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**JOINT POWERS AGREEMENT  
BETWEEN THE  
GREATER GLORIETA COMMUNITY  
REGIONAL MUTUAL DOMESTIC WATER CONSUMERS  
AND SEWAGE WORKS ASSOCIATION  
AND  
SANTA FE COUNTY**

BATAAN BLDG., RIZAL  
SANTA FE, NM 87507

**THIS AGREEMENT** is made this 11<sup>th</sup> day of April, 2013, and entered into by the **Greater Glorieta Community Regional Mutual Domestic Water Consumers and Sewage Works Association** (hereinafter “GGMDWCA”) and **Santa Fe County** (hereinafter “County”) pursuant to the Joint Powers Agreements Act, NMSA 1978, Sections 11-1-1, *et seq.* The purpose of this Joint Powers Agreement (hereafter “Agreement”) is to provide for the agreement to provide mutual assistance and cooperation for the completion of improvements to the GGMDWCA water system to the benefit of both parties.

**WHEREAS**, the GGMDWCA was incorporated as a domestic nonprofit in 2010 and commenced active water utility operations in 2012 by the merger of three former mutual domestics: Glorieta Estates Mutual Domestic Water Consumers Association, Glorieta Water Users Association, and East Glorieta Mutual Domestic Water Consumers Association. The three mutual domestics merged into the GGMDWCA. The purpose of the GGMDWCA is to improve the public health of the residents of the community of Glorieta and the greater Glorieta region through the acquisition, construction and improvement of water supply reuse, storm drainage and wastewater facilities;

**WHEREAS**, Santa Fe County is a political subdivision of the State of New Mexico and the GGMDWCA is a mutual domestic water association organized and existing as a domestic nonprofit corporation and a political subdivision of the State of New Mexico;

**WHEREAS**, the GGMDWCA needs to complete improvements to its water line to improve the water quality of the utility and improve the infrastructure to benefit its residents, community and citizens of the County;

**WHEREAS**, the GGMDWCA has secured \$368,282.00 (“NMFA Loan/Grant No. 192-WTB,” hereinafter referred to as “WTB funds”) from the Water Project Fund administered by the New Mexico Finance Authority (“NMFA”), as authorized by the Water Trust Board (hereinafter “WTB”) for improvements to the infrastructure of the water system that benefits the GGMDWCA;

**WHEREAS**, the County, on behalf of the GGMDWCA, applied for and received a Community Development Block Grant (“CDBG No. 12-C-NR-I-01-G-36”) from the State of New Mexico in the amount of \$424,759.00 to assist the GGMDWCA to make necessary improvements to its waterline system;

**WHEREAS**, the GGMDWCA has procured the services of licensed engineer HDR

Engineering, Inc. (the “Engineer”) to design and provide construction administration for the construction of the improvements to the GGMDWCA waterline. The Engineer’s estimate of probable construction cost of the waterline improvement project is \$788,047.00;

**WHEREAS**, the County and the GGMDWCA are willing to cooperate to provide for the design and construction of the waterline improvements with funds from NMFA Loan/Grant No. 192-WTB and CDBG No. 12-C-NR-I-01-G-36;

**WHEREAS**, it is necessary for the parties to enter into this Agreement to provide for the duties and responsibilities in the construction, construction administration, ownership and maintenance of the water system improvements and each party’s responsibilities; and

**WHEREAS**, the County and GGMDWCA are authorized by law to enter into this Joint Powers Agreement, and the common power to be exercised is to own, operate and maintain a public water utility system.

**NOW, THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES AS FOLLOWS:**

**Article 1**

General Purpose of Agreement

1.1. The purpose of this Agreement is to state the agreement and understanding of the parties for the construction, ownership and responsibilities for continued operation and maintenance of the improved water utility system that serves the Village of Glorieta and the greater Glorieta region. The improvements to be completed pursuant to this Agreement are (hereinafter referred to collectively as the “Improvements”):

1. Installation of approximately 4,300 lineal feet of new 8” waterline, fittings and joint restraints;
2. Installation of gate valves;
3. Installation of fire hydrants;
4. Connections to the existing waterline system;
5. Replacement of 101 existing service connection with services that includes water meters and meter boxes equipped for remote meter reading;
6. Installation of automated/remote water meter reading hardware and software.

