

REQUEST FOR PROPOSALS

FOR

**Honduras Area Flood Reduction Project
Design & Engineering Services**

As Requested by

**THE SOUTHERN SANDOVAL COUNTY ARROYO FLOOD CONTROL
AUTHORITY**



RFP 2025-01

PROPOSAL DUE DATE: April 24, 2025

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Section 1 – GENERAL INFO AND DELIVERY REQUIREMENTS

- 1.1. **Overview.** Proposals shall be prepared simply and economically, providing a straightforward, concise description of the Offeror's ability to meet the requirements of this Request for Proposals (RFP). Emphasis shall be placed on the quality, completeness, and clarity of content of the proposal.

SSCAFCA encourages qualified small and minority businesses and women's business enterprises (MBE/WBE) to submit proposals. SSCAFCA further encourages non-MBE/WBE prime consultants to solicit qualified MBE/WBE as sub-consultants for smaller project tasks.

- 1.2. **Point of Contact.** This RFP is issued by Southern Sandoval County Arroyo Flood Control Authority (SSCAFCA), Fiscal Services Department, which is the sole point of contact during the procurement process (the "Point of Contact"). Communications initiated by a respondent to this RFP (the "Offeror") with members of the Governing Body or SSCAFCA personnel, other than as coordinated by the Point of Contact noted below, shall be grounds for Offeror disqualification. Any inquiries or requests during this procurement shall be submitted via e-mail to the following Point of Contact:

Deborah Casaus, Fiscal Services Director
dcasaus@sscafca.com

- 1.3. **Proposal Due Date.** April 24, 2025 at 3:00 p.m. local time. Proposals for the project will be received by:

Fiscal Services Department
Southern Sandoval County Arroyo Flood Control Authority
1041 Commercial Dr. SE, Rio Rancho, New Mexico 87124

Proposals received after this deadline will not be accepted. The date and time of receipt will be recorded on each proposal. SSCAFCA shall not be responsible for proposals that are mailed and not received by the time specified in this section. Receipts for hand delivered proposals may be issued by SSCAFCA (upon request).

- 1.4. **Submittal Format.** Submit one (1) electronic pdf of the proposal on a USB Flash Drive and one (1) paper copy of the electronic pdf. Paper copy to be printed in color and stapled in the upper left corner. Proposals must be submitted in a sealed package or envelope listing the following information on the outside: **RFP 2025-01 - Honduras Area Flood Reduction Project - Design & Engineering Services.**

In the event there is a discrepancy between the paper and electronic submittals, or if the electronic version cannot be read/downloaded from the submitted Flash Drive, the paper copy becomes the official RFP response. SSCAFCA may request an additional electronic copy matching the paper copy in these rare instances.

- 1.5. **Proposal Font.** Proposals should use a non-serif font.
- 1.6. **Page Limit & Page Count.** Proposals shall be limited to ten (10) numbered pages, not including the Table of Contents, dividers, front/back covers, and any documentation listed in Section 4.3.
- Letter format (8-1/2" x 11") pages shall count as one (1) numbered page.
 - Tabloid format (11" x 17") pages shall count as two (2) numbered pages.
 - ANSI D format (22" x 34") pages shall count as four (4) numbered pages.

(End of Section 1)

Section 2 – OVERVIEW, FUNDING INFORMATION, SCOPE OF WORK

- 2.1. **Overview.** Southern Sandoval County Arroyo Flood Control Authority (SSCAFCA), a political subdivision of the State of New Mexico, requests qualification based competitive sealed proposals for **Honduras Area Flood Reduction Project - Design & Engineering Services**.
- 2.2. **Funding Information.** This is a federally funded project. Funding for this project is provided by the New Mexico Department of Homeland Security, the state agency that administers the Federal Emergency Management Agency's *Hazard Mitigation Grant Program (HMGP)* funding.

This project is wholly or partially funded with United States Federal Emergency Management Agency funds, and therefore must comply with all federal cross cutter requirements. Neither the United States nor its department's agencies or employees is or will be party to this Request for Proposals or any resulting contract. This procurement and subsequent contract will be subject to regulations contained in 2 CFR, Part 200. Language from 2 CFR, Part 200 is incorporated into the attached template contract.

- 2.3. **Project Timeline.** The selected consultant will be required to provide final deliverables by January 12, 2026.
- 2.4. **Scope of Work/Specifications/Deliverables.** Offerors should demonstrate their ability to directly provide the following services and anticipated deliverables (*note: anticipated deliverables provided are subject to change during project scoping with selected consultant*):

- I. **Hydrologic & Hydraulics Analysis and Reporting.** This effort will include:
 - i. A review of the HEC-HMS (hydrologic) model and incorporation of 10-, 50-, and 500-year recurrence interval storms. This analysis will be based on existing conditions hydrology only.
 - ii. Preparation of a SWMM (or similar) hydraulic model to evaluate design alternatives for a network of up to four (4) ponds connected by storm drain to outfall at the southwest corner of NM528 & Honduras Road. All work to be performed within SSCAFCA or City of Rio Rancho right-of-way.
 - iii. Update of hydraulic model to reflect the final design provided in the construction plans.
 - iv. Compile all engineering analyses in a Design Analysis Report.
 - v. Incorporate SSCAFCA staff comments for the Design Analysis Report.

Task I Anticipated Final Deliverables:

1. *Hydrologic & hydraulic report, including hydraulic model and supporting documentation.*
- II. **Development of Construction Plans, Specifications, and Cost Estimates (PS&E).**

- i. PS&E review submittals will be made at the 35%, 65%, 95% progress interval. Geotechnical investigation shall be conducted to support the design and locations of the storm drain and pond embankment(s). The engineer may need to verify subsurface utilities to prevent conflicts with the design.
- ii. Final PS&E will be certified by a licensed professional engineer.
- iii. Project Specifications shall include all or a portion of the following standard specifications: American Public Works Association (APWA), SSCAFCA, and/or New Mexico Department of Transportation (NMDOT). Specifications selected for the project (and determination of the need for supplemental specifications) will be discussed and agreed upon by SSCAFCA and the consultant prior to final plan set preparation. Project specifications shall be assembled under stamped cover as "Volume 2" of the project Bid and Contract Documents. SSCAFCA will provide an example.
- iv. Design Summary Report shall be prepared to document all changes in design assumptions since the submittal of the Design Analysis Report.

Task II Anticipated Final Deliverables:

1. *Stamped PS&E.*
2. *Engineer's opinion of probable costs*
3. *Design Summary Report (stamped)*
4. *Bid and Contract Documents, Volume 2 (stamped)*

- III. **Solicitation of Public Input.** The selected consultant will be required to lead a public meeting for public review/comment of the project around the 35% design phase.
- i. Pertinent project information will be posted on SSCAFCA's website prior to the public meeting for easy public access.
 - ii. The input received during the public meeting may factor into design modifications for the 65%, 95%, and final plan set submittals.

Task III Anticipated Final Deliverables:

1. *Completion of one (1) public meeting.*
2. *Written summary of Public Meeting (meeting minutes), including sign-in sheet, public comments, and agency responses from the public meeting.*

IV. **Benefit Cost Analysis Support.**

- i. Provide engineering support for SSCAFCA's development of a FEMA Benefit Cost Analysis (BCA). The BCA will be used to support potential future FEMA funding for construction of the project.
- ii. This engineering support will incorporate construction cost estimate and hydraulic information (including 10-, 50-, 100- and 500-year water surface elevation information within the project area) developed during the DAR and design processes.

Task IV Anticipated Final Deliverables:

1. *Interpretation of the construction cost estimate (Task I) and hydraulic model (see Task II) and coordination with SSCAFCA staff to support SSCAFCA's BCA development.*

- V. **Environmental Permitting.** The consultant (or their sub-consultant) will perform a biological and cultural resource assessment of the project area to meet FEMA Environmental and Historic Preservation compliance requirements. Cultural and Biological Assessments developed for FEMA Environmental and Historic Preservation Compliance may also be used for a future USACE 404 permit application, if applicable. The consultant should be prepared to provide SSCAFCA information that may be needed for future USACE 404 permitting, including dredge and fill volumes within the Waters of the United States (WOTUS) and dimensions (footprint) of WOTUS impact.

Task V Anticipated Final Deliverables:

1. *Cultural Resources Report.*
2. *Biological Evaluation Report.*
3. *Preparation of FEMA environmental compliance documents.*

- VI. **Construction Phase Services.** Submittals, RFIs, change orders, regular attendance to construction progress meetings etc. This task is not funded under the existing sub-grant agreement, however, SSCAFCA would like to procure this service in the event the construction phase of this project is funded. Negotiation of scope, deliverables and fee related to this service will be conducted upon receipt of grant funding for Phase 2 – Construction Phase of this project.

Task VI Anticipated Final Deliverables: *None. No deliverables under the current project phase. Deliverables for construction phase services will be negotiated at a later date if grant is awarded.*

2.5. Compensation

The selected consultant may invoice monthly for services rendered. It is anticipated that the contract will be based on a Lump Sum price for all Tasks and that reimbursement will be based on percentage complete of each Task outlined in the final Scope of Services, to be negotiated with the selected consultant.

