



ENGINEERS JOINT CONTRACT
DOCUMENTS COMMITTEE

**AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES
AS MODIFIED BY SANTA FE COUNTY**

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THIS IS AN AGREEMENT effective as of _____, 2013 (“Effective Date”) between

Santa Fe County, 102 Grant Avenue, Santa Fe, NM 87504-0276 (“Owner”) and

Sullivan Design Group Inc., P.O. Box 283, 227 East Palace Avenue, Suite P, Santa Fe, NM 87504 (“Engineer”).

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows: Santa Fe County, Public Works Department is required to maintain and improve County infrastructure to include waterlines. The County plans to construct 1,500 LF of 10” waterline on Alameda/NM 599 Frontage Road from South Meadows to CR 62/Caja del Oro Grant Road and approximately 2,600 LF of 8” waterline in CR62/ Caja del Oro Grant Road from Alameda Frontage Road. Project will includes appurtenant work, including but not limited to installation of valves, fire hydrants and service stubouts as appropriate.

Engineer's services under this Agreement are generally identified as follows: Analyze and assess field conditions for the optimal construction of the water lines under Alameda/NM 599 Frontage Road and Caja del Oro Grant Road Roads. Engineer’s services will consist of the preparation of Preliminary Design;final design plan, including specifications and drawings; opinion of construction cost; bidding; and limited engineering services during the construction phase.

Additional Services: Engineer shall request and receive written approval from the County prior to commencement of any Additional Services. Additional Services include but are not limited to: Utility Location Assembly; Design Surveys; Geotechnical Investigation; Traffic Control Plan; and, NMDOT Utility Permit.

Owner and Engineer further agree as follows:

ARTICLE 1 – SERVICES OF ENGINEER

1.01 Scope

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

ARTICLE 2 – OWNER’S RESPONSIBILITIES

2.01 General

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

- C. Owner shall be responsible for, and Engineer may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement.

ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

3.01 *Commencement*

- A. The Effective Date of this Agreement is the Date of the last party's signature to this Agreement. Engineer is authorized to begin rendering services as of date in the Notice to Proceed issued by the Owner.

3.02 *Time for Completion*

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided in Exhibit A, and are hereby agreed to be reasonable.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably as limited by the hourly rates and unit prices, if any, stated in Exhibit C.
- C. If Owner authorizes changes in the scope, extent, or character of the Project, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, may be adjusted as agreed to between Owner and Engineer.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 *Invoices*

- A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable by within 21 days of Owner's receipt of an invoice.

4.02 *Payments*

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay:* If Owner fails to make any payment due Engineer for services and expenses within 21 days after receipt of Engineer's invoice, then:
 - 1. amounts due Engineer will be increased at the rate of 1.5% per month from said 21st day; and
 - 2. Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- C. *Disputed Invoices:* If Owner contests an invoice, Owner shall promptly advise Engineer of the specific basis for doing so, may withhold only that portion so contested, and must pay the undisputed portion.
- D. *Legislative Actions:* If after the Effective Date any governmental entity takes a legislative action that imposes taxes, on Engineer's services or compensation under this Agreement, then the Engineer may invoice such new tax as a Reimbursable Expense. Owner shall reimburse Engineer for the cost of such invoiced new tax such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C.

ARTICLE 5 – OPINIONS OF COST

5.01 *Opinions of Probable Construction Cost*

- A. Engineer's opinions of probable Construction Cost are to be made on the basis of Engineer's experience and qualifications and represent Engineer's best judgment as an experienced and qualified professional generally familiar with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, Owner must employ an independent cost estimator as provided in Exhibit B.

5.02 *Designing to Construction Cost Limit*

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

5.03 *Opinions of Total Project Costs*

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

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 *Standards of Performance*

- A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services.
- B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. *Consultants:* Engineer may employ such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. *Compliance with Laws and Regulations, and Policies and Procedures:*
 - 1. Engineer and Owner shall comply with applicable Laws and regulations.
 - 2. Prior to the Effective Date, Owner provided to Engineer in writing any and all policies and procedures of Owner applicable to Engineer's performance of services under this Agreement. Engineer shall comply with such policies and procedures, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
 - 3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. Changes after the Effective Date to these Laws and Regulations, or to Owner-provided written policies and procedures, may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation.

- F. Engineer shall not be required to sign any documents, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such documents.
- G. The general conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (EJCDC C-700, 2007 Edition) unless both parties mutually agree to use other general conditions by specific reference in Exhibit J.
- H. Engineer shall not at any time supervise, direct, control, or have authority over any contractor work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a contractor to comply with Laws and Regulations applicable to such contractor's furnishing and performing of its work.
- I. Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.
- J. Engineer shall not provide or have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- K. Engineer shall not be responsible for the acts or omissions of any Contractor, Subcontractor, or Supplier, or of any of their agents or employees or of any other persons (except Engineer's own agents, employees, and Consultants) at the Site or otherwise furnishing or performing any Work; or for any decision made regarding the Contract Documents, or any application, interpretation, or clarification, of the Contract Documents, other than those made by Engineer.
- L. While at the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

6.02 *Design Without Construction Phase Services*

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

payment applications, and all other necessary Construction Phase engineering and professional services. Owner waives all claims against the Engineer that may be connected in any way to Construction Phase engineering or professional services except for those services that are expressly required of Engineer in Exhibit A, Paragraph A1.05.

