



Date: June 17, 2020

Time: 9:30 a.m.

Places: Online Zoom meeting

Event: Regular Board Meeting

Name	Company Name	Contact Information Phone Number	Email Address
Karen Nichols	LRG- Projects Manager	575-233-5742 Ext1018	
Patricia Charles	LRG- Projects Specialist	575-233-5742 Ext1021	
Joe Evaro	LRG- Board Secretary	575-618-0182	
Paul Smith	LRG- Board Director	505-710-4671	
Mrs. Holguin	LRG- Board Chair	575-644-9543	
Furman Smith	LRG- Board Vice Chair	575-382-5982	
Kathie Jackson	LRG- Finance Manager	575-233-5742 Ext1005	
Mike Lopez	LRG- Operations Manager	575-233-5742 Ext1011	
John Schroder	LRG- Accounting Assistant	575-233-5742 Ext1006	
Martin Lopez	LRG- General Manager	575-233-5742 Ext1004	
Josh Smith	LRG- Attorney	575-528-0500	
Tiffany Goolsby	SCCOG	575-740-2926	

LOWER RIO GRANDE PUBLIC WATER WORKS AUTHORITY

Draft Minutes — REGULAR BOARD OF DIRECTORS MEETING

9:30 a.m. Wednesday, June 17, 2020 via Online Zoom Meeting

Contact us at 575-233-5742 or board@LRGauthority.org for information, assistance, or to subscribe to email board meeting reminders. Email the board address or dial extension 1021 or 1018 and leave a message if requesting phone or log-in information for online meetings. Agendas are final 72 hours prior to the meeting and may be obtained at any LRGPWWA Office or at www.LRGauthority.org/noticesavisos.html

- I. **Call to Order, Roll Call to Establish Quorum:** Chairwoman Holguin called the meeting to order at 9:30 a.m. Mr. P Smith representing District #1 was present, District #2 is vacant, Mr. Evaro representing District #3 was present, Mrs. Holguin representing District #4 was present, Mr. Magallanez representing District # 5 was absent, District #6 is vacant, Mr. F Smith representing District #7 was present. Staff present were General Manager Martin Lopez, Finance Manager Kathi Jackson, Operations Manager Mike Lopez, Projects Manager Karen Nichols, Accounting Assistant John Schroder and Projects Specialist Patricia Charles. Guest were Attorney Josh Smith and Tiffany Goolsby with SCCOG.
- II. **Pledge of Allegiance – postponed due to online meeting**
- III. **Oath of Office for new District 1 Director, Paul Smith:** Mr. Lopez read the pledge of oath to Mr. P Smith. Mr. P Smith accepted the oath of office.
- IV. **Motion to approve Agenda:** Mr. F Smith made the motion to approve the agenda. Mr. Evaro seconded the motion, the motion passed with all in favor.
- V. **Approval of Minutes:**
 - A. **Motion to approve the minutes of the May 20, 2020 Regular Board Meeting:** Mr. Evaro made the motion to approve the minutes for May 20, 2020 regular board meeting. Mr. F Smith seconded the motion, the motion passed with all in favor.
- VI. **Presentations: None**
- VII. **Public Input**
 - A. **General Matters:** none
 - B. **Public Input RE: Infrastructure Capital Improvements Plan (ICIP) and needed projects:** Tiffany Goolsby was present and available for any questions from the public regarding the Infrastructure Capital Improvements Plan (ICIP). There were to comments or questions.
- VIII. **Managers' Reports**
 - A. **General Manager:** Mr. Lopez provided a written report and stood for questions. One staff member in the La Mesa office tested positive for COVID-19. The COVID-19 positive staff member was reported a couple of weeks ago. They are quarantined and is receiving medical attention. The staff member was not in contact with the public because that office has been

closed since March 18, 2020. Other staff members in that office that were in contact have been tested. Tests have all come back negative for COVID-19. One employee submitted their resignation and another has completed their probationary period.

- B. Finance:** Ms. Jackson provided a written report and stood for questions. The revenue for May 2020 was \$418,000, we are ahead of the projected budget. Expenses were \$281,000, we will need to make a couple of budget adjustments for the extra revenue. Extra revenue was put into savings. 260 register change outs were completed this month, still have about 1000 left to change out. 401K contributions were made. She was notified by the State Auditor's Office that there will be no change to due dates due to COVID-19. She lost one of her employees and one finished his probationary period and is doing great.
- C. Projects:** Ms. Nichols provided a written report and stood for questions. Mesquite-Brazito Sewer Project 1 is nearing completion the scheduled date is July 13, 2020. This date could be delayed a month in order to use contingency funds in the budget to hook up a few more customers. Mesquite-Brazito Sewer Project 2 contract documents have been approved by USDA-RD and will be ready for bid, once the pending items are cleared. Josh Smith said he had received orders of publication on two of the suits and will publish this week. The parties for the third suit are in California and due to COVID-19 it has been hard to get someone to serve them. He thinks possession of properties will be in the next couple of months. The Water Master Plan contract with Bohannon Huston is on today's agenda. Valle Del Rio System Project is under construction. East Mesa Water System Improvement Project the final design submittal is scheduled to be sent to NMED today and the land purchase is in process. Mr. Lopez mentioned that he received notification on June 17, 2020 from the Environmental Dept. notifying him that they sent out the official publication to the public, they have a 30-day comment period on the closure of Mesquite Wetlands.
- D. Operations:** Mr. Mike Lopez provided a written report and stood for questions. We have had many line breaks recently thru out the system. There was a big increase in water usage in April & May it could be due to people being home because of COVID-19. Mr. Lopez asked Mr. Mike Lopez to give an update on the damage at the Desert Sands #1 tank. He rented a lift and plugged the bullet holes in it. We have had several incidents were people have used that tank for target shooting. He spoke to Ms. Nichols about maybe meeting with an engineer to design some kind of a barrier to deflect the bullets. He is going to get a quote to make repairs on the current damage. Mrs. Holguin would like for us to try to work with the Sheriff's Department or the City of Anthony to see if they could keep an eye on the tank. We may need to give the Sheriff a visit regarding this matter. Ms. Nichols said the land the tank is on is leased from BLM. We are co-located with the county at that site.

IX. Unfinished Business

A. Appointment of Directors for Districts 2 & 6 - Postponed

X. New Business

- A. Motion to approve Engineering Services Agreement with Bohannon Huston, Inc. for development of a Water Master Plan funded by a CDBG Planning Grant and LRGPWWA funds:** Mr. F. Smith made the motion to approve the Engineering Services Agreement with Bohannon Huston, Inc. for development of a Water Master Plan funded by a CDBG Planning Grant and LRGPWWA funds. Mr. Evaro seconded the motion, the motion passed with all in favor. Ms. Nichols explained for Mr. P Smiths benefit, that this started as a planning document to build a surface water plant, then later took a look at building a brackish water treatment plant. The Brackish water treatment plant proved to be too expensive. The planning document was funded by Water Trust Board, it was then recommended that we develop a Water Master Plan and build an additional well in Berino. With this funding we completed a comprehensive water model, water system design standards, GSI Database and a ground water well siting study, but these need updating. We received a planning grant from CDBG so we can move forward with the Plan piece, for future water supplies. The motion passed with all in favor.
- B. Motion to adopt USDA Rural Development Loan Resolution Security Agreement for Mesquite-Brazito Sewer Project 2:** Mr. F Smith made the motion to adopt USDA Rural Development Loan Resolution Security Agreement for Mesquite Brazito Sewer Project 2. Mr. Evaro seconded the motion. Mr. Lopez said Mesquite Brazito Sewer Project Phase II is to help capture some additional streets in the Brazito and Mesquite areas, depending on the actual construction bid. We anticipate being short funds and will require a Phase III Project. The motion passed with all in favor.
- C. Motion to approve waiver of disconnections for July 2020:** Mr. F Smith made the motion to approve waiver of disconnections. Mr. Evaro seconded the motion. Mr. Lopez said we have waived disconnections since March. Staff does not recommend continuing the waiver. Some customers are really falling behind on paying their bills. We have had people call and make arrangements but there are still many that are delinquent. At this point we need to take action and start disconnecting services. Mr. Evaro asked if we sent out notices of the delinquencies, Mr. Lopez said this information in noted on the actual bills we send out. Mr. P Smith asked if there was anyway there could be a dollar amount limit. Mr. Lopez said that was a possibility. Chairwoman Holguin asked for a vote for approving the waiver of disconnections for July 2020. Mr. P Smith voted nay, Mr. Evaro voted nay, Mr. F Smith voted nay and Mrs. Holguin voted nay. The motion did not pass.
- D. Motion to adopt Resolution #FY2020-21 Approving the SCCOG membership:** Mr. Evaro made the motion to adopt Resolution #FY2020-21 approving the SCCOG membership and the appointment of a representative and an alternate. Mr. F Smith seconded the motion. Chairwoman asked it any member of the board or staff member was interested in being appointed representative or alternate. No one volunteered so Ms. Jackson will remain the representative and Mrs. Holguin will remain the alternate. The motion passed with all in favor.

XI. Other discussion and agenda items for next meeting at 9:30 a.m. Wednesday, July 15, 2020 at the Vado Office.

- A. Have any Board Members participated in training? If so, please give us a copy of your certificate:** No one had attended any trainings.

- B. Directors should turn in Board of Directors Manuals so staff can update them**
- C. Resolution Number FY-2020-20 Approving and Adopting the Final Budget for FY-2021**
- D. Budget adjustment for FY2020**
- E. Replace Mr. McMullen on Disposition Committee with Mr. P. Smith.**

XII. Motion to Adjourn: Mr. F Smith made the motion to adjourn the board meeting at 10:09 a.m., Mr. Evaro seconded the motion. The motion passed with all in favor.

These minutes were approved on the 17th Day of June, 2020 at a regular meeting of the Board of Directors:

SEAL:

Esperanza Holguin, Board Chair

Attest:

Joe Evaro, Secretary

DRAFT

LOWER RIO GRANDE PUBLIC WATER WORKS AUTHORITY

Meeting Notice & Agenda—REGULAR BOARD OF DIRECTORS MEETING

9:30 a.m. Wednesday, June 17, 2020 via Online Zoom Meeting

Contact us at 575-233-5742 or board@LRGauthority.org for information, assistance, or to subscribe to email board meeting reminders. Email the board address or dial extension 1021 or 1018 and leave a message if requesting phone or log-in information for online meetings. Agendas are final 72 hours prior to the meeting and may be obtained at any LRGPWVA Office or at www.LRGauthority.org/noticesavisos.html

- I. Call to Order, Roll Call to Establish Quorum: District #1 (Mr. P. Smith) __, #2 (Vacant) __, #3 (Mr. Evaro) __, #4 (Mrs. Holguin) __, # 5 (Mr. Magallanez) __, #6 (Vacant) __, #7 (Mr. F. Smith) __
- II. Pledge of Allegiance – postponed due to online meeting
- III. Oath of Office for new District 1 Director, Paul Smith
- IV. Motion to approve Agenda
- V. Approval of Minutes
 - A. Motion to approve the minutes of the May 20, 2020 Regular Board Meeting
- VI. Presentations: None
- VII. Public Input
 - A. General Matters: 15 minutes are allotted for this item, 3 minutes per person
 - B. Public Input RE: Infrastructure Capital Improvements Plan (ICIP) and needed projects
- VIII. Managers' Reports
 - A. General Manager
 - B. Finance
 - C. Projects
 - D. Operations
- IX. Unfinished Business
 - A. Appointment of Directors for Districts 2 & 6 - Postponed
- X. New Business
 - A. Motion to approve Engineering Services Agreement with Bohannon Huston, Inc. for development of a Water Master Plan funded by a CDBG Planning Grant and LRGPWVA funds
 - B. Motion to adopt USDA Rural Development Loan Resolution Security Agreement for Mesquite-Brazito Sewer Project 2

- C. Motion to approve waiver of disconnections for July 2020
- D. Motion to adopt Resolution #FY2020-21 Approving the SCCOG membership

XI. Other discussion and agenda items for next meeting at 9:30 a.m. Wednesday, July 15, 2020 at the Vado Office.

- A. Have any Board Members participated in training? If so, please give us a copy of your certificate
- B. Directors should turn in Board of Directors Manuals so staff can update them
- C. Resolution Number FY-2020-20 Approving and Adopting the Final Budget for FY-2021

XII. 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.



www.LRGauthority.org

LOWER RIO GRANDE

Public Water Works Authority

325 Holguin Road Box C Vado, New Mexico 88072 (575) 233-5742

Oath of Office

I, Paul G Smith, do solemnly swear that I will support the Constitution of the United States and the Constitution and the laws of the State of New Mexico and that I will faithfully and impartially discharge the duties of the office of Director of the Lower Rio Grande Public Water Works Authority, on which I am about to enter, to the best of my abilities, so help me God.

