

AGREEMENT BETWEEN OWNER AND ENGINEER

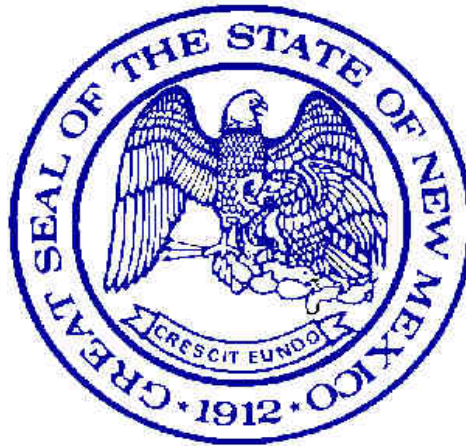
Project _____

Contract No. _____

Project No. _____

Distribution to:

- Owner
- Engineer
- DFA
- Other



This Agreement entered into this _____ day of _____, 20____, ("Effective Date") by and between
 the "**Owner**" and the "**Engineer**"

Telephone: _____

Telephone: _____

Email: _____

Email: _____

Professional and technical services shall be provided by the Engineer through the Project Engineer whose signature is contained on the signature page to this Agreement.

[This document was prepared to be used with Community Development Block Grant and incorporates terms from the standard Agreement for Engineering Services (Publicly Funded Project) used by other funding agencies including the New Mexico Environment Department and the New Mexico Finance Authority. **Additions to the standard agreement document include (SECTION A.21) MAXIMUM ALLOWABLE CONSTRUCTION COST and (SECTION A.22) CDBG TERMS AND CONDITIONS FOR PROFESSIONAL SERVICES.** This document has important legal consequences; consultation with an attorney is encouraged with respect to its completion or modification]

**AGREEMENT FOR ENGINEERING SERVICES
(CDBG Funded Project)**

THIS agreement for engineering services ("Agreement"), made this ___ day of _____, 20___ by and between _____ (hereinafter referred to as the "OWNER"), and _____ (hereinafter referred to as the "ENGINEER").

Contingent on the award of CDBG funding, the OWNER intends to construct a project consisting of

(hereinafter referred to as the "Project") in _____ County, State of New Mexico, which may be paid for in part with financial assistance from the U.S. Department of Housing and Urban Development (hereinafter referred to as "HUD") acting through the New Mexico Department of Finance and Administration (hereinafter referred to as "DFA" or "Funding Agency"). Neither the United States or the State of New Mexico nor any of its departments, agencies, or employees is or will be a party to this Agreement or any sub-agreement. The ENGINEER agrees to perform the various professional engineering services for the planning, design, and construction of said Project in accordance with the provisions of this Agreement.

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SECTION A - GENERAL PROVISIONS

1. General

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

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

(1) Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by OWNER or ENGINEER to any Contractor, Contractor's subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them.

(2) All duties and responsibilities undertaken pursuant to this Agreement will be for sole and exclusive benefit of OWNER and ENGINEER and not for the benefit of any other party.

(c) The ENGINEER will work closely with the Funding Agency, as necessary, for the purposes of complying with program requirements.

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

2. Approvals

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

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

3. Responsibilities of the ENGINEER

- (a) The ENGINEER shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all design drawings, specifications, reports, and other services furnished by the ENGINEER under this Agreement. If this Agreement involves environmental measures or data generation, the ENGINEER shall comply with applicable quality assurance requirements. The ENGINEER shall keep the OWNER informed of the performance of the ENGINEER'S duties under this Agreement. The ENGINEER, shall promptly and without additional compensation, correct or revise any errors, omissions, or other deficiencies in the design drawings, specifications, reports, and other services provided by ENGINEER under terms of this Agreement.
- (b) The ENGINEER shall perform the professional services necessary to accomplish the work specified in this Agreement, in accordance with this Agreement and applicable Funding Agency requirements in effect on the date of execution of any assistance agreement for this Project.
- (c) The OWNER, or Funding Agency review or approval of design drawings, specifications, reports, and other services furnished hereunder shall not in any way relieve the ENGINEER of responsibility for the technical adequacy of the work. Neither the OWNER, nor Funding Agency review, approval or acceptance of, nor payment for any of the services shall be construed as a waiver of action arising out to the performance of this Agreement.
- (d) The ENGINEER shall indemnify, defend, and hold the OWNER and Funding Agency harmless, in accordance with applicable law, with respect to any damages, expenses, or claims arising from or in connection with any acts, errors, or omissions of the ENGINEER in connection with, arising from, or related to the ENGINEER'S obligations under this Agreement. The ENGINEER shall not be responsible for any time delays in the Project caused by circumstances beyond the ENGINEER'S control. This provision shall not be construed as a limitation of either party's liability under this Agreement, or as otherwise provided by law.
- (e) ENGINEER'S opinions of probable construction cost ("Probable Construction Cost") are to be made on the basis of ENGINEER'S experience and qualifications and represent ENGINEER'S best judgment as an experienced and qualified professional generally familiar with the construction industry. However, since ENGINEER has no control over the cost of labor, materials, equipment, or services furnished by others, or over Contractor's methods of determining prices, or over competitive bidding or market conditions, ENGINEER cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of Probable Construction Cost prepared by ENGINEER.
- (f) If OWNER wishes greater assurance as to Probable Construction Cost, OWNER shall employ an independent cost estimator.
- (g) During the Construction Phase, the ENGINEER shall not at any time supervise, direct, or have control over Contractor's work, nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to the Contractor's work in progress, nor for any failure of Contractor to comply with laws and regulations applicable to Contractor's furnishing and performing the Work.
- (h) The standard of care of all professional engineering and related services performed or furnished by ENGINEER under this Agreement will be the care and skill ordinarily used by members of subject profession practicing under similar circumstances at the same time and in the same locality. ENGINEER makes no warranties, expressed or implied, under this Agreement or otherwise, in

