

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

**STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES**

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly by



PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
a practice division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

AMERICAN COUNCIL OF ENGINEERING COMPANIES

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This Agreement has been prepared for use with the Standard General Conditions of the Construction Contract (No. C-700, 2002 Edition) of the Engineers Joint Contract Documents Committee. Their provisions are interrelated, and a change in one may necessitate a change in the other. For guidance on the completion and use of this Agreement, see EJCDC User's Guide to the Owner-Engineer Agreement, No. E-001, 2002 Edition.

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STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES

SANTA FE COUNTY
SANTA FE RIVER RESTORATION PROJECT
CONTRACT No. 2011-0051-CSD/PL

THIS AGREEMENT is made and entered into this _____ day of _____, 2011, by and between the **Santa Fe County**, hereinafter referred to as “the County” or “Owner”, and Wilson & Company, Inc., Engineers and Architects, a Corporation with its principal place of business located at 1421 Luisa Street, Suite E, Santa Fe, NM 87505, hereinafter referred to as “the Contractor”.

Owner and Engineer agree as follows:

ARTICLE 1 – SERVICES OF ENGINEER

1.01 *Scope*

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*

Owner shall have the responsibilities set forth herein and in Exhibit B.

Owner shall pay Engineer as set forth in Exhibit C. The total Contract Sum for Basic Services, Additional Services, and Reimbursables as specifically described in Exhibit C, is One Hundred Ten Thousand and Three dollars and Sixty cents (\$110,003.60), exclusive of gross receipts tax.

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*

Engineer shall begin rendering services as of the date set forth in a 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. The Contractor shall not begin the Work until the County issues to the Contractor a written Notice to Proceed and Purchase Order. The Contractor shall complete all work to coincide with the completion of the Construction Phase of Owner's Project.
- C. The Contractor acknowledges and agrees that (i) time is of the essence under this Agreement; (ii) the County's loss caused by the Contractor's delay in completing the work will be difficult to prove; (iii) that it will be inconvenient and nonfeasible for the County to obtain an adequate remedy for the Contractor's delay in completing the work. The Contractor thus agrees to pay the County liquidated damages of \$500 for each calendar day beyond the completion of the Construction Phase that completion of Contractor's work is delayed, which amount the Contractor agrees is not a penalty but, rather, a reasonable estimate of the County's anticipated harm
- D. 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.
- E. If Owner authorizes changes in the scope, extent, or character of the Project, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- F. 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.
- G. 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 to the recovery of direct damages resulting from such failure.

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 *Invoices*

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. Within fifteen (15) days of Owner's receipt of the written request, Owner shall issue a written certification of complete or partial acceptance or rejection of the contractual items or services for which payment is sought. Engineer acknowledges and agrees that Owner may not make any payment hereunder unless and until it has issued a written certification accepting the contractual items or services. Within thirty (30) days of the issuance of a written certification accepting the contractual items or services, Owner shall tender payment for the accepted items or services.

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 specified in Paragraph 4.01, then:

1. amounts due Engineer will be increased at the rate of 1.5% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and
 2. Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- C. *Disputed Invoices.* If Owner contests an invoice, Owner may withhold only that portion so contested, and must pay the undisputed portion.
- D. *Legislative Actions.* If after the Effective Date of the Agreement any governmental entity takes a legislative action that imposes taxes, fees, or charges on Engineer's services or compensation under this Agreement, then the Engineer may invoice such new taxes, fees, or charges as a Reimbursable Expense to which a factor of 1.0 shall be applied. Owner shall pay such invoiced new taxes, fees, and charges; such payment 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

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 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 wishes greater assurance as to probable Construction Cost, Owner shall employ an independent cost estimator as provided in Exhibit B.

5.02 Designing to Construction Cost Limit

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

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

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.

Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct any such deficiencies in technical accuracy without additional compensation except to the extent such corrective action is directly attributable to deficiencies in Owner-furnished information.

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.

Subject to the standard of care set forth in Paragraph 6.01., 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.

Engineer and Owner shall comply with applicable Laws and Regulations and Owner-mandated standards that Owner has provided to Engineer in writing. This Agreement is based on these requirements as of its Effective Date. Changes to these requirements after the Effective Date of this Agreement may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, and compensation.

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.

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 (No. C-700, 2002 Edition).

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.

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.

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 employees and its Consultants) at the Site or otherwise furnishing or performing any Work; or for any decision made on interpretations or clarifications of the Contract Documents given by Owner without consultation and advice of Engineer.

6.02 *Design Without Construction Phase Services*

If Engineer's Basic Services under this Agreement do not include Project observation, or review of the Contractor's performance, or any other Construction Phase services, then (1) Engineer's services under this Agreement shall be deemed complete no later than the end of the Bidding or Negotiating Phase; (2) Engineer shall have no design or shop drawing review obligations during construction; and (3) Owner waives any claims against the Engineer that may be connected in any way thereto.

6.03 *Use of Documents*

All Documents are instruments of service in respect to this Project. All documents prepared by the Engineer and all rights to such documents, including copyright, are property of the Owner. The Contractor may retain one contract record set. Neither the Contractor, or any Subcontractor, or Sub-subcontractor, or material or equipment supplier shall own or claim a copyright in the documents prepared by the Engineer, unless otherwise indicated. The Engineer shall be deemed the author of them and will retain all common law, statutory, and other reserved rights, in addition to the copyright. All copies of them, except the Contractor's set, shall be returned or suitably accounted for to the Owner, on request, upon completion of the Work. The documents prepared by the Engineer, and copies thereof furnished to the Contractor, are for use solely with respect to this project. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor, or material or equipment supplier on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner. The Contractor, Subcontractor, Sub-subcontractor, and material or equipment suppliers are granted a limited license to use and reproduce applicable portions of the documents prepared by the Engineer appropriate to and for use in the execution of their Work under the contract Documents. All copies made under this license shall bear the statutory copyright notice, if any, shown on the Documents prepared by the Engineer. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Owner's copyright or other reserved rights.

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.

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.

6.04 *Insurance*

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.

Owner shall require Contractor to purchase and maintain general liability and other insurance in accordance with the requirements of Paragraph 5.04 of the "Standard General Conditions of the Construction Contract," (No. C-700, 2002 Edition) as prepared by the Engineers Joint Contract Documents Committee and to cause Engineer and Engineer's Consultants to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractor for the Project.

