



Doña Ana Mutual Domestic Water Consumers Association
Mailing Address: P.O. Box 866 • Doña Ana, NM • 88032
Physical Address: 5535 Ledesma Dr • Las Cruces, NM 88007
(575) 526-3491 Office • (575) 526-9306 Fax

Agenda

The following are the items for consideration at the Regular Board Meeting of the Doña Ana Mutual Domestic Water Consumers Association Board of Directors on March 17, 2016, convening at 9:00 a.m. at the Doña Ana Mutual Domestic Water Consumers Association Board Room 5535 Ledesma Dr., Las Cruces, NM 88007:

Call to Order & Roll Call

Approval of Agenda

Minutes:

1. Minutes of 03-03-2016 Regular Meeting

Approval of New Members & Meters

Customer Issues and Public Input

Public Input will be limited to 3 minutes per person

Board President Report

Staff Reports

2. Executive Director

New Business

None

Consent Agenda

None

Unfinished Business

3. Approval of Amended Policy 1027.0 Wastewater Connection Fee
4. Approval of Loan Resolution Security Agreement for the Radium Springs Water System Improvement Project
5. Approval of Water Line Project on Elks Road
6. Approval of Souder Miller & Associates Contract 6324890 Design of Transmission Water Line Project
7. Approval of Souder Miller & Associates Contract 6323822 EJCDC E-500 Design of Radium Springs Water System Improvement Project
8. Approval to Call a Special Membership Meeting

Closed Session:

As authorized by the Open Meetings Act, New Mexico Statutes Annotated, Section 10-15-1, Subsections H (2), H (7) and H (8), the following portion of the Board Meeting will be conducted in closed session:

1. Real Property and Water Right Acquisition

2. Litigation and Threatened Litigation
3. Limited Personnel Matters

Take action, if any on closed session items

Legal Update

9. Westmoreland case status
10. Moongate case status
11. General Legal Update

Board Open Discussion

Adjournment

A copy of this agenda may be requested by phone by calling (575) 526-3491 or in person at 5535 Ledesma Drive, Las Cruces, NM 88007.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, if summary or other type of accessible format is needed, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact Edward Salomon at (575) 526-3491 on the Friday prior to the meeting or as soon as possible.



Doña Ana Mutual Domestic Water Consumers Association
Mailing Address: P.O. Box 866 • Doña Ana, NM • 88032
Physical Address: 5535 Ledesma Dr. • Las Cruces, NM 88007
(575) 526-3491 Office • (575) 526-9306 Fax

The following are the minutes of the Regular Board Meeting of the Doña Ana Mutual Domestic Water Consumers Association Board of Directors, March 3, 2016, convened at 9:00 A.M. in the Doña Ana Mutual Domestic Water Consumers Association Board Room located at 5535 Ledesma Dr., Las Cruces, NM 88007:

Call to Order & Roll Call

President- Mr. Melton called the meeting to order at 9:00 A.M. and called roll:

Vice President- Jamie Stull, Excused

Secretary/ Treasurer- Kurt Anderson, Present

Board Member- Raymond Ponteri, Present

Others in Attendance:

Executive Director- Jennifer Horton, Present

Legal Counsel- Lee E. Peters, Present

Approval of Agenda

Mr. Anderson moved to approve the agenda for the March 3, 2016 Regular Board Meeting as presented; the motion was seconded by Mr. Ponteri. The Chair called for discussion of the motion. The Chair called for a vote on the motion; the motion carried by roll call vote 3-0.

Minutes

Mr. Anderson moved to approve the Board Meeting Minutes of February 23, 2015 as presented; the motion was seconded by Mr. Ponteri. The Chair called for discussion of the motion. The Chair called for a vote on the motion; the motion carried by roll call vote 3-0.

New Members & New Meters

Mr. Anderson moved to approve the New Members and New Meters list as presented; the motion was seconded by Mr. Ponteri. The Chair called for discussion of the motion: Mrs. Horton stated that there were four (4) new members and ten (10) new meters. The Chair called for a vote on the motion; the motion carried by roll call vote 3-0.

Customer Issues and Public Input

None

Board President Report

Mr. Melton reports:

Mr. Melton reported that he noted with some concern that the Extra Territorial Zoning (ETZ) Authority has an item on their agenda for the March 16, 2016 meeting to consider a zoning change for parcel of property being developed by Mr. Thurston between Dona Ana and the city limits of Las Cruces. The fact that Mr. Thurston has not received a letter of commitment from Dona Ana MDWCA for service has been brought to the attention of the ETZ Commission and the motion failed for the rezoning. Mr. Thurston has appealed the motion to the ETZ Authority; the motion will be reconsidered on March 16, 2016 at 5:30P.M. in the Commission chambers of the Dona Ana county complex. The position of Dona Ana MDWCA is that we have no objection to whether the zoning change is permitted, However, by a Federal Court Decree the area that is in question has been allotted to Dona Ana MDWCA as its service area, as a result we will insist that we be allowed to

serve it. Mr. Melton stated that the Association does not oppose the zoning change, but we do oppose the fact that there seems to be some discussion as Whether the City of Las Cruces or Dona Ana MDWCA would provide service and we will enforce our territorial authority as assigned to us by the federal courts. Finally, Mr. Melton suggested to the Board of Directors that they consider looking into First Aid/CPR training for staff members. Mr. Melton stated that with the amount of staff that we currently have it may be a safety issue for employees.

Staff Reports

Customer Service Department

See Attachment A

Operations Department

See Attachment B

Project Department

See Attachment C

Executive Director

See Attachment D

Mrs. Horton presented all of the Department reports; Mr. Ponteri had numerous questions about the financial statements that Mrs. Horton provides at the Regular Board of Directors Meetings. Mr. Ponteri requested that Mrs. Horton provide an income statement at the next Board Meeting. Mrs. Horton reported that the Dona Ana MDWCA audit was released on February 29, 2016 and she discussed the audit with the Board of Directors.

Unfinished Business

The Board of Directors decided to table the action on the connection charge for Kristin Schreurs until after closed session. Mr. Melton explained to Mrs. Schreurs that the issued

needed to be further discussed with legal counsel; a decision would be made by the end of the day.

Closed Session

Mr. Anderson moved to go into closed session at 10:12 A.M.; the motion was seconded by Mr. Melton. The Chair called for a vote on the motion; the motion carried by roll call vote 2-1.

As authorized by the Open Meetings Act, New Mexico Statutes Annotated, Section 10-15-1, Subsections H (2), H (7) and H (8), the following portion of the Board Meeting will be conducted in close session:

1. Real Property and Water Right Acquisition
2. Litigation and Threatened Litigation
3. Limited Personnel Matters

Mr. Melton called for recess at 10:45A.M.; closed session continued at 10:53A.M.

Mr. Anderson moved to go into Open Session at 11:26 P.M.; the motion was seconded by Mr. Ponteri. The Chair called for a vote on the motion; the motion carried by roll call vote 3-0.

Mr. Melton reported that only the items on the agenda were discussed in closed session and that there were no items requiring action as a result of the closed session.

Legal Update

Westmoreland Case- Still pending.

Moongate Case- We will be filing post-trial briefs on April 1, 2016.

General Legal Update- Jennifer and I are negotiating a new comprehensive wastewater agreement with the City of Las Cruces, which will be brought to the Board for review when there is tentative agreement.

The Public Regulation Commission has decided that it needs to take final action on its review of the transfer of the Fairview Estates water system to Dona Ana Mutual back in December 2013. We should be seeing some paperwork soon on this.

Open Discussion

The Board of Directors discussed adding an action item to revise the effective of the Wastewater Connection Fee Policy 1027.0 at the March 17, 2016 Regular Board Meeting.

Adjournment

Mr. Anderson moved to adjourn at 11:35 A.M.; the motion was seconded by Mr. Ponteri. The Chair called for a vote on the motion: and the motion carried by roll call vote 3-0.

Kurt Anderson
Secretary/ Treasurer

Date

NEW METERS		MARCH 2016					Total	
Name	Address	Tap In Fee	Water Rights	Membership	Tax	Sewer	Other Fees	Fees
Thomas K. Palmer	5275 Singer Rd.			\$75.00	\$3.75			\$78.75
Luis Escalera	6015 Tannahill			\$75.00	\$3.75			\$78.75
Tierra Del Sol	4387 Paseo Del Oro	\$ 1,340.67	\$ 1,750.00	EM	\$ 154.53			\$3,245.20
Carol & Robert Brewka	10002 San Savino			\$75.00	\$3.75			\$78.75
John & Nellie Owens	1322 Bazille Pl.			EM				\$0.00
Sarah Davis	3230 Dona Ana Rd.			\$75.00	\$3.75			\$78.75
Raymond Price	5478 Amarillo Del Sol			\$75.00	\$3.75			\$78.75
Javier Solorzano	2898 San Elizario			\$75.00	\$3.75			\$78.75
Zia Homesites	128 mohawk			EM			\$	-
Manuel D. Cisneros	12250 Ft. Mclane	\$1,312.03	\$1,750.00	\$75.00	\$156.86			\$3,293.89
Alvin & Yvonne Cessna	314 hurt			\$75.00	\$3.75			\$78.75
Travis Gullede	4724 Grider Rd.			\$75.00	\$3.75			\$78.75
Eric Aragon	4822 Campbell			EM			\$	-
Totals		\$ -		\$ 675.00	\$ 341.39		\$ -	\$ 7,169.09

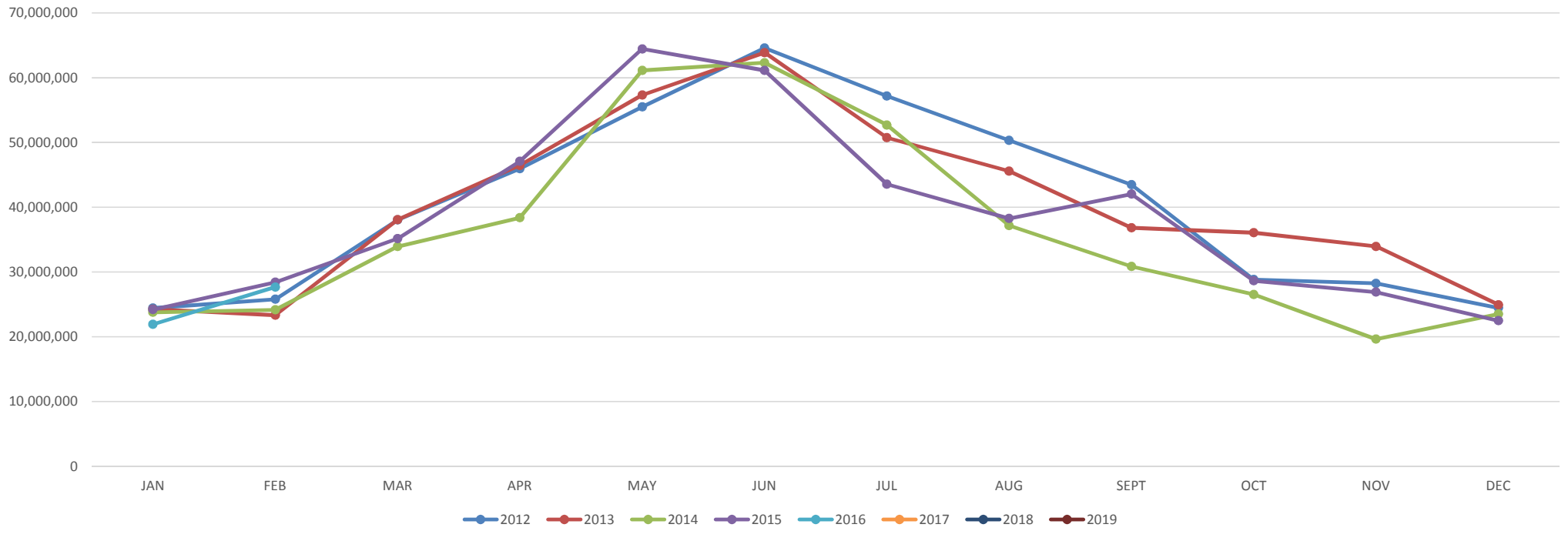
DOÑA ANA WATER SYSTEMS PUMPING DATA

March 13, 2016

Doña Ana MDWCA Pumping Data 2012-2019 LRG-1905, 1905 S, 1905-S-1, 1905-S-2, 1905-S-3, 1905-S-4

Year	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEPT	OCT	NOV	DEC	Yrly. Gal. Total	Acre Feet
2012	24,432,587	25,782,264	38,044,794	45,962,262	55,513,568	64,595,847	57,170,585	50,339,544	43,466,702	28,850,122	28,243,781	24,453,634	486,855,690	1,494.105
2013	24,249,939	23,329,610	38,064,981	46,462,497	57,317,163	63,880,675	50,741,546	45,583,545	36,827,179	36,049,128	33,950,110	24,942,391	481,398,764	1,477.359
2014	23,766,965	24,148,114	33,926,528	38,390,499	61,134,851	62,314,015	52,701,447	37,175,209	30,841,408	26,531,104	19,621,484	23,514,412	434,066,036	1,332.100
2015	24,190,459	28,421,869	35,139,500	47,094,453	64,441,095	61,109,043	43,547,088	38,263,107	42,048,368	28,646,735	26,908,590	22,478,862	462,289,169	1,418.713
2016	21,917,333	27,667,934											49,585,267	152.172
2017													0	0.000
2018													0	0.000
2019													0	0.000