6.03 *Use of Documents*

- A. All Documents are instruments of service in respect to this Project, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed. Owner shall not rely in any way on any Document unless it is in printed form, signed or sealed by the Engineer or one of its Consultants.
- B. Either party to this Agreement may rely that data or information set forth on paper (also known as hard copies) that the party receives from the other party by mail, hand delivery, or facsimile, are the items that the other party intended to send. Files in electronic media format of text, data, graphics, or other types that are furnished by one party to the other are furnished only for convenience, not reliance by the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern. If the parties agree to other electronic transmittal procedures, such are set forth in Exhibit J.
- C. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any transmittal errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files.
- D. When transferring documents in electronic media format, the transferring party makes no representations as to long-term compatibility, usability, or readability of such documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the documents' creator.
- E. Owner may make and retain copies of Documents for information and reference in connection with use on the Project by Owner or Owner's agent or Project Manager. Engineer grants Owner, Owner's agent and Owner's Project Manager a limited license to use the Documents on the Project, extensions and revisions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment for all services relating to preparation of the Documents and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner, Owner's Project Manager, or others on extensions or revisions of the Project, on any other project; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer

or to its officers, directors, members, partners, agents, employees, and Consultants; (3) such limited license to Owner or Owner's Project Manager shall not create any rights in third parties.

- F. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions or revisions of the Project or for any other purpose that exceeds Engineer's scope of services as described in Exhibit A to this Agreement, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

6.04 Insurance

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

6.05 *Suspension and Termination*

- A. *Suspension:*

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

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

1. For cause,

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

b. By Engineer:

1.) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or

2.) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control.

3.) Engineer shall have no liability to Owner on account of such termination.

c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.05.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience,

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

C. *Effective Date of Termination*: The terminating party under Paragraph 6.05.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would

otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

D. *Payments Upon Termination:*

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

6.06 *Controlling Law*

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

6.07 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.07.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise in this Agreement:
 1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Contractor, Subcontractor, Supplier, other individual or entity, or to any surety for or employee of any of them.

2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
3. Owner agrees that the substance of the provisions of this Paragraph 6.07.C shall appear in the Contract Documents.

6.08 *Dispute Resolution*

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

6.09 *Environmental Condition of Site*

- A. Owner has disclosed to Engineer in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern located at or near the Site, including type, quantity, and location.
- B. Owner represents to Engineer that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at the Site.
- C. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- D. It is acknowledged by both parties that Engineer's scope of services does not include any services related to Constituents of Concern. If Engineer or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (1) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.
- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on 30 days notice.

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

6.10 *Indemnification and Mutual Waiver*

- A. *Indemnification by Engineer:* To the fullest extent permitted by law, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees from reasonable claims, costs, losses, and damages arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, members, partners, agents, employees, or consultants.
- B. *Indemnification by Owner:* Intentionally Omitted.
- C. *Environmental Indemnification:* Intentionally Omitted.
- D. *Percentage Share of Negligence:* Intentionally Omitted.
- E. *Waiver:* To the fullest extent permitted by law, Engineer waives against Owner, and Owner's, employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project.

6.11 *Miscellaneous Provisions*

- A. *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by facsimile, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability:* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

- D. *Waiver*: A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims*: To the fullest extent permitted by law, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.
- F. *Validity of Changes or Amendment to Contract*: Any change or amendment to this Contract that increases the Contract Time or Contract Sum is not valid until approved by the Santa Fe County Manager or Santa Fe County Board of County Commissioners.

ARTICLE 7 – DEFINITIONS

7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following provisions:
 - 1. *Additional Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Part 2 of Exhibit A of this Agreement.
 - 2. *Agreement* – This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
 - 3. *Asbestos* – Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
 - 4. *Basic Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Part 1 of Exhibit A of this Agreement.
 - 5. *Construction Contract* – The entire and integrated written agreement between Owner and Contractor concerning the Work.
 - 6. *Construction Cost* – The cost to Owner of those portions of the entire Project designed or specified by Engineer. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to properties; Owner's costs for legal, accounting, insurance counseling or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement. Construction Cost is one of the items comprising Total Project Costs.

