



AGREEMENT FOR GENERAL ENGINEERING SERVICES

THIS Agreement, made this 10th day of March 2020 by and between the Governing Body of City of Rio Communities, State of New Mexico, hereinafter referred to as the CITY, and HDR Engineering, Inc. hereinafter referred to as the ENGINEER.

RECITALS

WHEREAS, the Governing Body has determined that it requires the services of an engineer in order to design and implement projects to protect the health, safety and welfare of the City's inhabitants; and,

WHEREAS, the CITY intends to issue Task Orders as appropriate for individual Projects for General Engineering services. The CITY anticipates the need for HDR Engineering, Inc. to perform, on as-needed-basis, various tasks with respect to various CITY which are currently undefined;

WHEREAS, this contract has been procured pursuant to CITY Request for Proposal Number 2020-0101 to establish a contract for on Call Consulting and Engineering Services; and,

WHEREAS, individual projects in City of Rio Communities, State of New Mexico, may be paid for in part with financial assistance from the United States of America acting through the United States Department of Agriculture – Rural Development, hereinafter referred to as USDA-RD; and/or through the United States Environmental Protection Agency, hereinafter referred to as EPA; and/or the New Mexico Environment Department, hereinafter referred to as NMED; and/or the New Mexico Finance Authority, hereinafter referred to as NMFA; and/or the New Mexico Department of Finance, hereinafter referred to as DFA; all collectively referred to as the Funding Agency. Neither the United States or the State of New Mexico nor any of its departments, agencies, or employees is or will be a party to this Agreement or any sub-agreement. The ENGINEER agrees to perform the various professional engineering services for the planning, design, and construction of said Project in accordance with the provisions of this Agreement.

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SECTION A - GENERAL PROVISIONS

1. General

(a) This Agreement represents the entire and integrated Agreement between the CITY and the ENGINEER for General Engineering Services for multiple projects per City of Rio Communities RFP 2020-0101 and supersedes all prior negotiations, representations or agreements, either written or oral. In the event any provisions of this Agreement or any subsequent addendum shall be held to be invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provision, term, condition or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party. The General provisions of this Agreement supersede any conflicting SPECIAL PROVISIONS.

(b) CITY and ENGINEER each is bound and the partners, successors, executors, administrators and legal representatives of CITY and ENGINEER are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives of such other party, in respect of all covenants, agreements, and obligations of the Agreement. Neither CITY nor ENGINEER may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may be become due) in the Agreement without 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 of an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Unless expressly provided otherwise in this Agreement:

(1) Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by CITY or ENGINEER to any Contractor, Contractor's subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them

(2) All duties and responsibilities undertaken pursuant to this Agreement will be for sole and exclusive benefit of CITY and ENGINEER and not for the benefit of any other party.

(c) Scope of Work

The Engineer will provide a full range of planning, engineering and construction support services on an as-needed basis. The Consultant team shall be capable of providing some or all consulting support services for capital, maintenance and operational enhancement projects as listed below:

- (1) Preliminary design, final design, bidding and negotiating and construction phase services;
- (2) Construction, design, expansion, repair and modification of CITY road projects;
- (3) Assist with the procurement of engineering and design professionals in specialty fields (i.e. bridge engineers, traffic engineers, structural engineers, etc.)
- (4) Assist with the procurement, of construction contractors including but not limited to bidding and negotiations;
- (5) Assessment and improvements of existing roads and facilities;
- (6) Road System evaluations and studies;
- (7) Planning and environmental studies and reports;

- (8) Cost estimating;
- (9) Design reviews and value engineering;
- (10) Survey and Geotechnical investigation;
- (11) Surveying services;
- (12) Project Management; and
- (13) Construction Engineering.

The Engineer shall be responsible for, but not limited to, the following tasks:

- (1) Provide detailed task order scope and cost proposals as required by the CITY. The following process shall be utilized:
 - a. Step 1: The Mayor or his/her designee and the ENGINEER shall identify a task to be completed.
 - b. Step 2: The ENGINEER will prepare a task order which will detail the scope of work/goals to be completed, estimate the amount of time to complete the task, estimate the cost of incidentals and estimate the final cost to complete the task on an hourly basis.
 - c. Step 3: The Mayor or his/her designee will review and approve the task order.
 - d. Step 4: The ENGINEER may commence work upon the execution of the Task Order by the Mayor or his/her designee and issuance of a Purchase Order by the purchasing office.
- (2) Provide clarifications to proposal as requested;
- (3) Comply with Federal, State and jurisdiction regulations and procedures including grant requirements for the assigned projects, including but not limited to implementation of Community Development Block program funds administered through the State of New Mexico; and
- (4) Comply with terms and scope of executed Task Orders.

