

## MEMORANDUM

**DATE:** February 14, 2012

**TO:** Board of County Commissioners

**VIA:** Katherine Miller, County Manager

**FROM:** Julia Valdez, Constituent Services Liaison, Manager's Office

**RE:** Acknowledgement and Recognition of Members of the Santa Fe County Safety Committee for Completing the New Mexico Association of Counties Risk Awareness Program and Reducing Workers' Compensation Claims by 16.8% (Commissioner Stefanics)

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### ITEM:

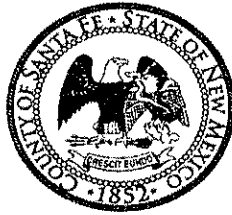
RAP (Risk Awareness Program) was created by NMAC to bring awareness to hazards in our work environments.

The Santa Fe County Safety Committee was created by resolution. Representatives from each department meet regularly to discuss the different kinds of safety issues. It is a useful vehicle to disseminate all types of safety concerns throughout the county.

Members of the Safety Committee received the 2011 NMAC Risk Awareness Program (RAP) award for reducing Workers' Compensation claims by 16.8% after successfully completing the program.

### REQUEST ACTION:

Commissioner Stefanics respectfully requests the Board of County Commissioners support and approve this item.



## MEMORANDUM

**DATE:** February 14, 2012

**TO:** Board of County Commissioners

**VIA:** Katherine Miller, County Manager

**FROM:** Julia Valdez, Constituent Services Liaison, Manager's Office

**RE:** Acknowledgement and Recognition of Richard Varela, Bureau of Elections and Erle Wright, G.I.S., Santa Fe County Graduates of the NM EDGE County College and CPM (Certified Public Manager®) Programs (Commissioner Stefanics)

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### ITEM:

NM EDGE, a service of New Mexico State University's Cooperative Extension Service, is a program designed to provide a comprehensive course of study to administrators, managers, elected officials, and staff in local, state, tribal, and national government, through which participants can acquire and apply the best practices and theory to their management behaviors and strategies using the highest professional standards.

Richard Varela has earned the designation of Certified Public Supervisors (CPS).

Erle Wright has earned the designation of NM Certified County GIS Specialist, and he is among the first in the State to do so.

They were recently honored at the NM EDGE County College & CPM Graduation Ceremony at the NMAC Legislative Conference held at in Santa Fe.

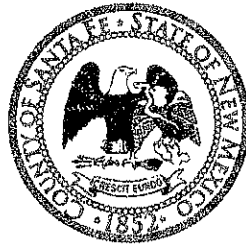
### REQUEST ACTION:

Commissioner Stefanics respectfully requests the Board of County Commissioners support and approve this item.

**Daniel "Danny" Mayfield**  
*Commissioner, District 1*

**Virginia Vigil**  
*Commissioner, District 2*

**Robert A. Anaya**  
*Commissioner, District 3*



**Kathy Holian**  
*Commissioner, District 4*


**Liz Stefanics**  
*Commissioner, District 5*

**Katherine Miller**  
*County Manager*

## **MEMORANDUM**

**DATE:** *February 14<sup>th</sup>, 2012*

**TO:** *Board of County Commissioners*

**FROM:** *Adam Leigland, Public Works Department Director* 

**VIA:** *Katherine Miller, County Manager*

**ITEM AND ISSUE:** *BCC Meeting February 14<sup>th</sup>, 2012*

REQUEST APPROVAL OF A RESOLUTION AUTHORIZING THE COUNTY MANAGER TO EXECUTE ALL GRANT AGREEMENT AND LOAN DOCUMENTS IN CONNECTION WITH THE RIO QUEMADO WATER PROJECT BETWEEN THE NEW MEXICO WATER TRUST BOARD/NEW MEXICO FINANCE AUTHORITY AND SANTA FE COUNTY.

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### **BACKGROUND AND SUMMARY:**

In October of 2010 the Board of County Commissioners, by Resolution No. 2010-188, approved the submission of applications to the Water Trust Board for funding consideration in the 2011 funding cycle. The Rio Quemado Watershed Restoration Project was given conditional approval, from Water Trust Board, on June 1, 2011 for a 90/10 grant.

On January 10<sup>th</sup>, 2012 the Board of County Commissioners authorized the publication of title and general summary of Ordinance No. 2012-\_\_\_\_ Authorizing the execution and delivery of a water project fund loan/grant agreement between the New Mexico Water Trust Board, The New Mexico Finance Authority and Santa Fe County. The Loan/Grant is for the sole purpose of financing the costs of planning, designing And implementing a vegetative management and bank stabilization plan on the Rio Quemado.

On January 16<sup>th</sup>, 2012 notice of consideration of the proposed ordinance was advertised in *The New Mexican*.

On January 31<sup>st</sup>, 2012 the Board of County Commissioners approved the previously mentioned ordinance.

**ACTION REQUESTED:**

Staff recommends approval of a Resolution Authorizing the County Manager To Execute All Grant Agreement And Loan Documents In Connection With The Rio Quemado Water Project Fund Loan Between The New Mexico Water Trust Board/New Mexico Finance Authority And Santa Fe County.

**THE BOARD OF COUNTY COMMISSIONERS OF  
SANTA FE COUNTY**

**RESOLUTION NO. 2012-\_\_\_\_\_**

**A RESOLUTION AUTHORIZING THE COUNTY MANAGER TO EXECUTE ALL GRANT  
AGREEMENT AND LOAN DOCUMENTS IN CONNECTION WITH THE RIO QUEMADO  
WATER PROJECT BETWEEN THE NEW MEXICO WATER TRUST BOARD/NEW  
MEXICO FINANCE AUTHORITY AND SANTA FE COUNTY**

**WHEREAS**, in October of 2010 the Board of County Commissioners (BCC), by Resolution No. 2010-188 approved the submission of applications to the Water Trust Board for funding consideration in the 2011 funding cycle;

**WHEREAS**, on June 1<sup>st</sup>, 2011 the Water Trust Board gave conditional approval for a ninety (90) percent grant coupled with a ten (10) percent loan for the Rio Quemado Watershed Restoration Project with a grant amount of forty-one thousand four hundred (\$41,400) and a loan amount of four thousand six hundred (\$4,600);

**WHEREAS**, on January 10<sup>th</sup>, 2012 the BCC authorized the publication of title and general summary of an ordinance authorizing the execution of the loan/grant agreement for the Rio Quemado Watershed Restoration Project;

**WHEREAS**, on January 16<sup>th</sup>, 2012 notice of consideration of the proposed ordinance was advertised in *The New Mexican*;

**WHEREAS**, on January 31, 2012 the BCC adopted the ordinance authorizing execution and delivery of the grant/loan agreement to the Water Trust Board and the New Mexico Finance Authority; and

**WHEREAS**, the BCC, in order to ensure timely processing of the grant/loan wishes to delegate to the County Manager signature authority over the grant/loan agreement and any other documents necessary to complete the grant/loan transaction.

**NOW, THEREFORE BE IT RESOLVED THAT** the County Manager is authorized to execute the grant/loan agreement and any other documents necessary for the grant/loan agreement between the New Mexico Water Trust Board, The New Mexico Finance Authority and Santa Fe County for the Rio Quemado Water Project.

**APPROVED and ADOPTED this 14<sup>th</sup> DAY OF FEBRUARY 2012.**

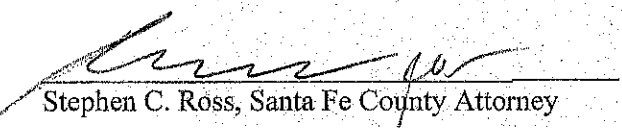
**THE BOARD OF COUNTY COMMISSIONERS OF  
SANTA FE COUNTY**

By: \_\_\_\_\_  
Liz Stefanics, Chair

**ATTEST:**

\_\_\_\_\_  
Valerie Espinoza, Santa Fe County Clerk

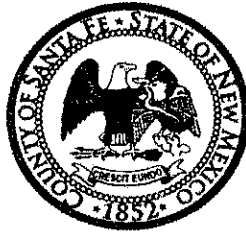
**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Stephen C. Ross, Santa Fe County Attorney

Daniel "Danny" Mayfield  
Commissioner, District 1

Virginia Vigil  
Commissioner, District 2

Robert A. Anaya  
Commissioner, District 3



Kathy Holian  
Commissioner, District 4

Liz Stefanics  
Commissioner, District 5

Katherine Miller  
County Manager

## MEMORANDUM

To: Board of County Commissioners

From: Teresa Martinez, Finance Director *TM*

Through: Katherine Miller, County Manager

Date: February 14, 2012

**RE: Resolution No. 2012 – Increase General Fund budget authority for the Support of the LANL Regional Coalition for a total of \$5,000 for FY 2012**

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## ISSUE

Finance Division staff, on behalf of Board of County Commissioners (BCC), is seeking possible approval of a budget increase to the General Fund to support the efforts/initiatives of the Regional Coalition of LANL Communities for a total of \$5,000.