(End of Section 2)

Section 3 – CONDITIONS GOVERNING PROCUREMENT

3.1. **Overview.** This section of the RFP contains the schedule for the procurement, describes the major events and milestones and specifies general conditions governing the procurement.

3.2. **Schedule of Events.** SSCAFCA will make every effort to adhere to the following schedule:

<i>Action</i>	<i>Responsibility</i>	<i>Date</i>	<i>Time</i>
Issue RFP/ Advertise	SSCAFCA	March 30 & April 2, 2025	N/A
Non-mandatory Pre-proposal Conference	SSCAFCA	April 8, 2025	10:00 AM
Deadline to Submit Written Questions	Potential Offerors	April 14, 2025	5:00 PM
Response to Written Questions	SSCAFCA	April 17, 2025	5:00 PM
RFP Addenda	SSCAFCA	If applicable, no later than April 22, 2025	5:00 PM
Submission of Proposals	Offerors	April 24, 2025	3:00 PM
Proposal Evaluation and Ranking (Including time for Interviews, Oral Presentations, and Best and Final Offers) *	Evaluation Committee	April 24 - May 6, 2025	
SSCAFCA Board of Directors Approval	SSCAFCA	May 15, 2025	
Funding Agency Review Period	DHSEM / FEMA	May 7 - 29, 2025	
Finalize Contract/Notice to Proceed (est.)	SSCAFCA/Offeror	May 30, 2025	

*Offerors will be notified by the Fiscal Services Department if and when to expect interview and Best and Final Offer dates.

3.2.1. **Written Questions and RFP Amendments.** Potential Offerors may submit written questions as to the intent or clarity of this RFP until the date and time specified in the schedule of events. All written questions must be sent by email and addressed to the Point of Contact. SSCAFCA response to questions will be formalized as an addendum to the RFP.

3.2.2. **Addenda/Communication.** The issuance of a written addendum is the only official method by which interpretation, clarification or additional information can be given. If it becomes necessary to revise or amend any part of this RFP, notice may be obtained by accessing our web site: <https://www.sscafca.org>. Oral and other interpretations or clarifications will be without legal effect.

It is the responsibility of all potential Offerors to check the website and to ensure that all addenda have been acknowledged on the "Required Information Form" (provided in Appendix A) before submitting their proposal.

- 3.2.3. **Proposal Evaluation.** The evaluation and ranking of proposals will be performed by the Evaluation Committee during the time period noted in the Schedule of Events.
- 3.2.4. **Selection of Finalist.** The Evaluation Committee will select, and the Point of Contact will notify the Finalist Offeror(s).
- 3.2.5. **Oral Presentations and Interviews.** The Evaluation Committee may request oral presentations or interviews by the Offerors. If this is required, the requested action will take place at the SSCAFCA office within the proposal evaluation timeframe specified the Schedule of Events.
- 3.2.6. **Finalize Contract.** The Contract will be finalized with the most qualified Offeror(s). In the event that mutually agreeable terms cannot be reached, SSCAFCA reserves the right to terminate negotiations with that Offeror.
- 3.2.7. **Protest Deadline.** The ten (10) day protest period for Offerors shall begin on the day following the notification of the contract award and will end at 5:00 pm local time on the tenth (10th) calendar day following the notification of the contract award. Protests must be submitted in writing and must include the name and address of the protestant and the RFP number. It must also contain a statement of grounds for protest and be addressed and delivered to the Point of Contact.

3.3. General Requirements.

- 3.3.1. Offerors shall carefully read the information contained in this RFP and submit a complete response to all requirements and questions as directed. Incomplete proposals may be considered non-responsive and subject to rejection.
- 3.3.2. Proposals and any other information submitted by Offerors in response to this RFP shall become the property of SSCAFCA.
- 3.3.3. Proposals that are qualified with conditional clauses, alterations, or irregularities of any kind are subject to rejection by SSCAFCA, at its option.
- 3.3.4. It is incumbent upon each Offeror to carefully examine all specifications, terms, and conditions contained herein. Any inquiries, suggestions, or requests concerning interpretation, clarification or additional information shall be made through the Point of Contact named in Section 1. SSCAFCA will not be responsible for any oral

representation(s) given by any employee, representative or others. The issuance of a written addendum is the only official method by which interpretation, clarification or additional information can be given. If it becomes necessary to revise or amend any part of this RFP, notice may be obtained by accessing our web site.

- 3.3.5. A proposal may be amended or withdrawn in person at any time BEFORE the scheduled due date and time of proposals provided a receipt for the withdrawn proposal is signed by the Offeror's authorized representative. An amendment must be a complete replacement for a previously submitted proposal and must be clearly identified in a transmittal letter signed by the Offeror's authorized representative. SSCAFCA reserves the right to request proof of authorization to withdraw or amend a proposal.
- 3.3.6. All information, documentation, and other materials submitted in response to this RFP are considered non-confidential and/or non-proprietary and are subject to public disclosure after the procurement is completed.
- 3.3.7. SSCAFCA may evaluate the proposals based on the anticipated completion of all or any portion of the project. SSCAFCA reserves the right to divide the project into multiple parts, to reject any and all proposals and re-solicit for new proposals, or to reject any and all proposals and temporarily or permanently abandon the project when deemed to be in SSCAFCA's best interest. SSCAFCA makes no representations, written or oral, that it will enter into any form of agreement with any Offeror to this RFP for any project and no such representation is intended or should be construed by the issuance of this RFP.
- 3.3.8. SSCAFCA may, in the evaluation of proposals, request clarification from Offerors regarding their proposals, obtain additional material or literature, and pursue other avenues of research as necessary to ensure that a thorough evaluation is conducted.
- 3.3.9. By submitting a proposal in response to this RFP, the Offeror accepts the evaluation process and acknowledges and accepts that determination will require subjective judgments by SSCAFCA.
- 3.3.10. Offeror acknowledges and accepts that any expense incurred from the Offeror's participation in this RFP process shall be at the sole risk and responsibility of the Offeror.
- 3.3.11. SSCAFCA expects the highest level of ethical conduct from Offerors including adherence to all applicable laws regarding ethical behavior. The Procurement Code, NMSA 1978, Sections 13-1-28 through 13-1-199 (1984 as amended), imposes civil

and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

3.3.12. After identifying the highest scoring Offeror(s), SSCAFCA will attempt to negotiate final terms of a Contract with such Offeror(s), on such terms as SSCAFCA deems in its best interest. SSCAFCA reserves the right to negotiate all elements of the Contract.

3.3.13. SSCAFCA shall evaluate any potential conflict of interests identified and determine if it is a direct conflict of interest. A direct conflict of interest shall be cause for disqualifying an Offeror from consideration. SSCAFCA's determination shall be final.

(End of Section 3)

Section 4 - SUBMISSION REQUIREMENTS

4.1. **Overview.** This section contains the list of mandatory requirements, scoring categories, and related information. Offerors must respond to the mandatory requirements and should respond to the scoring categories of this RFP providing the required responses, documentation, and assurances.

4.2. **Proposal Format.** The proposal must be organized in the following format and must contain, as a minimum, all listed items in the sequence indicated:

- 4.2.1. Table of Contents
- 4.2.2. Mandatory Requirements
- 4.2.3. Scoring Categories

Any proposal that does not adhere to this format, and which does not address each specification and requirement within the RFP, may be deemed non-responsive and rejected on that basis.

4.3. **Mandatory Submission Requirements.** Failure to comply with a mandatory requirement will result in disqualification of the proposal. The items listed below will not be counted towards the page limit provided in Section 1.5.

The following items must be submitted with the proposal:

- 4.3.1. **Required Information Form.** See Appendix A.
- 4.3.2. **Campaign Contribution Disclosure Form.** See Appendix B. In accordance with the Procurement Code, Section 13-1-28, all prospective contractors who are seeking to enter into a contract with a state agency or local public body are required to file the attached "Campaign Contribution Disclosure Form" with that state agency or local public body, in this case, SSCAFCA. This form must be filled out in its entirety and submitted with the proposal.
- 4.3.3. **Federal Clauses.** See Appendix C. Offeror is required to sign acknowledgement in the Federal Clauses Appendix C.
- 4.3.4. **Proof of Insurance.** Certification of professional liability insurance of at least one million dollars (\$1,000,000).

4.4. **Scoring Categories.** The following items will be evaluated on a points-based system, as outlined in Section 5.1. Failure to respond to a Scoring Category will result in zero (0) points being awarded for that item.

- 4.4.1. **Specialized Technical Competence**

- a. Describe the Offeror's experience with hydrologic/hydraulic modelling solutions for interconnected pipe, pond, and open channel networks.
- b. Describe the Offeror's experience designing flood control infrastructure, slope stabilization, and energy dissipation in an environment with highly-erosive soils and varying slopes.
- a. Describe the Offeror's experience with environmental compliance activities performed to meet federal requirements of funding agencies and the Offeror's experience with federal agencies.

4.4.2. Capacity and Capability

- a. Describe the Offeror's capacity and capability, including any sub-consultants, representatives, qualifications, and locations, to perform the work outlined in the Scope of Work (Section 2.4), including any specialized services.
- b. Provide qualifications of key team members, including membership in professional organizations and licensure.
- c. Provide any unique knowledge of key team members relevant to this scope of work.
- b. Describe how the Offeror will manage this project to ensure timely completion, including stakeholder agency coordination, reviews, and approvals. See Section 2.3.

