

LOWER RIO GRANDE
Public Water Works Authority

PO Box 2646 Anthony, New Mexico 88021 (575) 233-5742

www.LRGauthority.org

Sign In Sheet

Page 1 of

Date: 8/21/19

Time: 9:30

Places: Vado Office

Event: Regular Board mtg

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LOWER RIO GRANDE PUBLIC WATER WORKS AUTHORITY

Draft Minutes —REGULAR BOARD OF DIRECTORS MEETING

9:30 a.m. Wednesday, August 21, 2019 at our Office, 325 Holguin Rd, Vado, NM

Agendas are final 72 hours prior to the meeting and may be obtained at any LRGPWWA Office or at www.LRGauthority.org/noticesavisos.html. Call 575-233-5742 or email board@LRGauthority.org for information

- I. **Call to Order, Roll Call to Establish Quorum:** Chairman McMullen called the meeting to order at 9:30 a.m. and called order. Mr. Sanchez representing District #1 was absent, District #2 is Vacant, Mr. Evaro representing District #3 was present, Mrs. Holguin representing District #4 was present, Mr. Magallanez representing District # 5 was present, Mr. McMullen representing District #6 was present, Mr. Smith representing District #7 was present. Staff members present were General Manager Martin Lopez, Projects Manager Karen Nichols, Projects Specialist Patricia Charles, Finance Manager Kathi Jackson, Operations Manager Mike Lopez, Accounting Assistant John Schroder and Guest Jennifer Hill, Senior Engineer with D. B. Stephens & Associates.
- II. **Pledge of Allegiance:** Mr. McMullen led the pledge of Allegiance.
- III. **Motion to approve Agenda (VIII A. postponed):** Mr. Magallanez made the motion to approve the agenda with VIIIA postponed. Mrs. Holguin seconded the motion, the motion passed with all in favor.
- IV. **Approval of Minutes:**
 - A. **Motion to approve the minutes of the July 17, 2019 Regular Board Meeting:** Mr. Smith made the motion to approve the July 17, 2019 regular board meeting minutes. Mrs. Holguin seconded the motion, the motion passed with all in favor.
 - B. **Motion to approve the minutes of the July 22, 2019 Special Board Meeting:** Mr. Smith made the motion to approve the July 22, 2019 special board meeting minutes. Mrs. Holguin seconded the motion, the motion passed with all in favor.
- V. **Presentations:** NONE
- VI. **Public Input:** NONE
- VII. **Managers' Reports**
 - A. **General Manager:** Mr. Lopez provided a written report and stood for questions. We paid off High Valley's Colonia's loan for \$4,800.00 from prior to the merger. We would like to set up an Equipment Disposal Committee meeting prior to the September Board Meeting. He would like the committee to meet 15 minutes before the September 18, 2019 regular board meeting. Chairman, McMullen asked Mr. Lopez, when he thought Yucca Road would be open to traffic again Mr. Lopez said, it would probably take about 6 months.
 - B. **Projects:** Ms. Nichols provided a written report and stood for questions. We have two Colonia's closing packages on the agenda today for approval, High Valley Phase II project total is \$741,628.00, loan amt \$111,244.00 and grant amt \$630,384.00 and Jacquez Road project total

is \$88,480.00, loan amt \$8,848.00 and grant amt \$79,632.00. Ms. Nichols introduced Jennifer Hill from DB Stevens & Associates who has provided an Engineering package proposal for the East Mesa Project. Vencor Engineering has informed us that they are closing their operation. We have a letter from Ms. Jackson as Chief Procurement Officer advising us to move to the next highest-ranking firm from the RFP who is DB Stevens & Associates. Ms. Hill provided a proposal for consideration today. Mr. Lopez interjected that Ms. Nichols and Ms. Charles prepared a newsletter explaining the election process which will go out with the September bills. We will be happy to help the members that are up for re-election with any questions they might have. Ms. Nichols said the election information is also on LRG's website in the Board members section and in the Elections page.

- C. Operations:** Mr. Mike Lopez provided a written report and stood for questions. Most of the system has been running smoothly. We started having electrical problems at well #2 on the East Mesa and it finally gave out last week. We are waiting for three estimates for a new pump and motor. He said we have had problems with this pump before. We have been moving water from the Mountain View well to East Mesa. Mr. Martin Lopez said there is a potential sewer line collapse on Acetunas road in Mesquite, Mr. Mike Lopez said he had a couple of quotes. He said he was out in that area and it looks like there are a few sink holes out there. Also included in the operations report is the Summary of 2018 water audit results. This is an annual process, we did 5 audits this year. Results have been submitted to the Environment Dept. Mr. Mike Lopez said he is working on gathering the numbers from 15th of the month to the 15th of the next month, this will be in line with the audit input needs, and it will better match our billing cycle. He had been gathering the numbers from 1st of the month to the 1st of next month, for other reporting but does not flow with the audit. Mr. Martin Lopez said it is critical to collect more accurate data the difference is between getting a 4% grant to getting an 80% grant.
- D. Finance:** Ms. Jackson provided a written report and stood for questions. Revenues for July 2019 were \$332,991.54 and expenses were \$230,788.14. We had a surplus which will probably be used on the impending sewer collapse. The audit is under way. Ms. Jackson has been involved in the meter change outs. She was able to assemble meters herself. We had hired someone to change out the meters but has left the position. We are in need of Operators, Labors and a Meter Mechanic. Mr. Mike Lopez said we also could use a Well Tech. Mr. Lopez said we need between 3-4 people. Ms. Jackson said she and Patricia Charles attended the UMI (Utility Management Institute) in San Antonio, the end of July 2019. We will be going back at the end of September for the next module. Then after that we will have two more modules in 2020. Mr. Schroder finished his training and is now a CPO (Chief Procurement Officer).

VIII. Unfinished Business

- A. Appointment of Director for District 2 –postponed**

IX. New Business

- A. Motion to adopt Resolution FY2020-06 Authorizing CIF-4916 Loan/Grant Agreement:** Ms. Nichols said this resolution is for design & construction on High Valley Phase II. Mr. Lopez said

this loan/grant agreement is for \$111,244.00 loan and \$630,384 grant for a total of \$741,628.00. Mrs. Holguin made the motion to adopt resolution FY2020-06 authorizing CIF-4916 Loan/Grant agreement. Mr. Smith seconded the motion, the motion passed with all in favor.

- B. Motion to adopt Resolution FY2020-07 Authorizing CIF-4917 Loan/Grant Agreement:** Mr. Lopez said this loan/grant agreement is for Jacquez Road water extension the loan amount is \$8,848.00 and the grant amount is \$79,632.00 for a grand total of \$88,480.00. Mr. Magallanez made the motion to adopt resolution FY2020-07 authorizing CIF-4617 Loan/Grant agreement. Mr. Evaro seconded the motion, the motion passed with all in favor.
- C. Motion to adopt Resolution FY2020-08 Adopting Updated Source Water Protection Plan:** Mr. Lopez said this resolution is so we can go ahead with the updated Source Water Protection Plan. Mr. Lopez asked Ms. Nichols about the potential CDBG funding for completing the Water Master Plan, and shd said Ms. Goolsby of SCCOG is working on the attachments to the CDBG Planning Grant Agreement, so it looks pretty likely. Mr. Magallanez made the motion to adopt resolution FY2020-08 adopting updated Source Water Protection Plan. Mrs. Holguin seconded the motion, the motion passed with all in favor.
- D. Motion to authorize termination of membership for delinquent accounts:** Mr. Lopez said these accounts have gone thru the collections process and are very old. We are asking that we terminate the membership. Mr. Smith made the motion to authorize termination of membership. Mr. Evaro seconded the motion, the motion passed with all in favor.
- E. Motion to authorize issuing an RFP for the Mesquite Wetlands Closure Project:** Mr. Lopez said we have received State funding from the Legislature to shut down our wet lands facility. We submitted the Closure Plan and are working with NMED to this project finished. We are coming up on the 5-year permit renew, next year. Mr. Mike Lopez and his staff have decommissioned that facility. We have to install some monitoring wells and plug the existing 5 wells. This request will help us move forward and get some engineering services to finish this project up.
- F. Motion to approve proposed Engineering Agreement with Bohannan Huston, Inc. for S. Valley Water Supply & Treatment Project contingent upon USDA-RD concurrence:** Mr. Lopez provided the Funding Analysis for the South Valley Water Supply & Treatment Project which is for a new well, water tank and arsenic treatment facility in Berino. We have received funding from USDA for this project. Ms. Nichols said we can put out to bid as soon as we get concurrence from RD. Mr. Magallanez made the motion to approve proposed Engineering Agreement with Bohannan Huston, Inc. for S. Valley Water Supply & Treatment Project. Mrs. Holguin seconded the motion, the motion passed with all in favor.
- G. Motion to terminate Vencor Engineering, LLC contract for E. Mesa Water System Improvements design work:** Mr. Lopez met with Hector Vasquez on Wednesday of last week and was notified the he was shutting down his operations. He is no longer accepting any new consulting work and has canceled our contract for the East Mesa Water System Improvements Project. Mr. Smith made the motion to terminate Vencor Engineering, LLC contract for E. Mesa

System Improvements design work. Mr. Magallanez seconded the motion, the motion passed with all in favor.

- H. Motion to approve selection of a new engineering firm for the E. Mesa Water System Improvements Project from the initial RFP:** Mr. Lopez said due to the cancelation of the contract with Vencor we would like to request the approval to select a new engineering firm for the E. Mesa Water System Improvements Project. D.B. Stephens & Associates was the second ranking engineering firm on the initial RFP we would like to request their selection. Ms. Nichols said she had checked with NMED-CPB to make sure this was the proper course of action. Mrs. Holguin asked if the budget was going to increase, Ms. Nichols said Vencor's and D.B. Stephens budgets are very close to the same. Mr. Magallanez made the motion to approve selection of a new engineering firm. Mr. Smith seconded the motion, the motion passed with all in favor.
- I. Motion to approve Engineering Services Agreement with D.B. Stephens & Associates for E. Mesa Water System Improvements Project contingent upon NMED-CPB/NMFA approval:** Mr. Lopez said since D. B. Stephens was the next highest scoring Engineering firm, they have submitted a contract and Ms. Jennifer Hill is in attendance and can answer any questions. Mr. Magallanez asked if the budget was going to increase. Ms. Nichols said the project budget stays the same but the contract is slightly different. Mrs. Holguin made the motion to approve Engineering Services Agreement with D.B. Stephens & Associates for E. Mesa Water System Improvements Project contingent upon NMED-CPB/NMFA approval. Mr. Magallanez seconded the motion, the motion passed with all in favor.
- J. Motion to authorize end-of-year function:** Mr. Lopez said he would like to get started on the preparations. Mr. McMullen said he has secured the venue for the end-of-year function. Mr. Smith made the motion to authorize end-of-year function. Mrs. Holguin seconded the motion, the motion passed with all in favor.
- K. Motion to convene in closed session pursuant to NMSA 1978 10-15-1 H.7-threatened or pending litigation and NMSA 1978 10-15-1 H.8 regarding the acquisition of real property or water rights:** Mr. Smith made the motion to convene to closed session pursuant to NMSA 1978 10-15 H.7-threatened or pending litigation and NMSA 1978 10-15-1 H.8 regarding the acquisition of real property or water rights. Mrs. Holguin seconded the motion, the motion passed with all in favor.
- L. .**
- i. **Roll Call Vote:** District #1, Mr. Sanchez was absent, District #2 is Vacant, District #3, Mr. Evaro voted yes, District #4, Mrs. Holguin voted yes, District #5, Mr. Magallanez voted yes, District #6, Mr. McMullen voted yes, District #7, Mr. Smith voted yes.
 - ii. **Motion to reconvene in open session:** Mr. Magallanez made the motion to reconvene to open session at 10:21 a.m., Mrs. Holguin seconded the motion, the motion passed with all in favor.
 - iii. Statement by the Chair: ***The matters discussed in the closed meeting were limited only to those specified in the motion for closure.*** Mr. McMullen made the statement regarding the matters discussed.

iv. **Motion, if any related to closed session matters:** No motion was made related to closed session matters.

X. Other discussion and agenda items for next meeting at 9:30 a.m. Wednesday, September 16, 2019 at the East Mesa Office:

- A. Have any Board Members participated in training? If so, please give us a copy of your certificate: Ms. Nichols announced that registration is now open for the 24th Annual NM Infrastructure Finance Conference in October. The information is on our website on the Board Member page. Mrs. Holguin suggested board members attend the Attorney Generals training on The Open Meetings Act, in Socorro for a couple of hours and is free. She will send the link for the training.
- B. RFP Committee recommendation for Wetlands Closure Project
- C. Mr. Evaro stated that Orlando Jimenez requested he be added to September 16, 2019 agenda
- D. Disposal Committee meeting 15 minutes before the September 16, 2019 meeting.

XI. Motion to Adjourn: Mr. Smith made the motion to adjourn the board meeting at 10:30 a.m. Mrs. Holguin seconded the motion, the motion passed with all in favor.

Minutes approved September 18, 2019

Michael McMullen, Chairman (District 6)

Furman Smith, Vice-Chairman (District 7)

Esperanza Holguin, Secretary (District 4)

ABSENT

Raymundo Sanchez, Director (District 1)

Joe Evaro, Director (District 3)

Henry Magallanez, Director (District 5)

VACANT

Director (District 2)

LOWER RIO GRANDE PUBLIC WATER WORKS AUTHORITY

Meeting Notice & Agenda—REGULAR BOARD OF DIRECTORS MEETING

9:30 a.m. Wednesday, August 21, 2019 at our Office, 325 Holguin Rd, Vado, NM

Agendas are final 72 hours prior to the meeting and may be obtained at any LRGPWWA Office or at www.LRGauthority.org/noticesavisos.html. Call 575-233-5742 or email board@LRGauthority.org for information

- I. Call to Order, Roll Call to Establish Quorum: District #1 (Mr. Sanchez) __, #2 (Vacant) __, #3 (Mr. Evaro) __, #4 (Mrs. Holguin) __, # 5 (Mr. Magallanez) __, #6 (Mr. McMullen) __, #7 (Mr. Smith) __
- II. Pledge of Allegiance
- III. Motion to approve Agenda (VIII A. postponed)
- IV. Approval of Minutes
 - A. Motion to approve the minutes of the July 17, 2019 Regular Board Meeting
 - B. Motion to approve the minutes of the July 22, 2019 Special Board Meeting
- V. Presentations: NONE
- VI. Public Input—15 minutes are allotted for this item, 3 minutes per person
- VII. Managers’ Reports
 - A. General Manager
 - B. Projects
 - C. Operations
 - D. Finance
- VIII. Unfinished Business
 - A. Appointment of Director for District 2 –postponed
- IX. New Business
 - A. Motion to adopt Resolution FY2020-06 Authorizing CIF-4916 Loan/Grant Agreement
 - B. Motion to adopt Resolution FY2020-07 Authorizing CIF-4917 Loan/Grant Agreement
 - C. Motion to adopt Resolution FY2020-08 Adopting Updated Source Water Protection Plan
 - D. Motion to authorize termination of membership for delinquent accounts
 - E. Motion to authorize issuing an RFP for the Mesquite Wetlands Closure Project
 - F. Motion to approve proposed Engineering Agreement with Bohannon Huston, Inc. for S. Valley Water Supply & Treatment Project contingent upon USDA-RD concurrence
 - G. Motion to terminate Vencor Engineering, LLC contract for E. Mesa Water System Improvements design work

- H. Motion to approve selection of a new engineering firm for the E. Mesa Water System Improvements Project from the initial RFP
- I. Motion to approve Engineering Services Agreement with D.B. Stephens & Associates for E. Mesa Water System Improvements Project contingent upon NMED-CPB/NMFA approval
- J. Motion to authorize end-of-year function
- K. Motion to convene in closed session pursuant to NMSA 1978 10-15-1 H.7-threatened or pending litigation and NMSA 1978 10-15-1 H.8 regarding the acquisition of real property or water rights.
- L. .
 - i. Roll Call Vote: District #1 (Mr. Sanchez) ____, #2 (Vacant) ____, #3 (Ms. Evaro) ____, #4 (Mrs. Holguin) ____, #5 (Mr. Magallanez) ____, #6 (Mr. McMullen) ____, #7(Mr. Smith) _____
 - ii. Motion to reconvene in open session.
 - iii. Statement by the Chair: ***The matters discussed in the closed meeting were limited only to those specified in the motion for closure.***
 - iv. Motion, if any related to closed session matters.

- X. Other discussion and agenda items for next meeting at 9:30 a.m. Wednesday, September 16, 2019 at the East Mesa Office.
 - A. Have any Board Members participated in training? If so, please give us a copy of your certificate
 - B. RFP Committee recommendation for Wetlands Closure Project

XI. Motion to Adjourn

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aide or service to attend or participate in the hearing or meeting, please contact the LRGPWVA office at 575-233-5742, PO Box 2646, Anthony NM 88021 OR 215 Bryant St., Mesquite NM at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the LRGPWVA office if a summary or other type of accessible format is needed.

Si usted es una persona con una discapacidad que necesita un lector, amplificador, intérprete de lenguaje de signos o cualquier otra forma de ayudante auxiliar o servicio para asistir o participar en la audiencia o reunión, póngase en contacto con la oficina de LRGPWVA, 575-233-5742, PO Box 2646, Anthony, NM 88021 o 215 Bryant St., Mesquite, NM por lo menos una semana antes de la reunión o tan pronto como sea posible. Documentos públicos, incluyendo el orden del día y actas, pueden proporcionarse en diferentes formatos accesibles. Póngase en contacto con la oficina LRGPWVA si es necesario un resumen u otro tipo de formato accesible.

LOWER RIO GRANDE PUBLIC WATER WORKS AUTHORITY

Minutes — REGULAR BOARD OF DIRECTORS MEETING

9:30 a.m. Wednesday, July 17, 2019 at our Office, 325 Holguin Rd, Vado, NM

Agendas are final 72 hours prior to the meeting and may be obtained at any LRGPWWA Office or at www.LRGauthority.org/noticesavisos.html. Call 575-233-5742 or email board@LRGauthority.org for information

- I. **Call to Order, Roll Call to Establish Quorum:** Chairman McMullen called the meeting to order at 9:30 a.m. and called order. Mr. Sanchez representing District #1 was absent, District #2 is Vacant, Mr. Evaro representing District #3 was present, Mrs. Holguin representing District #4 was present, Mr. Magallanez representing District # 5 was present, Mr. McMullen representing District #6 was present, and Mr. Smith representing District #7 was present. Staff members present were General Manager Martin Lopez, Projects Manager Karen Nichols, Project Specialist Patricia Charles, Finance Manager Kathi Jackson, Operations Manager Mike Lopez and Accounting Assistant John Schroder.
- II. **Pledge of Allegiance:** Mr. McMullen led the pledge of Allegiance.
- III. **Motion to approve Agenda (VIII A. may be postponed):** Mr. Smith made the motion to approve the agenda with VIIIA postponed. Mrs. Holguin seconded the motion, the motion passed with all in favor.
- IV. **Approval of Minutes – Motion to approve the minutes of the June 19, 2019 Regular Board Meeting:** Mr. Smith made the motion to approve the minutes for June 19, 2019 Regular Board Meeting. Mr. Evaro seconded the motion, the motion passed with all in favor.
- V. **Presentations:** none
- VI. **Public Input:** none
- VII. **Managers' Reports**
 - A. **General Manager:** Mr. Lopez provided a written report and stood for questions. We have received the annual payment for the Vado land rent and the annual payment for the Truck Stop tank rent (for AT&T antenna). Senior staff met with DAC staff to discuss a sewer billing partnership and provided them with a copy of the AWSO agreement. Ms. Jackson also requested DAC look at partnering with us in any area paving work. Mr. Lopez also said other entities had already asked DAC for a partnership regarding paving. We hired someone for the Meter Mechanic position to address meter register replacement. Ms. Jackson said we had just received a shipment of replacement registers. Mr. Lopez said we have replaced several hundred but about 3700 that still need to be replaced.
 - B. **Operations:** Mr. Mike Lopez provided a written report and stood for questions. There were some electrical problems at well #2 and #3 on the East Mesa. After inspection it was determined the problem was El Paso Electric's, they had a faulty regulating switch. June's total production was 57.49 million gallons 2.2 million gallons higher than last year.

- C. **Finance:** Ms. Jackson provided a written report and stood for questions. She said the original budget about was \$3,700,000.00. YTD revenue was approximately \$3,780,000.00 and expenses were approximately \$3,543,000.00 which left approximately \$237,000.00. The original budget was \$3,120,000.00 and was increased through the year to \$3,567,592.00.
- D. **Projects:** Ms. Nichols provided a written report and stood for questions. She said on the agenda today is the Loan Agreement for the East Mesa Design and the Engineering Agreement. We have executed 2 SAP funding's and are pending 2 other SAP funding's. The Mesquite-Brazito Sewer Project is underway and under construction. We have had a couple of Customer complaints but nothing critical.

VIII. Unfinished Business

- A. **Appointment of Director for District 2 – this item may be postponed:** This item was postponed

IX. New Business

- A. **Motion to approve a 2 year extension for the Talavera MDWCA O & M Contract (Expires July 31, 2019):** Mr. Lopez said Mike Lopez and his operations crew assisted with the line replacement taking place at Talavera. Mr. Lopez recommended extending the O & M Contract for 2 years, after discussions with the Operations Staff. Mr. Smith made the motion to approve a 2 year extension for Talavera MDWCA Contract. Mrs. Holguin seconded the motion, the motion passed with all in favor.
- B. **Motion to adopt Resolution #FY2020-01 Authorizing CIF-4915 Loan-Grant Agreement:** Ms. Nichols said this is the Loan Agreement with NMFA for Colonia's funding for the East Mesa Water System Improvements Project Design. Vencor is the Engineer on this Project, this Project is closing today. There will be a 30 day waiting period for public comment, after that we can proceed with the Project. Mr. Lopez said the amount of the Loan –Grant Agreement is \$247,152.00 of which \$207,608.00 is Grant and \$39,544.00 is a Loan. Mr. Magallanez made the motion to adopt Resolution #FY2020-01 authorizing CIF-4915 Loan-Grant Agreement. Mrs. Holguin seconded the motion, the motion passed with all in favor.
- C. **Motion to adopt Resolution #FY2020-02 adopting FY2019 4th Quarter Budget:** Ms. Jackson indicated that this is the 2019 4th quarter that was presented earlier as the financial manager's report. Mr. Magallanez made the motion to adopt Resolution #FY2020-02 adopting FY2019 4th Quarter Budget. Mrs. Holguin seconded the motion, the motion passed with all in favor.
- D. **Motion to adopt Resolution #FY2020-03 adopting Final ICIP for FY2021-2025:** Mr. Lopez said #1 on the list is general water system rehab. & improvements. #2 Central Office & Warehouse facility has been funded but will probably request Capital Outlay funding buildings, furniture, solar panels. #3 Berino Water Supply & Treatment Plant has been funded but will probably also need additional funding. #4 Brazito Sewer Project is funded but we know we will need additional funds. Phase I is under construction and Phase II is 95% designed, waiting on securing some of the final properties. #5 is System wide information technology standardization, which includes additional SCADA for

existing lift stations, upgrade from Windows 7 (Windows 7 will not be supported after 2020. Mrs. Holguin suggested we put all the additional funding needed into one lump sum and share with our representatives. Mr. Lopez said he would get Mrs. Holguin so numbers together. Mrs. Holguin made the motion to adopt Resolution #FY2020-03 adopting Final ICIP for VY2021-2025. Mr. Magallanez seconded the motion, the motion passed with all in favor.

- E. Motion to approve Engineering Services Agreement with Vencor Engineering for E. Mesa Water System Improvements Project:** Mr. Lopez said this Engineering Contract is for the East Mesa Water System Improvements – Phase I Design. The contract is with Vencor Engineering, LLC and is for transmission lines along Highway 70 and for new water tanks. Mr. Magallanez made the motion to approve the Engineering Services Agreement with Vencor Engineering. Mr. Evaro seconded the motion, the motion passed with all in favor.
 - F. Motion to adopt Resolution #FY2020-04 approving the SCCOG membership:** Mr. Lopez said this is the annual membership renewal. They help us with technical, grant program planning and lobbying. In the past we appointed Ms. Jackson to be the designated representative and Mrs. Holguin the alternate. We would like to request the appointments the same, if Ms. Jackson and Mrs. Holguin do not have any objections. Ms. Jackson and Mrs. Holguin said they were fine with being appointed the same way again. Mrs. Holguin made the motion to adopt Resolution #FY2020-04 approving the SCCOG membership. Mr. Smith seconded the motion, the motion passed with all in favor.
 - G. Motion to adopt Resolution #FY2020-05 adopting FY2019 Budget Adjustments:** Ms. Jackson informed the board that there was an error in the budget adjustments as presented. The Debt Service line item was \$10,000.00 short, but was going to make the correction and update the Budget Adjustments for FY2019. She said a loan had been paid off that was not included. The budget increased and was at \$446,992.00. Mr. Magallanez made the motion to adopt Resolution #FY2020-05 adopting FY2019 Budget Adjustments with the amendments stated. Mr. Smith seconded the motion, the motion passed with all in favor.
- X. Other discussion and agenda items for next meeting at 9:30 a.m. Wednesday, August 21, 2019 at the Vado Office:**
- A. Have any Board Members participated in training? If so, please give us a copy of your certificate
 - B. RCAC Training Saturday, July 20, 2019 in Las Cruces
 - C. Rate Scale for Employee Pay – possible agenda item for discussion
 - D. Rate Study
- XI. Motion to Adjourn:** Mr. Smith made the motion to adjourn the board meeting at 10:28 a.m. Mr. Magallanez seconded the motion, the motion passed with all in favor.

Minutes approved August 21, 2019

Michael McMullen, Chairman (District 6)

Furman Smith, Vice-Chairman (District 7)

Esperanza Holguin, Secretary (District 4)

ABSENT

Raymundo Sanchez, Director (District 1)

Joe Evaro, Director (District 3)

Henry Magallanez, Director (District 5)

VACANT

Director (District 2)

LOWER RIO GRANDE PUBLIC WATER WORKS AUTHORITY

Minutes —Special BOARD OF DIRECTORS MEETING

1:30 p.m. Monday, July 22, 2019 at our Vado Office, 325 Holguin Rd, Vado, NM

Agendas are final 72 hours prior to the meeting and may be obtained at any LRGPWWA Office or at www.LRGauthority.org/noticesavisos.html. Call 575-233-5742 or email board@LRGauthority.org for information

- I. **Call to Order, Roll Call to Establish Quorum:** Chairman McMullen called the meeting to order at 1:38 p.m. and called order. Mr. Sanchez representing District #1 was absent, District #2 is vacant, Mr. Evaro representing District #3 present via telephone, Mrs. Holguin representing District #4 was present, Mr. Magallanez representing District # 5 was absent, Mr. McMullen representing District #6 was present, and Mr. Smith representing District #7 was present via telephone. Staff members present were General Manager Martin Lopez, Projects Manager Karen Nichols and Projects Specialist Patricia Charles.
- II. **Motion to authorize amending the current application to USDA Rural Development Community Facilities to increase the application amount to cover purchase of an additional truck equipped with a crane:** Mrs. Holguin made the motion to authorize amending the current application to USDA Rural Development Community Facilities to include an additional truck equipped with a crane. Mr. Smith second the motion, the motion passed with all in favor.
- III. **Motion to Adjourn:** Mrs. Holguin made the motion to adjourn the Special Board Meeting at 1:45 p.m. Mr. Smith seconded the motion, the motion passed with all in favor.

Minutes approved August 21, 2019

Michael McMullen, Chairman (District 6)

_____ Via telephone call
Furman Smith, Vice-Chairman (District 7)

Esperanza Holguin, Secretary (District 4)

ABSENT

Raymundo Sanchez, Director (District 1)

_____ Via telephone call
Joe Evaro, Director (District 3)

ABSENT

Henry Magallanez, Director (District 5)

VACANT

Director (District 2)

LRGPWWA
Manager's Report
August 21, 2019

- AT&T is seeking consideration to possibly renegotiate Vado tank site lease-I will coordinate with them on terms and report back to Board for concurrence
- Newsletter will be sent to customers with September billing which will detail election and candidate process
- Paid off High Valley Colonia's Loan (≈\$4,800) from prior to the merger
- I have requested that RCAC conduct a water and sewer rate study to satisfy USDA RD request
- 2018 water and sewer rate schedule has been submitted to NMED for annual survey
- 2018 water audit information has been submitted to NMED
- FY2019 Annual Report has been submitted to USDA RD
- Received a Warning Letter without enforcement action or corrective action necessary from NM PRC-Pipeline Safety pertaining to "Failure to Provide Positive Response within the Requisite Time Frame"-Operations staff are researching
- FCC Call Sign license WQKY350 is set to expire October 26, 2019 (old Mesquite frequency)-no longer utilized
- Equipment Disposal Committee meeting will be set prior to the September Board Meeting

**LOWER RIO GRANDE PUBLIC WATER WORKS AUTHORITYs
PROJECTS REPORT – 8/21/19**

LRG-11-02.2 – Mesquite-Brazito Sewer Project – Bohannon Huston, Inc. & File Construction – Construction – NMFA PG/SAP funded Planning, \$30k 2014 SAP, \$540,608 2014 CITF (10% Loan), USDA-RD Loan \$357,000 @ 3.250%, Grant \$1,194,919, Colonia’s Grants of \$6,356,474 & \$119,407 – Second progress meeting was held on 8/5/19. Traffic Control Plan was finally approved, but we will be looking at a Change Order to add 30 days to the contract as a result of the delay. Only one customer complaint so far.