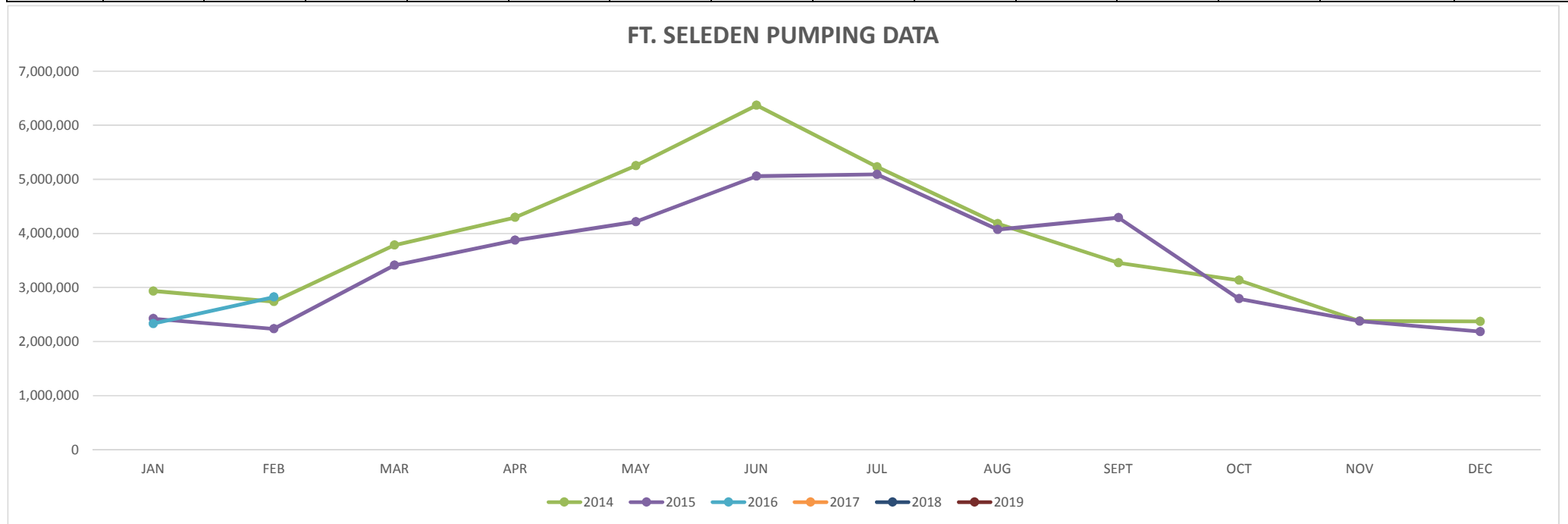
DONA ANA PUMPING DATA



DOÑA ANA WATER SYSTEMS PUMPING DATA

Doña Ana MDWCA at Ft. Selden Pumping Data 2012-2019 LRG 80-S-2, 80-S-4, 80-POD6

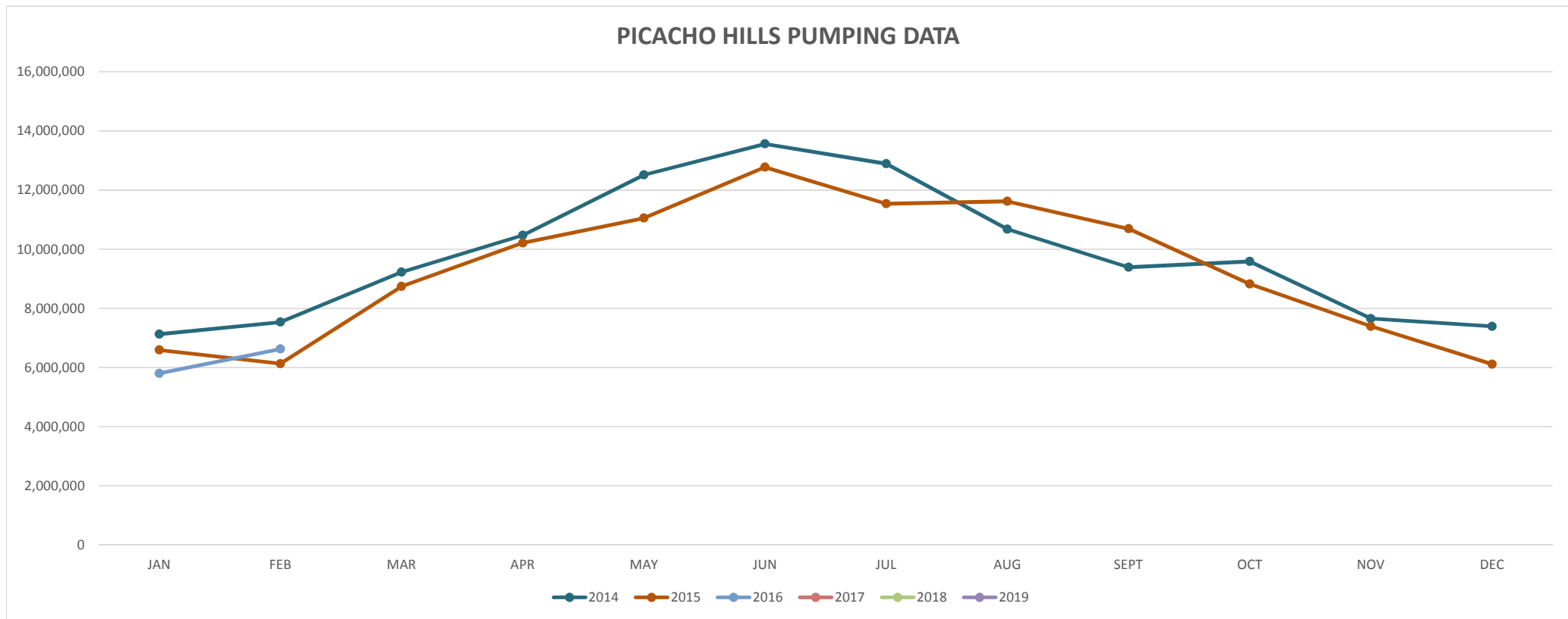
Year	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEPT	OCT	NOV	DEC	Yrly. Gal. Total	Acre Feet
2014	2,933,000	2,738,994	3,784,702	4,294,279	5,251,524	6,367,011	5,229,115	4,179,437	3,453,971	3,132,991	2,377,540	2,371,998	46,114,562	141.520
2015	2,422,723	2,233,153	3,412,623	3,874,341	4,216,092	5,056,619	5,091,282	4,068,880	4,292,296	2,790,836	2,376,026	2,183,010	42,017,881	128.948
2016	2,331,220	2,822,148											5,153,368	15.815
2017													0	0.000
2018													0	0.000
2019													0	0.000



DOÑA ANA WATER SYSTEMS PUMPING DATA

Doña Ana MDWCA at Picacho Hills Pumping Data 2012-2019 LRG-4250, 4250-S, 4250-S-2

Year	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEPT	OCT	NOV	DEC	Yrly. Gal. Total	Acre Feet
2014	7,127,600	7,538,000	9,229,176	10,473,776	12,509,408	13,558,832	12,891,892	10,678,512	9,388,149	9,588,205	7,655,945	7,394,480	118,033,975	362.233
2015	6,594,504	6,131,834	8,739,758	10,213,292	11,057,268	12,772,516	11,534,792	11,617,400	10,691,123	8,823,303	7,393,799	6,115,782	111,685,371	342.750
2016	5,803,070	6,625,130											12,428,200	38.141
2017													0	0.000
2018													0	0.000
2019													0	0.000

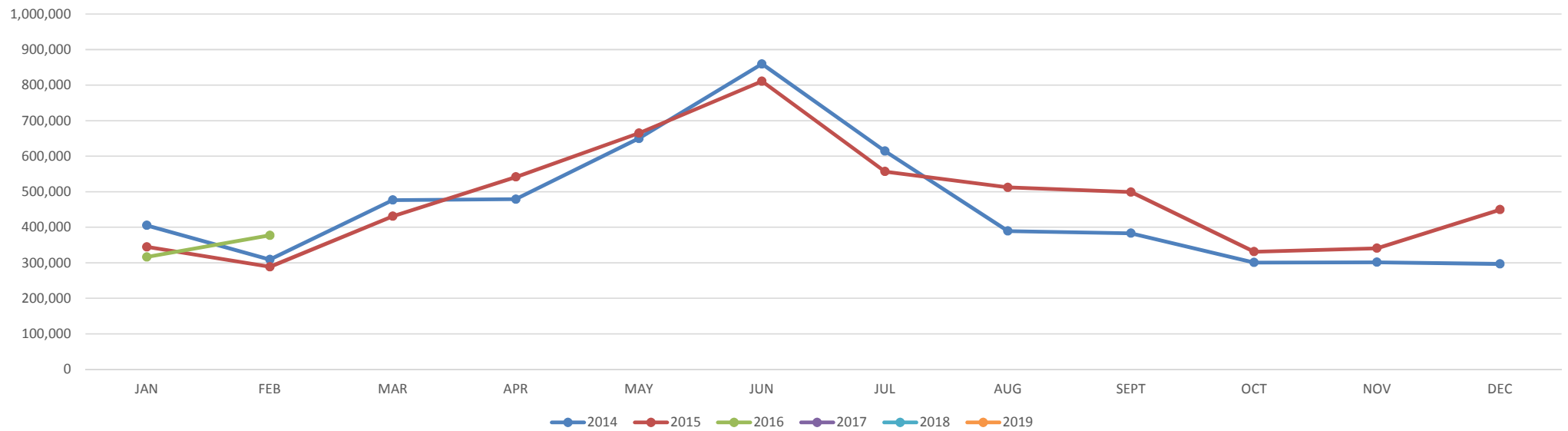


DOÑA ANA WATER SYSTEMS PUMPING DATA

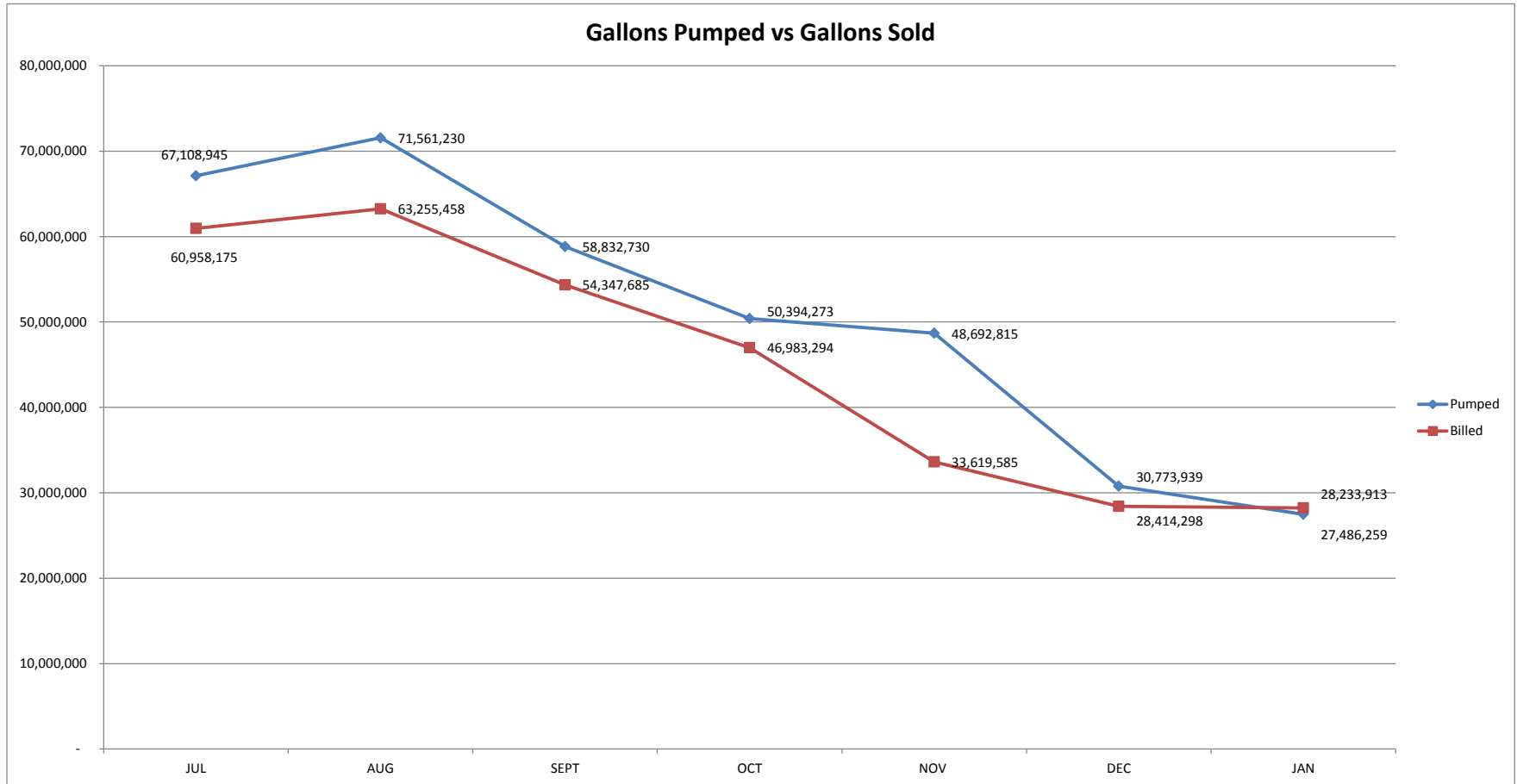
Doña Ana MDWCA at Fairview Pumping Data 2012-2019 LRG -15880 POD 1, LRG -15880 POD 2

Year	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEPT	OCT	NOV	DEC	Yrly. Gal. Total	Acre Feet
2014	404,930	308,900	476,600	478,764	649,720	859,330	614,320	389,240	382,830	300,450	301,300	296,600	5,462,984	16.765
2015	344,640	288,540	430,580	541,400	664,440	810,570	556,890	512,000	498,900	331,030	340,530	449,600	5,769,120	17.705
2016	316,100	377,000											693,100	2.127
2017													0	0.000
2018													0	0.000
2019													0	0.000

FAIRVIEW PUMPING DATA



Year	JUL	AUG	SEPT	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	Yrly. Gal. Total
Pumped	67,108,945	71,561,230	58,832,730	50,394,273	48,692,815	30,773,939	27,486,259						354,850,191
Billed	60,958,175	63,255,458	54,347,685	46,983,294	33,619,585	28,414,298	28,233,913						315,812,408
Unbilled	60,591	279,950	176,621	267,292	307,883	218,532	174,863						1,485,732
Water Loss	6,090,179	8,025,822	4,308,424	3,143,687	14,765,347	2,141,109	(922,517)	-	-	-	-	-	37,552,051
% of Loss	9.08%	11.22%	7.32%	6.24%	30.32%	6.96%	-3.36%	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	11%





Doña Ana Mutual Domestic Water Consumers Association
Mailing Address: P.O. Box 866 • Doña Ana, NM • 88032
Physical Address: 5535 Ledesma Dr • Las Cruces, NM 88007
(575) 526-3491 Office • (575) 526-9306 Fax

Amended Wastewater Connection Fee Policy 1027.0

Doña Ana Mutual Domestic Water Consumers Association (The Association) charges all new residences who request wastewater service a new connection fee in order to provide wastewater service to a property.

The current Connection Fees for collections systems owned by the Association is: **\$1,185**

The current connection fee may be paid in full at the time of requesting service or payment arrangements may be made. The member may select 12 equal monthly payments at 0% interest or 48 equal monthly payments at 4% interest.

This policy does not apply to new commercial connections. Commercial connections are handled on a case by case basis.

A promissory note will be required for any deferred payment arrangements.

The policy was approved on January 26, 2016, and is effective for all wastewater connections after February 29, 2016.

James Melton, President Y/N

Jamie Stull, Vice President Y/N

Kurt Anderson, Sec./Treas. Y/N

Vacant, Board Member Y/N

Raymond Ponteri, Board Member Y/N

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

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

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

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

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

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

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

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

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

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

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

(a) Construction Account.

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

(b) General Account

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

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

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

(c) Debt Service Account

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

(d) Reserve Account

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The vote was: Yeas _____ Nays _____ Absent _____

(SEAL) (if applicable) _____
By _____

Attest: _____
Title _____

Title _____

CERTIFICATION

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

Dated, this _____ day of _____.

Secretary of _____

ELKS WATERLINE LOWERING - REVISED 3-8-16

Morrow Enterprises Inc.

MORROW

Las Cruces, N.M - 88007

morrownm.com

Contact: Warren Morrow

Phone: O-575-526-1178/C-575-993-1358

Fax: 575-527-2260

Quote To: Dona Ana MDWCA
Jennifer Horton
Abenicio Fernandez

Job Name: Elks Drive Widening

Date of Plans:

Phone:

Fax:

Revision Date:

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	AMOUNT
CO #1 - WATERLINE LOWERING					
10	10" C900 WATER PIPE - 4 FEET OF COVER TO F.G	800.00	LF	31.00	24,800.00
20	10" 45 DEGREE BEND	6.00	EA	698.00	4,188.00
30	10" X 2" TEST CAP	2.00	EA	257.00	514.00
40	10" X 2" TAP SADDLE	2.00	EA	1,040.00	2,080.00
50	2" POLY JUMPER TO FILL WATER LINE	20.00	LF	14.00	280.00
60	10" WATER TIE IN	2.00	EA	2,218.00	4,436.00
65	3/4" WATER SERVICE LINE	1.00	EA	4,744.00	4,744.00
70	PRESSURE TEST	1.00	EA	788.00	788.00
80	BACTERIA TEST	1.00	EA	263.00	263.00
90	10" MJ GATE VALVE W/BOX & COLLAR	1.00	EA	2,462.00	2,462.00
91	TOTAL CO # 1				\$42,093.00
IF NEEDED ITEMS					
101	10" 45 DEGREE BEND - IF NEEDED TO CROSS CULVERT	8.00	EA	755.00	6,040.00
102	TOTAL IF NEEDED ITEMS				\$6,040.00
GRAND TOTAL					\$50,595.00

NOTES:

EXCLUSIONS

- TAX OF ANY KIND
- PERMITS
- ROCK EXCAVATION
- DE WATERING
- REMOVAL OF EXISTING PIPE - THAT WILL BE AN ADDITIONAL COST
- SURVEYING - PIPE WILL BE PLACED NEXT TO EXISTING PIPE

- MATERIAL TESTING - TESTING INVOICES WILL BE FORWARDED TO DONA ANA WATER FOR PAYMENT
- METER BOX,METER SETTER,METER - WILL HOOK NEW SERVICE LINE UP TO EXISTING METER
- BEDDING & BACKFILL WILL BE DONE WITH NATIVE MATERIAL - NO IMPORT OF ANY KIND
- NO EPOXY COATED MATERIAL OR STAINLESS STEEL MATERIAL WAS QUOTED, IF REQUIRED WE WILL HAVE TO REPRICE.



March 10, 2016

#6324890

Ms. Jennifer J. Horton, Executive Director
Doña Ana Mutual Domestic Water Consumers Association
5535 Ledesma Drive, Las Cruces, NM 88007
P.O. Box 866, Doña Ana, NM 88032
(575) 526-3491, (575) 526-9306 (Fax)
jennifer@dawater.org

RE: TRANSMISSION WATERLINE IMPROVEMENT PROJECT, DOÑA ANA MDWCA
WTB 271

Dear Ms. Horton:

Enclosed please find the contract package for the Transmission Waterline Improvement Project, as provided under the 2015-03 contract agreement for water. This package is for data collection and design of water system improvements on Valley Drive between the intersections with Myles Road and Taylor Road; on Taylor Road between the intersections with Valley Drive and Doña Ana Road; and on Doña Ana Road between the intersections with Taylor Road and Doña Ana School Road

Following Doña Ana MDWCA Board review and approval, and Doña Ana MDWCA Board President execution of the agreement, one copy should be forwarded on to the funding agency for their review and concurrence. Please feel free to call if you should have any questions regarding the scope of work referred to herein.

Sincerely,

MILLER ENGINEERS, INC. D/B/A
SOUDER, MILLER & ASSOCIATES

A handwritten signature in blue ink, appearing to read 'Lilla J. Reid'.

