projects to comply with all applicable policies, rules and instructions issued by District for District's own personnel, unless specifically exempted by District.
- e. Provide an Execution/Work Plan for each Task Order and Project Contract with contents of which as mutually agreed by Engineer and GM.
- f. Meet quarterly, or as otherwise requested by GM, to consider all aspects of this Agreement and its deliverables, the Engineer's performance, and the Parties' relationship. At a minimum, a representative of Engineer's Management and GM shall attend such meetings.
- g. Develop with GM a mutually agreeable monthly report format that provides all pertinent information for all Tasks and Projects as directed by GM, and prepare and submit this report as directed by GM.
- h. Attend weekly, or more frequent, Task and Project meetings, as requested by GM or as needed. Such meeting(s) shall be attended by, at a minimum, Engineer's Task Managers or their designees and GM or other District Representatives. GM shall be cognizant of and, to the extent feasible, accommodate the Task Manager's other responsibilities when scheduling special meetings and requesting their attendance.

3. Authority to Proceed. Particular services to be performed under this Agreement shall require further District authorization on the basis of either (1) a Task Order issued by the GM for utility support tasks or, (2) in the case of specific CIPs, a Project Contract (see Attachment B) for each and every CIP, which meets the requirements of State of New Mexico funding agencies and which Engineer agrees to accept and execute if and when presented. Services under this Agreement shall be performed only after

discussion between the parties and issuance of a Task Order or Project Contract by the District or the District's designated representative for each task or project to be performed by Engineer under this Agreement. The procedure for issuing a Task Order or Project Contract shall be generally as follows, but may be modified by the parties hereto, by explicit agreement of the parties as incorporated in the applicable Task Order or Project Contract, in the event of unforeseen contingencies or other factors requiring a different procedure in any given instance.

- a. If the District determines that a particular service within the specific Tasks and Projects in Section 1 is necessary, the District or the GM will contact Engineer with a description of the proposed service and will request that Engineer prepare a proposed scope of work, schedule, and estimated costs for the particular service.
- b. If Engineer, in connection with Engineer's work for the District under this Agreement, determines that in Engineer's professional judgment, certain services must be performed for the benefit of the District, Engineer may prepare and submit to the District a proposed scope of work, schedule, and estimated costs for the particular proposed services.
- c. Upon receipt of Engineer's proposed scope of work, schedule, and estimated costs for any particular proposed service, the District will review them and determine whether to issue a Task Order or Project Contract for the proposed scope of work. During the course of its review, the District or its designated representative may contact Engineer to discuss and possibly amend any aspect of the proposed scope of work, schedule, estimated costs, or any other aspect of the particular service.
- d. Once agreement has been reached on all aspects of the particular proposed service, the schedule for its completion, and the estimated costs associated with it, the District may issue a Task Order or Project Contract to Engineer for completion of the task or project, which Task Order or Project Contract shall then become binding upon the Engineer and the District in accordance with all terms of this Agreement.
- e. Upon issuance of the Task Order or Project Contract, Engineer shall timely perform the services requested in accordance therewith.
- f. The District may, but shall not be required to, amend any Task Order or Project Contract upon the request of the Engineer or by the mutual agreement of the parties.
- g. Nothing contained herein shall, under any circumstances, be deemed to require the issuance of a Task Order, Project Contract or the amendment of any outstanding Task Order or Project Contract by the District. All such Task Orders and Project Contracts shall be issued at the District's sole discretion. The District reserves the right to issue a separate RFP for engineering or architectural services for any particular proposed service that falls outside the scope of services of this Agreement.

4. Compensation. Compensation to the Engineer for the services to be provided hereunder shall be as follows:

- a. Engineer shall be entitled to compensation under the terms of this Agreement only after issuance of a Task Order or Project Contract by the District and performance of Engineer's services in accordance therewith. The District shall have no obligation to compensate Engineer for any work performed by Engineer in advance, in anticipation that a Task Order or Project Contract will later be issued, and Engineer is specifically instructed not to perform such work in advance of a Task Order or Project Contract.
- b. All work performed by Engineer under this Agreement shall be invoiced under the rates set forth in the Engineer's Rate Schedule attached hereto as Attachment A and hereby incorporated by reference as a part of this Agreement, or as lump sum pricing, if agreed to by the parties and set forth in Task Orders or Project Contracts for any specific project or work authorized by the District to be performed by the Engineer. The rates set forth in Attachment A shall not increase with subsequent renewals of this Agreement under Section 5 of this Agreement, unless otherwise agreed to in writing by both parties.
- c. All invoices submitted by Engineer for work performed under this Agreement shall include a detailed accounting of all charges including account coding as assigned by the District, itemized in accordance with the applicable Task Orders or Project Contracts as issued by the District.
- d. Engineer shall submit invoices for work performed under this Agreement no more than one time per month.
- e. The District will pay any invoice duly rendered under this Agreement, with sufficient detail as provided in this Paragraph 4 and not in dispute, within thirty (30) days following the receipt thereof in the offices of the District.
- f. If the District determines that any invoice submitted in accordance herewith lacks sufficient detail or information, is incorrect, or for any other reason is deficient, the District shall, within five (5) business days following the receipt thereof, notify Engineer of the problem and request an amended invoice from Engineer. If the matter is not resolved within thirty (30) days following the District's receipt of the original invoice, the District may nonetheless pay any undisputed amount to Engineer pending resolution of issues related to any amount that remains in dispute. Engineer and the GM shall first attempt to resolve the disputed amount in the invoice in good faith. If the parties are unable to resolve the dispute through good-faith negotiation, the parties shall, prior to filing any legal action regarding any contested invoice, first submit the matter to mediation by a mutually-agreeable mediator and shall split any mediation fees required by such a mediator. The parties shall be solely responsible for any legal fees incurred in relation to the resolution of any contested invoice.

5. Term. This Contract shall be effective upon its endorsement by all the parties hereto, and shall terminate twelve months from the effective date of the Agreement, unless sooner terminated pursuant to the provisions of this Agreement, or extended by

mutual agreement of the parties. This Agreement may be renewed for up to three (3) successive one-year terms, at the District's sole discretion.

6. Termination.

- a. This Agreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this Agreement through no fault of the terminating party, provided that no such termination may be effected unless the other party is given (1) not less than fourteen (14) calendar days written notice (delivered by certified mail, return receipt requested) of the intent to terminate and (2) an opportunity for consultation with the terminating party before termination.
- b. This Agreement may be terminated in whole or in part in writing by the District for its convenience, provided that the Engineer is given (1) not less than fourteen (14) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the District prior to termination.
- c. If termination for default is effected by the District, an equitable adjustment in the price provided for in this Agreement shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due to the Engineer at the time of termination may be adjusted to cover any additional costs to the District because of the Engineer's default. If the Engineer effects termination for default, or if the District effects termination for convenience, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to the Engineer for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by the Engineer relating to commitments which had become firm prior to the termination.
- d. Upon receipt of a termination action under paragraphs a or b above, the Engineer shall (1) promptly discontinue all affected work (unless the notice directs otherwise), and (2) deliver or otherwise make available to the District within fourteen (14) calendar days copies of all data, design drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the Engineer in performing this Agreement, whether completed or in process.
- e. Upon termination under paragraphs a or b above, the District may take over the work and may award another party an Agreement to complete the work under this Agreement.
- f. If, after termination, for failure of the Engineer to fulfill contractual obligations, it is determined that the Engineer had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of the District. In such event, adjustment of the Agreement price shall be made as provided in c of this clause.

7. Insurance and Indemnification. Insurance and Indemnification under this Agreement will be as follows:

- a. Engineer during the term of this Agreement shall maintain in force general liability insurance in an amount no less than **\$2,000,000** and shall provide that the District is an additional named insured on such policy.
- b. Engineer also agrees to procure and maintain professional liability (errors and omissions) insurance in an amount not less than **\$2,000,000**.
- c. Engineer agrees to procure and maintain Comprehensive Automobile and Vehicle Liability Insurance with minimum of five hundred thousand dollars (\$500,000) combined single limits covering claims for injuries to members of the public and/or damage to property of others arising from the use of Engineer owned or leased motor vehicles, including onsite and offsite operations and locations.
- d. Engineer agrees to procure and maintain Statutory Workers' Compensation and Employers Liability Insurance as required by the State of New Mexico.
- e. The Engineer agrees to defend, indemnify, and hold harmless the District and its officers and employees from and against all suits, actions, or claims of any character brought because of any injury or damage claimed, received or sustained by any person, persons or property arising out of or resulting from the negligence or other tortious conduct of the Engineer, its employees, its subcontractors, subcontractors' employees or agents, or other personnel under Engineer's supervision and control, or if caused by the actions of any client of Engineer resulting in injury or damage to persons or property during the time when Engineer or any officer, agent, employee, servant or subcontractor or other personnel thereof has performed or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the Agreement performed by Engineer or any officer, agent, employee, servant or subcontractor or other personnel under this Agreement is brought against Engineer, Engineer shall, as soon as practicable, but no later than two (2) days after it receives notice thereof, notify the District General Manager by certified mail.