LRG-17-01 – Mesquite-Brazito Sewer Project 2 – Bohannon Huston, Inc. – Design Stage – USDA-RD LOC \$15,030,780 – Letter of Conditions was issued by USDA-RD on 3/5/18 for \$6,189,000 loan and \$8,030,000 Colonia’s Grant. 13th Request for Funds from RCAC bridge loan has been submitted, 95% submittal was reviewed with Operations staff on 8/6/19 and submitted to USDA-RD. Permits have been requested from DAC, EBID, and NM DOT. Two property acquisitions are pending. Attorney is working with one of them, BHI is working on the documents for the second. Letter of Conditions extension expired 8/1/19, and we are requesting an extension.

LRG-11-03 – Interconnect & Looping Project – see LRG-18-02 for current portion – Stern Drive Line Ext.

LRG-11-05 – South Valley Water Supply & Treatment Project WTB #252– Bohannon Huston - Design stage - \$750,000 WTB – 10% Loan 10% Match: USDA-RD has issued a Letter of Conditions for a \$1,014,000 loan, \$3,629,065 Persistent Poverty Grant and \$323,335 Colonia’s Grant, and we are working on completing the LOC requirements. Engineering Agreement with Bohannon Huston, Inc. is on today’s agenda, and the Legal Services Agreement is still pending RD approval. BHI will be scheduling a kick-off meeting with LRG staff.

LRG-17-01 – Water Master Plan – WTB #252: CDBG Public Hearing was held 1/9/18. Ms. Goolsby, SCCOG, put together Project Description, Schedule, and Cost & Financing Summary exhibits for the Grant Agreement and has submitted them to NM DFA.

LRG-17-02 – Central Office Building – DW-4213 \$3,285,619: Engineering Agreement amendment for scope modification to address the two-building concept and to move on to the design phase has been approved, and design is still in process.

Forty-Year Water Plan – CE&M – complete – needs update for new mergers after Brazito combine & commingle: pending NM-OSE comments/approval. Currently only includes the initial five systems.

LRG-13-03 – Valle Del Rio Water System Project – Construction Stage & Ph. II Design - \$1,197,708 DWSRLF funding - \$898,281 principal forgiveness – 299,427 loan repayment – Souder, Miller & Associates: Phase I has been closed out, design for Phase II has been reviewed by Operations staff. Review comments were received from NMED-CPB on 8/2/19, and engineering is working on addressing comments.

LRG-17-03 –East Mesa Water System Improvements Project – NMFA 3803-PG & 3804-PG, 4915-CIF – Design – Closing date for 4915-CIF is 8/23/19.

LRG-18-01 – High Valley Water System Improvements Project – NMFA 4645-CIF18, 4915-CIF – Design & Construction – Souder, Miller & Assoc. – Ph. I design plans have been reviewed by Operations and submitted to NMED-CPB. NMED-CPB Comments were received 8/1/19 and are being addressed by the engineer. Engineering Services Amendment #3 was approved 7/16/19. Closing documents for 4916-CIF for Phase II project are on today's agenda.

LRG-18-02 – Stern Drive Waterline Extension Project – Design/Build - \$150,000 SAP – Owner comments have been incorporated into the design. SMA has the design package to NMED-CPB and NMED-DWB for review. CPB comments were received 5/22/19, and the engineering is working on a response pending review by NM DOT. NMED-DWB letter of acknowledgement and no review needed was received on 6/28/19.

LRG-18-03 – Jacquez Waterline Extension Project – Design/Build - \$50,000 SAP – Wilson & Co. – Bid documents have been approved by NMED-CPB. Readiness-To-Proceed items for 4917-CIF are complete after issuing a new check for the easement which has been cashed. CIF closing documents are on today's agenda, and fully executed SAP 19-D2450-GF Grant Agreement has been received from NMED-CPB.

LRG-19-09 – S. Valley Service Area Line Extensions – The Legislature appropriated \$3 million to the Local Government Planning fund at NMFA, and that bill has been signed by the governor. We are considering applying for PER funding.

LRG-20-01 – Mesquite Wetlands Closure – RFP - \$250,000 SAP:

Other projects: Election Newsletter has been prepared and will go out with the September bills.

Infrastructure Capital Improvements Plan 2021-2025: Complete, submitted, and approved.

Documents Retention & Destruction – Sorting of old association documents for storage or destruction is ongoing, and staff is implementing approved retention/destruction schedules for LRGPWWA documents. No bins have been sent out for shredding in the past month.

Website and Email – Notices and Minutes pages are up to date.

Source Water Protection Plan Update - DBSA has completed the final version. Patty contacted NMED to find out how to proceed to finalize and adopt the plan. They had no further comments on the plan, and it is on agenda to be adopted by resolution.

Training – Patty attended the Utility Management Institute training in San Antonio July 23-26th.

Lower Rio Grande Water Users Organization – nothing new to report

As Needed Engineering Services - Currently we have two active Task Orders: BHI for securing the SLO Permit, and BHI for transferring a BLM permit from Organ WSA to the LRGPWWA.

Collection & Lien Procedures - 164 first notifications, 100 certified letters have been sent and 83 liens have been filed to date. 14 liens have been released following payment in full of the account. Vencor Task Order for Ph. 8 of GIS Project is pending.

LRGPWWA 2019 Election –Updated election information is posted on the Board & Elections page at our website, and a newsletter will go out with the September bills.

Water Audits – Calendar 2018 Water Audits have been completed, and results are included with the Operations Report. Our first Water Audits were completed for calendar 2014 by D.B. Stephens & Associates with a Technical Assistance Grant from BECC. It has been our stated intention to perform water audits annually in-house, but to have a third-party audit every five years, and that will be due for calendar 2019. The Water Audit team will meet on 9/12/19 to work on policies, procedures, and planning to improve our data validity scores in future audits.

Lower Rio Grande PWWA

Operators Report

August 21 , 2019

System Problems and Repairs.

- Backflow inspections are Current. (Mesquite District)
- For the month of June, we were issued 505 work and service orders.
- For the month of July, we were issued 434 work and service orders.
- For the month of July, we installed 4 new water service connections.
- We did not have any main or service line breaks at Alto De Los Flores.
- We did not have any main or service line breaks at the East Mesa.
- We did not have any main or service line breaks at Talavera MDWCA
- We started having electrical problems at well #2 on the east mesa and it finally gave out last week, we are waiting for three estimates for a new pump and motor.

NMED: All of our Monthly Bac-T-Samples were taken for the month of July and all samples were negative.

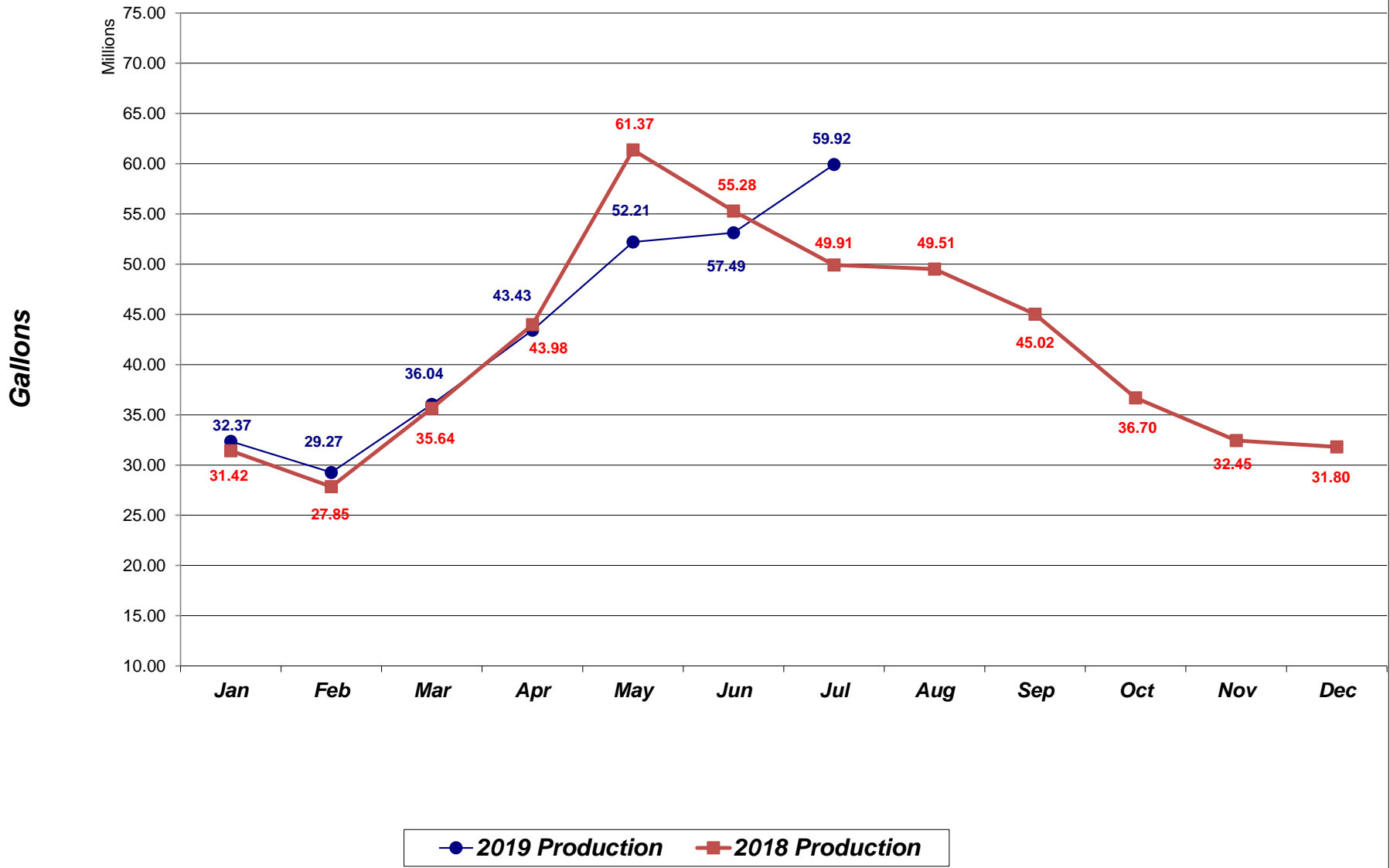
Mesquite district Wetlands: NMED is going to require us to drill 3 monitoring wells as the existing are dry.

Mesquite and Organ Sewer Reports. The Organ and the Mesquite wastewater reports were sent before July 1st.

Chlorine: No problems.

Reports: NMED, State Engineers, and the water conservation reports have been sent.

Lower Rio Grande PWWA Water Production Report





LOWER RIO GRANDE

Public Water Works Authority






325 Holguin Road

Vado, New Mexico 88072

(575) 233-5742

www.LRGauthority.org

Summary of 2018 Water Audit Results

-  Valle Del Rio Service Area
-  East Mesa Service Area (Organ & Butterfield Park)
-  High Valley Service Area
-  South Valley Service Area – Brazito
-  South Valley Service Area excluding Brazito

Valle Del Rio: 13,051,000 Gallons Produced 12,720,000 Gallons Authorized Consumption

Water Audit Report for: **Lower Rio Grande Public Water Works Authority (NM3513607)**
 Reporting Year: **2018** **1/2018 - 12/2018**

***** YOUR WATER AUDIT DATA VALIDITY SCORE IS: 74 out of 100 *****

System Attributes:

Apparent Losses:	0.193	MG/Yr
+ Real Losses:	0.138	MG/Yr
= Water Losses:	0.331	MG/Yr

? Unavoidable Annual Real Losses (UARL): See limits in definition MG/Yr

Annual cost of Apparent Losses: \$1,105

Annual cost of Real Losses: \$85 Valued at **Variable Production Cost**

Return to Reporting Worksheet to change this assumption

Performance Indicators:

Financial: { Non-revenue water as percent by volume of Water Supplied: 2.6%
 Non-revenue water as percent by cost of operating system: 2.1% Real Losses valued at Variable Production Cost

Operational Efficiency: { Apparent Losses per service connection per day: 5.62 gallons/connection/day
 Real Losses per service connection per day: 4.02 gallons/connection/day
 Real Losses per length of main per day*: N/A
 Real Losses per service connection per day per psi pressure: 0.06 gallons/connection/day/psi

From Above, Real Losses = Current Annual Real Losses (CARL): 0.14 million gallons/year

? Infrastructure Leakage Index (ILI) [CARL/UARL]:

* This performance indicator applies for systems with a low service connection density of less than 32 service connections/mile of pipeline

Note: One of the well meters was under-registering by at least 17%, but we chose to leave it in place until it was replaced during the project, so This audit is less accurate than normal. In hindsight, it may have been a good idea to go ahead and have this bad meter tested to determine the exact percentage by which it was off.

PRIORITY AREAS FOR ATTENTION: Customer metering inaccuracies, Unbilled metered, Master meter error adjustment

East Mesa: 77,470,227 Gallons Produced

61,873,952 Gallons Authorized Consumption

Water Audit Report for: **Lower Rio Grande Public Water Works Authority (NM3512007)**

Reporting Year: **2018** | **1/2018 - 12/2018**

***** YOUR WATER AUDIT DATA VALIDITY SCORE IS: 79 out of 100 *****

System Attributes:

Apparent Losses:	779.709	MG/Yr
+ Real Losses:	15,599.094	MG/Yr
= Water Losses:	16,378.803	MG/Yr

? Unavoidable Annual Real Losses (UARL): See limits in definition MG/Yr

Annual cost of Apparent Losses: \$5,691,875

Annual cost of Real Losses: \$9,444,515 Valued at **Variable Production Cost**

Return to Reporting Worksheet to change this assumption

Performance Indicators:

Financial:	{	Non-revenue water as percent by volume of Water Supplied:	20.9%	
		Non-revenue water as percent by cost of operating system:	3453.5%	Real Losses valued at Variable Production Cost

Operational Efficiency:	{	Apparent Losses per service connection per day:	3000.27	gallons/connection/day
		Real Losses per service connection per day:	N/A	gallons/connection/day
		Real Losses per length of main per day*:	1,079,223.32	gallons/mile/day
		Real Losses per service connection per day per psi pressure:	N/A	gallons/connection/day/psi

From Above, Real Losses = Current Annual Real Losses (CARL): 15,599.09 million gallons/year

? Infrastructure Leakage Index (ILI) [CARL/UARL]:

* This performance indicator applies for systems with a low service connection density of less than 32 service connections/mile of pipeline

PRIORITY AREAS FOR ATTENTION: Customer metering inaccuracies, Billed metered, Systematic data handling errors

High Valley: 2,238,000 Gallons Produced

1,863,000 Gallons Authorized Consumption

Water Audit Report for: Lower Rio Grande Public Water Works Authority (NM3513107)

Reporting Year: 2018 1/2018 - 12/2018

*** YOUR WATER AUDIT DATA VALIDITY SCORE IS: 71 out of 100 ***

System Attributes:

Apparent Losses:	0.029	MG/Yr
+ Real Losses:	0.346	MG/Yr
= Water Losses:	0.375	MG/Yr

? Unavoidable Annual Real Losses (UARL): See limits in definition MG/Yr

Annual cost of Apparent Losses: \$226

Annual cost of Real Losses: \$232 Valued at **Variable Production Cost**

Return to Reporting Worksheet to change this assumption

Performance Indicators:

Financial: { Non-revenue water as percent by volume of Water Supplied: 18.3%
Non-revenue water as percent by cost of operating system: 3.3% Real Losses valued at Variable Production Cost

Operational Efficiency: { Apparent Losses per service connection per day: 3.28 gallons/connection/day
Real Losses per service connection per day: N/A gallons/connection/day
Real Losses per length of main per day*: 1,142.51 gallons/mile/day
Real Losses per service connection per day per psi pressure: N/A gallons/connection/day/psi

From Above, Real Losses = Current Annual Real Losses (CARL): 0.35 million gallons/year

? Infrastructure Leakage Index (ILI) [CARL/UARL]:

* This performance indicator applies for systems with a low service connection density of less than 32 service connections/mile of pipeline

PRIORITY AREAS FOR ATTENTION: Billed metered, Unbilled metered, Customer metering inaccuracies

South Valley – Brazito:

35,242,000 Gallons Produced

31,197,000 Gallons Authorized Consumption

Water Audit Report for: **Lower Rio Grande Public Water Works Authority (NM3502407)**

Reporting Year: **2018** | **1/2018 - 12/2018**

***** YOUR WATER AUDIT DATA VALIDITY SCORE IS: 74 out of 100 *****

System Attributes:

	Apparent Losses:	0.481	MG/Yr
+	Real Losses:	3.564	MG/Yr
=	Water Losses:	4.045	MG/Yr

? Unavoidable Annual Real Losses (UARL): **See limits in definition** MG/Yr

Annual cost of Apparent Losses: **\$3,356**

Annual cost of Real Losses: **\$2,178** Valued at **Variable Production Cost**

Return to Reporting Worksheet to change this assumption

Performance Indicators:

Financial: { Non-revenue water as percent by volume of Water Supplied: **11.5%**
 Non-revenue water as percent by cost of operating system: **2.3%** Real Losses valued at Variable Production Cost

Operational Efficiency: { Apparent Losses per service connection per day: **3.34** gallons/connection/day
 Real Losses per service connection per day: **N/A** gallons/connection/day
 Real Losses per length of main per day*: **527.75** gallons/mile/day
 Real Losses per service connection per day per psi pressure: **N/A** gallons/connection/day/psi

From Above, Real Losses = Current Annual Real Losses (CARL): **3.56** million gallons/year

? Infrastructure Leakage Index (ILI) [CARL/UARL]:

* This performance indicator applies for systems with a low service connection density of less than 32 service connections/mile of pipeline

PRIORITY AREAS FOR ATTENTION: Customer metering inaccuracies, Billed metered, Volume from own sources

South Valley – La Mesa, Mesquite, Vado, Berino, Desert Sands

360,516,000 Gallons Produced

342,510,000 Gallons Authorized Consumption

Water Audit Report for: **Lower Rio Grande Public Water Works Authority (NM3502407)**

Reporting Year: **2018** **1/2018 - 12/2018**

***** YOUR WATER AUDIT DATA VALIDITY SCORE IS: 74 out of 100 *****

System Attributes:

Apparent Losses:	4.381	MG/Yr
+ Real Losses:	13.625	MG/Yr
= Water Losses:	18.006	MG/Yr

? Unavoidable Annual Real Losses (UARL): **31.19** MG/Yr

Annual cost of Apparent Losses: **\$26,614**

Annual cost of Real Losses: **\$4,954** Valued at **Variable Production Cost**

Return to Reporting Worksheet to change this assumption

Performance Indicators:

Financial: { Non-revenue water as percent by volume of Water Supplied: **5.2%**
 Non-revenue water as percent by cost of operating system: **1.5%** Real Losses valued at Variable Production Cost

Operational Efficiency: { Apparent Losses per service connection per day: **3.48** gallons/connection/day
 Real Losses per service connection per day: **N/A** gallons/connection/day
 Real Losses per length of main per day*: **240.83** gallons/mile/day
 Real Losses per service connection per day per psi pressure: **N/A** gallons/connection/day/psi

From Above, Real Losses = Current Annual Real Losses (CARL): **13.62** million gallons/year

? Infrastructure Leakage Index (ILI) [CARL/UARL]: **0.44**

* This performance indicator applies for systems with a low service connection density of less than 32 service connections/mile of pipeline

PRIORITY AREAS FOR ATTENTION: Customer metering inaccuracies, Unbilled metered, Volume from own sources



Lower Rio Grande Public Water Works Authority

Income Statement Group Summary

AcctNumber	Current Total Budget	MTD Activity	YTD Activity	Budget Remaining
Revenue				
40000 - Operating Revenue	2,865,000.00	276,416.65	276,416.65	2,588,583.35
40001 - Activation & Connection Fees-Sewer	4,000.00	141.67	141.67	3,858.33
40002 - Installation Fees	57,500.00	5,333.33	5,333.33	52,166.67
40003 - Activation & Connection Fees-Water	7,500.00	358.33	358.33	7,141.67
40005 - Backflow Testing	7,000.00	625.00	625.00	6,375.00
40006 - Tampering Fee/Line Breaks	0.00	897.61	897.61	-897.61
40007 - Delinquency Fee	100,000.00	7,950.00	7,950.00	92,050.00
40008 - Penalties-Water	0.00	9,209.17	9,209.17	-9,209.17
40009 - Membership Fees	0.00	600.00	600.00	-600.00
40010 - Impact Fees	40,000.00	3,857.00	3,857.00	36,143.00
40011 - Returned Check Fees	0.00	35.00	35.00	-35.00
40012 - Credit Card Fees	10,000.00	924.00	924.00	9,076.00
40013 - Miscellaneous Revenue	0.00	15.00	15.00	-15.00
40015 - Penalties-Sewer	4,500.00	569.75	569.75	3,930.25
40017 - Hydrant Meter Rental Fee	15,000.00	250.00	250.00	14,750.00
40019 - DAC Trash Coupons	0.00	62.00	62.00	-62.00
40020 - Miscellaneous Revenue-Sewer	7,500.00	41.29	41.29	7,458.71
45000 - Tower Rent	0.00	250.00	250.00	-250.00
45001 - Billing Adjustments-Water	0.00	138.63	138.63	-138.63
45005 - Fiscal Agent Fees	0.00	5,368.80	5,368.80	-5,368.80
45010 - Interest	0.00	61.85	61.85	-61.85
45015 - Copy/Fax	0.00	24.25	24.25	-24.25
45020 - Other Income	45,000.00	13,736.00	13,736.00	31,264.00
45025 - Contract Services	50,000.00	5,726.21	5,726.21	44,273.79
45030 - Transfers In	0.00	0.00	0.00	0.00
49000 - Recovered Bad Debts	0.00	400.00	400.00	-400.00
Revenue Total:	3,213,000.00	332,991.54	332,991.54	2,880,008.46
Expense				
60001 - Transfers to Reserve Account	0.00	10,000.00	10,000.00	-10,000.00
60005 - Accounting Fees	0.00	0.00	0.00	0.00
60010 - Audit	15,000.00	0.00	0.00	15,000.00
60020 - Bank Service Charges	15,000.00	726.03	726.03	14,273.97
60025 - Cash Short/Over	300.00	20.00	20.00	280.00
60030 - Dues and Subscriptions	5,000.00	1,390.69	1,390.69	3,609.31
60045 - Late Fees	1,000.00	0.00	0.00	1,000.00
60050 - Legal Fees	0.00	375.30	375.30	-375.30
60055 - Legal Notices	2,500.00	28.59	28.59	2,471.41
60060 - Licenses & Fees	5,000.00	200.00	200.00	4,800.00
60065 - Meals	2,500.00	32.47	32.47	2,467.53
60075 - Permit Fees	1,500.00	0.00	0.00	1,500.00
60080 - Postage	30,500.00	0.00	0.00	30,500.00
60100 - Project Development	0.00	0.00	0.00	0.00
60120 - Retirement Account Fees	2,500.00	652.08	652.08	1,847.92
60125 - Easments & Leases	0.00	6,611.10	6,611.10	-6,611.10
60130 - Training	5,000.00	0.00	0.00	5,000.00
60140 - Travel:Airfare Per Diem	2,500.00	0.00	0.00	2,500.00
60150 - Travel:Lodging Per Diem	5,000.00	0.00	0.00	5,000.00
60155 - Travel:Meals Per Diem	2,500.00	0.00	0.00	2,500.00
60160 - Travel:Mileage/Parking Per Diem	1,500.00	0.00	0.00	1,500.00
60600 - Debit Service	148,000.00	5,159.74	5,159.74	142,840.26
60650 - Interest paid to NMFA	37,000.00	0.00	0.00	37,000.00
60675 - Interest paid to USDA	130,000.00	11,596.26	11,596.26	118,403.74
63000 - Regular Pay	1,074,100.00	71,291.17	71,291.17	1,002,808.83
63001 - Overtime	70,000.00	2,627.29	2,627.29	67,372.71
63006 - Holiday Pay	55,000.00	4,240.40	4,240.40	50,759.60
63007 - Sick Pay	60,000.00	4,700.83	4,700.83	55,299.17

63008 - Annual Leave Pay	0.00	7,289.20	7,289.20	-7,289.20
63010 - 401K 10% Company Contribution	3,000.00	0.00	0.00	3,000.00
63020 - 401K Employee Contribution	61,700.00	0.00	0.00	61,700.00
63030 - Accrued Leave	75,000.00	0.00	0.00	75,000.00
63070 - Employee Benefits-401K Contrib	109,000.00	2,705.95	2,705.95	106,294.05
63100 - Insurance-Dental	18,000.00	1,089.64	1,089.64	16,910.36
63110 - Insurance-Health	272,000.00	22,120.18	22,120.18	249,879.82
63115 - Salaries: Insurance - Work Comp	20,000.00	1,845.00	1,845.00	18,155.00
63125 - Insurance: Life & Disability	21,000.00	0.00	0.00	21,000.00
63160 - Payroll Taxes-Medicare	19,860.00	1,307.14	1,307.14	18,552.86
63170 - Payroll Taxes-Social Security	77,440.00	5,589.22	5,589.22	71,850.78
63200 - Vision Insurance	5,500.00	318.20	318.20	5,181.80
64100 - Sewer:DAC Waste Water Flow Charge	35,000.00	3,441.75	3,441.75	31,558.25
64200 - Sewer:Electricity-Sewer	9,000.00	758.30	758.30	8,241.70
64300 - Sewer:Lab & Chemicals-Sewer	42,000.00	1,788.07	1,788.07	40,211.93
65010 - Automobile Repairs & Maint.	40,000.00	2,111.12	2,111.12	37,888.88
65230 - Computer Maintenance	63,000.00	5,423.68	5,423.68	57,576.32
65240 - Equipment Rental	2,500.00	0.00	0.00	2,500.00
65250 - Fuel	60,000.00	5,849.96	5,849.96	54,150.04
65255 - GPS Insights Charges	7,000.00	0.00	0.00	7,000.00
65270 - Lab Chemicals-Water	5,000.00	75.82	75.82	4,924.18
65275 - SCADA Maintenance Fee	2,000.00	0.00	0.00	2,000.00
65276 - Test Equipment Calibration	2,000.00	0.00	0.00	2,000.00
65277 - Generator Maintenance Contract	3,000.00	0.00	0.00	3,000.00
65280 - Lab Chemicals-Water:Chemicals	35,000.00	3,037.95	3,037.95	31,962.05
65300 - Locates	6,000.00	0.00	0.00	6,000.00
65310 - Maint. & Repairs-Infrastructure	0.00	4,112.84	4,112.84	-4,112.84
65320 - Maint. & Repairs-Office	10,000.00	0.00	0.00	10,000.00
65330 - Maintenance & Repairs-Other	1,500.00	1,003.84	1,003.84	496.16
65340 - Materials & Supplies	45,000.00	3,735.04	3,735.04	41,264.96
65345 - Non Inventory-Consumables	65,000.00	3,446.55	3,446.55	61,553.45
65350 - Office Supplies	2,500.00	248.45	248.45	2,251.55
65360 - Printing and Copying	20,000.00	2,634.69	2,634.69	17,365.31
65370 - Tool Furniture	5,000.00	200.62	200.62	4,799.38
65390 - Uniforms-Employee	10,400.00	288.60	288.60	10,111.40
65490 - Cell Phone	20,000.00	1,668.00	1,668.00	18,332.00
65500 - Electricity-Lighting	6,000.00	191.89	191.89	5,808.11
65510 - Electricity-Offices	15,000.00	493.25	493.25	14,506.75
65520 - Electricity-Wells	211,000.00	8,579.88	8,579.88	202,420.12
65530 - Garbage Service	2,500.00	183.58	183.58	2,316.42
65540 - Natural Gas	3,000.00	128.67	128.67	2,871.33
65550 - Security/Alarm	6,700.00	0.00	0.00	6,700.00
65560 - Telephone	20,000.00	1,424.34	1,424.34	18,575.66
65561 - Telstar Maintenance Contract	7,000.00	0.00	0.00	7,000.00
65570 - Wastewater	2,000.00	185.32	185.32	1,814.68
66200 - Insurance-General Liability	75,000.00	16,136.00	16,136.00	58,864.00
66700 - Water Conservation Fee	20,000.00	1,723.45	1,723.45	18,276.55
Expense Total:	3,213,000.00	230,788.14	230,788.14	2,982,211.86
Total Surplus (Deficit):	0.00	102,203.40	102,203.40	-102,203.40

**LOWER RIO GRANDE PUBLIC WATER WORKS AUTHORITY
RESOLUTION NO. FY2020-06**

A RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF A COLONIAS INFRASTRUCTURE PROJECT FUND LOAN/GRANT AGREEMENT BY AND AMONG THE NEW MEXICO COLONIAS INFRASTRUCTURE BOARD (“CIB”) AND THE NEW MEXICO FINANCE AUTHORITY (“FINANCE AUTHORITY,” AND COLLECTIVELY WITH THE CIB, THE “LENDERS/GRANTORS”) AND THE LOWER RIO GRANDE PUBLIC WATER WORKS AUTHORITY (THE “BORROWER/GRANTEE”), FOR THE BENEFIT OF BRAZITO, MESQUITE, DEL CERRO, LA MESA, HIGH VALLEY SUBDIVISION, VADO, BERINO, MONTANA VISTA, JOY DRIVE SUBDIVISION, LAS PALMERAS, ORGAN, MOUNTAIN VIEW, BUTTERFIELD PARK, CATTLELAND AND A PORTION OF ANTHONY, IN THE TOTAL AMOUNT OF \$741,628, EVIDENCING AN OBLIGATION OF THE BORROWER/GRANTEE TO UTILIZE THE LOAN/GRANT AMOUNT SOLELY FOR THE PURPOSE OF FINANCING THE COSTS OF DESIGN AND CONSTRUCTION OF A NEW WELL AND WELL-HOUSE AND CONSTRUCTION OF A WATER PIPELINE INTERCONNECTED WITH VISTA DEL REY MDWCA FOR EMERGENCY BACK-UP WATER SUPPLY, AND SOLELY IN THE MANNER DESCRIBED IN THE LOAN/GRANT AGREEMENT; PROVIDING FOR THE PLEDGE AND PAYMENT OF THE LOAN AMOUNT OF \$111,244 SOLELY FROM NET SYSTEM REVENUES AND ACCEPTANCE OF A GRANT AMOUNT OF \$630,384; CERTIFYING THAT THE LOAN/GRANT AMOUNT, TOGETHER WITH OTHER FUNDS AVAILABLE TO THE BORROWER/GRANTEE, IS SUFFICIENT TO COMPLETE THE PROJECT; APPROVING THE FORM OF AND OTHER DETAILS CONCERNING THE LOAN/GRANT AGREEMENT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS RESOLUTION; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LOAN/GRANT AGREEMENT.