connection with ENGINEER'S services.

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

4. Responsibilities of the OWNER

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

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

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

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

5. Changes

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

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

6. Termination of Contract

(a) This Agreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this Agreement through no fault of

the terminating party, provided that no such termination may be effected unless the other party is given (1) not less than fourteen (14) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate and (2) an opportunity for consultation with the terminating party before termination.

(b) This Agreement may be terminated in whole or in part in writing by the OWNER for its convenience, provided that the ENGINEER is given (1) not less than fourteen (14) calendar days written notice (delivered by certified, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the OWNER prior to termination.

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

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

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

(f) If, after termination for failure of the ENGINEER to fulfill contractual obligations, it is determined that the ENGINEER had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of the OWNER. In such event, adjustment of the Agreement price shall be made as provided in paragraph 9 of this clause.

7. Payment

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

(b) The OWNER shall notify the ENGINEER of any disputed amounts in the invoices within thirty (30) calendar days of receipt. If OWNER contests an invoice, OWNER may withhold only that portion so contested, and must pay the undisputed portion.

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

(d) If OWNER fails to make any undisputed payment due ENGINEER within forty-five (45) calendar days after OWNER's receipt of ENGINEER's invoice, the amount due ENGINEER shall be increased at the rate of 1.5% per month from said forty-fifth day. In addition, after fourteen (14) calendar days prior written notice, the ENGINEER may suspend services under this Agreement until ENGINEER is paid in full for undisputed amounts. OWNER waives any and all claims against ENGINEER for any such suspension.

8. TIME

(a) PROGRESS AND COMPLETION

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

(b) CONTRACT TIME AND LIQUIDATED DAMAGES

(c) The ENGINEER agrees that the services being provided under this Agreement will be performed regularly, diligently and without interruption at such rate of progress as will ensure completion within the Contract Time. It is expressly understood and agreed, by and between ENGINEER and the OWNER, that the Contract Time is a reasonable time for completion of the services, taking into consideration the usual conditions for performing the services. ENGINEER agrees to promptly notify OWNER of delays in completing the services under this Agreement that are beyond ENGINEER's control and for which a Contract Time extension will be requested. If the ENGINEER neglects, fails or refuses to complete the services within the Contract Time, including any time extension granted by the OWNER, then the ENGINEER agrees to pay the OWNER the

amount specified below, not as a penalty, but as liquidated damages.

2. The parties agree that the amount of the likely damages to the OWNER for such delay is difficult to ascertain at the time of execution of this Agreement, but that a reasonable estimate of such damages may be deducted from any monthly progress payments due to the ENGINEER or from other monies being withheld from the ENGINEER when a reasonable estimate of the expected date of completion can be determined by the OWNER.
3. Final accounting of Liquidated Damages shall be determined at completion and the ENGINEER shall be liable for any Liquidated Damages over and above unpaid balances held by the OWNER.
4. The OWNER and ENGINEER agree that as mutually agreeable, reasonable Liquidated Damages for delay (but not as a penalty), ENGINEER shall pay OWNER _____ dollars (_____) for each calendar day that expires after _____ the Contract Time specified in the Agreement until the Work is complete and accepted by the OWNER. OWNER shall have no more than ten (10) calendar days to accept or reject the Work.

9. Project Design

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

10. Audits and Access to Records

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

(b) The ENGINEER agrees to make paragraphs (a) through (f) applicable to all subcontracts, at any tier, and to make paragraphs (a) through (f) of this clause applicable to all amendments directly related to Project performance.

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

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

(e) Records under paragraphs (a) and (b) above shall be maintained and made available by the ENGINEER during performance of services under this Agreement and for six (6) years following Project closeout (as determined by the Funding Agency). In addition, those records which relate to any controversy arising under this Agreement, litigation, the settlement of claims arising out of such performance or to costs or items to which an audit exception has been taken shall be maintained and made available by the ENGINEER until six (6) years after the date of resolution of such appeal, litigation, claim or exception.