Construction will occur along Avenida Ponderosa in the unincorporated community of Glorieta to connect the portion of GGMDWCA’s water utility system serving Glorieta Estates to the portion of GGMDWCA’s water utility system serving the central portion of the unincorporated community of Glorieta. The waterline will be installed at a minimum depth of 4 feet from the ground surface and the existing roadway will be restored to its original condition consisting of a chip seal road surface.

**Article 2**  
Obligations and Duties of the Parties

2.1 The County agrees to:

- (1) To accept the Limited Assignment and assume the duties of the Owner under the Contract between GGMDWCA and the Engineer.
- (2) To obtain a construction easement or license from BNSF for the portions of the BNSF right-of-way that will be affected by construction of the Improvements.
- (3) Procure a construction contract for services of a qualified and licensed contractor to complete the construction of the Improvements in accordance with the Engineer's design and specifications.
- (4) Cooperate with the GGMDWCA by providing documentation and information necessary for the GGMDWCA's submission of documentation and information for reimbursement of project expenses from WTB funds.
- (5) To timely provide to GGMDWCA all necessary information and documentation held by the County that would assist the GGMDWCA in any audit requirement imposed on the expenditure or disbursement of the WTB funds or CDBG No. 12-C-NR-I-01-G-36.
- (6) Upon issuance of final payment to the contractor, the County shall assign all rights and duties of the Owner under the construction contract to the GGMDWCA including any general guarantees or warranties regarding materials or workmanship and convey ownership of the Improvements to the GGMDWCA.
- (7) Upon conveyance of the Improvements to the GGMDWCA, grant an easement to the GGMDWCA for the GGMDWCA's continued operation and maintenance of the waterline system and improvements.

2.2 The GGMDWCA agrees to:

- (1) Assign its rights and duties to the County as stated in the Limited Assignment of Contract attached hereto as Exhibit A.
- (2) Work with and cooperate with the County in GGMDWCA's performance of the duty to make payments to and compensate the Engineer including any determination regarding liquidated damages.
- (3) To timely provide to the County all necessary information and documentation held by the GGMDWCA that would assist the County in any audit requirement imposed on the expenditure or disbursement of CDBG No. 12-C-NR-I-01-G-36 or the WTB funds.
- (4) Cooperate with the County by providing documentation and information necessary for the County's submission of documentation and information for reimbursement or payment of funds from CDBG No. 12-C-NR-I-01-G-36.
- (5) Accept the County's conveyance of the Improvements for continued operation and maintenance of the waterline and improvements.
- (6) Obtain an easement or license from BNSF and the County for GGMDWCA's ownership and operation of the waterline system.

- (7) Be fully responsible for the continued operation and maintenance of the waterline system and improvements.

### **Article 3**

#### Funds to be Paid and Disbursed by the Parties

3.1 The parties agree that payment for completion of the Improvements described above shall be provided by both parties: Three Hundred Sixty-Three Thousand Two Hundred Eight-Two Dollars (\$363,282.00) of WTB funds, part of which have been expended for the project prior to this Agreement, will be made available by the GGMDWCA and Four Hundred Twenty-Four Thousand Seven Hundred Fifty-Nine Dollars (\$424,759.00) in CDBG Grant funds (CDBG # No. 12-C-NR-I-01-G-36) will be made available by the County.

3.2 The parties understand and agree that all funds shall be expended for allowable costs under the terms and conditions of the WTB funds and CDBG # No. 12-C-NR-I-01-G-36. The parties recognize that the WTB funds must be expended no later than October 14, 2014 and CDBG No. 12-C-NR-I-01-G-36 no later than two (2) years from the date of the State of New Mexico's acceptance of the CDBG No. 12-C-NR-I-01-G-36 Grant Agreement.

### **Article 4**

#### Term and Termination

4.1 This Agreement shall be in full force and effect upon the execution of this Agreement by all of the parties and approval by the Department of Finance and Administration of the State of New Mexico, and shall continue in full force and effect, subject to amendments, until terminated by the parties pursuant to this Agreement.

4.2 At all times during this Agreement's term, either party may terminate the Agreement for cause (i.e. any violation of this Agreement's terms). This Agreement shall not be terminated while the County has an ownership interest in the Improvements.

### **Article 5**

#### Disposition of Property; Return of Surplus Funds

5.1 Upon expiration or termination of this Agreement, if either party has property or funds in its possession belonging to the other, the property and the funds shall be returned to each party and if less than the original amount of property or funds contributed remains, then returns shall be in proportion to the parties' original contribution.