4.4.3. Past Record of Performance

- c. Provide a summary of up to three (3) representative projects performed by Offeror, including project reference contact information for each, and describe Offeror's role during the project.
- d. If applicable, provide information on how the representative projects have performed (if constructed) and what the main "lessons learned" were (from the design standpoint).
- e. Describe how Offeror managed specific projects to ensure timely completion.
- f. Describe Offeror's quality assurance/quality control (QA/QC) practices to minimize errors and omissions.

4.4.4. Proximity to, or Familiarity with SSCAFCA's Jurisdiction

- a. Identify specific experience the Offeror has with projects in the City of Rio Rancho, Town of Bernalillo, Village of Corrales and/or Sandoval County.

4.4.5. Amount of Work to Be Produced in New Mexico

- a. Describe the amount of work that will be produced by a New Mexico business within this state.

4.4.6. Current Volume of Work with the Contracting Agency Not 75% Complete

- a. **No response to this item is required from the Offeror.** SSCAFCA's Fiscal Services department will determine the scoring for this category.
- b. The volume of work previously done for SSCAFCA which is not seventy-five percent complete with respect to basic professional design services, with the objective of effecting an equitable distribution of contracts among qualified businesses and of assuring the interest of the public in having available substantial number of qualified businesses is protected; provided, however, that the principal of selection of the most highly qualified business is not violated.

Below is the table of how points are assigned:

<i>Value of work not yet completed on projects that are not 75% complete</i>	<i>Points to be allowed for this item</i>
None	5
\$1 to \$50,000	4
\$50,001 to \$100,000	3
\$100,001 to \$150,000	2
\$150,001 to \$200,000	1
\$200,001 or more	0

4.4.7. Quality and Content of Proposal

- a. The proposal will be scored on the overall quality of the assembly and presentation of information.

4.4.8. References

Please provide three (3) references for work completed within the last three (3) years.

4.4.9. Application of Preferences

- a. Due to the Federal funding associated with this project, no State Preferences (Resident/Veterans/Native American Preference Certification(s)) will be considered.

(End of Section 4)

Section 5 - EVALUATION OF PROPOSALS

5.1. **Evaluation Summary.** The following table is a summary of evaluation factors and the maximum point factors assigned to each. These will be used in the evaluation of each Offeror proposal submitted.

MANDATORY SUBMITTAL REQUIREMENTS		
<i>RFP Section</i>	<i>Description</i>	<i>Evaluation Method</i>
4.3.1	Required Information Form - Appendix A	Pass/Fail
4.3.2	Campaign Contribution Disclosure - Appendix B	Pass/Fail
4.3.3	Federal Clauses - Appendix C	Pass/Fail
4.3.4	Proof of Insurance	Pass/Fail

SCORING CATEGORIES		
<i>RFP Section</i>	<i>Description</i>	<i>Max. Possible Points</i>
4.4.1	Specialized Design & Technical Competence	25
4.4.2	Capacity and Capability	20
4.4.3	Past Record of Performance	15
4.4.4	Proximity to, or Familiarity with SSCAFCA's Jurisdiction	15
4.4.5	Amount of Work to Be Produced in New Mexico	10
4.4.6	Current Volume of Work with the Contracting Agency Not 75% Complete	5
4.4.7	Quality and Content of Proposal	5
4.4.8	References	5
TOTAL POINTS POSSIBLE (TPP)		100

APPLICATION OF PREFERENCES		
4.4.9	Resident/Native American/Veterans Preferences (See NMSA 1978, Section 13-1-22) – NOT APPLICABLE ON THIS PROJECT	TPP + 0

(End of Section 5)

Appendix A – Required Information Form

1. IDENTITY OF OFFEROR:

FIRM NAME: _____

ADDRESS: _____

TELEPHONE #: _____

FEIN: _____

CONTACT PERSON FOR PROPOSAL: _____

E-MAIL ADDRESS*: _____

ALTERNATE EMAIL CONTACT*: _____

SSCAFCA may attempt to contact Offeror via email. Please provide additional email contact information if available.

2. DISCLOSURE OF ANY POTENTIAL CONFLICTS OF INTEREST

Please indicate any potential conflicts of interest including, but not limited to:

1. Accepting an assignment where duty to the client would conflict with the Offeror's personal interest, or interest of another client.
2. Performing work for a client or having an interest which conflicts with this contract.
3. If NO conflict exists, write NONE below.

(Please attach additional pages if necessary)

3. LITIGATION STATUS

Provide a brief list of any pending, settled, tried, or other litigation the firm has been involved in for the past five (5) years relating to professional surveying services performed by the firm, with a description of the case(s) and their current status, if applicable. If not applicable, write NONE below.

(Please attach additional pages if necessary)

4. SIGNATURE

This page has been signed by a signatory with the authority to bind the Offeror. By signing this document, through the undersigned representative who has the authority to bind the Offeror, and by submitting this proposal in response to this RFP, the Offeror agrees to the following:

1. To perform the services required by such RFP and to adhere to all requirements, specifications, terms and conditions of the RFP.
2. To be bound by this proposal for a minimum of 60 days from the date proposals were due.
3. Receipt of all addenda that have been issued for this RFP.

SIGNED BY:

Name (print)

Signature

Title

Date

(*End of Appendix A*)

Appendix B – Campaign Contribution Disclosure Form

PROSPECTIVE CONTRACTOR NAME: _____

Pursuant to the Procurement Code, Sections 13-1-28, et seq., NMSA 1978 and NMSA 1978, § 13-1-191.1 (2006), as amended by Laws of 2007, Chapter 234, any prospective contractor seeking to enter into a contract with any state agency or local public body **for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources** must file this form with that state agency or local public body. This form must be filed even if the contract qualifies as a small purchase or a sole source contract. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred fifty dollars (\$250.00) over the two year period.

Furthermore, the state agency or local public body may cancel a solicitation or proposed award for a proposed contract pursuant to Section 13-1-181 NMSA 1978 or a contract that is executed may be ratified or terminated pursuant to Section 13-1-182 NMSA 1978 of the Procurement Code if: 1) a prospective contractor, a family member of the prospective contractor, or a representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or 2) a prospective contractor fails to submit a fully completed disclosure statement pursuant to the law.

THIS FORM MUST BE INCLUDED IN THE REQUEST FOR PROPOSALS AND MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBERS, OR THEIR REPRESENTATIVES HAVE MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

The following definitions apply:

“Applicable public official” means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

“Campaign Contribution” means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official's behalf for the purpose of electing the official to statewide or local office. “Campaign Contribution” includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

“Family member” means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law of:

- (a) a prospective contractor, if the prospective contractor is a natural person; or
- (b) an owner of a prospective contractor.

“Pendency of the procurement process” means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals.

“Prospective contractor” means a person or business that is subject to the competitive sealed proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person or business qualifies for a sole source or a small purchase contract.

“Representative of a prospective contractor” means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

For the purposes of this procurement, the applicable public officials are the SSCAFCA Board of Directors named below:

Ronald Abramshe
852 Golden Yarrow Trail
Bernalillo, NM 87004

John Chaney
3592 Calle Suenos
Rio Rancho, NM 87124

Cassandra D’Antonio
6031 Redondo Sierra Vista NE
Rio Rancho, NM 87144

Maria Isabel Marquez
1203 West Ella Drive
Corrales, NM 87048

Michael Vidal
3860 Bay Hill Loop NE
Rio Rancho, NM 87124

(see next page for signatory sheet)

DISCLOSURE OF CONTRIBUTIONS BY PROSPECTIVE CONTRACTOR

Contribution Made By: _____

Relation to Prospective Contractor: _____

Date Contribution(s) Made: _____

Amount(s) of Contribution(s): _____

Nature of Contribution(s): _____

Purpose of Contribution(s): _____

(Attach extra pages if necessary)

Signature

Date

Title (position)

— OR —

NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS (\$250.00) WERE MADE to an applicable public official by me, or my family members or my representatives.

Signature

Date

Title (position)

(End of Appendix B)

Appendix C – Federal Clauses

Recipients and subrecipients awarded FEMA and/or other federal funding sources will often use contracts to help them carry out work under their grant program awards. As a requirement of receiving FEMA or other federal grant funding, all purchases/contracts must comply with the federal procurement under grant standards found at [2 C.F.R. §§ 200.317 – 200.327](#). This guidance from the Roadmap to Procurement Compliance, Procurement Disaster Assistance Team (PDAT) August 2023 and is applicable to all FEMA award recipients and subrecipients for grants awarded on or after Nov. 12, 2020.

Code of Federal Regulations, Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

Remedies Clause

For contracts more than the federal simplified acquisition threshold (SAT set at \$250,000 for procurements made on or after June 20, 2018), the contractor will address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and must provide for sanctions and penalties as appropriate in all contracts even when not required into all applicable contracts, and all applicable contractors must include these provisions in full in any subcontracts.

Termination for Cause and Convenience Clause

If procurements exceed \$10,000, the contractor will include provisions for termination for cause and for convenience in all contracts even when not required into all applicable contracts, and all applicable contractors must include these provisions in full in any subcontracts.