District 1 Term ends Dec. 31, 2023

Signature

Subscribed and Sworn to me on this
17th day of June, 2020

Signature

Title

My commission/term
expires _____

LOWER RIO GRANDE PUBLIC WATER WORKS AUTHORITY

Minutes —REGULAR BOARD OF DIRECTORS MEETING

9:30 a.m. Wednesday, May 20, 2020 via Online Zoom Meeting

(If you plan to attend please contact us at board@lrgauthority.org or call us at 575-233-5742 ext. 1021 or 1018 and leave a message)

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:** Chairwoman Holguin called the meeting to order at 9:30 a.m. District #1 is vacant, District #2 is vacant, Mr. Evaro representing District #3 was present, Mrs. Holguin representing District #4, Mr. Magallanez representing # 5 was present, (Mr.) District #6 is vacant, Mr. Smith representing District #7 was present. Staff present were General Manager Martin Lopez, Finance Manager Kathi Jackson, Projects Manager Karen Nichols, Projects Specialist Patricia Charles, Accounting Assistant John Schroder, Operations Manager Mike Lopez, Attorney Josh Smith. Guest present Paul Smith
- II. **Pledge of Allegiance – postponed due to online meeting**
- III. **Motion to approve Agenda:** Mr. Magallanez made the motion to approve the agenda, Mr. Evaro seconded the motion, the motion passed with all in favor.
- IV. **Approval of Minutes**
 - A. **Motion to approve the minutes of the March 24, 2020 Special Board Meeting:** Mr. Smith made the motion to approve the March 24, 2020 Special Board Meeting minutes. Mr. Magallanez seconded the motion, the motion passed with all in favor.
 - B. **Motion to approve the minutes of the April 15, 2020 Regular Board Meeting:** Mr. Evaro made the motion to approve the April 15, 3030 Regular Board Meeting minutes. Mr. Magallanez seconded the motion, the motion passed with all in favor.
- V. **Presentations: Employee Recognition – Arturo Talamantes – 5 Years of Service:** Mr. Lopez presented a Plaque for 5 years of Service. He is a Level 1 Water Operator and completed his 5-year service on May 6, 2020.
- VI. **Public Input: None**
- VII. **Managers' Reports**
 - A. **General Manager:** Mr. Lopez provided a written report and stood for questions. He informed the Board of Directors of the new format for the minutes. We will have the Chair and Secretary sign them instead of all the board members. This is to avoid having to meet with the rest of the board members during the pandemic. We reopened offices and resumed full operations on Monday 18, 2020 with the exception of the La Mesa Office due to its lobby configuration. The Staff has been provided with masks, gloves and thermometers (for self-check). The 4 staff

members that had possible contact with individuals with Covid-19 have been tested and all were negative. We are working with GISD and internet providers to possibly setup antennas on some of our facilities to assist with “distance learning”. Mrs. Holguin suggested we post this activity once it is setup, on the Website to show community support.

- B. Projects:** Ms. Nichols provided a written report and stood for questions. Mesquite-Brazito Sewer Project update main lines, service connections, and lift stations are done. Customer hook-up, septic tank decommissions, and road work are in process as of the first of this month. Sewer Project 2 is pending right of way issues. Mr. Josh Smith said they had finalized the condemnation suits on 4 properties that they were unable to obtain easements for. They will be published in the next week or so. South Valley Water Supply & Treatment Project (well, arsenic treatment and tank in Berino): RCAC loan was approved, contract documents have been approved by USDA-RD and NMED-DWB. We are waiting on approval to bid from RD and closing on RCAC construction loan. Water Master Plan: Bohannon Huston has provided a draft contract, which will be on the June agenda. Central Office Building: Architect has final received comments from DSI, LRGPWVA IT contractor, regarding the IT portion of the contract. Valle Del Rio Water System Project: Morrow Construction is about to begin construction. They had a start date of the 11th but were delayed waiting on the county to review the Storm Water Plan. They may start next week. Mr. Mike Lopez said they are setting up the site and are going to take a deposit for the hydrant meter, we have one available for them. East Mesa Project: 90% review meeting was held on 5/14/20. We are waiting on comments from the operators, we got them a plan set for them to mark up yesterday. High Valley Project: Phase II has been cleared to move forward. Phase I received 3 bids but were very high so authorization was received from Construction Programs Bureau to get bids from drilling companies and proceed with starting the project. Stern Drive Extension Project: the contract amendment to design the rest of the pipeline has been approved. Jacquez Project is complete. Mesquite wetlands closure – is underway there will be a 60% design review.
- C. Operations:** Mr. Mike Lopez provided a written report and stood for questions. Ms. Holguin asked if he knew what the problem with the lack of water on Holguin Road in Vado. She said she did not have water at 9:00 am this morning and she had noticed that the shortage was usually between 9:00 – 10:00 am. Mr. Mike Lopez said he and Ramon Morales would be going out there to check the pressure reducing valves tomorrow and would know something then.
- D. Finance:** Ms. Jackson provided a written report and stood for questions. We brought in \$330,582.00 in revenues and expenditures were \$237,081.00 with a surplus to be put in savings. We are on track to exceed our budgeted revenue by \$300,000.00. We have not seen any dips in revenues due to the Covid-19 virus. Tyler tracks how many payments are made on line, we have seen a 33% increase in online payments. Tyler news: a notification system has been setup to send an email to remind customers to make payments.

VIII. Unfinished Business

- A. Appointment of Director for Districts 1 – Letter of Interest from Paul Smith:** We received a letter of interest from Mr. Paul Smith to participate as a board member for LRGPWVA. Mr. F.

Smith made the motion to appoint Mr. Paul Smith to represent District #1. Mr. Evaro seconded the motion, the motion passed with all in favor. Ms. Nichols said we would be setting up an email address and putting together a board member binder for Mr. P Smith. Mrs. Holguin welcomed the newly appointed District 1 Director.

B. Appointment of Directors for Districts 2 & 6 - Postponed

IX. New Business

- A. Motion to adopt Resolution #FY2020-17 Open Meetings Act Compliance:** Ms. Nichols explained that the need for this resolution was to clean up the language and to make it clear that we have met our meeting notice requirements. The Directors Schedule of Meeting is attached and is part of the Open Meetings Act. Chairperson Holguin requested the zip code be added to the Mesquite address. Mr. F. Smith made the motion to adopt Resolution #FY2020-17 Open Meetings Act Compliance. Mr. Evaro seconded the motion, the motion passed with all in favor.
- B. Motion to adopt Resolution #FY2020-18 Adopting Interim Proposed Budget:** Ms. Jackson said the interim budget is divided in two, Water budget and Sewer budget. The water budget has been increased by 5% to cover increases in Insurance and Salaries everything else stayed the same. The sewer budget was increased by 36% due to the 172 new connections. Mr. Magallanez asked what the potential revenue is expected due to the new connections. Ms. Jackson said we could increase by approximately \$80,000.00. We will get the minimums from the 172 connections for sure, but the usage will depend on individual usage. Ms. Nichols said there will be a potential for increase because of debt service and increase in fees from the County. Mr. Martin Lopez said the estimates are based on minimums and 6,000 gallons estimate of sewage, some will go above that and some will be below that. That is the standard we use for estimating. Mr. F Smith made the motion to adopt Resolution #FY2020-18 Adopting Interim Proposed Budget. Mr. Evaro seconded the motion, the motion passed with all in favor.
- C. Motion to adopt Resolution #FY2020-19 Request Support for Retaining SAP 19-D2445-GF to complete Mesquite Wetlands Closure Project:** Ms. Nichols explained that we received an email from Construction Bureau Environment Dept. that the general funds appropriations were going to be frozen and they were not accepting any new contracts for 2019 Capital Outlay. The wetlands project is funded by 2019 Capital Outlay and the Engineering Agreement in place. The construction budget is \$200,000.00 and we could lose those funds. She spoke to Representative Lara about this issue and wanted to ask all our legislators to support our retaining these funds to finish this project because it is a regulatory issue. We would like to have this resolution passed so we can contact all our legislators. We might still lose some other funding. Chairperson Mrs. Holguin asked that a correction be made on paragraph 3 the groundwater discharge permit limitation be 10mg instead of 14mg. Mr. Magallanez made the motion to adopt Resolution #FY2020-19 request support for retaining SAP 19-D2445-GF to complete Mesquite Wetlands Closure Project with the contingency that 14 mg be verified. Mr. F Smith seconded the motion, the motion passed with all in favor.

- D. Motion to authorize the General Manager to establish opportunities for public input for the FY2022-2026 ICIP:** Mr. Lopez said this is the typical process for public input for ICIP Plan, but this year there is a twist because of the public open meetings needed. This gives staff the opportunity to coordinate public input and stay compliant with the regulations required by the Dept. of Financial Administration. Ms. Nichols will be working with Tiffany Goolsby with SCCOG to get this done. We could possibly provide opportunities for Zoom meetings, news letters and/or public input forms to people they can use if there are project's they would like to see in their districts. Mr. F Smith made the motion to authorize the General Manager to establish opportunities for public input for the FY2022-2026 ICIP. Mr. Evaro seconded the motion, the motion passed with all in favor.
- E. Motion to adopt proposed amendment to the LRGPWWA Employee Policy Manual:** Mr. Lopez said the addition is to avoid a perceived weakness mentioned by the Auditor, this will limit LRGPWWA's exposure. It prohibits employees from using personal credit cards to purchase company materials and accrue mileage points or bonuses. Ms. Jackson said we did not have any issues with this problem. Mr. Magallanez made the motion to adopt proposed amendment to the LRGPWWA Employee Policy Manual. Mr. F. Smith seconded the motion, the motion passed with all in favor.
- F. Motion to approve Real Estate Purchase Agreement for .08365 acres with Weston & Carmella Lee and the expenditure of LRGPWWA funds for the purchase:** Mr. Lopez said as part of the East Mesa Improvements the previous engineer did not include a site for a tank location. In discussions with the new engineer it was determined that a bit more land would be needed. We contacted Mr. Lee about purchasing some land from him. Ms. Nichols added the price of the land will be \$6,186.00 and if the purchase agreement is approved a closing would be scheduled for the end of the month. Mr. Magallanez offered to fill out and submit the application for claim of exception because the property is going to be split. His offer was accepted, he will prepare it and have it ready to submit it to the county this Friday or next Monday. Mr. Lopez said he would like to use money received from AT&T rental because the purchase of the property would not be a budget item. Mr. Magallanez is able to provide this service because he owns Moy Surveying and is sub-contracting services to the engineering firm on this project. Mr. F Smith made the motion to approve the Real Estate Purchase Agreement for .08365 acres with Weston & Carmella Lee. Mr. Evaro seconded the motion, the motion passed with all in favor except for Mr. Magallanez who abstained from voting.
- G. Motion to approve waiver of disconnections for June 2020:** Mr. Evaro made the motion to approve waiver of disconnections for June 2020. Mr. Magallanez seconded the motion, the motion passed with all in favor.
- H. Discussion regarding FY2022-FY2026 ICIP:** Ms. Nichols said she wanted to open discussion about what projects may be needed in each of our districts. She would like the Board members to start thinking about any projects that might be needed in the district that each represents. It is up on the website and we will make sure the previous one is up on the website. Chairperson Holguin would like Ms. Nichols and Ms. Charles to get together with Mr. P Smith and give him information regarding the ICIP.

I. **Motion to authorize funding application to NM CIF or NMDWSRLF for East Mesa Water System Improvements Phase I Project for approximately \$3 million:** Ms. Nichols said we are nearing completion of Phase I East Mesa Improvement Project and design was funded by NM CIF. She would like to apply for funding from NM CIF or NMFWDRLF because we are a disadvantage community and would qualify for 75% principal forgiveness for this project. They may be receiving stimulus funding we have received requests to send information regarding our up coming projects. Mr. F Smith made the motion to authorize funding application for NM CIF or NMDWSRLF for East Mesa Water System Improvements Phase I. Mr. Evaro seconded the motion, the motion passed with all in favor.

J. **Motion to authorize the General Manager to negotiate a contract with a well drilling company for the High Valley Water System Improvements Phase I Project:** Ms. Nichols said we have had lots of interest in this project from driller we have used for in house projects and from a driller from Albuquerque who had a contract with the city. She asked Mr. Mike Lopez to let her know if he knew any other drillers that might be interested in this project. Mr. Paul Smith said he might know someone who might be interested as well. He will get with Ms. Nichols with that information. Mr. Magallanez made the motion to authorize the General Manger to negotiate a contract with a well drilling company for High Valley Water System Project I. Mr. Evaro 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, June 17, 2020 at the La Mesa Office.**

A. **Have any Board Members participated in training? If so, please give us a copy of your certificate:** None of the board members had participated in any training.

B. Budget Resolution

XI. **Motion to Adjourn:** Mr. F. Smith made the motion to adjourn the board meeting at 10:32 a.m. Mr. Magallanez seconded the motion, the motion passed with all in favor.