5.2 Upon expiration or termination of this Agreement by the parties, the powers granted under this Agreement shall continue to the extent necessary to make an effective disposition of the Improvements and a full accounting.

**Article 6**  
Appropriations

6.1 The terms of this Agreement are contingent upon sufficient appropriations and authorizations being granted by the New Mexico State Legislature and the Santa Fe County Commission, as appropriate. If sufficient appropriations or authorizations are not granted, the County may terminate this Agreement, or suspend performance pending approval of sufficient appropriations or authorizations, upon written notice from one to the other, regardless of any other provisions in this Agreement. The County's decision as to whether sufficient appropriations are available shall be final, binding and accepted by the GGMDWCA.

**Article 7**  
Insurance

7.1 The parties, each at its own expense, shall carry public liability insurance coverage consistent with the responsibilities of each entity under the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1 *et seq.*

7.2 The insurance required by this Agreement shall be from a reliable insurance company and such policy shall be maintained in full force and effect throughout the duration of this Agreement. A copy of any insurance policy shall be provided to the other party at a party's request.

**Article 8**  
Records and Audits, Strict Accountability

8.1 Both parties shall be strictly accountable for receipts and disbursements relating hereto and shall make all relevant financial records available to the GGMDWCA, the County, State of New Mexico Department of Finance and Administration, New Mexico Finance Authority and the State Auditor upon request, and shall maintain all such records for three (3) years after this Agreement has expired or has been terminated.

**Article 9**  
Liability

9.1 No party hereto shall be responsible for liability incurred as a result of one of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement shall be subject to the privileges and immunities of the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1 *et seq.* as amended.

**Article 10**  
Third Party Beneficiary

10.1 The parties to this Agreement do not and do not intend to create in the public, any member thereof, or any person, any right whatsoever such as but not limited to the rights of a third-party beneficiary, or to authorize anyone not a party to this Agreement to maintain a suit for any claim whatsoever pursuant to the provisions of this Agreement.

**Article 11**  
Dispute Resolution

11.1 Disputes shall be first discussed by representatives of each party having the authority, if necessary, to bind the party that they represent. Such representatives shall use their best efforts to amicably and promptly resolve the dispute. If the parties are unable to resolve the dispute through informal mechanisms or mediation within thirty (30) days of the occurrence of the event or circumstances giving rise to the dispute, then either party may seek redress of their respective issues in a New Mexico state court of competent jurisdiction.

**Article 12**  
Governing Law

12.1 The laws of the State of New Mexico shall govern this Agreement.

12.2 The parties stipulate and agree that funding for this project and completion of the Improvements was sought prior to the adoption of Santa Fe County Resolution 2012-58 and that County Resolution 2012-58 does not pertain to this project or completion of the Improvements.

**Article 13**  
Notice

13.1 Any notice, demand, request or information authorized or related to this Agreement shall be deemed to have been given if mailed (return receipt requested), hand delivered or faxed as follows:

To County:                   County Manager  
                                  Santa Fe County  
                                  102 Grant Avenue  
                                  P.O. Box 276  
                                  Santa Fe, NM 87504-0276

With Copy to:               Paul Olafson  
                                  Community Projects Division

Santa Fe County  
P.O. Box 276  
Santa Fe, NM 87504-0276

To GGMDWCA: Anna Hamilton, President  
Greater Glorieta Community Regional Mutual  
Domestic Water Consumers and Sewage Works  
Association  
P.O. Box 223  
Glorieta, NM 87535

**Article 14**  
Amendment

14.1 This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and approved by the Secretary of the New Mexico Department of Finance and Administration.

**Article 15-**  
Entire Agreement

15.1 This Agreement contains the entire agreement between the parties hereto with regard to the matters set forth herein.

**IN WITNESS WHEREOF**, the parties have herein set their hand.

**SANTA FE COUNTY**

By: Kathleen S. Holian  
Kathleen S. Holian, Chair  
Santa Fe Board of County Commissioners

Date: March 26, 2013

**ATTEST**

Geraldine Salazar  
Geraldine Salazar, Santa Fe County Clerk

Date: 4/1/2013

Approved as to form:

Stephen C. Ross  
Stephen C. Ross  
Santa Fe County Attorney

Date: March 12, 2013

March 23, 2013

**GREATER GLORIETA COMMUNITY REGIONAL MUTUAL DOMESTIC WATER  
CONSUMERS AND SEWAGE WORKS ASSOCIATION**

By: Anna Hamilton Date: 3/13/2013  
Anna Hamilton, President

**ATTEST:**

By: Julia Hassom Date: 3/15/2013

Approved as to form:

John L. Appel Date: 3-13-2013  
John L. Appel  
Coppler Law Firm, P.C.