2. Approvals

It is expressly understood that this Agreement is not binding upon the CITY until it is executed by the City Council after voting on the contract at a public meeting. Further, the Engineer is not to proceed with its obligations under the Agreement until the Engineer has received a fully signed copy of the Agreement.

3. Responsibilities of the ENGINEER

(a) The ENGINEER shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all design drawings, specifications, reports, and other services furnished by the ENGINEER under this Agreement. If this Agreement involves environmental measures or data generation, the ENGINEER shall comply with EPA quality assurance requirements that can be found on their website at <http://www.epa.gov/quality/index.html>. The ENGINEER shall keep the CITY informed of the performance of the ENGINEER'S duties under this Agreement. The ENGINEER, shall promptly and without additional compensation, correct or revise any errors, omissions, or other deficiencies in the design drawings, specifications, reports, and other services provided by ENGINEER under terms of this Agreement, but only to the extent such errors, omissions or

deficiencies failed to ENGINEER's applicable standard of professional care.

(b) The ENGINEER shall ensure that they have the following valid DUNS number and is registered in the federal SAMS system: 18-729-4624.

(c) The ENGINEER shall perform the professional services necessary to accomplish the work specified in this Agreement, in accordance with this Agreement and applicable Funding requirements in effect on the date of execution of any assistance agreement for this Project.

(d) The CITY'S review or approval of design drawings, specifications, reports, and other services furnished hereunder shall not in any way relieve the ENGINEER of responsibility for the technical adequacy of the work. Neither the CITY, nor applicable Funding Agency review, approval or acceptance of, nor payment for any of the services shall be construed as a waiver of action arising out to the performance of this Agreement.

(e) The ENGINEER shall be and shall remain liable, in accordance with applicable law, for all damages to the CITY caused by the ENGINEER's negligent performance of any of the services furnished under this Agreement, except for errors, omissions or other deficiencies to the extent attributable to the CITY or CITY -furnished data. The ENGINEER shall not be responsible for any time delays in the Project caused by circumstances beyond the ENGINEER'S reasonable control.

(f) ENGINEER'S opinions of probable Construction Cost are to be made on the basis of ENGINEER'S experience and qualifications and represent ENGINEER'S best judgment as an experienced and qualified professional generally familiar with the construction industry. However, since ENGINEER has no control over the cost of labor, materials, equipment, or services furnished by others, or over Contractor's 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 CITY wishes greater assurance as to probable Construction Cost, CITY shall employ and independent cost estimator.

(g) During the Construction Phase, the ENGINEER shall not at any time supervise, direct, or have control over Contractor's work, nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to the Contractor's work in progress, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work.

(h) The standard of care of 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 subject profession practicing under similar circumstances at the same time and in the same locality. ENGINEER makes no warranties, expressed or implied, under this Agreement

or otherwise, in connection with ENGINEER'S services.

(i) The ENGINEER'S obligations under this clause are in addition to the ENGINEER's other express or implied assurances under this Agreement or State law and in no way diminish any other rights that the CITY may have against the ENGINEER for faulty materials, equipment, or work.

4. Responsibilities of the CITY

(a) The CITY shall designate in writing a person authorized to act as the CITY 's representative. The CITY or its representative shall receive and examine documents submitted by the ENGINEER, interpret and define the CITY 's policies and render decisions and authorizations promptly in writing.

(b) CITY 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 CITY 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 without responsibility for verifying accuracy of CITY furnished data and information.

(c) The CITY shall provide to the ENGINEER full and free access to enter upon all property required for the performance of the ENGINEER's services under this Agreement.

(d) The CITY may make and retain copies of Documents for information and reference in connection with use on the Project by CITY. Such Documents are not intended or represented to be suitable for reuse by CITY or others on extensions of the Project or on any other project. Any such reuse or modification without written verification or adaptation by ENGINEER will be at CITY'S sole risk and without liability or legal exposure to ENGINEER. Any verification or adaptation as stated above, will entitle ENGINEER to further compensation at rates to be agreed upon by CITY and ENGINEER.

5. Changes

(a) The CITY may, at any time, by written order make changes within the general scope of this Agreement in the services or work to be performed. If such changes cause an increase or decrease in the ENGINEER's cost or time required to perform any services under this Agreement, whether or not changed by any order, the CITY shall make an equitable adjustment and modify this Agreement in writing. The ENGINEER must assert any claim for adjustment under this clause in writing within thirty (30) calendar days from the date it receives the CITY'S notification of change, unless the CITY grants additional time before the date of final payment.

(b) No services for which the ENGINEER will charge an additional compensation shall be furnished without the written authorization of the CITY.

6. Termination of Contract

(a) This Agreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this Agreement through no fault of the terminating party, provided that no such termination may be effected unless the other party is given (1) not less than fourteen (14) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate and (2) an opportunity for consultation with the terminating party and an opportunity to cure such failure during such 14-day period before termination.