These minutes were approved on the 17th Day of June, 2020 at a regular meeting of the Board of Directors:

SEAL:

Esperanza Holguin, Board Chair

Attest:

Joe Evaro, Secretary

LRGPWWA
Manager's Report
June 17, 2020

- AT&T tank site annual rent received
- Invoiced farmer utilizing Vado farm land
- One staffer in the La Mesa office has tested positive for CoVid-19 and is in quarantine and receiving medical attention. Individual was not in contact with public at our facility. Other staff which were in contact have been tested; all who tested have been negative so far
- One employee has submitted their resignation and another has completed their probationary period
- 401K contribution for 2019 has been made
- Expected to received dump truck before the end of month



Lower Rio Grande Public Water Works Authority

Income Statement

Group Summary

For Fiscal: FYE 2020 Period Ending: 05/31/2020

AcctNumber	Current Total Budget	MTD Activity	YTD Activity	Budget Remaining
Revenue				
40000 - Operating Revenue	2,865,000.00	239,118.78	2,697,841.15	167,158.85
40001 - Activation & Connection Fees-Sewer	4,000.00	0.00	425.01	3,574.99
40002 - Installation Fees	57,500.00	2,750.00	46,782.28	10,717.72
40003 - Activation & Connection Fees-Water	7,500.00	500.00	5,491.48	2,008.52
40005 - Backflow Testing	7,000.00	0.00	2,825.00	4,175.00
40006 - Tampering Fee/Line Breaks	0.00	0.00	8,614.57	-8,614.57
40007 - Delinquency Fee	100,000.00	16,150.00	92,010.00	7,990.00
40008 - Penalties-Water	0.00	12,172.25	86,560.05	-86,560.05
40009 - Membership Fees	0.00	950.00	6,100.00	-6,100.00
40010 - Impact Fees	40,000.00	4,525.01	37,954.55	2,045.45
40011 - Returned Check Fees	0.00	0.00	735.00	-735.00
40012 - Credit Card Fees	10,000.00	822.00	9,600.00	400.00
40013 - Miscellaneous Revenue	0.00	35.00	648.05	-648.05
40015 - Penalties-Sewer	4,500.00	543.32	6,255.63	-1,755.63
40017 - Hydrant Meter Rental Fee	15,000.00	1,000.00	4,000.00	11,000.00
40018 - Permit Fees	0.00	0.00	150.00	-150.00
40019 - DAC Trash Coupons	0.00	46.00	848.00	-848.00
40020 - Miscellaneous Revenue-Sewer	7,500.00	60.83	419.75	7,080.25
45000 - Tower Rent	0.00	500.00	4,500.00	-4,500.00
45001 - Billing Adjustments-Water	0.00	-3,246.75	-83,606.47	83,606.47
45005 - Fiscal Agent Fees	0.00	6,426.50	54,571.27	-54,571.27
45010 - Interest	0.00	25.53	623.35	-623.35
45015 - Copy/Fax	0.00	6.25	165.30	-165.30
45020 - Other Income	45,000.00	62.96	42,061.30	2,938.70
45022 - Annual Farm Rental	0.00	7,500.00	7,500.00	-7,500.00
45025 - Contract Services	50,000.00	3,098.70	42,328.35	7,671.65
45030 - Transfers In	0.00	125,746.00	331,818.00	-331,818.00
49000 - Recovered Bad Debts	0.00	200.00	2,600.00	-2,600.00
Revenue Total:	3,213,000.00	418,992.38	3,409,821.62	-196,821.62
Expense				
60001 - Transfer to Reserves	0.00	10,000.00	110,066.65	-110,066.65
60005 - Accounting Fees	0.00	0.00	216.84	-216.84
60010 - Audit	15,000.00	0.00	13,666.25	1,333.75
60016 - Adjustments	0.00	0.00	-16,700.00	16,700.00
60020 - Bank Service Charges	15,000.00	2,003.52	16,305.55	-1,305.55
60025 - Cash Short/Over	300.00	12.25	-38.03	338.03
60026 - Computer Hardware	0.00	0.00	2,452.11	-2,452.11
60030 - Dues and Subscriptions	5,000.00	200.00	2,705.77	2,294.23
60035 - Engineering Fees	0.00	6,505.44	27,091.93	-27,091.93
60045 - Late Fees	1,000.00	0.00	0.00	1,000.00
60050 - Legal Fees	0.00	216.63	3,159.29	-3,159.29
60055 - Legal Notices	2,500.00	0.00	343.04	2,156.96
60060 - Licenses & Fees	5,000.00	75.00	5,698.31	-698.31
60065 - Meals	2,500.00	39.00	1,265.24	1,234.76
60075 - Permit Fees	1,500.00	0.00	825.00	675.00
60080 - Postage	30,500.00	440.14	1,946.57	28,553.43
60090 - Professional Fees-Other	0.00	758.19	9,523.34	-9,523.34
60100 - Project Development	0.00	0.00	0.00	0.00
60120 - Retirement Account Fees	2,500.00	624.50	7,474.15	-4,974.15
60125 - Easments & Leases	0.00	0.00	7,248.28	-7,248.28
60130 - Training	5,000.00	150.00	3,702.70	1,297.30
60140 - Travel:Airfare Per Diem	2,500.00	0.00	776.00	1,724.00
60150 - Travel:Lodging Per Diem	5,000.00	0.00	3,331.41	1,668.59
60155 - Travel:Meals Per Diem	2,500.00	0.00	994.18	1,505.82
60160 - Travel:Mileage/Parking Per Diem	1,500.00	0.00	913.39	586.61
60165 - Travel:Vehicle Rental Per Diem	0.00	0.00	301.47	-301.47

60600 - Debit Service	148,000.00	18,540.67	264,559.76	-116,559.76
60625 - Interest paid to NMED	0.00	0.00	12,435.44	-12,435.44
60650 - Interest paid to NMFA	37,000.00	24,073.57	41,509.51	-4,509.51
60675 - Interest paid to USDA	130,000.00	11,596.26	75,797.79	54,202.21
63000 - Regular Pay	1,074,100.00	55,540.41	859,836.73	214,263.27
63001 - Overtime	70,000.00	84.42	27,301.45	42,698.55
63006 - Holiday Pay	55,000.00	0.00	45,976.13	9,023.87
63007 - Sick Pay	60,000.00	1,671.53	46,378.69	13,621.31
63008 - Annual Leave Pay	0.00	36,398.47	132,526.26	-132,526.26
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
63040 - Administrative Labor	0.00	0.00	3,090.00	-3,090.00
63070 - Employee Benefits-401K Contrib	109,000.00	2,735.11	32,055.34	76,944.66
63100 - Insurance-Dental	18,000.00	1,031.92	11,610.76	6,389.24
63110 - Insurance-Health	272,000.00	22,844.61	244,778.23	27,221.77
63115 - Salaries: Insurance - Work Comp	20,000.00	1,436.00	12,372.00	7,628.00
63125 - Insurance: Life & Disability	21,000.00	-69.87	10,575.88	10,424.12
63130 - Mileage	0.00	0.00	420.87	-420.87
63135 - Drug Testing	0.00	0.00	510.00	-510.00
63160 - Payroll Taxes-Medicare	19,860.00	1,358.58	16,124.26	3,735.74
63170 - Payroll Taxes-Social Security	77,440.00	5,809.07	68,945.10	8,494.90
63180 - Payroll Taxes-State Unemployment	0.00	0.00	25.00	-25.00
63200 - Vision Insurance	5,500.00	322.27	3,498.20	2,001.80
64100 - Sewer:DAC Waste Water Flow Charge	35,000.00	7,314.91	40,139.66	-5,139.66
64200 - Sewer:Electricity-Sewer	9,000.00	658.73	8,660.12	339.88
64300 - Sewer:Lab & Chemicals-Sewer	42,000.00	0.00	2,105.47	39,894.53
65010 - Automobile Repairs & Maint.	40,000.00	2,877.72	24,339.72	15,660.28
65230 - Computer Maintenance	63,000.00	3,042.99	66,722.49	-3,722.49
65240 - Equipment Rental	2,500.00	0.00	1,262.52	1,237.48
65250 - Fuel	60,000.00	3,570.28	56,327.83	3,672.17
65255 - GPS Insights Charges	7,000.00	458.80	5,346.05	1,653.95
65260 - Kitchen & Cleaning Supplies	0.00	0.00	681.75	-681.75
65270 - Lab Chemicals-Water	5,000.00	0.00	1,434.51	3,565.49
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
65278 - Meter Testing/Repair/Replacement	0.00	0.00	5,453.14	-5,453.14
65280 - Lab Chemicals-Water:Chemicals	35,000.00	3,502.60	29,975.60	5,024.40
65300 - Locates	6,000.00	0.00	1,281.38	4,718.62
65310 - Maint. & Repairs-Infrastructure	0.00	5,058.94	68,749.88	-68,749.88
65320 - Maint. & Repairs-Office	10,000.00	2,405.32	8,102.99	1,897.01
65330 - Maintenance & Repairs-Other	1,500.00	10.00	14,544.80	-13,044.80
65340 - Materials & Supplies	45,000.00	5,151.13	40,556.98	4,443.02
65345 - Non Inventory-Consumables	65,000.00	13,801.02	49,339.26	15,660.74
65350 - Office Supplies	2,500.00	1,047.19	8,317.49	-5,817.49
65360 - Printing and Copying	20,000.00	3,776.68	39,099.41	-19,099.41
65370 - Tool Furniture	5,000.00	286.69	7,617.72	-2,617.72
65390 - Uniforms-Employee	10,400.00	762.00	14,496.21	-4,096.21
65490 - Cell Phone	20,000.00	0.00	18,156.52	1,843.48
65500 - Electricity-Lighting	6,000.00	901.59	5,553.67	446.33
65510 - Electricity-Offices	15,000.00	1,800.95	12,890.47	2,109.53
65520 - Electricity-Wells	211,000.00	15,163.01	172,241.26	38,758.74
65530 - Garbage Service	2,500.00	219.58	2,970.02	-470.02
65540 - Natural Gas	3,000.00	1,133.87	2,646.27	353.73
65550 - Security/Alarm	6,700.00	0.00	1,341.50	5,358.50
65560 - Telephone	20,000.00	1,530.95	19,761.43	238.57
65561 - Telstar Maintenance Contract	7,000.00	0.00	0.00	7,000.00
65570 - Wastewater	2,000.00	733.46	2,582.46	-582.46
66200 - Insurance-General Liability	75,000.00	0.00	84,400.63	-9,400.63
66700 - Water Conservation Fee	20,000.00	1,485.99	14,019.28	5,980.72
Expense Total:	3,213,000.00	281,092.09	2,944,715.33	268,284.67
Total Surplus (Deficit):	0.00	137,900.29	465,106.29	-465,106.29

**LOWER RIO GRANDE PUBLIC WATER WORKS AUTHORITYs
PROJECTS REPORT – 6/17/20**

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 – Twelfth progress meeting was held on 6/1/20. 12th Contractor’s pay application has been submitted. Customer hook-up and septic tank decommissions are still in process. Odor control system was started up on 6/10/20, and start-up of grinder stations is scheduled for 6/16/20.

LRG-17-01 – Mesquite-Brazito Sewer Project 2 – Bohannon Huston, Inc. – Design Stage – USDA-RD LOC \$15,030,780 – 21st Request for Funds from RCAC bridge loan has been submitted. Contract documents have been approved by USDA-RD. Two easements pending and one real property are pending, Josh is taking care of these. All three are condemnation suits. Loan Resolution Security Agreement Is on today’s agenda.

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: RCAC loan was approved. Contract Documents have been approved by USDA-RD and NMED-DWB. Extension of Time has been submitted to NM OSE for the well. RD approval to bid and closing on RCAC construction loan are pending.

LRG-17-01 – Water Master Plan – WTB #252: Contract with Bohannon Huston is on today’s agenda.

LRG-17-02 – Central Office Building – Wilson & Co. - DW-4213 \$3,285,619: NMED-CPB comments on contract documents were received, architect is preparing responses. Resolution of the NM DOT permit issue is still pending.

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: Construction is under way.

LRG-17-03 –East Mesa Water System Improvements Project – NMFA 3803-PG & 3804-PG, 4915-CIF – Design –Final design submittal is scheduled for today. Land purchase is in process.

LRG-18-01 – High Valley Water System Improvements Project – NMFA 4645-CIF18, 4915-CIF – Design & Construction – Souder, Miller & Assoc. – Engineer has obtained quotes from 2 of the 3 drillers he approached, and we will go with the lowest, D&J out of Deming. We will need to get quotes from contactors for the remainder of the work: electrical, piping, and hauling potable water to keep the tank filled during the project.

LRG-18-01 Ph. II – High Valley Water System Improvements Ph. II Project – NMFA 4916-CIF \$630,384 Grant, \$111,244 Loan – Design & Construction – Souder, Miller & Assoc. – Engineering agreement amendment for Phase II has been approved by NMED-CPB now that the agreement with Vista Del Rey is in place. Design work is under way.

LRG-18-02 – Stern Drive Waterline Extension Project – Design/Build – SMA - \$150,000 SAP –SMA

Additional design work is under way.