Engineer shall deliver to the Owner 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.

At any time, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.

6.05 *Suspension and Termination*

Suspension.

By Owner: Owner may suspend the Project upon seven days written notice to Engineer.

By Engineer: If Engineer's services are substantially delayed through no fault of Engineer, Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement.

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 6.05.1.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.

Effective Date of Termination. The terminating party under Paragraph 6.05. 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.

Payments Upon Termination.

3. 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 and all Reimbursable Expenses incurred through the effective date of termination.
4. 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, to invoice Owner and to payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

6.06 *Controlling Law*

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

6.07 *Successors, Assigns, and Beneficiaries*

Owner and Engineer are hereby bound and the partners, successors, executors, administrators and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.07 the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this 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 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.

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 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 shall appear in the Contract Documents.

6.08 *Dispute Resolution*

Either party may invoke the procedures of Exhibit H to resolve a dispute.

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.

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.

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.

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.

6.09 *Indemnification*

Indemnification by Engineer. To the fullest extent permitted by law, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, partners, agents, consultants, and employees from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, mediation, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, partners, employees, or Consultants.

6.10 *Miscellaneous Provisions*

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.

Survival. All express representations and indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

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, who 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.

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.

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.

New Mexico Tort Claims Act: No provision of this Agreement modifies or waives any sovereign immunity or limitation of liability enjoyed by County or its "public employees" at common law or under the New Mexico Tort Claims Act, NMSA 1978, § 41-4-1, et seq.

Appropriations and Authorizations. The terms of this Agreement are contingent upon sufficient appropriations and authorizations being made by the Santa Fe Board of County Commissioners or the Legislature of the State of New Mexico, if state funds are involved, for performance of this Agreement. If sufficient appropriations and authorizations are not made by the Santa Fe Board of County Commissioners or the Legislature of the State of New Mexico, if state funds are involved, this Agreement shall terminate upon written notice being given by the County to the Contractor. The County is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure by the County. The County's decision as to whether its funds are sufficient for fulfillment of this Agreement shall be final.

Records and Inspections. The Contractor shall maintain detailed books, documents, accounting records and other evidence pertaining to services and costs incurred in providing all services identified in Paragraph 1, SCOPE OF WORK of this Agreement. The Contractor shall make such materials available at their respective offices for inspection by the County at all reasonable times during the Agreement period, including before and after payment, and for three (3) years from the date of final payment under this Agreement

Independent Contractor. The Contractor, its agents and employees are independent contractors performing professional services for the County, and are not employees or agents of the County. Notwithstanding that the Contractor enters into and performs under this Agreement, the Contractor and its agents and employees shall not accrue leave, participate in retirement plans, or liability bonding, use County vehicles, or participate in any other benefits afforded to employees of the County.

Conflict of Interest. The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with performance of services required under this Agreement.

Compliance with Applicable Law; Choice of Law.

- A. In performing the services in the SCOPE OF WORK outlined herein, the Contractor shall comply with all applicable Federal, State of New Mexico and local government laws and ordinances.
- B. This Agreement shall be construed in accordance with the substantive laws of the State of New Mexico, without regard to its choice of law rules.
- C. Any litigation arising out of or related to this shall be resolved in state and federal courts located in Santa Fe County, New Mexico.

Notice of Penalties. The Procurement Code, NMSA 1978, Section 13-1-28 through 13-1-199, imposes civil and criminal penalties for its violation. In addition, New Mexico criminal statutes impose felony penalties for bribes, gratuities, and kickbacks

ARTICLE 7 – DEFINITIONS

7.01 *Defined Terms*

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 or in the exhibits; in the following provisions; or in the “Standard General Conditions of the Construction Contract,” prepared by the Engineers Joint Contract Documents Committee (No. C-700, 2002 Edition):

1. *Additional Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Exhibit A, Part 2, and Exhibit J of this Agreement.
2. *Basic Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Exhibit A, Part 1, and Exhibit J of this Agreement.
3. *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, or Owner’s costs for legal, accounting, insurance counseling or auditing services, or interest and 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.
4. *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.

5. *Consultants* – Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer’s independent professional associates, consultants, subcontractors, or vendors.
6. *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.
7. *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.
8. *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.
9. *Reimbursable Expenses* – The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic and Additional Services for the Project.
10. *Resident Project Representative* – Not applicable.
11. *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.
12. *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, and New Mexico gross receipts tax, 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.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 *Exhibits Included*

Exhibit A, “Engineer’s Services.”

Exhibit B, “Owner’s Responsibilities.”

Exhibit C, “Payments to Engineer for Services and Reimbursable Expenses.”

Exhibit D, “Duties, Responsibilities, and Limitations of Authority of Resident Project Representative”

Exhibit E, “Notice of Acceptability of Work.”

Exhibit F, “Construction Cost Limit.”

Exhibit G, "Insurance."

Exhibit H, "Dispute Resolution."

Exhibit I, Intentionally Omitted.

Exhibit J, Special Provisions

Exhibit K, Amendment form

8.02 *Total Agreement*

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 signed by both parties.

8.03 *Designated Representatives*

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 individuals shall have authority to transmit instructions, receive information, and render decisions relative to the Project on behalf of each respective party. IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner: Katherine Miller
Santa Fe County

Engineer: [Signature]
Wilson & Company

By: Katherine Miller

By: Steve J. Salazar, PE

Title: Manager, Santa Fe County

Title: Principle Engineer

Date Signed: 5.3.11

Date Signed: 5/3/11

Engineer License or Certificate No. NMPE 16241
State of: New Mexico

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

Address for giving notices:
1421 Luisa Street Suite E
Santa Fe, New Mexico 87501
(505) 898-8021

Designated Representative (see Paragraph 8.03.A):

Designated Representative (see Paragraph 8.03.A):

Colleen Baker, Open Space Program Manager

Steve J. Salazar

949 W. Alameda
Santa Fe, NM 87501

Title: Open Space Program Manager

Phone Number: (505) 992-9868

Title: PE and Operations Manager

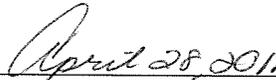
Phone Number: (505) 254-5345

Approved as to legal form:



Stephen C. Ross

Santa Fe County Attorney



Date:

Finance Department Approval:



Teresa Martinez

Santa Fe County Finance Director

Date:

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

Engineer's Services

Article 1 of the Agreement is amended and supplemented to include the following agreement of the parties. Engineer shall provide Basic and Additional Services as set forth below.