Equal Employment Opportunity Clause

The regulation at 41 C.F.R. § 60-1.4(b) requires, except as otherwise provided or exempted in 41 C.F.R. Part 60, the insertion of the following contract clause: “During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This

provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

- (4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating is a state or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of

Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.”

Davis-Bacon Act Clause

If applicable, the NFE must include the provisions at 29 C.F.R. § 5.5(a)(1)-(10) in full into all applicable contracts, and all applicable contractors must include these provisions in full in any subcontracts.

Copeland Anti-Kickback Act Clause

“Compliance with the Copeland “Anti-Kickback” Act.

Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. Part 3 as may be applicable, which are incorporated by reference into this contract.

Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.”

Rights to Inventions Made Under a Contract or Agreement Clause

If applicable per the standard described above, the NFE must include the provisions at 37 C.F.R. § 401.2(a) in full into all applicable contracts, and all applicable contractors must include these provisions in full in any subcontracts.

Contract Work Hours and Safety Standards Act Clause

“Compliance with the Contract Work Hours and Safety Standards Act.

- (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives

compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.
- (3) Withholding for unpaid wages and liquidated damages. The (insert name of grant recipient or subrecipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.
- (4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.”

“Further Compliance with the Contract Work Hours and Safety Standards Act.

- (1) The contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.
- (2) Records to be maintained under this provision shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Homeland Security, the Federal Emergency Management Agency, and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.”

Clean Air Act Clause

“Clean Air Act”

The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. The contractor agrees to report each violation to the (insert name of non-federal entity entering into the contract) and understands and

agrees that the (insert name of the nonfederal entity entering into the contract) will, in turn, report each violation as require

assure notification to the Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA.

Federal Water Pollution Control Act Clause

“Federal Water Pollution Control Act”

The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq. The contractor agrees to report each violation to the (insert name of the non-federal entity entering into the contract) and understands and agrees that the (insert name of the nonfederal entity entering into the contract) will, in turn, report each violation as required to assure notification to the (insert name of the pass-through entity, if applicable), Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA.”

Suspension and Debarment Clause

“Suspension and Debarment

This contract is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 3000. As such, the contractor is required to verify that none of the contractor’s principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935). The contractor must comply with 2 C.F.R. Part 180, subpart C and 2C.F.R. Part 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into. This certification is a material representation of fact relied upon by (insert name of recipient/subrecipient/applicant). If it is later determined that the contractor did not comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, in addition to remedies available to (insert name of recipient/subrecipient/applicant), the federal government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.”

Byrd Anti-Lobbying Amendment

“Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

Contractors who apply or bid for an award of more than \$100,000 shall file the required certification. Each tier certifies to the tier above that it will not and has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31

U.S.C. § 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the federal awarding agency.”

Recovered Materials Clause

“In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired Competitively within a timeframe providing for compliance with the contract performance schedule; Meeting contract performance requirements; or At a reasonable price. Information about this requirement, along with the list of EPA-designated items, is available at EPA’s Comprehensive Procurement Guidelines webpage: [Comprehensive Procurement Guideline \(CPG\) Program | US EPA](#). The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.”

Domestic Preference Clause

If applicable per the standard described above, the NFE must include the provisions at 2 C.F.R. § 200.322 in full into all applicable contracts, and all applicable contractors must include these provisions in full in any subcontracts.

Please acknowledge compliance with the applicable federal clauses that apply to this solicitation:

FIRM: _____

REPRESENTATIVE: _____

TITLE: -----

SIGNATURE: _____

DATE: _____

Appendix D – EJCDC E-505 Documents (4 Parts)

Part 1 – Main Agreement

Part 2 – Exhibits to Main Agreement

Part 3 – Task Order Form

Part 4 – Exhibits to Task Order Form

(This Page Intentionally Left Blank, See Following Pages)

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the Controlling Laws and Regulations.

AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE



and

Issued and Published Jointly by



AMERICAN COUNCIL OF ENGINEERING COMPANIES

ASSOCIATED GENERAL CONTRACTORS OF AMERICA

AMERICAN SOCIETY OF CIVIL ENGINEERS

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
A Practice Division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

This Agreement has been prepared for use with the Standard General Conditions of the Construction Contract (EJCDC C-700, 2007 Edition). Their provisions are interrelated, and a change in one may necessitate a change in the other. For guidance on the completion and use of this Agreement, see EJCDC User's Guide to the Owner-Engineer Agreement, EJCDC E-001, 2009 Edition.

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1420 King Street, Alexandria, VA 22314-2794
(703) 684-2882
www.nspe.org

American Council of Engineering Companies
1015 15th Street N.W., Washington, DC 20005
(202) 347-7474
www.acec.org

American Society of Civil Engineers
1801 Alexander Bell Drive, Reston, VA 20191-4400
(800) 548-2723
www.asce.org

Associated General Contractors of America
2300 Wilson Boulevard, Suite 400, Arlington, VA 22201-3308
(703) 548-3118
www.agc.org

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ENGINEERS JOINT CONTRACT
DOCUMENTS COMMITTEE

**AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of _____ (“Effective Date”) between

Southern Sandoval County Arroyo Flood Control Authority (“Owner”) and

_____ (“Engineer”).

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:

Honduras Area Flood Reduction Project (“Project”).

Engineer's services under this Agreement are generally identified as follows:

Engineering and design services, including hydrology & hydraulics reporting, construction plans, cost estimate and specification development, environmental permitting, and public involvement.

Owner and Engineer further agree as follows:

ARTICLE 1 – SERVICES OF ENGINEER

1.01 *Scope*

- A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

ARTICLE 2 – OWNER’S RESPONSIBILITIES

2.01 *General*

- A. Owner shall have the responsibilities set forth herein and in Exhibit B.
- B. Owner shall pay Engineer as set forth in Exhibit C.

- C. 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.

ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

3.01 Commencement

- A. Engineer is authorized to begin rendering services as of the Effective Date.

3.02 Time for Completion

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided in Exhibit A, and are hereby agreed to be reasonable.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Project, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- D. 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.
- E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 Invoices

- A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

4.02 Payments

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay:* If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:

1. amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and
 2. Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- C. *Disputed Invoices:* If Owner contests an invoice, Owner shall promptly advise Engineer of the specific basis for doing so, may withhold only that portion so contested, and must pay the undisputed portion.
- D. *Legislative Actions:* If after the Effective Date any governmental entity takes a legislative action that imposes taxes, fees, or charges on Engineer's services or compensation under this Agreement, then the Engineer may invoice such new taxes, fees, or charges as a Reimbursable Expense to which a factor of 1.0 shall be applied. Owner shall reimburse Engineer for the cost of such invoiced new taxes, fees, and charges; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C.

ARTICLE 5 – OPINIONS OF COST

5.01 Opinions of Probable Construction Cost

- A. 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, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' 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 requires greater assurance as to probable Construction Cost, Owner must employ an independent cost estimator as provided in Exhibit B.

5.02 Designing to Construction Cost Limit

- A. If a Construction Cost limit is established between Owner and Engineer, such Construction Cost limit and a statement of Engineer's rights and responsibilities with respect thereto will be specifically set forth in Exhibit F, "Construction Cost Limit," to this Agreement.

5.03 Opinions of Total Project Costs

- A. The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Owner in collating the various cost categories which comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 *Standards of Performance*

- A. *Standard of Care:* The standard of care for 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 the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer’s services.
- B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer’s services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. *Consultants:* Engineer may employ such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. *Compliance with Laws and Regulations, and Policies and Procedures:*
 - 1. Engineer and Owner shall comply with applicable Laws and regulations.
 - 2. Prior to the Effective Date, Owner provided to Engineer in writing any and all policies and procedures of Owner applicable to Engineer's performance of services under this Agreement. provided to Engineer in writing. Engineer shall comply with such policies and procedures, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
 - 3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. Changes after the Effective Date to these Laws and Regulations, or to Owner-provided written policies and procedures, may be the basis for modifications to Owner’s responsibilities or to Engineer’s scope of services, times of performance, or compensation.
- F. Engineer shall not be required to sign any documents, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such documents.
- G. The general conditions for any construction contract documents prepared hereunder are to be the “Standard General Conditions of the Construction Contract” as prepared by the Engineers Joint

Contract Documents Committee (EJCDC C-700, 2007 Edition) unless both parties mutually agree to use other general conditions by specific reference in Exhibit J.

- H. Engineer shall not at any time supervise, direct, control, or have authority over any contractor work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a contractor to comply with Laws and Regulations applicable to such contractor's furnishing and performing of its work.
- I. Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.
- J. Engineer shall not provide or have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- K. Engineer shall not be responsible for the acts or omissions of any Contractor, Subcontractor, or Supplier, or of any of their agents or employees or of any other persons (except Engineer's own agents, employees, and Consultants) at the Site or otherwise furnishing or performing any Work; or for any decision made regarding the Contract Documents, or any application, interpretation, or clarification, of the Contract Documents, other than those made by Engineer.
- L. While at the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

6.02 *Design Without Construction Phase Services*

- A. Engineer shall be responsible only for those Construction Phase services expressly required of Engineer in Exhibit A, Paragraph A1.05. With the exception of such expressly required services, Engineer shall have no design, Shop Drawing review, or other obligations during construction and Owner assumes all responsibility for the application and interpretation of the Contract Documents, review and response to Contractor claims, contract administration, processing Change Orders, revisions to the Contract Documents during construction, construction surety bonding and insurance requirements, construction observation and review, review of payment applications, and all other necessary Construction Phase engineering and professional services. Owner waives all claims against the Engineer that may be connected in any way to Construction Phase engineering or professional services except for those services that are expressly required of Engineer in Exhibit A, Paragraph A1.05.