8. Status of Engineer. Engineer acknowledges that Engineer and Engineer's agents and employees are and shall at all times remain independent contractors and not employees of the District. Engineer and Engineer's employees shall not be eligible to accrue leave, retirement benefits, or insurance benefits, to use District vehicles, or to receive any other benefits provided to District employees. Engineer agrees not to bind, purport to bind, or attempt to bind the District to any obligation not assumed herein, unless the Engineer has prior expressed written authority to do so from the District, and then only within the strict limits of that authority.

9. Workers Compensation. Engineer acknowledges that neither Engineer nor Engineer's employees shall have any claims whatsoever to workers compensation coverage under the District's policy.



10. Assignment and Subcontracting. Engineer shall not assign or transfer any interest in this Agreement, subcontract any portion of the services to be performed under this Agreement, or assign any claims for money due under this Agreement without the express prior written approval of the District, which may be incorporated into the applicable Task Order or Project Contract issued in accordance herewith.

11. Confidentiality and Work Product. Any information learned, given to, or developed by Engineer in the performance of this Agreement shall be kept confidential and shall not be made available or otherwise released to any individual or organization without the prior written approval of the District; provided, however, that neither the District nor the Engineer shall be obligated to withhold from public dissemination any information and records that are required to be made available to the public under the New Mexico Inspection of Records Act or other applicable law. The field notes, design notes, and original tracings of plans and logs of any wells drilled as instruments of service are and shall remain the property of the Engineer; however, the District, at no additional cost, will be provided with reproducible copies of the original tracings of any work as actually built. The District will make available for the use of the Engineer all of its maps, records, laboratory tests or other data pertinent to the work to be performed by the Engineer pursuant to this Agreement, and also any other map, records, or other materials available to the District upon the District's request to another public agency or body. The Engineer shall make available to the District, upon request, maps, records, field notes, and soil tests which were developed in the course of work for the District and for which compensation has been received by the Engineer.

12. Conflict of Interest. Engineer warrants that Engineer has no present conflict of interest with Engineer's performance of its services under this Agreement. In the event of any matter arising that presents a potential conflict of interest, Engineer shall immediately advise the District and shall make such arrangements as may be required to resolve the potential conflict.

13. Release on Final Payment. Upon final payment of the amounts due under this Agreement, Engineer releases the District, its officers, agents and employees from any and all liabilities, claims and obligations whatsoever arising from or under this Agreement.

14. Equal Opportunity Compliance. The Engineer agrees to abide by all federal and state laws and regulations, including executive orders of the President of the United States and the Governor of the State of New Mexico, pertaining to equal employment opportunity, to the extent such laws, regulations and executive orders are applicable to this Agreement. The Engineer must agree to ensure that no person in the United States shall, on the grounds of race, color, national origin, sex, sexual preference, age or disability, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination in connection with any program performed under the Agreement. If the Engineer is found not to be in compliance with such requirements in connection with the Agreement, at any time during the life of the Agreement, Engineer will be required to take appropriate steps to correct any and all deficiencies.

15. Bribes, Gratuities and Kickbacks Prohibited. Pursuant to New Mexico law, it is a crime to engage in bribery or provide gratuities or kickbacks in relation to public contracts. The parties hereto, their agents, officers and employees state affirmatively

that no such activities have been engaged in, or will be engaged in, in connection with this Agreement. Any person, firm or corporation that knowingly violates any provisions of the New Mexico Procurement Code is subject to a civil penalty of not more than one thousand (\$1,000.00) for each procurement violation of any provision of the Procurement Code. The attorney general or district attorney of the first jurisdiction in which the violation occurs is empowered to bring a civil action for enforcement of any provision of the Procurement Code.

16. Amendment. This Agreement shall not be altered, changed or amended except by an instrument in writing executed by the parties hereto with the same formalities as this Agreement, provided that the terms of Task Orders issued hereunder are fully binding as between the parties.

17. Scope of Agreement. This Agreement incorporates all agreements, covenants and understandings of the parties hereto concerning the subject matter hereof and all such agreements, covenants and understandings have been merged into this written Agreement. No prior agreement or understanding, verbal or otherwise, of the parties or their agents regarding work to be performed under this Agreement shall be valid or enforceable unless embodied in this Agreement.

18. Governing Law. This Agreement is entered into in the State of New Mexico and shall be governed by the laws of the State of New Mexico as the same from time to time exists.

19. Sufficient Funding. This Agreement's terms, including the initial and any extended terms are contingent upon the District having sufficient funding and authorization for the performance of this Agreement in its budget. Notwithstanding the provisions of Paragraphs 5 and 6 above, if the District does not have sufficient funding and authorizations, this Agreement shall terminate immediately upon the District giving written notice to the Engineer. The District's decision whether sufficient funding is available shall be accepted by the Engineer and shall be final.

20. Design Professional Registration. All work shall be under the direction of the applicable design professional legally licensed and registered by the state.

21. Notices: Any notices or communications under this Agreement shall be directed as follows:

To the District:

Steve King, General Manager  
Eldorado Area Water & Sanitation District  
2 North Chamisa Drive, Suite A  
Santa Fe, New Mexico 87508  
Tele: 505-466-2531  
Fax: 505-466-2631  
E-mail: s.king@EAWSD.org

Direct delivery address:  
2 North Chamisa Drive. Suite A  
Santa Fe, NM 87508  
505-466-2531

To Engineer:

Direct delivery address:

IN WITNESS WHEREOF, the parties have executed this Agreement as of this date first written above.

ELDORADO AREA WATER & SANITATION DISTRICT

By: \_\_\_\_\_  
Name: Steve King  
Title: General Manager  
Date: \_\_\_\_\_

Attest: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

ENGINEER

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Attest: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**ATTACHMENT A: ENGINEER’S RATE SCHEDULE**

**ATTACHMENT B: PROJECT CONTRACT** (This State-approved Agreement for Engineering Services will be required to be executed for all Capital Improvement Project (CIP) services, and the Engineer agrees to accept and execute this Agreement if and when presented.

**AGREEMENTS FOR ENGINEERING SERVICES  
(Publicly Funded Project)**

THIS Agreement, made this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ by and between \_\_\_\_\_ hereinafter referred to as the OWNER, and \_\_\_\_\_ hereinafter referred to as the ENGINEER. Contract becomes effective on the date of the last signature.

The OWNER intends to construct a Project consisting of

in \_\_\_\_\_ County, State of New Mexico, which may be paid for in part with financial assistance from the United States of America acting through the United States Department of Agriculture – Rural Development, hereinafter referred to as USDA-RD; and/or through the United States Environmental Protection Agency, hereinafter referred to as EPA; and/or the New Mexico Environment Department, hereinafter referred to as NMED; and/or the New Mexico Finance Authority, hereinafter referred to as NMFA; and/or the New Mexico Department of Finance, hereinafter referred to as DFA; all collectively referred to as the Funding Agency. Neither the United States or the State of New Mexico nor any of its departments, agencies, or employees is or will be a party to this Agreement or any subagreement. The ENGINEER agrees to perform the various professional engineering services for the planning, design, and construction of said Project in accordance with the provisions of this Agreement.

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## **SECTION A – GENERAL PROVISIONS**

### **1. General**

(a) This Agreement represents the entire and integrated Agreement between the OWNER and the ENGINEER for the Project and supersedes all prior negotiations, representations or agreements, either written or oral. In the event any provisions of this Agreement or any subsequent addendum shall be held to be invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provision, term, condition or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party. The General provisions of this Agreement supersede any conflicting SPECIAL PROVISIONS.

(b) OWNER and ENGINEER each is bound and the partners, successors, executors, administrators and legal representatives of OWNER and ENGINEER are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives of such other party, in respect of all covenants, agreements, and obligations of the Agreement. Neither OWNER nor ENGINEER may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in the Agreement without written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent of an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Unless expressly provided otherwise in this Agreement:

- (1) Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by OWNER or ENGINEER to any Contractor, Contractor's subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them
- (2) All duties and responsibilities undertaken pursuant to this Agreement will be for sole and exclusive benefit of OWNER and ENGINEER and not for the benefit of any other party.

(c) The ENGINEER will work closely with the Funding Agency, as necessary, for funding to be provided.

(d) The ENGINEER will attend conferences and public hearings with the OWNER, representatives of the Funding Agency, or other interested parties and provide assistance in connection with such undertakings as provided for in the scope of work detailed in the Attachments.