Capitalized terms used in the following preambles have the same meaning as defined in this Resolution unless the context requires otherwise.

WHEREAS, the CIB is a public body duly organized and created under and pursuant to the laws of the State of New Mexico (the “State”), particularly the Colonia’s Infrastructure Act, NMSA 1978, §§ 6-30-1 through 6-30-8, as amended, (the “Colonia’s Infrastructure Act” or the “Act”); and

WHEREAS, the Finance Authority is a public body politic and corporate, separate and apart from the State, constituting a governmental instrumentality, duly organized and created under and pursuant to the laws of the State, particularly NMSA 1978, §§ 6-21-1, through 6-21-31, as amended, (the “Finance Authority Act”); and

WHEREAS, the Borrower/Grantee is a Political Subdivision of the State, being a legally and regularly created, established, organized and existing public water works authority under the general laws of the State and more specifically, NMSA 1978, § 73-26-1, as amended; and

WHEREAS, the Act creates the Colonia's Infrastructure Project Fund (the "Fund") in the Finance Authority, to be administered by the Finance Authority to originate grants or loans to Qualified Entities for Qualified Projects recommended by the CIB; and

WHEREAS, there exists within the boundaries of the Borrower/Grantee, Brazito, Mesquite, Del Cerro, La Mesa, High Valley Subdivision, Vado, Berino, Montana Vista, Joy Drive Subdivision, Las Palmeras, Organ, Mountain View, Butterfield Park, Cattleland, and a portion of Anthony (hereinafter, the "Colonia's"), communities that have been designated as a Colonia within the meaning of the Act; and

WHEREAS, the Borrower/Grantee will be receiving the Loan/Grant for the benefit of the Colonia's and the constituent public they serve; and

WHEREAS, the Borrower/Grantee submitted an application dated December 12, 2018, for the Project; and

WHEREAS, the CIB has determined that the Project is a qualifying Project and that the Borrower/Grantee is a Qualified Entity under the Board Rules; and

WHEREAS, the CIB on April 30, 2019, recommended to the Finance Authority that the Borrower/Grantee receive financial assistance from the Fund in the form of the Loan/Grant, for the benefit of the Colonia and the CIB has recommended that the Finance Authority enter into and administer this Agreement; and

WHEREAS, the Finance Authority approved the Loan/Grant Amount from the Fund to the Borrower/Grantee on May 23, 2019; and

WHEREAS, the Borrower/Grantee has determined that it is in the best interests of the Borrower/Grantee and the Colonia's, that the Borrower/Grantee enter into an Agreement with the Lenders/Grantors to borrow \$111,244 from the Lenders/Grantors and to accept a grant in the amount of \$630,384 from the Lenders/Grantors to finance the costs of design and construction of a new well and well-house and construction of a water pipeline interconnected with Vista Del Rey MDWCA for emergency back-up water supply, this project being more particularly described in the Term Sheet; and

WHEREAS, the Governing Body has determined and hereby determines that the Project may be financed with amounts granted and loaned pursuant to the Loan/Grant Agreement, that the Loan/Grant Amount, together with the Local Match and other moneys available to the Borrower/Grantee, is sufficient to complete the Project, and that it is in the best interest of the Borrower/Grantee and the Colonia's and the constituent public they serve that the Loan/Grant Agreement be executed and delivered and that the funding of the Project take place by executing and delivering the Loan/Grant Agreement; and

WHEREAS, the Governing Body has determined that it may lawfully enter into the Loan/Grant Agreement, accept the Loan/Grant Amount and be bound to the obligations and by the restrictions thereunder; and

WHEREAS, the Loan/Grant Agreement shall not constitute a general obligation of the Borrower/Grantee, the CIB or the Finance Authority or a debt or pledge of the full faith and credit of the Borrower/Grantee, the CIB, the Finance Authority or the State; and

WHEREAS, there have been presented to the Governing Body and there presently are on file with the Secretary this Resolution and the form of the Loan/Grant Agreement which is incorporated by reference and considered to be a part hereof; and

WHEREAS, the Governing Body hereby determines that the Local Match is now available to the Borrower/Grantee to complete the Project; and

WHEREAS, all required authorizations, consents and approvals in connection with (i) the use of the Loan/Grant Amount for the purposes described, and according to the restrictions set forth, in the Loan/Grant Agreement; (ii) the availability of other moneys necessary and sufficient, together with the Loan/Grant Amount, to complete the Project; and (iii) the authorization, execution and delivery of the Loan/Grant Agreement which are required to have been obtained by the date of this Resolution, have been obtained or are reasonably expected to be obtained.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF LOWER RIO GRANDE PUBLIC WATER WORKS AUTHORITY, DOÑA ANA COUNTY, NEW MEXICO:

Section 1. Definitions. Capitalized terms defined in the foregoing recitals shall have the same meaning when used in this Agreement unless the context clearly requires otherwise. Capitalized terms not defined in the recitals and defined in this Article I shall have the same meaning when used in this Agreement including the foregoing recitals, unless the context clearly requires otherwise. Capitalized terms not defined herein shall have the meaning given them by the Loan/Grant Agreement.

“Agreement” or “Loan/Grant Agreement” means the Loan/Grant Agreement and any amendments or supplements thereto, including the Exhibits attached thereto.

“Authorized Officers” means, any one or more of the Chairman, the Finance Manager, the General Manager and Secretary thereof.

“Borrower/Grantee” means the Lower Rio Grande Public Water Works Authority in Doña Ana, New Mexico.

“CIB” means the Colonia’s Infrastructure Board created by the Act.

“Closing Date” means the date of execution of the Loan/Grant Agreement by the Borrower/Grantee, the CIB and the Finance Authority.

“Colonia” or “Colonia’s” means a Colonia as defined in the Act, and more particularly in NMSA 1978, § 6-30-3(C), as amended, and particularly Brazito, Mesquite, Del Cerro, La Mesa, Vado, High Valley Subdivision, Berino, Montana Vista, Joy Drive Subdivision, Las Palmeras, Organ, Mountain View, Butterfield Park, Cattleland, and a portion of Anthony.

“Colonia’s Infrastructure Project Fund” or “Fund” means the fund of the same name created pursuant to the Act and held and administered by the Finance Authority.

“Conditions” has the meaning given to that term in the Loan/Grant Agreement.

“Completion Date” means the date of final payment of the cost of the Project.

“Eligible Fiscal Agent Fees” means fees and costs incurred by a fiscal agent for the administration of Project funds, including the collection and reporting of Project information as required by the Agreement, in an amount not exceeding five percent (5%) of the Loan/Grant Amount. “Eligible Items” has the meaning given to that term in the Loan/Grant Agreement.

“Eligible Items” means eligible Project costs for which loans/grants may be made pursuant to Title 2, Chapter 91, Part 2 NMAC, the Board Rules and applicable Policies, and includes costs of acquiring and constructing the Project, and, without limitation, Eligible Legal Costs and Eligible Fiscal Agent Fees.

“Eligible Legal Costs” means legal fees and costs for services rendered by legal counsel on behalf of the Borrower/Grantee for transaction of the Project and those directly associated with the qualified project, in an amount not exceeding ten percent (10%) of the Loan/Grant Amount, but does not include adjudication services.

“Finance Authority” means the New Mexico Finance Authority.

“Fiscal Year” means the period commencing on July 1 of each calendar year and ending on the last day of June of the next succeeding calendar year, or any other twelve-month period which any appropriate authority may hereafter establish for the Borrower/Grantee as its fiscal year.

“Generally Accepted Accounting Principles” means the officially established accounting principles applicable to the Borrower/Grantee consisting of the statements, determinations and other official pronouncements of the Government Accounting Standards Board, Financial Accounting Standards Board, Federal Accounting Standards Board or other principle-setting body acceptable to the Finance Authority establishing accounting principles applicable to the Borrower/Grantee.

“Governing Body” means the Board of Directors of the Borrower/Grantee, or any future successor governing body of the Borrower/Grantee.

“Grant” or “Grant Amount” means the amount provided to the Borrower/Grantee as a grant pursuant to the Loan/Grant Agreement for the purpose of funding the Project, and shall equal 90% of the Amount disbursed not to exceed \$630,384.

“Gross Revenues” has the meaning given to that term in the Loan/Grant Agreement.

“Herein,” “hereby,” “hereunder,” “hereof,” “hereinabove” and “hereafter” refer to this entire Resolution and not solely to the particular section or paragraph of this Resolution in which such word is used.

“Lenders/Grantors” means the CIB and the Finance Authority.

“Loan” or “Loan Amount” means 10% of the amount disbursed to the Borrower/Grantee as a loan pursuant to the Loan/Grant Agreement for the purpose of funding the Project, and shall not equal more than \$111,244.

“Loan/Grant” or “Loan/Grant Amount” means the amount provided to the Borrower/Grantee as the Grant Amount and borrowed by the Borrower/Grantee as the Loan Amount pursuant to the Loan/Grant Agreement for the purpose of funding the Project. The value of the Loan/Grant shall not equal more than \$741,628.

“Local Match” means the amount determined pursuant to the Policies to be provided by the Borrower/Grantee which includes the total value of the soft or hard match (each as defined in the Policies) which, in combination with the Loan/Grant Amount and other monies available to the Borrower/Grantee, is sufficient to complete the Project. The Local Match is \$36,087.

“Net System Revenues” means the Gross Revenues of the System minus Operation and Maintenance Expenses, indirect charges, amounts expended for capital replacements and repairs, required set asides for debt and replacement requirements, and any other payments from the gross revenues reasonably required for operation of the System.

“NMAC” means the New Mexico Administrative Code.

“NMSA 1978” means the New Mexico Statutes Annotated, 1978 Compilation, as amended and supplemented from time to time.

“Operation and Maintenance Expenses” has the meaning given to that term in the Loan/Grant Agreement.

“Pledged Revenues” means the Net System Revenues of the Borrower/Grantee pledged to the payment of the Loan Amount pursuant to this Resolution and the Loan/Grant Agreement and described in the Term Sheet.

“Policies” means the Colonia’s Infrastructure Project Fund Project Selection and Management Policies, approved by the CIB.

“Political Subdivision of the State” means a municipality, a county, water and sanitation district, an association organized and existing pursuant to the Sanitary Projects Act, NMSA 1978, § 3-29-1 through § 3-29-21, as amended, or any other entity recognized by statute as a political subdivision of the State.

“Project” means the project described in the Term Sheet.

“Project Account” means the book account, if any, established by the Finance Authority in the name of the Borrower/Grantee for purposes of tracking expenditure of the Loan/Grant Amount by the Borrower/Grantee to pay for the costs of the Project, as shown in the Term Sheet, which account shall be kept separate and apart from all other accounts of the Finance Authority.

“Qualified Entity” means a county, municipality, or other entity recognized as a Political Subdivision of the State pursuant to NMSA 1978, § 6-30-3(F), as amended.

“Qualified Project” means a capital outlay project recommended by the CIB to the Finance Authority for financial assistance that is primarily intended to develop Colonia’s infrastructure. A Qualified Project may include a water system, a wastewater system, solid waste disposal facilities, flood and drainage control, roads or housing infrastructure pursuant to NMSA 1978, § 6-30-3(G), as amended, but does not include general operation and maintenance, equipment, housing allowance payments or mortgage subsidies.

“Resolution” means this Resolution as it may be supplemented or amended from time to time.

“Rules” means Review and Selection of Colonia’s Infrastructure Projects, New Mexico Colonia’s Infrastructure Board, Sections 2.91.2.1 through 2.91.2.18 NMAC.

“State” means the State of New Mexico.

“System” means the water utility system of the Borrower/Grantee, owned and operated by the Borrower/Grantee, and of which the Project, when completed, will form part.

“Term Sheet” means Exhibit “A” attached to the Loan/Grant Agreement.

“Useful Life” means the period during which the Project is expected to be usable for the purpose for which it was acquired, which is 12.177 years.

Section 2. Ratification. All action heretofore taken (not inconsistent with the provisions of this Resolution) by the Borrower/Grantee and officers of the Borrower/Grantee directed toward the acquisition and completion of the Project, the pledge of the Pledged Revenues to payment of amounts due under the Loan/Grant Agreement, and the execution and delivery of the Loan/Grant Agreement shall be, and the same hereby is, ratified, approved and confirmed.

Section 3. Authorization of the Project and the Loan/Grant Agreement. The acquisition and completion of the Project and the method of funding the Project through execution and delivery of the Loan/Grant Agreement and the other documents related to the transaction are hereby authorized and ordered. The Project is for the benefit and use of the Borrower/Grantee and the Colonia's and the constituent public they serve.

Section 4. Findings. The Governing Body hereby declares that it has considered all relevant information and data and hereby makes the following findings:

A. The Project is needed to meet the needs of the Borrower/Grantee and the Colonia's and the constituent public they serve.

B. Moneys available and on hand for the Project from all sources other than the Loan/Grant are not sufficient to defray the cost of acquiring and completing the Project but, together with the Loan/Grant Amount, are sufficient to complete the Project.

C. The Project and the execution and delivery of the Loan/Grant Agreement pursuant to the Act to provide funds for the financing of the Project are necessary, convenient and in furtherance of the governmental purposes of the Borrower/Grantee, and in the interest of the public health, safety, and welfare of the constituent public served by the Borrower/Grantee.

D. The Borrower/Grantee will acquire and complete the Project with the proceeds of the Loan/Grant, the Local Match and other amounts available to the Borrower/Grantee, and except as otherwise expressly provided by the Loan/Grant Agreement, will utilize, operate and maintain the Project for the duration of its Useful Life.

E. Together with the Loan/Grant Amount, and other amounts available to the Borrower/Grantee, the Local Match is now available to the Borrower/Grantee, and in combination with the Loan/Grant Amount, will be sufficient to complete the Project.

F. The Lenders/Grantors shall maintain on behalf of the Borrower/Grantee a separate Project Account as a book account only on behalf of the Borrower/Grantee and financial records in accordance with Generally Accepted Accounting Principles during the construction or implementation of the Project.

G. The Borrower/Grantee has title to or easements or rights of way on the real property upon which the Project is being constructed or located.

Section 5. Loan/Grant Agreement—Authorization and Detail.

A. Authorization. This Resolution has been adopted by the affirmative vote of at least a majority of the Governing Body. For the purpose of protecting the public health, conserving the property, and protecting the general welfare and prosperity of the public served by the Borrower/Grantee and acquiring and completing the Project, it is hereby declared necessary that the Borrower/Grantee execute and deliver the Loan/Grant Agreement evidencing the Borrower/Grantee's acceptance of the Grant Amount of \$630,384 and borrowing the Loan

Amount of \$111,244 to be utilized solely for Eligible Items necessary to complete the Project, and solely in the manner and according to the restrictions set forth in the Loan/Grant Agreement, the execution and delivery of which is hereby authorized. The Borrower/Grantee shall use the Loan/Grant Amount to finance the acquisition and completion of the Project.

B. Detail. The Loan/Grant Agreement shall be in substantially the form of the Loan/Grant Agreement presented at the meeting of the Governing Body at which this Resolution was adopted. The Grant shall be in the amount of \$630,384 and the Loan shall be in the amount of \$111,244. Interest on the Loan Amount shall be zero percent (0%) per annum of the unpaid principal balance of the Loan Amount.

Section 6. Approval of Loan/Grant Agreement. The form of the Loan/Grant Agreement as presented at the meeting of the Governing Body, at which this Resolution was adopted, is hereby approved. Authorized Officers are hereby individually authorized to execute, acknowledge and deliver the Loan/Grant Agreement with such changes, insertions and omissions as may be approved by such individual Authorized Officers, and the Secretary is hereby authorized to attest the Loan/Grant Agreement. The execution of the Loan/Grant Agreement shall be conclusive evidence of such approval.

Section 7. Security. The Loan Amount shall be solely secured by the pledge of the Pledged Revenues herein made and as set forth in the Loan/Grant Agreement.

Section 8. Disposition of Proceeds: Completion of the Project.

A. Project Account. The Borrower/Grantee hereby consents to creation of the Project Account by the Finance Authority and further approves of the deposit or crediting of a portion of the Loan/Grant Amount to pay expenses. Until the Completion Date, the amount of the Loan/Grant credited to the Project Account shall be used and paid out solely for Eligible Items necessary to acquire and complete the Project in compliance with applicable law and the provisions of the Loan/Grant Agreement.

B. Completion of the Project. The Borrower/Grantee shall proceed to complete the Project with all due diligence. Upon the Completion Date, the Borrower/Grantee shall execute a certificate stating that completion of and payment for the Project has been completed. Following the Completion Date or the earlier expiration of the time allowed for disbursement of Loan/Grant funds as provided in the Loan/Grant Agreement, any balance remaining in the Project Account shall be transferred and deposited into the Colonia's Infrastructure Project Fund or otherwise distributed as provided in the Loan/Grant Agreement.

C. CIB and Finance Authority Not Responsible. Borrower/Grantee shall apply the funds derived from the Loan/Grant Agreement as provided therein, and in particular Article V of the Loan/Grant Agreement. Neither the CIB nor the Finance Authority shall in any manner be responsible for the application or disposal by the Borrower/Grantee or by its officers of the funds derived from the Loan/Grant Agreement or of any other funds held by or made available to the Borrower/Grantee in connection with the Project. Lenders/Grantors shall not be liable for the refusal or failure of any other agency of the State to transfer any portion of the

Loan/Grant Amount in its possession, custody and control to the Finance Authority for disbursement to the Borrower/Grantee, or to honor any request for such transfer or disbursement of the Loan/Grant Amount.

Section 9. Payment of Loan Amount. Pursuant to the Loan/Grant Agreement, the Borrower/Grantee shall pay the Loan Amount directly from the Pledged Revenues to the Finance Authority as provided in the Loan/Grant Agreement in an amount sufficient to pay principal and other amounts due under the Loan/Grant Agreement and to cure any deficiencies in the payment of the Loan Amount or other amounts due under the Loan/Grant Agreement.

Section 10. Lien on Pledged Revenues. Pursuant to the Loan/Grant Agreement, the Loan/Grant Agreement constitutes an irrevocable lien (but not an exclusive lien) upon the Pledged Revenues to the extent of the Loan Amount, the priority of which is consistent with that shown on the Term Sheet.

Section 11. Authorized Officers. Authorized Officers are hereby individually authorized and directed to execute and deliver any and all papers, instruments, opinions, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this Resolution, the Loan/Grant Agreement and all other transactions contemplated hereby and thereby. Authorized Officers are hereby individually authorized to do all acts and things required of them by this Resolution and the Loan/Grant Agreement for the full, punctual and complete performance of all the terms, covenants and agreements contained in this Resolution and the Loan/Grant Agreement including but not limited to, the execution and delivery of closing documents in connection with the execution and delivery of the Loan/Grant Agreement.

Section 12. Amendment of Resolution. This Resolution after its adoption may be amended without receipt by the Borrower/Grantee of any additional consideration, but only with the prior written consent of the CIB and the Finance Authority.

Section 13. Resolution Irrepealable. After the Loan/Grant Agreement has been executed and delivered, this Resolution shall be and remain irrepealable until all obligations due under the Loan/Grant Agreement shall be fully discharged, as herein provided.

Section 14. Severability Clause. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

Section 15. Repealer Clause. All bylaws, orders, ordinances, resolutions, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof, heretofore repealed.

Section 16. Effective Date. Upon due adoption of this Resolution, it shall be recorded in the book of the Borrower/Grantee kept for that purpose, authenticated by the signatures of the

Chairman and Secretary of the Borrower/Grantee, and this Resolution shall be in full force and effect thereafter, in accordance with law; provided, however, that if recording is not required for the effectiveness of this Resolution, this Resolution shall be effective upon adoption of this Resolution by the Governing Body.

Section 17. General Summary for Publication. Pursuant to the general laws of the State, the title and a general summary of the subject matter contained in this Resolution shall be published in substantially the following form:

[Remainder of page intentionally left blank.]

[Form of Notice of Adoption of Resolution for Publication]

LOWER RIO GRANDE PUBLIC WATER WORKS AUTHORITY
Notice of Adoption of Resolution

Notice is hereby given of the title and of a general summary of the subject matter contained in Resolution No. FY2020-06, duly adopted and approved by the Board of Directors of Lower Rio Grande Public Water Works Authority on August 21, 2019. A complete copy of the Resolution is available for public inspection during normal and regular business hours in the office of the Secretary, at 325 Holguin Road, Vado, New Mexico 88072.

The title of the Resolution is:

LOWER RIO GRANDE PUBLIC WATER WORKS AUTHORITY
RESOLUTION NO. FY2020-06

A RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF A COLONIAS INFRASTRUCTURE PROJECT FUND LOAN/GRANT AGREEMENT BY AND AMONG THE NEW MEXICO COLONIAS INFRASTRUCTURE BOARD (“CIB”) AND THE NEW MEXICO FINANCE AUTHORITY (“FINANCE AUTHORITY,” AND COLLECTIVELY WITH THE CIB, THE “LENDERS/GRANTORS”) AND THE LOWER RIO GRANDE PUBLIC WATER WORKS AUTHORITY (THE “BORROWER/GRANTEE”), FOR THE BENEFIT OF BRAZITO, MESQUITE, DEL CERRO, LA MESA, HIGH VALLEY SUBDIVISION, VADO, BERINO, MONTANA VISTA, JOY DRIVE SUBDIVISION, LAS PALMERAS, ORGAN, MOUNTAIN VIEW, BUTTERFIELD PARK, CATTLELAND AND A PORTION OF ANTHONY, IN THE TOTAL AMOUNT OF \$741,628, EVIDENCING AN OBLIGATION OF THE BORROWER/GRANTEE TO UTILIZE THE LOAN/GRANT AMOUNT SOLELY FOR THE PURPOSE OF FINANCING THE COSTS OF DESIGN AND CONSTRUCTION OF A NEW WELL AND WELL-HOUSE AND CONSTRUCTION OF A WATER PIPELINE INTERCONNECTED WITH VISTA DEL REY MDWCA FOR EMERGENCY BACK-UP WATER SUPPLY, AND SOLELY IN THE MANNER DESCRIBED IN THE LOAN/GRANT AGREEMENT; PROVIDING FOR THE PLEDGE AND PAYMENT OF THE LOAN AMOUNT OF \$111,244 SOLELY FROM NET SYSTEM REVENUES AND ACCEPTANCE OF A GRANT AMOUNT OF \$630,384; CERTIFYING THAT THE LOAN/GRANT AMOUNT, TOGETHER WITH OTHER FUNDS AVAILABLE TO THE BORROWER/GRANTEE, IS SUFFICIENT TO COMPLETE THE PROJECT; APPROVING THE FORM OF AND OTHER DETAILS CONCERNING THE LOAN/GRANT AGREEMENT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS RESOLUTION; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LOAN/GRANT AGREEMENT.

A general summary of the subject matter of the Resolution is contained in its title. This notice constitutes compliance with NMSA 1978, § 6-14-6, as amended.

[End of Form of Notice of Adoption for Publication]

PASSED, APPROVED AND ADOPTED THIS 21ST DAY OF AUGUST, 2019.

LOWER RIO GRANDE PUBLIC WATER
WORKS AUTHORITY, DOÑA ANA COUNTY,
NEW MEXICO

By _____
Mike McMullen, Chairman

[SEAL]

ATTEST:

By _____
Esperanza Holguin, Secretary

[Remainder of page intentionally left blank.]

Governing Body Member _____ then moved adoption of the foregoing Resolution, duly seconded by Governing Body Member _____.

The motion to adopt the Resolution, upon being put to a vote, was passed and adopted on the following recorded vote:

Those Voting Aye:

Mike McMullen, Board Chair
Furman Smith, Vice-Chair
Espy Holguin, Secretary
Henry Magallanez, Director
Joe Evaro, Director

Those Voting Nay:

NONE

Those Absent:

Raymundo Sanchez, Director

_____ () Members of the Governing Body having voted in favor of the motion, the Chairman declared the motion carried and the Resolution adopted, whereupon the Chairman and Secretary signed the Resolution upon the records of the minutes of the Governing Body.

After consideration of matters not relating to the Resolution, the meeting upon motion duly made, seconded and carried, was adjourned.

LOWER RIO GRANDE PUBLIC WATER
WORKS AUTHORITY, DOÑA ANA COUNTY,
NEW MEXICO

By _____
Mike McMullen, Chairman

[SEAL]

ATTEST:

By _____
Esperanza Holguin, Secretary

[Remainder of page intentionally left blank.]

STATE OF NEW MEXICO)
) ss.
COUNTY OF DOÑA ANA)

I, Esperanza Holguin, the duly qualified and acting Secretary of the Lower Rio Grande Public Water Works Authority (the “Borrower/Grantee”), do hereby certify:

1. The foregoing pages are a true, perfect, and complete copy of the record of the proceedings of the Board of Directors of the Borrower/Grantee (the “Governing Body”), had and taken at a duly called regular meeting held at 325 Holguin Road, Vado, New Mexico 88072, on August 21, 2019, at the hour of 9:30 a.m., insofar as the same relate to the adoption of Resolution No. FY2020-06 and the execution and delivery of the proposed Loan/Grant Agreement, a copy of which is set forth in the official records of the proceedings of the Governing Body kept in my office. None of the action taken has been rescinded, repealed, or modified.

2. The proceedings were duly had and taken as therein shown, the meeting therein was duly held, and the persons therein named were present at said meeting, as therein shown.

3. Notice of the meeting was given in compliance with the permitted methods of giving notice of meetings of the Governing Body as required by the State Open Meetings Act, NMSA 1978, § 10-15-1, as amended, including the Borrower/Grantee's open meetings Resolution No. FY2019-30, adopted and approved on May 15, 2019, in effect on the date of the meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 21st day of August, 2019.