PART 1 – BASIC SERVICES

A.1.01 Study and Report Phase

A. Engineer shall:

1. Consult with Owner to define and clarify Owner's requirements for the Project and available data.
2. Advise Owner of any need for Owner to provide data or services of the types described in Exhibit B which are not part of Engineer's Basic Services.
3. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project designed or specified by Engineer, including but not limited to mitigating measures identified in the environmental assessment.
4. Identify and evaluate, where appropriate, alternate solutions available to Owner and, after consultation with Owner, recommend to Owner those solutions which in Engineer's judgment meet Owner's requirements for the Project.
5. Prepare a report (the "Report") which will, as appropriate, contain schematic layouts, sketches, and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and those alternate solutions available to Owner which Engineer recommends. For each recommended solution Engineer will provide the following, which will be separately itemized: opinion of probable Construction Cost; proposed allowances for contingencies; the estimated total costs of design, professional, and related services to be provided by Engineer and its Consultants; and, on the basis of information furnished by Owner, a summary of allowances for other items and services included within the definition of Total Project Costs.
6. Perform or provide the following additional Study and Report Phase deliverables: See "Exhibit J" for deliverables.
7. Furnish (see "Exhibit J") review copies of the Report and any other deliverables to Owner within thirty (30) calendar days of authorization to begin services and review it with Owner. Within thirty (30) calendar days of receipt, Owner shall submit to Engineer any comments regarding the Report and any other deliverables.

8. Revise the Report and any other deliverables in response to Owner's comments, as appropriate, and furnish (See "Exhibit J") copies of the revised Report and any other deliverables to the Owner within thirty (30) calendar days of receipt of Owner's comments.
- B. Engineer's services under the Study and Report Phase will be considered complete on the date when the revised Report and any other deliverables have been delivered to Owner.

A.1.02 Preliminary Design Phase

- A. After acceptance by Owner of the Report and any other deliverables, selection by Owner of a recommended solution and indication of any specific modifications or changes in the scope, extent, character, or design requirements of the Project desired by Owner, and upon written authorization from Owner, Engineer shall:
1. Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project.
 2. Provide necessary field surveys and topographic and utility mapping for design purposes. Utility mapping will be based upon information obtained from utility owners.
 3. Advise Owner if additional reports, data, information, or services of the types described in Exhibit B are necessary and assist Owner in obtaining such reports, data, information, or services.
 4. Based on the information contained in the Preliminary Design Phase documents, prepare a revised opinion of probable Construction Cost, and assist Owner in collating the various cost categories which comprise Total Project Costs.
 5. Perform or provide the following additional Preliminary Design Phase deliverables: [See "Exhibit J."]
 6. Furnish (see "Exhibit J") review copies of the Preliminary Design Phase documents and any other deliverables to Owner within sixty (60) calendar days of authorization to proceed with this phase, and review them with Owner. Within sixty (60) calendar days of receipt, Owner shall submit to Engineer any comments regarding the Preliminary Design Phase documents and any other deliverables.
 7. Revise the Preliminary Design Phase documents and any other deliverables in response to Owner's comments, as appropriate, and furnish to Owner (see "Exhibit J") copies of the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables within sixty (60) 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.

A.1.03 *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. If appropriate, Specifications shall conform to the 16-division format of the Construction Specifications Institute.
 2. Provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design of the Project; assist Owner in consultations with such authorities; and revise the Drawings and Specifications in response to directives from such authorities.
 3. Advise Owner of any adjustments to the opinion of probable Construction Cost known to Engineer.
 4. Perform or provide the following additional Final Design Phase deliverables: [See "Exhibit J"]
 5. Prepare and furnish Bidding Documents for review by Owner, its legal counsel, and other advisors, and assist Owner in the preparation of other related documents. Within thirty (30) days of receipt, Owner shall submit to Engineer any comments and, subject to the provisions of Paragraph 6.01., instructions for revisions.
 6. Revise the Bidding Documents in accordance with comments and instructions from the Owner, as appropriate, and submit (see "Exhibit J") final copies of the Bidding Documents, a revised opinion of probable Construction Cost, and any other deliverables to Owner within thirty (30) calendar days after receipt of Owner's comments and instructions.
- B. Engineer's services under the Final Design Phase will be considered complete on the date when the submittals required by Paragraph A1.03.A.6 have been delivered to Owner.
- C. In the event that the Work designed or specified by Engineer is to be performed or furnished under more than one prime contract, or if Engineer's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), Owner and Engineer shall, prior to commencement of the Final Design Phase, develop a schedule for performance of Engineer's services during the Final Design, Bidding or Negotiating, Construction, and Post-Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate prime contracts. This schedule is to be prepared and included in or become an amendment to Exhibit A whether or not the work under such contracts is to proceed concurrently.
- D. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Agreement is two: Riverbend

Engineering and Morrow Reardon Wilkinson Miller Landscape Architects. If more prime contracts are awarded, Engineer shall be entitled to an equitable increase in its compensation under this Agreement subject to Owner approval.

A.1.04 *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 in advertising for and obtaining bids or proposals for the Work and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, attend pre-Bid conferences, if any, and receive and process contractor deposits or charges for the Bidding Documents.
 2. Issue Addenda as appropriate to clarify, correct, or change the Bidding Documents.
 3. 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. Perform or provide the following additional Bidding or Negotiating Phase tasks or deliverables: [See "Exhibit J"]
 6. Attend the Bid opening, prepare Bid tabulation sheets, and assist Owner in evaluating Bids or proposals and in assembling and awarding contracts for the Work.
- 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).