### **2. Approvals**

(a) This Agreement shall not become effective until approved by the Funding Agency. Such approval shall be evidenced by the signature of a duly authorized representative of the Funding Agency in the space provided in the Attachments to this Agreement. The approval shall in no way commit the Funding Agency to render financial assistance to the OWNER. The Funding Agency is without liability for any payment hereunder, but in the event such assistance is provided, the approval shall signify that the provisions of this Agreement are consistent with the requirements of the Funding Agency.

(b) Review or approval of documents by or for the Funding Agency under this Agreement is for administrative purposes only and does not relieve the ENGINEER or OWNER of their responsibilities to design, construct and operate the Project as required under law, regulations, permits and good management practices.



### 3. Responsibilities of the ENGINEER

(a) The ENGINEER shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all design drawings, specifications, reports, and other services furnished by the ENGINEER under this Agreement. If this Agreement involves environmental measures or data generation, the ENGINEER shall comply with EPA quality assurance requirements that can be found on their website at <https://www.epa.gov/compliance/resources-and-guidance-documents-compliance-assistance>. The ENGINEER shall keep the OWNER informed of the performance of the ENGINEER'S duties under this Agreement. The ENGINEER shall promptly and without additional compensation, correct or revise any errors, omissions, or other deficiencies in the design drawings, specifications, reports, and other services provided by ENGINEER under terms of this Agreement.

(b) The ENGINEER shall perform the professional services necessary to accomplish the work specified in this Agreement, in accordance with this Agreement and applicable Funding Agency requirements in effect on the date of execution of any assistance agreement for this Project.

(c) The OWNER, or Funding Agency review or approval of design drawings, specifications, reports, and other services furnished hereunder shall not in any way relieve the ENGINEER of responsibility for the technical adequacy of the work. Neither the OWNER, nor Funding Agency review, approval or acceptance of, nor payment for any of the services shall be construed as a waiver of action arising out to the performance of this Agreement.

(d) The ENGINEER shall be and shall remain liable, in accordance with applicable law, for all damages to the OWNER caused by the ENGINEER's negligent performance of any of the services furnished under this Agreement, except for errors, omissions or other deficiencies to the extent attributable to the OWNER or OWNER-furnished data. The ENGINEER shall not be responsible for any time delays in the Project caused by circumstances beyond the ENGINEER'S control.

(e) ENGINEER'S opinions of probable Construction Cost are to be made on the basis of ENGINEER'S experience and qualifications and represent ENGINEER'S best judgment as an experienced and qualified professional generally familiar with the construction industry. However, since ENGINEER has no control over the cost of labor, materials, equipment, or services furnished by others, or over Contractor's methods of determining prices, or over competitive bidding or market conditions, ENGINEER cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by ENGINEER. If OWNER wishes greater assurance as to probable Construction Cost, OWNER shall employ an independent cost estimator.

(f) During the Construction Phase, the ENGINEER shall not at any time supervise, direct, or have control over Contractor's work, nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to the Contractor's work in progress, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work.

(g) The standard of care of all professional engineering and related services performed or furnished by ENGINEER under this Agreement will be the care and skill ordinarily used by members of subject profession practicing under similar circumstances at the same time and in the same locality. ENGINEER makes no warranties, expressed or implied, under this Agreement or otherwise, in connection with ENGINEER'S services.

(h) The ENGINEER's obligations under this clause are in addition to the ENGINEER's other express or implied assurances under this Agreement or State law and in no way diminish any other rights that the OWNER may have against the ENGINEER for faulty materials, equipment, or work.

#### **4. Responsibilities of the OWNER**

(a) The OWNER shall designate in writing a person authorized to act as the OWNER's representative. The OWNER or its representative shall receive and examine documents submitted by the ENGINEER, interpret and define the OWNER's policies and render decisions and authorizations promptly in writing.

(b) OWNER shall be responsible for, and ENGINEER may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by OWNER to ENGINEER pursuant to this Agreement. ENGINEER may use such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement without responsibility for verifying accuracy of OWNER furnished data and information.

(c) The OWNER shall provide to the ENGINEER full and free access to enter upon all property required for the performance of the ENGINEER's services under this Agreement.

(d) The OWNER may make and retain copies of Documents for information and reference in connection with use on the Project by OWNER. Such Documents are not intended or represented to be suitable for reuse by OWNER or others on extensions of the Project or on any other project. Any such reuse or modification without written verification or adaptation by ENGINEER will be at OWNER's sole risk and without liability or legal exposure to ENGINEER. Any verification or adaptation as stated above, will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER.

#### **5. Changes**

(a) The OWNER may, at any time, with prior approval of the Funding Agency, by written order make changes within the general scope of this Agreement in the services or work to be performed. If such changes cause an increase or decrease in the ENGINEER's cost or time required to perform any services under this Agreement, whether or not changed by any order, the OWNER shall make an equitable adjustment and modify this Agreement in writing. The ENGINEER must assert any claim for adjustment under this clause in writing within thirty (30) calendar days from the date it receives the OWNER's notification of change, unless the OWNER grants additional time before the date of final payment.

(b) No services for which the ENGINEER will charge an additional compensation shall be furnished without the written authorization of the OWNER.

#### **6. Termination of Contract**

(a) This Agreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this Agreement through no fault of the terminating party, provided that no such termination may be effected unless the other party is given (1) not less than fourteen (14) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate and (2) an opportunity for consultation with the terminating party before termination.

(b) This Agreement may be terminated in whole or in part in writing by the OWNER for its convenience, provided that the ENGINEER is given (1) not less than fourteen (14) calendar days written notice (delivered by certified, return receipt requested) of intent to terminate, and

(2) an opportunity for consultation with the OWNER prior to termination.

(c) If termination for default is effected by the OWNER, an equitable adjustment in the price provided for in this agreement shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due to the ENGINEER at the time of termination may be adjusted to cover any additional costs to the OWNER because of the ENGINEER's default. If the ENGINEER effects termination for default, or if the OWNER effects termination for convenience, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to the ENGINEER for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by the ENGINEER relating to commitments which had become firm prior to the termination.

(d) Upon receipt of a termination action under paragraphs (a) or (b) above, the ENGINEER shall (1) promptly discontinue all affected work (unless the notice directs otherwise), and (2) deliver or otherwise make available to the OWNER within fourteen (14) calendar days copies of all data, design drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the ENGINEER in performing this Agreement, whether completed or in process.

(e) Upon termination under paragraphs (a) or (b) above, the OWNER may take over the work and may award another party an Agreement to complete the work under this Agreement.

(f) If, after termination for failure of the ENGINEER to fulfill contractual obligations, it is determined that the ENGINEER had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of the OWNER. In such event, adjustment of the Agreement price shall be made as provided in paragraph 6(c) of this clause.

## **7. Payment**

(a) The ENGINEER will submit to the OWNER for services rendered an itemized bill showing charges for such services accompanied by any additional documentation requested by the OWNER. Such invoices are limited to no more than one per month. Compensation will be based on the lump sum or standard hourly rate with a maximum method of payment as detailed in the Attachments.

(b) The OWNER shall notify the ENGINEER of any disputed amounts in the invoices within fourteen (14) calendar days of receipt. If OWNER contests an invoice, OWNER may withhold only that portion so contested, and must pay the undisputed portion.

(c) Final Payment under this Agreement or settlement upon termination of this Agreement shall not constitute a waiver of the OWNER's claims against the ENGINEER under this Agreement.

(d) If OWNER fails to make any payment due ENGINEER within forty-five (45) calendar days after OWNER's receipt of ENGINEER's invoice, the amount due ENGINEER shall be increased at the rate of 1.5% per month from said forty-fifth day. The OWNER is solely responsible for the payment of any interest incurred due to late payments. The FUNDING AGENCY will not reimburse for any interest incurred. In addition, after ten (10) calendar days prior written notice, the ENGINEER may suspend services under this Agreement until ENGINEER is paid in full. OWNER waives any and all claims against ENGINEER for any such suspension.

## 8. Time

### (a) PROGRESS AND COMPLETION

1. Time limits stated in this Agreement are of the essence. By executing the Agreement, ENGINEER confirms that the Contract Time(s) is (are) reasonable periods for performing each phase of the Work.
2. The ENGINEER shall proceed expeditiously, consistent with professional skills, with adequate forces to achieve completion within the Contract Time.
3. The OWNER shall not be liable to the ENGINEER for additional time or money if the ENGINEER submits a progress report expressing an intention to achieve completion of the Work prior to the Contract Time and then is not able to achieve intended accelerated schedule regardless of the reason.
4. If the ENGINEER is delayed at any time in the commencement or progress of the Work by an act or neglect of the OWNER, changes in the Work as directed by the OWNER in writing, or other causes beyond the ENGINEER'S control, then the Contract Time may be extended by OWNER per Section 5 of this Agreement. Extensions of time not associated with modifications or change to the Work shall not be allowed to increase the Contract amount for overhead or for any other reason and shall strictly apply toward liquidated damages.
5. The ENGINEER shall promptly notify OWNER in writing of any conditions that may delay delivery of work beyond the Contract Time.
6. OWNER shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the ENGINEER'S performance of its Services.