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

(g) To the extent the records pertain directly to Agreement performance; or

(h) If there is any indication that fraud, gross abuse or corrupt practices may be involved; or

(i) If the Agreement is terminated for default or for convenience.

11. Subcontracts

(a) Any subcontractors and outside associates or consultants required by the ENGINEER in connection with services under this Agreement will be limited to such individuals or firms as were specifically identified and agreed to during negotiations of this Agreement. The OWNER must give prior approval for any substitutions, additions or deletions to such subcontractors, associates, or consultants. All CDBG program requirements will apply, including but not limited to SAM registration.

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

12. Insurance

The ENGINEER agrees to obtain and maintain, at the ENGINEER's expense, such insurance as will protect the ENGINEER from claims under the Workman's Compensation Act and such comprehensive general liability and automobile insurance as will protect the OWNER, Funding Agency, and the ENGINEER from all claims for bodily injury, death, or property damage which may arise from the performance by the ENGINEER, or by the ENGINEER's employees, for the ENGINEER's functions and services required under this

Agreement. Such insurance shall be in an amount not less than _____ for injury to any one person and _____ on account of any one accident and in the amount of not less than _____ for property damage. The ENGINEER further agrees to procure and maintain professional liability (errors and omissions) insurance in an amount not less than _____ per claim and in the aggregate. Prior to commencement of any work, the ENGINEER shall furnish to the OWNER a certificate that complies with this paragraph. The certificate shall provide that the policy shall not be canceled until at least ten (10) calendar days prior written notice shall have been given to the OWNER. ENGINEER shall provide annual updates of the certificate to demonstrate the policy remains in effect for the duration of this Agreement.

13. Environmental Condition of Site

- (a) Owner has disclosed to Engineer in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern located at or near the Site, including type, quantity, and location.
- (b) Owner represents to Engineer that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at the Site.
- (c) If Engineer encounters an undisclosed Constituent of Concern, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- (d) It is acknowledged by both parties that Engineer's scope of services does not include any services related to Constituents of Concern. If Engineer or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (1) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and (2) certifies that the Site is in full compliance with applicable laws and regulations.
- (e) If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on 30 calendar days notice.
- (f) Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

14. Mutual Waiver

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

15. Independent Contractor

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

16. Equal Employment Opportunity

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

17. Gratuities

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

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

18. Covenant Against Contingent Fees

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

19. Cost and Pricing Data on Federally-funded Projects

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

20. Remedies

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

21. Maximum Allowable Construction Cost (for CDBG funded projects)

(a) Evaluations of the Owner's Project budget, statements of Probable Construction Cost, and detailed estimates of construction cost prepared by the Engineer represent the Engineer's best judgment as a design professional familiar with the construction industry. It is recognized, however, that the Engineer does not have control over the cost of labor, materials, or equipment; over the contractor's methods of determining bid prices; or over competitive bidding, market, or negotiating conditions. Accordingly, the Engineer cannot and does not represent that bids or negotiated prices will not vary from the Project budget proposed, established, or approved by the Owner, or from any Statement of Probable Construction Cost or other cost estimate or evaluation prepared by the Engineer.

(b) The Maximum Allowable Construction Cost (MACC) is established, as a condition of this Agreement, as a fixed limit of Construction Cost for design and bidding purposes. The Engineer shall be permitted to determine what materials, equipment, component systems, and types of construction are to be included in the Bidding Documents to bring Construction Cost within the MACC. With the written consent of the Owner, the Engineer may also include in the Bidding Documents either additive or deductive alternate bids to adjust the Construction Cost to the fixed limit.

(c) The acceptance by the Owner at any time during Basic Services of a revised Statement of Probable Construction Cost in excess of the then established MACC will constitute a corresponding increase in the MACC to the extent indicated in the revised statement subject to Section 21(d) below.

(d) The Owner shall provide a written response to the Funding Agency of their acceptance of the increased MACC. This written response shall identify the source of the additional funds (or other procedure for covering the cost). Prior to construction, at no time shall the MACC exceed the total amount allocated for construction in the Grant Agreement budget (or applicable Grant Agreement amendment budget) between the Owner and the Funding Agency.

(e) If bidding or negotiations with potential contractors have not commenced within two months after the Engineer submits Bidding Documents to the Owner, the Project budget and/or MACC shall be adjusted to reflect any change in the general level of prices in the construction industry between the date of submission of the Bidding Documents to the Owner and the date on which bids are sought. Prior to construction, at no time shall the MACC exceed the total amount allocated for construction in the Grant Agreement budget (or applicable Grant Agreement amendment budget) between the Owner and the Funding Agency.