A.1.05 *Construction Phase*

- A. Upon successful completion of the Bidding and Negotiating Phase, and upon written authorization from Owner, Engineer shall:
1. *General Administration of Construction Contract*. Consult with Owner and act as Owner's representative as provided in the General Conditions. The extent and limitations of the duties, responsibilities, and authority of Engineer as assigned in the General Conditions shall not be modified, except as Engineer may otherwise agree in writing. All of Owner's instructions to Contractor will be issued through Engineer, which shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and the General Conditions except as otherwise provided in writing.
 2. *Resident Project Representative (RPR)*. See Exhibit D.

3. *Selecting Independent Testing Laboratory.* Assist Owner in the selection of an independent testing laboratory to perform the services identified in Exhibit B, Paragraph B2.01.0.
4. *Pre-Construction Conference.* Participate in a Pre-Construction Conference prior to commencement of Work at the Site.
5. *Schedules.* Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.
6. *Baselines and Benchmarks.* As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.
7. *Visits to Site and Observation of Construction.* In connection with observations of Contractor's Work while it is in progress:
 - a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, to observe as an experienced and qualified design professional the progress 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.
 - b. The purpose of Engineer's visits to, and representation by the Resident Project Representative, if any, at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the 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 on 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 and perform the Work in accordance with the Contract Documents.

8. *Defective Work.* Recommend to Owner that Contractor's Work be rejected while it is in progress if, on the basis of Engineer's observations, Engineer believes that such Work will not produce a completed Project that conforms generally to the Contract Documents or that it will threaten the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents.
9. *Clarifications and Interpretations; Field Orders.* Issue necessary clarifications and interpretations of the Contract Documents 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. Engineer may issue Field Orders authorizing minor variations in the Work from the requirements of the Contract Documents.
10. *Change Orders and Work Change Directives.* Recommend Change Orders and Work Change Directives to Owner, as appropriate, and prepare Change Orders and Work Change Directives as required.
11. *Shop Drawings and Samples.* Review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.
12. *Substitutes and "or-equal."* Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, but subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A.
13. *Inspections and Tests.* Require such special inspections or tests of Contractor's work as deemed reasonably necessary, and receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Contract Documents. Engineer shall be entitled to rely on the results of such tests.
14. *Disagreements between Owner and Contractor.* Intentionally Omitted
15. *Applications for Payment.* Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:
 - a. Determine the amounts that Engineer recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, Contractor's Work has progressed to the

point indicated, the quality of such Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe Contractor's Work. In the case of unit price work, Engineer's recommendations of payment will include final determinations of quantities and classifications of Contractor's Work (subject to any subsequent adjustments allowed by the Contract Documents).

- b. By recommending any payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Contract Documents. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control Contractor's Work in progress or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any portion of the Work in progress, materials, or equipment has passed to Owner free and clear of any liens, claims, security interests, or encumbrances, or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.

16. *Contractor's Completion Documents.* Receive, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Contract Documents, certificates of inspection, tests and approvals, Shop Drawings, Samples and other data approved as provided under Paragraph A1.05.A.11, and the annotated record documents which are to be assembled by Contractor in accordance with the Contract Documents to obtain final payment. The extent of such review by Engineer will be limited as provided in Paragraph A1.05.A.11.

17. *Substantial Completion.* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, conduct an inspection 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.

18. *Additional Tasks.* Perform or provide the following additional Construction Phase tasks or deliverables: [here list any such tasks or deliverables].

19. *Final Notice of Acceptability of the Work.* Conduct a final inspection 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.A.15.b) to the best of Engineer’s knowledge, information, and belief and based on the extent of the services provided by Engineer under this Agreement.

- B. *Duration of Construction Phase.* The Construction Phase will commence with the execution of the first construction Contract for the Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. If the Project involves more than one prime contract as indicated in Paragraph A1.03.C, Construction Phase services may be rendered at different times in respect to the separate contracts. Subject to the provisions of Article 3, Engineer shall be entitled to an equitable increase in compensation if Construction-Phase services are required after the original date for final completion of the Work as set forth in the construction Contract.
- C. *Limitation of Responsibilities.* Engineer shall not be responsible for the acts or omissions of any Contractor, or of any subcontractors, suppliers, or other individuals or entities performing or furnishing any of the Work. Engineer shall not be responsible for the failure of any Contractor to perform or furnish the Work in accordance with the Contract Documents.

A.1.06 *Post-Construction Phase*

- A. Upon written authorization from Owner, Engineer, during the Post-Construction Phase, shall:
1. Provide assistance in connection with the adjusting of Project equipment and systems.
 2. Assist Owner in training Owner’s staff to operate and maintain Project equipment and systems.
 3. Assist Owner in developing procedures for control of the operation and maintenance of, and record keeping for Project equipment and systems.
 4. Together with Owner, visit the Project to observe any apparent defects in the Work, assist Owner in consultations and discussions with Contractor concerning correction of any such defects, and make recommendations as to replacement or correction of Defective Work, if present.
 5. Perform or provide the following additional Post-Construction Phase tasks or deliverables: See “Exhibit J.”
 6. In company with Owner or Owner’s representative, provide an inspection of the Project within one month before the end of the Correction Period to ascertain whether any portion of the Work is subject to correction.
- B. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate at the end of the Construction Contract’s correction period.

PART 2 – ADDITIONAL SERVICES

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

- A. If authorized in writing by Owner, Engineer shall furnish or obtain from others Additional Services of the types listed below.
1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
 2. Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.
 3. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer or its design requirements including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date of this Agreement or are due to any other causes beyond Engineer's control.
 4. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those identified in Paragraph A1.01.A.4.
 5. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.
 6. Providing renderings or models for Owner's use.
 7. Undertaking investigations and studies including, but not limited to, detailed consideration of operations, maintenance, and overhead expenses; the preparation of feasibility studies, cash flow and economic evaluations, rate schedules, and appraisals; assistance in obtaining financing for the Project; evaluating processes available for licensing, and assisting Owner in obtaining process licensing; detailed quantity surveys of materials, equipment, and labor; and audits or inventories required in connection with construction performed by Owner.
 8. Furnishing services of Engineer's Consultants for other than Basic Services.
 9. Services attributable to more prime construction contracts than specified in Paragraph A1.03.C.
 10. Services during out-of-town travel required of Engineer other than for visits to the Site or Owner's office.
 11. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and 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.