### (b) CONTRACT TIME AND LIQUIDATED DAMAGES

1. The ENGINEER agrees that the Services being provided under this Agreement will be performed regularly, diligently and without interruption at such rate of progress as will ensure completion within the Contract Time. It is expressly understood and agreed, by and between ENGINEER and the OWNER, that the Contract Time is a reasonable time for completion of the Services, taking into consideration the usual conditions for performing the Services. ENGINEER agrees to promptly notify OWNER of delays in completing the services under this Agreement that are beyond ENGINEER'S control and for which a Contract Time extension will be requested. If the ENGINEER neglects, fails or refuses to complete the Services within the Contract Time, including any time extension granted by the OWNER, then the ENGINEER agrees to pay the OWNER the amount specified in the ATTACHMENT, not as a penalty, but as liquidated damages.
2. The parties agree that the amount of the likely damages to the OWNER for such delay is difficult to ascertain at the time of execution of this Agreement, but that a reasonable estimate of such damages may be deducted from any monthly progress payments due to the ENGINEER or from other monies being withheld from the ENGINEER when a reasonable estimate of the expected date of completion can be determined by the OWNER.
3. Final accounting of Liquidated Damages shall be determined at completion and the ENGINEER shall be liable for any Liquidated Damages over and above unpaid balances held by the OWNER.

4. The OWNER and ENGINEER agree that as mutually agreeable, reasonable Liquidated Damages for delay (but not as a penalty), ENGINEER shall pay OWNER amount specified in the ATTACHMENT (minimum fifty dollars [\$50.00] per day) for each calendar day that expires after the Contract Time specified in the Agreement until the Work is complete and accepted by the OWNER. OWNER shall have no more than ten (10) calendar days to accept or reject the Work.

## **9. Project Design**

Unless otherwise approved by the OWNER and Funding Agency, the ENGINEER shall specify materials, equipment, and processes that are readily available through competitive procurement and consistent with State and Federal regulations.

## **10. Audits and Access to Records**

(a) The ENGINEER shall maintain books, records, documents, and other evidence directly pertinent to performance on work under this Agreement in accordance with generally accepted accounting principles and practices consistently applied, and Funding Agency regulations in effect on the date of execution of this Agreement. The ENGINEER shall also maintain the financial information and data used by the ENGINEER in the preparation of support of the cost submission required under EPA regulations in effect on the date of execution for any negotiated agreement or amendment thereof and a copy of the cost summary submitted to the OWNER. The Funding Agency, the Comptroller General of the United States, the U.S. Department of Labor, OWNER, and the State water pollution control agency or any of their duly authorized representatives shall have access to such books, records, documents, and other evidence for inspection, audit, and copying during normal business hours. The ENGINEER will provide proper facilities for such access and inspection.

(b) The ENGINEER agrees to make paragraphs (a) through (f) applicable to all agreements it awards in excess of \$10,000, at any tier, and to make paragraphs (a) through (f) of this clause applicable to all amendments directly related to Project performance.

(c) Audits conducted under this provision shall be in accordance with generally accepted auditing standards and established procedures and guidelines of the reviewing or audit agency (ies) and the General Accounting Office.

(d) The ENGINEER agrees to disclose all information and reports resulting from access to records under paragraphs (a) and (b) of this clause to any of the agencies referred to in paragraph (a) upon their request.

(e) Records under paragraphs (a) and (b) above shall be maintained and made available by the ENGINEER during performance of services under this Agreement and for three (3) years from the date of final Federal/State assistance payment to the OWNER for the Project. In addition, those records which relate to any controversy arising under this Agreement, litigation, the settlement of claims arising out of such performance or to costs or items to which an audit exception has been taken shall be maintained and made available by the ENGINEER until three (3) years after the date of resolution of such appeal, litigation, claim or exception.

(f) This right of access clause applies to financial records pertaining to all agreements (except formally advertised, competitively awarded, fixed price agreements) and all agreement amendments regardless of the type of agreement. In addition, this right of access applies to all records pertaining to all agreements and agreement amendments:

1. To the extent the records pertain directly to Agreement performance; or

2. If there is any indication that fraud, gross abuse or corrupt practices may be involved; or
3. If the Agreement is terminated for default or for convenience.

## **11. Subcontracts**

(a) Any subcontractors and outside associates or consultants required by the ENGINEER in connection with services under this Agreement will be limited to such individuals or firms as were specifically identified and agreed to during negotiations of this Agreement. The OWNER and the FUNDING AGENCY must give prior approval for any substitutions, additions or deletions to such subcontractors, associates, or consultants.

(b) The ENGINEER may not subcontract services to subcontractors or consultants in excess of thirty (30) percent of the total phased compensation due ENGINEER and detailed in the Attachments without the OWNER AND FUNDING AGENCY prior written approval.

## **12. Insurance**

The ENGINEER agrees to obtain and maintain, at the ENGINEER's expense, such insurance as will protect the ENGINEER from claims under the Workman's Compensation Act and such comprehensive general liability and automobile insurance as will protect the OWNER and the ENGINEER from all claims for bodily injury, death, or property damage which may arise from the performance by the ENGINEER, or by the ENGINEER's employees, for the ENGINEER's functions and services required under this Agreement. Such insurance shall be in an amount specified in ATTACHMENT for injury to any one person and amount specified in ATTACHMENT on account of any one accident and in the amount specified in ATTACHMENT for property damage. The ENGINEER further agrees to procure and maintain professional liability (errors and omissions) insurance in an amount specified in ATTACHMENT per claim and in the aggregate. Prior to commencement of any work, the ENGINEER shall furnish to the OWNER a certificate that complies with this paragraph. The certificate shall provide that the policy shall not be canceled until at least ten (10) calendar days prior written notice shall have been given to the OWNER. ENGINEER shall provide annual updates of the certificate to demonstrate the policy remains in effect for the duration of this Agreement.

## **13. Environmental Condition of Site**

(a) Owner has disclosed to Engineer in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern located at or near the Site, including type, quantity, and location.

(b) Owner represents to Engineer that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at the Site.

(c) If Engineer encounters an undisclosed Constituent of Concern, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.

(d) It is acknowledged by both parties that Engineer's scope of services does not include any services related to Constituents of Concern. If Engineer or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (1) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate,

abate, remediate, or remove the Constituents of Concern; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.

(e) If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on 30 calendar days' notice.

(f) Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

#### **14. Mutual Waiver**

To the fullest extent permitted by law, Owner and Engineer waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project.

#### **15. Independent Contractor**

Engineer will, at all times during the performance of this Agreement and in connection with the Services, be deemed to be an Independent Contractor. No relationship of employer-employee or agency or other fiduciary capacity is created by this Agreement or by Engineer's performance of the Services.

## **16. Equal Employment Opportunity**

The ENGINEER shall comply with Executive Order 11246, entitled "Equal Employment Opportunity", as amended by Executive Order 11375, and as supplemented in Department of Labor regulations 41 CFR Part 60.

## **17. Gratuities**

(a) If the OWNER finds after a notice and hearing that the ENGINEER or any of the ENGINEER's agents or representatives offered or gave gratuities (in the form of entertainment, gifts, or otherwise), to any official, employee, or agent of the OWNER or the FUNDING AGENCY in an attempt to secure this Agreement, or favorable treatment in awarding, amending or making any determinations related to the performance of this Agreement, the OWNER may, by written notice to the ENGINEER, terminate this Agreement. The OWNER may also pursue other rights and remedies that the law or this Agreement provides. However, the existence of the facts on which the OWNER bases such findings shall be in issue and may be reviewed in proceedings under the Remedies clause of this Agreement.

(b) In the event this Agreement is terminated as provided in paragraph (a), the OWNER may pursue the same remedies against the ENGINEER as it could pursue in the event of a breach of the Agreement by the ENGINEER. As a penalty, in addition to any other damages to which it may be entitled by law, the OWNER may pursue exemplary damages in an amount (as determined by the OWNER) which shall be not less than three nor more than ten times the costs the ENGINEER incurs in providing any such gratuities to any such officer or employee.

## **18. Covenant Against Contingent Fees**

The ENGINEER represents that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the ENGINEER for the purpose of securing business. For breach or violation of this assurance the OWNER shall have the right to annul this Agreement without liability or, at its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fees.