7. *Constituent of Concern* – Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; and (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
8. *Consultants* – Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer’s independent professional associates and consultants; subcontractors; or vendors.
9. *Contract Documents* – Those items so designated in the Construction Contract, including the Drawings, Specifications, construction agreement, and general and supplementary conditions. Only printed or hard copies of the items listed in the Construction Contract are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
10. *Contractor* – The entity or individual with which Owner has entered into a Construction Contract.
11. *Documents* – Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
12. *Drawings* – That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings are not Drawings as so defined.
13. *Effective Date* – The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
14. *Engineer* – The individual or entity named as such in this Agreement.
15. *Hazardous Waste* – The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

16. *Laws and Regulations; Laws or Regulations* – Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
17. *Owner* – The individual or entity with which Engineer has entered into this Agreement and for which the Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.
18. *PCBs* – Polychlorinated biphenyls.
19. *Petroleum* – Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-hazardous waste and crude oils.
20. *Project* – The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
21. *Radioactive Material* – Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
22. *Record Drawings* – Drawings depicting the completed Project, prepared by Engineer as an Additional Service and based solely on Contractor's record copy of all Drawings, Specifications, addenda, change orders, work change directives, field orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.
23. *Reimbursable Expenses* – The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic and Additional Services for the Project.
24. *Resident Project Representative* – **(NOT APPLICABLE)** The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. Engineer's designated Resident Project Representative or any successor Resident Project Representative shall be approved by Owner. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative agreed to by Owner. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D **(NOT INCLUDED)**.
25. *Samples* – Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

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

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 *Exhibits Included:*

- A. Exhibit A, Engineer’s Services, including Engineer’s Scope and Fee Proposal dated ~~April 18,~~ ^{May 23,} 2013.
- B. Exhibit B, Owner’s Responsibilities.
- C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses.
- D. Exhibit D, **NOT INCLUDED.**
- E. Exhibit E, Notice of Acceptability of Work.
- F. Exhibit F, **NOT INCLUDED.**
- G. Exhibit G, Insurance.
- H. Exhibit H, Dispute Resolution.
- I. Exhibit I, Limitations of Liability. **NOT INCLUDED.**
- J. Exhibit J, **NOT INCLUDED.**
- K. Exhibit K, Amendment to Owner-Engineer Agreement.

8.02 *Total Agreement:*

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

8.03 *Designated Representatives:*

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

8.04 *Engineer's Certifications:*

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:

1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the selection process or in the Agreement execution;
2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

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

Owner: Santa Fe County

Engineer: Sullivan Design Group Inc

By: Katherine Miller *Katherine Miller*

By: John M. Sullivan, P.E. *John M. Sullivan*

Title: County Manager

Title: President

Date

Date

Signed: 7.12.13

Signed: 6/12/13

Engineer License or Firm's Certificate No. 5572
State of: New Mexico

Address for giving notices:
102 Grant Avenue
P.O. Box 276
Santa Fe, NM 87504-0276

Address for giving notices:
P.O. Box 283
Santa Fe, NM 87504-0283

Approved as to form:

Stephen C. Ross
Santa Fe County Attorney

Robert A. ... Date: 6/19/13

Finance Department

Teresa C. Martinez
Teresa C. Martinez, Director

Date
Signed: *7/16/13*

This is **EXHIBIT A**, part of the **Agreement between Owner and Engineer for Professional Services**.

Engineer's Services

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

Engineer shall provide Basic Services as set forth below.

PART 1 – BASIC SERVICES

A1.01

A. Engineer shall:

1. Consult with Owner to define and clarify Owner's requirements for the Project and available data.
2. Conduct field inspection with County staff.
3. Provide utility coordination with Owner's Representative.
4. Evaluate and consult with Owner's Representative to identify alternate solutions available to Owner resulting from the initial field inspection. Upon concurrence with Owner's Representative recommend to Owner solutions that meet Owner's requirements for the Project.
5. Advise Owner of any need for Owner to provide data or services of the types described in Exhibit B which are not part of Engineer's Basic Services.
6. Submit a schedule of progress with specific milestones and dates for completion and progress of full Design, Bidding or Negotiation, and Construction Phase services to be provided.
7. Analyze and identify topographical conditions that need to be addressed, or additional investigation or specialized work that need to be accomplished in order to complete the project, based on survey identified in Part 2 of Exhibit A.

A1.02 *Preliminary Design Phase*

- A. After selection by Owner of any recommended solution and indication of any specific modifications or changes in the scope, extent, character, or design requirements of the Project desired by Owner, and upon written authorization from Owner,

Engineer shall:

1. Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project.
 2. Coordinate necessary field surveys and topographic and utility mapping for design purposes. Utility mapping will be based upon information obtained from utility owners and any SUE analysis.
 3. Advise Owner if additional data, information, or services of the types described in Exhibit B are necessary and assist Owner in obtaining such reports, data, information, or services.
 4. Based on the information contained in the Preliminary Design Phase documents, prepare an opinion of probable Construction Cost, and assist Owner in collating the various cost categories which comprise Total Project Costs, if needed.
 5. Furnish two (2) review copies of the Preliminary Design Phase documents and any other deliverables to Owner within fourteen (14) calendar days from the County's delivery of any applicable survey and SUE data, and review them with Owner. Within seven (7) calendar days of receipt, Owner shall submit to Engineer any comments regarding the Preliminary Design Phase documents and any other deliverables.
 6. Revise the Preliminary Design Phase documents and any other deliverables in response to Owner's comments, as appropriate, and furnish to Owner two (2) copies of the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables within (14) calendar days after receipt of Owner's comments.
- B. Engineer's services under the Preliminary Design Phase will be considered complete on the date when the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables have been delivered to Owner.