## BACKGROUND

At the January 29<sup>th</sup> BCC administrative meeting, the Board discussed and approved funding for the Regional Coalition of LANL Communities for a total of \$5,000. The funding would represent Santa Fe County's contribution for efforts of the Coalition completed during fiscal year 2012.

## RECOMMENDATION

The Finance Division seeks approval of an increase of \$5,000 to the General Fund from cash reserves. The increased budget authority will support the initiatives of the Regional Coalition of LANL Communities.

# SANTA FE COUNTY

## BUDGET ADJUSTMENT REQUEST FORM (BAR)

Entered by Finance

Fiscal Year 2012 (July 1, 2011 through June 30, 2012)

**NOTE: THIS FORM MUST BE ACCOMPANIED BY A "BUDGET ADJUSTMENT NARRATIVE FORM"**  
 INCLUDE ONLY ONE FUND IN THIS BAR.

Requesting Department / Division: CMO / Finance      Date: February 14, 2012  
 Line-Item Transfer: \_\_\_\_\_ (between cost centers \_\_\_\_\_)      Capital Package Request: \_\_\_\_\_ Contingency Request \_\_\_\_\_ Other \_\_\_\_\_

BUDGETED REVENUES: (use continuation sheet, if necessary)

| FUND CODE XXX                          | DEPARTMENT / DIVISION XXXX | ACTIVITY BASIC/SUB XXX | ELEMENT / OBJECT XXXX | REVENUE NAME                 | INCREASE AMOUNT | DECREASE AMOUNT |
|--|----------------------------|------------------------|-----------------------|------------------------------|-----------------|-----------------|
| 101                                    | 0000                       | 385                    | 00-01                 | Budgeted Cash / General Fund | \$5,000.00      |                 |
| <b>TOTAL (if SUBTOTAL, check here)</b> |                            |                        |                       |                              |                 |                 |

BUDGETED EXPENDITURES: (use continuation sheet, if necessary)

| FUND CODE XXX                          | DEPARTMENT / DIVISION XXXX | ACTIVITY BASIC/SUB XXX | ELEMENT / OBJECT XXXX | CATEGORY / LINE ITEM NAME  | INCREASE AMOUNT | DECREASE AMOUNT |
|--|----------------------------|------------------------|-----------------------|----------------------------|-----------------|-----------------|
| 101                                    | 0102                       | 411                    | 50-90                 | Other Contractual Services | \$5,000.00      |                 |
| <b>TOTAL (if SUBTOTAL, check here)</b> |                            |                        |                       |                            |                 |                 |

Requested by: \_\_\_\_\_ Date: \_\_\_\_\_ Title: \_\_\_\_\_  
 Finance Department Approval: *Arrian M. Early* Date: 2/16/12 Entered by: \_\_\_\_\_ Date: \_\_\_\_\_  
 County Manager Approval: \_\_\_\_\_ Date: \_\_\_\_\_ Updated by: \_\_\_\_\_ Date: \_\_\_\_\_



# SANTA FE COUNTY

## BUDGET ADJUSTMENT NARRATIVE FORM

Fiscal Year 2012 (July 1, 2011 through June 30, 2012)

*ATTACH ADDITIONAL SHEETS IF NECESSARY.*

**DEPARTMENT CONTACT:**

Name: Teresa C. Martinez Dept/Div: CMO / Board of County Commissioners Phone No.: 505.995.2780

**DETAILED JUSTIFICATION FOR REQUESTING BUDGET ADJUSTMENT (If applicable, cite the following authority: State Statute, grant name and award date, other laws, regulations, etc.):**

- 1) Please summarize the request and its purpose.  
Increase in budget authority from General Fund Cash Reserves to support the Los Alamos National Laboratory (LANL) Regional Coalition. The amount of \$5,000 was previously discussed and authorized by the Board of County Commissioners at the January 29<sup>th</sup> administrative meeting. The funds will be used to support the LANL Regional Coalition for work completed during fiscal year 2012. This resolution establishes the BCC authorized amount.

**a) Employee Actions**

| Line Item | Action (Add/Delete Position, Reclash, Overtime) | Position Type (permanent, term) | Position Title |
|-----------|---|---------------------------------|----------------|
|           |   |                                 |                |
|           |   |                                 |                |
|           |   |                                 |                |

**b) Professional Services (50-xx) and Capital Category (80-xx) detail:**

| Line Item          | Detail (what specific things, contracts, or services are being added or deleted)         | Amount     |
|--------------------|--|------------|
| 101-0102-411.50-90 | Support of the LANL Regional Coalition as outlined in an existing joint powers agreement | \$5,000.00 |
|                    |  |            |
|                    |  |            |

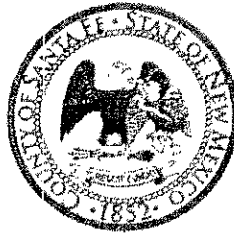
- 2) Is the budget action for RECURRING expense X or for NON-RECURRING (one-time only) expense \_\_\_\_\_
- 3) Does this BAR include state or federal funds? YES \_\_\_\_\_ NO X  
If YES, please cite and attach a copy of statute, if a special appropriation, or include grant name, number, award date and amount, and attach a copy of award letter and proposed budget.
- 4) Is this request a result of Commission action? YES X NO \_\_\_\_\_  
If YES, please cite and attach a copy of supporting documentation (i.e. Minutes, Resolution, Ordinance, etc.).

This was approved by BCC action at the January 29<sup>th</sup> administrative meeting; minutes not yet available.

**Daniel "Danny" Mayfield**  
*Commissioner, District 1*

**Virgina Vigil**  
*Commissioner, District 2*

**Robert A. Anaya**  
*Commissioner, District 3*



**Kathy Holian**  
*Commissioner, District 4*


**Liz Stefanics**  
*Commissioner, District 5*


**Katherine Miller**  
*County Manager*

## MEMORANDUM

**Date:** January 12, 2012

**To:** Santa Fe County Board of County Commissioners

**From:** Maria B. Sanchez, Procurement Specialist, Senior 

**Via:** Vincent Ojinaga, Procurement Manager   
Adam Leigland, Public Works Director  
Patricio Guerrerortiz, Utilities Division Director

**Re:** *Request approval to award RFP #2012-0086-UT/MS to Molzen Corbin, for Engineering Design Services for the Water Transmission Line TL6S in the Amount of \$333,080.30, exclusive of GRT*

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**Issue:**

The Procurement Division requests authorization to enter into a contract with Molzen Corbin for the Engineering Services for the Water Transmission Line TL6S, formerly known as the Rail Trail Water Transmission Line, in the amount of \$333,080.30, exclusive of GRT

**Background:**

The project involves the installation of a 12-inch gravity-flow water transmission line that will ultimately make Buckman Direct Diversion (BDD) water available to a large segment of the population that resides in unincorporated areas of the County west of the New Mexico Department of Transportation (NMDOT) railroad line and south of the City of Santa Fe. The project will connect the infrastructure, which includes the 1.5 million gallon Rancho Viejo reservoir located within Section 23, T16N, R09E, to the system owned and operated by Eldorado Area Water and Sanitation District (EAWSD). The line will be installed within one of three utility corridors or right-of-ways: 1) NMDOT-owned right-of-way, 2) the old abandoned narrow gauge railroad, and 3) the existing power transmission corridor under the control of the Public Service Company of New Mexico (PNM). The line will extend south to connect to the water distribution network owned by the EAWSD.

The Procurement Division solicited a Request for Proposal #2012-0086-UT/MS Engineering Design Services for the Water Transmission Line TL6S. The solicitation was advertised in two newspapers, posted on the County Website and e-mailed to ten (10) companies on November 14, 2011. A total of

seventeen (17) companies attended the mandatory pre-proposal conference. There was one (1) addenda issued for this solicitation that included questions regarding the tie-in to the Eldorado Area Water & Sanitation District (EAWSD) and also right-of-way.

Five proposals were received from the following companies:

Occam Consulting Engineers, Albuquerque, NM  
Smith Engineering, Albuquerque, NM  
Santa Fe Engineering Consultants, Santa Fe, NM  
Molzen Corbin, Albuquerque, NM  
Huitt-Zollars, Rio Rancho, NM

All proposals were deemed responsive. The Evaluation Committee rated all five (5) proposals and the proposals. The Evaluation Committee elected to go straight to negotiations with the highest rated offeror versus conduct Oral Presentations based on the scores.