## **19. Cost and Pricing Data on Federally-funded Projects (delete section if not applicable)**

The ENGINEER and its subcontractor(s) assure that cost and pricing data submitted for evaluation with respect to negotiation of prices for negotiated agreements, lower tier subagreements, or amendments are based on current, accurate, and complete data supported by their books and records. If the OWNER, or Funding Agency determines that any price (including profit) negotiated in connection with this Agreement, any lower tier subagreement, or any amendment thereunder was increased by any significant sums because the data provided was incomplete, inaccurate, or not current at the time of submission, then such price or cost or profit shall be reduced accordingly; and this Agreement shall be modified in writing to reflect such action. Failure to agree on a reduction shall be subject to the Remedies clause of this Agreement.

## **20. Remedies**

Unless otherwise provided in this Agreement, all claims, counter-claims, disputes, and other matters in question between the OWNER and the ENGINEER arising out of or relating to this Agreement or the breach of it will be decided by non-binding mediation or arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the OWNER is located.



## **21. Assurance Against Debarment**

The ENGINEER assures that neither it nor any of its subcontractors are suspended or debarred by EPA or USDA-RD.

## **SECTION B – ENGINEERING SERVICES**

The ENGINEER shall furnish ENGINEERING SERVICES as follows in accordance with the GENERAL PROVISIONS of the Agreement and as authorized by the appropriate Attachment to this Agreement:

### **Engineering Services During the Planning Phase**

1. The ENGINEER shall complete the ENGINEERING SERVICES described in ATTACHMENT I – Planning Services scope of work and cost proposal within the time specified in Attachment I – Compensation for Engineering Services During the Planning Phase from the date of written authorization to proceed unless otherwise mutually agreed to in writing by both parties. Any supporting documentation or revisions regarding the ENGINEER's services under this Agreement necessary to obtain the approval of the Funding Agency and all State regulatory agencies will be provided promptly.

### **Engineering Services During the Design Phase**

2. The ENGINEER shall complete the ENGINEERING SERVICES described in ATTACHMENT II – Design Services scope of work and cost proposal and section B-2 through B-10 described herein within the time specified in Attachment II – Compensation for Engineering Services During the Design Phase from the date of written authorization to proceed unless otherwise mutually agreed to in writing by both parties. Any supporting documentation or revisions regarding the ENGINEER's services under this Agreement necessary to obtain the approval of the Funding Agency and all State regulatory agencies will be provided promptly.

3. The ENGINEER shall perform the necessary design surveys, accomplish the detailed design of the Project, prepare contract documents including design drawings, specifications and invitations for bids, and prepare a final opinion of probable Project costs based on the final design of the Project. The design drawings prepared shall be in sufficient detail to show the character and extent of the Project and to permit the actual location of the proposed improvements on the Project site. It is also understood that if subsurface explorations such as borings, or soil tests are required to determine amounts of rock excavation or foundation conditions, the ENGINEER will furnish coordination of said explorations as an Additional Engineering Service, and the costs incident to such explorations, no matter whether they are performed by the ENGINEER or by others shall be paid for by the OWNER as indicated in Section C and set out in Attachment II.

4. The ENGINEER shall review the Engineering Report prepared for this Project and, if necessary and upon consultation with and concurrence of the OWNER, Funding Agency or delegated State as appropriate, shall revise design criteria, design standards, treatment process sizing and other appropriate preliminary design information included in the Plan or other preliminary engineering reports in order to complete the final design for the Project in accordance with the performance standards and accepted engineering practices.

5. The ENGINEER shall assist the OWNER in obtaining necessary permits and approvals from appropriate Federal, State, and local regulatory agencies. The cost of obtaining such permits and approvals shall be borne by the OWNER. However, this shall not be construed as

a guarantee that the ENGINEER can cause a permit or permit condition to be granted or further the OWNER's goals.

6. The Contract Documents furnished by the ENGINEER under Section B-4 shall utilize Funding Agency endorsed construction contract documents, as appropriate.

7. Prior to the advertisement for bids, the ENGINEER shall provide for each construction contract to be awarded by the OWNER, the number of copies specified in Attachment II of the detailed design drawings, specifications, and contract documents for use by the OWNER and appropriate Federal, State and local agencies from whom approval of the Project must be obtained. The ENGINEER shall provide additional copies of the above specified documents to the OWNER at the cost of reproduction. Originals of such items as documents, survey notes, and tracings, prepared by the ENGINEER are and shall remain the property of the ENGINEER, but this shall in no way infringe upon the OWNER's rights to such items under Section A-6(e).

8. The ENGINEER shall establish baselines for locating the work together with a suitable number of benchmarks adjacent to the work and show their location in the Contract Documents. This information and the Contract Documents will provide the contractor sufficient reference from which to execute the contract work. The ENGINEER is not obligated to set construction grade stakes for the construction of the Project.

9. The ENGINEER shall prepare and furnish to the OWNER three (3) copies of maps or drawings showing the approximate location of needed construction easements, permanent easements, rights-of-way and land to be acquired. Such maps or drawings shall be furnished promptly to enable the OWNER to initiate property and easement acquisitions.

10. The ENGINEER shall, prior to completion of ninety (90) percent of the Design Phase service, prepare and furnish to the OWNER an estimate for total compensation to be paid to the ENGINEER for providing the services to be performed in the Construction Phase and Operation Phase.

11. Section B-2 through B-10 and those ADDITIONAL ENGINEERING SERVICES designated for the Design Phase in Attachment II will take effect upon execution of Attachment II.

### **Engineering Services During the Construction Phase**

12. ENGINEER shall complete the ENGINEER SERVICES described in ATTACHMENT III – Construction Services scope of work and cost proposal and section B-12 through B-23 described herein, within the time specified in Attachment III – Compensation for Engineering Services During the Construction Phase from the date of written authorization to proceed unless otherwise mutually agreed to by both parties.

13. The ENGINEER shall attend the bid opening and tabulate the bid proposals, analyze the responsiveness of the bidders, check references, and make recommendations for awarding the contract(s) for construction to the lowest responsible, responsive bidder.

14. Upon award of each construction contract, the ENGINEER shall furnish to the OWNER, for each contract, the number specified in Attachment III of the sets of the design drawings, specifications and contract documents for execution by the OWNER and contractor. The ENGINEER shall provide additional copies of such contract documents to the OWNER at the cost of reproduction.

15. The ENGINEER shall review and approve, for conformance with the design concept all shop drawings and other submittals required by the Contract Documents to be furnished by contractors.

16. The ENGINEER shall interpret the general intent of the design drawings and specifications to endeavor to protect the OWNER against defects and deficiencies in construction on the part of the contractors.

17. The ENGINEER shall provide general engineering review of the work of the contractors as construction progresses to ascertain that the contractors are conforming to the general design concept. Engineer shall, in connection with observations of Contractor's Work while it is in progress make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, but at least monthly, to observe as an experienced and qualified design professional the progress and quality of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of Contractor's Work in progress or to involve detailed inspections of Contractor's Work in progress beyond the responsibilities specifically assigned to Engineer in this Agreement and the Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.

18. The ENGINEER's undertaking hereunder shall not relieve the contractor of its obligation to perform the work in conformity with the Contract Documents and in a workmanlike manner; nor shall it make the ENGINEER an insurer of the contractor's performance. Engineer shall not at any time supervise, direct, or have control over Contractor's work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to the Contractor's work in progress, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work.

19. The ENGINEER shall review each contractor's applications for progress and final payments and submit sufficient copies of same to the OWNER with the ENGINEER's recommendation for approval or disapproval.

20. The ENGINEER shall prepare necessary contract change orders for approval of the OWNER, the Funding Agency and others as required. The ENGINEER shall make an independent assessment of the Contractor's cost and time proposal and the impacts on the Contract Price and Contract Time as part of the review and recommendation process for each change order.

21. The ENGINEER shall make a site visit prior to issuing the certificate of substantial completion of all construction and submit a written report to the OWNER, the Funding Agency and others as required.

22. Prior to submission of recommendation for final payment on each contract, the ENGINEER shall submit a certificate of substantial completion of work done under that contract to the OWNER, the Funding Agency and others as required.

23. The ENGINEER shall provide the OWNER with record drawings as specified in the scope of work for Attachment III. Such drawings will be based upon the Resident Project Representative's construction data and the construction records provided by the contractor during construction and reviewed by the Resident Project Representative.

24. Section B-12 through B-23 and those ADDITIONAL ENGINEERING SERVICES designated for the Construction Phase in Attachment III will take effect upon execution of Attachment III.

#### **Engineering Services During the Operation Phase**

25. The ENGINEER shall complete the ENGINEERING SERVICES described in ATTACHMENT IV – Operational Services scope of work and cost proposal and section B-25 through B-29 within the time specified in Attachment IV – Compensation for Engineering Services During the Operation Phase from the date of written authorization to proceed unless otherwise mutually agreed to in writing by both parties.

26. The ENGINEER shall review the first year's operation of the Project and revise the operation and maintenance manual for the Project as necessary to accommodate actual operating experience.