Lilla J. Reid, P.E.
Senior Engineer II
lilla.reid@soudermiller.com

cc: Mr. Abenicio Fernandez, Project Manager

WORKPLAN AND BUDGET
SERVICES RELATING TO THE TRANSMISSION WATERLINE PROJECT FOR
DOÑA ANA MUTUAL DOMESTIC WATER CONSUMERS ASSOCIATION
DOÑA ANA, NEW MEXICO
MARCH 10, 2016

INTRODUCTION

This workplan and budget is in response to the request by Doña Ana Mutual Domestic Water Consumers Association (MDWCA) to Souder, Miller & Associates (SMA) to design water system improvements on Valley Drive between the intersections with Myles Road and Taylor Road; on Taylor Road between the intersections with Valley Drive and Doña Ana Road; and on Doña Ana Road between the intersections with Taylor Road and Doña Ana School Road. The scope of work was provided to SMA by Ms. Jennifer J. Horton, Executive Director, and is in concurrence with Doña Ana MDWCA ICIP. The project includes the design of approximately 17,000 linear feet of 18-inch transmission waterline and related appurtenances on the following roadways:

- Valley Drive / HWY 185
- Taylor Road
- Doña Ana Road

The budgets for the following phases of the project will be billed on a lump sum basis; therefore, the invoices will not include an itemized breakdown of charges. Invoices will be issued on a monthly basis reflecting the percentage of each task completed to date. NMGRT will be added to each invoice at the time of billing.

Lump Sum Deliverable Schedule		
Task	Submittal Description	Budget Requested
P3T01	Field Survey and Mapping	\$30,044.00
P3T10	Geotechnical Investigation	\$12,047.00
P3T20	Preliminary Design	\$92,218.00
P4T20	Final Design	\$63,630.00
Total Work Scope Cost (not including NMGRT)		\$197,939.00

P3T01 – FIELD SURVEY AND MAPPING

Survey support will include professional land survey support of the project design including coordinating with utility companies to identify and incorporate existing and proposed utility locations, basic topography within the project limits; on Valley Drive between the intersections with Myles Road and Taylor Road; on Taylor Road between the intersections with Valley Drive and Doña

Ana Road; and on Doña Ana Road between the intersections with Taylor Road and Doña Ana School Road. In addition, SMA will also collect survey information for preparation of Doña Ana County (DAC) and New Mexico Department of Transportation (NMDOT) utility permits. All survey work will be directed and overseen by a New Mexico registered land surveyor. Data for all control used (recovered or set) for the project will be included in the final plans. Note that only apparent rights-of-way will be identified; a boundary survey is not being completed at this time. Survey datum's will utilize North American (horizontal) Datum NAD 83 and North American Vertical Datum NAVD 88. Utility location information will be completed by requesting a New Mexico One-Call utility locate "for design" and subsequent surveying of the indicated utilities. *Note: SMA has not included a title search or physical utility location with associated mapping.*

P3T10 – GEOTECHNICAL INVESTIGATION

SMA will contract with Southwest Engineering, Inc. of Las Cruces, New Mexico to complete a geotechnical investigation of the project area. The intent of the investigation is to determine the suitability of the native material for bedding and backfill, as well as to determine if there are any constructability concerns such as shallow groundwater table. The geotechnical report will be provided in the contract documents for the contractors' review during the bidding phase.

P3T20 – PRELIMINARY DESIGN

Preliminary design will include engineering design services for the Doña Ana MDWCA transmission line project through approximately 60% complete. SMA will complete a plan layout, including a grading and drainage plan of the proposed improvements, as well as all appropriate header sheets, notes and details for review by the Association. Plan and profile sheets will be created for all lines to be installed in public right-of-way (anticipated to be essentially the entire project). As noted above, the project includes the design of approximately 17,000 linear feet of 18-inch transmission waterline with all appropriate appurtenances, and connect to the existing water system. SMA will also keep in contact with the review agencies to ensure their respective awareness of the design progress and to expedite approval of the plans.

P4T20 – FINAL DESIGN

Final design will include revisions to the construction plans commensurate with review comments, development of a draft bid package and submittal of these items to the New Mexico Environment Department (NMED) Drinking Water Bureau and NMED Construction Programs Bureau. SMA will advise the Association of any adjustments to the opinion of probable construction costs and any adjustments to the total project costs known to SMA. SMA will revise the plans and specifications and prepare a single master package for agency approval. Using this information, permit applications will be prepared. The permit applications will be provided to the Association for their use in obtaining access for the proposed water system improvements.

Note: SMA has not included funding for application, filing or insurance fees that may be required by right of way management agencies. These fees shall be paid directly by the Owner with intended reimbursement from funding agency.

ATTACHMENTS

Please check the appropriate box and include applicable **attachments**

1. As set forth in the AGREEMENT FOR ENGINEERING SERVICES dated the 13th day of January 2015 by and between the Doña Ana Mutual Domestic Water Consumers Association the OWNER, and Souder, Miller & Associates, the ENGINEER, the OWNER and ENGINEER agree this 17th day of March, 2016 that the OWNER shall compensate the ENGINEER for services described in Section B and Section C and further described in

ATTACHMENT I – Planning Services scope of work, cost proposal and compensation for Engineering Services During the Planning Phase

ATTACHMENT II – Design Services scope of work, cost proposal and compensation for Engineering Services During the Design Phase

ATTACHMENT III – Construction Services scope of work, cost proposal and compensation for Engineering Services During the Construction Phase

ATTACHMENT IV – Operational Services scope of work, cost proposal and compensation for Engineering Services During the Operation Phase

2. Compensation for ENGINEERING SERVICES shall be by the

LUMP SUM method of payment. The total amount of compensation for ENGINEERING SERVICES, as described in the appropriate ATTACHMENTS shall not exceed \$197,939.00, excluding gross receipt tax and reimbursables.

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

3. Compensation for ADDITIONAL ENGINEERING SERVICES (provided by the ENGINEER upon written authorization from the OWNER and concurrence of the Funding Agency), shall be by the

LUMP SUM method of payment. The total amount of compensation for ADDITIONAL ENGINEERING SERVICES, as described in the appropriate ATTACHMENT shall not exceed \$_____, excluding gross receipt tax and reimbursables.

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

4. The amount of compensation shall not change unless the scope of services to be provided by the ENGINEER changes and this Agreement is formally amended according to Section A-5.

Contract Time under Section B. and for the purpose of Section A.8 shall be 30 calendar days for P3T01 after notice to proceed is received; 75 calendar days for P3T10 and P3T20 after notice to proceed is received; 30 calendar days for P4T20 after client and review agencies comments are received calendar days (or as specified in the Attachments).

5. The OWNER and ENGINEER agree that as mutually agreeable, reasonable Liquidated Damages for delay (but not as a penalty), ENGINEER shall pay OWNER fifty dollars (\$50.00) (minimum fifty dollars [\$50.00] per day) for each calendar day that expires after the Contract Time specified in the Agreement (See attached project schedule - Gantt chart, bar chart, etc.) until the Work is complete and accepted by the

OWNER. OWNER shall have no more than ten (10) calendar days to accept or reject the Work.

6. The ENGINEER agrees to obtain and maintain, at the ENGINEER's expense, such insurance as will protect the ENGINEER from claims under the Workman's Compensation Act and such comprehensive general liability and automobile insurance as will protect the OWNER and the ENGINEER from all claims for bodily injury, death, or property damage which may arise from the performance by the ENGINEER, or by the ENGINEER's employees, for the ENGINEER's functions and services required under this Agreement. Such insurance shall be in an amount not less than \$ 500,000 for injury to any one person and \$ 1,000,000 on account of any one accident and in the amount of not less than \$ 1,000,000 for property damage. The ENGINEER further agrees to procure and maintain professional liability (errors and omissions) insurance in an amount not less than \$ 1,000,000 per claim and in the aggregate. Prior to commencement of any work, the ENGINEER shall furnish to the OWNER a certificate that complies with this paragraph. The certificate shall provide that the policy shall not be canceled until at least ten (10) calendar days prior written notice shall have been given to the OWNER. ENGINEER shall provide annual updates of the certificate to demonstrate the policy remains in effect for the duration of this Agreement.

7. OWNER shall pay ENGINEER applicable gross receipt taxes and reimbursable expenses at the rates set forth in the appropriate ATTACHMENTS. The amounts payable to ENGINEER for reimbursable expenses will be the project related internal expenses, such as mileage, per diem and reproduction, actually incurred or allocated by ENGINEER, plus all invoiced external reimbursable expenses, including consultants, allocable to the project, the latter multiplied by a factor of 1.1 (1.1 MAXIMUM). Mileage will be reimbursed at the current federally approved IRS rate. Reimbursable expenses shall not exceed the estimate in the ATTACHMENT without prior written approval of the OWNER, with Funding Agency concurrence.

8. The method for interim or partial payments, such as milestone or time & materials, shall be: Invoices will be issued on a monthly basis reflecting the percentage complete to date.


The rest of the page is intentionally left blank


9. Signatures

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

ATTEST: _____
Type Name Dr. Kurt Anderson
Title Secretary / Treasurer
Date 17Mar16

OWNER: Doña Ana MDWCA
By _____
Type Name Mr. Jim Melton
Title President
Date 17Mar16

ATTEST:  _____
Type Name Lilla J. Reid, P.E.
Title Senior Engineer II
Date 10Mar16

ENGINEER: Souder, Miller & Associates
By  _____
Type Name Karl E. Tonander, P.G., P.E.
Title Vice-President
Address 401 N. Seventeenth St., Ste 4
Las Cruces, NM 88005
Date 10Mar16

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

Summary of Cost Proposal

Souder, Miller & Associates

Professional Services and Expenses Task/Hours/Fee Breakdown Related To

Project Description: 17,000 LF Transmission Line on Valley Drive, Taylor Road and Doña Ana Road
Project Number: 6324890
Owner: Doña Ana MDWCA
Date of Submittal: March 10, 2016
Tax Rate on Services: 8.3125%

TOTALS

PHASE/ CATEGORY OF WORK	Subtotal	NMGRT	Total
P3T01 - Field Survey and Mapping	\$ 30,044.00	\$ 2,497.41	\$ 32,541.41
P3T10 - Geotechnical Investigation	\$ 12,047.00	\$ 1,001.41	\$ 13,048.41
P3T20 - Preliminary Design	\$ 92,218.00	\$ 7,665.62	\$ 99,883.62
P4T20 - Final Design	\$ 63,630.00	\$ 5,289.24	\$ 68,919.24
TOTALS	\$ 197,939.00	\$ 16,453.68	\$ 214,392.68

EXHIBIT B.2 - COST PROPOSAL

Souder, Miller & Associates

Professional Services and Expenses Task/Hours/Fee Breakdown Related To

DATA COLLECTION - BASIC ENGINEERING SERVICES

Project Description: 17,000 LF Transmission Line on Valley Drive, Taylor Road and Doña Ana Road
Project Number: 6324890
Owner: Doña Ana MDWCA
Date of Submittal: March 10, 2016
Tax Rate on Services: 8.3125%

Note: Figures in this table do not include tax.

Job Description	Principal	Senior Design Manager	Senior Eng./Sur. Mgr. II	Project Eng./Sci. Mgr II	Staff EIT/LSIT Sci. II	Eng/CAD Surv/Field Tech III	Eng/CAD Surv/Field Tech II	Admin II	GPS	Mileage	Expenses	Total SMA	Sub Contracts	Total Task
Billing Rate per Unit	\$ 200	\$ 180	\$ 160	\$ 120	\$ 90	\$ 85	\$ 75	\$ 65	\$ 20	\$ 0.54	\$ 1.00			
Unit	Hrs	Hrs	Hrs	Hrs	Hrs	Hrs	Hrs	Hrs	Hrs	Mi	Actual	\$	\$	\$
Task														
P3T01 - Field Survey and Mapping														
Client Interview / Programming		1										\$ 180		
Project Management Plan			2	4								\$ 800		
Start-Up Meeting Preparation				1				1				\$ 185		
Start-Up Meeting w/ Survey Team			1	1		1						\$ 365		
Survey Plan / Instructions			3									\$ 480		
Project Meetings	1	2	2	2		2						\$ 1,290		
Survey Research:												\$ -		
Utility Locations				1		4						\$ 460		
Property Ownership				5	4							\$ 960		
Data Collection			1	8	3							\$ 1,390		
Obtain Permission to Survey				1		2						\$ 290		
Perform Field Research				2		6		1				\$ 815		
Perform Field Survey												\$ -		
Valley Drive / HWY 185				2		43	43		43	100	120	\$ 8,154		
Taylor Road				2		22	22		22	40	60	\$ 4,282		
Doña Ana Road				2		21	21		21	60	60	\$ 4,112		
Establish Utility & R/W Location				4	5							\$ 930		
Establish Control Points				2		4				20		\$ 591		
Download Data / tins & contours				4								\$ 480		
Prepare Mapping				5		30						\$ 3,150		
Verify Accuracy of Survey			2	4							20	\$ 820		
Management and Invoicing		1						2				\$ 310		
Subtotal Hours:	1	4	11	50	12	135	86	4	86	220	260	\$ 30,044	\$ -	\$ 30,044
Subtotal Cost:	\$ 200	\$ 720	\$ 1,760	\$ 6,000	\$ 1,080	\$ 11,475	\$ 6,450	\$ 260	\$ 1,720	\$ 119	\$ 260	\$ 30,044		

P3T10 - Geotechnical Investigation														
Traffic Control				2						150		\$ 321		
One Call Ticket				1								\$ 120		
Permit (Borings)				1		2						\$ 290		
Perform Field Survey						6	6		6	20	100	\$ 1,191		
Drilling Bore Holes, Lab Analysis		2										\$ 360	\$ 7,150	
Geotechnical Report	1		6		12			2				\$ 2,370		
Management and Invoicing		1						1				\$ 245		
Subtotal Hours:	1	3	6	4	12	8	6	3	6	170	100	\$ 4,897	\$ 7,150	\$ 12,047
Subtotal Cost:	\$ 200	\$ 540	\$ 960	\$ 480	\$ 1,080	\$ 680	\$ 450	\$ 195	\$ 120	\$ 92	\$ 100	\$ 4,897		

Total Cost of Data Collection Phase Services: \$ 42,091

EXHIBIT B.2 - COST PROPOSAL

Souder, Miller & Associates

Professional Services and Expenses Task/Hours/Fee Breakdown Related To

DESIGN PHASE - BASIC ENGINEERING SERVICES

Project Description: 17,000 LF Transmission Line on Valley Drive, Taylor Road and Doña Ana Road
Project Number: 6324890
Owner: Doña Ana MDWCA
Date of Submittal: March 10, 2016
Tax Rate on Services: 8.3125%

Note: Figures in this table do not include tax.

Job Description	Principal	Senior Design Manager	Senior Eng./Sur. Mgr. II	Project Eng./Sci. Mgr II	Staff EIT/LSIT Sci. II	Eng/CAD Surv/Field Tech III	Admin II	Mileage	Expenses	Total SMA	Total Task
Billing Rate per Unit	\$ 200	\$ 180	\$ 160	\$ 120	\$ 90	\$ 85	\$ 65	\$ 0.54	\$ 1.00		
Unit	Hrs	Hrs	Hrs	Hrs	Hrs	Hrs	Hrs	Mi	Actual	\$	\$
Task											
P3T20 - Preliminary Design											
Client Interview / Programming		1			1						\$ 270
Start-Up Meeting Preparation				1							\$ 120
Start-Up Meeting w/ Design Team		1	1	1	1	1					\$ 635
Scoping Meeting w/ NMED/Client		2	2					40			\$ 702
Dwg / Detail Plan / Spec Outline			1	4							\$ 640
Project Management Plan/Coord.			1	5			1				\$ 825
Team Meeting Preparation			1	2							\$ 400
Design Team Meeting	1	1	2	2	2	1					\$ 1,205
Preliminary Design (Below):											\$ -
Cover Sheet			1	5		10					\$ 1,610
Index Sheet, Notes & Legend			1	5		10					\$ 1,610
Scope of Work			1	5		10					\$ 1,610
Survey Control			1	5		10					\$ 1,610
Valley Drive / HWY 185			11	55		110					\$ 17,710
Taylor Road			6	30		60					\$ 9,660
Doña Ana Road			6	30		60					\$ 9,660
Crossings			2	10		20					\$ 3,220
Traffic Control			5	25		50					\$ 8,050
Details			4	20		40					\$ 6,440
Update Water Model		4			12						\$ 1,800
ARV, Water Hammer, etc. calculations		1	10	6							\$ 2,500
Coordination w/ Utility Comps				12	4				100		\$ 1,900
Incorporate Geotech Investigation			2	6							\$ 1,040
R/W & Permitting Requirements		5	4	24							\$ 4,420
In-House Quality Control		10	24								\$ 5,640
Design Review			12	20							\$ 4,320
Production				2		6	2				\$ 880
Client Review Meeting			4	4				40	50		\$ 1,192
Provide OPCC			5	12							\$ 2,240
Management and Invoicing		1					2				\$ 310
Subtotal Hours:	1	26	107	291	20	388	5	80	150		\$ 92,218
Subtotal Cost:	\$ 200	\$ 4,680	\$ 17,120	\$ 34,920	\$ 1,800	\$ 32,980	\$ 325	\$ 43	\$ 150		\$ 92,218

P4T20 - Final Design											
R/W & Utility Adjustment Req s			2								\$ 320
Team Meeting Preparation											\$ -
Team Meeting		1	2	2		2					\$ 910
Utility Coordination			4	8							\$ 1,600
Final Design (Below):											\$ -
Cover Sheet				1		2					\$ 290
Index Sheet, Notes & Legend			1	2		2					\$ 570
Scope of Work				1		1					\$ 205
Survey Control				1		1					\$ 205
Valley Drive / HWY 185			11	44		88					\$ 14,520
Taylor Road			6	24		48					\$ 7,920
Doña Ana Road			6	24		48					\$ 7,920
Crossings			1	8		10					\$ 1,970
Traffic Control			4	20		8					\$ 3,720
Details			2	16		10					\$ 3,090
Prepare Technical Specifications			8	40			4		50		\$ 6,390
Prepare Contract Documents			10	20			4		50		\$ 4,310
Client Review Meeting			4	4							\$ 1,120
Address Client/Agency Comments			4	10							\$ 1,840
In-House Quality Control	2	4	20								\$ 4,320
Design Review		5		10							\$ 2,100
Management and Invoicing		1					2				\$ 310
Subtotal Hours:	2	11	85	235	0	220	10	0	100		\$ 63,630
Subtotal Cost:	\$ 400	\$ 1,980	\$ 13,600	\$ 28,200	\$ -	\$ 18,700	\$ 650	\$ -	\$ 100		\$ 63,630

Total Cost of Design Phase Services: \$155,848



March 10, 2016

#6323822

Ms. Jennifer J. Horton, Executive Director
Doña Ana Mutual Domestic Water Consumers Association
5535 Ledesma Drive, Las Cruces, NM 88007
P.O. Box 866, Doña Ana, NM 88032
(575) 526-3491, (575) 526-9306 (Fax)
jennifer@dawater.org

RE: *EJCDC E-500 AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES*
RADIUM SPRINGS WATER SYSTEM IMPROVEMENT PROJECT, DOÑA ANA MDWCA
USDA, RUS LOAN AND USDA RUS COLONIAS GRANT

Dear Ms. Horton:

Enclosed please find the *EJCDC E-500 Agreement between Owner and Engineer for Professional Services* for the Radium Springs Water System Improvement Project. The costs and scope of work presented herein are consistent with that discussed with Doña Ana Mutual Domestic Water Consumers Association (MDWCA), presented in the Radium Springs Preliminary Engineering Report (PER) dated December 2015 and the United States Department of Agriculture (USDA) Letter of Conditions dated February 10, 2016.