A1.03 *Final Design Phase*

- A. After acceptance by Owner of the Preliminary Design Phase documents, revised opinion of probable Construction Cost as determined in the Preliminary Design Phase, and any other deliverables subject to any Owner-directed modifications or changes in the scope, extent, character, or design requirements of or for the Project, and upon written authorization from Owner, Engineer shall:
1. Prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor, including the Traffic Control Plan, if applicable and if agreed upon in Part 2 ADDITIONAL SERVICES, and submit to the Owner within thirty (30) calendar days from completion of the Preliminary Design Phase as indicated in A1.02 B.

2. Prepare: Title Sheet; base photo map and project notes: location sheet; plan sheets for water main (4 sheets); water main details (3 sheets), and submit to the Owner within thirty (30) calendar days from completion of the Preliminary Design Phase as indicated in A1.02 B.
 3. Provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design of the Project; and, assist Owner in consultations with such authorities and revise the Drawings and Specifications in response to directives from such authorities, as applicable and if agreed upon in Part 2 ADDITIONAL SERVICES.
 4. Advise Owner of any adjustments to the opinion of probable Construction Cost known to Engineer.
 5. Prepare and furnish bidding documents to include: Bid Form; Description of Bid Items and, Technical Specifications for review by Owner, and assist Owner in the preparation of other related documents and submit to the Owner within thirty (30) calendar days from completion of the Preliminary Design Phase as indicated in A1.02 B. Within ten (10) days of receipt, Owner shall submit to Engineer any comments.
 6. Revise the bidding documents in accordance with comments and instructions from the Owner, as appropriate, and submit two (2) final copies of the bidding documents, a revised opinion of probable Construction Cost, and any other deliverables to Owner within ten (10) calendar days after receipt of Owner's comments and instructions.
- B. Engineer's services under the Final Design Phase will be considered complete on the date when the submittals required by Paragraph A1.03 and A.6 have been delivered to Owner.
- C. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Agreement is one (1). If more prime contracts are awarded, Engineer shall be entitled to an equitable increase in its compensation under this Agreement.

A1.04 *Bidding or Negotiating Phase*

- A. After acceptance by Owner of the bidding documents and the most recent opinion of probable Construction Cost as determined in the Final Design Phase, and upon written authorization by Owner to proceed, Engineer shall:
 1. Assist Owner to conduct and attend pre-bid conference.
 2. Respond to Requests for Information and assist with addenda as appropriate to clarify, correct, or change the bidding documents.
 3. If necessary provide information or assistance needed by Owner in the course of any negotiations with prospective contractors.

4. Consult with Owner as to the acceptability of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors for those portions of the Work as to which such acceptability is required by the bidding documents.
5. If bidding documents require, the Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by bidders, but subject to the provisions of paragraph A2.02.A.2 of this Exhibit A.
6. Prepare Bid tabulation sheets, and assist Owner in evaluating Bids or proposals.
7. Review and become familiar with final construction contracts documents in order to respond to the limited Construction Phase consultation requirements, subject to the provisions of A.1.05 of this Exhibit A.

- B. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective contractors (except as may be required if Exhibit F is a part of this Agreement).

A1.05 Construction Phase

With the exception of the requirements expressly identified hereinto this Exhibit A for the Construction Phase of the Project, Engineering services are subject to the provisions as described in 6.02.A Design without Construction Phase Services.

- A. *Telephone Consultation:* Upon successful completion of the Bidding and Negotiating Phase, and upon written authorization from Owner, Engineer shall:

1. Be available for up to eight (8) hours for telephone consultation with Owner's Representative, Contractor Representative and/or any other individual authorized to communicate with the Engineer during the Construction Phase.
2. *Visits to Site and Observation of Construction:* In connection with observations of Contractor's Work while it is in progress:
 - a. Make two (2) visits to the Site at intervals appropriate to the various stages of construction, when notified by Owner to observe as an experienced and qualified design professional the progress of Contractor's executed Work. Such visits and observations by Engineer 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 if applicable, but rather are to be limited to spot checking, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment. 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.