27. The ENGINEER shall provide to the OWNER monthly operation reports on the performance of the Project.

28. The ENGINEER shall train operating personnel and prepare curricula and training material for operating personnel.

29. Eleven (11) months after the initiation of the Project operation, the ENGINEER shall advise the OWNER in writing whether the Project meets the project performance standards.

30. Section B-25 through B-29 and those ADDITIONAL ENGINEERING SERVICES designated for the Operation Phase in Attachment IV will take effect upon execution of Attachment IV.

## **SECTION C – ADDITIONAL ENGINEERING SERVICES**

ADDITIONAL ENGINEERING SERVICES as detailed in the Attachments shall be provided by the ENGINEER upon written authorization by the OWNER and concurrence of Funding Agency. Compensation for performing the designated ADDITIONAL ENGINEERING SERVICES will be included on Attachment I, Attachment II, Attachment III, or Attachment IV. ADDITIONAL ENGINEERING SERVICES could include such things as the following.

1. Provide Resident Project Observation. The ENGINEER shall, prior to the preconstruction conference, submit a resume of the Resident Project Representative's qualifications, anticipated duties and responsibilities for approval by the OWNER and the Funding Agency. Resident observation includes checking lines and grades, keeping records of full measurements and the contractor's activities, passing information between the ENGINEER and contractor, reviewing of contractor's request for progress payments, inspection of completed work for compliance with Contract Documents and keeping of a daily diary per Funding Agency requirements. Performance of this service will not guarantee the contractor's performance, but it endeavors to protect the OWNER against defects and deficiencies in the Project and verify compliance with the contract Documents. Period of service for calculating compensation will be as specified in the Attachments.
2. Prepare site, boundary, and topographic surveys for treatment works, dams, reservoirs, and other similar special surveys as may be required.
3. Conduct laboratory tests, well tests, borings, and specialized geological, soils, hydraulic, or other studies recommended by the ENGINEER.
4. Prepare property surveys, detailed descriptions of sites, maps, drawings, or estimates related thereto; assist in negotiating for land and easement rights.
5. Appear before courts or boards on matters of litigation related to the project.
6. Assist OWNER with developing a user charge system. Design a user charge system to produce adequate revenues required for the operation, maintenance and replacement of the Project that meets applicable EPA or other requirements.
7. Prepare an operation and maintenance manual.
8. Provide construction-staking services.
9. Prepare or review environmental assessments and impact statements; review and evaluate the effects on the design requirements for the Project of any such statements and documents prepared by others; and assist in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
10. Provide services resulting from significant changes in the scope, extent or character of the portions of the Project designed or specified by ENGINEER or its design requirements including, but not limited to, changes in size, complexity, OWNER's schedule, character of construction or method of financing; and revising previously accepted studies, reports, Drawings, Specifications or Contract Documents when such revisions are required by changes in laws, rules, regulations, ordinances, codes, standards or orders enacted subsequent to the Effective Date of this Agreement or are due to any other causes beyond ENGINEER's control.
11. Provide services resulting from evaluation by ENGINEER during the Study and Report Phase at OWNER's request of alternative solutions in addition to those specified in Attachment I.

12. Prepare for, coordinate with, participate in and respond to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering and constructability review requested by OWNER; and performing or furnishing services required to revise studies, reports, Drawings, Specifications or other Bidding Documents as a result of such review processes.
13. Provide services in connection with Work Change Directives and Change Orders to reflect OWNER-requested changes to the Drawings and Specifications.
14. Provide services in making revisions to Drawings and Specifications occasioned by the OWNER's acceptance of substitute materials or equipment other than "or-equal" items; and services after the award of the construction contract in evaluating and determining the acceptability of a substitution.
15. Provide additional or extended services during construction made necessary by (1) emergencies or acts of God endangering the Work, (2) work damaged by fire or other cause during construction, (3) a significant amount of defective, neglected or delayed work by Contractor, (4) acceleration of the progress schedule involving services beyond normal working hours, or (5) default by Contractor.

## **SECTION D**

Special Provisions or Modifications to the  
Standard Language in this Agreement

## **PART 1: Contract Language for all Projects**



MODEL CONTRACT CLAUSE FOR ENGINEERING AGREEMENTS for Clean Water State Revolving Fund (CWSRF) or Drinking Water State Revolving Fund (DWSRF) projects.

1. PRIVITY OF CONTRACT

This contract is expected to be funded in part with funds from the U.S. Environmental Protection Agency. Neither the United States nor any of its departments, agencies or employees is, or will be, a party to this contract or any lower tier contract. This contract is subject to the applicable EPA procurement regulations in effect on the date of the assistance award for this project.

2. CHANGES

1. The OWNER may at any time, by written order make changes within the general scope of this contract in the services to be performed. If such changes cause an increase or decrease in the ENGINEER'S cost or time required to perform any services under this contract, whether or not changed by any order, the OWNER shall make an equitable adjustment and modify this contract in writing. The ENGINEER must assert any claim for adjustment under this clause in writing within 30 days from the date it receives the OWNER'S notification of change, unless the OWNER grants additional time before the date of final payment.

2. No claim by the ENGINEER for an equitable adjustment shall be allowed if made after final payment under this contract.

3. No services for which the ENGINEER will charge an additional compensation shall be furnished without the written authorization of the OWNER.

3. TERMINATION

a. This contract may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this contract through no fault of the terminating party, provided that no termination may be effected unless the other party is given (1) not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination.

b. This contract may be terminated in whole or in part in writing by the OWNER for its convenience, provided that the ENGINEER is given: 1) not less than ten (10) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate, and; 2) an opportunity for consultation with the terminating party prior to termination.

c. If termination for default is effected by the OWNER, an equitable adjustment in the price provided for in this contract shall be made, but: 1) no amount shall be allowed for anticipated profit on unperformed services or other work; and 2) any payment due to the ENGINEER at the time of termination may be adjusted to cover any additional costs to the OWNER because of the ENGINEER'S default. If the ENGINEER effects termination for default, or if the OWNER effects termination for convenience, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to the ENGINEER for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by the ENGINEER relating to commitments which had become firm prior to the termination.

d. Upon receipt of a termination action under paragraphs (a) or (b) above, the Engineer shall (1) promptly discontinue all affected work (unless the notice directs otherwise), and (2) deliver or

otherwise make available to the Owner all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the Engineer in performing this contract, whether completed or in process.

e. Upon termination under paragraphs (a) or (b) above, the Owner may take over the work and may award another party a contract to complete the work under this contract.

f. If, after termination for failure of the Engineer to fulfill contractual obligations, it is determined that the Engineer had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of the Owner. In such event, adjustment of the sub-agreement price shall be made as provided in paragraph (c) of this clause.

#### 4. REMEDIES

Unless otherwise provided in this contract, all claims, counter-claims, disputes and other matters in question between the OWNER and the ENGINEER arising out of, or relating to, this contract or the breach of it will be decided, if the parties mutually agree, by arbitration, mediation, or other alternative dispute resolution mechanism; or in a court of competent jurisdiction within the State in which the OWNER is located.

#### 5. AUDIT; ACCESS TO RECORDS

a. The ENGINEER shall maintain books, records, documents and other evidence directly pertinent to performance on EPA funded work under this contract in accordance with generally accepted accounting principles and practices consistently applied, and the applicable EPA regulations in effect on the date of execution of this contract. The ENGINEER shall also maintain the financial information and data used in the preparation or support of any cost submission required under applicable regulations for negotiated contracts or change orders and a copy of the cost summary submitted to the OWNER. The United States Environmental Protection Agency, the Comptroller General of the United States, the United States Department of Labor, the OWNER, and [the State] or any of their authorized representatives shall have access to all such books, records, documents and other evidence for the purpose of inspection, audit and copying during normal business hours. The ENGINEER will provide proper facilities for such access and inspection.

b. If this is a fixed price contract awarded through sealed bidding or otherwise on the basis of effective price competition, the ENGINEER agrees to make paragraphs (a) through (f) of this clause applicable to all negotiated change orders and contract amendments affecting the contract price. In the case of all other types of prime contracts, the ENGINEER agrees to make paragraphs (a) through (f) applicable to all contract awards in excess of \$10,000, at any tier, and to make paragraphs (a) through (f) of this clause applicable to all change orders directly related to project performance.

c. Audits conducted under this provision shall be in accordance with generally accepted auditing standards and with established procedures and guidelines of the reviewing or audit agency(ies).

d. The ENGINEER agrees to disclose all information and reports resulting from access to records under paragraphs (a) and (b) of this clause to any of the agencies referred to in paragraph (a).

e. Access to records is not limited to the required retention periods. The authorized representatives designated in paragraph (a) of this clause shall have access to records at any reasonable time for as long as the records are maintained.

f. This right of access clause applies to financial records pertaining to all contracts (except for fixed price contracts awarded through sealed bidding or otherwise on the basis of effective price competition) and all contract change orders regardless of the type of contract, and all contract amendments regardless of the type of contract. In addition, this right of access applies to all records pertaining to all contracts, contract change orders and contract amendments:

1. To the extent the records pertain directly to contract performance;
2. If there is any indication that fraud, gross abuse or corrupt practices may be involved; or
3. If the sub-agreement is terminated for default or for convenience.