LRG-18-03 – Jacquez Waterline Extension Project – Design/Build - \$50,000 SAP – Wilson & Co. – Final close-out documents have been submitted.

LRG-19-09 – S. Valley Service Area Line Extensions - SMA – Authorization to apply to NMED Local Government Planning Fund for PER funding was approved by the board, but due to NMFA restrictions, we cannot apply until December and January.

LRG-20-01 – Mesquite Wetlands Closure – Plan/Design - BHI - \$250,000 SAP: EBID board denied permit application for storm water run-off to their drain. This will impact design and may result in being required to install an additional monitoring well.

Other projects:

Infrastructure Capital Improvements Plan 2022-2026: Deadline for Special Districts is 9/4/20. Public input is on today's agenda and for the July meeting.

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. One bin is expected to be sent out for shredding very shortly.

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

Training – Patty and I attended EFC Funding and Financing Strategies for integrated hazard mitigation and water resource plans on 5/27/20, and Patty attended EPA's Small System Risk and Resilience Assessments under AWIA on 6/4/20 and EPA's Water Sector Best Practices During COVID-19 on 6/9/20.

Lower Rio Grande Water Users Organization – nothing new to report

As Needed Engineering Services - Currently we have four active Task Orders: BHI for Berry Patch Road plan review and construction oversight, and Souder, Miller & Associates for two NM DOT permits for new services. Wilson & Co. completed a valve locate and will be providing some estimates of probable cost for a line extension.

Collection & Lien Procedures – 221 first notifications, 119 certified letters have been sent and 86 liens have been filed to date. 31 liens have been released following payment in full of the account.

Water Audits –Water audit results have been reported to NMED.

Rate Study – Is ongoing.

Lower Rio Grande PWWA

Operators Report

June 17 , 2020

System Problems and Repairs.

- Backflow inspections are Current. (Mesquite District)
- For the month of April, we were issued 391 work and service orders.
- For the month of May, we were issued 894 work and service orders, mostly register change outs.
- For the month of May, we installed 6 new water service connections.
- We had one main line breaks at Alto De Los Flores.
- We had three main line breaks at the East Mesa.
- We did not have any main or service line breaks at Talavera MDWCA.
- We have had 12 Main and service line breaks in South valley area.
- All CCR'S have been created and approved by NMED.

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

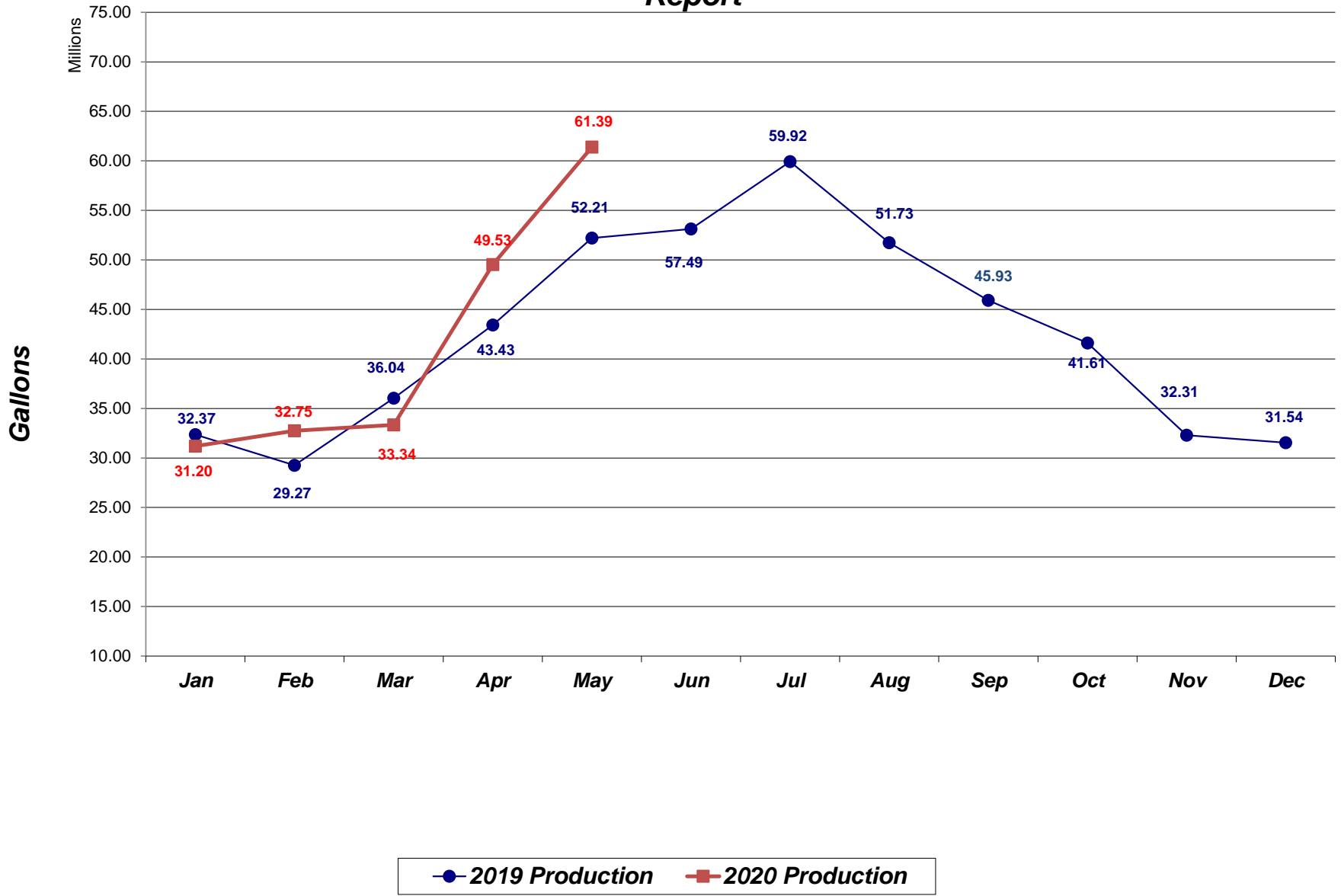
Mesquite district Wetlands: NMED is going to require us to drill 3 monitoring wells as the existing are dry.

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

Chlorine: No problems.

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

Lower Rio Grande PWWA Water Production Report



AGREEMENT BETWEEN OWNER AND ENGINEER

Project _____

Contract No. _____

Project No. _____

Distribution to:

- Owner
- Engineer
- LGD
- Other

Representative



This Agreement entered into this _____ day of _____, 20____, by and between

the "Owner"

and

the "Engineer"

Telephone: _____

Telephone: _____

Fax: _____

Fax: _____

Email: _____

Email: _____

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

[This document was prepared to be used with Community Development Block Grant and incorporates the use of the standard Agreement for Engineering Services (Publicly Funded Project) used by other funding agencies including the New Mexico Environment Department and the New Mexico Finance Authority. **Additions to the standard agreement document include (SECTION A.22) MAXIMUM ALLOWABLE CONSTRUCTION COST and (SECTION A.23) FEDERAL TERMS AND CONDITIONS FOR PROFESSIONAL SERVICES.** This document has important legal consequences; consultation with an attorney is encouraged with respect to its completion or modification]

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

THIS Agreement, made this day of _____, 20____ by and between _____ hereinafter referred to as the OWNER, and _____ hereinafter referred to as the ENGINEER.

The OWNER intends to construct a Project consisting of

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

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the Operation Phase

SECTION A - GENERAL PROVISIONS

1. General

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

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

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

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

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

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

2. Approvals

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

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

3. Responsibilities of the ENGINEER

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

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

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

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

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

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

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

connection with ENGINEER'S services.

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

4. Responsibilities of the OWNER

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

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

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

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

5. Changes

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

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

6. Termination of Contract

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

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

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

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

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

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

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

7. Payment

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

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

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

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

8. TIME

(a) PROGRESS AND COMPLETION

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

(b) CONTRACT TIME AND LIQUIDATED DAMAGES

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

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

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

9. Project Design

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

10. Audits and Access to Records

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

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

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

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

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

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

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

11. Subcontracts

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

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

12. Insurance

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

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

13. Environmental Condition of Site

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

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

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

(d) It is acknowledged by both parties that Engineer's scope of services does not include any services related to Constituents of Concern. If Engineer or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (1) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.

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

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

14. Mutual Waiver

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

15. Independent Contractor

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

16. Equal Employment Opportunity

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

17. Gratuities

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

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

18. Covenant Against Contingent Fees

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

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

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

20. Remedies

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

21. Assurance Against Debarment

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

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

- (a) Evaluations of the Owner's Project budget, statements of probable construction cost, and detailed estimates of construction cost prepared by the Engineer represent the Engineer's best judgment as a design professional familiar with the construction industry. It is recognized, however, that the Engineer does not have control over the cost of labor, materials, or equipment; over the Contractor's methods of determining bid prices; or over competitive bidding, market, or negotiating conditions. Accordingly, the Engineer cannot and does not represent that bids or negotiated prices will not vary from the Project budget proposed, established, or approved by the Owner, or from any Statement of Probable Construction Cost or other cost estimate or evaluation prepared by the Engineer.
- (b) The Maximum Allowable Construction Cost (MACC) is established, as a condition of this Agreement, as a fixed limit of Construction Cost for design and bidding purposes. The Engineer shall be permitted to determine what materials, equipment, component systems, and types of construction are to be included in the Bidding Documents to bring Construction Cost within the MACC. With the written consent of the Owner, the Engineer may also include in the Bidding Documents either additive or deductive alternate bids to adjust the Construction Cost to the fixed limit.
- (c) The acceptance by the Owner at any time during Basic Services of a revised Statement of Probable Construction Cost in excess of the then established MACC will constitute a corresponding increase in the MACC to the extent indicated in the revised statement.
- (d) The Owner shall provide a written response to the funding agency of their acceptance of the increased MACC. This written response shall identify the source of the additional funds (or other procedure for covering the cost).
- (e) If bidding or negotiations with potential contractors have not commenced within two months after the Engineer submits Bidding Documents to the Owner, the Project budget and/or MACC shall be adjusted to reflect any change in the general level of prices in the construction industry between the date of submission of the Bidding Documents to the Owner and the date on which bids are sought.
- (f) The MACC, therefore, is established as a condition of this Agreement. When it is exceeded by the lowest bona fide bid, the Owner with review by the funding agency may: a) give written approval of an increase in the MACC; b) authorize re-bidding the Project within a reasonable time, or c) cooperate with the Engineer in revising the Project scope and, as required to reduce the Probable Construction Cost.
- (g) If the Owner elects to reduce the Probable Construction Cost, the Owner shall cooperate with the Engineer in revising the quality and scope of the Project; and the Engineer, without additional charge, shall modify the Drawings and Specifications as necessary to bring the Construction Cost within the MACC. The Engineer shall then assist the Owner through the Bidding process. When the cost estimate or an evaluation prepared by the Engineer indicates that the Project exceeds the MACC, the provisions outlined in this paragraph shall apply.

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

23. Federal Terms and Conditions for Professional Services (for CDBG funded projects)

State administered Community Development Block Grant monies are federal funds. Section 13-1-30B NMSA 1978 of the Procurement Code stipulates: "When a procurement involves the expenditure of federal funds, the procurement shall be conducted in accordance with mandatory applicable federal law and regulations. When mandatory applicable federal law or regulations are inconsistent with the provisions of the Procurement Code, compliance with federal law or regulations shall be compliance with the Procurement Code." The applicable governing federal procurement standards are defined in OMB Circular A-102, Attachment O. When federal and state procurement policies are different, the more restrictive policies apply so long as they are consistent with Circular A-102 standards.

(a) Termination of Contract for Cause. If, through any cause, the Engineer shall fail to fulfill in timely and proper manner his obligations under this Contract, or if the Engineer shall violate any of the covenants, agreements, or stipulations of this Contract, the Owner shall there-upon have the right to terminate this Contract by giving written notice to the Engineer of such termination and specifying the effective date thereof, at least five days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the Engineer under this Contract shall, at the option of the Owner, become its property and the Engineer shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder.

Notwithstanding the above, the Engineer shall not be relieved of liability to the Owner for damages sustained by the Owner by virtue of any breach of the Contract by the Engineer, and the Owner may withhold any payments to the Engineer for the purpose of set-off until such time as the exact amount of damages due the Owner from the Engineer is determined.

(b) Termination for Convenience of the Owner. The Owner may terminate this contract at any time by giving at least ten (10) days notice in writing to the Engineer. If the Contract is terminated by the Owner as provided herein, the Engineer will be paid for the time provided and expenses incurred up to the termination date. If this Contract is terminated due to the fault of the Engineer, paragraph 1 hereof relative to termination shall apply.

(c) Changes. The Owner may, from time to time, request changes in the scope of the services of the Engineer to be performed hereunder. Such changes, including any increase or decrease in the amount of the Engineer compensation, which are mutually agreed upon by and between the Owner and the Engineer, shall be incorporated in written amendments to this contract.

(d) Personnel.