12. Preparing additional Bidding Documents or Contract Documents for alternate bids or prices requested by Owner for the Work or a portion thereof.
13. Determining the acceptability of substitute materials and equipment proposed during the Bidding or Negotiating Phase when substitution prior to the award of contracts is allowed by the Bidding Documents.
14. Assistance in connection with Bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required by Exhibit F.
15. Providing construction surveys and staking to enable Contractor to perform its work other than as required under Paragraph A1.05.A.6, and any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.
16. Providing Construction Phase services beyond the original date for final completion of the Work.
17. Providing assistance in responding to the presence of any Constituent of Concern at the Site, in compliance with current Laws and Regulations.
18. Preparing and furnishing to Owner Record Drawings showing appropriate record information based on Project annotated record documents received from Contractor.
19. Preparation of operation and maintenance manuals.
20. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, or other dispute resolution process related to the Project.
21. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.
22. Other services performed or furnished by Engineer not otherwise provided for in this Agreement.

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

- A. Engineer shall advise Owner that Engineer is commencing to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice from Owner.
 1. Services in connection with Work Change Directives and Change Orders to reflect changes requested by Owner.

2. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than “or-equal” items; and services after the award of the Construction Contract in evaluating and determining the acceptability of a substitution which is found to be inappropriate for the Project or an excessive number of substitutions.
3. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.
4. Additional or extended services during construction made necessary by (1) emergencies or acts of God endangering the Work, (2) the presence at the Site of any Constituent of Concern, (3) Work damaged by fire or other cause during construction, (4) a significant amount of defective, neglected, or delayed work by Contractor, (5) acceleration of the progress schedule involving services beyond normal working hours, or (6) default by Contractor.
5. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of any part of the Work by Owner prior to Substantial Completion.
6. Evaluating an unreasonable claim or an excessive number of claims submitted by Contractor or others in connection with the Work.
7. Services during the Construction Phase rendered after the date stated in A1.05.B.

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

Owner's Responsibilities

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

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

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

- E. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement as required.
- F. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.
- G. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.
- I. 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.
 - 4. Placement and payment for advertisement for Bids in appropriate publications.
- J. 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.
- K. 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.
- L. 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.
- M. 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.

- N. Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Substantial Completion and final payment inspections.
- O. 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.
- P. Provide Engineer with the findings and reports generated by the entities providing services to Owner pursuant to this paragraph.
- Q. Perform or provide the following additional services: Not applicable.

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

Payments to Engineer for Services and Reimbursable Expenses

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

C2.01 Compensation For Basic Services – Lump Sum Method of Payment

A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, except for services of Engineer's Resident Project Representative and Post-Construction Phase services, if any, as follows:

1. A Lump Sum amount of \$51,622.88, exclusive of gross receipts tax, based on the following distribution of compensation:

a. Study and Report Phase	<u>\$10,200.04</u>
b. Preliminary Design Phase	<u>\$13,501.00</u>
c. Final Design Phase	<u>\$13,097.02</u>
d. Bidding and Negotiating Phase	\$ <u>523.96</u>
e. Construction Phase	<u>\$14,300.86</u>
2. Engineer may alter the distribution of compensation between individual phases noted herein to be consistent with services actually rendered, but shall not exceed the total Lump Sum amount unless approved in writing by the Owner.
3. The Lump Sum includes compensation for Engineer's services and services of Engineer's Consultants, if any. Appropriate amounts have been incorporated in the Lump Sum to account for labor, overhead, profit, and Reimbursable Expenses, but excluding gross receipts tax.
4. The portion of the Lump Sum amount billed for Engineer's services will be based upon Engineer's estimate of the proportion of the total services actually completed during the billing period to the Lump Sum.

C2.02 *Compensation For Reimbursable Expenses*

- A. Owner shall pay Engineer for all Reimbursable Expenses as indicated on Appendix 1. Total reimbursable expenses under this Contract are \$16,378.00.

C2.03 *Other Provisions Concerning Payment*

- A. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of **(Not applicable.)**
- B. Factors. The external Reimbursable Expenses and Engineer's Consultant's factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
- C. Estimated Compensation Amounts
 1. Engineer's estimate of the amounts that will become payable for specified services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.
 2. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Engineer that a compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof. Promptly thereafter Owner and Engineer shall review the matter of services remaining to be performed and compensation for such services. Owner shall either agree to such compensation exceeding said estimated amount or Owner and Engineer shall 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 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, the Engineer shall be paid for all services rendered hereunder.
- D. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

C2.04 Compensation for Additional Services – Lump Sum amount of \$42,002.72, exclusive of gross receipts tax, based on the following distribution of compensation

Aerial & Photographic Mapping & Survey Services	\$ 23,081.40
Design Plan Sub consultant (BMW&M)	\$ 8,200.00
Determination of ROW & Easement	\$ 261.98
Floodplain modeling, delineation & mapping for SFC	\$ 6,278.28
Floodplain Development Permit preparation & Submittal	

- A. Owner shall pay Engineer for Additional Services, if any, as follows:
1. *General.* For services of Engineer's employees engaged directly on the Project pursuant to Paragraph A2.01 or A2.02 of Exhibit A, except for services as a consultant or witness under Paragraph A2.01.A.20, an amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class for all Additional Services performed on the Project, plus related Reimbursable Expenses and Engineer's Consultant's charges, if any.
- B. Compensation For Reimbursable Expenses
1. For those Reimbursable Expenses that are not accounted for in the compensation for Basic Services under Paragraph C2.01 and Appendix 1 and are directly related to the provision of Additional Services, Owner shall pay Engineer in accordance with the Per Diem and Mileage Act, NMSA (1978), Sections 10-8-1 through 10-8-8.
- C. Other Provisions Concerning Payment For Additional Services
1. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of: **(Not applicable.)**
 2. Factors. The external Reimbursable Expenses and Engineer's Consultant's Factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
 3. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

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 as indicated below. The total for Reimbursable Expenses for Study & Report, Preliminary Design, Final Design, and Additional Services under this Contract is \$16,378.00