Following Doña Ana MDWCA Board review and approval, and Doña Ana MDWCA Board President execution of the agreement, two originals should be forwarded on to USDA for their review and agency concurrence. Please feel free to call if you should have any questions regarding the scope of work referred to herein.

Sincerely,

MILLER ENGINEERS, INC. D/B/A
SOUDER, MILLER & ASSOCIATES

A handwritten signature in blue ink, appearing to read 'Lilla J. Reid'.

Lilla J. Reid, P.E.
Senior Engineer II
lilla.reid@soudermiller.com

cc: Mr. Abenicio Fernandez, Project Manager

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

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

Prepared by



Issued and Published Jointly by



This Agreement has been prepared for use with EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition. Their provisions are interrelated, and a change in one may necessitate a change in the other. For guidance on the completion and use of this Agreement, see EJCDC® E-001, Commentary on the EJCDC Engineering Services Agreements, 2013 Edition.

Copyright © 2013:

National Society of Professional Engineers
1420 King Street, Alexandria, VA 22314-2794
(703) 684-2882
www.nspe.org

American Council of Engineering Companies
1015 15th Street N.W., Washington, DC 20005
(202) 347-7474
www.acec.org

American Society of Civil Engineers
1801 Alexander Bell Drive, Reston, VA 20191-4400
(800) 548-2723
www.asce.org

The copyright for this EJCDC document is owned jointly by the three sponsoring organizations listed above. The National Society of Professional Engineers is the Copyright Administrator for the EJCDC documents; please direct all inquiries regarding EJCDC copyrights to NSPE.

RUS CERTIFICATION PAGE

PROJECT NAME: Doña Ana MDWCA Water System Improvements

The Engineer and Owner hereby concur in the Funding Agency required revisions to E-500. In addition, Engineer certifies to the following:


All modifications required by RUS Bulletin 1780-26 have been made in accordance the terms of the license agreement, which states in part that the Engineer “must plainly show all changes to the Standard EJCDC Text, using ‘Track Changes’ (redline/strikeout), highlighting, or other means of clearly indicating additions and deletions.” Such other means may include attachments indicating changes (e.g. Supplementary Conditions modifying the General Conditions).

SUMMARY OF ENGINEERING FEES

Note that the fees indicated on this table are only a summary and if there is a conflict with any provision of Exhibit C, the provisions there overrule the values on this table. Fees shown in will not be exceeded without the concurrence of the Agency.

Basic Services	\$ <u>404,052.00</u>
Resident Project Observation	\$ <u>149,110.00</u>
Additional Services	\$ _____
TOTAL:	\$ <u>553,162.00</u>

Any adjustments to engineering fees or changes to maximum estimated values must be approved by the Agency and must include a table of what specific category or categories of fees are being changed, what fees were before and after the change, and the resulting total fee.



Engineer

March 10, 2016

Date

Karl E. Tonander, P.G., P.E. | Senior Vice President

Name and Title

March 17, 2016

Owner

Date

Jim Melton | Doña Ana MDWCA Board President

Name and Title

Agency Concurrence:

As lender or insurer of funds to defray the costs of this Contract, and without liability for any payments thereunder, the Agency hereby concurs in the form, content, and execution of this Agreement.

Agency Representative

Date

Name and Title

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1 – SERVICES OF ENGINEER.....	1
1.01 Scope	1
ARTICLE 2 – OWNER’S RESPONSIBILITIES.....	1
2.01 General	1
ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES.....	2
3.01 Commencement.....	2
3.02 Time for Completion	2
ARTICLE 4 – INVOICES AND PAYMENTS	2
4.01 Invoices.....	2
4.02 Payments.....	2
ARTICLE 5 – OPINIONS OF COST	3
5.01 Opinions of Probable Construction Cost	3
5.02 Designing to Construction Cost Limit	3
5.03 Opinions of Total Project Costs.....	3
ARTICLE 6 – GENERAL CONSIDERATIONS.....	4
6.01 Standards of Performance	4
6.02 Design Without Construction Phase Services	5
6.03 Use of Documents.....	6
6.04 Electronic Transmittals.....	6
6.05 Insurance	7
6.06 Suspension and Termination	8
6.07 Controlling Law.....	9
6.08 Successors, Assigns, and Beneficiaries	9
6.09 Dispute Resolution	10
6.10 Environmental Condition of Site.....	10
6.11 Indemnification and Mutual Waiver	11
6.12 Records Retention.....	12
6.13 Miscellaneous Provisions.....	12
ARTICLE 7 – DEFINITIONS.....	12
7.01 Defined Terms	12
ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS	16
8.01 Exhibits Included:	16
8.02 Total Agreement.....	17
8.03 Designated Representatives	17
8.04 Engineer's Certifications	17
8.05 Federal Requirements.....	17

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

THIS IS AN AGREEMENT effective as of March 17, 2016 (“Effective Date”) between
DOÑA ANA MUTUAL DOMESTIC WATER CONSUMERS ASSOCIATION (MDWCA) (“Owner”) and
MILLER ENGINEERS, INC. d/b/a SOUDER, MILLER & ASSOCIATES (“Engineer”).

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:
Engineer's services under this Agreement are generally identified as follows: Doña Ana MDWCA Water System Improvement ("Project").

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

Engineer's services under this Agreement are generally identified as follows: Engineer's services under this Agreement are generally identified as follows: Planning, design and construction phase services of a water system improvements project including, but not limited to, drinking water supply, distribution, storage and treatment. Engineering services for the project may include funding administration; surveying; developing preliminary planning documents prepared in accordance with Rural Development guidelines; and data collection, design, bid facilitation, and construction observation, construction administration, construction phase services related to treatment, repair, expansion, modification, pilot testing and/or rehabilitation of existing or new facilities.

Owner and Engineer further agree as follows:

ARTICLE 1 – SERVICES OF ENGINEER

1.01 *Scope*

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

ARTICLE 2 – OWNER’S RESPONSIBILITIES

2.01 *General*

- A. Owner shall have the responsibilities set forth herein and in Exhibit B.
- B. Owner shall pay Engineer as set forth in Article 4 and Exhibit C.
- C. Owner shall be responsible for all requirements and instructions that it furnishes to Engineer pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items.
- D. Owner shall give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of:

1. any development that affects the scope or time of performance of Engineer's services;
2. the presence at the Site of any Constituent of Concern; or
3. any relevant, material defect or nonconformance in: (a) Engineer's services, (b) the Work, (c) the performance of any Constructor, or (d) Owner's performance of its responsibilities under this Agreement.

ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

3.01 Commencement

- A. Engineer is authorized to begin rendering services as of the Effective Date.

3.02 Time for Completion

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

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 Invoices

- A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C. Invoices must include a breakdown of services provided. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

4.02 Payments

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.

- B. *Failure to Pay:* If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:
1. amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and
 2. Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- C. *Disputed Invoices:* If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion subject to the terms of Paragraph 4.01.
- D. *Sales or Use Taxes:* If after the Effective Date any governmental entity takes a legislative action that imposes additional sales or use taxes on Engineer's services or compensation under this Agreement, then Engineer may invoice such additional sales or use taxes for reimbursement by Owner. Owner shall reimburse Engineer for the cost of such invoiced additional sales or use taxes; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C.

ARTICLE 5 – OPINIONS OF COST

5.01 *Opinions of Probable Construction Cost*

- A. Engineer's opinions (if any) of probable Construction Cost are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, then Owner agrees to obtain an independent cost estimate.

5.02 *Designing to Construction Cost Limit*

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

5.03 *Opinions of Total Project Costs*

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

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 *Standards of Performance*

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

resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such document.

- G. The general conditions for any construction contract documents prepared hereunder are to be EJCDC® C-700 “Standard General Conditions of the Construction Contract” (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, unless expressly indicated otherwise in Exhibit J or elsewhere in this Agreement.
- H. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor’s work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws and Regulations applicable to that Constructor’s furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.
- I. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor’s failure to furnish and perform the Work in accordance with the Construction Contract Documents.
- J. Engineer shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Engineer or its Consultants.
- K. Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- L. Engineer’s services do not include providing legal advice or representation.
- M. Engineer’s services do not include (1) serving as a “municipal advisor” for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.
- N. While at the Site, Engineer, its Consultants, and their employees and representatives shall comply with the applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

6.02 *Design Without Construction Phase Services*

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

revisions to the Construction Contract Documents during construction, construction observation and review, review of Contractor's payment applications, and all other necessary Construction Phase administrative, engineering, and professional services. Owner waives all claims against the Engineer that may be connected in any way to Construction Phase administrative, engineering, or professional services except for those services that are expressly required of Engineer in Exhibit A.

6.03 *Use of Documents*

- A. All Documents are instruments of service, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed.
- B. If Engineer is required to prepare or furnish Drawings or Specifications under this Agreement, Engineer shall deliver to Owner at least one original printed record version of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations.
- C. Owner may make and retain copies of Documents for information and reference in connection with the use of the Documents on the Project. Engineer grants Owner a limited license to use the Documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment due and owing for all services relating to preparation of the Documents, and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.
- D. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

6.04 *Electronic Transmittals*

- A. Owner and Engineer may transmit, and shall accept, Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.
- B. If this Agreement does not establish protocols for electronic or digital transmittals, then Owner and Engineer may jointly develop such protocols.

- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

6.05 *Insurance*

- A. Engineer shall procure and maintain insurance as set forth in Exhibit G. Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.
- B. Owner shall procure and maintain insurance as set forth in Exhibit G. Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability policies carried by Owner, which are applicable to the Project.
- C. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability insurance purchased and maintained by Contractor for the Project.
- D. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.
- E. All policies of property insurance relating to the Project, including but not limited to any builder's risk policy, shall allow for waiver of subrogation rights and contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insured thereunder or against Engineer or its Consultants. Owner and Engineer waive all rights against each other, Contractor, the Consultants, and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by any builder's risk policy and any other property insurance relating to the Project. Owner and Engineer shall take appropriate measures in other Project-related contracts to secure waivers of rights consistent with those set forth in this paragraph.
- F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 10 days prior written notice has been given to the primary insured. Upon receipt of such notice, the receiving party shall promptly forward a copy of the notice to the other party to this Agreement.
- G. At any time, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such

additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.

6.06 *Suspension and Termination*

A. *Suspension:*

1. *By Owner:* Owner may suspend the Project for up to 90 days upon seven days written notice to Engineer.
2. *By Engineer:* Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement if Owner has failed to pay Engineer for invoiced services and expenses, as set forth in Paragraph 4.02.B, or in response to the presence of Constituents of Concern at the Site, as set forth in Paragraph 6.10.D.

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

1. For cause,
 - a. by either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
 - b. by Engineer:
 - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
 - 2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control, or as the result of the presence at the Site of undisclosed Constituents of Concern, as set forth in Paragraph 6.10.D.
 - 3) Engineer shall have no liability to Owner on account of such termination.
 - c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.06.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
2. For convenience, by Owner effective upon Engineer's receipt of notice from Owner.

C. *Effective Date of Termination:* The terminating party under Paragraph 6.06.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow

Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

D. *Payments Upon Termination:*

1. In the event of any termination under Paragraph 6.06, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.
2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.06.D.1, to invoice Owner and receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

6.07 *Controlling Law*

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

6.08 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.08.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise in this Agreement:
 1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them.
 2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

3. Owner agrees that the substance of the provisions of this Paragraph 6.08.C shall appear in the Construction Contract Documents.

6.09 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights at law.
- B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.09.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights at law.

6.10 *Environmental Condition of Site*

- A. Owner represents to Engineer that as of the Effective Date to the best of Owner's knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at or adjacent to the Site.
- B. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- C. It is acknowledged by both parties that Engineer's scope of services does not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an undisclosed Constituent of Concern, then Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take any necessary corrective action.
- D. If investigative or remedial action, or other professional services, are necessary with respect to undisclosed Constituents of Concern, or if investigative or remedial action beyond that reasonably contemplated is needed to address a disclosed or known Constituent of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until such portion of the Project is no longer affected.
- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on seven days notice.
- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

6.11 *Indemnification and Mutual Waiver*

- A. *Indemnification by Engineer:* To the fullest extent permitted by Laws and Regulations, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees, from losses, damages, and judgments (including reasonable consultants' and attorneys' fees and expenses) arising from third-party claims or actions relating to the Project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants. **This indemnification provision is subject to and limited by the provisions, if any, agreed to by Owner and Engineer in Exhibit I, "Limitations of Liability."**
- B. *Indemnification by Owner:* Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations **and to the extent (if any) required in Exhibit I, "Limitations of Liability."**
- C. *Environmental Indemnification:* To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, costs, losses, damages, actions, and judgments (including reasonable consultants' and attorneys fees and expenses) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) any such claim, cost, loss, damages, action, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.
- D. *No Defense Obligation:* The indemnification commitments in this Agreement do not include a defense obligation by the indemnitor unless such obligation is expressly stated.
- E. *Percentage Share of Negligence:* To the fullest extent permitted by Laws and Regulations, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.
- F. *Mutual Waiver:* To the fullest extent permitted by Laws and Regulations, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes.

6.12 *Records Retention*

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

6.13 *Miscellaneous Provisions*

- A. *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability:* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. *Waiver:* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims:* To the fullest extent permitted by Laws and Regulations, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

ARTICLE 7 – DEFINITIONS

7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following definitions:
 - 1. *Addenda*—Written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding requirements or the proposed Construction Contract Documents.
 - 2. *Additional Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 2 of Exhibit A of this Agreement.

3. *Agreement*—This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
4. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Construction Contract.
5. *Basic Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 1 of Exhibit A of this Agreement.
6. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract.
7. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an adjustment in Construction Contract Price or Construction Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Construction Contract.
8. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, State, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
9. *Construction Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
10. *Construction Contract Documents*—Those items designated as “Contract Documents” in the Construction Contract, and which together comprise the Construction Contract.
11. *Construction Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.
12. *Construction Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion; and (c) complete the Work.

13. *Construction Cost*—The cost to Owner of the construction of those portions of the entire Project designed or specified by or for Engineer under this Agreement, including construction labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to property; Owner's costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.
14. *Constructor*—Any person or entity (not including the Engineer, its employees, agents, representatives, and Consultants), performing or supporting construction activities relating to the Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner's work forces, utility companies, other contractors, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
15. *Consultants*—Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer's independent professional associates and consultants; subcontractors; or vendors.
16. *Contractor*—The entity or individual with which Owner enters into a Construction Contract.
17. *Documents*—Data, reports, Drawings, Specifications, Record Drawings, building information models, civil integrated management models, and other deliverables, whether in printed or electronic format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
18. *Drawings*—That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. *Effective Date*—The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
20. *Engineer*—The individual or entity named as such in this Agreement.
21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Construction Contract Price or the Construction Contract Times.
22. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
23. *Owner*—The individual or entity named as such in this Agreement and for which Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.

24. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the services to be performed or furnished by Engineer under this Agreement are a part.
25. *Record Drawings*—Drawings depicting the completed Project, or a specific portion of the completed Project, prepared by Engineer and based on Contractor's record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.
26. *Reimbursable Expenses*—The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic Services and Additional Services for the Project.
27. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.
28. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
29. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.
30. *Site*—Lands or areas to be indicated in the Construction Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
31. *Specifications*—The part of the Construction Contract Documents that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
32. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
33. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Construction Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

34. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
 35. *Total Project Costs*—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Project, including Construction Cost and all other Project labor, services, materials, equipment, insurance, and bonding costs, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner’s costs for legal, accounting, insurance counseling, and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner.
 36. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Construction Contract Documents.
 37. *Work Change Directive*—A written directive to Contractor issued on or after the effective date of the Construction Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.
 38. *Agency*—The Rural Utilities Service or any designated representative of Rural Utilities Service, including USDA, Rural Development.
- B. *Day*:
1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 Exhibits Included:

- A. Exhibit A, Engineer’s Services.
- B. Exhibit B, Owner’s Responsibilities.
- C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses.
- D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative.
- E. Exhibit E, Notice of Acceptability of Work.
- F. Exhibit F, Construction Cost Limit. (Not used)

- G. Exhibit G, Insurance.
- H. Exhibit H, Dispute Resolution.
- I. Exhibit I, Limitations of Liability (Not used).
- J. Exhibit J, Special Provisions.
- K. Exhibit K, Amendment to Owner-Engineer Agreement.

8.02 *Total Agreement*

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

8.03 *Designated Representatives*

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

8.04 *Engineer's Certifications*

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the selection process or in the Agreement execution;
 - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
 - 3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

8.05 *Federal Requirements*

- A. Agency Concurrence. Signature of a duly authorized representative of the Agency in the space provided on the signature page of EJCDC form E-500 hereof does not constitute a commitment to provide financial assistance or payments hereunder but does signify that

this Agreement conforms to Agency's applicable requirements. This Agreement shall not be effective unless the Funding Agency's designated representative concurs. No amendment to this Agreement shall be effective unless the Funding Agency's designated representative concurs.

- B. Audit and Access to Records. Owner, Agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Engineer which are pertinent to the Agreement, for the purpose of making audits, examinations, excerpts, and transcriptions. Engineer shall maintain all required records for three years after final payment is made and all other pending matters are closed.
- C. Restrictions on Lobbying. Engineer and each Consultant shall comply with "Restrictions on Lobbying" if they are recipients of engineering services contracts and subcontracts that exceed \$100,000 at any tier. If applicable, Engineer must complete a certification form on lobbying activities related to a specific Federal loan or grant that is a funding source for this Agreement. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other applicable award. Each tier shall disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Certifications and disclosures are forwarded from tier to tier up to the Owner. Necessary certification and disclosure forms shall be provided by Owner.
- D. Suspension and Debarment. Engineer certifies, by signing this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency. Engineer will not contract with any Consultant for this project if it or its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Necessary certification forms shall be provided by the Owner. The Engineer will complete and submit a form AD-1048, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – lower tier transactions," to the Owner who will forward it the USDA, Rural Development processing office.

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

Owner: **Doña Ana MDWCA**

Engineer: **Souder, Miller & Associates**

By: _____

By:  _____

Print name: Jim Melton

Print name: Karl E. Tonander, P.G., P.E.

Title: President

Title: Senior Vice President

Date Signed: March 17, 2016

Date Signed: March 10, 2016

Federal EIN: _____

Federal EIN: 85-0336964

Address for Owner's receipt of notices:

5535 Ledesma Drive, Las Cruces, NM 88007

P.O. Box 866, Doña Ana, NM 88032

Designated Representative (Paragraph 8.03.A):

Jennifer J. Horton

Title: Executive Director

Phone Number: 575-526-3491

E-Mail Address: jennifer@dawater.org

Address for Engineer's receipt of notices:

401 North Seventeenth Street, Suite 4

Las Cruces, NM 88005

Designated Representative (Paragraph 8.03.A):



Lilla J. Reid, P.E.

Title: Senior Design Manager

Phone Number: 575-644-4575

E-Mail Address: lilla.reid@soudermiller.com

This is **EXHIBIT A**, consisting of 17 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated March 17, 2016.

Engineer's Services

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

Engineer shall provide Basic and Additional Services as set forth below and further detailed in Appendix 1 to Exhibit A.

PART 1 – BASIC SERVICES

A1.01 ~~Study and Report Phase~~

A. ~~Engineer shall:~~

- ~~1. Consult with Owner to define and clarify Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations, and identify available data, information, reports, facilities plans, and site evaluations.~~
 - ~~a. If Owner has already identified one or more potential solutions to meet its Project requirements, then proceed with the study and evaluation of such potential solutions: N/A~~
 - ~~b. In addition, Engineer must identify, study, and evaluate multiple potential alternative solutions potentially available to Owner, unless Owner and Engineer mutually agree with Agency concurrence that only one feasible solution exists. The number of alternative solutions should be appropriate to the specific project as concurred in by the Agency.~~
- ~~2. Identify potential solution(s) to meet Owner's Project requirements, as needed.~~
- ~~3. Study and evaluate the potential solution(s) to meet Owner's Project requirements.~~
- ~~4. Visit the Site, or potential Project sites, to review existing conditions and facilities, unless such visits are not necessary or applicable to meeting the objectives of the Study and Report Phase.~~
- ~~5. Advise Owner of any need for Owner to obtain, furnish, or otherwise make available to Engineer additional Project-related data and information, for Engineer's use in the study and evaluation of potential solution(s) to Owner's Project requirements, and preparation of a related report.~~
- ~~6. After consultation with Owner, recommend to Owner the solution(s) which in Engineer's judgment meet Owner's requirements for the Project.~~
- ~~7. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project to be designed or specified by Engineer,~~

Exhibit A – Engineer's Services

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

Copyright © 2013 National Society of Professional Engineers, American Council of Engineering Companies, and American Society of Civil Engineers. All rights reserved.

including but not limited to mitigating measures identified in an environmental assessment for the Project.

- ~~8. Prepare a report (the "Report") which will, as appropriate, contain schematic layouts, sketches, and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and Engineer's recommended solution(s). For each recommended solution Engineer will provide the following, which will be separately itemized: opinion of probable Construction Cost; proposed allowances for contingencies; the estimated total costs of design, professional, and related services to be provided by Engineer and its Consultants; and, on the basis of information furnished by Owner, a tabulation of other items and services included within the definition of Total Project Costs. The Report mentioned in paragraph 1.01.A.8 of Exhibit A to the Agreement is the Preliminary Engineering Report as defined in RUS Bulletin 1780-2. This document must meet customary professional standards as required by 7 CFR 1780.55. The Report must be concurred in by the Agency.~~
- ~~9. Advise Owner of any need for Owner to provide data or services of the types described in Exhibit B, for use in Project design, or in preparation for Contractor selection and construction.~~
- ~~10. When mutually agreed and approved by Agency, assist Owner in evaluating the possible use of building information modeling; civil integrated management; geotechnical baselining of subsurface site conditions; innovative design, contracting, or procurement strategies; or other strategies, technologies, or techniques for assisting in the design, construction, and operation of Owner's facilities. The subject matter of this paragraph shall be referred to in Exhibit A and B as "Project Strategies, Technologies, and Techniques."~~
- ~~11. If requested to do so by Owner, assist Owner in identifying opportunities for enhancing the sustainability of the Project, and pursuant to Owner's instructions plan for the inclusion of sustainable features in the design.~~
- ~~12. Use ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data" as a means to advise the Owner on a recommended scope of work and procedure for the identification and mapping of existing utilities.~~
- ~~13. Develop a scope of work and survey limits for any topographic and other surveys necessary for design.~~
- ~~14. Perform or provide the following other Study and Report Phase tasks or deliverables:
 - ~~a. Provide an Environmental Report as defined at 7 CFR 1794 and RUS Bulletin 1794A-602 or other Agency approved format. The Environmental Report must be concurred in by the Agency.~~~~
- ~~15. Furnish N/A review copies of the Report and any other Study and Report Phase deliverables to Owner within N/A days of the Effective Date and review it with Owner. Within N/A days of receipt, Owner shall submit to Engineer any comments regarding the furnished items.~~

Exhibit A – Engineer's Services

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

Copyright © 2013 National Society of Professional Engineers, American Council of Engineering Companies, and American Society of Civil Engineers. All rights reserved.

~~16. Revise the Report and any other Study and Report Phase deliverables in response to Owner's and Agency's comments, as appropriate, and furnish three (3) written copies and one (1) electronic copy of the revised Report and any other Study and Report Phase deliverables to the Owner within N/A days of receipt of Owner's and Agency's comments."~~

~~B. Engineer's services under the Study and Report Phase will be considered complete on the date when Engineer has delivered to Owner the revised Report and any other Study and Report Phase deliverables.~~

A1.02 *Preliminary Design Phase*

A. After acceptance by Owner and concurrence by Agency of the Report and any other Study and Report Phase deliverables; selection by Owner of a recommended solution; issuance by Owner of any instructions of for use of Project Strategies, Technologies, and Techniques, or for inclusion of sustainable features in the design; and indication by Owner of any specific modifications or changes in the scope, extent, character, or design requirements of the Project desired by Owner, (1) Engineer and Owner shall discuss and resolve any necessary revisions to Engineer's compensation (through application of the provisions regarding Additional Services, or otherwise), or the time for completion of Engineer's services, resulting from the selected solution, related Project Strategies, Technologies, or Techniques, sustainable design instructions, or specific modifications to the Project, and (2) upon written authorization from Owner and Agency, Engineer shall:

1. Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project.
2. In preparing the Preliminary Design Phase documents, use any specific applicable Project Strategies, Technologies, and Techniques authorized by Owner during or following the Study and Report Phase, and include sustainable features, as appropriate, pursuant to Owner's instructions.
3. Provide necessary field surveys and topographic and utility mapping for Engineer's design purposes. Comply with the scope of work and procedure for the identification and mapping of existing utilities selected and authorized by Owner pursuant to advice from Engineer based on ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data," as set forth in Paragraph A1.01.A.12 above. If no such scope of work and procedure for utility mapping has been selected and authorized, then at a minimum the utility mapping will include Engineer contacting utility owners and obtaining available information.
4. Visit the Site as needed to prepare the Preliminary Design Phase documents.
5. Advise Owner if additional reports, data, information, or services of the types described in Exhibit B are necessary and assist Owner in obtaining such reports, data, information, or services.
6. Continue to assist Owner with Project Strategies, Technologies, and Techniques that Owner has chosen to implement.

7. Based on the information contained in the Preliminary Design Phase documents, prepare a revised opinion of probable Construction Cost, and assist Owner in tabulating the various cost categories which comprise Total Project Costs.
 8. Obtain and review Owner's instructions regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Also obtain and review copies of Owner's design and construction standards, Owner's standard forms, general conditions (if other than EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition), supplementary conditions, text, and related documents or content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and in the draft Construction Contract Documents, when applicable. Engineer must also incorporate all Agency regulations, forms, and design and construction standards applicable to the project in development of the documents indicated in this Article."
 9. Perform or provide the following other Preliminary Design Phase tasks or deliverables: Deliverables include preparation of a geotechnical report as outlined in Appendix 1 of Exhibit A
 10. Furnish 2 review copies of the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables to Owner within 135 days of authorization to proceed with this phase, and review them with Owner. Within 30 days of receipt, Owner shall submit to Engineer any comments regarding the furnished items.
 11. Revise the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables in response to Owner's comments, as appropriate, and furnish to Owner 2 copies of the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables within 30 days after receipt of Owner's comments.
- B. Engineer's services under the Preliminary Design Phase will be considered complete on the date when Engineer has delivered to Owner the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables.

A1.03 *Final Design Phase*

- A. After acceptance by Owner of the Preliminary Design Phase documents, revised opinion of probable Construction Cost as determined in the Preliminary Design Phase, and any other Preliminary Design Phase deliverables, subject to any Owner-directed modifications or changes in the scope, extent, character, or design requirements of or for the Project, and upon written authorization from Owner, Engineer shall:

1. Prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor.
2. Visit the Site as needed to assist in preparing the final Drawings and Specifications.
3. Provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design; assist Owner in consultations with such authorities; and revise the Drawings and Specifications in response to directives from such authorities, as appropriate.
4. Advise Owner of any recommended adjustments to the opinion of probable Construction Cost.
5. After consultation with Owner, include in the Construction Contract Documents any specific protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website. Any such protocols shall be applicable to transmittals between and among Owner, Engineer, and Contractor during the Construction Phase and Post-Construction Phase, and unless agreed otherwise shall supersede any conflicting protocols previously established for transmittals between Owner and Engineer.
6. Assist Owner in assembling known reports and drawings of Site conditions, and in identifying the technical data contained in such reports and drawings upon which bidders or other prospective contractors may rely.
7. In addition to preparing the final Drawings and Specifications, assemble drafts of other Construction Contract Documents based on specific instructions and contract forms, text, or content received from Owner.
8. Prepare or assemble draft bidding-related documents (or requests for proposals or other construction procurement documents), based on the specific bidding or procurement-related instructions and forms, text, or content received from Owner.
9. Perform or provide the following other Final Design Phase tasks or deliverables:
 - a. The Engineer shall identify the building codes and accessibility standards used in the design and indicate them on the drawings and specifications and certify that the final drawings and specifications comply with those standards.
10. Furnish for review by Owner, its legal counsel and Agency, and other advisors, total of 4 copies of the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables, within 30 days of authorization to proceed with the Final Design Phase, and review them with Owner. Within 30 days of receipt, Owner shall submit to Engineer any comments regarding the furnished items, and any instructions for revisions.

11. Revise the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables in accordance with comments and instructions from the Owner, as appropriate, and submit 2 final copies of such documents to Owner within 30 days after receipt of Owner's comments and instructions.
 12. Provide the Owner and Agency with a written certification that the final Drawings and Specifications, other assembled Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables comply with all requirements of Agency. Use the Engineer's Certification of Final Plans and Specifications (Attachment GC-B) for this purpose.
- B. Engineer's services under the Final Design Phase will be considered complete on the date when Engineer has delivered to Owner the final Drawings and Specifications, other assembled Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables and all final design phase deliverables have been accepted by Owner.
- C. In the event that the Work designed or specified by Engineer is to be performed or furnished under more than one prime contract, or if Engineer's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), Owner and Engineer shall, prior to commencement of the Final Design Phase, develop a schedule for performance of Engineer's services during the Final Design, Bidding or Negotiating, Construction, and Post-Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate prime contracts. This schedule is to be prepared and included in or become an amendment to Exhibit A whether or not the work under such contracts is to proceed concurrently.
- D. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Agreement is 1. If more prime contracts are awarded, Engineer shall be entitled to an equitable increase in its compensation under this Agreement.

A1.04 *Bidding or Negotiating Phase*

- A. After acceptance by Owner of the final Drawings and Specifications, other Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and the most recent opinion of probable Construction Cost as determined in the Final Design Phase, and upon written authorization by Owner to proceed, Engineer shall:
1. Assist Owner in advertising for and obtaining bids or proposals for the Work, assist Owner in issuing assembled design, contract, and bidding-related documents (or requests for proposals or other construction procurement documents) to prospective contractors, and, where applicable, maintain a record of prospective contractors to which documents have been issued, attend pre-bid conferences, if any, and receive and process contractor deposits or charges for the issued documents.

2. Prepare and issue Addenda as appropriate to clarify, correct, or change the issued documents. Obtain Agency concurrence on any addenda that modify the bidding documents. Obtain prior concurrence where possible.
 3. Provide information or assistance needed by Owner in the course of any review of proposals or negotiations with prospective contractors.
 4. Consult with Owner as to the qualifications of prospective contractors.
 5. Consult with Owner as to the qualifications of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors, for those portions of the Work as to which review of qualifications is required by the issued documents.
 6. The Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by prospective contractors prior to award of contracts for the Work. Engineer shall issue a bid addendum for any and all approved "or equals" and substitutes. Review of substitutes and "or equals" shall be in accordance with the General Conditions of the Construction Contract and applicable Agency regulations. Services under this paragraph are subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A.
 7. Attend the bid opening, prepare bid tabulation sheets to meet Owner's schedule, and assist Owner in evaluating bids or proposals, assembling final contracts for the Work for execution by Owner and Contractor, and in issuing notices of award of such contracts.
 8. If Owner engages in negotiations with bidders or proposers, assist Owner with respect to technical and engineering issues that arise during the negotiations.
 9. Perform or provide the following other Bidding or Negotiating Phase tasks or deliverables:
 - a. Upon award of the Construction Contract, the Engineer shall furnish to Owner five executed copies of the Contract Documents and one electronic copy of the signed documents, including Drawings and Specifications.
- B. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective contractors (except as may be required if Exhibit F is a part of this Agreement).