(b) This Agreement may be terminated in whole or in part in writing by the CITY for its convenience, provided that the ENGINEER is given (1) not less than fourteen (14) calendar days written notice (delivered by certified, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the CITY prior to termination.

(c) If termination for default is effected by the CITY, an equitable adjustment in the price provided for in this agreement shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due to the ENGINEER at the time of termination may be adjusted to cover any additional reasonable costs to the CITY because of the ENGINEER's default. If the ENGINEER effects termination for default, or if the CITY effects termination for convenience, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to the ENGINEER for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by the ENGINEER relating to commitments which had become firm prior to the termination.

(d) Upon receipt of a termination action under paragraphs (a) or (b) above, the ENGINEER shall (1) promptly discontinue all affected work (unless the notice directs otherwise), and (2) upon payment of undisputed amounts to ENGINEER in accordance with the above, deliver or otherwise make available to the CITY within fourteen (14) calendar days copies of all data, design drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the ENGINEER in performing this Agreement, whether completed or in process.

(e) Upon termination under paragraphs (a) or (b) above, the CITY may take over the work and may award another party an Agreement to complete the work under this Agreement.

(f) If, after termination for failure of the ENGINEER to fulfill contractual obligations, it is determined that the ENGINEER had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of the CITY. In such event, adjustment of the Agreement price shall be made as provided in paragraph 9 of this clause.

7. Notices

(a) Any notice required to be given to either party for this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified,

return receipt requested, postage prepaid, as follows:

To the CITY: Mayor
360 Rio Communities Blvd
Rio Communities, NM 87002

To the ENGINEER: Chris Rodriguez, Managing Principal
2155 Louisiana Blvd., NE, Suite 9500
Albuquerque, NM 87110-5483

8. Payment

(a) The CITY shall pay to the Engineer in full payment for services satisfactorily performed per the completion of each specific Task Order. Payment is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year.

(b) The ENGINEER will submit to the CITY for services rendered an itemized bill showing charges for such services accompanied by any additional documentation requested by the CITY. Invoices must be received by the CITY no later than seven (7) days after the preceding quarter in which services were performed with the final invoice due no later than seven (7) days after the termination of the Fiscal Year in which the services were delivered. Compensation will be based on the lump sum or standard hourly rate with a maximum method of payment as detailed in the Attachments.

(c) The CITY shall notify the ENGINEER of any disputed amounts in the invoices within thirty (30) calendar days of receipt. If CITY contests an invoice, CITY may withhold only that portion so contested, and must pay the undisputed portion.

(d) Final Payment under this Agreement or settlement upon termination of this Agreement shall not constitute a waiver of the CITY 's claims against the ENGINEER under this Agreement.

(e) If CITY fails to make any payment due ENGINEER within forty-five (45) calendar days after CITY's receipt of ENGINEER's invoice, the amount due ENGINEER shall be increased at the rate of 1.5% per month from said forty-fifth day. In addition, after fourteen (14) calendar days prior written notice, the ENGINEER may suspend services under this Agreement until ENGINEER is paid in full. CITY waives any and all claims against ENGINEER for any such suspension.

9. TIME

(a) PROGRESS AND COMPLETION

1. Time limits stated in this Agreement are of the essence. By executing the Agreement, ENGINEER confirms that the Contract Time(s) is (are) reasonable periods for performing each phase of the Work.

2. The ENGINEER shall proceed expeditiously, consistent with professional skills, with adequate forces to achieve completion within the Contract Time.
3. The CITY shall not be liable to the ENGINEER for additional time or money if the ENGINEER submits a progress report expressing an intention to achieve completion of the Work prior to the Contract Time and then is not able to achieve intended accelerated schedule regardless of the reason.
4. If the ENGINEER is delayed at any time in the commencement or progress of the Work by an act or neglect of the CITY, changes in the Work as directed by the CITY in writing, or other causes beyond the ENGINEER'S control, then the Contract Time may be extended by CITY per Section 5 of this Agreement. Extensions of time not associated with modifications or change to the Work shall not be allowed to increase the Contract amount for overhead or for any other reason.
5. The ENGINEER shall promptly notify CITY in writing of any conditions that may delay delivery of work beyond the Contract Time.
6. CITY 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.