FEMA fees & costs

Digital FIRM Map	\$ 98.00	
Flood Insurance Study	\$ 7.00	
CLOMR Submittal Review fee	\$6,050.00	
FEMA Document Shipping	\$150.00	
LOMR Submittal fee	\$5,000.00	
FEMA document shipping	\$150.00	
FEMA as-built certification survey for LOMR submittal	\$3,000.00	
Fax	\$	/page
Printing & plotting	\$ 25.00/	per set (est. 33 sets total)
Cost per sheet	\$ 1.00	/per sheet (est. 50 sheets total)
8 X 10 Copies/Impressions	\$ 1.00/	per page
Blue Print Copies	_____	/sq. ft.
Reproducible Copies (Mylar)	_____	/sq. ft.
Reproducible Copies (Paper)	\$1.00/	per page
Mileage (auto)	\$.44/	mile (est. 22 trips/100 miles R/T)
Field Truck Daily Charge	_____	/day
Mileage (Field Truck)	_____	/mile
Field Survey Equipment	_____	/day
Confined Space Equipment	_____	/day plus expenses
Resident Project Representative Equipment	_____	/month
Computer CPU Charge	_____	/hour
Specialized Software	_____	/hour
Personal Computer Charge	_____	/hour
CAD Charge	_____	/hour
CAE Terminal Charge	_____	/hour
VCR and Monitor Charge	_____	/day, \$ _____ /week, or \$ _____ /month
Video Camcorder	_____	/day, plus \$ _____ /tape
Electrical Meters Charge	_____	/week, or \$ _____ /month
Flow Meter Charge	_____	/week, or \$ _____ /month
Rain Gauge	_____	/week, or \$ _____ /month
Sampler Charge	_____	/week, or \$ _____ /month
Dissolved Oxygen Tester Charge	_____	/week
Fluorometer	_____	/week

Laboratory Pilot Testing Charge	_____/week, or \$_____/month
Soil Gas Kit	_____/day
Submersible Pump	_____/day
Water Level Meter	_____/day, or \$_____/month
Soil Sampling	_____/sample
Groundwater Sampling	_____/sample
Health and Safety Level D	_____/day
Health and Safety Level C	_____/day
Electronic Media Charge	_____/hour
Long Distance Phone Calls	at cost
Mobile Phone	_____/day
Meals and Lodging (per diem)	\$ 20.00/day (est. 4 days)

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

1. Standard Hourly Rates are set forth in this Appendix 2 to this Exhibit C and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
2. The Standard Hourly Rates will be adjusted annually (as of (N/A)) to reflect equitable changes in the compensation payable to Engineer.
3. The Standard Hourly Rates apply only as specified in Article C2.

B. Schedule

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

Operations Manager	\$147.27/hour (24 man hours for Basic & Additional Services)
Project Manager	\$130.99/hour (80 man hours for Basic & Additional Services)
Staff Engineer	\$ 71.04/hour (190 man hours for Basic & Additional Services)
Senior Designer II	\$ 85.84/hour (48 man hours for Basic & Additional Services)
Drafter	\$ 65.12/hour (104 man hours for Basic & Additional Services)
Clerical	\$ 52.55/hour (6 man hours for Basic & Additional Services)

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

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

Paragraph 1.01.A of the Agreement is amended and supplemented to include the following agreement of the parties:

D1.01 *Resident Project Representative*

- A. Engineer shall furnish a Resident Project Representative (“RPR”), assistants, and other field staff to assist Engineer in observing progress and quality of the Work. The RPR, assistants, and other field staff under this Exhibit D may provide full time representation or may provide representation to a lesser degree.
- B. Through such additional observations of Contractor’s work in progress and field checks of materials and equipment by the RPR and assistants, Engineer shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, 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 the 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, for any failure of Contractor to comply with Laws and Regulations applicable to Contractor’s performing and furnishing the Work, or responsibility for Contractor’s failure to furnish and perform the Work in accordance with the Contract Documents. In addition, the specific terms set forth in section A.1.05 of Exhibit A of the Agreement are applicable.
- C. The duties and responsibilities of the RPR are as follows:
 - 1. *General:* RPR is Engineer’s agent at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR’s actions. RPR’s dealings in matters pertaining to the Contractor’s work in progress shall in general be with Engineer and Contractor, keeping Owner advised as necessary. RPR’s dealings with subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner with the knowledge of and under the direction of Engineer.
 - 2. *Schedules:* Review the progress schedule, schedule of Shop Drawing and Sample submittals, and schedule of values prepared by Contractor and consult with Engineer concerning acceptability.

3. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.
4. *Liaison:*
 - a. Serve as Engineer's liaison with Contractor, working principally through Contractor's superintendent, assist in providing information regarding the intent of the Contract Documents.
 - b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
 - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
5. *Interpretation of Contract Documents:* Intentionally Omitted.
6. *Shop Drawings and Samples:*
 - a. Record date of receipt of Samples and approved Shop Drawings.
 - b. Receive Samples which are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.
 - c. Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal for which RPR believes that the submittal has not been approved by Engineer.
7. *Modifications:* Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report such suggestions, together with RPR's recommendations, to Engineer. Transmit to Contractor in writing decisions as issued by Engineer.
8. *Review of Work and Rejection of Defective Work:*
 - a. Conduct on-Site observations of Contractor's work in progress to assist Engineer in determining if the Work is in general proceeding in accordance with the Contract Documents.
 - b. Report to Engineer whenever RPR believes that any part of Contractor's work in progress will not produce a completed Project that conforms generally to the Contract Documents or will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise Engineer of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.

9. *Inspections, Tests, and System Startups:*

- a. Consult with Engineer in advance of scheduled major inspections, tests, and systems startups of important phases of the Work.
- b. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
- c. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.
- d. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections, and report to Engineer.

10. *Records:*

- a. Maintain at the Site orderly files for correspondence, reports of job conferences, reproductions of original Contract Documents including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Contract, Engineer's clarifications and interpretations of the Contract Documents, progress reports, Shop Drawing and Sample submittals received from and delivered to Contractor, and other Project-related documents.
- b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.
- c. Record names, addresses, fax numbers, e-mail addresses, web site locations, and telephone numbers of all Contractors, subcontractors, and major suppliers of materials and equipment.
- d. Maintain records for use in preparing Project documentation.
- e. Upon completion of the Work, furnish original set of all RPR Project documentation to Engineer.

11. *Reports:*

- a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- b. Draft and recommend to Engineer proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.