6.03 *Use of Documents*

- A. All Documents are instruments of service in respect to this Project, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed. Owner shall not rely in any way on any Document unless it is in printed form, signed or sealed by the Engineer or one of its Consultants.

- B. Either party to this Agreement may rely that data or information set forth on paper (also known as hard copies) that the party receives from the other party by mail, hand delivery, or facsimile, are the items that the other party intended to send. Files in electronic media format of text, data, graphics, or other types that are furnished by one party to the other are furnished only for convenience, not reliance by the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern. If the parties agree to other electronic transmittal procedures, such are set forth in Exhibit J.
- C. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any transmittal errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files.
- D. When transferring documents in electronic media format, the transferring party makes no representations as to long-term compatibility, usability, or readability of such documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the documents' creator.
- E. Owner may make and retain copies of Documents for information and reference in connection with use on the Project by Owner. Engineer grants Owner a limited license to use the Documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment for all services relating to preparation of the Documents and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.
- F. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

6.04 *Insurance*

- A. Engineer shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.
- B. Owner shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability policies

and as loss payees on any property insurance policies carried by Owner which are applicable to the Project.

- C. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, property damage (other than to the Work itself), motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractor for the Project.
- D. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.
- E. All policies of property insurance relating to the Project shall contain provisions to the effect that Engineer's and its Consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against Engineer or its Consultants, or any insureds, additional insureds, or loss payees thereunder.
- F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 30 days prior written notice has been given to Owner and Engineer and to each other additional insured (if any) to which a certificate of insurance has been issued.
- G. At any time, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.

6.05 *Suspension and Termination*

A. *Suspension:*

- 1. By Owner: Owner may suspend the Project for up to 90 days upon seven days written notice to Engineer.
- 2. By Engineer: Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement if Engineer's performance has been substantially delayed through no fault of Engineer.

B. *Termination:* The obligation to provide further services under this Agreement may be terminated:

- 1. For cause,
 - a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

- b. By Engineer:
 - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
 - 2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control.
 - 3) Engineer shall have no liability to Owner on account of such termination.
- c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.05.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience,

- a. By Owner effective upon Engineer's receipt of notice from Owner.

C. *Effective Date of Termination:* The terminating party under Paragraph 6.05.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

D. *Payments Upon Termination:*

- 1. In the event of any termination under Paragraph 6.05, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.E.
- 2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.05.D.1, to invoice Owner and to payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

6.06 *Controlling Law*

- A. This Agreement is to be governed by the law of the state or jurisdiction in which the Project is located.

6.07 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.07.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. 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 this Agreement without the 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 to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. 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, 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 the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
 - 3. Owner agrees that the substance of the provisions of this Paragraph 6.07.C shall appear in the Contract Documents.

6.08 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights under law.
- B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.08.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights under law.

6.09 *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 or learns of an undisclosed Constituent of Concern at the Site, 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 consultants or contractors 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 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 "owner" "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.

6.10 *Indemnification and Mutual Waiver*

- A. *Indemnification by Engineer:* To the fullest extent permitted by law, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees from reasonable claims, costs, losses, and damages arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants. **This indemnification provision is subject to and limited by the provisions, if any, agreed to by Owner and Engineer in Exhibit I, "Limitations of Liability."**
- B. *Indemnification by Owner:* Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations and to the extent (if any) required in Exhibit I, Limitations of Liability.
- C. *Environmental Indemnification:* To the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, and all court, arbitration, or other dispute resolution costs) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and

(2) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.

- D. *Percentage Share of Negligence:* To the fullest extent permitted by law, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.
- E. *Mutual Waiver:* To the fullest extent permitted by law, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, 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.

6.11 *Miscellaneous Provisions*

- A. *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by facsimile, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability:* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. *Waiver:* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims:* To the fullest extent permitted by law, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

ARTICLE 7 – DEFINITIONS

7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following provisions:
 - 1. *Additional Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Part 2 of Exhibit A of this Agreement.

2. *Agreement* – This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
3. *Asbestos* – Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
4. *Basic Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Part 1 of Exhibit A of this Agreement.
5. *Construction Contract* – The entire and integrated written agreement between Owner and Contractor concerning the Work.
6. *Construction Cost* – The cost to Owner of those portions of the entire Project designed or specified by Engineer. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to properties; Owner’s costs for legal, accounting, insurance counseling or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement. Construction Cost is one of the items comprising Total Project Costs.
7. *Constituent of Concern* – Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; and (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
8. *Consultants* – Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer’s independent professional associates and consultants; subcontractors; or vendors.
9. *Contract Documents* – Those items so designated in the Construction Contract, including the Drawings, Specifications, construction agreement, and general and supplementary conditions. Only printed or hard copies of the items listed in the Construction Contract are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
10. *Contractor* – The entity or individual with which Owner has entered into a Construction Contract.
11. *Documents* – Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.

12. *Drawings* – That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings are not Drawings as so defined.
13. *Effective Date* – The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
14. *Engineer* – The individual or entity named as such in this Agreement.
15. *Hazardous Waste* – The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
16. *Laws and Regulations; Laws or Regulations* – Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
17. *Owner* – The individual or entity with which Engineer has entered into this Agreement and for which the Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.
18. *PCBs* – Polychlorinated biphenyls.
19. *Petroleum* – Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-hazardous waste and crude oils.
20. *Project* – The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
21. *Radioactive Material* – Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
22. *Record Drawings* – Drawings depicting the completed Project, prepared by Engineer as an Additional Service and based solely on Contractor's record copy of all Drawings, Specifications, addenda, change orders, work change directives, field orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.
23. *Reimbursable Expenses* – The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic and Additional Services for the Project.
24. *Resident Project Representative* – The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative agreed to by Owner. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.

25. *Samples* – Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
26. *Shop Drawings* – All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
27. *Site* – Lands or areas to be indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
28. *Specifications* – That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.
29. *Subcontractor* – An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
30. *Substantial Completion* – The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
31. *Supplier* – A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.
32. *Total Project Costs* – The sum of the Construction Cost, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner’s costs for legal, accounting, insurance counseling and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement.
33. *Work* – The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 Exhibits Included:

- A. Exhibit A, Engineer’s Services.

- B. Exhibit B, Owner's Responsibilities.
- C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses.
- D. Exhibit D, **NOT INCLUDED**.
- E. Exhibit E, **NOT INCLUDED**.
- F. Exhibit F, **NOT INCLUDED**.
- G. Exhibit G, Insurance.
- H. Exhibit H, Dispute Resolution.
- I. Exhibit I, **NOT INCLUDED**.
- J. Exhibit J, Special Provisions.
- K. Exhibit K, Amendment to Owner-Engineer Agreement.

[NOTE TO USER: If an exhibit is not included, indicate "not included" after the listed exhibit item]

8.02 *Total Agreement:*

- A. This Agreement, (together with the exhibits identified above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument based on the format of Exhibit K to this Agreement.

8.03 *Designated Representatives:*

- A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to the Project on behalf of the respective party whom the individual represents.

8.04 *Engineer's Certifications:*

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the selection process or in the Agreement execution;
 - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;

3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

ARTICLE 9 – NOT USED

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner:

By:

Title:

Date

Signed:

Engineer:

By:

Title:

Date

Signed:

Engineer License or Firm's

Certificate No.

State of:

Address for giving notices:

Address for giving notices:

Designated Representative (Paragraph 8.03.A):

Title:

Phone Number:

Facsimile Number:

E-Mail Address:

Designated Representative (Paragraph 8.03.A):

Title:

Phone Number:

Facsimile Number:

E-Mail Address:

This is **EXHIBIT A**, consisting of _____ pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____, _____.

Engineer's Services

Article 1 of the Agreement is supplemented to include the following agreement of the parties.

Engineer shall provide Basic and Additional Services as set forth below.

PART 1 – BASIC SERVICES

A1.01 Study and Report Phase

A. Engineer shall:

1. Consult with Owner to define and clarify Owner's requirements for the Project and available data.
2. Advise Owner of any need for Owner to provide data or services of the types described in Exhibit B which are not part of Engineer's Basic Services.
3. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project designed or specified by Engineer, including but not limited to mitigating measures identified in the environmental assessment.
4. Identify and evaluate **[insert specific number or list here]** alternate solutions available to Owner and, after consultation with Owner, recommend to Owner those solutions which in Engineer's judgment meet Owner's requirements for the Project.
5. Prepare a report (the "Report") which will, as appropriate, contain schematic layouts, sketches, and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and those alternate solutions available to Owner which Engineer recommends. For each recommended solution Engineer will provide the following, which will be separately itemized: opinion of probable Construction Cost; proposed allowances for contingencies; the estimated total costs of design, professional, and related services to be provided by Engineer and its Consultants; and, on the basis of information furnished by Owner, a summary of allowances for other items and services included within the definition of Total Project Costs.
6. Perform or provide the following additional Study and Report Phase tasks or deliverables: **[here list any such tasks or deliverables]**
7. **Furnish _____ review copies** of the Report and any other deliverables to Owner **within _____ calendar days** of the Effective Date and review it with Owner. **Within _____ calendar days** of receipt, Owner shall submit to Engineer any comments regarding the Report and any other deliverables.