A1.05 *Construction Phase*

- A. Upon successful completion of the Bidding and Negotiating Phase, and upon written authorization from Owner, Engineer shall:
 1. *General Administration of Construction Contract:* Consult with Owner and act as Owner's representative as provided in the Construction Contract. The extent and limitations of the duties, responsibilities, and authority of Engineer shall be as assigned in EJCDC® C-700, Standard General Conditions of the Construction Contract (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, or other construction general conditions specified in this Agreement. If Owner, or Owner and Contractor, modify the duties, responsibilities, and authority of Engineer in the Construction Contract, or modify other

terms of the Construction Contract having a direct bearing on Engineer, then Owner shall compensate Engineer for any related increases in the cost to provide Construction Phase services. Engineer shall not be required to furnish or perform services contrary to Engineer's responsibilities as a licensed professional. All of Owner's instructions to Contractor will be issued through Engineer, which shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and the Construction Contract except as otherwise provided in writing.

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

Exhibit A – Engineer's Services

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

**Copyright © 2013 National Society of Professional Engineers, American Council of Engineering Companies,
and American Society of Civil Engineers. All rights reserved.**

intended to be exhaustive or to extend to every aspect of the Work or to involve detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Construction Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment, as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Construction Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.

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

or relating to the acceptability of the Work under the Construction Contract Documents. With reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Construction Contract Documents.

13. *Non-reviewable Matters:* If a submitted matter in question concerns the Engineer's performance of its duties and obligations, or terms and conditions of the Construction Contract Documents that do not involve (1) the performance or acceptability of the Work under the Construction Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer will not provide a decision or interpretation.
14. *Field Orders:* Subject to any limitations in the Construction Contract Documents, Engineer may prepare and issue Field Orders requiring minor changes in the Work.
15. *Change Orders and Work Change Directives:* Recommend Change Orders and Work Change Directives to Owner, as appropriate, and prepare Change Orders and Work Change Directives as required.
16. *Differing Site Conditions:* Respond to any notice from Contractor of differing site conditions, including conditions relating to underground facilities such as utilities, and hazardous environmental conditions. Promptly conduct reviews and prepare findings, conclusions, and recommendations for Owner's use.
17. *Shop Drawings, Samples, and Other Submittals:* Review and approve or take other appropriate action with respect to Shop Drawings, Samples, and other required Contractor submittals, but only for conformance with the information given in the Construction Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Construction Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.
18. *Substitutes and "Or-equal":* Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, but subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A. Review of substitutes and "or equals" shall be in accordance with the General Conditions of the Construction Contract and applicable Agency regulations.
19. *Inspections and Tests:*
 - a. Receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Construction Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Construction Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Construction

Contract Documents. Engineer shall be entitled to rely on the results of such inspections and tests.

- b. As deemed reasonably necessary, request that Contractor uncover Work that is to be inspected, tested, or approved.
 - c. Pursuant to the terms of the Construction Contract, require special inspections or testing of the Work, whether or not the Work is fabricated, installed, or completed.
20. *Change Proposals and Claims:* (a) Review and respond to Change Proposals. Review each duly submitted Change Proposal from Contractor and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer will not resolve the Change Proposal. (b) Provide information or data to Owner regarding engineering or technical matters pertaining to Claims.
21. *Applications for Payment:* Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:
- a. Determine the amounts that Engineer recommends Contractor be paid. Recommend reductions in payment (set-offs) based on the provisions for set-offs stated in the Construction Contract. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the Work is generally in accordance with the Construction Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Construction Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work. In the case of unit price Work, Engineer's recommendations of payment will include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Construction Contract Documents).
 - b. By recommending payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control the Work, or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and

performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the money paid to Contractor by Owner; to determine that title to any portion of the Work, including materials or equipment, has passed to Owner free and clear of any liens, claims, security interests, or encumbrances; or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.

22. *Contractor's Completion Documents:* Receive from Contractor, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Construction Contract Documents, certificates of inspection, tests and approvals, and Shop Drawings, Samples, and other data approved as provided under Paragraph A1.05.A.17. Receive from Contractor and review the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The Engineer shall prepare Record Drawings, and furnish such Record Drawings to Owner.
23. *Substantial Completion:* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, visit the Site to review the Work and determine the status of completion. Follow the procedures in the Construction Contract regarding the preliminary certificate of Substantial Completion, punch list of items to be completed, Owner's objections, notice to Contractor, and issuance of a final certificate of Substantial Completion. Assist Owner regarding any remaining engineering or technical matters affecting Owner's use or occupancy of the Work following Substantial Completion.
24. *Other Tasks:* Perform or provide the following other Construction Phase tasks or deliverables:
 - a. Upon Substantial Completion, the Engineer shall provide a copy of the Certificate of Substantial Completion to the Agency.
25. *Final Notice of Acceptability of the Work:* Conduct a final visit to the Project to determine if the Work is complete and acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice to Owner and Contractor in the form attached hereto as Exhibit E ("Notice of Acceptability of Work") that the Work is acceptable (subject to the provisions of the Notice and Paragraph A1.05.A.21.b) to the best of Engineer's knowledge, information, and belief, and based on the extent of the services provided by Engineer under this Agreement.
26. *Standards for Certain Construction-Phase Decisions:* Engineer will render decisions regarding the requirements of the Construction Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth in the Construction Contract for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

Exhibit A – Engineer's Services

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

- B. *Duration of Construction Phase:* The Construction Phase will commence with the execution of the first Construction Contract for the Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. If the Project involves more than one prime contract as indicated in Paragraph A1.03.D, then Construction Phase services may be rendered at different times in respect to the separate contracts. Subject to the provisions of Article 3, Engineer shall be entitled to an equitable increase in compensation if Construction Phase services (including Resident Project Representative services, if any) are required after the original date for completion and readiness for final payment of Contractor as set forth in the Construction Contract.

A1.06 *Post-Construction Phase*

- A. Upon written authorization from Owner during the Post-Construction Phase, Engineer shall:
1. Together with Owner, visit the Project to observe any apparent defects in the Work, make recommendations as to replacement or correction of defective Work, if any, or the need to repair of any damage to the Site or adjacent areas, and assist Owner in consultations and discussions with Contractor concerning correction of any such defective Work and any needed repairs.
 2. Together with Owner, visit the Project within one month before the end of the Construction Contract's correction period to ascertain whether any portion of the Work or the repair of any damage to the Site or adjacent areas is defective and therefore subject to correction by Contractor.
 3. Perform or provide the following other Post-Construction Phase tasks or deliverables: Attend the operator training for the pump station during system startup. Record the training and provide a copy to the Owner for future operator training.
- B. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate twelve months after the commencement of the Construction Contract's correction period.

PART 2 – ADDITIONAL SERVICES

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

- A. If authorized in writing by Owner, Engineer shall provide Additional Services of the types listed below. These services are not included as part of Basic Services and will be paid for by Owner as indicated in Exhibit C.
1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; preparation or review of environmental assessments and impact statements, not including preparation of the Environmental Report defined under Basic Services; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.

2. Services to make measured drawings of existing conditions or facilities, to conduct tests or investigations of existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.
3. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer, or the Project's design requirements, including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Construction Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date or are due to any other causes beyond Engineer's control.
4. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those agreed to in Paragraph A1.01.A.1 and 2, but only if the Owner's request is made after completion of the Study and Report Phase.
5. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.
6. Providing renderings or models for Owner's use, including services in support of building information modeling or civil integrated management.
7. Undertaking investigations and studies including, but not limited to:
 - a. detailed consideration of operations, maintenance, and overhead expenses;
 - b. the preparation of feasibility studies (such as those that include projections of output capacity, utility project rates, project market demand, or project revenues) and cash flow analyses, provided that such services are based on the engineering and technical aspects of the Project, and do not include rendering advice regarding municipal financial products or the issuance of municipal securities;
 - c. preparation of appraisals;
 - d. evaluating processes available for licensing, and assisting Owner in obtaining process licensing;
 - e. detailed quantity surveys of materials, equipment, and labor; and
 - f. audits or inventories required in connection with construction performed or furnished by Owner.
8. Furnishing services of Consultants for other than Basic Services.
9. Providing data or services of the types described in Exhibit B, when Owner retains Engineer to provide such data or services instead of Owner furnishing the same.
10. Providing the following services:
 - a. Services attributable to more prime construction contracts than specified in Paragraph A1.03.D.

Exhibit A – Engineer's Services

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

**Copyright © 2013 National Society of Professional Engineers, American Council of Engineering Companies,
and American Society of Civil Engineers. All rights reserved.**

- b. Services to arrange for performance of construction services for Owner by contractors other than the principal prime Contractor, and administering Owner's contract for such services.
11. Services during out-of-town travel required of Engineer, other than for visits to the Site or Owner's office as required in Basic Services (Part 1 of Exhibit A).
12. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructibility review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other documents as a result of such review processes.
13. Preparing additional bidding-related documents (or requests for proposals or other construction procurement documents) or Construction Contract Documents for alternate bids or cost estimates requested by Owner for the Work or a portion thereof.
14. Assistance in connection with bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required to complete services required by Paragraph 5.02.A and Exhibit F.
15. Preparing conformed Construction Contract Documents that incorporate and integrate the content of all Addenda and any amendments negotiated by Owner and Contractor.
16. Providing Construction Phase services beyond the original date for completion and readiness for final payment of Contractor, but only if such services increase the total quantity of services to be performed in the Construction Phase, rather than merely shifting performance of such services to a later date.
17. [Deleted]
18. Supplementing Record Drawings with information regarding the completed Project, Site, and immediately adjacent areas obtained from field observations, Owner, utility companies, and other reliable sources.
19. Conducting surveys, investigations, and field measurements to verify the accuracy of Record Drawing content obtained from Contractor, Owner, utility companies, and other sources; revise and supplement Record Drawings as needed.
20. Preparation of operation, maintenance, and staffing manuals.
21. Protracted or extensive assistance in refining and adjusting of Project equipment and systems (such as initial startup, testing, and balancing).
22. Assistance to Owner in training Owner's staff to operate and maintain Project equipment and systems.
23. Assistance to Owner in developing systems and procedures for (a) control of the operation and maintenance of Project equipment and systems, and (b) related recordkeeping.

Exhibit A – Engineer's Services

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

24. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, lien or bond claim, or other legal or administrative proceeding involving the Project.
25. Overtime work requiring higher than regular rates.
26. Providing construction surveys and staking to enable Contractor to perform its work other than as required under Paragraph A1.05.A.8; any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.
27. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.
28. Extensive services required during any correction period, or with respect to monitoring Contractor's compliance with warranties and guarantees called for in the Construction Contract (except as agreed to under Basic Services).
29. Other additional services performed or furnished by Engineer not otherwise provided for in this Agreement.

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

- A. Engineer shall advise Owner that Engineer is commencing to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice to cease from Owner.
 1. Services in connection with Work Change Directives and Change Orders to reflect changes requested by Owner.
 2. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or equal" items; evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the Construction Contract.
 3. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.
 4. Additional or extended services arising from (a) the presence at the Site of any Constituent of Concern or items of historical or cultural significance, (b) emergencies or acts of God endangering the Work, (c) damage to the Work by fire or other causes during construction, (d) a significant amount of defective, neglected, or delayed Work, (e) acceleration of the progress schedule involving services beyond normal working hours, or (f) default by Contractor.
 5. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of the Work by Owner prior to Substantial Completion.

6. Evaluating unreasonable or frivolous requests for interpretation or information (RFIs), Change Proposals, or other demands from Contractor or others in connection with the Work, or an excessive number of RFIs, Change Proposals, or demands.
7. Reviewing a Shop Drawing or other Contractor submittal more than three times, as a result of repeated inadequate submissions by Contractor.
8. While at the Site, compliance by Engineer and its staff with those terms of Owner's or Contractor's safety program provided to Engineer subsequent to the Effective Date that exceed those normally required of engineering personnel by federal, State, or local safety authorities for similar construction sites.

This is **Appendix 1 to EXHIBIT A**, consisting of 5 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated March 17, 2016.

WORKPLAN AND BUDGET

SERVICES RELATING TO THE RADIUM SPRINGS WATER SYSTEM IMPROVEMENT PROJECT FOR DOÑA ANA MUTUAL DOMESTIC WATER CONSUMERS ASSOCIATION

DOÑA ANA, NEW MEXICO

MARCH 10, 2016

INTRODUCTION

This workplan and budget is in response to the request by Doña Ana Mutual Domestic Water Consumers Association (MDWCA) to Souder, Miller & Associates (SMA) to provide data collection, design and construction phase services for water system improvements in Radium Springs. The scope of work is consistent with the United States Department of Agriculture (USDA) Letter of Conditions dated February 10, 2016 for Alternatives B- waterline replacement west of the railroad, C- waterline replacement east of the railroad, D- new fill line from wells to storage tanks, E- replacement/addition of fire hydrants, F- existing tank rehabilitation and G- new booster station from the *Preliminary Engineering Report (PER) Radium Spring Water System Improvements* dated December 2015. *This workplan and budget is supplemental to the workplan and budget dated August 25, 2015 for the data collection and design of Alternatives B and E (approximately 3.2 miles of 6-inch distribution waterlines); Alternatives B and E are only in this workplan with respect to inclusion as part of the overall final design package, and then continuing on into construction phase services.* The project includes a new booster station, rehabilitation of both existing water storage tanks, over 50 new fire hydrants and approximately 5.3 miles of 8- and 6-inch water distribution and fill lines. The 5.3 miles of 6-inch and 8-inch water distribution and fill lines with related appurtenances will be designed on two private easements and on the following roadways:

- De Beers Drive
- Indian Trail
- Frodo Place
- Meador Road
- Tel High Road
- Fort Selden Road
- Desert Edge Road
- Blazing Trail Road
- Interstate 25

The budgets for the following phases of the project will be billed on a lump sum basis; therefore, the invoices will not include an itemized breakdown of charges. Invoices will be issued on a monthly basis reflecting the percentage of each task completed to date. NMGRT will be added to each invoice at the time of billing.

Lump Sum Deliverable Schedule		
Task	Submittal Description	Budget Requested
P3T01	Field Survey and Mapping	\$33,038.00
P3T10	Geotechnical Investigation	\$14,502.00
P3T20	Preliminary Design	\$114,595.00
P4T20	Final Design	\$62,577.00
P5T01	Bid Administration	\$20,952.00
P6T01	Construction Administration	\$78,440.00
P6T10	Resident Project Representative	\$149,110.00
P6T30	Construction Staking	\$40,118.00
P7T01	Operations and Maintenance Manual	\$19,868.00
P7T02	Record Drawings	\$19,962.00
Total Work Scope Cost (not including NMGRT)		\$553,162.00

P3T01 - FIELD SURVEY AND MAPPING

Survey support will include professional land survey support of the project design including coordinating with utility companies to identify and incorporate existing and proposed utility locations, basic topography within the project limits as described in Alternatives C, D, F and G of the Radium Spring Water System Improvements PER dated December 2015. In addition, SMA will also collect survey information for preparation of Doña Ana County (DAC), Burlington Northern Santa Fe (BNSF) Railway and New Mexico Department of Transportation (NMDOT) utility permits. All survey work will be directed and overseen by a New Mexico registered land surveyor. Data for all control used (recovered or set) for the project will be included in the final plans. Note that only apparent rights-of-way will be identified; a boundary survey is not being completed at this time. Survey datums will utilize North American (horizontal) Datum NAD 83 and North American Vertical Datum NAVD 88. Utility location information will be completed by requesting a New Mexico One-Call utility locate "for design" and subsequent surveying of the indicated utilities. *Note: SMA has not included a title search or physical utility location with associated mapping.*

P3T10 - GEOTECHNICAL INVESTIGATION

SMA will contract with Southwest Engineering, Inc. of Las Cruces, New Mexico to complete a geotechnical investigation of the project area. The investigation will be intended to determine the suitability of the native material for bedding and backfill as well as to determine if there are any constructability concerns such shallow groundwater table. The geotechnical report will be used for structural analysis in the design phase and will include a foundation design for the booster station building. The geotechnical report will be provided in the contract documents for the contractors' review during the bidding phase.

P3T20 - PRELIMINARY DESIGN

Preliminary design will include engineering design services for the Doña Ana MDWCA transmission line project through approximately 60% complete. SMA will complete a plan layout, including a grading and drainage plan for appropriate elements of the proposed improvements, as well as all appropriate header sheets, notes and details for review by the Association. Plan and profile sheets will be created for all lines to be installed in public right-of-way (anticipated to be essentially the entire project). As noted above, the project includes the design of a new booster station, rehabilitation of both existing water storage tanks, over 50 new fire hydrants and approximately 5.3 miles of 8- and 6-inch water distribution and fill lines. SMA will also keep in contact with the review and permitting agencies to ensure their respective awareness of the design progress and to expedite approval of the plans.