1. The Engineer represents that he has, or will secure at his own expense, all personnel required in performing the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the Owner.

2. All of the services required hereunder will be performed by the Engineer or under his supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state and local law to perform such services.

3. None of the work or services covered by this contract shall be subcontracted without the prior written approval of the Owner. Any work or services subcontracted hereunder be specified by written contract or agreement and shall be subject to each provision of this Contract.

(e) Assign ability. The Engineer shall not assign any interest on this Contract, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the Owner thereto: Provided, however, that claims for money by the Engineer from the Owner under the Contract may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment or transfer shall be furnished promptly to the Owner.

(f) Reports and Information. The Engineer, at such times and in such forms as the Owner may require, shall furnish the Owner such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Contract, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Contract.

(g) Records and Audits. The Engineer shall maintain accounts and records, including personnel, property and financial records, adequate to identify and account for all costs pertaining to the Contract and such other records as may be deemed necessary by the Owner and to assure proper accounting for all project funds, both federal and non-federal shares. These records will be made available for audit purposes to the Owner or any authorized representative, and will be retained for six (6) years after the expiration of this Contract unless permission to destroy them is granted by the Owner and the funding agency.

(h) Findings Confidential. All of the reports, information, data, etc., prepared or assembled by the Engineer under this Contract are confidential and the Engineer agrees that they shall not be made available to any individual or organization without the prior written approval of the Owner.

(i) Copyright. No report, maps, or other documents produced in whole or in part under this Contract shall be the subject of an application for copyright by or on behalf of the Engineer.

(j) Compliance with Local Laws. The Engineer shall comply with all applicable laws, ordinances and codes of the state and the Owner, and the Engineer shall save the Owner harmless with respect to any damages arising from any tort done in performing any of the work embraced by this Contract.

(k) Equal Employment Opportunity. During the performance of this Contract, the Engineer agrees as follows:

1. The Engineer will not discriminate against any employee or applicant for employment because of race, creed, sex, color or national origin. The Engineer will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, sex, color or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Engineer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Owners setting forth the provisions of this non-discrimination clause.

2. The Engineer will, in all solicitation or advertisements for employees placed by or on behalf of the Engineer, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex, or national origin.

3. The Engineer will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Contract so that such provisions will be binding upon each subcontractor, provided that

the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

4. The Engineer will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

5. The Engineer will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the Owner's representative, the funding agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

6. In the event of the Engineer's non-compliance with the equal opportunity clauses of this Agreement or with any of such rules, regulations or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the Engineer may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

7. The Engineer will include the provisions of paragraphs A through G in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Engineer will take such action with respect to any subcontract or purchase order as the Owner's representative may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that in the event the Engineer becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Owner, the Engineer may request the United States to enter into such litigation to protect the interests of the United States.

(l) Civil Rights Act of 1964. Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

(m) Section 109 of the Housing and Community Development Act of 1974. No person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

(n) "Section 3" Compliance in the Provision of Training, Employment and Business Opportunities

1. The work to be performed under this contract is on a project assisted under a program providing direct federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the project.

2. The parties to this contract will comply with the provisions of said Section 3 and the regulations

issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR 135, and all applicable rules and orders of the Department issued there under prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.

3. The contractor will send to each labor organization or representative or workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

4. The contractor will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135. The Contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

5. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued hereunder prior to the execution of the contract, shall be a condition of the federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors and assigns to those sanctions specified by the grant or loan agreement or contract through which federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.

(o) Interest of Members of the Owner. No member of the governing body of the Owner and no other officer, employee, or agent of the Owner, who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this contract; and the Engineer shall take appropriate steps to assure compliance.

(p) Interest of other Local Public Officials. No member of the governing body of the Owner and no other public official of the Owner, who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this Contract; and the Engineer shall take appropriate steps to assure compliance.

(q) Interest of Engineer and Employees. The Engineer covenants that he presently has no interest and shall not acquire interest, direct or indirect, in the study area or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his services hereunder. The Engineer further covenants that in the performance of this Contract, no person having any such interest shall be employed.

(r) Access to Records. The state funding (grantor) agency, the Department of Housing and Urban Development, 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 directly pertinent to this specific contract, for the purpose of audits, examinations, and making excerpts and transcriptions.

(s) All records connected with this contract will be maintained in a central location by the Owner and will be maintained for a period of six (6) years from the official date of close-out of the grant.

SECTION B -ENGINEERING SERVICES

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

Engineering Services During the Planning Phase

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

Engineering Services During the Design Phase

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

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

Engineering Services During the Construction Phase

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

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

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

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

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

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

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

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

21. The ENGINEER shall prepare necessary contract change orders for approval of the OWNER, the Funding Agency and others as required. The ENGINEER shall make an independent assessment of the

Contractor's cost and time proposal and the impacts on the Contract Price and Contract Time as part of the review and recommendation process for each change order.

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

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

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

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

Engineering Services During the Operation Phase

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

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

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

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

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

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

SECTION C - ADDITIONAL ENGINEERING SERVICES

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

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

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

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

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

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

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

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

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

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

(Describe, attach or indicate "None")

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

ATTEST: _____
Type Name _____
Title _____
Date _____

OWNER:
By _____
Type Name _____
Title _____
Date _____

ATTEST: _____
Type Name _____
Title _____
Date _____

ENGINEER:
By _____
Type Name _____
Title _____
Date _____

CONCURRENCE: FUNDING AGENCY
NAME: _____
By _____
Type Name _____
Date _____

ATTACHMENT I - Compensation for Engineering Services During the Planning Phase

ATTACHMENT II - Compensation for Engineering Services During the Design Phase

ATTACHMENT III - Compensation for Engineering Services During the Construction Phase

ATTACHMENT IV - Compensation for Engineering Services During the Operation Phase

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

EXHIBIT A – Planning Services scope of work and cost proposal

EXHIBIT B – Design Services scope of work and cost proposal

EXHIBIT C – Construction Services scope of work and cost proposal

EXHIBIT D – Operational Services scope of work and cost proposal

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

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

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

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

4. The amount of compensation shall not change unless the scope of services to be provided by the ENGINEER changes and this Agreement is formally amended according to Section A-5. Contract Time under Section B. and for the purpose of Section A.8 shall be _____ calendar days (or as specified in the Attachments or Exhibits)

5. OWNER shall pay ENGINEER applicable gross receipt taxes and reimbursable expenses at the

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

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

7. Signatures

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

ATTEST: _____
Type Name _____
Title _____
Date _____

OWNER:
By _____
Type Name _____
Title _____
Date _____

ATTEST: _____
Type Name _____
Title _____
Date _____

ENGINEER:
By _____
Type Name _____
Title _____
Date _____

CONCURRENCE: FUNDING AGENCY
NAME: _____
By _____
Type Name _____
Date _____

May 16, 2020

Karen Nichols
Project Manager
Lower Rio Grande Public Water Works Authority
325 Holguin Road Box C
Vado, NM 88072

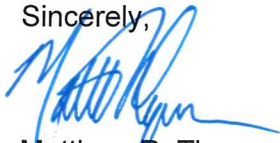
Re: **Proposal for Professional Engineering Services:**
Water Master Plan Development

Dear Karen:

Bohannon Huston, Inc., (BHI) is pleased to provide this engineering services contract for the above referenced work to the Lower Rio Grande Public Water Works Authority (Authority). These work tasks described within this scope is intended to fully support the final development of a Water Master Plan. These tasks are fully supported by prior pre-development work tasks completed earlier with respect to a GIS database, water model, and wellfield siting report, as well as incorporating the Vencor Engineering East Mesa Preliminary Engineering Work, and each will be incorporated accordingly.

Please return a signed copy of the agreement enclosed at your earliest convenience once the Authority has funding available for this task. If you have any questions, please contact me directly at 575-532-8670. Thank you and we look forward to working with you on this project.

Sincerely,



Matthew R. Thompson, P.E.
Senior Vice President

MRT/dg

AGREEMENT BETWEEN OWNER AND ENGINEER

Project Water Master Plan

Contract No. _____

Project No. 19-C-NR-I-06-G-100

Distribution to:

- Owner
- Engineer
- LGD
- Other

Representative



This Agreement entered into this _____ day of _____, 20____, by and between

the "**Owner**" and the "**Engineer**"

Lower Rio Grande Public Water Works
Authority (LRGPWWA)
325 Holguin Road
Las Cruces, NM 88002

Bohannon Huston Inc.
425 S. Telshor Blvd. Suite C-103
Las Cruces, NM 88011

Telephone: (575) 233-5742

Telephone: (575) 532-8670

Fax: _____

Fax: (575) 532-8680

Email: karen.nichols@lrgauthority.org

Email: dgomez@bhinc.com

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

[This document was prepared to be used with Community Development Block Grant and incorporates the use of the standard Agreement for Engineering Services (Publicly Funded Project) used by other funding agencies including the New Mexico Environment Department and the New Mexico Finance Authority. **Additions to the standard agreement document include (SECTION A.22) MAXIMUM ALLOWABLE CONSTRUCTION COST and (SECTION A.23) FEDERAL TERMS AND CONDITIONS FOR PROFESSIONAL SERVICES.** This document has important legal consequences; consultation with an attorney is encouraged with respect to its completion or modification]

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

THIS Agreement, made this day of _____, 20____ by and between
LRGPWWA hereinafter referred to as the OWNER,
and Bohannon Huston Inc. hereinafter referred to as the ENGINEER.

The OWNER intends to construct a Project consisting of

The Lower Rio Grande Public Water Works Authority (LRGPWWA) in Dona Ana County, New Mexico will select a consultant to conduct data gathering and analysis to create a Water Master Plan (WMP). The development of the WMP will include updates as needed to LRGPWWA water model, GIS Geodatabase, and Water System Design Standards; a Well Siting Study; analysis of all components to develop the plan; and public participation and a public outreach web page. Other documents such as the LRGPWWA Asset Management Plan, O&M Plan, Forty-Year Water Plan, and Water Audits may be accessed as needed for + in Dona 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 sub-agreement. The ENGINEER agrees to perform the various professional engineering services for the planning, design, and construction of said Project in accordance with the provisions of this Agreement.

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SECTION A - GENERAL PROVISIONS

1. General

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

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

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

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

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

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

2. Approvals

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

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

3. Responsibilities of the ENGINEER

- (a) The ENGINEER shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all design drawings, specifications, reports, and other services furnished by the ENGINEER under this Agreement. If this Agreement involves environmental measures or data generation, the ENGINEER shall comply with EPA quality assurance requirements that can be found on their website at <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 any errors, omissions, or other deficiencies in the design drawings, specifications, reports, and other services provided by ENGINEER under terms of this Agreement.
- (b) The ENGINEER shall perform the professional services necessary to accomplish the work specified in this Agreement, in accordance with this Agreement and applicable Funding Agency requirements in effect on the date of execution of any assistance agreement for this Project.
- (c) The OWNER, or Funding Agency review or approval of design drawings, specifications, reports, and other services furnished hereunder shall not in any way relieve the ENGINEER of responsibility for the technical adequacy of the work. Neither the OWNER, nor Funding Agency review, approval or acceptance of, nor payment for any of the services shall be construed as a waiver of action arising out to the performance of this Agreement.
- (d) The ENGINEER shall be and shall remain liable, in accordance with applicable law, for all damages to the OWNER caused by the ENGINEER's negligent performance of any of the services furnished under this Agreement, except for errors, omissions or other deficiencies to the extent attributable to the OWNER or OWNER-furnished data. The ENGINEER shall not be responsible for any time delays in the Project caused by circumstances beyond the ENGINEER'S control.
- (e) ENGINEER'S opinions of probable Construction Cost are to be made on the basis of ENGINEER'S experience and qualifications and represent ENGINEER'S best judgment as an experienced and qualified professional generally familiar with the construction industry. However, since ENGINEER has no control over the cost of labor, materials, equipment, or services furnished by others, or over Contractor's methods of determining prices, or over competitive bidding or market conditions, ENGINEER cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by ENGINEER. If OWNER wishes greater assurance as to probable Construction Cost, OWNER shall employ ~~and~~ independent cost estimator.
- (f) During the Construction Phase, the ENGINEER shall not at any time supervise, direct, or have control over Contractor's work, nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to the Contractor's work in progress, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work.
- (g) The standard of care of all professional engineering and related services performed or furnished by ENGINEER under this Agreement will be the care and skill ordinarily used by members of subject profession practicing under similar circumstances at the same time and in the same locality. ENGINEER makes no warranties, expressed or implied, under this Agreement or otherwise, in

connection with ENGINEER'S services.