- b. The purpose of Engineer's visits to the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Engineer shall not, during such visits or as a result of such observations of Contractor's Work in progress, 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 Contractor's Work, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work. Accordingly, Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish or perform the Work in accordance with the Contract Documents.
3. *Defective Work:* Reject Work with concurrence by the Owner, if on the basis of Engineer's observations, Engineer believes that such Work (a) is defective under the standards set forth in the Contract Documents, (b) will not produce a completed Project that conforms to the Contract Documents, or (c) will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
4. *Clarifications and Interpretations; Field Orders:* On the basis of Engineer's observations recommend to the Owner any necessary clarifications and interpretations of the Contract Documents and compatibility with the design, as appropriate to the orderly completion of Contractor's work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. Subject to any limitations in the Contract Documents, Engineer may issue field orders authorizing minor variations in the Work from the requirements of the Contract Documents.
5. *Change Orders and Work Change Directives:* Recommend change orders and work change directives to Owner, as appropriate.
6. *Disagreements between Owner and Contractor:* Render formal written decisions on all duly submitted issues relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract and Design Documents pertaining to the execution, performance, or progress of Contractor's Work; review each duly submitted Claim by Owner or Contractor, and in writing either deny such Claim in whole or in part, approve such Claim, or decline to resolve such Claim if Engineer in its discretion concludes that to do so would be inappropriate. In rendering such decisions, Engineer

shall be fair and not show partiality to Owner or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.

7. **Substantial Completion:** Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, visit the Project to determine if the Work is substantially complete. If after considering any objections of Owner, Engineer considers the Work substantially complete; Engineer shall deliver a certificate of Substantial Completion to Owner and Contractor.
8. **Final Notice of Acceptability of the Work:** Conduct a final visit to the Project to determine if the completed Work of Contractor is acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice in the form attached hereto as Exhibit E (the "Notice of Acceptability of Work") that the Work is acceptable (subject to the provisions of Paragraph A1.05.) to the best of Engineer's knowledge, information, and belief and based on the extent of the services provided by Engineer under this Agreement.
9. **Duration of Construction Phase:** The Construction Phase will commence with the execution of the Construction Contract for the Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors.
10. **Limitation of Responsibilities:** Engineer shall not be responsible for the acts or omissions of any Contractor, Subcontractor or Supplier, or other individuals or entities performing or furnishing any of the Work, for safety or security at the Site, or for safety precautions and programs incident to Contractor's Work, during the Construction Phase or otherwise. Engineer shall not be responsible for the failure of any Contractor to perform or furnish the Work in accordance with the Contract Documents.

PART 2 – ADDITIONAL SERVICES

A2.01 Additional Services Requiring Owner's Written Authorization

- A. If authorized in writing by Owner, Engineer shall furnish or obtain from others Additional Services of the types listed below.
 1. Identify all utility locations.
 2. Consult with Owner's Representative to determine need for design survey, if appropriate complete design survey.
 3. Consult with Owner's Representative to determine the necessity for geotechnical analysis, if geotechnical analysis is required Engineer will proceed accordingly.
 4. Prepare Traffic Control Plan to include but not limited to the following traffic elements: minimize delay for traffic flow; site access; safety considerations for automobiles.

pedestrians, and bicycles; impact to site driveways and other access points; and, other traffic control considerations as deemed necessary by Engineer.

5. Obtain required Utility Permit from New Mexico Department of Transportation (NMDOT).

**This is EXHIBIT B, part of the Agreement between
Owner and Engineer for Professional Services.**

Owner's Responsibilities

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

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

- A. Print and assemble appropriate number of design drawings and project manuals for bid process. Prepare bid packet to include all necessary bid items documents and forms: advertisement for Bids; Instructions for Bidders; Bid Proposal; Bid Form; Non-Collusion Affidavit of Prime Bidder; Certificate of Non-segregated Facilities; Certification of Bidder Regarding; Equal Employment Opportunity; Bid Bond; Subcontractor listing; Receipt of Invitation for Bid Form; Campaign Contribution Disclosure Form; Standard Specifications; Notice to Contractors; Supplemental specifications if required; Bid Sheet; General Contractors Statement of Qualifications Form; Sample Contract Documents including General and Supplemental Provisions.
- B. Provide Engineer with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which Owner will require to be included in the Drawings and Specifications; and furnish copies of Owner's standard forms, conditions, and related documents for Engineer to include in the Bidding Documents, when applicable.
- C. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Site.
- D. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, furnish or otherwise make available such additional Project related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:
 - 1. Property descriptions.
 - 2. Zoning, deed, and other land use restrictions.
 - 3. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.

4. Explorations and tests of subsurface conditions at or contiguous to the Site, drawings of physical conditions relating to existing surface or subsurface structures at the Site, or hydrographic surveys, with appropriate professional interpretation thereof.
 5. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental or cultural studies as to the Project, the Site, and adjacent areas.
 6. Data or consultations as required for the Project but not otherwise identified in the Agreement or the Exhibits thereto.
- E. Give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of the presence at the Site of any Constituent of Concern, or of any other development that affects the scope or time of performance of Engineer's services, or any defect or nonconformance in Engineer's services, the Work, or in the performance of any Contractor.
- F. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement as required, upon written request by Engineer and written approval by Owner..
- G. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.
- H. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- I. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.
- J. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, provide, as required for the Project:
1. Accounting, bond and financial advisory, independent cost estimating, and insurance counseling services.
 2. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests.
 3. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the moneys paid.
- K. Place and pay for advertisement for Bids in appropriate publications.