8. Revise the Report and any other deliverables in response to Owner's comments, as appropriate, and furnish ___ copies of the revised Report and any other deliverables to the Owner within ___ calendar days of receipt of Owner's comments.

B. Engineer's services under the Study and Report Phase will be considered complete on the date when the revised Report and any other deliverables have been delivered to Owner.

A1.02 Preliminary Design Phase

A. After acceptance by Owner of the Report and any other deliverables, selection by Owner of a recommended solution and indication of any specific modifications or changes in the scope, extent, character, or design requirements of the Project desired by Owner, and upon written authorization from Owner, Engineer shall:

1. Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project.
2. Provide necessary field surveys and topographic and utility mapping for design purposes. Utility mapping will be based upon information obtained from utility owners.
3. Advise Owner if additional reports, data, information, or services of the types described in Exhibit B are necessary and assist Owner in obtaining such reports, data, information, or services.
4. Based on the information contained in the Preliminary Design Phase documents, prepare a revised opinion of probable Construction Cost, and assist Owner in collating the various cost categories which comprise Total Project Costs.
5. Perform or provide the following additional Preliminary Design Phase tasks or deliverables:
[here list any such tasks or deliverables]
6. Furnish ___ review copies of the Preliminary Design Phase documents and any other deliverables to Owner within ___ calendar days of authorization to proceed with this phase, and review them with Owner. Within ___ calendar days of receipt, Owner shall submit to Engineer any comments regarding the Preliminary Design Phase documents and any other deliverables.
7. Revise the Preliminary Design Phase documents and any other deliverables in response to Owner's comments, as appropriate, and furnish to Owner ___ copies of the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables within ___ calendar days after receipt of Owner's comments.

B. Engineer's services under the Preliminary Design Phase will be considered complete on the date when the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables have been delivered to Owner.

A1.03 Final Design Phase

- A. After acceptance by Owner of the Preliminary Design Phase documents, revised opinion of probable Construction Cost as determined in the Preliminary Design Phase, and any other deliverables subject to any Owner-directed modifications or changes in the scope, extent, character, or design requirements of or for the Project, and upon written authorization from Owner, Engineer shall:
1. Prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor.
 2. Provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design of the Project; assist Owner in consultations with such authorities; and revise the Drawings and Specifications in response to directives from such authorities.
 3. Advise Owner of any adjustments to the opinion of probable Construction Cost known to Engineer.
 4. Perform or provide the following additional Final Design Phase tasks or deliverables: **[here list any such tasks or deliverables]**
 5. Prepare and furnish bidding documents for review by Owner, its legal counsel, and other advisors, and assist Owner in the preparation of other related documents. **Within ___ days** of receipt, Owner shall submit to Engineer any comments and, subject to the provisions of Paragraph 6.01.G, instructions for revisions.
 6. Revise the bidding documents in accordance with comments and instructions from the Owner, as appropriate, and **submit ___ final copies** of the bidding documents, a revised opinion of probable Construction Cost, and any other deliverables to Owner **within ___ calendar days** after receipt of Owner's comments and instructions.
- B. Engineer's services under the Final Design Phase will be considered complete on the date when the submittals required by Paragraph A1.03.A.6 have been delivered to Owner.
- C. In the event that the Work designed or specified by Engineer is to be performed or furnished under more than one prime contract, or if Engineer's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), Owner and Engineer shall, prior to commencement of the Final Design Phase, develop a schedule for performance of Engineer's services during the Final Design, Bidding or Negotiating, Construction, and Post-Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate prime contracts. This schedule is to be prepared and included in or become an amendment to Exhibit A whether or not the work under such contracts is to proceed concurrently.
- D. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Agreement **is _____**. If more prime

contracts are awarded, Engineer shall be entitled to an equitable increase in its compensation under this Agreement.

A1.04 *Bidding or Negotiating Phase*

- A. **DELETED.**
- B. **DELETED.**

A1.05 *Construction Phase*

- A. **DELETED.**

A1.06 *Post-Construction Phase*

- A. **DELETED.**
- B. **DELETED.**

PART 2 – ADDITIONAL SERVICES

A2.01 *Additional Services Requiring Owner's Written Authorization*

- C. If authorized in writing by Owner, Engineer shall furnish or obtain from others Additional Services of the types listed below.
 - 1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
 - 2. Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.
 - 3. 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 and Regulations enacted subsequent to the Effective Date or are due to any other causes beyond Engineer's control.
 - 4. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those identified in Paragraph A1.01.A.4.
 - 5. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.

6. Providing renderings or models for Owner's use.
7. Undertaking investigations and studies including, but not limited to, detailed consideration of operations, maintenance, and overhead expenses; the preparation of financial feasibility and cash flow studies, rate schedules, and appraisals; assistance in obtaining financing for the Project; evaluating processes available for licensing, and assisting Owner in obtaining process licensing; detailed quantity surveys of materials, equipment, and labor; and audits or inventories required in connection with construction performed by Owner.
8. Furnishing services of Consultants for other than Basic Services.
9. Services attributable to more prime construction contracts than specified in Paragraph A1.03.D.
10. Services during out-of-town travel required of Engineer other than for visits to the Site or Owner's office.
11. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructibility 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.
12. Preparing additional Bidding Documents or Contract Documents for alternate bids or prices requested by Owner for the Work or a portion thereof.
13. Assistance in connection with Bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required by Exhibit F.
14. Providing construction surveys and staking to enable Contractor to perform its work other than as required under Paragraph A1.05.A.6, and any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.
15. Providing Construction Phase services beyond the original date for completion and readiness for final payment of Contractor.
16. Providing assistance in responding to the presence of any Constituent of Concern at the Site, in compliance with current Laws and Regulations.
17. Preparing Record Drawings showing appropriate record information based on Project annotated record documents received from Contractor, and furnishing such Record Drawings to Owner.
18. Preparation of operation and maintenance manuals.
19. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, or other dispute resolution process related to the Project.

20. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.
21. Assistance in connection with the adjusting of Project equipment and systems.
22. Assistance to Owner in training Owner's staff to operate and maintain Project equipment and systems.
23. Assistance to Owner in developing procedures for (a) control of the operation and maintenance of Project equipment and systems, and (b) related record-keeping.
24. Overtime work requiring higher than regular rates.
25. Other services performed or furnished by Engineer not otherwise provided for in this Agreement.

A2.02 Additional Services Not Requiring Owner's Written Authorization

- A. Engineer shall advise Owner in advance that Engineer is will immediately commence to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice from Owner.
 1. Services in connection with work change directives and change orders to reflect changes requested by Owner.
 2. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or-equal" items; services after the award of the Construction Contract in evaluating and determining the acceptability of a proposed "or equal" or substitution which is found to be inappropriate for the Project; evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the Construction Contract.
 3. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.
 4. Additional or extended services during construction made necessary by (1) emergencies or acts of God endangering the Work (advance notice not required), (2) the presence at the Site of any Constituent of Concern or items of historical or cultural significance, (3) Work damaged by fire or other cause during construction, (4) a significant amount of defective, neglected, or delayed work by Contractor, (5) acceleration of the progress schedule involving services beyond normal working hours, or (6) default by Contractor.
 5. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of any part of the Work by Owner prior to Substantial Completion.
 6. Evaluating an unreasonable claim or an excessive number of claims submitted by Contractor or others in connection with the Work.

7. Services during the Construction Phase rendered after the original date for completion of the Work referred to in A1.05.B.
8. Reviewing a Shop Drawing more than three times, as a result of repeated inadequate submissions by Contractor.
9. While at the Site, compliance by Engineer and its staff with those terms of Owner's or Contractor's safety program provided to Engineer subsequent to the Effective Date that exceed those normally required of engineering personnel by federal, state, or local safety authorities for similar construction sites.

This is **EXHIBIT B**, consisting of _____ pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____, _____.

Owner's Responsibilities

Article 2 of the Agreement is supplemented to include the following agreement of the parties.

B2.01 In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall at its expense:

- A. Provide Engineer with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which Owner will require to be included in the Drawings and Specifications; and furnish copies of Owner's standard forms, conditions, and related documents for Engineer to include in the Bidding Documents, when applicable.
- B. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Site.
- C. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, furnish or otherwise make available such additional Project related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:
 1. Property descriptions.
 2. Zoning, deed, and other land use restrictions.
 3. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
 4. Explorations and tests of subsurface conditions at or contiguous to the Site, drawings of physical conditions relating to existing surface or subsurface structures at the Site, or hydrographic surveys, with appropriate professional interpretation thereof.
 5. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental or cultural studies as to the Project, the Site, and adjacent areas.
 6. Data or consultations as required for the Project but not otherwise identified in the Agreement or the Exhibits thereto.
- D. Give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of the presence at the Site of any Constituent of Concern, or of any other development that affects the

scope or time of performance of Engineer's services, or any defect or nonconformance in Engineer's services, the Work, or in the performance of any Contractor.