(f) The MACC, therefore, is established as a condition of this Agreement. When it is exceeded by the lowest bona fide bid, the Owner with prior review by and concurrence from the Funding Agency may: a) give written approval of an increase in the MACC; b) authorize re-bidding the Project within a reasonable time, or c) cooperate with the Engineer in revising the Project scope and, as required to reduce the Probable Construction Cost. Any proposed revision to the Project scope requires written Funding Agency approval.

(g) If the Owner elects to reduce the Probable Construction Cost, the Owner shall cooperate with the Engineer in revising the quality and scope of the Project if such revision is approved by the Funding Agency; and the Engineer, without additional charge, shall modify the Drawings and Specifications as necessary to bring the Construction Cost within the MACC. The Engineer shall then assist the Owner through the Bidding process. When the cost estimate or an evaluation prepared by the Engineer indicates that the Project exceeds the MACC, the provisions outlined in this paragraph shall apply.

(h) The MACC shall not exceed _____ dollars (_____).

22. CDBG TERMS AND CONDITIONS FOR PROFESSIONAL SERVICES

The CDBG program is subject to Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 et seq.), and HUD's regulations at 24 C.F.R. Part 570.

Vendor performance shall include compliance with:

- A. Applicable CDBG/HUD program statutes and regulations;
- B. 2 C.F.R. Part 200;
- C. Build America, Buy America (BABA) requirements, as applicable to the Project;
- D. Civil rights, fair housing, and other national policy requirements;
- E. Debarment/suspension and anti-lobbying;
- F. 24 C.F.R. § 85.36 (as applicable) and 24 C.F.R. § 570.489, State Procurement Code, and the CDBG Implementation Manual, applying the most stringent requirement when conflicts occur in accordance with 24 C.F.R. § 570.480(f); and
- G. Reporting requirements, including UEI/SAM and FFATA.

Vendor must adhere to applicable CDBG Implementation Manual processes, as amended, available at:

<https://www.nmdfa.state.nm.us/infrastructure-planning-and-development-division/cdbg-implementation-manual/>

For the purposes of these supplemental terms and conditions, the term "Vendor" shall refer to the applicable defined term in a DFA-approved vendor contract, including the following:

- Exhibit 3-B: Consultant
- Exhibit 3-D: Engineer
- Exhibit 3-E: Architect
- Exhibit 3-G: Planner

In the event of any conflict between these supplemental terms and conditions and the terms of the contract or agreement to which this document is attached or within which this document is incorporated, the more restrictive terms and conditions shall apply.

1. **Debarment.** The Vendor covenants that it is not debarred, suspended or otherwise excluded from contracting on any projects involving federal funds. The Vendor shall provide the Owner and the Funding Agency documentation of eligibility at least once per year as well as promptly following any written request from the Owner or Funding Agency. Prior to any participation in the Project, the Vendor shall verify that all subcontractors employed are not debarred, suspended or otherwise excluded from contracting on any projects involving federal funds. The Vendor shall provide immediate notice to the Owner and Funding Agency, but in no case later than three (3) business days, after becoming aware that the Vendor or any subcontractor has been debarred or is prohibited in any way from contracting on any projects involving federal funds. The Owner may immediately terminate this Agreement if the Vendor or any subcontractor is or becomes a "debarred" or "active exclusion" contractor or subcontractor.
2. **Payments.** Requests for payment shall be submitted in an appropriate format with supporting documentation. The Owner or Funding Agency may dispute or withhold requests for payment for noncompliance or insufficient documentation. The Vendor agrees to provide certification and receipts for reimbursement expenditures. The Vendor is exclusively responsible for ensuring its subcontractors are paid promptly in accordance with applicable law; the Owner bears no responsibility for subcontractor payments.
3. **Construction Approvals.** The bidding process for the Project's construction activities shall not begin until the Funding Agency issues a signed Authority to Use Grant Funds in response to the Owner's Request for Release of Funds. During construction, proposed change orders must be submitted to the Owner and Funding Agency for written approval prior to execution.
4. **Termination of Agreement for Cause.** If, through any cause, the Vendor fails to fulfill in a timely and proper manner its obligations under this Agreement, or if the Vendor violates any of the covenants, agreements, or stipulations of this Agreement or fails to comply with applicable program requirements, the Owner shall have the right to terminate this Agreement by giving written notice to the Vendor of such termination and specifying the effective date thereof, such notice to be provided at least five (5) days before the effective date of such

termination. In such event, all finished or unfinished documents, data, studies, surveys and reports prepared by the Vendor under this Agreement shall, at the option of the Owner, become its property and the Vendor shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder prior to the termination date.

Notwithstanding the above, the Vendor shall not be relieved of liability to the Owner for damages sustained by the Owner by virtue of any breach of the Agreement by the Vendor or by virtue of any other act or omission by the Vendor, and the Owner may, among other remedies, withhold any payments to the Vendor for the purpose of set-off until such time as the exact amount of damages due the Owner from the Vendor is determined.