***Action Requested:***

The Procurement Division requests authorization to enter into contract #2012-0086-UT/MS with Molzen Corbin for the Engineering Design Services for the Water Transmission Line TL6S in the amount of \$333,080.30, exclusive of GRT.



**ENGINEERS JOINT CONTRACT  
DOCUMENTS COMMITTEE**

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

THIS IS AN AGREEMENT effective as of \_\_\_\_\_, 2012 (“Effective Date”) between

Santa Fe County, a political subdivision of the State of New Mexico (“Owner”) \_\_\_\_\_ and

Molzen-Corbin & Associates, Inc., 2701 Miles Road SE, Suite 200, Albuquerque, NM  
87106, (“Engineer”).

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows: Santa Fe County, Utilities Department, operates a 1.5 million gallon water reservoir located at Rancho Viejo within Sec. 23, T16N, R09E, NMPM, in Santa Fe County, NM. The County plans to extend a 12” gravity-flow water line from the tank to the boundary of the Eldorado Area Water & Sanitation District at Moya Road, in Eldorado at Santa Fe, a subdivision located south of the City of Santa Fe, NM. The gravity-flow water transmission line is also referred to as “TL6S.” The purpose of the TL6S is to provide water from the Buckman Direct Diversion plant to water users located in the unincorporated areas west and south of Santa Fe.

Engineer's services under this Agreement are generally identified as follows: To analyze and assess the optimal design plan for the route and construction of the TL6S water line that will extend from the Rancho Viejo reservoir to Moya Road in the Eldorado at Santa Fe subdivision. Engineer’s services will consist of the preparation of a preliminary design plan; completion of environmental investigation and documentation; site analysis; signage; subsurface utility engineering; drainage analysis and design; geotechnical investigation, preparation of an opinion of construction costs; access plans for repair and maintenance of the transmission line; telemetry or other devices to remotely monitor transmission line pressure; a Traffic Control plan; profile sheets, preparation of a final design plan, specifications, and drawings; and engineering services to be provided throughout construction as more specifically described herein.

Owner and Engineer further agree as follows:

## **ARTICLE 1 – SERVICES OF ENGINEER**

### *1.01 Scope*

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

## **ARTICLE 2 – OWNER’S RESPONSIBILITIES**

### *2.01 General*

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

## **ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES**

### *3.01 Commencement*

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

### *3.02 Time for Completion*

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

- E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.

## ARTICLE 4 – INVOICES AND PAYMENTS

### 4.01 *Invoices*

- A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable by within 30 days net of Owner's receipt of an invoice.

### 4.02 *Payments*

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay:* If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:
  - 1. amounts due Engineer will be increased at the rate of 1.5% per month from said 30th day; and
  - 2. Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- C. *Disputed Invoices:* If Owner contests an invoice, Owner shall promptly advise Engineer of the specific basis for doing so, may withhold only that portion so contested, and must pay the undisputed portion.
- D. *Legislative Actions:* If after the Effective Date any governmental entity takes a legislative action that imposes taxes on Engineer's services or compensation under this Agreement, then the Engineer may invoice such new tax as a Reimbursable Expense. Owner shall reimburse Engineer for the cost of such invoiced new tax; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C.

## ARTICLE 5 – OPINIONS OF COST

### 5.01 *Opinions of Probable Construction Cost*

- A. Engineer's opinions of probable Construction Cost are to be made on the basis of Engineer's experience and qualifications and represent Engineer's best judgment as an experienced and qualified professional generally familiar with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction

Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, Owner must employ an independent cost estimator as provided in Exhibit B.

#### 5.02 *Designing to Construction Cost Limit*

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

#### 5.03 *Opinions of Total Project Costs*

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

### **ARTICLE 6 – GENERAL CONSIDERATIONS**

#### 6.01 *Standards of Performance*

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

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

#### 6.02 *Design Without Construction Phase Services*

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



Contract Documents, review and response to Contractor claims, contract administration, processing Change Orders, revisions to the Contract Documents during construction, construction surety bonding and insurance requirements, construction observation and review, review of payment applications, and all other necessary Construction Phase engineering and professional services. Owner waives all claims against the Engineer that may be connected in any way to Construction Phase engineering or professional services except for those services that are expressly required of Engineer in Exhibit A, Paragraph A1.05.

### 6.03 *Use of Documents*

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

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

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

#### 6.04 *Insurance*

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

#### 6.05 *Suspension and Termination*

- A. *Suspension:*

1. By Owner: Owner may suspend the Project for up to 90 days upon seven days written notice to Engineer.
  2. By Engineer: Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement if Engineer's performance has been substantially delayed through no fault of Engineer.
- B. *Termination*: The obligation to provide further services under this Agreement may be terminated:
1. For cause,
    - a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
    - b. By Engineer:
      - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
      - 2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control.
      - 3) Engineer shall have no liability to Owner on account of such termination.
    - c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.05.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
  2. For convenience,
    - a. By Owner effective upon Engineer's receipt of notice from Owner.
- C. *Effective Date of Termination*: The terminating party under Paragraph 6.05.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

D. *Payments Upon Termination:*

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

6.06 *Controlling Law*

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

6.07 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.07.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise in this Agreement:
  1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Contractor, Subcontractor, Supplier, other individual or entity, or to any surety for or employee of any of them.
  2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
  3. Owner agrees that the substance of the provisions of this Paragraph 6.07.C shall appear in the Contract Documents.

#### 6.08 *Dispute Resolution*

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

#### 6.09 *Environmental Condition of Site*

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

#### 6.10 *Indemnification.*

- A. *Indemnification by Engineer:* To the fullest extent permitted by law, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and

employees from reasonable claims, costs, losses, and damages arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting there from.

- B. *Indemnification by Owner*: Intentionally Omitted.
- C. *Environmental Indemnification*: Intentionally Omitted.
- D. *Percentage Share of Negligence*: Intentionally Omitted.
- E. *Mutual Waiver*: To the fullest extent permitted by law, Engineer waives against Owner, and Owner's employees, officers, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project.

#### 6.11 *Miscellaneous Provisions*

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

## ARTICLE 7 – DEFINITIONS

### 7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following provisions:
1. *Additional Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Part 2 of Exhibit A of this Agreement.
  2. *Agreement* – This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
  3. *Asbestos* – Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
  4. *Basic Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Part 1 of Exhibit A of this Agreement.
  5. *Construction Contract* – The entire and integrated written agreement between Owner and Contractor concerning the Work.
  6. *Construction Cost* – The cost to Owner of those portions of the entire Project designed or specified by Engineer. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to properties; Owner's costs for legal, accounting, insurance counseling or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement. Construction Cost is one of the items comprising Total Project Costs.
  7. *Constituent of Concern* – Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; and (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
  8. *Consultants* – Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer's independent professional associates and consultants; subcontractors; or vendors.

9. *Contract Documents* – Those items so designated in the Construction Contract, including the Drawings, Specifications, construction agreement, and general and supplementary conditions. Only printed or hard copies of the items listed in the Construction Contract are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
10. *Contractor* – The entity or individual with which Owner has entered into a Construction Contract.
11. *Documents* – Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
12. *Drawings* – That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings are not Drawings as so defined.
13. *Effective Date* – The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
14. *Engineer* – The individual or entity named as such in this Agreement.
15. *Hazardous Waste* – The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
16. *Laws and Regulations; Laws or Regulations* – Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
17. *Owner* – The individual or entity with which Engineer has entered into this Agreement and for which the Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.
18. *PCBs* – Polychlorinated biphenyls.
19. *Petroleum* – Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-hazardous waste and crude oils.
20. *Project* – The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
21. *Radioactive Material* – Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.



22. *Record Drawings* – Drawings depicting the completed Project, prepared by Engineer as an Additional Service and based solely on Contractor's record copy of all Drawings, Specifications, addenda, change orders, work change directives, field orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.
23. *Reimbursable Expenses* – The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic and Additional Services for the Project.
24. *Resident Project Representative* – The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. Engineer's designated Resident Project Representative or any successor Resident Project Representative shall be approved by Owner. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative agreed to by Owner. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.
25. *Samples* – Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
26. *Shop Drawings* – All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
27. *Site* – Lands or areas to be indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
28. *Specifications* – That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.
29. *Subcontractor* – An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
30. *Substantial Completion* – The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.
31. *Supplier* – A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.