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

4. Responsibilities of the OWNER

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

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

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

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

5. Changes

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

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

6. Termination of Contract

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

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

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

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

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

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

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

7. Payment

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

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

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

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

8. TIME

(a) PROGRESS AND COMPLETION

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

(b) CONTRACT TIME AND LIQUIDATED DAMAGES

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

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

2. The parties agree that the amount of the likely damages to the OWNER for such delay is difficult to ascertain at the time of execution of this Agreement, but that a reasonable estimate of such damages may be deducted from any monthly progress payments due to the ENGINEER or from other monies being withheld from the ENGINEER when a reasonable estimate of the expected date of completion can be determined by the OWNER.
3. Final accounting of Liquidated Damages shall be determined at completion and the ENGINEER shall be liable for any Liquidated Damages over and above unpaid balances held by the OWNER.
4. The OWNER and ENGINEER agree that as mutually agreeable, reasonable Liquidated Damages for delay (but not as a penalty), ENGINEER shall pay OWNER Fifty dollars (\$ 50.00) for each calendar day that expires after the Contract Time specified in the Agreement until the Work is complete and accepted by the OWNER. OWNER shall have no more than ten (10) calendar days to accept or reject the Work.

9. Project Design

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

10. Audits and Access to Records

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

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

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

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

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

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

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

11. Subcontracts

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

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

12. Insurance

The ENGINEER agrees to obtain and maintain, at the ENGINEER's expense, such insurance as will protect the ENGINEER from claims under the Workman's Compensation Act and such comprehensive general liability and automobile insurance as will protect the OWNER 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 \$ 1,000,000.00 for injury to any one person and \$ 1,000,000.00 on account of any one accident and in the amount of not less than \$ 1,000,000.00 for property damage. The ENGINEER further agrees to procure and maintain professional liability (errors and omissions) insurance in an amount not less than \$ 1,000,000.00 per claim and in the aggregate. Prior to commencement of any work, the ENGINEER shall furnish to the OWNER a certificate that complies with this paragraph. The certificate shall provide that the policy shall not be canceled until at least ten (10) calendar days prior written notice shall have been given to the OWNER. ENGINEER shall provide annual updates of the certificate to demonstrate the policy remains in effect for the duration of this Agreement.

13. Environmental Condition of Site

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

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

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

(d) It is acknowledged by both parties that Engineer's scope of services does not include any services related to Constituents of Concern. If Engineer or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (1) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.

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

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

14. Mutual Waiver

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

15. Independent Contractor

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

16. Equal Employment Opportunity

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

17. Gratuities

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

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

18. Covenant Against Contingent Fees

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

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

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

20. Remedies

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

21. Assurance Against Debarment

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

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

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

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

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

(d) The Owner shall provide a written response to the funding agency of their acceptance of the increased MACC. This written response shall identify the source of the additional funds (or other procedure for covering the cost).

(e) If bidding or negotiations with potential contractors have not commenced within two months after the Engineer submits Bidding Documents to the Owner, the Project budget and/or MACC shall be adjusted to reflect any change in the general level of prices in the construction industry between the date of submission of the Bidding Documents to the Owner and the date on which bids are sought.

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

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

(h) The MACC shall not exceed _____ N/A _____ dollars (_____).

23. Federal Terms and Conditions for Professional Services (for CDBG funded projects)

State administered Community Development Block Grant monies are federal funds. Section 13-1-30B NMSA 1978 of the Procurement Code stipulates: "When a procurement involves the expenditure of federal funds, the procurement shall be conducted in accordance with mandatory applicable federal law and regulations. When mandatory applicable federal law or regulations are inconsistent with the provisions of the Procurement Code, compliance with federal law or regulations shall be compliance with the Procurement Code." The applicable governing federal procurement standards are defined in OMB Circular A-102, Attachment O. When federal and state procurement policies are different, the more restrictive policies apply so long as they are consistent with Circular A-102 standards.

(a) Termination of Contract for Cause. If, through any cause, the Engineer shall fail to fulfill in timely and proper manner his obligations under this Contract, or if the Engineer shall violate any of the covenants, agreements, or stipulations of this Contract, the Owner shall there-upon have the right to terminate this Contract by giving written notice to the Engineer of such termination and specifying the effective date thereof, at least five days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the Engineer under this Contract shall, at the option of the Owner, become its property and the Engineer shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder.

Notwithstanding the above, the Engineer shall not be relieved of liability to the Owner for damages sustained by the Owner by virtue of any breach of the Contract by the Engineer, and the Owner may withhold any payments to the Engineer for the purpose of set-off until such time as the exact amount of damages due the Owner from the Engineer is determined.

(b) Termination for Convenience of the Owner. The Owner may terminate this contract at any time by giving at least ten (10) days notice in writing to the Engineer. If the Contract is terminated by the Owner as provided herein, the Engineer will be paid for the time provided and expenses incurred up to the termination date. If this Contract is terminated due to the fault of the Engineer, paragraph 1 hereof relative to termination shall apply.

(c) Changes. The Owner may, from time to time, request changes in the scope of the services of the Engineer to be performed hereunder. Such changes, including any increase or decrease in the amount of the Engineer compensation, which are mutually agreed upon by and between the Owner and the Engineer, shall be incorporated in written amendments to this contract.

(d) Personnel.

1. The Engineer represents that he has, or will secure at his own expense, all personnel required in performing the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the Owner.

2. All of the services required hereunder will be performed by the Engineer or under his supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state and local law to perform such services.

3. None of the work or services covered by this contract shall be subcontracted without the prior written approval of the Owner. Any work or services subcontracted hereunder be specified by written contract or agreement and shall be subject to each provision of this Contract.

(e) Assign ability. The Engineer shall not assign any interest on this Contract, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the Owner thereto: Provided, however, that claims for money by the Engineer from the Owner under the Contract may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment or transfer shall be furnished promptly to the Owner.

(f) Reports and Information. The Engineer, at such times and in such forms as the Owner may require, shall furnish the Owner such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Contract, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Contract.

(g) Records and Audits. The Engineer shall maintain accounts and records, including personnel, property and financial records, adequate to identify and account for all costs pertaining to the Contract and such other records as may be deemed necessary by the Owner and to assure proper accounting for all project funds, both federal and non-federal shares. These records will be made available for audit purposes to the Owner or any authorized representative, and will be retained for six (6) years after the expiration of this Contract unless permission to destroy them is granted by the Owner and the funding agency.

(h) Findings Confidential. All of the reports, information, data, etc., prepared or assembled by the Engineer under this Contract are confidential and the Engineer agrees that they shall not be made available to any individual or organization without the prior written approval of the Owner.

(i) Copyright. No report, maps, or other documents produced in whole or in part under this Contract shall be the subject of an application for copyright by or on behalf of the Engineer.

(j) Compliance with Local Laws. The Engineer shall comply with all applicable laws, ordinances and codes of the state and the Owner, and the Engineer shall save the Owner harmless with respect to any damages arising from any tort done in performing any of the work embraced by this Contract.

(k) Equal Employment Opportunity. During the performance of this Contract, the Engineer agrees as follows:

1. The Engineer will not discriminate against any employee or applicant for employment because of race, creed, sex, color or national origin. The Engineer will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, sex, color or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Engineer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Owners setting forth the provisions of this non-discrimination clause.

2. The Engineer will, in all solicitation or advertisements for employees placed by or on behalf of the Engineer, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex, or national origin.

3. The Engineer will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Contract so that such provisions will be binding upon each subcontractor, provided that

the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

4. The Engineer will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

5. The Engineer will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the Owner's representative, the funding agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

6. In the event of the Engineer's non-compliance with the equal opportunity clauses of this Agreement or with any of such rules, regulations or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the Engineer may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

7. The Engineer will include the provisions of paragraphs A through G in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Engineer will take such action with respect to any subcontract or purchase order as the Owner's representative may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that in the event the Engineer becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Owner, the Engineer may request the United States to enter into such litigation to protect the interests of the United States.

(l) Civil Rights Act of 1964. Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

(m) Section 109 of the Housing and Community Development Act of 1974. No person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

(n) "Section 3" Compliance in the Provision of Training, Employment and Business Opportunities

1. The work to be performed under this contract is on a project assisted under a program providing direct federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the project.

2. The parties to this contract will comply with the provisions of said Section 3 and the regulations

issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR 135, and all applicable rules and orders of the Department issued there under prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.

3. The contractor will send to each labor organization or representative or workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

4. The contractor will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135. The Contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

5. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued hereunder prior to the execution of the contract, shall be a condition of the federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors and assigns to those sanctions specified by the grant or loan agreement or contract through which federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.

(o) Interest of Members of the Owner. No member of the governing body of the Owner and no other officer, employee, or agent of the Owner, who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this contract; and the Engineer shall take appropriate steps to assure compliance.

(p) Interest of other Local Public Officials. No member of the governing body of the Owner and no other public official of the Owner, who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this Contract; and the Engineer shall take appropriate steps to assure compliance.

(q) Interest of Engineer and Employees. The Engineer covenants that he presently has no interest and shall not acquire interest, direct or indirect, in the study area or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his services hereunder. The Engineer further covenants that in the performance of this Contract, no person having any such interest shall be employed.

(r) Access to Records. The state funding (grantor) agency, the Department of Housing and Urban Development, 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 directly pertinent to this specific contract, for the purpose of audits, examinations, and making excerpts and transcriptions.

(s) All records connected with this contract will be maintained in a central location by the Owner and will be maintained for a period of six (6) years from the official date of close-out of the grant.

SECTION B -ENGINEERING SERVICES

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

Engineering Services During the Planning Phase

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

Engineering Services During the Design Phase

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

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

Engineering Services During the Construction Phase

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

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

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

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

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

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

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

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

21. The ENGINEER shall prepare necessary contract change orders for approval of the OWNER, the Funding Agency and others as required. The ENGINEER shall make an independent assessment of the

Contractor's cost and time proposal and the impacts on the Contract Price and Contract Time as part of the review and recommendation process for each change order.

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

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

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

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

Engineering Services During the Operation Phase

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

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

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

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

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

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

SECTION C - ADDITIONAL ENGINEERING SERVICES

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

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

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

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

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

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

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

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

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

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

(Describe, attach or indicate "None")

None

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

ATTEST: _____
Type Name _____
Title _____
Date _____

Lower Rio Grande Public Water
OWNER: Works Authority
By _____
Type Name _____
Title _____
Date _____

ATTEST: Diana Gomez
Type Name Diana Gomez
Title Project Administrator
Date 5/16/2020

ENGINEER: Bohannon Huston Inc.
By [Signature]
Type Name Matthew R. Thompson
Title Senior Vice President
Date 5-16-2020

CONCURRENCE: FUNDING AGENCY
NAME: _____
By _____
Type Name _____
Date _____

- ATTACHMENT I** - Compensation for Engineering Services During the Planning Phase
- ATTACHMENT II** - Compensation for Engineering Services During the Design Phase
- ATTACHMENT III** - Compensation for Engineering Services During the Construction Phase
- ATTACHMENT IV** - Compensation for Engineering Services During the Operation Phase

1. As set forth in the AGREEMENT FOR ENGINEERING SERVICES dated the ____ day of _____, 2020 by and between the _____ LRGPWVA _____, the OWNER, and _____ Bohannan Huston Inc. _____, the ENGINEER, the OWNER and ENGINEER agree this ____ day of _____, 2020 that the OWNER shall compensate the ENGINEER for services described in Section B and Section C and further described in

- EXHIBIT A** – Planning Services scope of work and cost proposal
- EXHIBIT B** – Design Services scope of work and cost proposal
- EXHIBIT C** – Construction Services scope of work and cost proposal
- EXHIBIT D** – Operational Services scope of work and cost proposal

2. Compensation for ENGINEERING SERVICES shall be by the **LUMP SUM** method of payment. The total amount of compensation for ENGINEERING SERVICES, as described in the appropriate EXHIBIT, shall not exceed \$ 98,400.00, excluding gross receipt tax and reimbursables.

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

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

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

4. The amount of compensation shall not change unless the scope of services to be provided by the ENGINEER changes and this Agreement is formally amended according to Section A-5. Contract Time under Section B. and for the purpose of Section A.8 shall be 270 calendar days (or as specified in the Attachments or Exhibits)

5. OWNER shall pay ENGINEER applicable gross receipt taxes and reimbursable expenses at the

rates set forth in the appropriate EXHIBIT. The amounts payable to ENGINEER for reimbursable expenses will be the project related internal expenses, such as mileage, per diem and reproduction, actually incurred or allocated by ENGINEER, plus all invoiced external reimbursable expenses, including consultants, allocable to the project, the latter multiplied by a factor of 1.0 . Reimbursable expenses shall not exceed the estimate in the EXHIBIT without prior written approval of the OWNER, with Funding Agency concurrence.