5. **Termination for Convenience of the Owner.** The Owner may terminate this Agreement at any time by giving at least ten (10) days notice in writing to the Vendor. If the Agreement is terminated by the Owner as provided herein, the Vendor will be paid for the time provided and expenses incurred up to the termination date. If this Agreement is terminated due to the fault of the Vendor, Section 4 above relative to termination shall apply.
6. **Changes.** The Owner may, from time to time, request changes in the scope of the services of the Vendor to be performed hereunder. Such changes, including any increase or decrease in the amount of the Vendor compensation, which are mutually agreed upon by and between the Owner and the Vendor and comply with applicable program requirements, shall be incorporated in written amendments to this Agreement. Amendments to this Agreement require Funding Agency concurrence.
7. **Personnel; Subcontracting.**
 - a. The Vendor represents that it has, or will secure at its own expense, all personnel required in performing the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the Owner or Funding Agency.
 - b. All of the services required hereunder will be performed by the Vendor or under the Vendor's supervision and all personnel engaged in the work shall be fully qualified and shall be licensed, certified, authorized or permitted under state and local law to perform such services.
 - c. The Vendor shall perform its obligations under this Agreement in accordance with the highest standards of care, skill, and diligence in the Vendor's industry, trade, or profession.
 - d. None of the work or services covered by this Agreement shall be subcontracted without the prior written approval of the Owner. Any work or services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to the applicable provisions of this Agreement and applicable program requirements. In the event approval to subcontract is granted by the Owner, the Vendor will include the applicable provisions of this Agreement in every subcontract or purchase order so that such provisions will be binding upon each subcontractor or vendor.
8. **Assignability.** The Vendor shall not assign any interest in this Agreement, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the Owner thereto; provided, however, that claims for money by the Vendor from the Owner under the Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment or transfer shall be furnished promptly to the Owner.
9. **Reports and Information.** The Vendor, at such times and in such forms as the Owner may require, shall furnish the Owner such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Agreement, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Agreement.
10. **Records and Audits.** The Vendor shall maintain accounts and records, including personnel, property and financial records, adequate to identify and account for all costs pertaining to the Agreement and such other records as may be deemed necessary by the Owner or Funding Agency. These records will be made available for audit purposes to the Owner, Funding Agency or any authorized representative, and will be retained for six (6) years after Project closeout (as determined by the Funding Agency).
11. **Findings Confidential.** All of the reports, information, data, etc., prepared or assembled by the Vendor under this Agreement are confidential and the Vendor agrees that they shall not be made available to any individual or organization without the prior written approval of the Owner. Disclosure of such reports, information, data, etc. to Funding Agency shall not be considered a breach of this Agreement.

12. **Patents and Copyright.** No report, maps, or other documents produced in whole or in part under this Agreement shall be the subject of an application for patent or copyright by or on behalf of the Vendor.
13. **Compliance with Laws.** The Vendor shall comply with all applicable laws, ordinances and codes, and the Vendor shall indemnify, defend, and save the Owner and Funding Agency harmless with respect to any damages arising from any breach of applicable law or any tort done in performing any of the work embraced by this Agreement.
14. **Section 3 Compliance in the Provision of Training, Employment and Business Opportunities.**
 - a. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701 ("Section 3") as amended (Economic Opportunities for Low- and Moderate-Income Persons, Minority Business Enterprise and Women's Business Enterprise Policy). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD financial assistance shall be directed to low and very low income persons, particularly those who are recipients of government assistance for housing or residents of the community in which the Federal assistance is spent.
 - b. The parties to this contract agree to comply with HUD's regulations in 24 C.F.R. Part 75, including the Section 3 requirements outlined in 24 C.F.R. Part 75.19. As evidenced by their execution of this contract, the parties to this contract certify they are under no contractual or other impediment that would prevent them from complying with the Part 75 regulations.
 - c. The Vendor will complete, to the satisfaction of the Funding Agency, all requirements imposed under Section 3, pursuant to 24 C.F.R. Part 75 of the Regulations.
15. **Interest of Members of the Owner or Other Public Officials.** During tenure and for one year thereafter, no member of the governing body of the Owner and no other officer, employee, or agent of the Owner or other public official who exercises any functions or responsibilities in connection with the planning and carrying out of the Project, shall have any actual, potential, or apparent interest, direct or indirect, in this Agreement; the Vendor shall take appropriate steps to assure compliance.
16. **Interest of Vendor and Employees.** The Vendor covenants that it presently has no actual, potential, or apparent interest, direct or indirect, and shall not acquire interest, direct or indirect, in the study area or any parcels therein or any other interest which could conflict or appear to conflict in any manner or degree with the performance of the Vendor's services hereunder or with any interest of the Owner's constituents. The Vendor further covenants that in the performance of this Agreement, no person having or acquiring any such interest shall be employed by Vendor. The obligations of this section shall apply during the term of this Agreement and for a period of one year following termination or expiration.
17. **Conflict of Interest Notification.** The Vendor shall provide immediate notice to the Owner and Funding Agency after becoming aware of any actual, potential, or apparent conflict of interest described in Section 15 or Section 16 above. This obligation shall survive expiration or termination of this Agreement.
18. **Federal Requirements.**