32. *Total Project Costs* – The sum of the Construction Cost, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner’s costs for legal, accounting, insurance counseling and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement.
33. *Work* – The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

## **ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS**

### 8.01 *Exhibits Included:*

- A. Exhibit A, Engineer’s Services.
- 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.
- G. Exhibit G, Insurance.
- H. Exhibit H, Dispute Resolution.
- I. Exhibit I, Limitation of Liability.
- J. Exhibit J, Not Included.
- K. Exhibit K, Amendment to Owner-Engineer Agreement.

### 8.02 *Total Agreement:*

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

8.03 *Designated Representatives:*

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

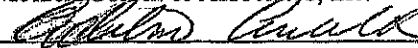
8.04 *Engineer's Certifications:*

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

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

Owner: Santa Fe County

Engineer:  
Molzen, Corbin & Associates, Inc.



By: \_\_\_\_\_

By: Adelmo Archuleta

Title: \_\_\_\_\_

Title: President & Owner

Date \_\_\_\_\_

Date \_\_\_\_\_

Signed: \_\_\_\_\_

Signed: 2-1-12

Engineer License or Firm's  
Certificate No. 7078

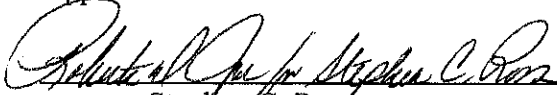
State of: New Mexico

Address for giving notices:  
\_\_\_\_\_

Address for giving notices:  
\_\_\_\_\_

2701 Miles Road SE, Suite 200

Approved as to form:



Stephen C. Ross

Title: Santa Fe County Attorney

Date

Signed:

*February 1, 2012*

Finance Department

Teresa C. Martinez, Finance Director

Date

Signed:

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

**Engineer's Services**

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

Engineer shall provide Basic Services as set forth below.

**PART 1 – BASIC SERVICES**

*A1.01 Study and Report Phase*

A. Engineer shall:

1. Consult with Owner to define and clarify Owner's requirements for the Project and available data. Engineer shall consider and evaluate route options which are available and feasible to Owner, including but not limited to: 1) a route within an existing utility right-of-way owned by New Mexico Department of Transportation (NMDOT); 2) a route within the abandoned narrow gauge railway of the Santa Fe Southern Railway (SFSR) generally adjacent to the Santa Fe Rail Trail; and 3) a route within the existing power transmission corridor under the jurisdiction of the Public Service Company of New Mexico (PNM). In the Study and Report Phase Engineer shall evaluate and assess these three (3) possible options and any other option which in Engineer's professional judgment Engineer recommends as a feasible route to accomplish Owner's goal.
2. Advise Owner of any need for Owner to provide data or services of the types described in Exhibit B which are not part of Engineer's Basic Services.
3. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project designed or specified by Engineer, including but not limited to mitigating measures identified in the environmental assessment, identifying any applicable requirements of the NMDOT, or SFSR, or PNM, or others, if applicable, and identifying any necessary environmental and archaeological clearances beyond what has been identified by Owner.
4. Identify and evaluate alternate solutions and routes available to Owner and, after consultation with Owner, recommend to Owner those solutions which in Engineer's judgment meet Owner's requirements for the TL6S Project. Engineer shall complete a geotechnical investigation which identifies any potential site/alignment features or other obstacles such as geotechnical issues that may present challenges to the project's completion and identify recommended solutions. This analysis shall include any subsurface investigations and geotechnical analyses and identification of topographical conditions that need to be addressed, or additional investigation or specialized work that need to be completed in order to complete the Project.
5. Submit a schedule of progress with specific milestones and dates for completion and progress of full design services to be provided.

6. Prepare a report (the "Report") which will as appropriate, contain schematic layouts, sketches, and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and those alternate solutions and routes available to Owner which Engineer recommends. For each recommended route, Engineer will provide the following, which will be separately itemized: opinion of probable Construction Cost; proposed allowances for contingencies; the estimated total cost of design, professional and related services to be provided by Engineer and its Consultants; and, on the basis of information furnished by Owner, a summary of allowances for other items and services included within the definition of Total Project Costs.
7. Furnish at least two (2) review copies of the Report and any other deliverables to Owner within fourteen (14) calendar days of the Effective Date and review it with Owner. Within fourteen (14) calendar days of receipt, Owner shall submit to Engineer any comments regarding the Report and any other deliverables.
8. Revise the Report and any other deliverables in response to Owner's comments, as appropriate, and furnish at least two (2) copies of the revised Report and any other deliverables to the Owner within fourteen (14) calendar days of receipt of Owner's comments.

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

*A1.02 Preliminary Design Phase (30% Completion).*

- A. After acceptance by Owner of the Report and other deliverables from the Study and Report Phase, selection by Owner of a recommended solution and route for the TL6S and indication of any specific modifications or changes in the scope, extent, character, or design requirements of the Project desired by Owner, and upon written authorization from Owner, Engineer shall:
  1. Prepare a 30% preliminary design that indicates schematic layouts, sketches, and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and the optimum route or alignment for the TL6S recommended by Engineer. The 30% preliminary plan shall include Engineer's investigation pertaining to subsurface and geotechnical analysis and topographical conditions necessary to the construction, repair and maintenance of the TL6S. The 30% preliminary design shall also include recommendations on necessary telemetry or remote control system for operation of the TL6S and any necessary preliminary traffic control plan. For Engineer's recommended solution and route Engineer will provide the following, which will be separately itemized: opinion of probable Construction Cost; proposed allowances for contingencies; the estimated total costs of design, professional, and related services to be provided by Engineer and its Consultants; and, on the basis of information furnished by Owner, a summary of allowances for other items and services included within the definition of Total Project Costs.
  2. Provide necessary field surveys and topographic and utility mapping for design purposes. Utility mapping will be based upon information obtained from utility owners.

3. Advise Owner if additional reports, data, information, or services of the types described in Exhibit B are necessary and assist Owner in obtaining such reports, data, information, or services.
  4. Complete an easement or property acquisition plan that identifies any easement or property acquisition necessary to construct, maintain and repair the TL6S, in addition any easements or property acquisitions identified by the Owner. If the Owner's selected route for the TL6S is in the vicinity of the abandoned SFSR railway, the access easement plan shall also provide for any necessary coordination with the SFSR or any special NMDOT requirements pertaining to activity or construction near or adjacent to a railroad track.
- B. *Preliminary Design Phase (70% Completion)*. After acceptance by Owner of the Report (30% Preliminary Design Phase) and any other deliverables, upon written authorization from Owner, Engineer shall:
1. Based on Owner-provided information on existing conditions, property and topographic surveys, which will include existing overhead and subsurface utilities or infrastructure, provide relevant drawing and technical specifications for review by Owner. At this state, drawings and technical specifications shall be sealed and labeled "Preliminary Not For Construction." Engineer shall also provide a progress report on environmental clearance documents, including any biological or archaeological clearances or mitigation that will demonstrate compliance with the anticipated project schedule.
  2. Prepare as part of design documents Drainage Analysis and Design. This should include details on the approach to arroyo crossings or other drainage courses and obtain necessary 404 Certification and a 401 Permit also taking into consideration compliance with the Santa Fe County Flood Plain Ordinance and include proof of compliance with FEMA/FIRM base flood evaluations and floodplain management related issues; recommendations for erosion or scour protection, and any details for replacing existing drainage structures that may be affected by the TL6S Project.
  3. Provide 3<sup>rd</sup> Party Quality Assurance/Constructability Analysis. Engineer shall provide proof of having performed a full constructability analysis of the TL6S which identifies any inconsistencies or issues in the design documents that may result in unanticipated cost increases.
  4. Furnish five (5) standard size (24" X 36") review copies of the 70% Preliminary Design Phase documents to Owner.
  5. Based on the information contained in the 70% Preliminary Design Phase documents, prepare a preliminary opinion of Construction Cost for the Project, and assist Owner in collating the various cost categories which comprise Total Project Costs.
  6. Furnish five (5) standard size (24" X 36") review copies and one (1) electronic copy in PDF format of the 70% Preliminary Design Phase documents to Owner within sixty (60) calendar days of authorization to proceed with this phase, and review them with Owner.

Within twenty (20) calendar days of receipt, Owner shall submit to Engineer any comments regarding the 70% Preliminary Design Phase documents and any other deliverables.

7. Revise the Preliminary Design Phase documents and any other deliverables in response to Owner's comments, as appropriate, and furnish to Owner five (5) copies of the revised 70% Preliminary Design Phase documents, revised opinion of Construction Cost, and any other deliverables within fifteen (15) calendar days after receipt of Owner's comments.
- C. Engineer's services under the 70% Preliminary Design Phase will be considered complete on the date when the revised 70% Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables have been delivered to Owner.