#### 6. COVENANT AGAINST CONTINGENT FEES

The ENGINEER assures that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee excepting bona fide employees or bona fide established commercial or selling agencies maintained by the ENGINEER for the purpose of securing business. For breach or violation of this assurance, the OWNER shall have the right to annul this agreement without liability or, at its discretion, to deduct from the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

#### 7. GRATUITIES

a. If the OWNER finds after a notice and hearing that the ENGINEER or any of the ENGINEER'S agents or representatives offered or gave gratuities (in the form of entertainment, gifts or otherwise) to any official, employee or agent of the OWNER, the State or EPA in an attempt to secure a contract or favorable treatment in awarding, amending or making any determinations related to the performance of this contract, the OWNER may, by written notice to the ENGINEER, terminate this contract. The OWNER may also pursue other rights and remedies that the law or this contract provides.

b. In the event this contract is terminated as provided in paragraph (a), the OWNER may pursue the same remedies against the ENGINEER as it could pursue in the event of a breach of the contract by the ENGINEER, and as a penalty, in addition to any other damages to which it may be entitled by law, be entitled to exemplary damages in an amount (as determined by the Owner) which shall be not less than three nor more than ten times the costs the ENGINEER incurs in providing any such gratuities to any such officer or employee.

#### 8. FINAL PAYMENT

Upon satisfactory completion of the work performed under this contract, as a condition before final payment under this contract or as a termination settlement under this contract the ENGINEER shall execute and deliver to the OWNER a release of all claims against the OWNER arising under, or by virtue of, this contract, except claims which are specifically exempted by the ENGINEER to be set forth therein. Unless otherwise provided in this contract, by State law or otherwise expressly agreed to by the parties to this contract, final payment under this contract or settlement upon termination of this contract shall not constitute a waiver of the OWNER'S claims against the ENGINEER under this contract.

## 9. 40 CFR PART 33

The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in termination of this contract or other legal available remedies.

**Contractors and Subcontractors are required to comply with the following provisions:**

### **CIVIL RIGHTS ACT OF 1964**

The Contractor and any subcontractors shall not, on the grounds of race, color, or national origin, or sex, exclude from participation in, deny the benefits of, or subject to discrimination, any person under any program or activity receiving federal financial assistance.

### **SECTION 13 of PL 92-500; UNDER THE FEDERAL WATER POLLUTION CONTROL ACT; REHABILITATION ACT OF 1973; PL 93-112, AND AGE DISCRIMINATION ACT OF 1975**

The Contractor and any subcontractors shall not on the grounds of race, color, national origin, or sex, exclude from participation in, deny the benefits of, or subject to discrimination any person under any program or activity funded in whole or in part with Federal funds. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975, or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973 shall also apply to any such program or activity.

IN WITNESS THEREOF, the parties hereto have executed, or caused to be executed, by their duly authorized officials, this Agreement in triplicate on the respective dates indicated below.

**The parties further certify by their signatures below that no modifications have been made to the standard language of this Agreement, other than those detailed in Section D.**

ATTEST: \_\_\_\_\_  
Type Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

OWNER: \_\_\_\_\_  
By \_\_\_\_\_  
Type Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

ATTEST: \_\_\_\_\_  
Type Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

ENGINEER: \_\_\_\_\_  
By \_\_\_\_\_  
Type Name \_\_\_\_\_  
Title \_\_\_\_\_  
Address \_\_\_\_\_  
Date \_\_\_\_\_

REVIEWED: FUNDING AGENCY  
NAME: \_\_\_\_\_  
By \_\_\_\_\_  
Type Name \_\_\_\_\_  
Date \_\_\_\_\_

## **PART 2: Contract Language & Certifications for Equivalency Projects**

## **New Mexico DWSRF Contract Provision #E2: Federal Requirements Applicable to SRF Engineering Contracts for Equivalency Projects**

Recipients of financial assistance from the New Mexico Drinking Water State Revolving Fund are advised to insert these clauses into Requests for Qualification for engineering services on projects receiving DWSRF assistance.

The BIDDER/OFFERER should be aware that this project will receive funding from the New Mexico Drinking Water State Revolving Fund (DWSRF) program. The BIDDER/OFFERER agrees to the following for any contract executed in service of the DWSRF-funded project.

### **EQUAL EMPLOYMENT OPPORTUNITY (EO 11246)**

During performance of this contract, the contractor agrees to the non-discrimination provisions contained in 41 CFR Part 60 §60-1.4 (a)(1-8), found here: [https://www.ecfr.gov/current/title-41/subtitle-B/chapter-60/part-60-1/subpart-A/section-60-1.4#p-60-1.4\(a\)](https://www.ecfr.gov/current/title-41/subtitle-B/chapter-60/part-60-1/subpart-A/section-60-1.4#p-60-1.4(a))

### **PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT**

The BIDDER shall comply with 2 CFR 200.216, which prohibits the use of loan or grant funds to procure or use certain telecommunication and video surveillance services or equipment either:

1. produced by Huawei Technologies Company, ZTE Corporation, Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company, or any subsidiary or affiliate of such entities; or
2. provided by an entity that the Secretary of Defense reasonably believes to be an entity owned or controlled by the government of a covered foreign country.

Entities on the excluded parties list can be found in the System for Award Management ([www.sam.gov](http://www.sam.gov)). This prohibition cannot be waived. See Public Law 115-232, section 889 for additional information.

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### **ADDITIONAL PROVISIONS APPLICABLE TO DWSRF-FUNDED PROJECTS**

In addition, the BIDDER/OFFERER should be aware that assistance recipients of DWSRF funding are required to comply with the following laws:

#### **Federal Non-Discrimination Laws:**

**These four laws prohibit discrimination in the provision of services or benefits, on the basis of race, color, national origin, sex, handicap or age, in programs or activities receiving federal financial assistance.**

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d)
- Section 13 of the Federal Water Pollution Control Act Amendments of 1972 (**33 U.S.C. §1251**)
- Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794)
- The Age Discrimination Act of 1975 (42 U.S.C. §6102)

## **Build America, Buy America (BABA) Domestic Procurement**

**All of the iron and steel, manufactured products, and construction materials used in the project must be produced in the United States in a manner that complies with the Build America, Buy America Requirements, unless a waiver of the requirements is approved.**

### *Applicable Laws:*

- Build America, Buy America Act (Pub. L. No. 117-58, §§ 70901-52)
- 

New Mexico DWSRF Contract Provision #E3: Disadvantaged Business Enterprises Contract Language for Offerers

**The following clause must be inserted into all engineering contracts for DWSRF Equivalency and Grant projects.**

### General Compliance (40 CFR Part 33).

The CONTRACTOR shall comply with the requirements of the Environmental Protection Agency's Program for Participation by Disadvantaged Business Enterprises (DBE) 40 CFR Part 33.

Note: EPA accepts DBE certifications from the following entities:

- The Small Business Administration (SBA) (both SBA 8(a) Program certifications and SBA Small Disadvantaged Business (SDB) Program self-certifications);
- The Department of Transportation's (DOT) state implemented DBE Certification Program (with U.S. citizenship) (New Mexico's Certified Disadvantaged Business Enterprise Directory may be found online at <https://nmdotstar.com/links/>);
- Tribal, State and local governments, as long as their standards for certification meet or exceed EPA's; and
- Independent private organization certifications as long as their standards for certification meet or exceed EPA's.

### APPENDIX A: Non-discrimination Provision (40 CFR Appendix A to Part 33).

The CONTRACTOR shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The CONTRACTOR shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the CONTRACTOR to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.

### Contract Administration Requirements

The CONTRACTOR must adhere to the following:

1. Pay subcontractor(s) for satisfactory performance no more than 30 days from the prime contractor's receipt of payment from the recipient.
2. Notify the SRF assistance recipient in writing prior to any termination of a DBE subcontractor for convenience by the prime contractor.



3. Employ the six good faith efforts described in §33.301 in procurement of goods and services.
4. If a DBE subcontractor fails to complete work under the subcontract for any reason, the prime contractor must employ the six good faith efforts described in §33.301 if soliciting a replacement subcontractor.
5. Ensure that each procurement contract it awards contains the term and condition specified in APPENDIX A (40 CFR Appendix A to Part 33) concerning compliance with the requirements of this part.
6. Ensure that the term and condition in APPENDIX A (40 CFR Appendix A to Part 33) is included in each procurement contract awarded by an entity receiving an identified loan under a financial assistance agreement to capitalize a revolving loan fund.