Vendor shall comply with the following requirements:

 - a. Equal Employment Opportunity, including Executive Order 11246 as further amended by Executive Order 11375;
 - b. Contract Work Hours and Safety Standards Act;
 - c. Rights to Inventions Made Under a Contract or Agreement (37 C.F.R. Part 401);
 - d. All applicable standards, orders, or regulations issued pursuant to the Clean Air Act and the Federal Water Pollution Control Act;
 - e. Debarment and Suspension (Executive Orders 12549 and 12689 and 2 C.F.R. Part 180);
 - f. Byrd Anti-Lobbying Prohibition (31 U.S.C. § 1352);
 - g. Davis-Bacon and Related Acts;
 - h. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment (2 C.F.R. § 200.216);

- i. Domestic Preferences for Procurements where appropriate and to the extent consistent with other laws and regulations (2 C.F.R. § 200.322);
- j. Procurement of Recovered Materials as required by 2 C.F.R. § 200.323;
- k. Civil Rights Act of 1964, including Title VI;
- l. Age Discrimination Act of 1975;
- m. Americans with Disabilities Act of 1990;
- n. To the extent applicable, Section 504 of the Rehabilitation Act of 1973;
- o. Section 109 of the Housing and Community Development Act of 1974;
- p. Copeland “Anti-Kickback” Act;
- q. Energy Policy and Conservation Act;
- r. 2013 National Defense Authorization Act (41 U.S.C. § 4712, Pilot Program for Enhancement of Recipient and Subrecipient Employee Whistleblower Protection);
- s. National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973;
- t. Wild and Scenic Rivers Act of 1968;
- u. Resource Conservation and Recovery Act;
- v. Toxic Substance Control Act;
- w. False Claims Act and 32 U.S.C. Chapter 38 (Administrative Remedies);
- x. Buy American Preference terms and conditions pursuant to 2 C.F.R. Part 184; and,
- y. Subpart K of 24 C.F.R. Part 570, 24 C.F.R. § 570.502 and 2 C.F.R. Part 200.

Any reference in this Agreement to a statute, regulation, fiscal policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the effective date of this Agreement.

- 19. **Data Protection.** The Vendor must establish, document, and maintain effective internal controls, including implementing reasonable cybersecurity and other measures to protect information, such as protected personally identifiable information and other types of sensitive data. This obligation shall also apply to information that the Owner or Funding Agency designates as sensitive, and such internal controls shall comply with applicable Federal, state, local, and tribal privacy laws and responsible handling of confidential information.
- 20. **Publicity.** Any publicity regarding the Project or this Agreement requires prior written approval of the Owner and Funding Agency; violations may result in termination. Federal Agency Seal(s), Logos, Crests, or Reproductions of Flags or Likeness of Federal Agency Officials are prohibited from being utilized without specific federal agency pre-approval.
- 21. **Governing Law.** New Mexico law and applicable federal laws govern.
- 22. **External Terms and Conditions.** Notwithstanding anything to the contrary herein, the Owner shall not be subject to any provision included in any terms, conditions, or agreements appearing on the Vendor’s or a subcontractor’s website or any provision incorporated into any click-through or online agreements related to the Project or services unless that provision is specifically included in this Agreement.
- 23. **Survival of Certain Agreement Terms.** Any provision of this Agreement that imposes an obligation on a party after termination or expiration of this Agreement shall survive the termination or expiration of this Agreement and shall be enforceable by the other party.

SECTION B -ENGINEERING SERVICES

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

Engineering Services During the Planning Phase

1. The ENGINEER shall complete the ENGINEERING SERVICES described in EXHIBIT A – Planning Services scope of work and cost proposal within the time specified in Attachment I – Compensation for Engineering Services During the Planning Phase from the date of written authorization to proceed unless otherwise mutually agreed to in writing by both parties. Any supporting documentation or revisions regarding the ENGINEER's services under this Agreement necessary to obtain the approval of the Funding Agency and all State regulatory agencies will be provided promptly.
2. The ENGINEER shall, prior to completion of ninety (90) percent of the Planning Phase service, prepare and furnish to the OWNER an estimate for total compensation to be paid to the ENGINEER for providing the services to be performed in the Design Phase.