#### A1.03 *Final Design Phase*

- A. After acceptance by Owner of the 70% Preliminary Design Phase documents, revised opinion of Construction Cost as determined in the Preliminary Design Phase, and any other deliverables subject to any Owner-directed modifications or changes in the scope, extent, character, or design requirements of or for the Project, and upon written authorization from Owner, Engineer shall:
1. Prepare final 100% stamped Design, Drawings and technical Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor. Engineer's final design drawings shall include, at a minimum: General Sheets, Title Sheet/Vicinity Map; Project Layout Sheet; Table of Contents; Summary of Quantities and Materials; General Construction Notes and Environmental Mitigation Measures; Standard/Special Details; Typical Sections; Pipeline Plans and Profiles; Structural Details (as necessary); Erosion and Sediment Control Plan; Reseeding Plan; Traffic Control Plan (as necessary); and Drainage Improvements.
  2. Prepare, process and obtain all approvals and/or permits from all private and/or governmental authorities having jurisdiction to permit, review, or approve the final design for the construction of the TL6S project and revise the drawing and specifications in response to directives from such authorities. Owner will assist in consultations with such authorities as necessary.
  3. Advise Owner of any adjustments to the opinion of probable Construction Cost known to Engineer.
  4. If needed by Owner, prepare and furnish bidding documents for review by Owner and assist Owner in the preparation of other related documents. Owner shall submit to Engineer any comments and, subject to the provisions of Paragraph 6.01.G, instructions for revisions.
  5. If needed, revise the bidding documents in accordance with comments and instructions from the Owner, as appropriate, and submit three (3) final copies of the bidding documents, a revised opinion of probable Construction Cost, and any other deliverables to Owner within ten (10) calendar days after receipt of Owner's comments and instructions.



6. Provide to the Owner three (3) stamped reproducible in standard size sets (24" X 36") of the final Design; three (3) copies of a reduced original set (11" X 17") of the final Design; and the final Design Documents in electronic form (CADD and .pdf).
- B. Engineer's services under the Final Design Phase will be considered complete on the date when the submittals required by Paragraph A1.03.A.5 have been delivered to Owner.
- C. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Agreement is one (1).

#### A1.04 *Bidding or Negotiating Phase*

- A. After acceptance by Owner of the bidding documents and the most recent opinion of probable Construction Cost as determined in the Final Design Phase, and upon written authorization by Owner to proceed, if requested by Owner, Engineer shall:
1. Assist Owner to prepare, conduct and attend pre-bid conferences, if any.
  2. Respond to Requests for Information and assist with addenda as appropriate to clarify, correct, or change the bidding documents.
  3. If necessary, provide information or assistance needed by Owner in the course of any negotiations with prospective contractors.
  4. Consult with Owner as to the acceptability of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors for those portions of the Work as to which such acceptability is required by the bidding documents.
  5. If bidding documents require, the Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by bidders, but subject to the provisions of paragraph A2.02.A.2 of this Exhibit A.
  6. Attend the Bid opening, prepare Bid tabulation sheets, and assist Owner in evaluating Bids or proposals.
- 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 as provided in the Construction Contract. The extent and limitations of the duties, responsibilities, and authority of Engineer as assigned in the Construction Contract shall not be modified, except as Engineer may otherwise agree in writing. All of Owner's instructions to Contractor will

be issued through Engineer, which shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and the Construction Contract except as otherwise provided in writing.

2. *Resident Project Representative (RPR)*: Provide the services of an RPR who is approved by the Owner, 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. Engineer shall inform Owner in advance if Engineer designates a different or successor RPR.
3. *Selecting Independent Testing Laboratory*: Assist Owner in the selection of an independent testing laboratory to perform the services identified in Exhibit B, Paragraph B2.01.0.
4. *Pre-Construction Conference*: Participate in a Pre-Construction Conference prior to commencement of Work at the Site.
5. *Schedules*: Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.
6. *Baselines and Benchmarks*: As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.
7. *Visits to Site and Observation of Construction*: In connection with observations of Contractor's Work while it is in progress:
  - a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, to observe as an experienced and qualified design professional the progress of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of Contractor's Work in progress or to involve detailed inspections of Contractor's Work in progress beyond the responsibilities specifically assigned to Engineer in this Agreement and the Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment, as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.
  - b. The purpose of Engineer's visits to, and representation by the Resident Project Representative, if any, at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of

confidence that the completed Work will conform in general to the Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Engineer shall not, during such visits or as a result of such observations of Contractor's Work in progress, supervise, direct, or have control over Contractor's Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to Contractor's Work, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work. Accordingly, Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish or perform the Work in accordance with the Contract Documents.

- c. Resident Project Representative shall attend and participate in regularly scheduled construction progress meetings at intervals in accordance with the contract documents, in general, once weekly for the duration of the project.
8. *Defective Work:* Reject Work if, on the basis of Engineer's observations, Engineer believes that such Work (a) is defective under the standards set forth in the Contract Documents, (b) will not produce a completed Project that conforms to the Contract Documents, or (c) will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
9. *Clarifications and Interpretations; Field Orders:* Issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of Contractor's work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. Subject to any limitations in the Contract Documents, Engineer may issue field orders authorizing minor variations in the Work from the requirements of the Contract Documents.
10. *Change Orders and Work Change Directives:* On an as-needed or as-requested basis by Owner, Engineer may recommend change orders and work change, as appropriate, and prepare change orders and work change directives as required or as needed by Owner. Engineer may recommend or request a Change Order to Owner if such request is made to Engineer by Contractor.
11. *Shop Drawings and Samples:* Review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.

12. *Substitutes and "or-equal"*: Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, but subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A.
13. *Inspections and Tests*: Engineer shall require of Contractor such special inspections or tests of Contractor's work as deemed reasonably necessary, and receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Contract Documents. Engineer shall be entitled to rely on the results of such tests.
14. *Disagreements between Owner and Contractor*: Render formal written decisions on all duly submitted issues relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the execution, performance, or progress of Contractor's Work; review each duly submitted Claim by Owner or Contractor, and in writing either deny such Claim in whole or in part, approve such Claim, or decline to resolve such Claim if Engineer in its discretion concludes that to do so would be inappropriate. In rendering such decisions, Engineer shall be fair and not show partiality to Owner or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.
15. *Review Applications for Payment on as-needed or as-requested basis by Owner*: If Engineer is requested by Owner to review Contractor's monthly payment applications, based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:
  - a. Determine the amounts that Engineer recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe Contractor's Work. In the case of unit price work, Engineer's recommendations of payment will include final determinations of quantities and classifications of Contractor's Work (subject to any subsequent adjustments allowed by the Contract Documents).
  - b. By recommending any payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement

and the Contract Documents. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control Contractor's Work in progress or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any portion of the Work in progress, materials, or equipment has passed to Owner free and clear of any liens, claims, security interests, or encumbrances, or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.

16. *Contractor's Completion Documents:* Receive, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Contract Documents, certificates of inspection, tests and approvals, Shop Drawings, Samples and other data approved as provided under Paragraph A1.05.A.11, and transmit the annotated record documents which are to be assembled by Contractor in accordance with the Contract Documents to obtain final payment. The extent of such review by Engineer will be limited as provided in Paragraph A1.05.A.11.
  17. *Substantial Completion:* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, visit the Project to determine if the Work is substantially complete. If after considering any objections of Owner, Engineer considers the Work substantially complete, Engineer shall deliver a certificate of Substantial Completion to Owner and Contractor.
  18. *Final Notice of Acceptability of the Work:* Conduct a final visit to the Project to determine if the completed Work of Contractor is acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice in the form attached hereto as Exhibit E (the "Notice of Acceptability of Work") that the Work is acceptable (subject to the provisions of Paragraph A1.05.A.15.b) to the best of Engineer's knowledge, information, and belief and based on the extent of the services provided by Engineer under this Agreement.
- B. *Duration of Construction Phase:* The Construction Phase will commence with the execution of the first Construction Contract for the Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. If the Project involves more than one prime contract as indicated in Paragraph A1.03.C, 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.

- C. *Limitation of Responsibilities:* Engineer shall not be responsible for the acts or omissions of any Contractor, Subcontractor or Supplier, or other individuals or entities performing or furnishing any of the Work, for safety or security at the Site, or for safety precautions and programs incident to Contractor's Work, during the Construction Phase or otherwise. Engineer shall not be responsible for the failure of any Contractor to perform or furnish the Work in accordance with the Contract Documents.