- c. Furnish to Engineer and Owner copies of all inspection, test, and system start-up reports.
 - d. Immediately notify Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, damage to property by fire or other causes, or the discovery of any Constituent of Concern. .
12. *Payment Requests*: Review Applications for Payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.
13. *Certificates, Operation and Maintenance Manuals*: During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Specifications to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.
14. Completion:
- a. Participate in a Substantial Completion inspection, assist in the determination of Substantial Completion and the preparation of lists of items to be completed or corrected.
 - b. Participate in a final inspection in the company of Engineer, Owner, and Contractor and prepare a final list of items to be completed and deficiencies to be remedied.
 - c. Observe whether all items on the final list have been completed or corrected and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work.

D. Resident Project Representative shall not:

- 1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).
- 2. Exceed limitations of Engineer's authority as set forth in the Agreement or the Contract Documents.
- 3. Undertake any of the responsibilities of Contractor, subcontractors, suppliers, or Contractor's superintendent.
- 4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work unless such advice or directions are specifically required by the Contract Documents.

5. Advise on, issue directions regarding, or assume control over safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
8. Authorize Owner to occupy the Project in whole or in part.

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

NOTICE OF ACCEPTABILITY OF WORK

PROJECT:

OWNER:

OWNER'S CONSTRUCTION CONTRACT IDENTIFICATION:

EFFECTIVE DATE OF THE CONSTRUCTION AGREEMENT:

CONSTRUCTION CONTRACT DATE:

ENGINEER:

To:

OWNER

And To:

CONTRACTOR

From:

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 on the reverse side of this Notice.

By: _____

Title: _____

Dated
: _____

(Reverse side of Notice)

CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK

The Notice of Acceptability of Work (“Notice”) on the front side of this sheet is expressly made subject to the following terms and conditions to which all persons 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 date hereof.
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 on the front side of 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 on the front side of 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**, referred to in and part of the
**Agreement between Owner and Engineer for
Professional Services.**

Insurance

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

G6.04 *Insurance*

- A. The limits of liability for the insurance required by Paragraph 6.04.A and 6.04.B of the Agreement are as follows:
1. By Engineer:
 - a) General Conditions. The Contractor shall submit evidence of insurance as is required herein. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico.
 - b) General Liability Insurance, Including Automobile. The Contractor shall procure and maintain during the life of this Agreement a comprehensive general liability and automobile insurance policy with liability limits in amounts not less than \$1,050,000 combined single limits of liability for bodily injury, including death, and property damage for any one occurrence. Said policies of insurance shall include coverage for all operations performed for the County by the Contractor; coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment, both on and off work; and contractual liability coverage under which this Agreement is an insured contract
 - c) Workers' Compensation Insurance. The Contractor shall comply with the provisions of the Workers' Compensation Act.
 - d) Increased Limits. 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 Contractor shall increase the maximum limits of any insurance required herein.
 - e) Professional Liability (Errors and Omissions) Insurance. Engineer shall procure and maintain in full force and effect at all times during the performance of Project services professional liability (errors and omissions) insurance with a minimum per claim and aggregate policy limit of \$1,000,000 or the Cost of the Work, whichever is greater. The Engineer shall not be entitled to reimbursement from the Owner for the premium or other costs of obtaining or maintaining such insurance.

This is **EXHIBIT H**, referred to in and 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:

H6.09 *Dispute Resolution*

- A. Claims, disputes or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof shall be subject to mediation in accordance with the Public Works Mediation Act, NMSA 1978, § 13-4C-1, et. seq., and litigation in the District Court of the State of New Mexico, First Judicial District.
- B. Mediation. In addition to and as a condition precedent to litigation, the parties shall endeavor to settle disputes by mediation in accordance with the Public Works Mediation Act, NMSA 1978, § 13-4C-1, et. seq. A demand for mediation shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for mediation be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of repose or limitations.
- C. Mediation. Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof (“Disputes”) to mediation.
- D. In the event that a Claim is not resolved by mediation, a party may commence litigation. The parties agree that the exclusive forum for such litigation shall be the State of New Mexico District Court for the First Judicial District located in Santa Fe, New Mexico. Engineer irrevocably consents to the jurisdiction of said Court and agrees to accept service of a summons and complaint by mail or commercial courier service in accordance with Rule 1-004(E)(3) NMRA.
- E. Contract Performance During Dispute Resolution. During mediation or litigation proceeding, the Owner and Engineer shall comply with Responsibilities as set forth in Exhibit A “Engineer’s Services” and Exhibit B “Owner’s Responsibilities.”

SUGGESTED FORMAT
(for use with E-500, 2002 Edition)

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

Allocation of Risks – Intentionally Omitted.

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

Special Provisions

General Scope of Work to include a design to address the following issues:

- A. Between station 50+00 and 45+00 of the Channel Profile, widen the river channel and lay back the banks to provide some floodplain area.
- B. The pond at the far, east end of the project near the parking lot is silting in from the storm flows that enter from the north side of San Ysidro Crossing. The storm flows are spilling over the side of the pond at Trail Profile 137+00 and flowing southwest to the river channel, causing erosion. The storm flows are also topping over the trail and eroding the shoulder of the trail where it crosses over the culverts leading from the pond to the bio-swale.
- C. Drainage from San Ysidro Crossing and River's Edge Lane enters the bio-swale in two culverts near Trail Profile station 135+00 and 134+00. Storm flows coming in from the roads are causing erosion of the bio-swale, trail crossing and recycled concrete slab rundown to the river channel.
- D. Drainage from the properties north of the river and from River's Edge Lane is eroding the trail and undermining the boulder plating below the trail between trail Profile stations 123+00 and 121+00.
- E. Drainage from the arroyo entering the park north of Trail Profile station 114+00 is overflowing the pond, washing away the trail and eroding a channel to the river.
- F. Channel stabilization throughout the project area using bioengineering methods such as post and boulder vanes.
- G. Redesign the trail where it is impacted by the drainage issues identified above and the engineering solution developed under this Scope Of Work to address those issues.
- H. Provide a topographic survey of the project area with 1 foot contour intervals in accordance with minimum standards for surveying in New Mexico and Santa Fe County digital submittal requirements.