LOWER RIO GRANDE PUBLIC WATER WORKS
AUTHORITY, DOÑA ANA COUNTY, NEW MEXICO

By _____
Esperanza Holguin, Secretary

EXHIBIT "A"

Notice of Meeting, Meeting Agenda

**RECORD OF PROCEEDINGS RELATING TO THE ADOPTION OF
RESOLUTION NO. FY2020-07 OF THE BOARD OF DIRECTORS
OF THE LOWER RIO GRANDE PUBLIC WATER WORKS AUTHORITY,
DOÑA ANA COUNTY, NEW MEXICO
AUGUST 21, 2019**

STATE OF NEW MEXICO)
) ss.
DOÑA ANA COUNTY)

The Board of Directors (the “Governing Body”) of the Lower Rio Grande Public Water Works Authority (the “Borrower/Grantee”) met in a regular session in full conformity with the law and the rules and regulations of the Governing Body at 325 Holguin Road, Vado, New Mexico 88072, being the meeting place of the Governing Body for the meeting held on the 21st day of August, 2019, at the hour of 9:30 a.m. Upon roll call, the following members were found to be present:

Present:

Mike McMullen, Board Chair
Furman Smith, Vice-Chair
Espy Holguin, Secretary
Henry Magallanez, Director
Joe Evaro, Director

Absent:

Raymundo Sanchez, Director

Also Present:

Martin Lopez, General Manager
Mike Lopez, Operations Manager
Kathi Jackson, Finance Manager
Karen Nichols, Projects Manager
Patty Charles, Projects Specialist
John Schroder, Accounting Assistant

Thereupon, there were officially filed with the Secretary copies of a proposed Resolution and Colonia’s Infrastructure Project Fund Loan/Grant Agreement in final form, the proposed Resolution being as hereinafter set forth:

[Remainder of page intentionally left blank.]

**LOWER RIO GRANDE PUBLIC WATER WORKS AUTHORITY
RESOLUTION NO. FY2020-07**

A RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF A COLONIAS INFRASTRUCTURE PROJECT FUND LOAN/GRANT AGREEMENT BY AND AMONG THE NEW MEXICO COLONIAS INFRASTRUCTURE BOARD (“CIB”) AND THE NEW MEXICO FINANCE AUTHORITY (“FINANCE AUTHORITY,” AND COLLECTIVELY WITH THE CIB, THE “LENDERS/GRANTORS”) AND THE LOWER RIO GRANDE PUBLIC WATER WORKS AUTHORITY (THE “BORROWER/GRANTEE”), FOR THE BENEFIT OF BRAZITO, MESQUITE, DEL CERRO, LA MESA, HIGH VALLEY SUBDIVISION, VADO, BERINO, MONTANA VISTA, JOY DRIVE SUBDIVISION, LAS PALMERAS, ORGAN, MOUNTAIN VIEW, BUTTERFIELD PARK, CATTLELAND AND A PORTION OF ANTHONY, IN THE TOTAL AMOUNT OF \$88,480, EVIDENCING AN OBLIGATION OF THE BORROWER/GRANTEE TO UTILIZE THE LOAN/GRANT AMOUNT SOLELY FOR THE PURPOSE OF FINANCING THE COSTS OF CONSTRUCTION OF A WATERLINE EXTENSION TO JACQUEZ ROAD, AND SOLELY IN THE MANNER DESCRIBED IN THE LOAN/GRANT AGREEMENT; PROVIDING FOR THE PLEDGE AND PAYMENT OF THE LOAN AMOUNT OF \$8,848 SOLELY FROM NET SYSTEM REVENUES AND ACCEPTANCE OF A GRANT AMOUNT OF \$79,632; CERTIFYING THAT THE LOAN/GRANT AMOUNT, TOGETHER WITH OTHER FUNDS AVAILABLE TO THE BORROWER/GRANTEE, IS SUFFICIENT TO COMPLETE THE PROJECT; APPROVING THE FORM OF AND OTHER DETAILS CONCERNING THE LOAN/GRANT AGREEMENT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS RESOLUTION; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LOAN/GRANT AGREEMENT.

Capitalized terms used in the following preambles have the same meaning as defined in this Resolution unless the context requires otherwise.

WHEREAS, the CIB is a public body duly organized and created under and pursuant to the laws of the State of New Mexico (the “State”), particularly the Colonia’s Infrastructure Act, NMSA 1978, §§ 6-30-1 through 6-30-8, as amended, (the “Colonia’s Infrastructure Act” or the “Act”); and

WHEREAS, the Finance Authority is a public body politic and corporate, separate and apart from the State, constituting a governmental instrumentality, duly organized and created under and pursuant to the laws of the State, particularly NMSA 1978, §§ 6-21-1, through 6-21-31, as amended, (the “Finance Authority Act”); and

WHEREAS, the Borrower/Grantee is a Political Subdivision of the State, being a legally and regularly created, established, organized and existing public water works authority under the

general laws of the State and more specifically, NMSA 1978, § 73-26-1, as amended; and

WHEREAS, the Act creates the Colonia's Infrastructure Project Fund (the "Fund") in the Finance Authority, to be administered by the Finance Authority to originate grants or loans to Qualified Entities for Qualified Projects recommended by the CIB; and

WHEREAS, there exists within the boundaries of the Borrower/Grantee, Brazito, Mesquite, Del Cerro, La Mesa, High Valley Subdivision, Vado, Berino, Montana Vista, Joy Drive Subdivision, Las Palmeras, Organ, Mountain View, Butterfield Park, Cattleland, and a portion of Anthony (the "Colonia's"), communities that have been designated as a Colonia within the meaning of the Act; and

WHEREAS, the Borrower/Grantee will be receiving the Loan/Grant for the benefit of the Colonia's and the constituent public they serve; and

WHEREAS, the Borrower/Grantee submitted an application dated December 12, 2018, for the Project; and

WHEREAS, the CIB has determined that the Project is a qualifying Project and that the Borrower/Grantee is a Qualified Entity under the Board Rules; and

WHEREAS, the CIB on April 30, 2019, recommended to the Finance Authority that the Borrower/Grantee receive financial assistance from the Fund in the form of the Loan/Grant, for the benefit of the Colonia and the CIB has recommended that the Finance Authority enter into and administer this Agreement; and

WHEREAS, the Finance Authority approved the Loan/Grant Amount from the Fund to the Borrower/Grantee on May 23, 2019; and

WHEREAS, the Borrower/Grantee has determined that it is in the best interests of the Borrower/Grantee and the Colonia's that the Borrower/Grantee enter into an Agreement with the Lenders/Grantors to borrow \$8,848 from the Lenders/Grantors and to accept a grant in the amount of \$79,632 from the Lenders/Grantors to finance the costs of construction of a waterline extension to Jacquez Road, this project being more particularly described in the Term Sheet; and

WHEREAS, the Governing Body has determined and hereby determines that the Project may be financed with amounts granted and loaned pursuant to the Loan/Grant Agreement, that the Loan/Grant Amount, together with the Local Match and other moneys available to the Borrower/Grantee, is sufficient to complete the Project, and that it is in the best interest of the Borrower/Grantee and Colonia's and the public they serve that the Loan/Grant Agreement be executed and delivered and that the funding of the Project take place by executing and delivering the Loan/Grant Agreement; and

WHEREAS, the Governing Body has determined that it may lawfully enter into the Loan/Grant Agreement, accept the Loan/Grant Amount and be bound to the obligations and by the restrictions thereunder; and

WHEREAS, the Loan/Grant Agreement shall not constitute a general obligation of the Borrower/Grantee, the CIB or the Finance Authority or a debt or pledge of the full faith and credit of the Borrower/Grantee, the CIB, the Finance Authority or the State; and

WHEREAS, there have been presented to the Governing Body and there presently are on file with the Secretary this Resolution and the form of the Loan/Grant Agreement which is incorporated by reference and considered to be a part hereof; and

WHEREAS, the Governing Body hereby determines that the Local Match is now available to the Borrower/Grantee to complete the Project; and

WHEREAS, all required authorizations, consents and approvals in connection with (i) the use of the Loan/Grant Amount for the purposes described, and according to the restrictions set forth, in the Loan/Grant Agreement; (ii) the availability of other moneys necessary and sufficient, together with the Loan/Grant Amount, to complete the Project; and (iii) the authorization, execution and delivery of the Loan/Grant Agreement which are required to have been obtained by the date of this Resolution, have been obtained or are reasonably expected to be obtained.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF LOWER RIO GRANDE PUBLIC WATER WORKS AUTHORITY, DOÑA ANA COUNTY, NEW MEXICO:

Section 1. Definitions. Capitalized terms defined in the foregoing recitals shall have the same meaning when used in this Agreement unless the context clearly requires otherwise. Capitalized terms not defined in the recitals and defined in this Article I shall have the same meaning when used in this Agreement including the foregoing recitals, unless the context clearly requires otherwise. Capitalized terms not defined herein shall have the meaning given them by the Loan/Grant Agreement.

“Agreement” or “Loan/Grant Agreement” means the Loan/Grant Agreement and any amendments or supplements thereto, including the Exhibits attached thereto.

“Authorized Officers” means, any one or more of the Chairman, the Finance Manager, the General Manager and Secretary thereof.

“Borrower/Grantee” means the Lower Rio Grande Public Water Works Authority in Doña Ana, New Mexico.

“CIB” means the Colonia’s Infrastructure Board created by the Act.

“Closing Date” means the date of execution of the Loan/Grant Agreement by the Borrower/Grantee, the CIB and the Finance Authority.

“Colonia” or “Colonia’s” means a Colonia as defined in the Act, and more particularly in

NMSA 1978, § 6-30-3(C), as amended, and particularly Brazito, Mesquite, Del Cerro, La Mesa, Vado, High Valley Subdivision, Berino, Montana Vista, Joy Drive Subdivision, Las Palmeras, Organ, Mountain View, Butterfield Park, Cattleland, and a portion of Anthony.

“Colonia’s Infrastructure Project Fund” or “Fund” means the fund of the same name created pursuant to the Act and held and administered by the Finance Authority.

“Conditions” has the meaning given to that term in the Loan/Grant Agreement.

“Completion Date” means the date of final payment of the cost of the Project.

“Eligible Fiscal Agent Fees” means fees and costs incurred by a fiscal agent for the administration of Project funds, including the collection and reporting of Project information as required by the Agreement, in an amount not exceeding five percent (5%) of the Loan/Grant Amount. “Eligible Items” has the meaning given to that term in the Loan/Grant Agreement.

“Eligible Items” means eligible Project costs for which loans/grants may be made pursuant to Title 2, Chapter 91, Part 2 NMAC, the Board Rules and applicable Policies, and includes costs of acquiring and constructing the Project, and, without limitation, Eligible Legal Costs and Eligible Fiscal Agent Fees.

“Eligible Legal Costs” means legal fees and costs for services rendered by legal counsel on behalf of the Borrower/Grantee for transaction of the Project and those directly associated with the qualified project, in an amount not exceeding ten percent (10%) of the Loan/Grant Amount, but does not include adjudication services.

“Finance Authority” means the New Mexico Finance Authority.

“Fiscal Year” means the period commencing on July 1 of each calendar year and ending on the last day of June of the next succeeding calendar year, or any other twelve-month period which any appropriate authority may hereafter establish for the Borrower/Grantee as its fiscal year.

“Generally Accepted Accounting Principles” means the officially established accounting principles applicable to the Borrower/Grantee consisting of the statements, determinations and other official pronouncements of the Government Accounting Standards Board, Financial Accounting Standards Board, Federal Accounting Standards Board or other principle-setting body acceptable to the Finance Authority establishing accounting principles applicable to the Borrower/Grantee.

“Governing Body” means the Board of Directors of the Borrower/Grantee, or any future successor governing body of the Borrower/Grantee.

“Grant” or “Grant Amount” means the amount provided to the Borrower/Grantee as a grant pursuant to the Loan/Grant Agreement for the purpose of funding the Project, and shall equal 90% of the Amount disbursed not to exceed \$79,632.

“Gross Revenues” has the meaning given to that term in the Loan/Grant Agreement.

“Herein,” “hereby,” “hereunder,” “hereof,” “hereinabove” and “hereafter” refer to this entire Resolution and not solely to the particular section or paragraph of this Resolution in which such word is used.

“Lenders/Grantors” means the CIB and the Finance Authority.

“Loan” or “Loan Amount” means 10% of the amount disbursed to the Borrower/Grantee as a loan pursuant to the Loan/Grant Agreement for the purpose of funding the Project, and shall not equal more than \$8,848.

“Loan/Grant” or “Loan/Grant Amount” means the amount provided to the Borrower/Grantee as the Grant Amount and borrowed by the Borrower/Grantee as the Loan Amount pursuant to the Loan/Grant Agreement for the purpose of funding the Project. The value of the Loan/Grant shall not equal more than \$88,480.

“Local Match” means the amount determined pursuant to the Policies to be provided by the Borrower/Grantee which includes the total value of the soft or hard match (each as defined in the Policies) which, in combination with the Loan/Grant Amount and other monies available to the Borrower/Grantee, is sufficient to complete the Project. The Local Match is \$16,460.

“Net System Revenues” means the Gross Revenues of the System minus Operation and Maintenance Expenses, indirect charges, amounts expended for capital replacements and repairs, required set asides for debt and replacement requirements, and any other payments from the gross revenues reasonably required for operation of the System.

“NMAC” means the New Mexico Administrative Code.

“NMSA 1978” means the New Mexico Statutes Annotated, 1978 Compilation, as amended and supplemented from time to time.

“Operation and Maintenance Expenses” has the meaning given to that term in the Loan/Grant Agreement.

“Pledged Revenues” means the Net System Revenues of the Borrower/Grantee pledged to the payment of the Loan Amount pursuant to this Resolution and the Loan/Grant Agreement and described in the Term Sheet.

“Policies” means the Colonia’s Infrastructure Project Fund Project Selection and Management Policies, approved by the CIB.

“Political Subdivision of the State” means a municipality, a county, water and sanitation district, an association organized and existing pursuant to the Sanitary Projects Act, NMSA 1978, § 3-29-1 through § 3-29-21, as amended, or any other entity recognized by statute as a

political subdivision of the State.

“Project” means the project described in the Term Sheet.

“Project Account” means the book account, if any, established by the Finance Authority in the name of the Borrower/Grantee for purposes of tracking expenditure of the Loan/Grant Amount by the Borrower/Grantee to pay for the costs of the Project, as shown in the Term Sheet, which account shall be kept separate and apart from all other accounts of the Finance Authority.

“Qualified Entity” means a county, municipality, or other entity recognized as a Political Subdivision of the State pursuant to NMSA 1978, § 6-30-3(F), as amended.

“Qualified Project” means a capital outlay project recommended by the CIB to the Finance Authority for financial assistance that is primarily intended to develop Colonia’s infrastructure. A Qualified Project may include a water system, a wastewater system, solid waste disposal facilities, flood and drainage control, roads or housing infrastructure pursuant to NMSA 1978, § 6-30-3(G), as amended, but does not include general operation and maintenance, equipment, housing allowance payments or mortgage subsidies.

“Resolution” means this Resolution as it may be supplemented or amended from time to time.

“Rules” means Review and Selection of Colonia’s Infrastructure Projects, New Mexico Colonia’s Infrastructure Board, Sections 2.91.2.1 through 2.91.2.18 NMAC.

“State” means the State of New Mexico.

“System” means the water utility system of the Borrower/Grantee, owned and operated by the Borrower/Grantee, and of which the Project, when completed, will form part.

“Term Sheet” means Exhibit “A” attached to the Loan/Grant Agreement.

“Useful Life” means the period during which the Project is expected to be usable for the purpose for which it was acquired, which is 12.177 years.

Section 2. Ratification. All action heretofore taken (not inconsistent with the provisions of this Resolution) by the Borrower/Grantee and officers of the Borrower/Grantee directed toward the acquisition and completion of the Project, the pledge of the Pledged Revenues to payment of amounts due under the Loan/Grant Agreement, and the execution and delivery of the Loan/Grant Agreement shall be, and the same hereby is, ratified, approved and confirmed.

Section 3. Authorization of the Project and the Loan/Grant Agreement. The acquisition and completion of the Project and the method of funding the Project through execution and delivery of the Loan/Grant Agreement and the other documents related to the transaction are hereby authorized and ordered. The Project is for the benefit and use of the

Borrower/Grantee and the Colonia's and the public they serve.

Section 4. Findings. The Governing Body hereby declares that it has considered all relevant information and data and hereby makes the following findings:

A. The Project is needed to meet the needs of the Borrower/Grantee and the Colonia's and the constituent public they serve.

B. Moneys available and on hand for the Project from all sources other than the Loan/Grant are not sufficient to defray the cost of acquiring and completing the Project but, together with the Loan/Grant Amount, are sufficient to complete the Project.

C. The Project and the execution and delivery of the Loan/Grant Agreement pursuant to the Act to provide funds for the financing of the Project are necessary, convenient and in furtherance of the governmental purposes of the Borrower/Grantee, and in the interest of the public health, safety, and welfare of the constituent public served by the Borrower/Grantee.

D. The Borrower/Grantee will acquire and complete the Project with the proceeds of the Loan/Grant, the Local Match and other amounts available to the Borrower/Grantee, and except as otherwise expressly provided by the Loan/Grant Agreement, will utilize, operate and maintain the Project for the duration of its Useful Life.

E. Together with the Loan/Grant Amount, and other amounts available to the Borrower/Grantee, the Local Match is now available to the Borrower/Grantee, and in combination with the Loan/Grant Amount, will be sufficient to complete the Project.

F. The Lenders/Grantors shall maintain on behalf of the Borrower/Grantee a separate Project Account as a book account only on behalf of the Borrower/Grantee and financial records in accordance with Generally Accepted Accounting Principles during the construction or implementation of the Project.

G. The Borrower/Grantee has title to or easements or rights of way on the real property upon which the Project is being constructed or located.

Section 5. Loan/Grant Agreement—Authorization and Detail.

A. Authorization. This Resolution has been adopted by the affirmative vote of at least a majority of the Governing Body. For the purpose of protecting the public health, conserving the property, and protecting the general welfare and prosperity of the public served by the Borrower/Grantee and acquiring and completing the Project, it is hereby declared necessary that the Borrower/Grantee execute and deliver the Loan/Grant Agreement evidencing the Borrower/Grantee's acceptance of the Grant Amount of \$79,632 and borrowing the Loan Amount of \$8,848 to be utilized solely for Eligible Items necessary to complete the Project, and solely in the manner and according to the restrictions set forth in the Loan/Grant Agreement, the execution and delivery of which is hereby authorized. The Borrower/Grantee shall use the Loan/Grant Amount to finance the acquisition and completion of the Project.

B. Detail. The Loan/Grant Agreement shall be in substantially the form of the Loan/Grant Agreement presented at the meeting of the Governing Body at which this Resolution was adopted. The Grant shall be in the amount of \$79,632 and the Loan shall be in the amount of \$8,848. Interest on the Loan Amount shall be zero percent (0%) per annum of the unpaid principal balance of the Loan Amount.

Section 6. Approval of Loan/Grant Agreement. The form of the Loan/Grant Agreement as presented at the meeting of the Governing Body, at which this Resolution was adopted, is hereby approved. Authorized Officers are hereby individually authorized to execute, acknowledge and deliver the Loan/Grant Agreement with such changes, insertions and omissions as may be approved by such individual Authorized Officers, and the Secretary is hereby authorized to attest the Loan/Grant Agreement. The execution of the Loan/Grant Agreement shall be conclusive evidence of such approval.

Section 7. Security. The Loan Amount shall be solely secured by the pledge of the Pledged Revenues herein made and as set forth in the Loan/Grant Agreement.

Section 8. Disposition of Proceeds: Completion of the Project.

A. Project Account. The Borrower/Grantee hereby consents to creation of the Project Account by the Finance Authority and further approves of the deposit or crediting of a portion of the Loan/Grant Amount to pay expenses. Until the Completion Date, the amount of the Loan/Grant credited to the Project Account shall be used and paid out solely for Eligible Items necessary to acquire and complete the Project in compliance with applicable law and the provisions of the Loan/Grant Agreement.

B. Completion of the Project. The Borrower/Grantee shall proceed to complete the Project with all due diligence. Upon the Completion Date, the Borrower/Grantee shall execute a certificate stating that completion of and payment for the Project has been completed. Following the Completion Date or the earlier expiration of the time allowed for disbursement of Loan/Grant funds as provided in the Loan/Grant Agreement, any balance remaining in the Project Account shall be transferred and deposited into the Colonia's Infrastructure Project Fund or otherwise distributed as provided in the Loan/Grant Agreement.

C. CIB and Finance Authority Not Responsible. Borrower/Grantee shall apply the funds derived from the Loan/Grant Agreement as provided therein, and in particular Article V of the Loan/Grant Agreement. Neither the CIB nor the Finance Authority shall in any manner be responsible for the application or disposal by the Borrower/Grantee or by its officers of the funds derived from the Loan/Grant Agreement or of any other funds held by or made available to the Borrower/Grantee in connection with the Project. Lenders/Grantors shall not be liable for the refusal or failure of any other agency of the State to transfer any portion of the Loan/Grant Amount in its possession, custody and control to the Finance Authority for disbursement to the Borrower/Grantee, or to honor any request for such transfer or disbursement of the Loan/Grant Amount.

Section 9. Payment of Loan Amount. Pursuant to the Loan/Grant Agreement, the Borrower/Grantee shall pay the Loan Amount directly from the Pledged Revenues to the Finance Authority as provided in the Loan/Grant Agreement in an amount sufficient to pay principal and other amounts due under the Loan/Grant Agreement and to cure any deficiencies in the payment of the Loan Amount or other amounts due under the Loan/Grant Agreement.

Section 10. Lien on Pledged Revenues. Pursuant to the Loan/Grant Agreement, the Loan/Grant Agreement constitutes an irrevocable lien (but not an exclusive lien) upon the Pledged Revenues to the extent of the Loan Amount, the priority of which is consistent with that shown on the Term Sheet.

Section 11. Authorized Officers. Authorized Officers are hereby individually authorized and directed to execute and deliver any and all papers, instruments, opinions, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this Resolution, the Loan/Grant Agreement and all other transactions contemplated hereby and thereby. Authorized Officers are hereby individually authorized to do all acts and things required of them by this Resolution and the Loan/Grant Agreement for the full, punctual and complete performance of all the terms, covenants and agreements contained in this Resolution and the Loan/Grant Agreement including but not limited to, the execution and delivery of closing documents in connection with the execution and delivery of the Loan/Grant Agreement.

Section 12. Amendment of Resolution. This Resolution after its adoption may be amended without receipt by the Borrower/Grantee of any additional consideration, but only with the prior written consent of the CIB and the Finance Authority.

Section 13. Resolution Irrepealable. After the Loan/Grant Agreement has been executed and delivered, this Resolution shall be and remain irrepealable until all obligations due under the Loan/Grant Agreement shall be fully discharged, as herein provided.

Section 14. Severability Clause. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

Section 15. Repealer Clause. All bylaws, orders, ordinances, resolutions, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof, heretofore repealed.

Section 16. Effective Date. Upon due adoption of this Resolution, it shall be recorded in the book of the Borrower/Grantee kept for that purpose, authenticated by the signatures of the Chairman and Secretary of the Borrower/Grantee, and this Resolution shall be in full force and effect thereafter, in accordance with law; provided, however, that if recording is not required for the effectiveness of this Resolution, this Resolution shall be effective upon adoption of this Resolution by the Governing Body.

Section 17. General Summary for Publication. Pursuant to the general laws of the State, the title and a general summary of the subject matter contained in this Resolution shall be published in substantially the following form:

[Remainder of page intentionally left blank.]

[Form of Notice of Adoption of Resolution for Publication]

LOWER RIO GRANDE PUBLIC WATER WORKS AUTHORITY
Notice of Adoption of Resolution

Notice is hereby given of the title and of a general summary of the subject matter contained in Resolution No. FY2020-07, duly adopted and approved by the Board of Directors of Lower Rio Grande Public Water Works Authority on August 21, 2019. A complete copy of the Resolution is available for public inspection during normal and regular business hours in the office of the Secretary, at 325 Holguin Road, Vado, New Mexico 88072.

The title of the Resolution is:

LOWER RIO GRANDE PUBLIC WATER WORKS AUTHORITY
RESOLUTION NO. FY2020-07

A RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF A COLONIAS INFRASTRUCTURE PROJECT FUND LOAN/GRANT AGREEMENT BY AND AMONG THE NEW MEXICO COLONIAS INFRASTRUCTURE BOARD (“CIB”) AND THE NEW MEXICO FINANCE AUTHORITY (“FINANCE AUTHORITY,” AND COLLECTIVELY WITH THE CIB, THE “LENDERS/GRANTORS”) AND THE LOWER RIO GRANDE PUBLIC WATER WORKS AUTHORITY (THE “BORROWER/GRANTEE”), FOR THE BENEFIT OF BRAZITO, MESQUITE, DEL CERRO, LA MESA, HIGH VALLEY SUBDIVISION, VADO, BERINO, MONTANA VISTA, JOY DRIVE SUBDIVISION, LAS PALMERAS, ORGAN, MOUNTAIN VIEW, BUTTERFIELD PARK, CATTLELAND AND A PORTION OF ANTHONY, IN THE TOTAL AMOUNT OF \$88,480, EVIDENCING AN OBLIGATION OF THE BORROWER/GRANTEE TO UTILIZE THE LOAN/GRANT AMOUNT SOLELY FOR THE PURPOSE OF FINANCING THE COSTS OF CONSTRUCTION OF A WATERLINE EXTENSION TO JACQUEZ ROAD, AND SOLELY IN THE MANNER DESCRIBED IN THE LOAN/GRANT AGREEMENT; PROVIDING FOR THE PLEDGE AND PAYMENT OF THE LOAN AMOUNT OF \$8,848 SOLELY FROM NET SYSTEM REVENUES AND ACCEPTANCE OF A GRANT AMOUNT OF \$79,632; CERTIFYING THAT THE LOAN/GRANT AMOUNT, TOGETHER WITH OTHER FUNDS AVAILABLE TO THE BORROWER/GRANTEE, IS SUFFICIENT TO COMPLETE THE PROJECT; APPROVING THE FORM OF AND OTHER DETAILS CONCERNING THE LOAN/GRANT AGREEMENT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS RESOLUTION; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LOAN/GRANT AGREEMENT.

A general summary of the subject matter of the Resolution is contained in its title. This

notice constitutes compliance with NMSA 1978, § 6-14-6, as amended.

[End of Form of Notice of Adoption for Publication]

PASSED, APPROVED AND ADOPTED THIS 21ST DAY OF AUGUST, 2019.

LOWER RIO GRANDE PUBLIC WATER
WORKS AUTHORITY, DOÑA ANA COUNTY,
NEW MEXICO

By _____
Mike McMullen, Chairman

[SEAL]

ATTEST:

By _____
Esperanza Holguin, Secretary

[Remainder of page intentionally left blank.]

Governing Body Member _____ then moved adoption of the foregoing Resolution, duly seconded by Governing Body Member _____.

The motion to adopt the Resolution, upon being put to a vote, was passed and adopted on the following recorded vote:

Those Voting Aye:

Mike McMullen, Board Chair
Furman Smith, Vice-Chair
Espy Holquin, Secretary
Henry Magallanez, Director
Joe Evaro, Director

Those Voting Nay:

NONE

Those Absent:

Raymundo Sanchez, Director

_____ (___) Members of the Governing Body having voted in favor of the motion, the Chairman declared the motion carried and the Resolution adopted, whereupon the Chairman and Secretary signed the Resolution upon the records of the minutes of the Governing Body.

After consideration of matters not relating to the Resolution, the meeting upon motion duly made, seconded and carried, was adjourned.

LOWER RIO GRANDE PUBLIC WATER
WORKS AUTHORITY, DOÑA ANA COUNTY,
NEW MEXICO

By _____
Mike McMullen, Chairman

[SEAL]

ATTEST:

By _____
Esperanza Holguin, Secretary

[Remainder of page intentionally left blank.]

STATE OF NEW MEXICO)
) ss.
 COUNTY OF DOÑA ANA)

I, Esperanza Holguin, the duly qualified and acting Secretary of the Lower Rio Grande Public Water Works Authority (the “Borrower/Grantee”), do hereby certify:

1. The foregoing pages are a true, perfect, and complete copy of the record of the proceedings of the Board of Directors of the Borrower/Grantee (the “Governing Body”), had and taken at a duly called regular meeting held at 325 Holguin Road, Vado, New Mexico 88072, on August 21, 2019, at the hour of 9:30 a.m., insofar as the same relate to the adoption of Resolution No. FY2020-07 and the execution and delivery of the proposed Loan/Grant Agreement, a copy of which is set forth in the official records of the proceedings of the Governing Body kept in my office. None of the action taken has been rescinded, repealed, or modified.