#### 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, assist Owner in consultations and discussions with Contractor concerning correction of any such defects, and make recommendations as to replacement or correction of defective Work, if any.
  2. Together with Owner or Owner's representative, visit the Project within one month before the end of the correction period to ascertain whether any portion of the Work is subject to correction.
  3. Coordinate with the completion of as-built drawings for the project to be signed and stamped by a land surveyor licensed in the State of New Mexico.
- B. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate twelve (12) months after the commencement of the Construction Contract's correction period.

### **PART 2 – ADDITIONAL SERVICES**

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

- A. If authorized in writing and in advance by Owner, Engineer may furnish or obtain from others Additional Services of the types listed below. As of the execution of the Agreement (EJCDC E-500), the Owner has not authorized the Engineer's performance of the Additional Services listed below. Authorization to proceed with these Additional Services shall only be through an Owner-approved amendment to this Agreement.
1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
  2. Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.

3. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer or its design requirements including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date or are due to any other causes beyond Engineer's control.
4. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those identified in Paragraph A1.01.A.4.
5. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.
6. Providing renderings or models for Owner's use.
7. Undertaking investigations and studies including, but not limited to, detailed consideration of operations, maintenance, and overhead expenses; the preparation of financial feasibility and cash flow studies, rate schedules, and appraisals; assistance in obtaining financing for the Project; evaluating processes available for licensing, and assisting Owner in obtaining process licensing; detailed quantity surveys of materials, equipment, and labor; and audits or inventories required in connection with construction performed by Owner.
8. Furnishing services of Consultants for other than Part 1 - Basic Services.
9. Services attributable to more prime construction contracts than specified in Paragraph A1.03.D.
10. Services during out-of-town travel required of Engineer other than for visits to the Site or Owner's office.
11. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructability review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other Bidding Documents as a result of such review processes.
12. Preparing additional Bidding Documents or Contract Documents for alternate bids or prices requested by Owner for the Work or a portion thereof.
13. Assistance in connection with Bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required by Exhibit F.
14. Providing construction surveys and staking to enable Contractor to perform its work other than as required under Paragraph A1.05.A.6, and any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.

15. Providing Construction Phase services beyond the original date for completion and readiness for final payment of Contractor.
16. Providing assistance in responding to the presence of any Constituent of Concern at the Site, in compliance with current Laws and Regulations.
17. Preparing Record Drawings showing appropriate record information based on Project annotated record documents received from Contractor, and furnishing such Record Drawings to Owner.
18. Preparation of operation and maintenance manuals.
19. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, or other dispute resolution process related to the Project.
20. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.
21. Assistance in connection with the adjusting of Project equipment and systems.
22. Assistance to Owner in training Owner's staff to operate and maintain Project equipment and systems.
23. Assistance to Owner in developing procedures for (a) control of the operation and maintenance of Project equipment and systems, and (b) related record-keeping.
24. Overtime work requiring higher than regular rates.
25. Other services performed or furnished by Engineer not otherwise provided for in this Agreement.

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

- A. Engineer shall advise Owner in advance that Engineer is will immediately commence to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice from Owner.
  1. Services in connection with work change directives and change orders to reflect changes requested by Owner. No change order amending the Contract Time or Contract Sum is valid and effective until approved by the Santa Fe County Manager or the Santa Fe Board of County Commissioners.
  2. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or-equal" items; services after the award of the Construction Contract in evaluating and determining the acceptability of a proposed "or equal" or substitution which is found to be inappropriate for the Project; 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 during construction made necessary by (1) emergencies or acts of God endangering the Work (advance notice not required), (2) the presence at the Site of any Constituent of Concern or items of historical or cultural significance, (3) Work damaged by fire or other cause during construction, (4) a significant amount of defective, neglected, or delayed work by Contractor, (5) acceleration of the progress schedule involving services beyond normal working hours, or (6) default by Contractor.
5. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of any part of the Work by Owner prior to Substantial Completion.
6. Evaluating an unreasonable claim or an excessive number of claims submitted by Contractor or others in connection with the Work.
7. Services during the Construction Phase rendered after the original date for completion of the Work referred to in A1.05.B.
8. Reviewing a Shop Drawing more than three times, as a result of repeated inadequate submissions by Contractor.
9. 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 **EXHIBIT B**, referred to in and part of the  
**Agreement between Owner and Engineer for  
Professional Services.**

**Owner's Responsibilities**

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

scope or time of performance of Engineer's services, or any defect or nonconformance in Engineer's services, the Work, or in the performance of any Contractor.

- E. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement as required.
- F. Approve Engineer's Resident Project Representative or successor RPR, if any. Owner shall timely render its approval or disapproval of Engineer's RPR within fourteen (14) days. If Owner does not respond to Engineer's designation of an RPR or successor RPR within fourteen (14) days of being informed of Engineer's designated RPR or successor RPR, Owner will be deemed to have approved Engineer's RPR or successor RPR.
- G. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.
- H. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- I. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, provide, as required for the Project:
  - 1. Accounting, bond and financial advisory, independent cost estimating, and insurance counseling services.
  - 2. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests.
  - 3. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the moneys paid.
- J. Place and pay for advertisement for Bids in appropriate publications.
- K. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructability review.
- L. 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.
- M. 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.

- N. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.
- O. Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Substantial Completion and final payment visits to the Project.
- P. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Contract Documents, or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof.
- Q. Provide Engineer with the findings and reports generated by the entities providing services to Owner pursuant to this paragraph.
- R. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.
- S. Provide construction contract administrative services including reviewing contractor's applications for payment, initiate and process change orders, or prepare monthly progress reports.

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

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

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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) – Standard Hourly Rates 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. An amount equal to the cumulative hours charged to the Project by each class of Engineer’s personnel times Standard Hourly Rates for each applicable billing class for all services performed on the Project, plus Reimbursable Expenses and Engineer’s Consultants’ charges, if any.
2. Engineer’s Reimbursable Expenses Schedule and Standard Hourly Rates are attached to this Exhibit C as Appendices 1 and 2.
3. The total compensation for services under Paragraph C2.01 is estimated to be Three Hundred Thirty-three Thousand, Eighty dollars and Thirty cents (\$333,080.30) based on the following estimated distribution of compensation:

|                                 |              |
|---------------------------------|--------------|
| a. Study and Report Phase       | \$ 23,790.00 |
| b. Reimbursables                | \$ 879.80    |
| c. Preliminary Design Phase     |              |
| 30% Completion                  | \$ 26,005.00 |
| 70% Completion                  | \$ 40,405.00 |
| Final Design Phase              | \$ 16,775.00 |
| d. Bidding or Negotiating Phase | \$ 6,805.00  |
| e. Construction Phase           | \$ 19,820.00 |
| f. Post-Construction Phase      | \$ 11,140.00 |
| g. Survey                       | \$ 13,753.50 |

|  |                     |
|--|---------------------|
| h. Reimbursables   | \$ 3,011.00         |
| i. Geotechnical Investigation<br>(Geo-Test, Inc.)  | \$ 10,890.00        |
| j. Drainage Analysis and Design,<br>404 Certification; 401 Permit                          | \$ 25,000.00        |
| k. 3rd Party QA/Constructability Review<br>(Wilson & Company)                              | \$ 3,850.00         |
| l. Resident Project Representative   | \$120,956.00        |
| m. Property/Easement Coordination  | \$ 5,000.00         |
| n. Prepare, Process, Obtain Approvals/<br>Permits from Private/Governmental<br>Authorities | \$ 5,000.00         |
| <b>Total Services:</b>   | <b>\$333,080.30</b> |

4. Pursuant to an amendment approved by the Owner, Engineer may alter the distribution of compensation between individual phases of the work noted herein to be consistent with services actually rendered, but shall not exceed the total estimated compensation amount unless approved in writing by Owner. See also C2.03.C.2 below.
5. The total estimated compensation for Engineer's services included in the breakdown by phases as noted in Paragraph C2.01.A.3 incorporates all labor, overhead, profit, Reimbursable Expenses and Engineer's Consultants' charges.
6. The amounts billed for Engineer's services under Paragraph C2.01 will be based on the cumulative hours charged to the Project during the billing period by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class, plus Reimbursable Expenses and Engineer's Consultants' charges.

*C2.02 Compensation For Engineer's Reimbursable Expenses*

- A. Owner shall pay Engineer for all Reimbursable Expenses at the rates set forth in Appendix 1 to this Exhibit C.
- B. Reimbursable Expenses include the following categories: Engineer's In-House copies (8 ½ X 11, 11 X 17 and 24 X 36); In-House color copies; mileage @.55/per mile; Printing Specifications and meals for the Study and Report Phase, 30% Preliminary Design Phase, 70% Pre-final Design Phase and the 100% Final Design Phase. In addition, if authorized in advance by Owner, Reimbursable Expenses may include other expenses.