- L. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructability review.
- M. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.
- N. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.
- O. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.
- P. Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Substantial Completion and final payment visits to the Project.
- Q. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Contract Documents, or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof.
- R. Provide Engineer with the findings and reports generated by the entities providing services to Owner pursuant to this paragraph.
- S. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.
- T. Provide construction contract administrative services including: pre construction conference; weekly progress meetings and minutes; reviewing contractor's shop drawings; submit applications for payment; initiate and process field orders and change orders; prepare monthly progress reports; utility coordination; review and logging of test results; claims evaluation; punch list(s); as built record drawings; and, 11-month warranty inspection and report.

This is **EXHIBIT C**, part of the **Agreement between Owner and Engineer for Professional Services**.

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

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

ARTICLE 2 – OWNER’S RESPONSIBILITIES

C2.01 Compensation For Basic Services – Standard Hourly Rates Method of Payment

- A. Owner shall pay Engineer for Basic Services set forth in Exhibit A as follows:
1. An amount equal to the cumulative hours charged to the Project by each class of Engineer’s personnel times Standard Hourly Rates for each applicable billing class for all services performed on the Project, plus Reimbursable Expenses and Engineer’s Consultants’ charges, if any, exclusive of New Mexico gross receipts tax.
 2. Engineer’s Reimbursable Expenses Schedule and Standard Hourly Rates are attached to this Exhibit C as Appendices 1 and 2.
 3. The total compensation for basic services under Paragraph C2.01 is estimated to be Twenty Thousand Nine Hundred Eighty Dollars and no cents (**\$20,980.00**), exclusive of gross receipts tax, based on the following estimated distribution of compensation:

a.	Preliminary Design Phase	\$13,700.00
b.	Final Design Phase	\$ 4,530.00
c.	Bidding or Negotiating Phase	\$ 750.00
d.	Construction Phase	\$ 2,000.0
Total Services		\$20,980.00
 4. Pursuant to an amendment approved by the Owner, Engineer may alter the distribution of compensation between individual phases of the work noted herein to be consistent with services actually rendered, but shall not exceed the total estimated compensation amount unless approved in writing by Owner. See also C2.03.C.2 below.
 5. The total estimated compensation for Engineer’s services included in the breakdown by phases as noted in Paragraph C2.01.A.3 incorporates all labor, overhead, profit, Reimbursable Expenses and Engineer’s Consultants’ charges.

6. The amounts billed for Engineer's services under Paragraph C2.01 will be based on the cumulative hours charged to the Project during the billing period by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class, plus Reimbursable Expenses and Engineer's Consultants' charges.

C2.02 Compensation For Reimbursable Expenses

- A. Owner shall pay Engineer for all Reimbursable Expenses at the rates set forth in Appendix 1 to this Exhibit C.
- B. Reimbursable Expenses include the following categories: transportation and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls and mobile phone charges; reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items in addition to those required under Exhibit A. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
- C. The amounts payable to Engineer for Reimbursable Expenses will be the Project-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to the Project, the latter multiplied by a factor of 1.1.

C2.03 Other Provisions Concerning Payment

- A. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of 1.1.
- B. Factors. The External Reimbursable Expenses and Engineer's Consultants' factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
- C. Estimated Compensation Amounts:
 1. Engineer's estimate of the amounts that will become payable for specified services are only estimates for planning purposes, are not binding on the parties, and are not minimum or maximum amounts payable to Engineer under the Agreement.
 2. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Engineer that the total compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof, allowing Owner to consider its options, including suspension or termination of Engineer's services for Owner's convenience. Upon notice, Owner and Engineer promptly shall review the matter of services remaining to be performed and compensation for such services. Owner shall either exercise its right to suspend or terminate Engineer's services for Owner's convenience, agree to such compensation exceeding said estimated amount, or agree to a reduction in the remaining services to be rendered by Engineer, so that total compensation for such services will not exceed said estimated amount when such services are completed. If Owner decides

not to suspend the Engineer's services during the negotiations and Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, then Engineer shall be paid for all services rendered herein.

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

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

Reimbursable Expenses Schedule

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

Postage and Shipping	\$ 75.00
Printing (Review Sets)	\$300.00
Base Photo	\$275.00

TRAVEL

Mileage (Site Visits)	\$105.00
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This is **Appendix 2 to EXHIBIT C**, referred to in and part of the **Agreement between Owner and Engineer for Professional Services**.