2. The proceedings were duly had and taken as therein shown, the meeting therein was duly held, and the persons therein named were present at said meeting, as therein shown.

3. Notice of the meeting was given in compliance with the permitted methods of giving notice of meetings of the Governing Body as required by the State Open Meetings Act, NMSA 1978, § 10-15-1, as amended, including the Borrower/Grantee's open meetings Resolution No. FY2019-30, adopted and approved on May 15, 2019, in effect on the date of the meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 21st day of August, 2019.

LOWER RIO GRANDE PUBLIC WATER WORKS
 AUTHORITY, DOÑA ANA COUNTY, NEW MEXICO

By _____
 Esperanza Holguin, Secretary

EXHIBIT "A"

Notice of Meeting, Meeting Agenda

Lower Rio Grande Public Water Works Authority
Resolution Number FY2020-08
Adopting an Updated Source Water Protection Plan

Whereas, the Lower Rio Grande Public Water Works Authority strives to maintain a clean, high quality, resilient drinking water supply; and

Whereas, the Lower Rio Grande Public Water Works Authority has developed and updated a Source Water Protection Plan with assistance from New Mexico Environment Department Drinking Water Bureau and it's consultant, D.B. Stephens & Associates; and

WHEREAS, the Source Water Protection Plan promotes awareness of the community's drinking water sources, identifies a source water protection area, promotes actions to protect and enhance the drinking water supply and identifies the best management practices that could be implemented within the source water protection area to help reduce the potential risks of contamination the community's source water; and

WHEREAS, the Source Water Protection Plan was developed with the participation from stakeholders including local citizens and landowners, private businesses, water operators, local and State Governments, and agency representatives; and

WHEREAS, the Source Water Protection Plan encourages education and voluntary solutions to alleviate pollution risks;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE LOWER RIO GRANDE PUBLIC WATER WORKS AUTHORITY THAT

The Lower Rio Grande Public Water Works Authority adopts the Updated Source Water Protection Plan and will strive to implement the identified best management practices identified therein

Passed and adopted this 21st Day of August, 2019 at a regular meeting of the Board of Directors:

SEAL:

Mike McMullen, Board Chair

Attest:

Esperanza Holguin, Secretary

LRGPWWA Termination of Membership List for Board Approval

August 21, 2019

	Customer Account	Customer Name	Address	City & Zip Code	Current Balance	Lien Filed Write off
1	14-20005-00	Maria G Garcia	5360 Desert Park Ave.	Las Cruces, 88011	\$ 713.14	Write off
2	07-20009-01	Jorge Rojas	742 Harlacker Rd	La Mesa, 88048	\$ 743.53	Write off
3	09-08750-01	Juan J. Acosta	4824 Highway 478	Berino, 88024	\$ 687.89	3/05/19
4	14-05824-03	Michael Alfrey	5070 Button Willow Place	Las Cruces, 88011	\$ 5,795.34	Write Off

updated 8/15/19

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



Issued and Published Jointly by



This Agreement has been prepared for use with EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 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® E-001, Commentary on the EJCDC Engineering Services Agreements, 2013 Edition.

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

THIS IS AN AGREEMENT effective as of [] (“Effective Date”) between
[Lower Rio Grande Public Wastewater Works Authority] (“Owner”) and
[Bohannon Huston Inc.] (“Engineer”).

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:
South Valley Water Supply and Treatment Project
("Project").

Other terms used in this Agreement are defined in Article 7.

Engineer's services under this Agreement are generally identified as follows: Design Revisions, Bidding and Construction phase services for the South Valley Water Supply and Treatment Project :

- Plans and specifications that were completed in 2017 will be reviewed for completeness and updated as required. Such review will include verifying equipment is still accurately specified and updating equipment costs.
- Revisions to the architectural and structural plans and specifications will new building codes adopted by the State of New Mexico in November 2018
- Revise the plans and specifications to reflect changes to the backwash system:
 - The backwash recycle pumps and piping will be deleted from the design.
 - Backwash water will be collected in the 30,000-gallon backwash holding tank from the original design and water will be decanted by gravity into the existing stormwater detention pond on site.
 - Solids will continue to be discharged into the sludge drying bed from the original design
 - Expand new site stormwater pond to allow additional backwash volume to be incorporated
- Plans and specifications will be submitted to NMED-DWB for approval
- The Final Engineer’s Opinion of Probable Construction Cost will be updated
- Bid Administration Services
- Construction Administration Services
- Construction Observation Services

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 Article 4 and Exhibit C.
- C. Owner shall be responsible for all requirements and instructions that it furnishes to Engineer pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items.
- D. Owner shall give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of:
 - 1. any development that affects the scope or time of performance of Engineer’s services;
 - 2. the presence at the Site of any Constituent of Concern; or
 - 3. any relevant, material defect or nonconformance in: (a) Engineer’s services, (b) the Work, (c) the performance of any Constructor, or (d) Owner’s performance of its responsibilities 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, 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 or Engineer's services, 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. **Invoices must include a breakdown of services provided.** 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 disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion subject to the terms of Paragraph 4.01.
- D. *Sales or Use Taxes:* If after the Effective Date any governmental entity takes a legislative action that imposes additional sales or use taxes on Engineer's services or compensation under this Agreement, then Engineer may invoice such additional sales or use taxes for reimbursement by Owner. Owner shall reimburse Engineer for the cost of such invoiced additional sales or use taxes; 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 (if any) of probable Construction Cost are to be made on the basis of Engineer's experience, qualifications, and general familiarity 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, then Owner agrees to obtain an independent cost estimate. **Opinions of Probable Cost and any revisions thereof should reflect compliance with American Iron & Steel requirements mandated by Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A - Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference.**

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 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 tabulating the various categories that comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.
- B. **Opinions of Total Project Costs and any revisions thereof should reflect compliance with American Iron & Steel requirements mandated by Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A - Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference.**

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 any services performed or furnished by Engineer.
- 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 retain 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. Engineer shall comply with any and all policies, procedures, and instructions of Owner that are applicable to Engineer's performance of services under this Agreement and that Owner provides to Engineer in writing, 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. The following may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation:
 - a. changes after the Effective Date to Laws and Regulations;
 - b. the receipt by Engineer after the Effective Date of Owner-provided written policies and procedures;
 - c. changes after the Effective Date to Owner-provided written policies or procedures.
- F. Engineer shall not be required to sign any document, 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 document.
- G. The general conditions for any construction contract documents prepared hereunder are to be EJCDC® C-700 "Standard General Conditions of the Construction Contract" (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, unless expressly indicated otherwise in Exhibit J or elsewhere in this Agreement.
- H. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's 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 Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws and

Regulations applicable to that Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.

- I. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's, failure to furnish and perform the Work in accordance with the Construction Contract Documents.
- J. Engineer shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Engineer or its Consultants.
- K. Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- L. Engineer's services do not include providing legal advice or representation.
- M. Engineer's services do not include (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.
- N. While at the Site, Engineer, its Consultants, and their employees and representatives shall comply with the 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 Construction Contract Documents, review and response to Contractor claims, Construction Contract administration, processing of Change Orders and submittals, revisions to the Construction Contract Documents during construction, construction observation and review, review of Contractor's payment applications, and all other necessary Construction Phase administrative, engineering, and professional services. Owner waives all claims against the Engineer that may be connected in any way to Construction Phase administrative, engineering, or professional services except for those services that are expressly required of Engineer in Exhibit A.

6.03 *Use of Documents*

- A. All Documents are instruments of service, 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.

- B. If Engineer is required to prepare or furnish Drawings or Specifications under this Agreement, Engineer shall deliver to Owner at least one original printed record version of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations.
- C. Owner may make and retain copies of Documents for information and reference in connection with the use of the Documents on the Project. 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 due and owing 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.
- D. 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 *Electronic Transmittals*

- A. Owner and Engineer may transmit, and shall accept, Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.
- B. If this Agreement does not establish protocols for electronic or digital transmittals, then Owner and Engineer shall **may** jointly develop such protocols.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

6.05 *Insurance*

- A. Engineer shall procure and maintain insurance as set forth in Exhibit G. Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.

- B. Owner shall **may** procure and maintain insurance as set forth in Exhibit G. Owner shall **may** cause Engineer and its Consultants to be listed as additional insureds on any general liability 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, 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 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, including but not limited to any builder's risk policy, shall allow for waiver of subrogation rights and contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insured thereunder or against Engineer or its Consultants. Owner and Engineer waive all rights against each other, Contractor, the Consultants, and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by any builder's risk policy and any other property insurance relating to the Project. Owner and Engineer shall take appropriate measures in other Project-related contracts to secure waivers of rights consistent with those set forth in this paragraph.
- 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 10 days prior written notice has been given to the primary insured. Upon receipt of such notice, the receiving party shall promptly forward a copy of the notice to the other party to this Agreement.
- 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.

6.06 *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 Owner has failed to pay Engineer for invoiced services and expenses, as set forth in Paragraph 4.02.B, or in response to the presence of Constituents of Concern at the Site, as set forth in Paragraph 6.10.D.
- 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, or as the result of the presence at the Site of undisclosed Constituents of Concern, as set forth in Paragraph 6.10.D.
 - 3) Engineer shall have no liability to Owner on account of such termination.
 - c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.06.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, by Owner effective upon Engineer's receipt of notice from Owner.
- C. *Effective Date of Termination:* The terminating party under Paragraph 6.06.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 6.06, 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.

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 6.06.D.1, to invoice Owner and receive 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.

6.07 *Controlling Law*

- A. This Agreement is to be governed by the Laws and Regulations of the state in which the Project is located.

6.08 *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 6.08.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, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated 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 Constructor, other third-party 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 6.08.C shall appear in the Construction Contract Documents.

6.09 *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 at law.

- B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.09.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 at law.

6.10 *Environmental Condition of Site*

- A. Owner represents to Engineer that as of the Effective Date to the best of Owner's knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at or adjacent to the Site.
- B. 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.
- C. It is acknowledged by both parties that Engineer's scope of services does not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an undisclosed Constituent of Concern, then Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take any necessary corrective action.
- D. If investigative or remedial action, or other professional services, are necessary with respect to undisclosed Constituents of Concern, or if investigative or remedial action beyond that reasonably contemplated is needed to address a disclosed or known Constituent 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 such portion of the Project is no longer affected.
- 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 seven 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.

6.11 *Indemnification and Mutual Waiver*

- A. *Indemnification by Engineer:* To the fullest extent permitted by Laws and Regulations, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees, from losses, damages, and judgments (including reasonable consultants' and attorneys' fees and expenses) arising from third-party claims or actions relating to the Project, provided that any such claim, action, loss, damages, or judgment 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 Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, costs, losses, damages, actions, and judgments (including reasonable consultants' and attorneys fees and expenses) 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, damages, action, or judgment 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. *No Defense Obligation:* The indemnification commitments in this Agreement do not include a defense obligation by the indemnitor unless such obligation is expressly stated.
- E. *Percentage Share of Negligence:* To the fullest extent permitted by Laws and Regulations, 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.
- F. *Mutual Waiver:* To the fullest extent permitted by Laws and Regulations, 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 this Agreement or the Project, from any cause or causes.

6.12 *Records Retention*

- A. Engineer shall maintain on file in legible form, for a period of five years following completion or termination of its services, all Documents, records (including cost records), and design calculations related to Engineer's services or pertinent to Engineer's performance under this Agreement. Upon Owner's request, Engineer shall provide a copy of any such item to Owner at cost.

6.13 *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 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 Laws and Regulations, 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 definitions:
 - 1. *Addenda*—Written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding requirements or the proposed Construction Contract Documents.
 - 2. *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.
 - 3. *Agreement*—This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
 - 4. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Construction Contract.
 - 5. *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.
 - 6. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract

Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract.

7. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an adjustment in Construction Contract Price or Construction Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Construction Contract.
8. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that 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. §§5501 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 Wastewater Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (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.
9. *Construction Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
10. *Construction Contract Documents*—Those items designated as “Contract Documents” in the Construction Contract, and which together comprise the Construction Contract.
11. *Construction Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.
12. *Construction Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion; and (c) complete the Work.
13. *Construction Cost*—The cost to Owner of the construction of those portions of the entire Project designed or specified by or for Engineer under this Agreement, including construction labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. 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 property; 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. Construction Cost is one of the items comprising Total Project Costs.
14. *Constructor*—Any person or entity (not including the Engineer, its employees, agents, representatives, and Consultants), performing or supporting construction activities relating to the Project, including but not limited to Contractors, Subcontractors,

Suppliers, Owner's work forces, utility companies, other contractors, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.

15. *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.
16. *Contractor*—The entity or individual with which Owner enters into a Construction Contract.
17. *Documents*—Data, reports, Drawings, Specifications, Record Drawings, building information models, civil integrated management models, and other deliverables, whether in printed or electronic format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
18. *Drawings*—That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. *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.
20. *Engineer*—The individual or entity named as such in this Agreement.
21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Construction Contract Price or the Construction Contract Times.
22. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
23. *Owner*—The individual or entity named as such in this Agreement and for which 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.
24. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the services to be performed or furnished by Engineer under this Agreement are a part.
25. *Record Drawings*—Drawings depicting the completed Project, or a specific portion of the completed Project, prepared by Engineer ~~as an Additional Service~~ and based 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.

26. *Reimbursable Expenses*—The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic Services and Additional Services for the Project.
27. *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. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.
28. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
29. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.
30. *Site*—Lands or areas to be indicated in the Construction Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
31. *Specifications*—The part of the Construction Contract Documents that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
32. *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.
33. *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 Construction 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.
34. *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 a Subcontractor.
35. *Total Project Costs*—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Project, including Construction Cost and all other Project labor, services, materials, equipment, insurance, and bonding costs, 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.

36. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Construction Contract Documents.
37. *Work Change Directive*—A written directive to Contractor issued on or after the effective date of the Construction Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.
38. **Agency**— **The Rural Utilities Service or any designated representative of Rural Utilities Services, including USDA, Rural Development.**

B. *Day*:

1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

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, Duties, Responsibilities and Limitations of Authority of Resident Project Representative.
- E. Exhibit E, Notice of Acceptability of Work.
- F. Exhibit F, Construction Cost Limit.
- G. Exhibit G, Insurance.
- H. Exhibit H, Dispute Resolution.
- I. Exhibit I, Limitations of Liability.
- J. Exhibit J, Special Provisions.
- K. Exhibit K, Amendment to Owner-Engineer Agreement.

8.02 *Total Agreement*

- A. This Agreement, (together with the exhibits included 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 written instrument duly executed by both parties. Amendments should be based whenever possible 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 this Agreement 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.

8.05 *Federal Requirements*

- A. **Agency Concurrence. Signature of a duly authorized representative of the Agency in the space provided on the signature page of EJCDC form E-500 hereof does not constitute a commitment to provide financial assistance or payments hereunder but does signify that this Agreement conforms to Agency's applicable requirements. This Agreement shall not be effective unless the Funding Agency's designated representative concurs. No amendment to this Agreement shall be effective unless the Funding Agency's designated representative concurs.**
- B. **Audit and Access to Records. Owner, Agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Engineer which are pertinent to the Agreement, for the purpose of making audits, examinations, excerpts, and transcriptions. Engineer shall maintain all required records for three years after final payment is made and all other pending matters are closed.**

- C. **Restrictions on Lobbying.** Engineer and each Consultant shall comply with “Byrd anti-lobbying amendment (31 U.S.C. 1352)” if they are recipients of engineering services contracts and subcontracts that exceed \$100,000 at any tier. If applicable, Engineer must complete a certification form on lobbying activities related to a specific Federal loan or grant that is a funding source for this Agreement. Each tier certifies to the tier above that it will not and has not used Federal 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, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other applicable award. Each tier shall disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Certifications and disclosures are forwarded from tier to tier up to the Owner. Necessary certification and disclosure forms shall be provided by Owner.
- D. **Suspension and Debarment.** Engineer certifies, by signing this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency. Engineer will not contract with any Consultant for this project if it or its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Necessary certification forms shall be provided by the Owner. The Engineer will complete and submit a form AD-1048, “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – lower tier transactions,” to the Owner who will forward it the USDA, Rural Development processing office.

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

Owner: Lower Rio Grande Public Wastewater Works Authority

Engineer: Bohannon Huston Inc.

By: _____

By:  _____

Print name: Mike McMullen

Print name: Matthew R. Thompson

Title: Board Chair

Title: Senior Vice President

Date Signed: August 21, 2019

Date Signed: 8-5-2019

Engineer License or Firm's Certificate No. (if required): 13868

State of: New Mexico

Address for Owner's receipt of notices:
PO Box 2646
Anthony NM 88021

Address for Engineer's receipt of notices:
425 S. Telshor Blvd., C-103
Las Cruces, NM 88011

Designated Representative (Paragraph 8.03.A):
Karen Nichols

Designated Representative (Paragraph 8.03.A):
Matthew Thompson

Title: Project Manager

Title: Senior Vice President

Phone Number: 575-233-5742 ext.1018

Phone Number: 575-532-8670

E-Mail Address: karen.nichols@lrgauthority.org

E-Mail Address: mthompson@bhinc.com

This is **EXHIBIT A**, consisting of [19] 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 and as further detailed in Appendix 1 to Exhibit A.

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, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations, and identify available data, information, reports, facilities plans, and site evaluations.
 - a. If Owner has already identified one or more potential solutions to meet its Project requirements, then proceed with the study and evaluation of such potential solutions: [Water system improvements has been identified previously in an existing engineering report.]
 - b. ~~If Owner has not identified specific potential solutions for study and evaluation, then assist Owner in determining whether Owner's requirements, and available data, reports, plans, and evaluations, point to a single potential solution for Engineer's study and evaluation, or are such that it will be necessary for Engineer to identify, study, and evaluate multiple potential solutions. In addition, Engineer must identify, study, and evaluate multiple potential alternative solutions potentially available to Owner, unless Owner and Engineer mutually agree with Agency concurrence that only one feasible solution exists. The number of alternative solutions should be appropriate to the specific project as concurred in by the Agency.~~
 - c. ~~If it is necessary for Engineer to identify, study, and evaluate multiple potential solutions, then identify [] *[insert specific number]* alternative solutions potentially available to Owner, unless Owner and Engineer mutually agree that some other specific number of alternatives should be identified, studied, and evaluated.~~
2. Identify potential solution(s) to meet Owner's Project requirements, as needed.
3. Study and evaluate the potential solution(s) to meet Owner's Project requirements.

Exhibit A – Engineer's Services

4. Visit the Site, or potential Project sites, to review existing conditions and facilities, unless such visits are not necessary or applicable to meeting the objectives of the Study and Report Phase.
5. Advise Owner of any need for Owner to obtain, furnish, or otherwise make available to Engineer additional Project-related data and information, for Engineer's use in the study and evaluation of potential solution(s) to Owner's Project requirements, and preparation of a related report.
6. After consultation with Owner, recommend to Owner the solution(s) which in Engineer's judgment meet Owner's requirements for the Project.
7. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project to be designed or specified by Engineer, including but not limited to mitigating measures identified in an environmental assessment for the Project.
8. 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 Engineer's recommended solution(s). 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 tabulation of other items and services included within the definition of Total Project Costs. **The Report mentioned in paragraph 1.01.A.8 of Exhibit A to the Agreement is the Preliminary Engineering Report as defined in RUS Bulletin 1780-2. This document must meet customary professional standards as required by 7 CFR 1780.55. The Report must be concurred in by the Agency.**
9. Advise Owner of any need for Owner to provide data or services of the types described in Exhibit B, for use in Project design, or in preparation for Contractor selection and construction.
10. When mutually agreed **and approved by the Agency**, assist Owner in evaluating the possible use of building information modeling; civil integrated management; geotechnical baselining of subsurface site conditions; innovative design, contracting, or procurement strategies; or other strategies, technologies, or techniques for assisting in the design, construction, and operation of Owner's facilities. The subject matter of this paragraph shall be referred to in Exhibit A and B as "Project Strategies, Technologies, and Techniques."
11. If requested to do so by Owner, assist Owner in identifying opportunities for enhancing the sustainability of the Project, and pursuant to Owner's instructions plan for the inclusion of sustainable features in the design.
12. Use ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data" as a means to advise the Owner on a recommended scope of work and procedure for the identification and mapping of existing utilities.

Exhibit A – Engineer's Services

EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services.

13. Develop a scope of work and survey limits for any topographic and other surveys necessary for design.
 14. Perform or provide the following other Study and Report Phase tasks or deliverables: **[Provide an Environmental Report as defined at 7 CFR 1970 or other Agency approved format. The Environmental Report must be concurred in by the Agency.]**
 15. Furnish review copies of the Report and any other Study and Report Phase deliverables to Owner within days of the Effective Date and review it with Owner. Within days of receipt, Owner shall submit to Engineer any comments regarding the furnished items.
 16. **Revise the Report and any other Study and Report Phase deliverables in response to Owner's and Agency's comments, as appropriate, and furnish three (3) written copies and one (1) electronic copy of the revised Report and any other Study and Report Phase deliverables to the Owner within [] days of receipt of Owner's and Agency's comments.**
- B.** Engineer's services under the Study and Report Phase will be considered complete on the date when Engineer has delivered to Owner the revised Report and any other Study and Report Phase deliverables.

A1.02 *Preliminary Design Phase*

- A.** After acceptance by Owner **and concurrence by Agency** of the Report and any other Study and Report Phase deliverables; selection by Owner of a recommended solution; issuance by Owner of any instructions of for use of Project Strategies, Technologies, and Techniques, or for inclusion of sustainable features in the design; and indication by Owner of any specific modifications or changes in the scope, extent, character, or design requirements of the Project desired by Owner, (1) Engineer and Owner shall discuss and resolve any necessary revisions to Engineer's compensation (through application of the provisions regarding Additional Services, or otherwise), or the time for completion of Engineer's services, resulting from the selected solution, related Project Strategies, Technologies, or Techniques, sustainable design instructions, or specific modifications to the Project, and (2) 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. In preparing the Preliminary Design Phase documents, use any specific applicable Project Strategies, Technologies, and Techniques authorized by Owner **and Agency** during or following the Study and Report Phase, and include sustainable features, as appropriate, pursuant to Owner's instructions.
 3. Provide necessary field surveys and topographic and utility mapping for Engineer's design purposes. Comply with the scope of work and procedure for the identification and mapping of existing utilities selected and authorized by Owner pursuant to advice from Engineer based on ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data," as set forth in Paragraph A1.01.A.12 above. If no such scope of work and procedure for utility mapping has been selected and authorized,

then at a minimum the utility mapping will include Engineer contacting utility owners and obtaining available information.

4. Visit the Site as needed to prepare the Preliminary Design Phase documents.
 5. 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.
 6. Continue to assist Owner with Project Strategies, Technologies, and Techniques that Owner has chosen to implement.
 7. Based on the information contained in the Preliminary Design Phase documents, prepare a revised opinion of probable Construction Cost, and assist Owner in tabulating the various cost categories which comprise Total Project Costs.
 8. Obtain and review Owner's instructions regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Also obtain and review copies of Owner's design and construction standards, Owner's standard forms, general conditions (if other than EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition), supplementary conditions, text, and related documents or content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and in the draft Construction Contract Documents, when applicable. **Engineer must also incorporate all Agency regulations, forms, and design and construction standards applicable to the project in development of the documents indicated in this Article.**
 9. Perform or provide the following other Preliminary Design Phase tasks or deliverables:
None
 10. Furnish (**) review copies of the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables to Owner within (**) days of authorization to proceed with this phase, and review them with Owner. Within (**) days of receipt, Owner shall submit to Engineer any comments regarding the furnished items.
 11. Revise the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase 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 (**) days after receipt of Owner's comments.
- B.** Engineer's services under the Preliminary Design Phase will be considered complete on the date when Engineer has delivered to Owner the revised Preliminary Design Phase documents,

revised opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables.

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 Preliminary Design Phase 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. Visit the Site as needed to assist in preparing the final Drawings and Specifications.
 3. 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; assist Owner in consultations with such authorities; and revise the Drawings and Specifications in response to directives from such authorities, as appropriate.
 4. Advise Owner of any recommended adjustments to the opinion of probable Construction Cost.
 5. After consultation with Owner, include in the Construction Contract Documents any specific protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website. Any such protocols shall be applicable to transmittals between and among Owner, Engineer, and Contractor during the Construction Phase and Post-Construction Phase, and unless agreed otherwise shall supersede any conflicting protocols previously established for transmittals between Owner and Engineer.
 6. Assist Owner in assembling known reports and drawings of Site conditions, and in identifying the technical data contained in such reports and drawings upon which bidders or other prospective contractors may rely.
 7. In addition to preparing the final Drawings and Specifications, assemble drafts of other Construction Contract Documents based on specific instructions and contract forms, text, or content received from Owner.
 8. Prepare or assemble draft bidding-related documents (or requests for proposals or other construction procurement documents), based on the specific bidding or procurement-related instructions and forms, text, or content received from Owner.
 9. Perform or provide the following other Final Design Phase tasks or deliverables:
The Engineer shall identify the building codes and accessibility standards used in the design and indicate them on the drawings and specifications and certify that the final drawings and specifications comply with those standards.

10. Furnish for review by Owner, its legal counsel **and Agency**, and other advisors, (one) copies of the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables, within (60) days of authorization to proceed with the Final Design Phase, and review them with Owner. Within (14) days of receipt, Owner shall submit to Engineer any comments regarding the furnished items, and any instructions for revisions.
 11. Revise the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables in accordance with comments and instructions from the Owner, as appropriate, and submit (one) final copies of such documents to Owner within (14) days after receipt of Owner's comments and instructions.
 12. **Provide the Owner and Agency with a written certification that the final Drawings and Specifications, other assembled Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables comply with all requirements of Agency. Use the Engineer's Certification of Final Plans and Specifications (Attachment J of the RUS Bulletin 1780-26) for this purpose.**
 13. **Services required to determine and certify that to the best of the Engineer's knowledge and belief all iron and steel products referenced in engineering analysis, the Plans, Specifications, Bidding Documents, and associated Bid Addenda requiring design revisions are either produced in the United States or are the subject of an approved waiver; and services required to determine to the best of the engineer's knowledge and belief that approved substitutes, equals, and all iron and steel products proposed in the shop drawings, Change Orders and Partial Payment Estimates are either produced in the United States or are the subject of an approved waiver under Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A - Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference. The term "iron and steel products" means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials. The deminimis and minor components waiver {add project specific waivers as applicable} apply to this contract.**
- B. Engineer's services under the Final Design Phase will be considered complete on the date when Engineer has delivered to Owner the final Drawings and Specifications, other assembled Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables **and all final design phase deliverables have been accepted by 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 **One** (1). 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. After acceptance by Owner of the final Drawings and Specifications, other Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and the most recent opinion of probable Construction Cost as determined in the Final Design Phase, and upon written authorization by Owner to proceed, Engineer shall:
1. Assist Owner in advertising for and obtaining bids or proposals for the Work, assist Owner in issuing assembled design, contract, and bidding-related documents (or requests for proposals or other construction procurement documents) to prospective contractors, and, where applicable, maintain a record of prospective contractors to which documents have been issued, attend pre-bid conferences, if any, and receive and process contractor deposits or charges for the issued documents.
 2. Prepare and issue Addenda as appropriate to clarify, correct, or change the issued documents. **Obtain Agency concurrence on any addenda that modify the bidding documents. Obtain prior concurrence where possible.**
 3. Provide information or assistance needed by Owner in the course of any review of proposals or negotiations with prospective contractors.
 4. Consult with Owner as to the qualifications of prospective contractors.
 5. Consult with Owner as to the qualifications of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors, for those portions of the Work as to which review of qualifications is required by the issued documents.
 6. ~~If the issued documents require, the Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by prospective contractors, provided that such proposals are allowed by the bidding-related documents (or requests for proposals or other construction procurement documents) prior to award of contracts for the Work. Services under this paragraph are subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A.~~ **The Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by prospective contractors prior to award of contracts for the Work. Engineer shall issue a bid addendum for any and all approved "or equals" and substitutes. Review of substitutes and "or equals" shall be in accordance with the**

General Conditions of the Construction Contract and applicable Agency regulations. Services under this paragraph are subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A.