- C. The amounts payable to Engineer for Reimbursable Expenses will be the Project-related internal expenses described in C2.02.A, and all invoiced Reimbursable Expenses allowed for Engineer's Resident Project Representative.

C2.03 *Other Provisions Concerning Payment*

- A. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer.
- B. Factors. The Reimbursable Expenses and Engineer's Consultants' charges indicated in C2.01.A.3 above include include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.

C. *Compensation Amounts:*

- 1. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Engineer that the total compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof, allowing Owner to consider its options, including suspension or termination of Engineer's services for Owner's convenience. Upon notice, Owner and Engineer promptly shall review the matter of services remaining to be performed and compensation for such services. Owner shall either exercise its right to suspend or terminate Engineer's services for Owner's convenience, agree to such compensation exceeding said estimated amount, or agree to a reduction in the remaining services to be rendered by Engineer, so that total compensation for such services will not exceed said estimated amount when such services are completed.
- D. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at no cost to Owner.

E. *Other or Additional Services:*

- 1. In the event it is determined that Owner's project requires Engineer to perform any Additional Services as stated at Part 2 – Additional Services, A2.01.A. paragraphs 1 through 25, or other engineering services not specifically described in Exhibit A attached hereto, Engineer's scope of services of this Agreement may be amended to include such Additional Services or other services and Engineer shall provide such Additional or other services at the same hourly rates as stated in this Exhibit C.

**COMPENSATION PACKET RPR-2:**  
**Resident Project Representative – Hourly Rate and Reimbursables**

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

*C2.04 Compensation for Resident Project Representative – Hourly Rate Method of Payment*

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

1. *Resident Project Representative Services:* For services of Engineer's Resident Project Representative under Paragraph A1.05A of Exhibit A, an amount equal to the cumulative hours charged to the Project by the Engineer's Resident Project Representative services performed on the Project, plus related Reimbursable Expenses.

|  |               |
|--|---------------|
| Resident Project Representative<br>(full time observation during construction,<br>8 months @ \$75.00/per hour for 1,400 hours) | \$105,000 Fee |
|--|---------------|

*B. Compensation for Reimbursable Expenses:*

1. For those Reimbursable Expenses that are directly related to the provision of Resident Project Representative, Owner shall pay Engineer at the rates: mileage .35/per mile and per diem at \$22.00/per day.
2. The amounts payable to Engineer for RPR Reimbursable Expenses, if any, will be those expenses related to the Resident Project Representative Basic Services that are actually incurred or allocated by Engineer.

*C. Other Provisions Concerning Payment Under this Paragraph C2.04:*

1. *Factors:* The external Reimbursable Expenses factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
2. *Compensation Amounts:*
  - a. When compensation amounts have been stated herein and it subsequently becomes apparent to Engineer that the total compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof, allowing Owner to consider its options, including amendment of this Agreement, or suspension or termination of Engineer's services for Owner's convenience. Upon notice Owner and Engineer promptly shall review the matter of services remaining to be performed and compensation for such services. Owner shall either exercise its right to suspend or terminate Engineer's services for Owner's convenience, agree by amendment to such compensation exceeding said estimated amount, or agree to a reduction in the remaining



services to be rendered by Engineer, so that total compensation for such services will not exceed said estimated amount when such services are completed. If Owner decides not to suspend Engineer's services during negotiations and Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, Engineer shall be paid for all services rendered hereunder only upon approval of an amendment to increase compensation approved by the Santa Fe County Manager or Santa Fe Board of County Commissioners.

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 to Owner.

This is **Appendix 1 to EXHIBIT C Agreement between Owner and Engineer for Professional Services.**

**Reimbursable Expenses Schedule**

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

Study and Report Phase

|                                  |                |
|----------------------------------|----------------|
| In-House Copies                  | .10/per unit   |
| In-House Color Copies (8 ½ X 11) | .90/per unit   |
| In-House Color Copies (11 X 17)  | .1.80/per unit |
| Mileage                          | .55/per mile   |
| Meals                            | \$100.00       |

30% Preliminary Design Phase

|                           |              |
|---------------------------|--------------|
| In-House Copies           | .10/per unit |
| In-House Copies (11 X 17) | .10/per unit |
| Mileage                   | .55/per mile |
| Meals                     | \$200.00     |

70% Pre-final Design Phase

|                         |                 |
|-------------------------|-----------------|
| In-House Copies         | .10/per unit    |
| Printing Specifications | .10/per unit    |
| In-House (11 X 17)      | .10/per unit    |
| In-House (24 X 36)      | \$2.00/per unit |
| Mileage                 | .55/per mile    |
| Meals                   | \$100.00        |

100% Final Design Phase

|                         |                 |
|-------------------------|-----------------|
| In-House Copies         | .10/per unit    |
| Printing Specifications | .10/per unit    |
| In-House (11 X 17)      | .10/per unit    |
| In-House (24 X 36)      | \$2.00/per unit |
| Mileage                 | .55/per mile    |
| Meals                   | \$100.00        |

This is **Appendix 2 to EXHIBIT C** referred to in and part of the **Agreement between Owner and Engineer for Professional Services.**

### **Engineer's Standard Hourly Rates Schedule**

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*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:

|                                     |               |
|-------------------------------------|---------------|
| Civil Engineer –Prof. Engineer      | \$105.00/hour |
| Civil Engineer – Design Specialist  | \$100.00/hour |
| Electrical – Project Engineer       | \$130.00/hour |
| Electrical – Sr. Eng. Design Tech   | \$ 95.00/hour |
| Water Resources – PE                | \$160.00/hour |
| Water Resources – Sr. Engineer      | \$155.00/hour |
| Water Resources – Proj. Engineer    | \$130.00/hour |
| Water Resources – Eng. Intern II    | \$ 95.00/hour |
| Water Resources – Sr. Eng. Design   | \$120.00/hour |
| Water Resources – Eng. Design Spec. | \$105.00/hour |
| Water Resources – TDA               | \$ 75.00/hour |
| Admin. Aide 2                       | \$ 45.00/hour |
| Admin. Support                      | \$ 55.00/hour |

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

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

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

D1.01 *Resident Project Representative*

- C. 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.
- D. Resident Project Representative shall attend and participate in regularly scheduled construction progress meetings at intervals in accordance with the contract documents, in general, once weekly for the duration of the project.
- E. Through RPR's observations of Contractor's work in progress and field checks of materials and equipment, Engineer shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, Engineer shall not, during such RPR field checks or as a result of such RPR observations of Contractor's work in progress, supervise, direct, or have control over Contractor's 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 contractor, for security or safety at the Site, for safety precautions and programs incident to any contractor's work in progress, or for any failure of a contractor to comply with Laws and Regulations applicable to such contractor's performing and furnishing of its work. The Engineer (including RPR) neither guarantee the performances of any contractor nor assumes responsibility for Contractor's failure to furnish and perform the Work in accordance with the Contract Documents. In addition, the specific terms set forth in Paragraph A1.05 of Exhibit A of the Agreement are applicable.
- F. The duties and responsibilities of the RPR are as follows:
  - 1. *General:* 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. RPR's dealings in matters pertaining to the Contractor's work in progress shall in general 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, and schedule of values prepared by Contractor and consult with Engineer concerning acceptability.

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

and advise Engineer of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection, or approval.

9. *Inspections, Tests, and System 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. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections, and report to Engineer.

10. *Records:*

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

11. *Reports:*

- a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.

- b. Draft and recommend to Engineer proposed change orders, work change directives, and field orders. Obtain backup material from Contractor.
  - c. Furnish to Engineer and Owner copies of all inspection, test, and system start-up reports.
  - d. Immediately notify Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, damage to property by fire or other causes, or the discovery of any Constituent of Concern.
12. *Payment Requests:* If requested, review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.
13. *Certificates, Operation and Maintenance Manuals:* During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the 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.
14. *Completion:*
- a. Participate in visits to the Project to determine Substantial Completion, assist in the determination of Substantial Completion and the preparation of lists of items to be completed or corrected.
  - b. Participate in a final visit to the Project in the company of Engineer, Owner, and Contractor, and prepare a final list of items to be completed and deficiencies to be remedied.
  - c. Observe whether all items on the final list have been completed or corrected and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work (Exhibit E).

G. Resident Project Representative shall not:

- 1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).
- 2. Exceed limitations of Engineer's authority as set forth in this Agreement.
- 3. Undertake any of the responsibilities of Contractor, Subcontractors or Suppliers.