- E. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement as required.
- F. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.
- G. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.
- I. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, provide, as required for the Project:
 - 1. Accounting, bond and financial advisory, independent cost estimating, and insurance counseling services.
 - 2. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests.
 - 3. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the moneys paid.
- J. Place and pay for advertisement for Bids in appropriate publications.
- K. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructibility review.
- L. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.
- M. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.
- N. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, designate a person or entity to have authority and responsibility for coordinating the activities

among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.

- O. Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Substantial Completion and final payment visits to the Project.
- P. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Contract Documents, or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof.
- Q. Provide Engineer with the findings and reports generated by the entities providing services to Owner pursuant to this paragraph.
- R. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.
- S. Perform or provide the following additional services: *None*.

1. Compensation for Basic Services (not including Resident Project Representative) (as described in Exhibit A, Part I)

Decision Question: Which method of compensation is to be used?

	Lump Sum	Standard Hourly Rates	Percentage of Construction Costs	Direct Labor Costs Times a Factor	Direct Labor Costs Plus Overhead Plus a Fixed Fee	Salary Costs Times a Factor
Use This Base Compensation Packet	Packet BC-1	Packet BC-2	Packet BC-3	Packet BC-4	Packet BC-5	Packet BC-6
Include This Appendix	N/A	Appendices 1 and 2	N/A	Appendix 1	Appendix 1	Appendix 1

2. Compensation for Resident Project Representative (as described in Exhibit A, Paragraph A1.05.A.2, and in Exhibit D)

Decision Question: Which method of compensation is to be used?

	Lump Sum	Standard Hourly Rates	Percentage of Construction Costs	Direct Labor Costs Times a Factor	Salary Costs Times a Factor
Use This RPR Compensation Packet	Packet RPR-1	Packet RPR-2	Packet RPR-3	Packet RPR-4	Packet RPR-5
Include This Appendix	N/A	Appendices 1 and 2	N/A	Appendix 1	Appendix 1

3. **Compensation for Additional Services (as described in Exhibit A, Part 2)**

Decision Question: Which method of compensation is to be used?

	Standard Hourly Rates	Direct Labor Costs Times a Factor	Salary Costs Times a Factor
Use This Additional Services Compensation Packet	Packet AS-1	Packet AS-2	Packet AS-3
Include This Appendix	Appendices 1 and 2	Appendix 1	Appendix 1

Example: If Basic Services (other than RPR) will be compensated using Lump Sum; RPR services using Direct Labor Times a Factor; and Additional Services using Standard Hourly Rates; then use Packet BC-1; Packet RPR-4; Packet AS-1; and Appendices 1 and 2 to form Exhibit C.

SUGGESTED FORMAT
(for use with E-500, 2008 Edition)

This is **EXHIBIT C**, consisting of ____ pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated _____, _____.

Payments to Engineer for Services and Reimbursable Expenses
COMPENSATION PACKET BC-1: Basic Services – Lump Sum

Article 2 of the Agreement is supplemented to include the following agreement of the parties:

ARTICLE 2 – OWNER’S RESPONSIBILITIES

C2.01 Compensation for Basic Services (other than Resident Project Representative) – Lump Sum Method of Payment

- A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, except for services of Engineer’s Resident Project Representative, if any, as follows:
1. A Lump Sum amount of \$_____ based on the following estimated distribution of compensation:
 - a. Study and Report Phase \$ _____
 - b. Preliminary Design Phase \$ _____
 - c. Final Design Phase \$ _____
 - d. Bidding and Negotiating Phase \$ _____
 - e. Construction Phase \$ _____
 - f. Post-Construction Phase \$ _____
 2. Engineer may alter the distribution of compensation between individual phases noted herein to be consistent with services actually rendered, but shall not exceed the total Lump Sum amount unless approved in writing by the Owner.
 3. The Lump Sum includes compensation for Engineer’s services and services of Engineer’s Consultants, if any. Appropriate amounts have been incorporated in the Lump Sum to account for labor, overhead, profit, and Reimbursable Expenses.
 4. The portion of the Lump Sum amount billed for Engineer’s services will be based upon Engineer’s estimate of the percentage of the total services actually completed during the billing period.

B. *Period of Service:* The compensation amount stipulated in Compensation Packet BC-1 is conditioned on a period of service not exceeding ____ months. If such period of service is extended, the compensation amount for Engineer's services shall be appropriately adjusted.

This is **EXHIBIT C**, consisting of _____ pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____, _____.

Payments to Engineer for Services and Reimbursable Expenses
COMPENSATION PACKET BC-2: Basic Services – Standard Hourly Rates

Article 2 of the Agreement is supplemented to include the following agreement of the parties:

ARTICLE 2 – OWNER’S RESPONSIBILITIES

C2.01 Compensation For Basic Services (other than Resident Project Representative) – Standard Hourly Rates Method of Payment

- A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, except for services of Engineer’s Resident Project Representative, if any, as follows:
1. An amount equal to the cumulative hours charged to the Project by each class of Engineer’s personnel times Standard Hourly Rates for each applicable billing class for all services performed on the Project, plus Reimbursable Expenses and Engineer’s Consultants' charges, if any.
 2. Engineer’s Reimbursable Expenses Schedule and Standard Hourly Rates are attached to this Exhibit C as Appendices 1 and 2.
 3. The total compensation for services under Paragraph C2.01 is estimated to be \$_____ based on the following estimated distribution of compensation:
 - a. Study and Report Phase \$ _____
 - b. Preliminary Design Phase \$ _____
 - c. Final Design Phase \$ _____
 - d. Bidding or Negotiating Phase \$ _____
 - e. Construction Phase \$ _____
 - f. Post-Construction Phase \$ _____
 4. Engineer may alter the distribution of compensation between individual phases of the work noted herein to be consistent with services actually rendered, but shall not exceed the total estimated compensation amount unless approved in writing by Owner. See also C2.03.C.2 below.
 5. The total estimated compensation for Engineer’s services included in the breakdown by phases as noted in Paragraph C2.01.A.3 incorporates all labor, overhead, profit, Reimbursable Expenses and Engineer’s Consultants' charges.

6. The amounts billed for Engineer's services under Paragraph C2.01 will be based on the cumulative hours charged to the Project during the billing period by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class, plus Reimbursable Expenses and Engineer's Consultants' charges.
7. The Standard Hourly Rates and Reimbursable Expenses Schedule will be adjusted annually (as of ___) to reflect equitable changes in the compensation payable to Engineer.

C2.02 Compensation For Reimbursable Expenses

- A. Owner shall pay Engineer for all Reimbursable Expenses at the rates set forth in Appendix 1 to this Exhibit C.
- B. Reimbursable Expenses include the following categories: transportation and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls and mobile phone charges; reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items in addition to those required under Exhibit A. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
- C. The amounts payable to Engineer for Reimbursable Expenses will be the Project-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to the Project, the latter multiplied by a factor of 1.0.

C2.03 Other Provisions Concerning Payment

- A. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of 1.0.
- B. Factors. The external Reimbursable Expenses and Engineer's Consultants' factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.

C. *Estimated Compensation Amounts:*

1. Engineer's estimate of the amounts that will become payable for specified services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.
2. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Engineer that the total compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof, allowing Owner to consider its options, including suspension or termination of Engineer's services for Owner's convenience. Upon notice, Owner and Engineer promptly shall review the matter of services remaining to be performed and compensation for such services. Owner shall either exercise its right to suspend or terminate Engineer's services for Owner's convenience, agree to such compensation exceeding said estimated amount, or agree to a reduction in the remaining services to be rendered by Engineer, so that total compensation for such services will not exceed said estimated amount when such services are completed. If Owner decides not to suspend the Engineer's services during the negotiations and Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, then Engineer shall be paid for all services rendered hereunder.

- D. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

This is **Appendix 1 to EXHIBIT C**, consisting of _____ pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____.

Reimbursable Expenses Schedule

Current agreements for engineering services stipulate that the Reimbursable Expenses are subject to review and adjustment per Exhibit C. Reimbursable expenses for services performed on the date of the Agreement are:

Fax	\$_____/page
8"x11" Copies/Impressions	_____/page
Blue Print Copies	_____/sq. ft.
Reproducible Copies (Mylar)	_____/sq. ft.
Reproducible Copies (Paper)	_____/sq. ft.
Mileage (auto)	_____/mile
Field Truck Daily Charge	_____/day
Mileage (Field Truck)	_____/mile
Field Survey Equipment	_____/day
Confined Space Equipment	_____/day plus expenses
Resident Project Representative Equipment	_____/month
Specialized Software	_____/hour
CAD Charge	_____/hour
CAE Terminal Charge	_____/hour
Video Equipment Charge	_____/day, \$_____/week, or \$_____/month
Electrical Meters Charge	_____/week, or \$_____/month
Flow Meter Charge	_____/week, or \$_____/month
Rain Gauge	_____/week, or \$_____/month
Sampler Charge	_____/week, or \$_____/month
Dissolved Oxygen Tester Charge	_____/week
Fluorometer	_____/week
Laboratory Pilot Testing Charge	_____/week, or \$_____/month
Soil Gas Kit	_____/day
Submersible Pump	_____/day
Water Level Meter	_____/day, or \$_____/month
Soil Sampling	_____/sample
Groundwater Sampling	_____/sample
Health and Safety Level D	_____/day
Health and Safety Level C	_____/day
Electronic Media Charge	_____/hour
Long Distance Phone Calls	at cost
Mobile Phone	_____/day
Meals and Lodging	at cost

[Note to User: Customize this Schedule to reflect anticipated reimbursable expenses on this specific Project]

This is **Appendix 2 to EXHIBIT C**, consisting of _____ pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____, _____.