7. Attend the bid opening, prepare bid tabulation sheets to meet Owner's schedule, and assist Owner in evaluating bids or proposals, assembling final contracts for the Work for execution by Owner and Contractor, and in issuing notices of award of such contracts.
 8. If Owner engages in negotiations with bidders or proposers, assist Owner with respect to technical and engineering issues that arise during the negotiations.
 9. Perform or provide the following other Bidding or Negotiating Phase tasks or deliverables: **Upon award of the Construction Contract, the Engineer shall furnish to Owner five executed copies of the Contract Documents and one electronic copy of the signed documents, including Drawings and Specifications.**
 10. **Provide copies of Manufacturers' Certification letters to the Bidders on any brand name iron and steel products along with the Plans, Specifications and Bidding Documents. Manufacturers' Certification Letters are to be included in the Bidding Documents and must be kept in the engineer's project file and on site during construction.**
 11. **Provide copies of Manufacturers' Certification letters to the Contractor on any brand name iron and steel products along with the Plans, Specifications, Bidding Documents including any Bid Addenda and Change Orders. Manufacturers' Certification Letters must be kept in the engineer's project file and on site during construction.**
- B.** The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective contractors (except as may be required if Exhibit F is a part of this Agreement).

A1.05 *Construction Phase*

- A.** Upon successful completion of the Bidding and Negotiating Phase, and upon written authorization from Owner, Engineer shall:
1. *General Administration of Construction Contract:* Consult with Owner and act as Owner's representative as provided in the Construction Contract. The extent and limitations of the duties, responsibilities, and authority of Engineer shall be as assigned in EJCDC® C-700, Standard General Conditions of the Construction Contract (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, or other construction general conditions specified in this Agreement. If Owner, or Owner and Contractor, modify the duties, responsibilities, and authority of Engineer in the Construction Contract, or modify other terms of the Construction Contract having a direct bearing on Engineer, then Owner shall compensate Engineer for any related increases in the cost to provide Construction Phase services. Engineer shall not be required to furnish or perform services contrary to Engineer's responsibilities as a licensed professional. All of Owner's instructions to Contractor will be issued through Engineer, which shall have authority to act on behalf of Owner in dealings with

Contractor to the extent provided in this Agreement and the Construction Contract except as otherwise provided in writing.

2. *Resident Project Representative (RPR)*: Provide the services of an RPR at the Site to assist the Engineer and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in Exhibit D. The furnishing of such RPR's services will not limit, extend, or modify Engineer's responsibilities or authority except as expressly set forth in Exhibit D.
3. *Selection of Independent Testing Laboratory*: Assist Owner in the selection of an independent testing laboratory to perform the services identified in Exhibit B, Paragraph B2.01.
4. *Pre-Construction Conference*: Participate in **and chair** a pre-construction conference prior to commencement of Work at the Site.
5. *Electronic Transmittal Protocols*: If the Construction Contract Documents do not specify protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, then together with Owner and Contractor jointly develop such protocols for transmittals between and among Owner, Contractor, and Engineer during the Construction Phase and Post-Construction Phase.
6. *Original Documents*: ~~If requested by Owner to do so,~~ maintain and safeguard during the Construction Phase at least one original printed record version of the Construction Contract Documents, including Drawings and Specifications signed and sealed by Engineer and other design professionals in accordance with applicable Laws and Regulations. Throughout the Construction Phase, make such original printed record version of the Construction Contract Documents available to Contractor and Owner for review.
7. *Schedules*: Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.
8. *Baselines and Benchmarks*: As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.
9. *Visits to Site and Observation of Construction*: In connection with observations of Contractor's Work while it is in progress:
 - a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, to observe as an experienced and qualified design professional the progress 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 the Work or to involve detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Construction Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of

Exhibit A – Engineer's Services

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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 Construction Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.

- b. The purpose of Engineer's visits to the Site, and representation by the Resident Project Representative, if any, at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Construction Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Construction Contract Documents. Engineer shall not, during such visits or as a result of such observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to any Constructor's work in progress, for the coordination of the Constructors' work or schedules, nor for any failure of any Constructor to comply with Laws and Regulations applicable to furnishing and performing of its work. Accordingly, Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish or perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents.
 - c. **The visits described in Article A1.05.A.9.a shall be at least monthly and the Engineer shall document all visits to the project with copies furnished to the Owner and Agency.**
10. *Defective Work:* Reject Work if, on the basis of Engineer's observations, Engineer believes that such Work is defective under the terms and standards set forth in the Construction Contract Documents. Provide recommendations to Owner regarding whether Contractor should correct such Work or remove and replace such Work, or whether Owner should consider accepting such Work as provided in the Construction Contract Documents.
 11. *Compatibility with Design Concept:* If Engineer has express knowledge that a specific part of the Work that is not defective under the terms and standards set forth in the Construction Contract Documents is nonetheless not compatible with the design concept of the completed Project as a functioning whole, then inform Owner of such incompatibility, and provide recommendations for addressing such Work.
 12. *Clarifications and Interpretations:* Accept from Contractor and Owner submittal of all matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. With reasonable promptness, render a written clarification, interpretation, or decision

on the issue submitted, or initiate an amendment or supplement to the Construction Contract Documents.

13. *Non-reviewable Matters:* If a submitted matter in question concerns the Engineer's performance of its duties and obligations, or terms and conditions of the Construction Contract Documents that do not involve (1) the performance or acceptability of the Work under the Construction Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer will not provide a decision or interpretation.
14. *Field Orders:* Subject to any limitations in the Construction Contract Documents, Engineer may prepare and issue Field Orders requiring minor changes in the Work.
15. *Change Orders and Work Change Directives:* Recommend Change Orders and Work Change Directives to Owner, as appropriate, and prepare Change Orders and Work Change Directives as required.
16. *Differing Site Conditions:* Respond to any notice from Contractor of differing site conditions, including conditions relating to underground facilities such as utilities, and hazardous environmental conditions. Promptly conduct reviews and prepare findings, conclusions, and recommendations for Owner's use.
17. *Shop Drawings, Samples, and Other Submittals:* **Review and approve or take other appropriate action with respect to Shop Drawings, Samples, and other required Contractor submittals to ensure compliance with American and Iron Steel requirements mandated by Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A - Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference. Any iron and steel products included in any submittal by the General Contractor, must include a Manufacturers' Certification letter to verify the products were produced in the United States. Copies of Manufacturers' Certification letters must be kept in the engineer's project file and on site during construction.** Review and approve or take other appropriate action with respect to Shop Drawings, Samples, and other required Contractor submittals, but only for conformance with the information given in the Construction Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Construction Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.
18. *Substitutes and "Or-equal":* Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, but subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A. **Review of substitutes and "or equals" shall be in accordance with the General Conditions of the Construction Contract and applicable Agency regulations. Prior to approval of any substitute "or equal" obtain a Manufacturers' Certification letter to verify the products were produced in the United States. Manufacturers' Certification letters must be kept in the engineer's project file and on site during construction to ensure compliance with**

American and Iron Steel requirements mandated by Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A - Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference, if applicable.

19. *Inspections and Tests:*

- a. Receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Construction Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Construction Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Construction Contract Documents. Engineer shall be entitled to rely on the results of such inspections and tests.
- b. As deemed reasonably necessary, request that Contractor uncover Work that is to be inspected, tested, or approved.
- c. Pursuant to the terms of the Construction Contract, require special inspections or testing of the Work, whether or not the Work is fabricated, installed, or completed.
- d. **Receive and review all Manufacturers' Certification Letters for materials required to comply with American and Iron Steel requirements mandated by Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A - Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference to verify the products were produced in the United States. Manufacturers' Certification letters must be kept in the engineer's project file and on site during construction.**

20. *Change Proposals and Claims:* (a) Review and respond to Change Proposals. Review each duly submitted Change Proposal from Contractor and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer will not resolve the Change Proposal. (b) Provide information or data to Owner regarding engineering or technical matters pertaining to Claims. (c) **Review Change Proposals to ensure compliance with American and Iron Steel requirements mandated by Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A - Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference.**

21. *Applications for Payment:* Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:

- a. Determine the amounts that Engineer recommends Contractor be paid. Recommend reductions in payment (set-offs) based on the provisions for set-offs stated in the Construction Contract. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the Work is generally in accordance with the Construction Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Construction Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work. In the case of unit price Work, Engineer's recommendations of payment will include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Construction Contract Documents).
 - b. By recommending payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control the Work, or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the money paid to Contractor by Owner; to determine that title to any portion of the Work, including materials or equipment, has passed to Owner free and clear of any liens, claims, security interests, or encumbrances; or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.
22. *Contractor's Completion Documents:* Receive from Contractor, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Construction Contract Documents, certificates of inspection, tests and approvals, and Shop Drawings, Samples, and other data approved as provided under Paragraph A1.05.A.17. ~~Receive from Contractor, review, and transmit to Owner the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The extent of Engineer's review of record documents shall be to check that Contractor has submitted all pages.~~ **Receive from Contractor and review the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The Engineer shall prepare Record Drawings, and furnish such Record Drawings to Owner.**

23. *Substantial Completion:* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, visit the Site to review the Work and determine the status of completion. Follow the procedures in the Construction Contract regarding the preliminary certificate of Substantial Completion, punch list of items to be completed, Owner's objections, notice to Contractor, and issuance of a final certificate of Substantial Completion. Assist Owner regarding any remaining engineering or technical matters affecting Owner's use or occupancy of the Work following Substantial Completion.
24. *Other Tasks:* Perform or provide the following other Construction Phase tasks or deliverables:
- a. **Upon Substantial Completion, the Engineer shall provide a copy of the Certificate of Substantial Completion to the Agency.**
25. *Final Notice of Acceptability of the Work:* Conduct a final visit to the Project to determine if the Work is complete and acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice to Owner and Contractor in the form attached hereto as Exhibit E ("Notice of Acceptability of Work") that the Work is acceptable (subject to the provisions of the Notice and Paragraph A1.05.A.21.b) to the best of Engineer's knowledge, information, and belief, and based on the extent of the services provided by Engineer under this Agreement.
- a. **Obtain the Contractors' Certification letter and copies of Manufacturers' Certification letters for all American Iron and Steel products used in the project. Upon Substantial Completion, provide copies of Engineer's, Contractors', and Manufacturers' Certification letters to the Owner and a copy of Contractor's Certification letter to the Agency. Provide a list of manufacturers of American Iron and Steel products used in the project and include manufacturer's name and location, and product(s) to the Agency.**
26. *Standards for Certain Construction-Phase Decisions:* Engineer will render decisions regarding the requirements of the Construction Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth in the Construction Contract for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.
- B. *Duration of Construction Phase:* The Construction Phase will commence with the execution of the first Construction Contract for the Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. If the Project involves more than one prime contract as indicated in Paragraph A1.03.D, then Construction Phase services may be rendered at different times in respect to the separate contracts. Subject to the provisions of Article 3, Engineer shall be entitled to an equitable increase in compensation if Construction Phase services (including Resident Project Representative services, if any) are required after the original date for completion and readiness for final payment of Contractor as set forth in the Construction Contract.

A1.06 *Post-Construction Phase*

- A.** Upon written authorization from Owner during the Post-Construction Phase, Engineer shall:
1. Together with Owner, visit the Project to observe any apparent defects in the Work, make recommendations as to replacement or correction of defective Work, if any, or the need to repair of any damage to the Site or adjacent areas, and assist Owner in consultations and discussions with Contractor concerning correction of any such defective Work and any needed repairs.
 2. Together with Owner, visit the Project within one month before the end of the Construction Contract's correction period to ascertain whether any portion of the Work or the repair of any damage to the Site or adjacent areas is defective and therefore subject to correction by Contractor.
 3. Perform or provide the following other Post-Construction Phase tasks or deliverables:
 - a. None
- B.** The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate twelve months after the commencement of the Construction Contract's correction period.

PART 2 – ADDITIONAL SERVICES

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

- A.** If authorized in writing by Owner, Engineer shall provide Additional Services of the types listed below. These services are not included as part of Basic Services and will be paid for by Owner as indicated in Exhibit C.
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 **not including preparation of the Environmental Report defined under Basic Services**; 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 existing conditions or facilities, to conduct tests or investigations of 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 the Project's 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 Construction 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 agreed to in Paragraph A1.01.A.1 and 2, **but only if the Owner's request is made after completion of the Study and Report Phase.**
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, including services in support of building information modeling or civil integrated management.
7. Undertaking investigations and studies including, but not limited to:
 - a. detailed consideration of operations, maintenance, and overhead expenses;
 - b. the preparation of feasibility studies (such as those that include projections of output capacity, utility project rates, project market demand, or project revenues) and cash flow analyses, provided that such services are based on the engineering and technical aspects of the Project, and do not include rendering advice regarding municipal financial products or the issuance of municipal securities;
 - c. preparation of appraisals;
 - d. evaluating processes available for licensing, and assisting Owner in obtaining process licensing;
 - e. detailed quantity surveys of materials, equipment, and labor; and
 - f. audits or inventories required in connection with construction performed or furnished by Owner.
8. Furnishing services of Consultants for other than Basic Services.
9. Providing data or services of the types described in Exhibit B, when Owner retains Engineer to provide such data or services instead of Owner furnishing the same.
10. Providing the following services:
 - a. Services attributable to more prime construction contracts than specified in Paragraph A1.03.D.
 - b. Services to arrange for performance of construction services for Owner by contractors other than the principal prime Contractor, and administering Owner's contract for such services.
11. Services during out-of-town travel required of Engineer, other than for visits to the Site or Owner's office as required in Basic Services (Part 1 of Exhibit A).

Exhibit A – Engineer's Services

EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services.

12. 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 constructability review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other documents as a result of such review processes.
13. Preparing additional bidding-related documents (or requests for proposals or other construction procurement documents) or Construction Contract Documents for alternate bids or cost estimates requested by Owner for the Work or a portion thereof.
14. Assistance in connection with bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required to complete services required by Paragraph 5.02.A and Exhibit F.
15. Preparing conformed Construction Contract Documents that incorporate and integrate the content of all Addenda and any amendments negotiated by Owner and Contractor.
16. Providing Construction Phase services beyond the original date for completion and readiness for final payment of Contractor, but only if such services increase the total quantity of services to be performed in the Construction Phase, rather than merely shifting performance of such services to a later date.
- ~~17. Preparing Record Drawings, and furnishing such Record Drawings to Owner. [Deleted]~~
18. Supplementing Record Drawings with information regarding the completed Project, Site, and immediately adjacent areas obtained from field observations, Owner, utility companies, and other reliable sources.
19. Conducting surveys, investigations, and field measurements to verify the accuracy of Record Drawing content obtained from Contractor, Owner, utility companies, and other sources; revise and supplement Record Drawings as needed.
20. Preparation of operation, maintenance, and staffing manuals.
21. Protracted or extensive assistance in refining and adjusting of Project equipment and systems (such as initial startup, testing, and balancing).
22. Assistance to Owner in training Owner's staff to operate and maintain Project equipment and systems.
23. Assistance to Owner in developing systems and procedures for (a) control of the operation and maintenance of Project equipment and systems, and (b) related recordkeeping.
24. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, lien or bond claim, or other legal or administrative proceeding involving the Project.
25. Overtime work requiring higher than regular rates.

Exhibit A – Engineer's Services

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26. Providing construction surveys and staking to enable Contractor to perform its work other than as required under Paragraph A1.05.A.8; any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.
27. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.
28. Extensive services required during any correction period, or with respect to monitoring Contractor's compliance with warranties and guarantees called for in the Construction Contract (except as agreed to under Basic Services).
29. Other additional 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 that Engineer is commencing 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 to cease 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.~~ **Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or equal" items; 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 arising from (a) the presence at the Site of any Constituent of Concern or items of historical or cultural significance, (b) emergencies or acts of God endangering the Work, (c) damage to the Work by fire or other causes during construction, (d) a significant amount of defective, neglected, or delayed Work, (e) acceleration of the progress schedule involving services beyond normal working hours, or (f) default by Contractor.
 5. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of the Work by Owner prior to Substantial Completion.

6. Evaluating unreasonable or frivolous requests for interpretation or information (RFIs), Change Proposals, or other demands from Contractor or others in connection with the Work, or an excessive number of RFIs, Change Proposals, or demands.
7. Reviewing a Shop Drawing or other Contractor submittal more than three times, as a result of repeated inadequate submissions by Contractor.
8. 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 [4] 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.
- B. Give instructions to Engineer regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Furnish copies (or give specific directions requesting Engineer to use copies already in Engineer's possession) of all design and construction standards, Owner's standard forms, general conditions (if other than EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition), supplementary conditions, text, and related documents and content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and draft Construction Contract Documents, when applicable. Owner shall have responsibility for the final content of (1) such bidding-related documents (or requests for proposals or other construction procurement documents), and (2) those portions of any Construction Contract other than the design (as set forth in the Drawings, Specifications, or otherwise), and other engineering or technical matters; and Owner shall seek the advice of Owner's legal counsel, risk managers, and insurance advisors with respect to the drafting and content of such documents.
- C. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, construction, or investigation at or adjacent to the Site.
- D. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, obtain, furnish, or otherwise make available (if necessary through title searches, or retention of specialists or consultants) 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.

Exhibit B – Owner's Responsibilities

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3. Utility and topographic mapping and surveys.
 4. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
 5. Explorations and tests of subsurface conditions at or adjacent to the Site; geotechnical reports and investigations; drawings of physical conditions relating to existing surface or subsurface structures at the Site; hydrographic surveys, laboratory tests and inspections of samples, materials, and equipment; with appropriate professional interpretation of such information or data.
 6. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental, historical, or cultural studies relevant to the Project, the Site, and adjacent areas.
 7. Data or consultations as required for the Project but not otherwise identified in this Agreement.
- E.** 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.
- F.** 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 (including, if applicable, "municipal advisor" services as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) and the municipal advisor registration rules issued by the Securities and Exchange Commission), 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 money paid.
- G.** Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Construction Contract Documents (other than those required to be furnished or arranged by Contractor), or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof. Provide Engineer with the findings and reports generated by testing laboratories, including findings and reports obtained from or through Contractor.
- 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. 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 constructability review.
- J. 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.
- K. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, then 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.
- L. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.
- M. Examine all alternative solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, risk manager, insurance counselor, financial/municipal advisor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- N. Inform Engineer regarding any need for assistance in evaluating the possible use of Project Strategies, Technologies, and Techniques, as defined in Exhibit A.
- O. Advise Engineer as to whether Engineer's assistance is requested in identifying opportunities for enhancing the sustainability of the Project.
- P. Place and pay for advertisement for Bids in appropriate publications.
- Q. 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.
- R. Attend and participate in the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Site visits to determine Substantial Completion and readiness of the completed Work for final payment.
- S. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement, as required.
- T. Perform or provide the following: [None]

Exhibit B – Owner's Responsibilities

EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services.

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B2.02 Owners are ultimately responsible for compliance with Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A - Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference and will be responsible for the following:

- a) Signing loan resolutions, grant agreements and letters of intent to meet conditions which include American Iron and Steel language, accepting American Iron and Steel requirements in those documents and in the letter of conditions.**
- b) Signing change orders (i.e. C-941 of EJDC) and partial payment estimates (i.e. C-620 of EJDC) and thereby acknowledging responsibility for compliance with American Iron and Steel requirements.**
- c) Obtaining the certification letters from the consulting engineer upon substantial completion of the project and maintaining this documentation for the life of the loan.**
- d) Where the owner provides their own engineering and/or construction services, providing copies of engineers', contractors', and manufacturers' certification letters (as applicable) to the Agency. All certification letters must be kept in the engineer's project file and on site during construction. For Owner Construction (Force Account), all clauses from Section 17 of RUS Bulletin 1780-35 must be included in the Agreement for Engineering Services.**
- e) Where the owner directly procures American Iron and Steel products, including American Iron and Steel clauses in the procurement contracts and obtaining manufacturers' certification letters and providing copies to consulting engineers and contractors.**

This is **EXHIBIT C**, consisting of [2] 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 \$193,900 based on the following estimated distribution of compensation (**see attached Appendix 3 to Exhibit C for detailed breakdown**):

a. Study and Report Phase	\$0(PER separate contract)
b. Preliminary Design Phase	\$0
c. Final Design Phase	\$66,200
d. Bidding and Negotiating Phase	\$16,800
e. Construction Phase	\$110,900
f. Post-Construction Phase	\$0

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 **and Agency**.

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 costs, overhead, profit, expenses (other than any expressly allowed Reimbursable Expenses), and Consultant charges.

4. In addition to the Lump Sum, Engineer is also entitled to reimbursement from Owner for the following Reimbursable Expenses (see Appendix 1 for rates or charges): **Reimbursable expenses for basic Services will be itemized in Appendix 1 to Exhibit c, with rates and charges listed, and with a not to exceed value for each reimbursable expense.**

5. 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. If any Reimbursable Expenses are expressly allowed, Engineer may also bill for any such Reimbursable Expenses incurred 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 24 months. If such period of service is extended, the compensation amount for Engineer's services shall be appropriately adjusted **with concurrence of the Owner and Agency.**

This is **EXHIBIT C**, consisting of [8] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [REDACTED].

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. The Standard Hourly Rates charged by Engineer constitute full and complete compensation for Engineer’s services, including labor costs, overhead, and profit; the Standard Hourly Rates do not include Reimbursable Expenses or Engineer’s Consultants’ charges.
 3. Engineer’s Reimbursable Expenses Schedule and Standard Hourly Rates are attached to this Exhibit C as Appendices 1 and 2.
 4. The total compensation for services under Paragraph C2.01 is estimated to be \$ [REDACTED] 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 \$
 5. 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 **and Agency**. See also C2.03.C.2 below.

6. 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.
7. 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.
8. The Standard Hourly Rates and Reimbursable Expenses Schedule will be adjusted annually (as of July 1) to reflect equitable changes in the compensation payable to Engineer. **Changes will not be effective unless and until concurred in by the Owner and Agency.**

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 expenses identified in Appendix 1 and the following: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls, mobile phone charges, and courier charges; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Project-related items; and Consultants' charges. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment. **Reimbursable expenses for Basic Services will be itemized in Appendix 1 of Exhibit C, with rates and charges listed, and with a not to exceed value for each reimbursable expense.**
- 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 1.00.

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 1.10.
- 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 **and Agency** 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.

**COMPENSATION PACKET RPR-1:
Resident Project Representative – Lump Sum**

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

C2.04 Compensation for Resident Project Representative Basic Services – Lump Sum Method of Payment

A. Owner shall pay Engineer for Resident Project Representative Basic Services as follows:

1. *Resident Project Representative Services:* For services of Engineer's Resident Project Representative, if any, under Paragraph A1.05 of Exhibit A, the Lump Sum amount of \$[N/A]. The Lump Sum includes compensation for the Resident Project Representative's services. Appropriate amounts have been incorporated in the Lump Sum to account for labor costs, overhead, profit, and expenses (other than any expressly allowed Reimbursable Expenses) related to the Resident Project Representative's Services.
2. *Reimbursable Expenses:* In addition to the Lump Sum, Engineer is also entitled to reimbursement from Owner for the following RPR Reimbursable Expenses (see Appendix 1 for rates or charges): ***Reimbursable expenses for Resident Project Representative will be itemized in Appendix 1 of Exhibit C, with rates and charges listed, and with a not to exceed value for each reimbursable expense.***
3. *Resident Project Representative Schedule:* The Lump Sum amount set forth in Paragraph C2.04.A.1 above is based on full-time RPR services on an eight-hour workday Monday through Friday over a [N/A] day construction schedule. Modifications to the schedule shall entitle Engineer to an equitable adjustment of compensation for RPR services. **Changes will not be effective unless and until concurred in by the Owner and Agency.**

**COMPENSATION PACKET RPR-2:
Resident Project Representative – Standard Hourly Rates**

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

C2.04 Compensation for Resident Project Representative Basic Services – Standard Hourly Rates Method of Payment

A. Owner shall pay Engineer for Resident Project Representative Basic Services as follows:

1. **Resident Project Representative Services:** For services of Engineer's Resident Project Representative under Paragraph A1.05.A of Exhibit A, 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 Resident Project Representative services performed on the Project, plus related Reimbursable Expenses and Engineer's Consultant's charges, if any. The total compensation under this paragraph is estimated to be \$121,100.00 based upon part-time RPR services over a 300 day construction schedule.
2. **If rate(s) for RPR services is not indicated in Appendix Two to Exhibit C, "Standard Hourly Rates Schedule," the Standard Hourly Rate for RPR services is \$120 per hour.**

B. Compensation for Reimbursable Expenses:

1. For those Reimbursable Expenses that are not accounted for in the compensation for Basic Services under Paragraph C2.01, and are directly related to the provision of Resident Project Representative or Post-Construction Basic Services, Owner shall pay Engineer at the rates set forth in Appendix 1 to this Exhibit C.
2. Reimbursable Expenses include the expenses identified in Appendix 1 and the following: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; subsistence and transportation of Resident Project Representative and assistants; toll telephone calls, mobile phone charges, and courier charges; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Project-related items. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment. **Reimbursable expenses for Resident Project Representative will be itemized in Appendix 1 of Exhibit C, with rates and charges listed, and with a not to exceed value for each reimbursable expense.**
3. The amounts payable to Engineer for Reimbursable Expenses, if any, will be those internal expenses related to the Resident Project Representative Basic Services that are actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to such services, the latter multiplied by a factor of 1.00.
4. The Reimbursable Expenses Schedule will be adjusted annually (as of July 1) to reflect equitable changes in the compensation payable to Engineer. **Changes will not be effective unless and until concurred in by the Owner and Agency.**

C. Other Provisions Concerning Payment Under this Paragraph C2.04:

1. 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 **1.10**.
2. *Factors:* The external Reimbursable Expenses and Engineer's Consultant's factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
3. *Estimated Compensation Amounts:*
 - a. 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.
 - b. 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 **and Agency** 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 Engineer's services during 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.
4. 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~~ **at no cost**.

**COMPENSATION PACKET AS-1:
Additional Services – Standard Hourly Rates**

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

C2.05 Compensation for Additional Services – Standard Hourly Rates Method of Payment

A. Owner shall pay Engineer for Additional Services, if any, as follows:

1. *General:* For services of Engineer's personnel engaged directly on the Project pursuant to Paragraph A2.01 or A2.02 of Exhibit A, except for services as a consultant or witness under Paragraph A2.01.A.20, (which if needed shall be separately negotiated based on the nature of the required consultation or testimony) 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 Additional Services performed on the Project, plus related Reimbursable Expenses and Engineer's Consultant's charges, if any.
2. **Additional Services will be itemized in Appendix 2 of Exhibit C, and will provide for a not to exceed value for each additional service.**

B. *Compensation For Reimbursable Expenses:*

1. For those Reimbursable Expenses that are not accounted for in the compensation for Basic Services under Paragraph C2.01 and are directly related to the provision of Additional Services, Owner shall pay Engineer at the rates set forth in Appendix 1 to this Exhibit C.
2. Reimbursable Expenses include the expenses identified in Appendix 1 and the following categories: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls, mobile phone charges, and courier charges; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Project-related items; and Consultants' charges. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
3. The amounts payable to Engineer for Reimbursable Expenses, if any, will be the Additional Services-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to such Additional Services, the latter multiplied by a factor of **1.00**.
4. The Reimbursable Expenses Schedule will be adjusted annually (as of **July 1**) to reflect equitable changes in the compensation payable to Engineer. **Changes will not be effective unless and until concurred in by the Owner and Agency.**

C. *Other Provisions Concerning Payment for Additional Services:*

Exhibit C – Compensation Packet AS-1: Additional Services –
Standard Hourly Rates Method of Payment.

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1. 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 **1.10**.
2. *Factors:* The external Reimbursable Expenses and Engineer's Consultant's Factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
3. 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~~ **at no cost**.

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

Reimbursable Expenses Schedule

Reimbursable Expenses are subject to review and adjustment per Exhibit C. Rates and charges for Reimbursable Expenses as of the date of the Agreement are:

MATERIALS AND REIMBURSABLE EXPENSES

Plotting, Printing, and Binding – As invoiced at cost of labor and materials.

Courier / Delivery Service – As invoiced by provider.

Mileage – Two-Wheel Drive Vehicle rate as published for the IRS Standard Mileage Rate.
Four-Wheel Drive Vehicle as published for the IRS Standard Mileage Rate.

Per Diem / Travel – Field personnel in accordance with the latest GSA Schedule based on location of service.

Office / Professional staff travel costs, meals and lodging will be billed at cost.

Survey Equipment Charge – \$25.00/Hour.

Survey Material Charge – \$2.00/Hour.

Expert Witness – Rates shall be negotiated based on the requirements of the contract with a minimum of four hours while in court.

Other Direct Project Expenses – At Cost.

Overtime – Performed upon request of the client; will be invoiced at 1.30 times the standard hourly rate.