Detailed Scope of Work:

- A. Study and Report Phase:
 - a) Provide a drainage report for the project area including the storm water runoff entering the river from the north side of the channel between San Ysidro Crossing and Caja Del Oro Road.
 - b) Review schematic designs in the field with Owner.
 - c) Provide three (3) bond sets of the final report and schematic construction drawings (24"x36") and two (2) half-size (11"x17") sets of construction plans as well as electronic copies of the same.
- B. Preliminary Design Phase:
 - a) Determine where it will be necessary to acquire easements from adjacent land owners to complete the project and provide surveys and legal descriptions of the easements.
 - b) Review preliminary design in the field with Owner.
 - c) Present the preliminary design at a public meeting organized and facilitated by the Owner.
 - d) Provide five (5) bound sets of the 60% complete construction plans (24"x36") and accompanying documents, and two (2) half-size (11"x17") sets of the construction plans as well as electronic copies of the same.

- e) Assist Open Space and Trails staff in presenting the project design to the Santa Fe County Technical Review Team and resolving any issues in complying with the Santa Fe County Land Development Code in order to obtain the required land use approvals and permits.
- f) Prepare a Santa Fe County Floodplain Development Permit application in accordance with the Santa Fe County Flood Damage Prevention and Storm Water Management Ordinance (No. 2008-10 and as required in FEMA 44 CFR Section 60.3 and submitted on FEMA's application forms. Assist the Open Space and Trails staff in resolving any issues in obtaining the required permits for the project.
- g) Prepare Joint Application for Department of the Army Permit and NM Water Quality Certification (401/404) and coordinate with the Department of the Army and NM Water Quality Bureau to obtain the permits and certifications.
- h) Provide two (6) bound sets of the 90% complete construction plans (24"x36") and accompanying documents, and two (2) half-size (11"x17") sets of the construction plans as well as electronic copies of the same.

C. Final Design Phase:

- a) Present the preliminary design at the public meeting organized and facilitated by the Owner.
- b) Provide the following deliverables:
 - i) One (1) full-size set of stamped construction plans on Mylar (36"x24") Note: Stamp from a Professional Engineer registered in the State of New Mexico.
 - ii) One (1) DVD with final construction plans in AutoCAD and in PDF format in both 24"x36" and 11"x17" print sizes.
 - iii) Three (3) bound sets of final construction plans (36"x24"), specifications, cost estimates, and accompanying documents as well as electronic copies of the same.
 - iv) Three (3) half-size copies of the final construction plans (11"x17").
 - v) Engineer shall submit all documents to the County electronically in PDF and Auto CAD formats (current version of Auto CAD in DWG format using state plane coordinates [NMSPCS, NAD 1983] as appropriate.

D. Construction Phase:

- a) Assist the Owner in bidding and negotiations.
- b) Provide construction administration and oversight (see "Exhibit D").
- c) Review contractors certified payrolls.
- d) Complete a FEMA CLOMR/LOMR application documenting changes to the floodplain.
- e) Provide two (2) bound sets of the "As Built" construction plans (36"x24") as well as electronic copies of the same.
- f) The Engineer shall submit all documents electronically in PDF and Auto CAD formats (current version of AutoCAD in DWG format using state plane coordinates [NMSPCS, NAD 1983] as appropriate.

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

AMENDMENT TO OWNER-ENGINEER AGREEMENT

2. Background Data:

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

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

- _____ Additional Services to be performed by Engineer
- _____ Modifications to Services of Engineer
- _____ Modifications to Responsibilities of Owner
- _____ Modifications to Payment to Engineer
- _____ Modifications to Time(s) for rendering Services
- _____ Modifications to other terms and conditions of the Agreement

4. Description of Modifications

Attachment 1, "Modifications"
[List other Attachments, if any]

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: _____

Title: _____

Date
Signed: _____

By: _____

Title: _____

Date Signed: _____

Modifications

[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.]

1. Engineer shall perform the following Additional Services:

2. 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:

3. The responsibilities of Owner are modified as follows:

4. For the Additional Services or the modifications to services set forth above, Owner shall pay Engineer the following additional or modified compensation:

5. The schedule for rendering services is modified as follows:

6. Other portions of the Agreement (including previous amendments, if any) are modified as follows:

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

Construction Cost Limit

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

F5.02 *Designing to Construction Cost Limit*

- B. A. Owner and Engineer hereby agree to a Construction Cost limit in the amount of Seven Hundren Thousand Dollars (\$700,000.00).
- C. A bidding or negotiating contingency of _____ percent will be added to any Construction Cost limit established.
- D. The acceptance by Owner at any time during Basic Services of a revised opinion of probable Construction Cost in excess of the then established Construction Cost limit will constitute a corresponding increase in the Construction Cost limit.
- E. Engineer will be permitted to determine what types and quality of materials, equipment and component systems are to be included in the Drawings and Specifications. Engineer may make reasonable adjustments in the scope, extent, and character of the Project to the extent consistent with the Project requirements and sound engineering practices, to bring the Project within the Construction Cost limit.
- F. If the Bidding or Negotiating Phase has not commenced within three months after completion of the Final Design Phase, or if industry-wide prices are changed because of unusual or unanticipated events affecting the general level of prices or times of delivery in the construction industry, the established Construction Cost limit will not be binding on Engineer. In such cases, Owner shall consent to an adjustment in the Construction Cost limit commensurate with any applicable change in the general level of prices in the construction industry between the date of completion of the Final Design Phase and the date on which proposals or Bids are sought.
- G. If the lowest bona fide proposal or Bid exceeds the established Construction Cost limit, Owner shall (1) give written approval to increase such Construction Cost limit, or (2) authorize negotiating or rebidding the Project within a reasonable time, or (3) cooperate in revising the Project's scope, extent, or character to the extent consistent with the Project's requirements and with sound engineering practices. In the case of (3), Engineer shall modify the Contract Documents as necessary to bring the Construction Cost within the Construction Cost Limit. Owner shall pay Engineer's cost to provide such modification services, including the costs of the services of Engineer's Consultants, all overhead expenses reasonably related thereto, and Reimbursable Expenses, but without profit to Engineer on account of such services. The providing of such services will be the limit of Engineer's responsibility in this regard and, having done so, Engineer shall be entitled to payment for services and expenses in accordance

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