**APPROVED BY THE DEPARTMENT OF FINANCE AND ADMINISTRATION**

By: By the Project Manager Date: 4/11/13  
(signature and title)

## Limited Assignment of Contract

I. Assignment. For good and valuable consideration, the undersigned Greater Glorieta Mutual Domestic Water Consumers and Sewage Works Association (Assignor) hereby assigns, transfers and sets over to Santa Fe County (Assignee) rights, title and interest held by Assignor subject to certain exception and amendment, in and to the following described contract: **AGREEMENTS FOR ENGINEERING SERVICES (Publicly Funded Project) dated December 28, 2010 between The Greater Glorieta Water and Wastewater Association and HDR Engineering, Inc.**, as amended by Amendment No. 1 dated October 5, 2011, Amendment 2 dated February 22, 2012, and Amendment 3, dated July 24, 2012 (hereinafter referred to as the "Contract"). **This Limited Assignment of Contract specifically excludes Amendment 4 of the Contract, dated January 14, 2013.**

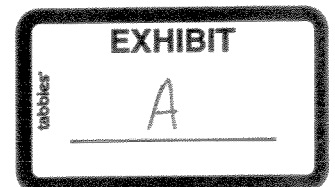
Purpose. The purpose of this Limited Assignment if for Assignee to administer and expend Community Development Block Grant No. 12-C-NR-I-01-G-36 obtained by the Assignee for the construction of a waterline connection and associated appurtenances between the Village of Glorieta and Glorieta Estates communities in Glorieta, New Mexico.

II. EXCEPTIONS TO ASSIGNMENT. Assignor's rights and duties under said contract are herein assigned to Santa Fe County **EXCEPT** the following provisions of the Contract and certain Exhibits for which the Assignor shall retain the rights, duties and obligations as OWNER:

- 1) Section A of the Contract, Article 7. Payment,
- 2) Section A of the Contract, Article 8(b)(1) – (4) Contract Time and Liquidated Damages as more specifically provided for at Paragraphs 2, 4, 5 and 8 of ATTACHMENTS,
- 3) Section B of the Contract, Paragraphs 1 and 2 of Engineering Services During the Planning Phase, Paragraph 3 of Engineering Services During the Design Phase, and Paragraphs 26 through 31 of Engineering Services During the Operation Phase,
- 4) Exhibit A to the Contract, PART 1, A1.01 (*Study and Report Phase*) through A.1.03.D.
- 5) Amendment 1, dated October 6, 2011, COMPENSATION on Page 3,
- 6) Amendment 2, dated February 22, 2012, in its entirety,
- 7) Amendment 3, dated July 24, 2012, COMPENSATION,
- 8) Amendment 4, dated January 14, 2013, in its entirety, and
- 9) Any subsequent amendments entered into between the Assignor and HDR Engineering for other phases of the Greater Glorieta Regional Water Supply Project that are unrelated to the expenditure of Community Development Block Grant No. 12-C-NR-I-01-G-36, unless otherwise stated in the amendment.

### III. Amendments.

1) Assignor and Assignee agree that this Limited Assignment of Contract shall incorporate an amendment to the contract to insert the following provisions in SECTION A, as Article 22 (MACC for CDBG funded projects) and Article 23 (Federal Terms and Conditions for Professional Services (for CDBG funded projects).



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

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

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

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

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

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

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

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

(h) The MACC shall not exceed Seven Hundred Eighty-Eight Thousand Forty-Seven Dollars (\$788,047.00).

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

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

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

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

(b) Termination for Convenience of the Owner. The Owner may terminate this contract at any time by giving at least ten (10) days notice in writing to the

Engineer. If the Contract is terminated by the Owner as provided herein, the Engineer will be paid for the time provided and expenses incurred up to the termination date. If this Contract is terminated due to the fault of the Engineer, paragraph 1 hereof relative to termination shall apply.

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

(d) Personnel.