Applicable Gross Receipts or Sales and Use Tax – Added to all fees charged for professional services unless they are exempt and official documentation is on file with Bohannon Huston, Inc.

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

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:

**BOHANNAN HUSTON, INC.
FEE SCHEDULE HOURLY RATES
JULY 1, 2019**

	1	2	3	4	5	6	7
ENGINEER Civil, Structural, Mechanical, Electrical	\$100	\$115	\$135	\$155	\$175	\$215	\$240
SURVEYOR	\$100	\$115	\$135	\$155	\$175	\$215	\$240
TECHNICAL MANAGER IT, GIS, Spatial Data, Construction, Project Manager	\$100	\$115	\$135	\$155	\$175	\$215	\$240
PLANNER Community, Transportation	\$95	\$105	\$120	\$135	\$150	\$190	\$230
SOFTWARE DEVELOPER	\$100	\$125	\$150	\$175	\$200	\$225	\$250
GIS PROFESSIONAL Geographic Information Systems	\$90	\$100	\$115	\$130	\$145	\$180	\$210
TECHNICAL CONSULTANT IT & CADD Consulting	\$90	\$110	\$125	\$135	\$145	\$155	\$175
TECHNICAL SPECIALIST Engineering Tech, Survey Tech, Geospatial Analyst, Graphics Specialist	\$72	\$77	\$82	\$92	\$102	\$115	\$135
CONSTRUCTION OBSERVER	\$70	\$75	\$80	\$90	\$105	\$120	\$160
MATERIALS TECHNICIAN Field and Laboratory Materials Testing	\$55	\$65	\$70	\$75	\$85	\$105	\$125
ADMINISTRATIVE PROFESSIONAL Administrative, Marketing, Technical Writing	\$105	\$115	\$125	\$140	\$160	\$210	\$235
ADMINISTRATIVE ASSISTANT	\$55	\$65	\$75	\$85	\$95	\$105	\$120

C. Additional Services:

The following additional services will be provided as part of the above standard hourly rates, with a not to exceed value as indicated below:

None

This is **Appendix 3** to **EXHIBIT C**, consisting of [1] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [REDACTED].

A. Final Design Phase

Task	Description	Type	Fee Amount
1.	Project Management	Lump Sum	\$21,000
2.	Right-of-Way Map & Coordination	Lump Sum	\$7,000
3.	Design Revisions	Lump Sum	\$38,200
<i>Final Design Phase Services Subtotal:</i>			<i>\$66,200</i>

B. Bidding and Negotiating Phase

Task	Description	Type	Fee Amount
1.	Bid Administration	Lump Sum	\$16,800
<i>Bidding and Negotiating Phase Services Subtotal:</i>			<i>\$16,800</i>

C. Construction Phase

Task	Description	Type	Fee Amount
1.	Construction Administration* *includes Record Drawings	Lump Sum	\$93,400
2.	Operations and Maintenance Manual	Lump Sum	\$17,500
<i>Construction Phase Services Subtotal:</i>			<i>\$110,900</i>

This is **EXHIBIT D**, consisting of [5] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [REDACTED].

Duties, Responsibilities, and Limitations of Authority of Resident Project Representative

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

ARTICLE 1 - SERVICES OF ENGINEER

D1.01 Resident Project Representative

- A.** Engineer shall furnish a Resident Project Representative (“RPR”) to assist Engineer in observing progress and quality of the Work. The RPR may provide full time representation or may provide representation to a lesser degree. RPR is Engineer’s representative at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR’s actions. **Full time Resident Project Representation is required unless requested in writing by the Owner and waived in writing by the Agency.**

- B.** Through RPR’s observations of the Work, including field checks of materials and installed equipment, Engineer shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, Engineer shall not, as a result of such RPR observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer (including the RPR) have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to the Work or any Constructor’s work in progress, for the coordination of the Constructors’ work or schedules, or for any failure of any Constructor to comply with Laws and Regulations applicable to the performing and furnishing of its work. The Engineer (including RPR) neither guarantees the performances of any Constructor nor assumes responsibility for any Constructor’s failure to furnish and perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents. In addition, the specific terms set forth in Exhibit A, Paragraph A1.05, of this Agreement are applicable.

- C.** The duties and responsibilities of the RPR are as follows:
 - 1. *General:* RPR’s dealings in matters pertaining to the Work in general shall be with Engineer and Contractor. RPR’s dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner only with the knowledge of and under the direction of Engineer.
 - 2. *Schedules:* Review the progress schedule, schedule of Shop Drawing and Sample submittals, schedule of values, and other schedules prepared by Contractor and consult with Engineer concerning acceptability of such schedules.
 - 3. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings

(but not including Contractor's safety meetings), and as appropriate prepare and circulate copies of minutes thereof.

4. *Safety Compliance:* Comply with Site safety programs, as they apply to RPR, and if required to do so by such safety programs, receive safety training specifically related to RPR's own personal safety while at the Site.
5. *Liaison:*
 - a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Construction Contract Documents.
 - b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
 - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
6. *Clarifications and Interpretations:* Receive from Contractor submittal of any matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. Report to Engineer regarding such RFIs. Report to Engineer when clarifications and interpretations of the Construction Contract Documents are needed, whether as the result of a Contractor RFI or otherwise. Transmit Engineer's clarifications, interpretations, and decisions to Contractor. ,
7. *Shop Drawings and Samples:*
 - a. Record date of receipt of Samples and Contractor-approved Shop Drawings.
 - b. Receive Samples that are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.
 - c. Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal, if RPR believes that the submittal has not been received from Contractor, or has not been approved by Contractor or Engineer.
8. *Proposed Modifications:* Consider and evaluate Contractor's suggestions for modifications to the Drawings or Specifications, and report such suggestions, together with RPR's recommendations, if any, to Engineer. Transmit Engineer's response (if any) to such suggestions to Contractor.
9. *Review of Work; Defective Work:*
 - a. Report to Engineer whenever RPR believes that any part of the Work is defective under the terms and standards set forth in the Construction Contract Documents, and provide recommendations as to whether such Work should be corrected,

removed and replaced, or accepted as provided in the Construction Contract Documents.

- b. Inform Engineer of any Work that RPR believes is not defective under the terms and standards set forth in the Construction Contract Documents, but is nonetheless not compatible with the design concept of the completed Project as a functioning whole, and provide recommendations to Engineer for addressing such Work. ; and
- c. Advise Engineer of that part of the Work that RPR believes should be uncovered for observation, or requires special testing, inspection, or approval.

10. *Inspections, Tests, and System Start-ups:*

- a. Consult with Engineer in advance of scheduled inspections, tests, and systems start-ups.
- b. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
- c. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.
- d. Observe whether Contractor has arranged for inspections required by Laws and Regulations, including but not limited to those to be performed by public or other agencies having jurisdiction over the Work.
- e. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Work, record the results of these inspections, and report to Engineer.

11. *Records:*

- a. Maintain at the Site orderly files for correspondence, reports of job conferences, copies of Construction Contract Documents including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Construction Contract, RFIs, Engineer's clarifications and interpretations of the Construction Contract Documents, progress reports, approved Shop Drawing and Sample submittals, and other Project-related documents.
- b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, Subcontractors present at the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, deliveries of equipment or materials, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.
- c. Upon request from Owner to Engineer, photograph or video Work in progress or Site conditions.

- d. Record and maintain accurate, up-to-date lists of the names, addresses, fax numbers, e-mail addresses, websites, and telephone numbers (including mobile numbers) of all Contractors, Subcontractors, and major Suppliers of materials and equipment.
- e. Maintain records for use in preparing Project documentation.
- f. Upon completion of the Work, furnish original set of all RPR Project documentation to Engineer.
- g. **Maintain all Manufacturers' Certification letters in the project file and on site during construction to ensure compliance with American and Iron Steel requirements mandated by Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A - Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference, as applicable.**

12. *Reports:*

- a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- ~~b. Draft and recommend to Engineer proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor. [Deleted]~~
- c. Furnish to Engineer and Owner copies of all inspection, test, and system start-up reports.
- d. Immediately inform Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, possible force majeure or delay events, damage to property by fire or other causes, or the discovery of any potential differing site condition or Constituent of Concern.

13. *Payment Requests:* Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

14. *Certificates, Operation and Maintenance Manuals:* During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.

15. *Completion:*

- a. Participate in Engineer's visits to the Site regarding Substantial Completion, assist in the determination of Substantial Completion, and prior to the issuance of a Certificate of Substantial Completion submit a punch list of observed items requiring completion or correction.
- b. Participate in Engineer's visit to the Site in the company of Owner and Contractor, to determine completion of the Work, and prepare a final punch list of items to be completed or corrected by Contractor.
- c. Observe whether all items on the final punch list have been completed or corrected, and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work (Exhibit E).

D. Resident Project Representative shall not:

1. Authorize any deviation from the Construction Contract Documents or substitution of materials or equipment (including "or-equal" items).
2. Exceed limitations of Engineer's authority as set forth in this Agreement.
3. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers, or any Constructor.
4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of the Work, by Contractor or any other Constructor.
5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
8. Authorize Owner to occupy the Project in whole or in part.

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



NOTICE OF ACCEPTABILITY OF WORK

PROJECT:

OWNER:

CONTRACTOR:

OWNER'S CONSTRUCTION CONTRACT IDENTIFICATION:

EFFECTIVE DATE OF THE CONSTRUCTION CONTRACT:

ENGINEER:

NOTICE DATE:

To: _____
_____ Owner

And To: _____
_____ Contractor

From: _____
_____ Engineer

The Engineer hereby gives notice to the above Owner and Contractor that Engineer has recommended final payment of Contractor, and that the Work furnished and performed by Contractor under the above Construction Contract is acceptable, expressly subject to the provisions of the related Contract Documents, the Agreement between Owner and Engineer for Professional Services dated _____, and the following terms and conditions of this Notice:

CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK

The Notice of Acceptability of Work (“Notice”) is expressly made subject to the following terms and conditions to which all those who receive said Notice and rely thereon agree:

1. This Notice is given with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.
2. This Notice reflects and is an expression of the Engineer’s professional opinion.
3. This Notice is given as to the best of Engineer’s knowledge, information, and belief as of the Notice Date.
4. This Notice is based entirely on and expressly limited by the scope of services Engineer has been employed by Owner to perform or furnish during construction of the Project (including observation of the Contractor’s work) under Engineer’s Agreement with Owner, and applies only to facts that are within Engineer’s knowledge or could reasonably have been ascertained by Engineer as a result of carrying out the responsibilities specifically assigned to Engineer under such Agreement.
5. This Notice is not a guarantee or warranty of Contractor’s performance under the Construction Contract, an acceptance of Work that is not in accordance with the related Contract Documents, including but not limited to defective Work discovered after final inspection, nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Construction Contract Documents, or to otherwise comply with the Construction Contract Documents or the terms of any special guarantees specified therein.
6. This Notice does not relieve Contractor of any surviving obligations under the Construction Contract, and is subject to Owner’s reservations of rights with respect to completion and final payment.

By: _____

Title: _____

Dated: _____

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

Construction Cost Limit

Paragraph 5.02 of the Agreement is supplemented to include the following agreement of the parties:

F5.02 *Designing to Construction Cost Limit*

- A. Owner and Engineer hereby agree to a Construction Cost limit in the amount of \$[3,576,827.00].
- B. A bidding or negotiating contingency of [10] percent will be added to any Construction Cost limit established.
- C. The acceptance by Owner at any time during Basic Services of a revised opinion of probable Construction Cost in excess of the then-established Construction Cost limit will constitute a corresponding increase in the Construction Cost limit.
- D. Engineer will be permitted to determine what types and quality of materials, equipment and component systems are to be included in the Drawings and Specifications. Engineer may make reasonable adjustments in the scope, extent, and character of the Project to the extent consistent with the Project requirements and sound engineering practices, to bring the Project within the Construction Cost limit. **Engineers determinations on types and quality of materials, equipment, and component systems to be included in the Drawings and Specifications are subject to approval by Agency in accordance with requirements of 7 CFR 1780, including open and free competition.**
- E. If the Bidding or Negotiating Phase has not commenced within three months after completion of the Final Design Phase, or if industry-wide prices are changed because of unusual or unanticipated events affecting the general level of prices or times of delivery in the construction industry, the established Construction Cost limit will not be binding on Engineer. In such cases, Owner shall consent to an adjustment in the Construction Cost limit commensurate with any applicable change in the general level of prices in the construction industry between the date of completion of the Final Design Phase and the date on which proposals or Bids are sought.
- F. If the lowest bona fide proposal or Bid exceeds the established Construction Cost limit, Owner shall (1) give written approval to increase such Construction Cost limit, or (2) authorize negotiating or rebidding the Project within a reasonable time, or (3) cooperate in revising the Project's scope, extent, or character to the extent consistent with the Project's requirements and with sound engineering practices. In the case of (3), Engineer shall modify the Construction Contract Documents as necessary to bring the Construction Cost within the Construction Cost Limit. Owner shall pay Engineer's cost to provide such modification services, including the costs of the services of its Consultants, all overhead expenses reasonably related thereto, and Reimbursable Expenses, but without profit to Engineer on account of such services. The providing of such services will be the limit of Engineer's responsibility in this regard and, having done so, Engineer shall be entitled to payment for

Exhibit F – Construction Cost Limit.

EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services.

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Page 1

services and expenses in accordance with this Agreement and will not otherwise be liable for damages attributable to the lowest bona fide proposal or bid exceeding the established Construction Cost limit.

This is **EXHIBIT G**, consisting of [2] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [REDACTED].

Insurance

Paragraph 6.05 of the Agreement is supplemented to include the following agreement of the parties:

G6.05 Insurance

A. The limits of liability for the insurance required by Paragraph 6.05.A and 6.05.B of the Agreement are as follows:

1. By Engineer:

- a. Workers' Compensation: Statutory
 - b. Employer's Liability --
 - 1) Bodily injury, each accident: \$[1,000,000]
 - 2) Bodily injury by disease, each employee: \$[REDACTED]
 - 3) Bodily injury/disease, aggregate: \$[REDACTED]
 - c. General Liability --
 - 1) Each Occurrence (Bodily Injury and Property Damage): \$[1,000,000]
 - 2) General Aggregate: \$[2,000,000]
 - d. Excess or Umbrella Liability --
 - 1) Per Occurrence: \$[10,000,000]
 - 2) General Aggregate: \$[10,000,000]
 - e. Automobile Liability --Combined Single Limit (Bodily Injury and Property Damage):
\$[REDACTED]
 - f. Professional Liability --
 - 1) Each Claim Made \$[2,000,000]
 - 2) Annual Aggregate \$[4,000,000]
 - g. Other (specify): \$[REDACTED]
2. By Owner:
- a. Workers' Compensation: Statutory
 - b. Employer's Liability --

Exhibit G – Insurance.

- 1) Bodily injury, Each Accident \$[]
- 2) Bodily injury by Disease, Each Employee \$[]
- 3) Bodily injury/Disease, Aggregate \$[]

c. General Liability --

- 1) General Aggregate: \$[]
- 2) Each Occurrence (Bodily Injury and Property Damage): \$[]

d. Excess Umbrella Liability

- 1) Per Occurrence: \$[]
- 2) General Aggregate: \$[]

e. Automobile Liability – Combined Single Limit (Bodily Injury and Property Damage):

\$[]

f. Other (specify):

\$[]

B. Additional Insureds:

1. The following individuals or entities are to be listed on Owner’s general liability policies of insurance as additional insureds:

- a. Bohannan Huston Inc.
Engineer
- b. N/A
Engineer’s Consultant
- c. N/A
Engineer’s Consultant
- d. [N/A]
[other]

2. During the term of this Agreement the Engineer shall notify Owner of any other Consultant to be listed as an additional insured on Owner’s general liability policies of insurance.

3. The Owner shall be listed on Engineer’s general liability policy as provided in Paragraph 6.05.A.



BOHAHUS-01

BMOYA

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
8/6/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).


PRODUCER License # 0757776 HUB International Insurance Services (NMX) 7770 Jefferson Street NE, Suite 101 Albuquerque, NM 87109	CONTACT NAME: PHONE (A/C, No, Ext): (505) 828-4000 FAX (A/C, No): (866) 487-3972 E-MAIL ADDRESS:
INSURED	INSURER(S) AFFORDING COVERAGE
Bohannon Huston, Inc. 7500 Jefferson St. NE Albuquerque, NM 87109-4335	INSURER A : Hartford Casualty Insurance Company 29424
	INSURER B : Hartford Fire Insurance Company 19682
	INSURER C : New Mexico Mutual Casualty Company 40627
	INSURER D : Advantage Workers Compensation Insurance Company 40517
	INSURER E : Continental Casualty Company 20443
	INSURER F :

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC <input checked="" type="checkbox"/> OTHER: \$0	X	X	34UUNZG0204	8/1/2019	8/1/2020	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COM/POP AGG \$ 2,000,000
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY	X	X	34UENZG0117	8/1/2019	8/1/2020	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			34XHUVT9367	8/1/2019	8/1/2020	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	70912	8/1/2019	8/1/2020	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D	Worker's Compensatio			3483893	8/1/2019	8/1/2020	Per Statute 1,000,000
E	Prof/Poll Liability			AEH288359977	8/1/2019	8/1/2020	\$4 Agg/100,000 Ded 2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Project: South Valley Water Supply and Treatment Project

CERTIFICATE HOLDER Lower Rio Grande Public Water Works Authority 215 Bryant St. Mesquite, NM 88048	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
--	--

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This is **EXHIBIT H**, consisting of [1] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [REDACTED].

Dispute Resolution

Paragraph 6.09 of the Agreement is supplemented to include the following agreement of the parties:

H6.08 *Dispute Resolution*

- 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 a mediator located in Dona Ana County acceptable to both parties**]. 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 I**, consisting of [3] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [] .

Limitations of Liability

Paragraph 6.11 of the Agreement is supplemented to include the following agreement of the parties:

A. *Limitation of Engineer's Liability*

1. *Engineer's Liability Limited to Amount of Insurance Proceeds:* Engineer shall procure and maintain insurance as required by and set forth in Exhibit G to this Agreement. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by Laws and Regulations, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants to Owner and anyone claiming by, through, or under Owner for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied, of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants (hereafter "Owner's Claims"), shall not exceed the total insurance proceeds paid on behalf of or to Engineer by Engineer's insurers in settlement or satisfaction of Owner's Claims under the terms and conditions of Engineer's insurance policies applicable thereto (excluding fees, costs and expenses of investigation, claims adjustment, defense, and appeal), up to the amount of insurance required under this Agreement. If no such insurance coverage is provided with respect to Owner's Claims, then the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants to Owner and anyone claiming by, through, or under Owner for any and all such uninsured Owner's Claims shall not exceed \$[100,000].

- B. *Indemnification by Owner:*** To the fullest extent permitted by Laws and Regulations, 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) 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 Owner or Owner's officers, directors, members, partners, agents, employees, consultants, or others retained by or under contract to the Owner with respect to this Agreement or to the Project.

This is **EXHIBIT J**, consisting of [1] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [REDACTED].

Special Provisions

Paragraph(s) * of the Agreement is/are amended to include the following agreement(s) of the parties:

- 1) Per USDA Guidance for the Use of Engineers Joint Contract Documents Committee (EJCDC) Documents on Wastewater and Waste Disposal Projects with RUS Financial Assistance, via RUS Bulletin 1780-26, with effective date 4/19/2017, the revisions detailed in Appendix 1 to Exhibit J have been made to the EJCDC E-500.
- 2) Exhibit B, Paragraph B.2.01 of the Agreement is amended to include the following agreement of the parties:
 - (i) Add Paragraph B.2.01.U:

The Owner agrees to acquire interim financing to effect payment to Engineer in accordance with the terms of Exhibit C and Article 4 of the Standard Form of Agreement between Owner and Engineer for Professional Services, without having to wait for loan/grant closing by the Agency.

Special Provisions: Electronic File Transfer Clause

This Contract Agreement is amended to include the following provisions between the mentioned parties:

Final submittal of documents shall also be submitted in pdf format that can be transmitted electronically (i.e., files must be small enough to be transmitted by email and to be uploaded). All elements of the final submittal (i.e., AutoCad files, water & wastewater models, GIS/GPS data files, technical specifications, MicroSoft Word files, etc.) shall be submitted in their original electronic working formats. In addition, final project Planning Reports and Preliminary Engineering Reports (PER) shall be provided in their original electronic working formats to facilitate the use of specific excerpts by the Lower Rio Grande Public Water Works Authority (LRGPWWA) for such reports assembled for grant and other funding applications, presentations to Legislative Committees or similar uses as deemed necessary by the LRGPWWA. Final electronic working reports will not be stamped or signed by the Engineer of Record.

The reports, plans, specifications and other engineering products created by Bohannon Huston Inc. and its subconsultants, are created specifically for the project and are intended to be used only for this project. The LRGPWWA agrees, to the fullest extent permitted by law, to indemnify and hold Bohannon Huston Inc. and its subconsultants harmless from any claim, liability or cost (including reasonable attorney fees and defense costs) arising or allegedly arising out of any reuse or modification to the approved final plans and specifications by the LRGPWWA or any person or entity that acquires the approved final plans and specifications from or through the LRGPWWA.

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

AMENDMENT TO OWNER-ENGINEER AGREEMENT
Amendment No. _____

The Effective Date of this Amendment is: _____.

Background Data

Effective Date of Owner-Engineer Agreement:

Owner:

Engineer:

Project:

Nature of Amendment: [Check those that are applicable and delete those that are inapplicable.]

- ____ Additional Services to be performed by Engineer
- ____ Modifications to services of Engineer
- ____ Modifications to responsibilities of Owner
- ____ Modifications of payment to Engineer
- ____ Modifications to time(s) for rendering services
- ____ Modifications to other terms and conditions of the Agreement

Description of Modifications:

Here describe the modifications, in as much specificity and detail as needed. Use an attachment if necessary.

Agreement Summary:

Original agreement amount:	\$ _____
Net change for prior amendments:	\$ _____
This amendment amount:	\$ _____
Adjusted Agreement amount:	\$ _____

Change in time for services (days or date, as applicable): _____

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.

OWNER:

ENGINEER:

By: _____
Print name: _____

By: _____
Print name: _____

Title: _____

Title: _____

Date Signed: _____

Date Signed: _____

ID	Task Name	Duration	Start	Finish	2019												2020												2021			
					Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul		
0	SOUTH VALLEY WATER SUPPLY AND TREATMEN	542 days	6/12/19	7/8/21																												
1	PROJECT COORDINATION	69 days	6/12/19	9/16/19																												
2	Engineering Agreement Preparation	39 days	6/12/19	8/5/19																												
3	Contract Award Notice	20 days	8/6/19	9/2/19																												
4	Project Kickoffs	10 days	9/3/19	9/16/19																												
5	PLANNING	80 days	11/12/19	3/2/20																												
6	R/W Map	65 days	11/12/19	2/10/20																												
7	Attorney R/W Review	15 days	2/11/20	3/2/20																												
8	ENGINEERING DESIGN	195 days	9/17/19	6/15/20																												
9	Design Revisions	50 days	9/17/19	11/25/19																												
10	Update Construction Documents	40 days	9/17/19	11/11/19																												
11	95% Review Period	10 days	11/12/19	11/25/19																												
12	Final Design	50 days	11/26/19	2/3/20																												
13	Prepare Stamped Construction and Contract Document	10 days	11/26/19	12/9/19																												
14	USDA/NMED-DWB Review Period	40 days	12/10/19	2/3/20																												
15	Permits and Approvals	95 days	2/4/20	6/15/20																												
16	Receive USDA/NMED/DAC/NMDOT/EBID approvals	20 days	2/4/20	3/2/20																												
17	LOC Submittal	15 days	3/3/20	3/23/20																												
18	USDA LOC Review	60 days	3/24/20	6/15/20																												
19	Authorization To Go To Bid	0 days	6/15/20	6/15/20																												
20	CONSTRUCTION PHASE	277 days	6/17/20	7/8/21																												
21	Advertising Period	25 days	6/17/20	7/21/20																												
22	Contractor Bids Due and Review	1 day	7/22/20	7/22/20																												
23	Board Approval	10 days	7/23/20	8/5/20																												
24	Contract Document Execution	15 days	8/6/20	8/26/20																												
25	Pre-Construction Meeting/Notice To Proceed	1 day	8/27/20	8/27/20																												
26	Project Construction Period	200 days	8/28/20	6/3/21																												
27	Commissioning and Substantial Completion	5 days	6/4/21	6/10/21																												
28	Final Completion - O&M, Record Drawings	20 days	6/11/21	7/8/21																												



FUNDING ANALYSIS
SOUTH VALLEY WATER SUPPLY AND TREATMENT PROJECT
August 5, 2019

PREDEVELOPMENT	
Title Insurance (Budget)	\$ 10,000
Legal Services (Budget)	\$ 27,700
Legal Fees NMGR	\$ 2,303
SUBTOTAL OF PREDEVELOPMENT	\$ 30,003
ENGINEERING SERVICES	
Project Management (LS)	\$ 21,000
ROW Map & Coordination	\$ 7,000
Design Revisions	\$ 38,200
Bid Administration (LS)	\$ 16,800
Construction Administration (LS)	\$ 93,400
O&M Manuals	\$ 17,500
Construction Observation (T&M)	\$ 121,100
Contract Total	\$ 315,000
NMGR (8.3125%)	\$ 26,184
SUBTOTAL OF ENGINEERING SERVICES	\$ 341,184
CONSTRUCTION	
Construction - (Cost Estimate)	\$ 3,576,827
Contingencies (10%)	\$ 357,683
Construction NMGR (6.75%)	\$ 265,579
SUBTOTAL OF CONSTRUCTION	\$ 4,200,089
OTHER PROJECT COST	
Interim Loan Interest	\$ 60,000
Financial Audit	\$ 15,000
Financial Audit NMGR	\$ 1,247
SUBTOTAL OF OTHER PROJECT COST	\$ 76,247
FUNDING AVAILABLE	
USDA Agency Loan	\$ 1,014,000
USDA Agency Persistent Poverty Grant	\$ 3,629,065
USDA Agency Colonias Grant	\$ 323,335
TOTAL FUNDING AVAILABLE	\$ 4,966,400
REMAINING PROJECT FUNDS AVAILABLE	318,877

VENCOR Engineering, LLC

505 South Main Street, Suite 142 · Las Cruces · New Mexico · 88001 · (575) 652-3531 · vencorllc.com

August 15, 2019

Mr. Martin Lopez - General Manager
Lower Rio Grande Public Water Works Authority
325 Holguin Road
Vado, New Mexico 88072

RE: Notice of VENCOR Office Closure

Dear Mr. Lopez:

Per our conversation, please accept this letter as written notification that VENCOR Engineering, LLC (VENCOR) is closing its Las Cruces office. Effective today, VENCOR is no longer accepting any new consulting work for professional engineering services. This includes the contract for the “East Mesa Water System Improvements Project”, Loan/Grant No. CIF-4915. For your files, this letter serves as written cancellation of that contract.

We wish to express our sincere gratitude to the Lower Rio Grande PWWA Board of Directors, Mr. Martin Lopez, General Manager, Ms. Karen Nichols, Projects Manager and all LRGPWWA staff for their support and efforts during the past 13 years. It has been a sincere privilege knowing and working with all of you.

Best regards,

A handwritten signature in black ink, appearing to read "Hector R. Vasquez, P.E.", written in a cursive style.

Hector R. Vasquez, P.E.
CEO / President



www.LRGauthority.org

LOWER RIO GRANDE

Public Water Works Authority

PO Box 2646 Anthony, New Mexico 88021 (575) 233-5742

August 20, 2019

Dear Directors,

We have been notified by Vencor Engineering that they are ceasing operations and will not be able to provide engineering services for the East Mesa RFP. I recommend that the board approve continuing to seek an engineering agreement with the responding firms in order of ranking from this RFP.

Cordially,

A handwritten signature in black ink, appearing to read "Kathi Jackson". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Kathi Jackson

Finance Manager/CPO

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

THIS Agreement, made this 22nd day of August 2019 (effective date) by and between the Lower Rio Grande Public Water Works Authority hereinafter referred to as the OWNER, and Daniel B. Stephens & Associates hereinafter referred to as the ENGINEER. This contract expires on December 31, 2020.