P4T20 - FINAL DESIGN

Final design will include revisions to the construction plans commensurate with review comments, development of a draft bid package and submittal of these items to the New Mexico Environment Department (NMED) Drinking Water Bureau and United States Department of Agriculture (USDA) Rural Development (RD). This will include combining the previous design of *Alternatives B and E* into the draft bid package. SMA will advise the Association of any adjustments to the opinion of probable construction costs and any adjustments to the total project costs known to SMA. SMA will revise the plans and specifications and prepare a single master package for agency approval. Using this information, permit applications will be prepared. The permit applications will be provided to the Association for their use in obtaining access for the proposed water system improvements.

Note: SMA has not included funding for application, filing or insurance fees that may be required by right of way management agencies. These fees shall be paid directly by the Owner with intended reimbursement from USDA RD.

P5T01 - BID ADMINISTRATION

Bid administration includes activities associated with a single round of bidding for the proposed project. These services will include preparation and distribution of a maximum of ten (10) bid packages to contractors and plan rooms and posting of an electronic bid via the SMA web site, attendance at a pre-bid conference and bid opening to be held at Doña Ana MDWCA office, answering contractor (bidder) questions, review, preparation of a bid tabulation and documentation of bids received by the Association. SMA will examine the bid packages received for completeness including verifying that the contractors are properly licensed and will verify the references for the low bidder. SMA will then make a written recommendation to the owner for the award of the construction contract. *Please note that hard copy bid package preparation beyond 10 packages, which would be entirely elective, may result in additional fees.*

P6T01 - Construction Administration

Upon written authorization from Doña Ana MDWCA, SMA shall:

1. Act as the engineer as described in the contract documents for the project construction.
2. Consult with the Association and act as the Association's representative as provided in the agreement. All of the Association's instructions to the contractor will be issued through SMA who shall have authority to act on behalf of the Association in dealings with the contractor to the extent provided in this workplan of the construction documents.
3. As project representative, participate in a pre-construction conference prior to commencement of work at the site.
4. Make visits to the site as detailed in the agreement, to observe the progress and quality of the various aspects of the contractor's work. Based on information obtained during such visits and observations, SMA shall determine in general if such work is proceeding in accordance with the contract documents and technical specifications and shall keep the Association informed of the progress of the work.
5. Shall have authority during such visits to recommend to the Association that the contractor's work be disapproved and rejected while it is in progress if SMA believes that such work will not produce a completed project that conforms generally to the contract documents and technical specifications or that will prejudice the integrity of the design concept of the completed project as a functioning whole as indicated in the contract documents and technical specifications.
6. Issue necessary clarifications and interpretations of the contract documents and technical specifications as appropriate to the orderly completion of the work. SMA may issue field orders authorizing minor variations from the requirements of the contract documents and technical specifications.
7. Recommend change orders and work change directives as detailed in the agreement.
8. Review and approve submittals and other data that the 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. Such reviews and approvals will not extend to means, methods, techniques, sequences or procedures of construction or to safety precautions and programs incident thereto. SMA will verify and document contractor submittals are in accordance with the technical specification, material received is per the submittals, material installed, tested and measured per the technical specifications.
9. Based on review of applications for payment and accompanying support documentation, recommend the amounts that the contractor be paid. Such recommendations of payment will be based on such observations and review, that, to the best of SMA's knowledge, the work has progressed to the point indicated, the quality of such work is generally in accordance with the contract documents, and the conditions precedent to contractors' being entitled to such payment appear to have been fulfilled in as so far as it is SMA's responsibility to observe the work.

The construction phase will commence with the execution of the construction agreement for the project or any part thereof and will terminate upon written recommendation by SMA of final payment to the contractor. Following notices from contractor that the entire work is ready for its intended use, in company with the Association, review agency, and contractor, SMA will conduct an inspection to determine if the work is substantially complete. If, after considering any objections of the Association, SMA considers the work substantially complete; SMA shall deliver a certificate of substantial completion to the Association, review agency, and contractor.

P6T10 - RESIDENT PROJECT REPRESENTATIVE

Upon written authorization from Doña Ana MDWCA, SMA shall:

1. Act as the construction observer as described in the contract documents for the project construction.
2. Participate in a pre-construction conference prior to commencement of work at the site.
3. Provide the services of a project representative / observer at the construction sites on a full-time basis for the estimated construction schedule of 210 calendar days (approximately 150 working days).
4. Make daily site visits in order to observe the progress and quality of the various aspects of the contractor's work. Based on information obtained during such visits and observations, SMA shall determine in general if such work is proceeding in accordance with NMSSPWC, contract documents and technical specifications (including documentation of field quality control requirements) and shall keep the Association informed of the progress of the work.
5. Verify the quantities in applications for payment and accompanying support documentation and advise of the amounts that the contractor should be paid. SMA will verify and document contractor submittals are in accordance with the technical specification, material received is per the submittals, material installed, tested and measured per the technical specifications.

Job site safety shall be the sole responsibility of the contractor. SMA will not manage or control the contractor's work with respect to means, methods, techniques, sequences or procedures, and/or safety. The contractor will be responsible for complying with rules, laws, ordinances, codes, or orders in the execution of the work. SMA and its subconsultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials or toxic substances in any form at the project site. The Workplan and Cost Proposal have been prepared on the basis that no hazardous or toxic substances are present at the project site. In the event hazardous or toxic substances are discovered on the site, the parties agree to review and renegotiate the terms and conditions of this contract to protect the interests of the parties.

P6T30 - CONSTRUCTION STAKING

SMA will provide construction surveying services for the Doña Ana MDWCA Radium Springs water system improvement project. Specifically, SMA will tie into the established project control, stake the center line (or offset if preferred by contractor) of the waterline at 50' intervals (or greater), angles, tees, vaults, hydrants and valves. SMA will also provide additional incremental stakes for crossings, appropriate stakes for building corners and will provide traffic control for the construction staking. SMA will provide stakes one time with an additional 16 hours available for re-stakes. SMA will collect the top of pipe data during the construction and provide the data for the required record drawings.

P7T01 - OPERATIONS AND MAINTENANCE MANUAL

SMA will attend the operator training for the pump station during startup. As part of the attendance SMA staff will record the training and provide a copy to Doña Ana MDWCA for future operator training. SMA will prepare and furnish to the Association an operations and maintenance manual showing appropriate record information based on project documentation received from the Contractor. SMA will deliver two (2) hardcopies of the operations and maintenance manual (and one digital pdf copy) to the owner and one (1) hardcopy to USDA RD upon completion.

P7T02 - RECORD DRAWINGS

SMA will prepare and furnish the Association record drawings showing appropriate record information based on project documentation received from the contractor. SMA will update the construction plans to reflect changes made during construction. Record Drawings will be prepared utilizing the As-Built drawings provided by the Contractor. SMA will deliver the original record drawings and three (3) hardcopies (and one digital pdf copy) to the owner upon completion. Provide direction and assistance on funding project closeout document to be submitted to the funding agency.

This is **EXHIBIT B**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated March 17, 2016.

Owner's Responsibilities

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

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

- A. Provide Engineer with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations.
- B. Give instructions to Engineer regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Furnish copies (or give specific directions requesting Engineer to use copies already in Engineer's possession) of all design and construction standards, Owner's standard forms, general conditions (if other than EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition), supplementary conditions, text, and related documents and content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and draft Construction Contract Documents, when applicable. Owner shall have responsibility for the final content of (1) such bidding-related documents (or requests for proposals or other construction procurement documents), and (2) those portions of any Construction Contract other than the design (as set forth in the Drawings, Specifications, or otherwise), and other engineering or technical matters; and Owner shall seek the advice of Owner's legal counsel, risk managers, and insurance advisors with respect to the drafting and content of such documents.
- C. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, construction, or investigation at or adjacent to the Site.
- D. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, obtain, furnish, or otherwise make available (if necessary through title searches, or retention of specialists or consultants) such additional Project-related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:
 1. Property descriptions.
 2. Zoning, deed, and other land use restrictions.
 3. Utility and topographic mapping and surveys.

4. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
 5. Explorations and tests of subsurface conditions at or adjacent to the Site; geotechnical reports and investigations; drawings of physical conditions relating to existing surface or subsurface structures at the Site; hydrographic surveys, laboratory tests and inspections of samples, materials, and equipment; with appropriate professional interpretation of such information or data.
 6. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental, historical, or cultural studies relevant to the Project, the Site, and adjacent areas.
 7. Data or consultations as required for the Project but not otherwise identified in this Agreement.
- E. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.
- F. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, provide, as required for the Project:
1. Accounting, bond and financial advisory (including, if applicable, "municipal advisor" services as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) and the municipal advisor registration rules issued by the Securities and Exchange Commission), independent cost estimating, and insurance counseling services.
 2. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests.
 3. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the money paid.
- G. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Construction Contract Documents (other than those required to be furnished or arranged by Contractor), or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof. Provide Engineer with the findings and reports generated by testing laboratories, including findings and reports obtained from or through Contractor.
- H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.

- I. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructibility review.
- J. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.
- K. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, then designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.
- L. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.
- M. Examine all alternative solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, risk manager, insurance counselor, financial/municipal advisor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- N. Inform Engineer regarding any need for assistance in evaluating the possible use of Project Strategies, Technologies, and Techniques, as defined in Exhibit A.
- O. Advise Engineer as to whether Engineer's assistance is requested in identifying opportunities for enhancing the sustainability of the Project.
- P. Place and pay for advertisement for Bids in appropriate publications.
- Q. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.
- R. Attend and participate in the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Site visits to determine Substantial Completion and readiness of the completed Work for final payment.
- S. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement, as required.
- T. Perform or provide the following: Provide documentation of current easements.

This is **EXHIBIT C**, consisting of 2 pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated March 17, 2016.

Payments to Engineer for Services and Reimbursable Expenses
COMPENSATION PACKET BC-1: Basic Services – Lump Sum

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

ARTICLE 2 – OWNER’S RESPONSIBILITIES

C2.01 Compensation for Basic Services (other than Resident Project Representative) – Lump Sum Method of Payment

A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, except for services of Engineer’s Resident Project Representative, if any, as follows:

1. A Lump Sum amount of \$404,052.00 based on the following estimated distribution of compensation:

a. Study and Report Phase	<u>\$0.00</u>
b. Preliminary Design Phase	<u>\$162,135.00</u>
c. Final Design Phase	<u>\$62,577.00</u>
d. Bidding and Negotiating Phase	<u>\$20,952.00</u>
e. Construction Phase	<u>\$158,388.00</u>
f. Post-Construction Phase	<u>\$0.00</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 and Agency.

3. The Lump Sum includes compensation for Engineer’s services and services of Engineer’s Consultants, if any. Appropriate amounts have been incorporated in the Lump Sum to account for labor costs, overhead, profit, expenses (other than any expressly allowed Reimbursable Expenses), and Consultant charges.

4. In addition to the Lump Sum, Engineer is also entitled to reimbursement from Owner for the following Reimbursable Expenses (see Appendix 1 for rates or charges): None.

5. The portion of the Lump Sum amount billed for Engineer’s services will be based upon Engineer’s estimate of the percentage of the total services actually completed during the billing period. If any Reimbursable Expenses are expressly allowed, Engineer may also bill for any such Reimbursable Expenses incurred during the billing period.

- B. *Period of Service:* The compensation amount stipulated in Compensation Packet BC-1 is conditioned on a period of service not exceeding 24 months. If such period of service is extended, the compensation amount for Engineer's services shall be appropriately adjusted with concurrence of the Owner and Agency.

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

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

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

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

1. *Resident Project Representative Services:* For services of Engineer's Resident Project Representative, if any, under Paragraph A1.05 of Exhibit A, the Lump Sum amount of \$149,110.00. The Lump Sum includes compensation for the Resident Project Representative's services. Appropriate amounts have been incorporated in the Lump Sum to account for labor costs, overhead, profit, and expenses (other than any expressly allowed Reimbursable Expenses) related to the Resident Project Representative's Services. Changes will not be effective unless and until concurred in by the Owner and Agency.
2. *Reimbursable Expenses:* In addition to the Lump Sum, Engineer is also entitled to reimbursement from Owner for the following RPR Reimbursable Expenses (see Appendix 1 for rates or charges): None
3. *Resident Project Representative Schedule:* The Lump Sum amount set forth in Paragraph C2.04.A.1 above is based on full-time RPR services on an eight-hour workday Monday through Friday over a 210 calendar day construction schedule. Modifications to the schedule shall entitle Engineer to an equitable adjustment of compensation for RPR services.

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

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

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

- A. Owner shall pay Engineer for Additional Services, if any, as follows:
1. *General:* For services of Engineer's personnel engaged directly on the Project pursuant to Paragraph A2.01 or A2.02 of Exhibit A, except for services as a consultant or witness under Paragraph A2.01.A.20, (which if needed shall be separately negotiated based on the nature of the required consultation or testimony) an amount equal to the cumulative hours charged to the Project by each class of Engineer's personnel times Standard Hourly Rates for each applicable billing class for all Additional Services performed on the Project, plus related Reimbursable Expenses and Engineer's Consultant's charges, if any.
- B. *Compensation For Reimbursable Expenses:*
1. For those Reimbursable Expenses that are not accounted for in the compensation for Basic Services under Paragraph C2.01 and are directly related to the provision of Additional Services, Owner shall pay Engineer at the rates set forth in Appendix 1 to this Exhibit C.
 2. Reimbursable Expenses include the expenses identified in Appendix 1 and the following categories: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls, mobile phone charges, and courier charges; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Project-related items; and Consultants' charges. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
 3. The amounts payable to Engineer for Reimbursable Expenses, if any, will be the Additional Services-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to such Additional Services, the latter multiplied by a factor of 1.10.
 4. The Reimbursable Expenses Schedule will be adjusted annually (as of January 2017) to reflect equitable changes in the compensation payable to Engineer. Changes will not be effective unless and until concurred in by the Owner and Agency.
- C. *Other Provisions Concerning Payment for Additional Services:*
1. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of 1.15.

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 no cost.

This is **Appendix 1 to EXHIBIT C**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated March 17, 2016.

Reimbursable Expenses Schedule

EXPENSES

All project-related expenses will be billed at rates determined with respect to current market pricing; *a complete list of expense rates is available upon request.*

OTHER SERVICES

Telephone/facsimile/postage @ actual cost

Mileage @ \$0.54 per mile (or current IRS rate)

Per diem \$140.00 per day (or max per-diem rate per USGSA)

Other travel (car rental, air, etc.) @ actual cost

Applicable taxes will be added to all billable hours, expenses and other charges for which such tax has not previously been paid. A 1.0% interest charge per month will be applied to all invoices not paid within 30 days.

This is **Appendix 2 to EXHIBIT C**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated March 17, 2016.

Standard Hourly Rates Schedule

A. *Standard Hourly Rates:*

1. Standard Hourly Rates are set forth in this Appendix 2 to this Exhibit C and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
2. The Standard Hourly Rates apply only as specified in Article C2.

B. *Schedule:*

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

PROFESSIONAL SERVICES

Professional Staff

Principal	\$ 200.00	per hour
Senior Design Manager	\$ 180.00	per hour
Senior Engineer/Scientist/Surveyor/Manager II	\$ 160.00	per hour
Senior Engineer/Scientist/Surveyor/Manager I	\$ 140.00	per hour
Project Engineer/Scientist/Surveyor/Manager II	\$ 120.00	per hour
Project Engineer/Scientist/Surveyor/Manager I	\$ 105.00	per hour
Staff EIT/Scientist/LSIT II	\$ 90.00	per hour
Staff EIT/Scientist/LSIT I	\$ 80.00	per hour

Technical Staff

Senior Engineering/Design/Survey Tech V	\$ 115.00	per hour
Senior Engineering/Design/Survey Tech IV	\$ 100.00	per hour
Engineering/CAD/Design/Survey/Field Tech III	\$ 85.00	per hour
Engineering/CAD/Design/Survey/Field Tech II	\$ 75.00	per hour
Engineering/CAD/Design/Survey/Field Tech I	\$ 65.00	per hour
Construction Observer III	\$ 90.00	per hour
Construction Observer II	\$ 75.00	per hour
Construction Observer I	\$ 55.00	per hour

Support Staff

Project Financial/Manager Assistant II	\$ 80.00	per hour
Project Financial/Manager Assistant I	\$ 65.00	per hour
Administrative Assistant IV	\$ 105.00	per hour
Administrative Assistant III	\$ 85.00	per hour
Administrative Assistant II	\$ 65.00	per hour
Administrative Assistant I	\$ 45.00	per hour

Applicable taxes will be added to all billable hours, expenses and other charges for which such tax has not previously been paid. A 1.0% interest charge per month will be applied to all invoices not paid within 30 calendar days.

This is **EXHIBIT D**, consisting of 5 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated March 17, 2016.