Standard Hourly Rates Schedule

A. *Standard Hourly Rates:*

- b. Standard Hourly Rates are set forth in this Appendix 2 to this Exhibit C and include salaries and wages paid to personnel in each billing class.
- c. The Standard Hourly Rates apply only as specified in Article C2.

Schedule:

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

Principal Engineer	\$165.00/hour
Project Engineer	\$125.00/hour
AutoCad and Tech Support	\$ 90.00/hour

This is **Appendix 3 to EXHIBIT C**, referred to in and part of the **Agreement between Owner and Engineer for Professional Services**.

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

Utility location assembly by Engineer	\$ 5,720.00
Design Survey	\$ 5,203.00
Geotechnical	\$ 4,950.00
Traffic Control Plan	\$ 2,440.00
NMDOT Utility Permit	\$ 1,000.00
<hr/>	
Total	\$19,313.00

This is **Appendix 3 to EXHIBIT C**, referred to in and part of the **Agreement between Owner and Engineer for Professional Services**.

Engineering Services Fee Proposal-Refer to ESTIMATED ENGINEERING SERVICES

ESTIMATED ENGINEERING SERVICES FOR CR 62 - CAJA DEL ORO GRANT ROAD WATERLINE EXTENSION

Santa Fe County
 Sullivan Design Group, Inc.
 Date: February 22, 2013 - revised May 24, 2013
 Manpower and Cost Estimate; Engineering Scope - EXHIBIT A

TASK No.	TASK DESCRIPTION	LABOR - HOURS					TOTAL BY ACTIVITY		ESTIMATED EXPENSES				
		Resident	Principal	Project	AutoCad &	LABOR HOURS	LABOR COSTS	Postage and Shipping	Printing (Review Sets)				
		Proj. Rep. Dave Neal	Engineer Jack Sullivan	Engineer Daniel Marsalone	Tech Support Marc Steiner								
	Design Development												
1	Field Inspection with County Staff			2		2	250.00						300.00
2	Utility Coordination			2		2	250.00						275.00
3	Title Sheet			1	4	5	485.00						
4	Base Photo Map and Project Notes			4	8	12	1,220.00						
5	Location Sheet			1	9	10	935.00						
6	Plan Sheets - Water Main (4 sheets) - no profiles			8	48	56	5,320.00						
7	Water Main Details (3 sheets)			6	12	18	1,830.00						
8	Preliminary Construction Cost Estimate			2		2	250.00						
9	Bid Form, Descrip. of Bid Items & Tech. Specifications			16		16	2,000.00						
10	Design Review - In-house and County		4	4		8	1,160.00						
	Final Construction Documents												
11	Revise Drawings to Incorporate Review Comments			6		6	1,830.00						
12	Prepare and Assemble Final Documents			2	8	10	970.00						
13	Final Construction Cost Estimate		1	3		4	540.00						5,720.00
14	Final Review - in house and County		2	4		6	1,190.00						5,203.00
	Bidding Phase												
15	Bid Tabulation and Letting of Recommendation			4		4	500.00						4,950.00
16	Attend Prebid Conference			2		2	250.00						2,440.00
	Construction Phase												
17	Phone Consultation during Construction			8		8	1,000.00						1,000.00
18	On-call Construction Observation - 4 site trips			8		8	1,000.00						19,993.00
													20,980.00
													3,354.66
													44,327.66
	TOTAL ESTIMATED LABOR		7	83	105	195	20,980.00						

Billing Rates: 95.00 165.00 125.00 90.00

ASSUMPTIONS/CONDITIONS: The basic services scope of work shown is for engineering design and drawings plus the bid form, description of bid items, technical specifications and limited construction phase consultation. Santa Fe County will provide and assemble the contract documents using the County's standard invitation to bids, instruction to bidders, bonds, agreement, general conditions and supplemental conditions. Santa Fe County will print and assemble the drawings and project manuals, advise for bids, distribute the bid documents, issue addenda and open bids. Santa Fe County will undertake all other project responsibilities not listed above including but not limited to construction inspection and project photographs, project progress meetings and minutes, periodic pay requests, field orders, change orders, utility coordination, review and approval of contractor submittals and shop drawings, all contractor coordination, funding agency reports (if any), review and logging of test results, claims evaluation, punchlists, as-built record drawings and 11-month warranty inspection and report. Time of performance for SDG will begin upon receipt of the design survey and utility location information and excludes County or NMDOT review and approval times. The waterline alignment assumes three bore locations. Service connection locations shall be designated by the County. The assumed construction period is 12 weeks to substantial completion.

Exclusions: Right of way research or acquisition, environmental review, archeological and cultural research and documentation, electrical engineering or controls design, hydraulic modeling, drainage analysis and report, public presentations and graphics, and County or other permit or application fees.

Note: Utility locations and depths are unknown on both the Alameda Frontage Road (state owned) and CR 62 (County owned). The surveyor must record the utility company design locate spots as a part of the design survey so the waterline can be routed to minimize impact on existing utilities - especially in the vicinity of the new NMDOT roundabout on SR 599 and existing structures.