The OWNER intends to construct a Project consisting of East Mesa Service Area Water System Improvements Phase I Design. Improvements to be designed include:

- A 500,000 Gallon centralized water storage tank in Organ at Three Sisters Site
- Abandonment and/or removal of 3 existing storage tanks
- Booster pump station upgrades at Butterfield Park and Mountain View
- SCADA Centralization/Relocation to Butterfield Park
- Replace remainder of aging & undersize pipeline in Organ
- Tierra Alta 6-inch Transmission Line Upgrade
- Replacement well at Well #E1 site, east end of Butterfield Boulevard

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

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Authorization to proceed date: This _____ day of _____, 2019
Contract Time shall be 365 calendar days from Authorization to proceed date. This phase expires on _____.

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Authorization to proceed date: This _____ day of _____, 20_____
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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 amendment 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) The OWNER and the ENGINEER each is bound and the partners, successors, executors, administrators and legal representatives of the OWNER and the 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 to all covenants, agreements, and obligations of the Agreement. Neither the OWNER nor the 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 the OWNER or the ENGINEER to any Contractor, Contractor's subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them; and

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

(c) The ENGINEER will work closely with the OWNER to confirm all Funding Agency requirements are met.

(d) The ENGINEER will attend conferences and public hearings with the OWNER, at which representatives of the Funding Agency and interested parties will also be in attendance, 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 reviewed and approved by the Funding Agency. Such approval shall be evidenced by the signature of a duly authorized representative of the Funding Agency in the space provided in the Attachments to this Agreement. The approval shall in no way commit the Funding Agency to render financial assistance to the OWNER. The Funding Agency is without liability for any payment hereunder, but in the event such assistance is provided, the approval shall signify that the provisions of this Agreement are consistent with the requirements of the Funding Agency.

(b) Review or approval of documents by or for the Funding Agency under this Agreement is

for administrative purposes only and does not relieve the ENGINEER or OWNER of their responsibilities to design, construct and operate the Project as required under law, regulations, permits and good management practices.

3. Responsibilities of the ENGINEER

(a) The ENGINEER shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of design drawings, specifications, reports, and other services furnished by the ENGINEER under this Agreement. If this Agreement involves environmental measures or data generation, the ENGINEER shall comply with EPA quality assurance requirements that can be found on their website at <http://www.epa.gov/quality/index.html>. 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 errors or omissions in the design drawings, specifications, reports, and other services provided by ENGINEER under terms of this Agreement.

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

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

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

(e) The ENGINEER'S opinions of probable Construction Cost are to be made on the basis of the 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 the 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, the ENGINEER cannot and does not guarantee that proposals, bids, or actual Construction Cost and project schedules will not vary from opinions of probable Construction Cost prepared by the ENGINEER. If the OWNER wishes greater assurance as to probable Construction Cost, the OWNER shall employ an independent cost estimator.

(f) During the Construction Phase, the ENGINEER shall not at any time supervise, direct, or have control over the Contractor's work, nor shall the ENGINEER have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by the 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 the Contractor to

comply with Laws and Regulations applicable to the Contractor's furnishing and performing the Work.

(g) The standard of care of all professional engineering and related services performed or furnished by the 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. The ENGINEER makes no warranties, expressed or implied, under this Agreement or otherwise, in connection with the 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) The OWNER shall be responsible for, and the ENGINEER may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by the OWNER to the ENGINEER pursuant to this Agreement. The 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 the OWNER furnished data and information.

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

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

5. Changes

(a) The OWNER and the ENGINEER may, at any time, with prior approval of the Funding Agency, make changes within the general scope of this Agreement in the services or work to be performed. Any such change must be in writing and approved by both parties to this Agreement. 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.

(c) All changes to the scope, cost or time of this Agreement and services described in the Attachments must be in writing and documented in Attachment VI – Amendment to Agreements for Engineering Services.

6. Termination of Contract

(a) This Agreement may be terminated in whole or in part 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. Any termination must be in writing. 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 to cure the default with the terminating party before termination.

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

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

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

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

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

7. Payment

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

in the Attachments.

(b) The OWNER shall pay the ENGINEER applicable gross receipt taxes and reimbursable expenses at the rates set forth in the appropriate Attachment. The amounts payable to the ENGINEER for reimbursable expenses will be the project-related internal expenses, such as reproduction, and all invoiced external reimbursable expenses allocatable to the project, including consultants, multiplied by a factor of 1.1 (1.1 MAXIMUM). Mileage will be reimbursed at the current federally approved IRS rate. Mileage and per diem will not be multiplied by a factor. Reimbursable expenses shall not exceed the estimate in the Attachments without prior written approval of the OWNER, with Funding Agency concurrence. Copies of invoices from consultants, mileage logs, and receipts for which the ENGINEER is requesting reimbursement must accompany the ENGINEER'S invoice.

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

(d) 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.

(e) If the OWNER fails to make any payment due to the ENGINEER within forty-five (45) calendar days after the OWNER's receipt of the ENGINEER's invoice, the amount due to the ENGINEER shall be increased at the rate of 1.5% per month from said forty-fifth day. Any payment of interest under this contract is not reimbursable from grant or loan funds. In addition, after ten (10) calendar days' prior written notice, the ENGINEER may suspend services under this Agreement until the ENGINEER is paid in full. The OWNER waives any and all claims against the ENGINEER for any such suspension.

8. Time

(a) PROGRESS AND COMPLETION

1. The ENGINEER has prepared and the OWNER has approved a schedule for the performance of the ENGINEER's services. This schedule is reflected in the contract time(s) as detailed in the Attachment(s) and represents reasonable times in which to complete the services. The schedule includes reasonable times required for the OWNER and other applicable parties to the agreement to provide necessary information, provide any applicable services not included in the ENGINEER's Scope of Work and make decisions necessary for completion of the work. The schedule also includes reasonable allowances for review and approval times required by the OWNER and by public authorities having jurisdiction over the Project. The schedule shall be equitably adjusted as the Project progresses, allowing for changes in scope, character or size of the Project requested by the OWNER, or for delays or other causes beyond the ENGINEER's reasonable control.
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 negligence of the OWNER, changes in the Work as agreed upon by the OWNER and the ENGINEER in writing, or other causes beyond the ENGINEER'S control, then the Contract Time may be extended per Section 5 of this Agreement. Extensions of time not associated with modifications or changes 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, as found in Subsection (b) of this Section.
5. The ENGINEER shall promptly notify the OWNER in writing of any conditions that may delay delivery of work beyond the Contract Time.
6. The OWNER shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the ENGINEER'S performance of its Services.

(b) CONTRACT TIME AND LIQUIDATED DAMAGES

1. The ENGINEER agrees that the Services being provided under this Agreement will be performed regularly, diligently and without interruption at such rate of progress as will provide for completion within the Contract Time. It is expressly understood and agreed, by and between the 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. The ENGINEER agrees to promptly notify the OWNER of delays in completing the services under this Agreement that are beyond ENGINEER'S control and for which a Contract Time extension will be requested. If the ENGINEER neglects, fails, or refuses to complete the Services within the Contract Time, including any time extension granted by the OWNER, then the ENGINEER agrees to pay the OWNER the amount specified in the Attachments, 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 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 the ENGINEER agree that reasonable liquidated damages for delay (but not as a penalty) due from the ENGINEER to the OWNER are \$100 (minimum one-hundred dollars [\$100.00] per day) for each calendar day that expires after the Contract Time specified in the Agreement until the Work is complete and accepted by the OWNER. The OWNER shall have no more than ten (10) calendar days to accept or reject the Work.

9. Project Design

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

10. Audits and Access to Records

(a) The ENGINEER shall maintain books, records, documents, and other evidence directly pertinent to performance on work under this Agreement in accordance with generally accepted accounting principles and practices consistently applied, and Funding Agency regulations in effect on the date of execution of this Agreement. The ENGINEER shall also maintain the financial information and data used by the ENGINEER in the preparation of the cost submission required under EPA regulations in effect on the date of execution for any negotiated agreement or amendment thereof, and a copy of the cost summary submitted to the OWNER. The Funding Agency, the Comptroller General of the United States, the U.S. Department of Labor, the OWNER, and the State water pollution control agency, or 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 agreements it awards in excess of \$10,000, at any tier, and to make paragraphs (a) through (f) of this clause applicable to all amendments directly related to Project performance.

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

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

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

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

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

11. Subcontracts

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

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

12. Insurance

The ENGINEER agrees to obtain and maintain, at their expense, such insurance as specified in Attachment I.

13. Environmental Condition of Site

(a) The OWNER has disclosed to the 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) The OWNER represents to the ENGINEER that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to the ENGINEER, exist at the Site.

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

(d) It is acknowledged by both parties that the ENGINEER'S scope of services does not include any services related to Constituents of Concern. If the 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 the 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 the OWNER: 1) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and 2) warrants that the Site is in full compliance with applicable Laws and Regulations.

(e) If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of the 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 the ENGINEER is performing professional services for the OWNER and that the 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 the ENGINEER'S activities under this Agreement.

14. Mutual Waiver

To the fullest extent permitted by law, the OWNER and the 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

The 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 the ENGINEER'S performance of the Services.

16. Equal Employment Opportunity

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

17. Gratuities

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

18. Covenant Against Contingent Fees

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

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

The ENGINEER and its subcontractor(s) confirm that cost and pricing data submitted for

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

20. Remedies

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

21. Assurance Against Debarment

The ENGINEER confirms that it and its subcontractors have not been suspended or debarred by EPA, USDA, or the State of New Mexico.

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:

1. The ENGINEER shall complete the ENGINEERING SERVICES described in Attachment II – Engineering Services During the Planning Phase within the time specified from the date of written authorization to proceed unless otherwise mutually agreed to in writing by both parties.
2. The ENGINEER shall complete the ENGINEERING SERVICES described in Attachment III – Engineering Services During the Design Phase within the time specified from the date of written authorization to proceed unless otherwise mutually agreed to in writing by both parties.
3. ENGINEER shall complete the ENGINEER SERVICES described in Attachment IV – Engineering Services During the Construction Phase within the time specified from the date of written authorization to proceed unless otherwise mutually agreed to by both parties.
4. The ENGINEER shall complete the ENGINEERING SERVICES described in Attachment V – Engineering Services During the Operation Phase within the time specified from the date of written authorization to proceed unless otherwise mutually agreed to in writing by both parties.

SECTION C – SPECIAL PROVISIONS OR MODIFICATIONS TO THE STANDARD LANGUAGE IN THIS AGREEMENT

(Mark those that apply or describe, attach or indicate “None”)

None

For Planning Grant Funds from NMFA Insert the note: For Preliminary Engineering Reports or other documents paid for using NMFA Planning Grant Funds, the community can only submit one reimbursement request. This request for payment must be based on a final invoice and can only occur after the document is approved by the pertinent reviewing agency. Interim payments to the engineer will be at the discretion of the community as agreed upon in this contract.

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, the OWNER may immediately terminate this Agreement by giving the ENGINEER written notice of such termination. The OWNER’s decision as to whether sufficient appropriations are available shall be accepted by the ENGINEER and shall be final. The ENGINEER hereby waives any rights to assert an impairment of contract claim against the OWNER or NMED or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the OWNER or the Department

This contract is funded in whole or in part by funds made available under a NMED Grant Agreement. Should the NMED early terminate the grant agreement, the OWNER may early terminate this contract by providing the ENGINEER written notice of such termination. In the event of termination pursuant to this paragraph, the OWNER’s only liability shall be to pay the ENGINEER or vendor for acceptable goods delivered and services rendered before the termination date.

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

1. PRIVITY OF CONTRACT

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

2. CHANGES

1. The OWNER may at any time, by written order make changes within the general scope of this contract in the services to be performed. If such changes cause an increase or decrease in the ENGINEER’S cost or time required to perform any services under this contract, whether or

not changed by any order, the OWNER shall make an equitable adjustment and modify this contract in writing. The ENGINEER must assert any claim for adjustment under this clause in writing within 30 days from the date it receives the OWNER'S notification of change, unless the OWNER grants additional time before the date of final payment.

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

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

3. TERMINATION

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

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

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

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

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

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

4. REMEDIES

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

5. AUDIT; ACCESS TO RECORDS

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

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

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

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

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

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

1. To the extent the records pertain directly to contract performance;
2. If there is any indication that fraud, gross abuse or corrupt practices may be involved; or

3. If the sub-agreement is terminated for default or for convenience.

6. COVENANT AGAINST CONTINGENT FEES

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

7. GRATUITIES

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

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

8. FINAL PAYMENT

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

9. 40 CFR Part 33

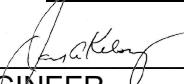
The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure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

IN WITNESS THEREOF, the parties hereto have executed, or caused to be executed, by their duly authorized officials, this Agreement 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 C.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date of the signature by the required approval authorities below.

By: _____ Date: 8/21/2019
OWNER
Type Name Mike McMullen, Lower Rio Grande Public Water Works Authority
Title Chairman of the Board

By:  _____ Date: 8/20/2019
ENGINEER
Type Name James Kelsey, P.G., Daniel B. Stephens & Associates
Title President
Address 6020 Academy Rd NE
Albuquerque, NM 87109
(505) 822-9400

REVIEWED AND APPROVED: FUNDING AGENCY

AGENCY NAME: _____

By _____

Type Name _____

Date _____

ATTACHMENT I – Insurance

The ENGINEER agrees to obtain and maintain, at the ENGINEER's expense, such insurance as will protect the ENGINEER from claims under the Workman's Compensation Act and such comprehensive general liability and automobile insurance as will protect the OWNER and the ENGINEER from all claims for bodily injury, death, or property damage which may arise from the performance by the ENGINEER, or by the ENGINEER's employees, for the ENGINEER's functions and services required under this Agreement. Such insurance shall be in an amount not less than \$1,000,000 for injury to any one person and \$1,000,000 on account of any one accident and in the amount of not less than \$1,000,000 for property damage. The ENGINEER further agrees to procure and maintain professional liability (errors and omissions) insurance in an amount not less than \$1,000,000 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.

ATTACHMENT III – Engineering Services During the Design Phase

1. As set forth in the AGREEMENT FOR ENGINEERING SERVICES dated the 22nd day of August, 2019 (effective date) by and between the Lower Rio Grande Public Water Works Authority, the OWNER, and Daniel B. Stephens & Associates, the ENGINEER, the OWNER and ENGINEER agree this ____ day of _____, 2019 (authorization to proceed date) that ENGINEER shall furnish ENGINEERING SERVICES During the Design Phase in accordance with the GENERAL PROVISIONS of the Agreement and OWNER shall compensate the ENGINEER for services described as set forth below:

A. Perform or provide the following tasks and/or deliverables:

Prepare engineered construction documents for water system improvements as described in the attached Cost Proposal dated August 20, 2019.

B. Cost Proposal – Include hourly breakdown for each task

See attached manhour/fee breakdown.

C. Reimbursable Expense Schedule

See attached manhour/fee breakdown.

D. Contract Time shall be 365 calendar days from the date of the OWNERS signature on Attachment III. Design phase services shall be completed and accepted by the OWNER by ____ (DATE). If design phase services have not been completed and accepted by ____ the ENGINEER shall pay the OWNER liquidated damages as outlined in the Agreement.

2. Compensation for ENGINEERING SERVICES During the Design Phase shall be by the

LUMP SUM method of payment. The total amount of compensation for ENGINEERING SERVICES During the Design Phase, as described, including reimbursable expenses shall not exceed \$199,580, excluding gross receipt tax.


STANDARD HOURLY RATE WITH MAXIMUM method of payment. The total amount of hourly charges, including reimbursables, for ENGINEERING SERVICES During the Design Phase, as described, shall not exceed \$____, excluding gross receipt tax, without prior written approval of the OWNER, with Funding Agency concurrence.

3. 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.

4. Signatures

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date of the signature by the required approval authorities below.

By: _____ Date: 8/21/2019
OWNER
Type Name Mike McMullen, Lower Rio Grande Public Water Works Authority
Title Chair

By:  _____ Date: 8/20/2019
ENGINEER
Type Name James Kelsey, P.G, Daniel B. Stephens & Associates
Title President
Address 6020 Academy Rd NE
Albuquerque, NM 87109
(505) 822-9400

REVIEWED AND APPROVED: FUNDING AGENCY

AGENCY NAME: _____

By _____

Type Name _____

Date _____

EXHIBIT A

Special Provisions: Electronic File Transfer Clause

This Contract Agreement is amended to include the following provisions between the mentioned parties:

Final submittal of documents shall also be submitted in pdf format that can be transmitted electronically (i.e., files must be small enough to be transmitted by email and to be uploaded). All elements of the final submittal (i.e., AutoCad files, water & wastewater models, GIS/GPS data files, technical specifications, MicroSoft Word files, etc.) shall be submitted in their original electronic working formats. In addition, final project Planning Reports and Preliminary Engineering Reports (PER) shall be provided in their original electronic working formats to facilitate the use of specific excerpts by the Lower Rio Grande Public Water Works Authority (LRGPWWA) for such reports assembled for grant and other funding applications, presentations to Legislative Committees or similar uses as deemed necessary by the LRGPWWA. Final electronic working reports will not be stamped or signed by the Engineer of Record.

The reports, plans, specifications and other engineering products created by Daniel B.Stephens & Associates and its subconsultants, are created specifically for the project and are intended to be used only for this project. The LRGPWWA agrees, to the fullest extent permitted by law, to indemnify and hold Daniel B.Stephens & Associates and its subconsultants harmless from any claim, liability or cost (including reasonable attorney fees and defense costs) arising or allegedly arising out of any reuse or modification to the approved final plans and specifications by the LRGPWWA or any person or entity that acquires the approved final plans and specifications from or through the LRGPWWA.



CERTIFICATE OF LIABILITY INSURANCE

DATE(MM/DD/YYYY)
08/19/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Aon Risk Insurance Services West, Inc. Los Angeles CA Office 707 Wilshire Boulevard Suite 2600 Los Angeles CA 90017-0460 USA	CONTACT NAME: PHONE (A/C. No. Ext): (866) 283-7122 FAX (A/C. No.): (800) 363-0105		
	E-MAIL ADDRESS:		
INSURED Daniel B. Stephens & Associates, Inc. 6020 Academy NE, Ste 100 Albuquerque NM 87109 USA	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A: Steadfast Insurance Company		26387
	INSURER B: Zurich American Ins Co		16535
	INSURER C:		
	INSURER D:		
	INSURER E:		
INSURER F:			

COVERAGES **CERTIFICATE NUMBER:** 570077891221 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS. **Limits shown are as requested**

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			GPL016606902	12/31/2018	12/31/2019	EACH OCCURRENCE	\$1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$1,000,000
							MED EXP (Any one person)	\$25,000
							PERSONAL & ADV INJURY	\$1,000,000
							GENERAL AGGREGATE	\$2,000,000
							PRODUCTS - COMP/OP AGG	\$2,000,000
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY			BAP 0166068-02	12/31/2018	12/31/2019	COMBINED SINGLE LIMIT (Ea accident)	\$1,000,000
							BODILY INJURY (Per person)	
							BODILY INJURY (Per accident)	
							PROPERTY DAMAGE (Per accident)	
A	<input type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION			SXS016607602	12/31/2018	12/31/2019	EACH OCCURRENCE	\$5,000,000
							AGGREGATE	\$5,000,000
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	WC016606602	12/31/2018	12/31/2019	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT	\$1,000,000
							E.L. DISEASE-EA EMPLOYEE	\$1,000,000
							E.L. DISEASE-POLICY LIMIT	\$1,000,000
A	E&O-PL-Primary			GPL016606902 Prof Liab - Claims Made	12/31/2018	12/31/2019	Each Claim Aggregate	\$1,000,000 \$2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 RE: East Mesa Service Area Water System Improvements for Phase I Design.

CERTIFICATE HOLDER

CANCELLATION

Lower Rio Grande Public Water Works Authority 325 Holguin Road Mesquite NM 88048 USA	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE <i>Aon Risk Insurance Services West, Inc.</i>

Holder Identifier :

570077891221

Certificate No :





AGENCY CUSTOMER ID: 570000037933

LOC #:

ADDITIONAL REMARKS SCHEDULE

Page _ of _

AGENCY Aon Risk Insurance Services West, Inc.		NAMED INSURED Daniel B. Stephens & Associates, Inc.	
POLICY NUMBER See Certificate Number: 570077891221			
CARRIER See Certificate Number: 570077891221	NAIC CODE	EFFECTIVE DATE:	

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: ACORD 25 **FORM TITLE:** Certificate of Liability Insurance

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER	
INSURER	
INSURER	
INSURER	

ADDITIONAL POLICIES If a policy below does not include limit information, refer to the corresponding policy on the ACORD certificate form for policy limits.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS	
	OTHER							
A	Env Contr Poll			GPL016606902	12/31/2018	12/31/2019	Per occurrence	\$1,000,000
							Aggregate	\$2,000,000



August 20, 2019

Ms. Karen Nichols
Projects Manager
Lower Rio Grande Public Water Works Authority
325 Holguin Road
Vado, NM 88072 karen.nichol@lrgauthority.org

Re: Cost Proposal for East Mesa Water System Design

Dear Ms. Nichols and Board Members:

Per your request, Daniel B. Stephens & Associates, Inc. (DBS&A) is pleased to present this cost proposal to prepare engineered construction documents for Phase 1 improvements to the East Mesa Water Systems as described in the Preliminary Engineering Report (PER) by Vencor Engineering completed in 2018.

We understand that funding has been secured from the Colonias Infrastructure Fund for the design and construction of improvements to the Butterfield Park and Organ water systems, acquired by the Lower Rio Grande Public Water Works Authority (LRG PWWA) in 2012. The Organ systems include the former Mountain View and Organ systems, which had merged prior to Organ's merger with the LRG PWWA, and the Butterfield Park and Organ independent systems, which merged prior to their mergers with the LRG PWWA. In 2018, the LRG PWWA replaced the leaking 6-inch interconnect pipeline under Highway 70 that connects the Organ and Butterfield systems.

The 2018 PER examined how to improve operation and reliability of the current system, which is the result of interconnecting three previously separate systems. There are nine water storage tanks located in the LRG PWWA East Mesa service area, five of which were identified as high priority for rehabilitation and two of which were identified as medium priority during a 2017 tank inspection project. A total of five of the tanks are less than 100,000 gallons in capacity. There are three wells in the LRG PWWA; the Butterfield Park well has low flow, low pressure, and an off-plumb casing.

The 2018 PER recommendations are planned to be designed and constructed in three phases. This scope of work represents design of Phase 1, which includes the following elements:

- A 500,000-gallon centralized water storage tank in Organ at the Three Sisters site
- Abandonment and/or removal of three existing storage tanks
- Booster pump station upgrades at Butterfield Park and Mountain View
- SCADA centralization/relocation to Butterfield Park
- Replacement of the remainder of aging and undersize pipeline in Organ

Daniel B. Stephens & Associates, Inc.

6020 Academy NE, Suite 100 505-822-9400

Albuquerque, NM 87109 FAX 505-822-8877

Ms. Karen Nichols
August 20, 2019
Page 2

- Tierra Alta 6-inch transmission line upgrade
- Replacement well at Well #E1 site, at the east end of Butterfield Boulevard

We understand that no easements are necessary for Phase I. Existing right-of-way will be used and permits will be required from the New Mexico Department of Transportation (NMDOT) and Doña Ana County; coordination will be needed with the Bureau of Land Management (BLM) under an existing permit.

The total estimated construction cost is \$2.6 million.

Task 1: Project Management and Administration

This task involves project management, including internal and external communication, project tracking and invoicing, and other associated administrative tasks. This task also includes one project kickoff meeting at the LRG PWWA's East Mesa office by the project manager and two design engineers, followed by a system-wide site visit.

Task 2: 30% Preliminary Plans

Under this task, preliminary site plans will be prepared for the new water storage tank, new well, Mountain View and Butterfield Park booster stations. Preliminary plan and profile sheets will be prepared for the 6-inch pipelines (approximately 19,000 linear feet) showing plan view only of the pipeline with existing ground profile. A preliminary well diagram will be prepared showing the replacement well for #E1.

An in-person design review meeting will be held at LRG PWWA offices after submittal of the 30% design. We assume that all comments will be received at that meeting, or that one consolidated set of written comments will be received from LRG PWWA.

Task 3: 60% Design Drawings, Specifications, and EOPC

DBS&A will incorporate LRG PWWA comments on the 30% plans to the 60% design submittal, which will include all general sheets (cover, general notes, survey control, etc.) and pipeline plan and profile including pipe elevations, demolition plans for tanks to be removed, new storage tank, and booster station upgrades, along with associated electrical and structural site plans.

Technical specifications will be provided in draft form along with the engineer's opinion of probable cost (EOPC).

An in-person design review meeting will be held at LRG PWWA offices after submittal of the 60% design. We assume that all comments will be received at that meeting, or that one consolidated set of written comments will be received from LRG PWWA.

Task 4: 90% Design Drawings, Specifications, and EOPC

DBS&A will incorporate LRG PWWA comments on the 60% design documents to the 90% design submittal, which will include all sheets to be provided in the final construction package, including details.

Technical specifications and front end contract documents will be provided, along with the EOPC.

A telephone design review meeting will be held after submittal of the 90% design. We assume that all comments will be received during that meeting, or that one consolidated set of written comments will be received from LRG PWWA.

Task 5: Final Design

The final design will comprise signed and sealed drawings, delivered in electronic (PDF) format, along with two hard copies (one full-size and one half-size set of drawings, and two bound sets of specifications).

Task 6: Permitting

We understand that permitting is required for pipeline installation in NMDOT and Doña Ana County right-of way; therefore, we anticipate telephone communication with these agencies and preparation of applications and exhibits showing the proposed pipelines in relation to right-of-way. We will also prepare the Office of the State Engineer (OSE) permit application for the replacement well.

Task 7: Design Survey

The design survey will include topography, utility research, and collection of surface features such as roadways, utilities, private improvements, buildings for pipeline alignments, and the proposed tank site. This scope of work assumes that no easement documents or title search are required for this project.

Task 8: Geotechnical Investigation

The geotechnical investigation will consist of advancing borings at the location of the new tank and at either end of the three proposed jack and bores (a total of seven borings) and preparation of a geotechnical report by a licensed professional geotechnical engineer.

Assumptions

DBS&A has made the following assumptions in preparing this cost proposal:

Ms. Karen Nichols

August 20, 2019

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- No title searches or easement delineation are included. During the preliminary design phase, we will assess the need for any easement or land acquisition.
- No permit fees are included, only manhours to assist in permit preparation.
- This scope and fee are for design phase services only. Bidding assistance, construction observation, etc. are not included.


Fee

DBS&A proposes to provide the services outlined in this letter on a lump sum basis for an amount not to exceed the fees shown in the attached manhour/fee estimate. This estimate represents our best estimate of the level of effort required, but no guarantees are made or implied. If it appears that the budget provided will not be sufficient, we will stop work and contact you immediately to discuss the additional compensation required.

We look forward to working with you on this important project. Please call with any questions.


Sincerely,

DANIEL B. STEPHENS & ASSOCIATES, INC.



Gundar Peterson, P.E.

New Mexico Operations Manager



Jennifer Hill, P.E.

Project Manager

GP/JH/rpf

Attachment

cc: James Kelsey, DBS&A President



Lower Rio Grande Public Water Works Association - East Mesa Water System Improvements

#	Task	Senior professional II	Senior professional I	Staff professional II	Staff professional I	Technical editor	CADD/GIS/ database II	Project Assistant II	Task Hours	Subconsultants	Direct Expenses	Mark-Up (10%)	Total
		G. Peterson \$215	J. Hill \$175	Omar Ruiz \$115	C. Stearnes \$105	R. Fay \$125	J. Arellano, A. Molina \$115	L. Martinez \$95					
	East Mesa Water System Improvements Design												
1	Project Management and Administration	4	55	10	10			24	103		\$ 500	\$ -	\$ 15,465
2	30% Preliminary Plans	2	40	40	40		140		262	\$ 5,000	\$ 500	\$ 500	\$ 38,330
3	60% Plans, Specifications and Cost Estimate	2	60	60	60	4	120		306	\$ 10,000	\$ 500	\$ 1,000	\$ 49,930
4	90% Plans, Specifications and Cost Estimate	2	40	40	30	4	82		198	\$ 7,500		\$ 750	\$ 33,360
5	Final Design	1	16	16	16	4	40		93	\$ 2,500		\$ 250	\$ 14,385
6	Permitting (NMDOT, County, OSE)		4	20	20	4	16		64				\$ 7,440
7	Design Survey		2				8		10	\$ 32,000		\$ 3,200	\$ 36,470
8	Geotechnical Investigation		2						2	\$ 3,500		\$ 350	\$ 4,200
	Total	11	219	186	176	16	406	24	1,038	\$ 60,500	\$ 1,500	\$ 6,050	\$ 199,580
											<i>NMGRT</i>	<i>7.8750%</i>	<i>\$ 15,716.93</i>
											Subtotal	\$	215,297