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

7. Signatures

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

ATTEST: _____	Lower Rio Grande Public Water
Type Name _____	OWNER: Works Authority
Title _____	By _____
Date _____	Type Name _____
	Title _____
	Date _____

ATTEST: <u>Diana Gomez</u>	ENGINEER: Bohannon Huston Inc.
Type Name <u>Diana Gomez</u>	By <u>Matthew R. Thompson</u>
Title <u>Project Administrator</u>	Type Name <u>Matthew R. Thompson</u>
Date <u>5/16/2020</u>	Title <u>Senior Vice President</u>
	Date <u>5/16/20</u>

CONCURRENCE: FUNDING AGENCY
NAME: _____
By _____
Type Name _____
Date _____

EXHIBIT A

PLANNING SERVICES SCOPE OF WORK AND COST PROPOSAL

LOWER RIO GRANDE PUBLIC WATER AND WASTEWATER AUTHORITY

WATER SYSTEM MASTER PLAN DEVELOPMENT

This Scope of Services offered by Bohannon Huston Inc. (BHI) defines the work, deliverables, and related fees for the Project's planning phase work tasks for the completion of the overall development of a utility-wide Water Master Plan (the "Plan") on behalf of the Lower Rio Grande Public Water Works Authority (Authority). Utility-wide indicates the areas known as "South Valley" service area located south of Las Cruces and the "East Mesa" service area located east of Las Cruces. Tasks of the individual phases are described in detail below. No Design Phase, Bid Administration and Construction Administration services are anticipated to be associated with this Project.

Work tasks and their related documents that have been previously completed and provide additional background information are the following:

1. ALTERNATIVE WATER SOURCES: Final PER Addendum by BHI & CDM Smith, 2015
2. Vencor Engineering East Mesa PER, date unknown

This contract attachment defines the scope of work, fees and schedule for Engineering Services during the Planning Phase for the OWNER.

A. PROJECT DESCRIPTION

This Plan will be accomplished with the following objectives:

- Update an inventory of current water utility system assets within an existing Geographical Information System (GIS) database overlaid with current Dona Ana County GIS parcel information database. All facilities in the water system will be characterized for age, material, and equipment type where that information is available.
- Analyze the existing computer software based hydraulic model of the water system previously created. Average day and peak day domestic demand will be confirmed and assigned based on available residential and commercial flow data.
- Confirm water supply redundancy, permitted water right volumes, source water quality, and long-term viable solutions based on previously completed wellfield siting report.
- Review storage tank/reservoir volume locations and determine additional volume expansion locations.
- Fire flow demand will be evaluated from the context of maintaining Insurance Standards Organization (ISO) minimum criteria and characterizing main distribution pipelines to provide a backbone of development code compliance.
- Develop a short-term 5-year capital improvement plan (CIP) that will focus on correcting existing system deficiencies based on model results and field inspection of deteriorating components.
- Long term capital improvements will be outlined to meet potential future system demands depending on various growth scenarios.

- Develop a long-term financial plan including a water rate analysis to account for annual operations including short and long-term capital improvements.
- Conduct a Public Meeting to introduce the Plan and proposed water and wastewater rate adjustments. Present findings to the Authority Board for consideration.

Project Assumptions

The following general assumptions have been made for these planning tasks:

- An initial Project Kick-off Meeting for the Planning Phase of this project will be held at the Authority's offices with Authority's staff, BHI's project manager and project team, and other stakeholders that may be identified. The Project Kick-off Meeting will also serve as a workshop to review the Authority's preferences and to establish project goals, critical success factors, schedule, lines of communication, and information needs.
- A summary list will be developed of all previously created documents by Authority staff or consultants. The intent of this summary list is to capture all previous planning efforts and applicable design efforts to completely characterize available information sources that can be capitalized upon and used for individual work tasks.

B. ENGINEERING SCOPE OF SERVICES

This Scope of Services defines the work, deliverables, schedule and fees for each of the facilities/tasks described in detail below.

Task 1: Project Management

Objective: Provide effective communications, coordination, meetings and project management for the Project through the planning phase.

Approach: BHI will conduct an initial Project Kick-off Meeting with the Authority to obtain additional Project information, to obtain Authority staff input, and to develop critical success factors for implementation of the Project. As part of this meeting, Authority goals and constraints will be identified to assist BHI in screening and evaluation of preliminary planning alternatives in order to construct facilities while continuing to maintain efficient operation. Subsequent planning meetings with Authority staff and operations team members will be conducted, as required, to complete the Project deliverables.

Regular conference calls and email communications to keep the Authority informed of the Project's progress and obtain additional input. BHI will attend Authority scheduled meetings on an as requested basis to update Authority board or staff members on the current status of specific project activities and get input needed to maintain the project schedule.

BHI will create a project specific website to manage project deliverables in ArcGIS and/or Adobe PDF format, and manage review comments on-line. Other project management responsibilities to be completed under this task include management of subcontracts, project accounting, scheduling and budget tracking, and maintenance of project files.

Assumptions:

1. Project Progress meetings shall be held at the Authority's office on an as requested basis.

Deliverables:

1. Conference meeting minutes

Task 2: Water Model Analysis

Objective: Evaluate the previously constructed InfoWater hydraulic model for domestic and fire flow demands. BHI will correlate model results to currently accessible pressure and flow data available through SCADA records.

Historical minimum day, average day, peak day, and peak hour water demands from historical per capita use will be determined from review of available water production and metered sales records. Summary tables of production and metered sales records by class in electronic format for the previous 10-years will be needed. This information will be evaluated to assess longer term historical trends and will provide the basis for developing demand factors.

All current domestic demand for an average day, peak day and peak hour demand factors will be confirmed against available SCADA data and within the model. Existing current flow and pressure deficiencies under domestic demands will be highlighted and confirmed. Existing current flow and pressure deficiencies under peak day domestic demand plus ISO rating fire protection flows will be analyzed. Existing pressure zones will be evaluated and adjusted to develop clearer zone boundaries and optimize existing and new storage reservoir elevations.

Fire flow demand will be evaluated with the following two strategies:

- Confirmation that all residential service areas are capable of meeting a minimum Insurance Standards Organization (ISO) criteria of 500 gallons per minute (gpm) at a residual pressure of 20 pounds per square inch (psi) for fire hydrants in residential areas.
- Identify key corridors of existing or new distribution main pipelines that will enable the system to potentially produce 1,000 gpm at a residual pressure of 20 psi in order to meet the county residential development code criteria and comply with the International Fire Code (IFC). This will position the Authority to strategically locate main pipelines within corridors that can be conveniently extended at a future date to planned residential developments by those development corporations.

Overall system resiliency will be tested to determine most at-risk system elements for catastrophic failure and resulting system ability to maintain uninterrupted service. This analysis will review the overall systems ability to transport domestic and fire demand water to each service area and independent pressure zones to ensure dual source water availability.

Evaluation of proposed improvements will take into consideration not only capital improvement cost factors but also non-cost factors, such as reliability, flexibility, and ease of operations. Improvements will be prioritized to identify immediate actions and longer-term resiliency enhancements.

Assumptions:

1. Water Model developed is fully functional, current as of 2018 infrastructure and calibrated.
2. Authority will provide all historical production and consumptive meter readings for the past 10 years.

Deliverables:

1. Provide comments and revisions on water model status.

Task 3: Water Master Plan Development

Objective:

The Plan sections will be developed and presented as follows:

1. Executive Summary: state the purpose of the Water Master Plan and present the current system conditions, proposed capital improvement plan summaries, and proposed rates.
2. Planning Area: identify the separate South Valley and East Mesa service areas will be reviewed independently. Existing water flow demand and future area demands based on potential growth and planned land use areas will be defined. Historical flow projections will be evaluated in conjunction with expected diurnal curves to establish demand factors. Water source analysis and expected wellfield source siting will be referenced accordingly.
3. Existing Utility System: provide an overview the existing system configuration and known component ages and known issues. Compile the existing revenue and cost data into a tabulated summary based on the chart of accounts in Excel format. Review, analyze, and validate operations data as necessary.
4. Analysis Criteria: define the various hydraulic design criteria used to evaluate the water system to establish various scenarios for domestic and fire flow demands.
5. System Model Scenario Analysis: describe the development of the water distribution model and analyze key parts of the system under current and future demand conditions to identify existing system deficiencies and to develop future system improvements related to water supply sources, storage, transmission, and distribution.
6. Recommended Short-Term Capital Improvements Plan: Based on the model scenario results, the recommended capital improvements will be presented, including the estimated construction cost of the recommended projects, in a prioritized and phased approach.
7. Recommended Financial Plan and Proposed Water Rates and Fees: Based on the recommended capital improvements, a long-term financial plan with recommended rates utilizing the American Water Works Association (AWWA) Manual M54 methodology.

This task requires an assessment of the sufficiency of revenues based on historical operating costs and expenses, the existing rates and fee schedules, in order to determine the Authority's ability to meet projected revenue requirements. A determination of the level of any revenue adjustments required with any additional financing requirements will also be conducted. Connection fees, consumption rates and development impact fees will each be evaluated to determine potential adjustments.

8. Public Participation: Summarize the outreach process and identify specific public input incorporated into the Plan. Include outreach documentation as an appendix to the Plan.

Assumptions:

1. Authority will provide current capital improvement plans previously developed and on record.
2. Authority will provide current financial information for revenue and operating expenses for the past 5 years, including any previously developed water rate studies.

Deliverables:

1. Provide three (3) paper copies, in addition to a digital copy of the Final Draft Plan, which will define all recommended capital improvements, and phasing.
2. Provide three (3) Final Master Plan paper copies incorporating all final Board comments and revisions.

Task 4 – Public Participation and Plan Presentations

Objective: Prepare and conduct two public workshops to inform the public of the Water Master Plan purpose, discuss the proposed rate structure, and present the need for capital improvements. A public comment collection method will be developed so that comments can be well documented and provide valuable feedback to the study process. Team members will be available to answer questions and address concerns.

Present the rate study to the LRGPWWA Board either at draft or final stage as part of the Plan approval and implementation process.

Assumptions:

1. Authority will be responsible for the preparation of advertisements, and any associated advertising and meeting location fees.
2. No Spanish interpreter or recording services will be required.

Deliverables:

1. Summary of all input and comments received as a result of the outreach process to be included in an appendix to the Plan.

C. FEES

Compensation for services (including direct costs, markups and cost of subcontracted services) will be as outlined below. Compensation amounts for each scoped task contained in Attachment A are provided below. Invoicing will be based on percent complete of task or cumulative completion of subtasks associated with the work under the task. Lump Sum (LS) amounts shown include all direct costs, markups, and cost of subcontracted services associated with the task. Time and Materials amounts shown are Not-to-Exceed (T&M-NTE) budgets. All amounts shown are exclusive of New Mexico Gross Receipts Tax. Invoicing will be based on percent complete of task or cumulative completion of subtasks associated with the work under the task.

TASK DESCRIPTION	TASK FEE
Task 1: Project Management (Lump Sum)	\$ 4,900
Task 2: Water Model Analysis (Lump Sum)	\$ 18,400
Task 3: Water Master Plan Development (Lump Sum)	\$ 62,600
Task 4: Public Participation and Plan Presentations (Lump Sum)	\$ 12,500
PROJECT TOTAL FEE	\$ 98,400

D. PROJECT SCHEDULE

The time period for the performance of BHI's services for Task 1, 2 and 3 is 210 days for creation of Draft Plan following receipt of all necessary system related data requested in this proposal. The time period for the performance of BHI's services for Task 4 participation and presentation to the Board will be on an as requested schedule.

DO NOT SIGN THE CERTIFICATION SECTION AT THE
BOTTOM UNTIL THE CLOSING
EXECUTE ONLY THE MAIN DOCUMENT AT THE
JUNE 17, 2020 MEETING

A RESOLUTION OF THE _____
OF THE _____
AUTHORIZING AND PROVIDING FOR THE INCURRENCE OF INDEBTEDNESS IN THE
PRINCIPAL AMOUNT OF _____ FOR THE PURPOSE
OF PROVIDING A PORTION OF THE COST OF ACQUIRING AND CONSTRUCTING A
_____, PROVIDING FOR THE COLLECTION, HANDLING, AND
DISPOSITION OF REVENUES THEREFROM, AND AUTHORIZING MAKINGS OF PROMISSORY NOTE(S),
SECURITY INSTRUMENTS, AND PLEDGES OF REVENUES TO EVIDENCE AND SECURE THE PAYMENT OF
SAID INDEBTEDNESS AND FOR RELATED PURPOSES.

WHEREAS, the _____, (hereinafter
referred to as the "Organization"), was organized under _____
_____ for the purpose of providing a
_____ (hereinafter referred to as the
"Facility") to serve the Members of the said Organization; and

WHEREAS, a meeting of the ~~members~~^{directors} of the said organization was held on the _____ day of _____
pursuant to proper notice thereof to consider plans for the acquisition and construction methods of financing the Facility;
and, as shown by the minutes of said meeting, of the _____ ~~members~~^{directors} of record of the organization there were
present and voting _____, and by a recorded majority vote, the Facility and its financing authorized; and,

WHEREAS, the proposed Facility is to be constructed and equipped in accordance with plans, and specifications
prepared by _____

and in order to finance the Facility, the _____
(hereinafter referred to as the "Board") is authorized and empowered, in their discretion, for and in the name of the organization,
to make application to the United States of America, acting through the United States Department of Agriculture,
(hereinafter referred to as the "Government"), for financial assistance; to cause the execution and delivery of a
promissory note or notes or other evidence of indebtedness (hereinafter referred to as the "note"), and appropriate security instruments
to secure any loan or loans made or insured by the Government; to comply with any requirements, terms or conditions prescribed by the
Government or by Government regulations; and to execute contracts or enter into agreements and, without limitation, to take any and
all other action as may be necessary, incidental or appropriate to finance, acquire, construct, complete, and/or equip the Facility for and
on behalf of the Organization.