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

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

ARTICLE 1 - SERVICES OF ENGINEER

D1.01 Resident Project Representative

- A. Engineer shall furnish a Resident Project Representative (“RPR”) to assist Engineer in observing progress and quality of the Work. The RPR may provide full time representation or may provide representation to a lesser degree. RPR is Engineer’s representative at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR’s actions. Full time Resident Project Representation is required unless requested in writing by the Owner and waived in writing by the Agency.
- B. Through RPR's observations of the Work, including field checks of materials and installed equipment, Engineer shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, Engineer shall not, as a result of such RPR observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer (including the RPR) have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to the Work or any Constructor’s work in progress, for the coordination of the Constructors’ work or schedules, or for any failure of any Constructor to comply with Laws and Regulations applicable to the performing and furnishing of its work. The Engineer (including RPR) neither guarantees the performances of any Constructor nor assumes responsibility for any Constructor’s failure to furnish and perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents. In addition, the specific terms set forth in Exhibit A, Paragraph A1.05, of this Agreement are applicable.
- C. The duties and responsibilities of the RPR are as follows:
 - 1. *General:* RPR’s dealings in matters pertaining to the Work in general shall be with Engineer and Contractor. RPR’s dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner only with the knowledge of and under the direction of Engineer.
 - 2. *Schedules:* Review the progress schedule, schedule of Shop Drawing and Sample submittals, schedule of values, and other schedules prepared by Contractor and consult with Engineer concerning acceptability of such schedules.
 - 3. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings (but

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

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

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

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

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

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

11. *Records:*

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

- d. Record and maintain accurate, up-to-date lists of the names, addresses, fax numbers, e-mail addresses, websites, and telephone numbers (including mobile numbers) of all Contractors, Subcontractors, and major Suppliers of materials and equipment.
- e. Maintain records for use in preparing Project documentation.
- f. Upon completion of the Work, furnish original set of all RPR Project documentation to Engineer.

12. *Reports:*

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

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

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

15. *Completion:*

- a. Participate in Engineer's visits to the Site regarding Substantial Completion, assist in the determination of Substantial Completion, and prior to the issuance of a Certificate of Substantial Completion submit a punch list of observed items requiring completion or correction.
- b. Participate in Engineer's visit to the Site in the company of Owner and Contractor, to determine completion of the Work, and prepare a final punch list of items to be completed or corrected by Contractor.

- c. Observe whether all items on the final punch list have been completed or corrected, and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work (Exhibit E).
- D. Resident Project Representative shall not:
1. Authorize any deviation from the Construction Contract Documents or substitution of materials or equipment (including “or-equal” items).
 2. Exceed limitations of Engineer’s authority as set forth in this Agreement.
 3. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers, or any Constructor.
 4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of the Work, by Contractor or any other Constructor.
 5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
 6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
 7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
 8. Authorize Owner to occupy the Project in whole or in part.

This is **EXHIBIT E**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated March 17, 2016.



NOTICE OF ACCEPTABILITY OF WORK

PROJECT:

OWNER:

CONTRACTOR:

OWNER'S CONSTRUCTION CONTRACT IDENTIFICATION:

EFFECTIVE DATE OF THE CONSTRUCTION CONTRACT:

ENGINEER:

NOTICE DATE:

To: _____
Owner

And To: _____
Contractor

From: _____
Engineer

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

CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK

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

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

By: _____

Title: _____

Dated: _____

This is **EXHIBIT F**, consisting of 1 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated March 17, 2016.

Construction Cost Limit

Not used.

This is **EXHIBIT G**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated March 17, 2016.

Insurance

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

G6.05 Insurance

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

1. By Engineer:

- | | |
|---|-------------|
| a. Workers' Compensation: | Statutory |
| b. General Liability -- | |
| 1) Each Occurrence (Bodily Injury and Property Damage): | \$1,000,000 |
| 2) General Aggregate: | \$2,000,000 |
| c. Excess or Umbrella Liability -- | |
| 1) Per Occurrence: | \$1,000,000 |
| 2) General Aggregate: | \$1,000,000 |
| d. Automobile Liability -- | |
| 1) Combined Single Limit (Bodily Injury & Property Damage): | \$1,000,000 |
| e. Professional Liability -- | |
| 1) Each Claim Made | \$2,000,000 |
| 2) Annual Aggregate | \$2,000,000 |

2. By Owner:

- a. The Owner represents and warrants that it, and its agents and staff employed by it, is and are protected by worker's compensation insurance and that the Owner has such coverage under public liability and property damage insurance policies which the Owner deems to be adequate.

B. *Additional Insureds:*

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

a. Souder, Miller & Associates
Engineer

b. _____
Engineer's Consultant

Exhibit G – Insurance.

c. _____
Engineer's Consultant

d. _____
[other]

2. During the term of this Agreement the Engineer shall notify Owner of any other Consultant to be listed as an additional insured on Owner's general liability policies of insurance.
3. The Owner shall be listed on Engineer's general liability policy as provided in Paragraph 6.05.A.

This is **EXHIBIT H**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated March 17, 2016.

Dispute Resolution

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

H6.08 *Dispute Resolution*

- A. *Mediation*: Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof (“Disputes”) to mediation by a party mutually agreed upon by both the Owner and the Engineer. Owner and Engineer agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis, and shall be completed within 120 days. If such mediation is unsuccessful in resolving a Dispute, then (1) the parties may mutually agree to a dispute resolution of their choice, such as Arbitration as described below, if the amount in controversy is less than \$200,000, or (2) either party may seek to have the Dispute resolved by a court of competent jurisdiction.
- A. Arbitration: If the parties mutually agree, and the amount in controversy is less than \$200,000 the Disputes between Owner and Engineer shall be settled by arbitration in accordance with the Construction Industry Arbitration rules of the American Arbitration Association rules effective at the Effective Date, subject to the conditions stated below. This agreement to arbitrate and any other agreement or consent to arbitrate entered into in accordance with this Paragraph H6.09.A will be specifically enforceable under prevailing law of any court having jurisdiction.
1. Notice of the demand for arbitration must be filed in writing with the other party to the Agreement and with the party mutually agreed upon by both the Owner and the Engineer. The demand must be made within a reasonable time after the Dispute has arisen. In no event may the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such Dispute would be barred by the applicable statute of limitations.
 2. All demands for arbitration and all answering statements thereto which include any monetary claims must contain a statement that the total sum or value in controversy as alleged by the party making such demand or answering statement is not more than \$200,000 (exclusive of interest and costs). The arbitrators will not have jurisdiction, power, or authority to consider, or make findings (except in denial of their own jurisdiction) concerning any Dispute if the amount in controversy in such Dispute is more than \$200,000 (exclusive of interest and costs), or to render a monetary award in response thereto against any party which totals more than \$200,000 (exclusive of interest and costs). Disputes that are not subject to arbitration under this paragraph may be resolved in any court of competent jurisdiction.
 3. The rules of any arbitration shall be supplemented to include the following: The award rendered by the arbitrators shall be in writing, and shall include (a) a precise breakdown of the award, and (b) a written explanation of the award specifically citing the Agreement provisions deemed applicable and relied on in making the award.

Exhibit H - Dispute Resolution.

4. The award rendered by the arbitrators will be consistent with the Agreement of the parties and final, and judgment may be entered upon it in any court having jurisdiction thereof, and will not be subject to appeal or modification.
5. If a Dispute in question between Owner and Engineer involves the work of a Contractor, Subcontractor, or consultants to the Owner or Engineer (each a "Joinable Party"), and such Joinable Party has agreed contractually or otherwise to participate in a consolidated arbitration concerning this Project, then either Owner or Engineer may join such Joinable Party as a party to the arbitration between Owner and Engineer hereunder. Nothing in this Paragraph H6.09.A.5 nor in the provision of such contract consenting to joinder shall create any claim, right, or cause of action in favor of the Joinable Party and against Owner or Engineer that does not otherwise exist.

This is **EXHIBIT I**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated March 17, 2016.

Limitations of Liability

Not used.

This is **EXHIBIT J**, consisting of 1 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated March 17, 2016.

Special Provisions

Additional Modifications to the “Agreement between Owner and Engineer for Professional Services”, EJCDC E-500:

Per USDA Guidance for the Use of Engineers Joint Contract Documents Committee (EJCDC) Documents on Water and Waste Disposal Projects with RUS Financial Assistance, via RUS Bulletin 1780-26, with effective date of 4/11/2014, the revisions detailed in Appendix 1 to Exhibit J have been made to the EJCDC E-500.

Non-Appropriations Clause: The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, the Owner may immediately terminate this Agreement by giving the Engineer written notice of such termination. The Owner’s decision as to whether sufficient appropriations are available shall be accepted by the Engineer and shall be final.

Insert the following additional understanding within Paragraph B.2.01.S:

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

This is **Appendix 1 to EXHIBIT J**, consisting of 4 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated March 17, 2016.

Revisions to EJCDC E-500

Amend paragraph 4.01.A by inserting the following text after the first sentence: “Invoices must include a breakdown of services provided.”

In paragraph 6.04.B replace “shall” with “may”.

Modify paragraph 7.01.A.25 by striking “, as an Additional Service.”

Add paragraph 7.01.A.38 to the Agreement as follows:

Agency – The Rural Utilities Service or any designated representative of Rural Utilities Service, including USDA, Rural Development.

Add paragraph 8.05 to the Agreement as follows:

8.05 Federal Requirements

A. Agency Concurrence. Signature of a duly authorized representative of the Agency in the space provided on the signature page of EJCDC form E-500 hereof does not constitute a commitment to provide financial assistance or payments hereunder but does signify that this Agreement conforms to Agency’s applicable requirements. This Agreement shall not be effective unless the Funding Agency’s designated representative concurs. No amendment to this Agreement shall be effective unless the Funding Agency’s designated representative concurs.

B. Audit and Access to Records. Owner, Agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Engineer which are pertinent to the Agreement, for the purpose of making audits, examinations, excerpts, and transcriptions. Engineer shall maintain all required records for three years after final payment is made and all other pending matters are closed.

C. Restrictions on Lobbying. Engineer and each Consultant shall comply with “Restrictions on Lobbying” if they are recipients of engineering services contracts and subcontracts that exceed \$100,000 at any tier. If applicable, Engineer must complete a certification form on lobbying activities related to a specific Federal loan or grant that is a funding source for this Agreement. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other applicable award. Each tier shall disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Certifications and disclosures are forwarded from tier to tier up to the Owner. Necessary certification and disclosure forms shall be provided by Owner.

D. Suspension and Debarment. Engineer certifies, by signing this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency. Engineer will not contract with any Consultant for this project if it or its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Necessary certification forms shall be provided by the Owner. The Engineer will complete and submit a form AD-1048, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – lower tier transactions," to the Owner who will forward it the USDA, Rural Development processing office.

~~Replace paragraph A1.01.A.1.b with "In addition, Engineer must identify, study, and evaluate multiple potential alternative solutions potentially available to Owner, unless Owner and Engineer mutually agree with Agency concurrence that only one feasible solution exists. The number of alternative solutions should be appropriate to the specific project as concurred in by the Agency."~~

~~Delete paragraph A1.01.A.1.c.~~

~~Insert the following additional text at the end of Article A1.01.A.8: "The Report mentioned in paragraph 1.01.A.8 of Exhibit A to the Agreement is the Preliminary Engineering Report as defined in RUS Bulletin 1780-2. This document must meet customary professional standards as required by 7 CFR 1780.55. The Report must be concurred in by the Agency."~~

~~Modify paragraph A1.01.A.10 by inserting "and approved by the Agency" after "When mutually agreed."~~

~~Add the following immediately after paragraph A1.01.A.14: "Provide an Environmental Report as defined at 7 CFR 1794 and RUS Bulletin 1794A-602 or other Agency approved format. The Environmental Report must be concurred in by the Agency."~~

~~Replace paragraph A1.01.A.16 with "Revise the Report and any other Study and Report Phase deliverables in response to Owner's and Agency's comments, as appropriate, and furnish three (3) written copies and one (1) electronic copy of the revised Report and any other Study and Report Phase deliverables to the Owner within [] days of receipt of Owner's and Agency's comments."~~

~~Modify paragraph A1.02.A by inserting "and concurrence by Agency" after the words "acceptance by Owner."~~

~~Modify paragraph A1.02.A.2 by inserting "and Agency" after "authorized by Owner."~~

~~Add the following to the end of paragraph A1.02.A.8: "Engineer must also incorporate all Agency regulations, forms, and design and construction standards applicable to the project in development of the documents indicated in this Article."~~

~~Add the following immediately after paragraph A1.03.A.9: "The Engineer shall identify the building codes and accessibility standards used in the design and indicate them on the drawings and specifications and certify that the final drawings and specifications comply with those standards."~~

~~Modify paragraph A1.03.A.10 by adding the "and Agency" after the word "counsel."~~

Insert paragraph A1.03.A.12 stating, "Provide the Owner and Agency with a written certification that the final Drawings and Specifications, other assembled Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables comply with all requirements of Agency. Use the Engineer's Certification of Final Plans and Specifications (Attachment GC-B) for this purpose."

Modify paragraph A1.03.B by deleting the period at the end of the paragraph and adding: "and all final design phase deliverables have been accepted by Owner."

Add the following to the end of paragraph A1.04.A.2: "Obtain Agency concurrence on any addenda that modify the bidding documents. Obtain prior concurrence where possible."

Replace paragraph A1.04.A.6 with the following: "The Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by prospective contractors prior to award of contracts for the Work. Engineer shall issue a bid addendum for any and all approved "or equals" and substitutes. Review of substitutes and "or equals" shall be in accordance with the General Conditions of the Construction Contract and applicable Agency regulations. Services under this paragraph are subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A."

Add the following sentence immediately after paragraph A1.04.A.9: "Upon award of the Construction Contract, the Engineer shall furnish to Owner five executed copies of the Contract Documents and one electronic copy of the signed documents, including Drawings and Specifications."

Paragraph A1.05.A.4: Insert "and chair" after "Participate in" regarding the preconstruction conference.

Delete "If requested by Owner to do so" from Article A1.05.A.6 regarding the Engineer maintaining a set of Drawings and Specifications.

Insert paragraph A1.05.A.9.c stating "The visits described in Article A1.05.A.9.a shall be at least monthly and the Engineer shall document all visits to the project with copies furnished to the Owner and Agency."

Add the following text at the end of paragraph A1.05.A.18: "Review of substitutes and "or equals" shall be in accordance with the General Conditions of the Construction Contract and applicable Agency regulations."

Insert paragraph A1.05.A.24.a: "Upon Substantial Completion, the Engineer shall provide a copy of the Certificate of Substantial Completion to the Agency."

Modify paragraph A1.05.A.22 by striking the words "Receive from Contractor, review, and transmit to Owner the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The extent of Engineer's review of record documents shall be to check that Contractor has submitted all pages."

Add the following to the end of paragraph A1.05.A.22: "Receive from Contractor and review the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The Engineer shall prepare Record Drawings, and furnish such Record Drawings to Owner."

Add the following text after “preparation or review of environmental assessments and impact statements” in A2.01.A.1: “not including preparation of the Environmental Report defined under Basic Services.”

Replace the period at the end of Article A2.01.A.4 with a comma and add the following text to the end of the Article: “but only if the Owner’s request is made after completion of the Study and Report Phase.”

Mark paragraph A2.01.A.17 as “[Deleted].”

Replace paragraph A2.02.A.2 with the following: “Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than “or equal” items; evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the Construction Contract.”

Modify Exhibit C, Compensation Packet BC-1, paragraph C2.01.A.2, by adding “and Agency” after “approved in writing by the Owner.”

Modify Exhibit C, Compensation Packet BC-1, paragraph C2.01,B by inserting “with concurrence of the Owner and Agency” after “the compensation amount for Engineer’s services shall be appropriately adjusted.”

Modify Exhibit C, Compensation Packet RPR-1, paragraph C2.04.A.3 by inserting the following text at the end of the paragraph, “Changes will not be effective unless and until concurred in by the Owner and Agency.”

Modify Exhibit C, Compensation Packet AS-1, paragraph C2.05.B.4, by inserting the following text at the end of the paragraph, “Changes will not be effective unless and until concurred in by the Owner and Agency.”

Modify Exhibit C, Compensation Packet AS-1, paragraph C2.05.C.3 by deleting “at cost” and inserting “at no cost” at the end of the paragraph.

Add the following to the end of Exhibit D, Article D1.01.A: “Full time Resident Project Representation is required unless requested in writing by the Owner and waived in writing by the Agency.”

Mark paragraph D1.01.C.12.b as [Deleted] regarding Resident Project representative role in Change Orders, Work Change Directives, and Field Orders.

This is **EXHIBIT K**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated March 17, 2016.

AMENDMENT TO OWNER-ENGINEER AGREEMENT
Amendment No. _____

The Effective Date of this Amendment is: _____.

Background Data

Effective Date of Owner-Engineer Agreement:

Owner:

Engineer:

Project:

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

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

Description of Modifications:

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

Agreement Summary:

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

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

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

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

OWNER:

ENGINEER:

By: _____
Print name: _____

By: _____
Print name: _____

Title: _____

Title: _____

Date Signed: _____

Date Signed: _____