Engineering Services During the Design Phase

3. The ENGINEER shall complete the ENGINEERING SERVICES described in EXHIBIT B – Design Services scope of work and cost proposal and section B-3 through B-11 described herein within the time specified in Attachment II – Compensation for Engineering Services During the Design Phase from the date of written authorization to proceed unless otherwise mutually agreed to in writing by both parties. Any supporting documentation or revisions regarding the ENGINEER's services under this Agreement necessary to obtain the approval of the Funding Agency and all State regulatory agencies will be provided promptly.
4. The ENGINEER shall perform the necessary design surveys, accomplish the detailed design of the Project, prepare contract documents including design drawings, specifications and invitations for bids, and prepare a final opinion of probable Project costs based on the final design of the Project (collectively, "Contract Documents"). The design drawings prepared shall be in sufficient detail to show the character and extent of the Project and to permit the actual location of the proposed improvements on the Project site. It is also understood that if subsurface explorations such as borings, or soil tests are required to determine amounts of rock excavation or foundation conditions, the ENGINEER will furnish coordination of said explorations as an Additional Engineering Service, and the costs incident to such explorations, no matter whether they are performed by the ENGINEER or by others shall be paid for by the OWNER as indicated in Section C and set out in Attachment II.
5. The ENGINEER shall review the Engineering Report prepared for this Project and, if necessary and upon consultation with and concurrence of the OWNER, Funding Agency or delegated State as appropriate, shall revise design criteria, design standards, treatment process sizing and other appropriate preliminary design information included in the Plan or other preliminary engineering reports in order to complete the final design for the Project in accordance with the performance standards and accepted engineering practices.

6. The ENGINEER shall assist the OWNER in obtaining necessary permits and approvals from appropriate Federal, State, and local regulatory agencies. The cost of obtaining such permits and approvals shall be borne by the OWNER. However, this shall not be construed as a guarantee that the ENGINEER can cause a permit or permit condition to be granted or further the OWNER's goals.
7. The Contract Documents furnished by the ENGINEER under Section B-4 shall utilize Funding Agency endorsed construction contract documents, as appropriate.
8. Prior to the advertisement for bids, the ENGINEER shall provide for each construction contract to be awarded by the OWNER, the number of copies specified in Attachment II of the detailed design drawings, specifications, and Contract Documents for use by the OWNER and appropriate Federal, State and local agencies from whom approval of the Project must be obtained. The ENGINEER shall provide additional copies of the above specified documents to the OWNER at the cost of reproduction. Originals of such items as documents, survey notes, and tracings, prepared by the ENGINEER are and shall remain the property of the ENGINEER, but this shall in no way infringe upon the OWNER's rights to such items under Section A-6(e).
9. The ENGINEER shall establish baselines for locating the work together with a suitable number of benchmarks adjacent to the work and show their location in the Contract Documents. This information and the Contract Documents will provide the contractor sufficient reference from which to execute the contract work. The ENGINEER is not obligated to set construction grade stakes for the construction of the Project.
10. The ENGINEER shall prepare and furnish to the OWNER three (3) copies of maps or drawings showing the approximate location of needed construction easements, permanent easements, rights-of-way and land to be acquired. Such maps or drawings shall be furnished promptly to enable the OWNER to initiate property and easement acquisitions.
11. The ENGINEER shall, prior to completion of ninety (90) percent of the Design Phase service, prepare and furnish to the OWNER an estimate for total compensation to be paid to the ENGINEER for providing the services to be performed in the Construction Phase and Operation Phase.
12. Section B-3 through B-11 and those ADDITIONAL ENGINEERING SERVICES designated for the Design Phase in Attachment II will take effect upon execution of Attachment II.

Engineering Services During the Construction Phase

13. ENGINEER shall complete the ENGINEER SERVICES described in EXHIBIT C – Construction Services scope of work and cost proposal and section B-13 through B-24 described herein, within the time specified in Attachment III – Compensation for Engineering Services During the Construction Phase from the date of written authorization to proceed unless otherwise mutually agreed to by both parties.
14. The ENGINEER shall attend the bid opening and tabulate the bid proposals, analyze the

responsiveness of the bidders, check references, and make recommendations for awarding the contract(s) for construction to the lowest responsible, responsive bidder.

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

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

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

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

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

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

21. The ENGINEER shall prepare necessary contract change orders for approval of the OWNER, the Funding Agency and others as required. Change orders must be submitted to the Funding Agency for approval prior to execution. The ENGINEER shall make an independent assessment of the Contractor's

cost and time proposal and the impacts on the construction contract price and timing as part of the review and recommendation process for each change order.

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

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

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

25. Section B-13 through B-24 and those ADDITIONAL ENGINEERING SERVICES designated for the Construction Phase in Attachment III will take effect upon execution of Attachment III.

Engineering Services During the Operation Phase

26. The ENGINEER shall complete the ENGINEERING SERVICES described in EXHIBIT D – Operational Services scope of work and cost proposal and section B-26 through B-31 within the time specified in Attachment IV – Compensation for Engineering Services During the Operation Phase from the date of written authorization to proceed unless otherwise mutually agreed to in writing by both parties.

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

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

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

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

31. Section B-26 through B-30 and those ADDITIONAL ENGINEERING SERVICES designated for the Operation Phase in Attachment IV will take effect upon execution of Attachment IV.