This is **EXHIBIT E**, part of the **Agreement between Owner and Engineer for Professional Services**.

NOTICE OF ACCEPTABILITY OF WORK

PROJECT: County Road 62 Caja del Oro Grant Road and Alameda waterline Extension

OWNER: Santa Fe County

CONTRACTOR:

OWNER'S CONSTRUCTION CONTRACT IDENTIFICATION: Agreement # 2013-0256-PW/MS

EFFECTIVE DATE OF THE CONSTRUCTION CONTRACT:

ENGINEER: Sullivan Design Group Inc.

NOTICE DATE:

To: Santa Fe County

Owner

And To:

Contractor

From: Sullivan Design Group Inc.

Engineer

The Engineer hereby gives notice to the above Owner and Contractor that the completed Work furnished and performed by Contractor under the above Contract is acceptable, expressly subject to the provisions of the related Contract Documents, the Agreement between Owner and Engineer for Professional Services dated _____, _____, and the terms and conditions set forth in this Notice.

By: _____

Title: _____

Dated: _____

CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK

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

1. This Notice is given with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.
2. This Notice reflects and is an expression of the professional judgment of Engineer.
3. This Notice is given as to the best of Engineer’s knowledge, information, and belief as of the Notice Date.
4. This Notice is based entirely on and expressly limited by the scope of services Engineer has been employed by Owner to perform or furnish during construction of the Project (including observation of the Contractor’s work) under Engineer’s Agreement with Owner and under the Construction Contract referred to in this Notice, and applies only to facts that are within Engineer’s knowledge or could reasonably have been ascertained by Engineer as a result of carrying out the responsibilities specifically assigned to Engineer under such Agreement and Construction Contract.
5. This Notice is not a guarantee or warranty of Contractor’s performance under the Construction Contract referred to in this Notice, nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Contract Documents.

This is **EXHIBIT G** part of the Agreement between
Owner and Engineer for Professional Services

Insurance

- A. The Engineer shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Engineer from claims set forth below which may arise out of or result from the Engineer's operations under the Contract and for which the Engineer may be legally liable, whether such operations be by the Engineer, Engineer's consultants or subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:
1. Claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
 2. Claims for damages because of bodily injury, occupational sickness or disease, or death of the Engineer's employees;
 3. Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Engineer's employees;
 4. Claims for damages insured by usual personal injury liability coverage;
 5. Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting there from;
 6. Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
 7. Claims for bodily injury or property damage arising out of completed operations.

The insurance required by this section shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment.

- B. The limits for Workers' Compensation and Employer's Liability insurance shall be as follows:
1. Workers' Compensation:
 - a. State: Statutory

2. Employer's Liability: \$500,000 per Accident
 - a. \$500,000 disease, Policy Limit
 - b. \$500,000 Disease, Each Employee

- C. The limits for Commercial General Liability Policy, including coverage for Premises-Operations, Independent Contractors' Protective, Products-completed Operations, Contractual Liability, Personal Injury and Board From Damage (including coverage for Explosion, Collapse and Underground Hazards), shall be as follows:

\$1,000,000 Each Occurrence

\$2,000,000 general Aggregate

 1. The Policy shall be endorsed to have the General Aggregate apply to this Project only.
 2. Products Completed Operations insurance shall be maintained for a minimum period of at least one (1) year after final payment.

- D. Automobile Liability insurance (owned, non-owned and hired vehicles) for bodily injury and property damage shall be \$1,000,000 Each Accident.

- E. Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These certificates and the insurance policies required by this section shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available and additional certificate evidencing continuation of such coverage shall be submitted with the final Application for payment. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Engineer with reasonable promptness in accordance with the Engineer's information and belief.

- F. If, during the life of this Agreement, the Legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act (NMSA 1978 Sections 41-4-1 through 41-4-29 as amended) the Engineer shall increase the maximum liability limits of any insurance required herein.

This is **EXHIBIT H**, part of the **Agreement between Owner and Engineer for Professional Services**.

Dispute Resolution

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

H6.08 *Dispute Resolution*

- A. *Mediation: then Litigation:* Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof (“Disputes”) to mediation if required by the Public Works Mediation Act, NMSA 1978, Section 13-4C-1 et seq. If mediation is unsuccessful Owner and Engineer agree to resolve disputes through litigation in State District court, First Judicial District in Santa Fe, New Mexico.

This is **EXHIBIT K**, part of the **Agreement between Owner and Engineer for Professional Services**.

AMENDMENT TO OWNER-ENGINEER AGREEMENT
Amendment No. _____

1. *Background Data:*

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

2. *Description of Modifications:*

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

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

[List other Attachments, if any]

3. Agreement Summary (Reference only)

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

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

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

OWNER:

ENGINEER:

By: _____

By: _____

Title: _____

Title: _____

Date Signed: _____

Date Signed: _____