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

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

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

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

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

(g) Records and Audits. The Engineer shall maintain accounts and records, including personnel, property and financial records, adequate to identify and account for all costs pertaining to the Contract and such other records as may be deemed necessary by the Owner and to assure proper accounting for all project funds, both federal and non-federal shares. These records will be made available

for audit purposes to the Owner or any authorized representative, and will be retained for six (6) years after the expiration of this Contract unless permission to destroy them is granted by the Owner and the funding agency.

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

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

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

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

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

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

3. The Engineer will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Contract so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

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

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

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

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

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

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

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

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

2. The parties to this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR 135, and all applicable rules and orders of the Department issued there under prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.

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

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

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

(o) Interest of Members of the Owner. No member of the governing body of the Owner and no other officer, employee, or agent of the Owner, who exercises

any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this contract; and the Engineer shall take appropriate steps to assure compliance.

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

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

(r) Access to Records. The state funding (grantor) agency, the Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the Engineer which are directly pertinent to this specific contract, for the purpose of audits, examinations, and making excerpts and transcriptions.

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

2) Assignor and Assignee further agree that this Limited Assignment of Contract shall also incorporate an amendment to the Contract to indicate in SECTION D of the Contract (Special Provisions or Modifications to the Standard Language in this Agreement), a modification to Article 22(g) above. Insert into SECTION D the following:

2. SECTION A, Article 22(g) of this Agreement is deleted and replaced with:

(g) If the Owner in consultation with the Greater Glorieta Mutual Domestic Water Consumers and Sewage Works Association elects to reduce the Probable Construction Cost, the Owner in consultation with the Greater Glorieta Mutual Domestic Water Consumers and Sewage Works Association shall cooperate with the Engineer in revising the quality and scope of the Project. If requested by the Owner and approved by the Greater Glorieta Mutual Domestic Water Consumers and Sewage Works Association, the Engineer shall modify the Drawings and Specifications as necessary to bring the Construction Cost within the MACC. The Greater Glorieta Mutual Domestic Water Consumers and Sewage Works Association will compensate the Engineer for any changes to the Drawings and Specifications to bring the Construction Cost within the MACC. The Greater

Glorieta Mutual Domestic Water Consumers and Sewage Works Association will compensate the Engineer for additional costs associated with a re-bid if the Owner with the concurrence of the Greater Glorieta Mutual Domestic Water Consumer's and Sewage Works Association determines that a rebid is necessary. The Engineer shall then assist the Owner through the Bidding process. When the cost estimate or an evaluation prepared by the Engineer indicates that the Project exceeds the MACC, the provisions outlined in this paragraph shall apply.

IV. Assignor warrants that said the Contract is in full force and effect and is assignable upon mutual consent of the parties thereto to the extent of this Limited Assignment set forth herein.

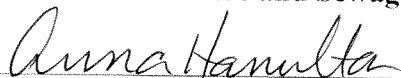
V. Assignee hereby assumes and agrees to perform the remaining executor obligations of Assignor under the Contract to the extent of the Limited Assignment set forth herein.

VI. Assignor warrants that the Contract as amended is without modification except as set forth in the amendments described herein, and remains on the terms thereon.

VII. Assignor further warrants that it has the right and authority to assign the Contract to the extent of the Limited Assignment herein, and that the Contract rights assigned herein are free of lien, encumbrances or adverse claim.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

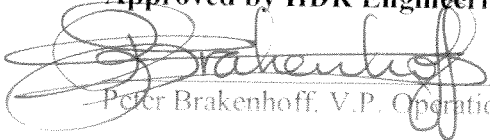
**Assignor Greater Glorieta Mutual Domestic  
Water Consumers and Sewage Works Association**



Anna Hamilton, President

Date: 3/13/2013

**Approved by HDR Engineering, Inc.**



Peter Brakenhoff, V.P. Operations Manager

Date: 3/14/2013

**Assignee Santa Fe County**

Kathleen S. Holian Date: March 26, 2013  
Kathleen S. Holian, Chair  
Santa Fe Board of County Commissioners

**ATTEST:**

Geraldine Salazar Date: 4/1/2013  
Geraldine Salazar  
Santa Fe County Clerk

Approved as to form:

Stephen C. Ross Date: March 12, 2013  
Stephen C. Ross  
Santa Fe County Attorney

Robert J. [unclear] Date: March 23, 2013

**Agency Concurrence – NMED Construction Programs Bureau**

By: [signature] Project Manager Date: 4/11/13  
(signature and title)