SECTION C - ADDITIONAL ENGINEERING SERVICES

ADDITIONAL ENGINEERING SERVICES as detailed in the Attachments shall be provided by the

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

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

Documents when such revisions are required by changes in laws, rules, regulations, ordinances, codes, standards or orders enacted subsequent to the Effective Date of this Agreement or are due to any other causes beyond ENGINEER's control.

11. Provide services resulting from evaluation by ENGINEER during the Study and Report Phase at OWNER's request of alternative solutions in addition to those specified in Exhibit A to Attachment I.

12. Prepare for, coordinate with, participate in and respond to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering and constructability review requested by OWNER; and performing or furnishing services required to revise studies, reports, Drawings, Specifications or other Bidding Documents as a result of such review processes.

13. Provide services in connection with Work Change Directives and Change Orders to reflect OWNER-requested changes to the Drawings and Specifications.

14. Provide services in making revisions to Drawings and Specifications occasioned by the OWNER's acceptance of substitute materials or equipment other than "or-equal" items; and services after the award of the construction contract in evaluating and determining the acceptability of a substitution.

15. Provide additional or extended services during construction made necessary by (1) emergencies or acts of God endangering the Work, (2) work damaged by fire or other cause during construction, (3) a significant amount of defective, neglected or delayed work by Contractor, (4) acceleration of the progress schedule involving services beyond normal working hours, or (5) default by Contractor.

SECTION D - SPECIAL PROVISIONS OR MODIFICATIONS TO THE STANDARD LANGUAGE IN THIS AGREEMENT

(Describe, attach or indicate "None")

IN WITNESS THEREOF, the parties hereto have executed, or caused to be executed, by their duly authorized officials, this Agreement in triplicate on the respective dates indicated below. **The parties further certify by their signatures below that no modifications have been made to the standard language of this Agreement, other than those detailed in Section D.**

ATTEST: _____
Type Name _____
Title _____
Date _____

OWNER:
By _____
Type Name _____
Title _____
Date _____

ATTEST: _____
Type Name _____
Title _____
Date _____

ENGINEER:
By _____
Type Name _____
Title _____
Date _____

CONCURRENCE: FUNDING AGENCY
AGENCY NAME: _____
Concurrence _____
Name, Title _____
Date _____

ATTACHMENT I - Compensation for Engineering Services During the Planning Phase

ATTACHMENT II - Compensation for Engineering Services During the Design Phase

ATTACHMENT III - Compensation for Engineering Services During the Construction Phase

ATTACHMENT IV - Compensation for Engineering Services During the Operation Phase

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

EXHIBIT A – Planning Services scope of work and cost proposal

EXHIBIT B – Design Services scope of work and cost proposal

EXHIBIT C – Construction Services scope of work and cost proposal

EXHIBIT D – Operational Services scope of work and cost proposal

2. Compensation for ENGINEERING SERVICES shall be by the **LUMP SUM** method of payment. The total amount of compensation for ENGINEERING SERVICES, as described in the appropriate EXHIBIT, shall not exceed _____, excluding gross receipt tax and reimbursables.

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

3. Compensation for ADDITIONAL ENGINEERING SERVICES, shall be by the **LUMP SUM** method of payment. The total amount of compensation for ADDITIONAL ENGINEERING SERVICES, as described in the appropriate EXHIBIT, shall not exceed _____ gross receipt tax and reimbursables.

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

4. The amount of compensation shall not change unless the scope of services to be provided by the ENGINEER changes and this Agreement is formally amended according to Section A-5. Contract Time under Section B. and for the purpose of Section A.8 shall be ____ years from the Effective Date unless this Agreement is earlier terminated pursuant to Section 4 or Section 5 of the CDBG Terms and Conditions for Professional Services or completed or unless such time period is extended via formal amendment to this Agreement.

5. OWNER shall pay ENGINEER applicable gross receipt taxes and reimbursable expenses at the rates set forth in the appropriate EXHIBIT. The amounts payable to ENGINEER for reimbursable expenses will be the project related internal expenses, such as mileage, per diem and reproduction, actually incurred or allocated by ENGINEER, plus all invoiced external reimbursable expenses, including consultants, allocable to the project, the latter multiplied by a factor of _____. Reimbursable expenses shall not exceed the estimate in the EXHIBIT without prior written approval of the OWNER, with Funding Agency concurrence.

6. The method for interim or partial payments, such as milestone or time & materials, shall be as detailed below:

7. Signatures

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

ATTEST: _____
Type Name _____
Title _____
Date _____

OWNER:
By _____
Type Name _____
Title _____
Date _____

ATTEST: _____
Type Name _____
Title _____
Date _____

ENGINEER:
By _____
Type Name _____
Title _____
Date _____

CONCURRENCE: FUNDING AGENCY
AGENCY NAME: _____
Concurrence _____
Name, Title _____
Date _____