Standard Hourly Rates Schedule

A. Standard Hourly Rates:

1. Standard Hourly Rates are set forth in this Appendix 2 to this Exhibit C and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
2. The Standard Hourly Rates apply only as specified in Article C2.

B. Schedule:

Hourly rates for services performed on or after the date of the Agreement are:

Billing Class VIII	\$ _____/hour
Billing Class VII	_____/hour
Billing Class VI	_____/hour
Billing Class V	_____/hour
Billing Class IV	_____/hour
Billing Class III	_____/hour
Billing Class II	_____/hour
Billing Class I	_____/hour
Support Staff	_____/hour

This is **EXHIBIT G**, consisting of _____ pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____, _____.

Insurance

Paragraph 6.04 of the Agreement is supplemented to include the following agreement of the parties.

H. Additional Insurance Coverage:

General Conditions: If applicable, Owner will require that the Engineer procure and maintain in full force and effect during the life of this agreement, such insurance as is required herein. Policies of insurance shall be written by companies licensed or approved to do business in the State of New Mexico.

The Engineer shall furnish Owner copies of certificates of required insurance in a form satisfactory to Owner (or copies of insurance policies if Owner calls for them). All certificates of insurance (or policies) shall provide that thirty (30) days written notice be given to owner before a policy is cancelled or not renewed except that thirty (30) days notice shall not apply for non-payment of premiums. Various types of required insurance may be written in one or more policies.

If part of this Agreement is subcontracted, the Engineer shall require its subcontractor to secure insurance to protect itself against all hazards enumerated herein, which are not covered by the Engineer's insurance policies.

1. *Approval of Insurance:* Even though a "Notice to Proceed" may have been given, the Engineer or subcontractor shall not begin any work under this Agreement until the required insurance has been obtained and the proper Certificates (or insurance policies) have been provided to Owner, adding Owner as an additional insured. Neither approval nor failure to disapprove certificates, policies or the insurance by Owner shall relieve the Engineer of full responsibility to maintain the required insurance in full force and effect
2. *Professional Liability Insurance:* The Engineer will be required to obtain Professional Liability Insurance in an amount not less than \$ 1,000,000.00 in the aggregate provided however, that there shall not be a per claim limit of less than \$ 1,000,000.

In the event Owner elects to require insurance coverage in excess of \$ 1,000,000 the cost directly incurred by the Engineer, if it is in addition to the Engineer's Basic Professional Liability Insurance, shall be a direct reimbursable expense (additional insurance premium cost only) paid by Owner.

3. *Commercial General Liability and Automobile Insurance:* All commercial, general liability and automobile insurance policies shall have liability limits in amounts not less than \$1,000,000 combined single limit of liability for bodily injury, including death and property damage in any one occurrence.

Said policies of insurance shall be in effect for the term of this Agreement and include coverage for all operations performed for Owner by the Engineer. Engineer shall provide with the Certificate of Insurance an endorsement from their policy showing the Engineer carries Additional Insured coverage.

4. *Workers' Compensation Insurance:* The Engineer shall comply with the provisions of the Workers' Compensation Act, the Subsequent Injury Act, and the New Mexico Occupational Disease Disablement Law.
5. *Increased Limits:* If during the life of this contract, the legislature of the State of New Mexico increases the maximum limits of the liability under the Tort Claims Act, Owner may require the Engineer to increase the maximum limits of any insurance required herein. In the event that the Engineer is so required to increase the limits of such insurance, an appropriate adjustment in contract amount will be made.
6. *Proof of Licensing:* Engineer shall provide Owner with its state license number and shall maintain its license in good standing for the term of this Agreement.
7. *Notification:* Engineer agrees to notify Owner of any change or cancellation of insurance policy.

I. Additional Insureds

1. The Engineer and sub-consultants (if any) identified in the Task Order for a specific Project shall be listed on Owner's general liability policies of insurance as additional insureds, and on any applicable property insurance policy as loss payees, as provided in Paragraph 6.04 B.

This is **EXHIBIT H**, consisting of _____ pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____, _____.

Dispute Resolution

Paragraph 6.08 of the Agreement is amended and supplemented to include the following agreement of the parties:

- A. *Mediation*: Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof (“Disputes”) to mediation by an individual or firm agreeable to Owner and Engineer. Owner and Engineer agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis and shall be completed within 120 days. If such mediation is unsuccessful in resolving a Dispute, then (1) the parties may mutually agree to a dispute resolution of their choice, or (2) either party may seek to have the Dispute resolved by a court of competent jurisdiction.

This is **EXHIBIT J**, consisting of _____ pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____, _____.

Special Provisions

Paragraph 6.11 of the Agreement is amended to include the following agreement(s) of the parties:

- F. *Records and Audits:* The Engineer shall maintain detailed time records which indicate the date, time, and nature of services rendered if hourly services are being provided. These records shall be subject to inspection by Owner. Owner shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of Owner to recover excessive and/or illegal payments.
1. *Ownership of Plans and Documents:* All documents prepared as part of or related to the project, including, but not limited to the field notes, design notes, original tracings of plans, and logs of any test holes drilled, and any computer generated materials prepared under this Agreement as instruments of service, are and shall remain, the property of Owner. At the termination of this Agreement or the conclusion of the project, whichever is sooner, upon request by Owner, the Engineer shall deliver as part of the basic services and in a form acceptable to Owner, one bound copy of the design calculations and assumptions including facility life-cycle costs and annual operations and maintenance requirements, one set of digital data on a format acceptable to Owner, one set of blueprints, and one set of reproducible mylar record drawings of the work. Additional plans and documents which may be required by Owner, will be identified and agreed upon as a deliverable due at the completion of the project. Any use of completed documents for other projects and/or any use of uncompleted documents without specific written authorization from the Engineer will be at Owner's sole risk. Owner shall indemnify, and hold harmless the Engineer from all claims, damages and attorney fees arising from the reuse of the documents. No material produced in whole or in part under this Agreement shall be subject to copyright in the United States or in any other country by the Engineer. Owner shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data or other materials prepared under this Agreement.
 2. *Retention:* After project completion including the warranty period and final payment under this contract, the Engineer shall maintain for no less than ten (10) years, or as required by funding agency, copies of all documents, maps, records, computer data and computer generated materials, field notes and soil tests which were developed in the course of work on the project for Owner and for which compensation has been received by the Engineer. The above shall be the property of Owner, maintained by the Engineer, at no additional cost to Owner and in accordance with applicable law and requirements prescribed by Owner. If required by Owner, and upon written request, delivery of these documents or copies of this information shall be transmitted to Owner at a mutually agreed upon cost.

G. *Use of Federal Funds:* Engineer and Owner must not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension".

This is **EXHIBIT K**, consisting of _____ pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____, _____.

AMENDMENT TO OWNER-ENGINEER AGREEMENT
Amendment No. _____

1. *Background Data:*

- a. Effective Date of Owner-Engineer Agreement: _____
- b. Owner: _____
- c. Engineer: _____
- d. Project: _____

2. *Description of Modifications:*

[NOTE TO USER: Include the following paragraphs that are appropriate and delete those not applicable to this amendment. Refer to paragraph numbers used in the Agreement or a previous amendment for clarity with respect to the modifications to be made. Use paragraph numbers in this document for ease of reference herein and in future correspondence or amendments.]

- a. Engineer shall perform or furnish the following Additional Services:
- b. The Scope of Services currently authorized to be performed by Engineer in accordance with the Agreement and previous amendments, if any, is modified as follows:
- c. The responsibilities of Owner are modified as follows:
- d. For the Additional Services or the modifications to services set forth above, Owner shall pay Engineer the following additional or modified compensation:
- e. The schedule for rendering services is modified as follows:
- f. Other portions of the Agreement (including previous amendments, if any) are modified as follows:

[List other Attachments, if any]

5. Agreement Summary (Reference only)

- a. Original Agreement amount: \$ _____

b. Net change for prior amendments: \$ _____
c. This amendment amount: \$ _____
d. Adjusted Agreement amount: \$ _____

The foregoing Agreement Summary is for reference only and does not alter the terms of the Agreement, including those set forth in Exhibit C.

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect. The Effective Date of this Amendment is _____.

OWNER:

ENGINEER:

By: _____

By: _____

Title: _____

Title: _____

Date
Signed: _____

Date Signed: _____