Six Good Faith Efforts (40 CFR Part 33 Subpart C).

The CONTRACTOR agrees to make the following good faith efforts whenever procuring subcontracts, equipment, services and supplies. The CONTRACTOR shall retain records documenting compliance with the following six good faith efforts.

1. Ensuring Disadvantaged Business Enterprises are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing Disadvantaged Business Enterprises on solicitation lists and soliciting them whenever they are potential sources. New Mexico's Certified Disadvantaged Business Enterprise Directory may be found online at <https://nmdotstar.com/links/>
2. Making information on forthcoming opportunities available to Disadvantaged Business Enterprises and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by Disadvantaged Business Enterprises in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of thirty (30) calendar days before the bid or proposal closing date.
3. Considering in the contracting process whether firms competing for large contracts could subcontract with Disadvantaged Business Enterprises. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by Disadvantaged Business Enterprises in the competitive process.
4. Encourage contracting with a consortium of Disadvantaged Business Enterprises when a contract is too large for one of these firms to handle individually.
5. Using services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.
6. If the prime contractor awards subcontracts, requiring the subcontractors to take the six good faith efforts in paragraphs 1 through 5 above.

## ATTACHMENTS

Please check the appropriate box and include applicable attachments

1. As set forth in the AGREEMENT FOR ENGINEERING SERVICES dated the \_\_\_\_ day of \_\_\_\_, 20\_\_\_\_ by and between the \_\_\_\_, the OWNER, and \_\_\_\_, the ENGINEER, the OWNER and ENGINEER agree this \_\_\_\_ day of \_\_\_\_, 20\_\_\_\_ that the OWNER shall compensate the ENGINEER for services described in Section B and Section C and further described in

**ATTACHMENT I** – Planning Services scope of work, cost proposal and compensation for Engineering Services During the Planning Phase

**ATTACHMENT II** – Design Services scope of work, cost proposal and compensation for Engineering Services During the Design Phase

**ATTACHMENT III** - Construction Services scope of work, cost proposal and compensation for Engineering Services During the Construction Phase

**ATTACHMENT IV** - Operational Services scope of work, cost proposal and compensation for Engineering Services During the Operation Phase

2. Compensation for ENGINEERING SERVICES shall be by the

**LUMP SUM** method of payment. The total amount of compensation for ENGINEERING SERVICES, as described in the appropriate ATTACHMENTS shall not exceed \$\_\_\_\_, excluding gross receipt tax and reimbursables.

**STANDARD HOURLY RATE WITH MAXIMUM** method of payment. The total amount of hourly charges, excluding gross receipt tax and reimbursables, for ENGINEERING SERVICES as described in the appropriate ATTACHMENTS shall not exceed \$\_\_\_\_ without prior written approval of the OWNER, with Funding Agency concurrence.

3. Compensation for ADDITIONAL ENGINEERING SERVICES (provided by the ENGINEER upon written authorization from the OWNER and concurrence of the Funding Agency), shall be by the

**LUMP SUM** method of payment. The total amount of compensation for ADDITIONAL ENGINEERING SERVICES, as described in the appropriate ATTACHMENT shall not exceed \$\_\_\_\_, excluding gross receipt tax and reimbursables.

**STANDARD HOURLY RATE WITH MAXIMUM** method of payment. The total amount of hourly charges, excluding gross receipt tax and reimbursables, for ADDITIONAL ENGINEERING SERVICES as described in the appropriate ATTACHMENT shall not exceed \$\_\_\_\_ without prior written approval of the OWNER and with Funding Agency concurrence.

4. The amount of compensation shall not change unless the scope of services to be provided by the ENGINEER changes and this Agreement is formally amended according to Section A-5.

Contract Time under Section B. and for the purpose of Section A.8 shall be \_\_\_\_ calendar days (or as specified in the Attachments).

5. The OWNER and ENGINEER agree that as mutually agreeable, reasonable Liquidated Damages for delay (but not as a penalty), ENGINEER shall pay OWNER \_\_\_\_dollars (\$\_\_\_\_) (minimum fifty dollars [\$50.00] per day) for each calendar day that expires after the Contract Time specified in the Agreement (See

attached project schedule - Gantt chart, bar chart, etc.) until the Work is complete and accepted by the OWNER. OWNER shall have no more than ten (10) calendar days to accept or reject the Work.

6. The ENGINEER agrees to obtain and maintain, at the ENGINEER's expense, such insurance as will protect the ENGINEER from claims under the Workman's Compensation Act and such comprehensive general liability and automobile insurance as will protect the OWNER and the ENGINEER from all claims for bodily injury, death, or property damage which may arise from the performance by the ENGINEER, or by the ENGINEER's employees, for the ENGINEER's functions and services required under this Agreement. Such insurance shall be in an amount not less than \$\_\_\_\_\_ for injury to any one person and \$\_\_\_\_\_ on account of any one accident and in the amount of not less than \$\_\_\_\_\_ for property damage. The ENGINEER further agrees to procure and maintain professional liability (errors and omissions) insurance in an amount not less than \$\_\_\_\_\_ per claim and in the aggregate. Prior to commencement of any work, the ENGINEER shall furnish to the OWNER a certificate that complies with this paragraph. The certificate shall provide that the policy shall not be canceled until at least ten (10) calendar days prior written notice shall have been given to the OWNER. ENGINEER shall provide annual updates of the certificate to demonstrate the policy remains in effect for the duration of this Agreement.

7. OWNER shall pay ENGINEER applicable gross receipt taxes and reimbursable expenses at the rates set forth in the appropriate ATTACHMENTS. The amounts payable to ENGINEER for reimbursable expenses will be the project related internal expenses, such as mileage, per diem and reproduction, actually incurred or allocated by ENGINEER, plus all invoiced external reimbursable expenses, including consultants, allocable to the project, the latter multiplied by a factor of \_\_\_\_\_ (1.1 MAXIMUM). Mileage will be reimbursed at the current federally approved IRS rate. Reimbursable expenses shall not exceed the estimate in the ATTACHMENT without prior written approval of the OWNER, with Funding Agency concurrence.

8. The method for interim or partial payments, such as milestone or time & materials, shall be: \_\_\_\_\_

The rest of the page is intentionally left blank

9. Signatures

IN WITNESS THEREOF, the parties hereto have executed, or caused to be executed, by their duly authorized officials, this Agreement in triplicate on the respective dates indicated below.

ATTEST: \_\_\_\_\_  
Type Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

OWNER: \_\_\_\_\_  
By \_\_\_\_\_  
Type Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

ATTEST: \_\_\_\_\_  
Type Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

ENGINEER: \_\_\_\_\_  
By \_\_\_\_\_  
Type Name \_\_\_\_\_  
Title \_\_\_\_\_  
Address \_\_\_\_\_  
\_\_\_\_\_  
Date \_\_\_\_\_

REVIEWED: FUNDING AGENCY

NAME: \_\_\_\_\_  
By \_\_\_\_\_  
Type Name \_\_\_\_\_  
Date \_\_\_\_\_











## EXAMPLE FEE PROPOSAL - ENGINEERING SERVICES

**Project Description:** Little Town Water System Improvements

**Project Number(s):** 00-000-00

**Owner:** Little Town, NM

**Engineer:** Middle Town Engineers

**Date of Submittal:** Aug. 5, 2024

**PRELIMINARY ENGINEERING (PER)**

												<b>Total</b>
Job Description	Principal	Project Engineer	Engineer Tech	Survey Crew	Field Tech	Admin Assist	Mileage	Per Diem	Prints	Totals	Sub-contracts	Task
<b>Grade Level</b>		V	IV		III	III					Geologist	
<b>Billing Rate / Unit</b>											Hydrologist	
<b>Unit</b>	Hrs	Hrs	Hrs	Hrs	Hrs	Hrs	Miles	Days	Prints		\$	\$
<b>Task</b>												
<b>Project Start-Up</b>												
Client Interview / Programming												
Project Management Plan												
Start-Up Meeting Preparation												
Start-Up Meeting												
Total Hours												
<b>Conceptual Engineering</b>												
Plan of Approach												
Report Outline / Approval												
Data and Measurements (Below):												
Coordination for Test Wells												
Test Wells (2)												
Gather Drawings / Records												
Interview Maintenance Staff												
Right of Way Research												
Identify Alternatives/Eval Criteria												
Studies / Schematics (Below):												
Growth Analysis												
Development of Water Model												
Evaluation of Existing System												
Evaluation of Alternatives												
Meetings												
Public / Client Meetings (Below):												
Meetings with Client (3 Mtgs)												
Public Info. Meeting (1 Mtg)												
Report Generation												
Write / Distribute Report												