4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work.
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**, referred to in and part of the **Agreement between Owner and Engineer for Professional Services**.

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NOTICE OF ACCEPTABILITY OF WORK

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

By: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

## CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK

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

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

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

**Construction Cost Limit**

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

F5.02 *Designing to Construction Cost Limit*

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

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

**Insurance**

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- A. The Engineer shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Engineer from claims set forth below which may arise out of or result from the Engineer's operations under the Contract and for which the Engineer may be legally liable, whether such operations be by the Engineer, Engineer's consultants or subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:
1. Claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
  2. Claims for damages because of bodily injury, occupational sickness or disease, or death of the Engineer's employees;
  3. Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Engineer's employees;
  4. Claims for damages insured by usual personal injury liability coverage;
  5. Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting there from;
  6. Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
  7. Claims for bodily injury or property damage arising out of completed operations;
  8. Claims involving contractual liability insurance applicable to the Engineer's obligations under Paragraph 6.10.A.

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

- B. The limits for Workers' Compensation and Employer's Liability insurance shall be as follows:
1. Workers' Compensation:
    - a. State: Statutory
    - b. Applicable Federal (e.g. Longshoremen's): Statutory
  2. Employer's Liability: \$500,000 per Accident  
\$500,000 Disease, Policy Limit  
\$500,000 Disease, Each Employee
- C. The limits for Commercial General Liability Policy, including coverage for Premises-Operations, Independent Contractors' Protective, Products-Completed Operations, Contractual Liability,

Personal Injury and Broad Form Property Damage (including coverage for Explosion, Collapse and Underground hazards), shall be as follows:

\$1,050,000 Each Occurrence

\$2,100,000 General Aggregate

\$2,100,000 Personal and Advertising Injury

\$2,100,000 Products-Completed Operations Aggregate

1. The policy shall be endorsed to have the General Aggregate apply to this Project only.
  2. The Contractual Liability insurance shall include coverage sufficient to meet the obligations in Paragraph 6.10.A.
  3. Products Completed Operations insurance shall be maintained for a minimum period of at least one (1) year after final payment.
- D. Automobile Liability insurance (owned, non-owned and hired vehicles) for bodily injury and property damage shall be \$2,000,000 Each Accident.
- E. Railroad Protective Liability Insurance. If the route selected by the Owner is adjacent to or within a right-of-way of a railroad track and this insurance is a requirement due to the proximity to the railroad track, Engineer shall procure and maintain throughout the life of this Agreement any necessary Railroad Protective Liability Insurance with minimum limits of \$500,000 per occurrence and \$500,000 in the aggregate and insurance for General Liability as provided in Paragraph B above. Santa Fe County shall each be included as an additional insured on such policy or policies. If Railroad Protective Liability is required due to the alignment selected by the parties, Owner shall, if necessary, initiate a change order to amend the contract sum to provide for reimbursement to Engineer of the actual costs of securing such insurance.
- F. Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These certificates and the insurance policies required by this section shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Engineer with reasonable promptness in accordance with the Engineer's information and belief.
- G. If, during the life of this Agreement, the Legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act (NMSA 1978, Sections 41-4-1 through 41-4-29, as amended) the Engineer shall increase the maximum liability limits of any insurance required herein.

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

## **Dispute Resolution**

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

### H6.08 *Dispute Resolution*

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

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

### **Limitation of Liability**

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Paragraph 6.10 of the Agreement is supplemented to include the following agreement of the parties:

1. *Exclusion of Special, Incidental, Indirect, and Consequential Damages:* To the fullest extent permitted by law, and notwithstanding any other provision in the Agreement, consistent with the terms of Paragraph 6.10. the Owner, its employees, officers, consultants shall not be liable to Engineer or anyone claiming by, through, or under Engineer for any special, incidental, indirect, or consequential damages whatsoever arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to any such damages caused by the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied of Owner or Owner's employees, officers, agents or Consultants.

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

**AMENDMENT TO OWNER-ENGINEER AGREEMENT**  
**Amendment No. \_\_\_\_\_**

1. *Background Data:*

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

2. *Description of Modifications:*

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

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

*[List other Attachments, if any]*

5. Agreement Summary (Reference only)

- a. Original Agreement amount: \$ \_\_\_\_\_
- b. Net change for prior amendments: \$ \_\_\_\_\_



c. This amendment amount: \$ \_\_\_\_\_  
d. Adjusted Agreement amount: \$ \_\_\_\_\_

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

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

OWNER:

ENGINEER:

By: Santa Fe County Manager or Santa Fe  
Board of County Commissioners

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date Signed: \_\_\_\_\_

Date Signed: \_\_\_\_\_

## MEMORANDUM

**TO:** Board of County Commissioners

**FROM:** Katherine Miller,  
County Manager

**DATE:** February 14, 2012

**SUBJECT:** Sole Community Provider Recommendation

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ISSUE:

Santa Fe County must review and approve a Sole Community Provider (SCP) commitment for the local hospitals by the State mandated deadline of February 15, 2012.

BACKGROUND:

At the last Indigent Board meeting, the Board instructed staff to take the requests made by the local hospitals, as well as the County's recommendations for the Sole Community Provider program to the Health Planning and Policy Commission (HPPC) for consideration. The HPPC were presented with the requests of the local hospitals and the County's recommendations on February 3<sup>rd</sup>.

A detailed discussion occurred; new members of the commission had a huge undertaking, as this was a first meeting for several of them. Staff presented a historical background to assist in the understanding of both the County's and the local hospital(s) needs, and the complexity of the SCP program.

The HPPC members discussed keeping the recommendation within existing resources. The HPPC clearly understood the needs of the local hospitals and recognized the need to balance such requests with available county resources.

Additional information was requested of Christus St. Vincent hospital relative to the uncompensated care and community benefit information that was attached to their request. The requested information included that a copy of the hospitals Form 990 and data relative to the charity events that raise funds that are administered by the hospital foundation be provided to the HPPC members. The members expressed a need for a more thorough reflection of all sources and uses. They also requested the percentage of budget that results from charitable donations.

RECOMMENDATION:

The SCP options that were presented to the HPPC for committed funding by Santa Fe County were based on the following. The numbers noted below represent the leveraged funding total for all participating local hospitals:

1. The number of FY 2011 Indigent Claims processed and approved - \$5.6 M
2. The projected number of FY 2012 Indigent claims - \$7.1 M
3. The level the State HSD would approve - \$7.6 M

The majority of HPPC members recommended that the County's commitment to the SCP program be within available resources. The HPPC also recommended that if possible, the County consider additional resources when the opportunity for supplemental funding occurs in September. The HPPC recommended using the indigent claims as projected for fiscal year 2012 with the escalator of 3.2%.

County staff also supports the recommendation of the HPPC with the known information to date. Unknown to staff at this time, are the following:

- The impact legislative action may or may not have on gross receipt taxes specific to the hold harmless component.
- The final match percentage that the State will prescribe for the SCP Commitment. This percentage is not finalized until May.

Based on the above-mentioned information, the County supports the recommendation of use of the FY2012 indigent claims extrapolated for each hospital based on six months of activity. Use of the FY12 indigent claims, an escalator of 3.2% (known) and a match percentage of 31% (unknown, and a conservative estimate) will result in the following commitment for each hospital:

↓

| HOSPITAL   | FY2012 CLAIMS    | SCP AMOUNT COMMITTED | AMOUNT LEVERAGED | MAX. STATE WILL APPROVE | RECOMMENDED AMOUNT |
|------------|------------------|----------------------|------------------|-------------------------|--------------------|
| Christus   | \$6,106,084      | \$1,953,459          | \$6,301,479      | \$7,030,916             | \$6,301,479        |
| Espanola   | \$ 640,071       | \$ 204,772           | \$ 660,554       | \$ 482,926              | \$ 482,926         |
| Los Alamos | <u>\$ 86,658</u> | <u>\$ 27,724</u>     | <u>\$ 89,431</u> | <u>\$ 54,070</u>        | <u>\$ 54,070</u>   |
| Total      | \$6,823,813      | \$2,185,955          | \$7,051,464      | \$7,567,912             | \$6,838,475        |

The amounts may change slightly when the State Human Services Department completes the final calculation. The recommendation of the HPPC members and County staff totals \$6,838,475. Staff respectfully requests approval of an SCP County commitment impacting the

FY2013 budget for a total of \$6.8 M. The recommended commitment equates to a \$2.186 M County match, and this amount is \$77,648 greater than the prior year's commitment of \$2.108.