NOW THEREFORE, it is hereby resolved by the Board as follows:

Section 1. (Determination of Board). That it is necessary to defray a portion of the costs of financing the Facility by obtaining
a loan made or insured by the Government in accordance with applicable provisions of the Consolidated Farm and Rural Development
Act, it being determined that the Organization is unable to obtain sufficient credit elsewhere to finance the Facility, taking into
consideration prevailing private and cooperative rates and terms currently available;

*According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless
it displays a valid OMB control number. The valid OMB control number for this information collection is 0572-0121. The time required to complete this information
collection is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the
data needed, and completing and reviewing the collection of information.*

Section 2. (Terms of Loan). That the Organization borrow _____ and issue as evidence thereof an installment promissory note in the form prescribed by the Government for the full principal amount of the loan. The note shall be signed by the President, attested by the Secretary and have the corporate seal of the Organization affixed thereto, and shall bear interest from its date, which shall be the date of delivery at a rate not to exceed _____ percent per annum; the principal and interest shall be paid over a period of _____ years in accordance with the payment schedule set forth in the promissory note, until the principal and interest are fully paid except the final payment of the entire indebtedness, if not sooner paid, shall be due and payable _____ years from the date of the note. Each payment shall be applied first to the payment of the accrued interest and second to the payment of the principal. Prepayments of any installment may be made in any amount at any time at the option of the Organization.

Section 3. (Assignment and Pledge of Revenue). The indebtedness hereby authorized to be incurred, together with the interest thereon, shall be payable from the gross income and revenue to be derived from the operation of the Facility, a sufficient portion of which, to pay the principal and interest as and when the same shall become due, is hereby assigned, and pledged and shall be set aside for that purpose and this assignment and pledge shall extend to and include any assessments that may be levied pursuant to Section 5 (d) hereof.

Section 4. (Protection and Disposition of Funds). The _____ of the Organization shall be the custodian of all funds of the Organization. Funds may be deposited in institutions insured by the State or Federal Government or invested in readily marketable securities backed by the full faith and credit of the United States. Any income from these accounts will be considered as revenues of the system.

The _____ is hereby directed to establish the following accounts into which the current funds of the Organization, note proceeds, the revenues from the Facility and any other income shall be deposited, which accounts shall be continually maintained, except as otherwise provided, so long as the indebtedness hereby authorized remains unpaid:

(a) Construction Account.

The proceeds of the borrowing hereby authorized not disbursed contemporaneously with loan closing for incurred Facility costs, and at least the amount of _____ to be contributed by the Organization from the collection of initial connection fees, membership fees or contributions shall be deposited in the Construction Account which shall be established as required by the Government. Withdrawals from the construction account shall be made only on checks signed by the _____ of the Organization as authorized by the Board from time to time, and with prior concurrence of the Government. At the option of the Government, the construction account may be established as a "supervised bank account". Amounts in the supervised bank account exceeding \$100,000 shall be secured by the depository bank in advance in accordance with U.S. Treasury Department Circular No. 176. Withdrawals from a supervised bank account shall be made only on checks signed by the _____ of the Organization and countersigned by an authorized official of the Department of Agriculture. The Organization's share of any insurance or liquidated damages and other monies paid by defaulting contractors or their sureties will be deposited in the Construction Account to assure completion of the Facility. When all construction costs have been paid in full, any balance remaining in the Construction Account may be applied on the loan or used for other authorized purposes that have been approved by the Government and the Construction Account shall be closed.

(b) General Account

As soon as the facility becomes revenue producing, all funds received shall be set aside in an account to be designated as the General Account, and disbursements and transfers from this account shall be in the following priority: Debt Service, Operations and Maintenance, transfers to Reserve Account. Monies deposited in the General Account shall be used only in the manner and order as follows:

(1) Borrowers making monthly USDA Debt Service Payments shall use the General Account for making such payments plus operating and maintenance expenses. Also, funds will be transferred from this account to the Reserve Account in accordance with (d) below.

(2) Borrowers making other than monthly USDA Debt Service Payments shall use the General Account to pay operating and maintenance expenses. Other transfers from this account will be made in the following order: (i) Transfers to the Debt Service Account will be made in accordance with (c) below, (ii) Transfers to the Reserve Account will be made in accordance with (d) below.

(c) Debt Service Account

For borrowers on other than monthly debt service payments, transfers, in proportion to income availability, shall be made from the General Account and set aside in an account designated as the Debt Service Account, in sufficient amounts which will accumulate for the next installment on the note.

(d) Reserve Account

From the remaining funds in the General Account, after transfers and payments required in (b)(1) or (b)(2) and (c), there shall be set aside into an account(s) designated as the Reserve Account(s) the sum of _____

each month until the sum of _____ is reached. With the prior written approval of the Government, funds may be withdrawn and used for such things as loan installments, emergency maintenance, extensions to facilities and replacement of short-lived assets, subject to conditions established by the Government.

(e) Whenever there shall accumulate in the General Account amounts in excess of those required in subsections (b)(1) and (2), (c), and (d), such excess will be used by the organization to make prepayments on the loan or retained in the General Account.

(f) The accounts required in subsections (b)(1) and (2), (c), and (d) may be established and maintained as bookkeeping accounts or as separate bank accounts at the election of the Organization, unless otherwise directed by the Government.

Section 5. (Other Covenants and Agreements of the Organization). The Organization covenants and agrees that so long as the indebtedness hereby authorized remains unpaid;

(a) It will indemnify the Government for any payments made or losses suffered by the Government.

(b) It will comply with applicable State laws and regulations and continually operate and maintain the Facility in good condition.

(c) It will impose and collect such rates and charges that gross revenues will be sufficient at all times to provide for payment of the operation and maintenance thereof; the installment payments on the note; and the maintenance of the various funds herein created. All service rendered by or use of the Facility shall be subject to the full rates prescribed in the rules and regulations of the Organization; no free service by or use of the Facility will be permitted.

(d) It will cause to be levied and collected such assessments as may be necessary to operate and maintain the Facility in good condition and meet installment payments on the note when the same become due if, for any reason, gross revenues are insufficient.

(e) It will establish and maintain such books and records relating to the operation of the system and its financial affairs, and will provide for the annual audit thereof, in such manner as may be required by the Government; will provide the Government without its request a copy of each such audit; and will make and forward to the Government such additional information and reports as it may from time to time require.

(f) It will provide the Government, at all reasonable times, access to all books and records relating to the Facility and access to the property of the Facility so that the Government may ascertain that the Organization is complying with the provisions hereof and with the provisions of other instruments incident to the making or insuring of the loan.

(g) It will maintain at least such insurance and fidelity bond coverage as may be required by the Government.

(h) It will not borrow any money from any source or enter into any contract or agreement or incur any other liabilities in connection with making extensions or improvements to the Facility, exclusive of normal maintenance, without obtaining the prior written consent of the Government.

(i) It will not cause or permit any voluntary dissolution of its organization, or merge or consolidate with any other organization, without obtaining the prior written consent of the Government. It will not dispose of or transfer title to the facility or any part thereof, including lands and interest in lands, by sale, security instrument, lease or other encumbrance, without obtaining the prior written consent of the Government. Revenue in excess of the amount required to maintain the accounts described by Section 4 herein will not be distributed or transferred to any other organization or legal entity.

(j) It will not modify or amend the Articles of Incorporation or the Bylaws of the Organization without the written consent of the Government,

(k) It will provide adequate service to all persons within the service area who can feasibly and legally be served and will obtain USDA's concurrence prior to refusing new or adequate services to such persons. Upon failure to provide services which are feasible and legal, such person shall have a direct right of action against the organization or public body.

(l) All present and future contract rights, accounts receivable, and general intangibles arising in connection with the facility are pledged as security for the loan.

(m) It will comply with the measures identified in the Government's environmental impact analysis for this facility for the purpose of avoiding or reducing adverse environmental impacts of the facility's construction or operation.

Section 6. (Security Instruments). In order to secure the payment of the principal and interest of the note, the President and Secretary of the Organization are hereby authorized and directed to execute and deliver good and sufficient lien instruments, where necessary, encumbering the properties and assets both real and personal constituting said Facility, as completed or as the same may be thereafter extended, including an assignment and pledge of revenues and such other instruments as may be prescribed by the Government

Section 7. (Refinancing). If at any time it shall appear to the Government that the Organization is able to refinance the amount of the indebtedness then outstanding, in whole or in part, by obtaining a loan for such purposes from responsible cooperative or private credit sources at reasonable rates and terms for loans for similar purposes and periods of time, the Organization will, upon request of the Government, apply for and accept such loan in sufficient amount to repay the Government and will take such actions as may be required in connection with such loan.

Section 8. ("Equal Employment Opportunity under Construction Contracts and Nondiscrimination"). The President and the Secretary be and they are hereby authorized and directed to execute for and on behalf of the Organization, Form RD 400-1, "Equal Opportunity Agreement", and Form RD 400-4, "Assurance Agreement".

Section 9. In the case of a grant in the sum not to exceed _____, the Organization hereby accepts the grant under the terms as offered by the Government and that the _____ and _____ of the Organization are hereby authorized and empowered to take all action necessary or appropriate in the execution of all written instruments as may be required in regard to or as evidence of such grant and the Organization hereby resolves to operate the facility under the terms as offered in said grant agreement(s).

Section 10. Default under the provisions of this agreement or any instrument incident to the making or issuing of the loan may be construed by the Government to constitute default under any other instrument held by the Government and executed or assumed by the Organization, and default under any such instrument may be construed by the Government to constitute default hereunder.

Section 11. (Resolution of Contract). The provisions hereof and the provisions of all instruments incident to the making or the insuring of the loan, unless otherwise specifically provided by the terms of such instruments, shall constitute a contract between the Organization and the Government or assignee so long as the note hereby authorized remains unpaid.

Section 12. This resolution shall take effect and be in force from and after the _____ day of June, 2020 _____, being the date of its enactment.

The vote was: Yeas _____ Nays _____ Absent _____

(SEAL) (if applicable) By _____

Attest: Title _____

Title _____

CERTIFICATION

I, the undersigned, as secretary of the _____ hereby certify that the _____ of such Organization or Corporation is composed of five (5) members of whom _____, constituting a quorum, were present at a meeting thereof duly called and held on the 17th day of June, 2020; that the foregoing resolution was adopted at such meeting by the vote shown above, and that said resolution has not been rescinded or amended in any way.

Dated, this _____ day of _____ .

Secretary of _____

RESOLUTION NO. FY2020-21

**APPROVING PARTICIPATION IN THE PROGRAM OF THE
SOUTH CENTRAL COUNCIL OF GOVERNMENTS, INC.
FOR FISCAL YEAR 2020-2021**

WHEREAS, Lower Rio Grande PWWA (herein-after known as the "Member"), desires to be a participating member in the program and policy development for the South Central Council of Governments, Inc. (hereinafter known as "SCCOG"); and

WHEREAS, it is necessary and desirable that an agreement setting forth the services to be performed by the SCCOG for the Member be entered into, wherewith the SCCOG is agreeing to furnish the following:

- A. Implement the work program as established by the SCCOG Board of Directors for the 2020-2021 Fiscal Year.
- B. Provide the Member, when requested, with technical, grant program planning, economic development, strategic overall planning and management assistance.
- C. Address problems, issues and opportunities of a regional nature which go beyond single municipal or county jurisdictional boundaries and serve as a liaison and advocate for local governments within the region at the state and federal levels.
- D. Provide information dissemination about statewide regional and community initiatives to foster greater coordination and efficiency of the programs.

WHEREAS, it is necessary to set forth the sum to be paid by the Member to the SCCOG as annual dues, thereby placing the Member with voting powers on the SCCOG Board of Directors, with an agreement to furnish the following:

- A. To participate, through their designated representatives or alternate, in the SCCOG's policy development process by attending meetings, helping formulate the annual work program, reviewing the SCCOG Goals and Objectives, and the District Comprehensive Economic Development Strategy (CEDS).
- B. To pay to the SCCOG the sum of **\$500.00** annual membership dues as payment of the aforementioned services for the period beginning July 1, 2020 and ending June 30, 2021.
- C. The Member hereby appoints _____, as their designated representative and _____ as alternate.

NOW THEREFORE, BE IT RESOLVED THAT the Member and the SCCOG hereby mutually agree to the aforementioned provisions of this Resolution and Agreement.

DONE this 17th day of June, 2020 at Dona Ana County, New Mexico.

Attestation:

Member Government

Clerk, or other Authorized Official
Joe Evaro, Secretary

Signature of Authorized Official
Esperanza Holguin, Board Chair

Attest :

South Central Council of Governments, Inc.

Jay Armijo, Executive Director

Chairwoman, Nora Barraza