(b) CONTRACT TIME AND LIQUIDATED DAMAGES

1. The ENGINEER agrees that the Services being provided under this Agreement will be performed regularly, diligently and without interruption at such rate of progress as will ensure completion within the Contract Time. It is expressly understood and agreed, by and between ENGINEER and the CITY, that the Contract Time is a reasonable time for completion of the Services, taking into consideration the usual conditions for performing the Services. ENGINEER agrees to promptly notify CITY of delays in completing the services under this Agreement that are beyond reasonable ENGINEER'S control and for which a Contract Time extension will be requested. If the ENGINEER neglects, fails or refuses to complete the Services within the Contract Time, including any time extension granted by the CITY, then the ENGINEER agrees to pay the CITY the amount specified below, not as a penalty, but as liquidated damages.
2. The parties agree that the amount of the likely damages to the CITY for such delay is difficult to ascertain at the time of execution of this Agreement, but that a reasonable estimate of such damages may be deducted from any monthly progress payments due to the ENGINEER or from other monies being withheld from the ENGINEER when a reasonable estimate of the expected date of completion can be determined by the CITY.
3. Final accounting of Liquidated Damages shall be determined at completion and the ENGINEER shall be liable for any Liquidated Damages over and above unpaid balances held by the CITY.

4. The CITY and ENGINEER agree that as mutually agreeable, reasonable Liquidated Damages for delay (but not as a penalty), ENGINEER shall pay CITY one hundred fifty dollars (\$150.00) for each calendar day that expires after the Contract Time specified in the Agreement until the Work is complete and accepted by the CITY. CITY shall have no more than ten (10) calendar days to accept or reject the Work.

10. Project Design

Unless otherwise approved by the CITY, the ENGINEER shall specify materials, equipment, and processes that are readily available through competitive procurement and consistent with State and Federal regulations.

11. Audits and Access to Records

(a) The ENGINEER shall maintain books, records, documents, and other evidence directly pertinent to performance on work under this Agreement in accordance with generally accepted accounting principles and practices consistently applied, and Funding Agency regulations in effect on the date of execution of this Agreement. The ENGINEER shall also maintain the financial information and data used by the ENGINEER in the preparation of support of the cost submission required under EPA regulations in effect on the date of execution for any negotiated agreement or amendment thereof and a copy of the cost summary submitted to the CITY. Only as and to the extent required by applicable law, the Funding Agency, the Comptroller General of the United States, the U.S. Department of Labor, CITY, and the State water pollution control agency or any of their duly authorized representatives shall have access to such books, records, documents, and other evidence for inspection, audit, and copying during normal business hours. The ENGINEER will provide proper facilities for such access and inspection.

(b) The ENGINEER agrees to make paragraphs (a) through (f) applicable to all agreements it awards in excess of \$10,000, at any tier, and to make paragraphs (a) through (f) of this clause applicable to all amendments directly related to Project performance.

(c) Audits conducted under this provision shall be in accordance with generally accepted auditing standards and established procedures and guidelines of the reviewing or audit agency(ies).

(d) The ENGINEER agrees to disclose all non-privileged and non-exempt information and reports resulting from access to records under paragraphs (a) and (b) of this clause to any of the agencies referred to in paragraph (a) upon their request.

(e) Records under paragraphs (a) and (b) above shall be maintained and made available by the ENGINEER during performance of services under this Agreement and for three (3) years from the date of final Federal/State assistance payment to the CITY for the Project. In addition, those non-privileged records which relate to any controversy arising under this Agreement, litigation, the settlement of claims arising out of such performance or to costs or items to which an audit exception has been taken shall be maintained and made available by

the ENGINEER until three (3) years after the date of resolution of such appeal, litigation, claim or exception.

(f) This right of access clause applies to financial records pertaining to all agreements (except formally advertised, competitively awarded, fixed price agreements) and all agreement amendments regardless of the type of agreement. In addition, this right of access applies to all records pertaining to all agreements and agreement amendments:

1. To the extent the records pertain directly to Agreement performance; or
2. If there is any indication that fraud, gross abuse or corrupt practices may be involved; or
3. If the Agreement is terminated for default or for convenience.

12. Subcontracts

(a) Any subcontractors and outside associates or consultants required by the ENGINEER in connection with services under this Agreement will be limited to such individuals or firms as were specifically identified and agreed to during negotiations of this Agreement. The CITY must give prior approval for any substitutions, additions or deletions to such subcontractors, associates, or consultants.

(b) The ENGINEER may not subcontract services to subcontractors or consultants in excess of thirty (30) percent of the total phased compensation due ENGINEER and detailed in the Attachments without the CITY 's prior written approval.

13. Insurance

The ENGINEER agrees to obtain and maintain, at the ENGINEER's expense, such insurance as will protect the ENGINEER from claims under the Workman's Compensation Act and such comprehensive general liability and automobile insurance as will protect the CITY and the ENGINEER from all claims for bodily injury, death, or property damage which may arise from the performance by the ENGINEER, or by the ENGINEER's employees, for the ENGINEER's functions and services required under this Agreement. Such insurance shall be in an aggregate and per occurrence/accident amount not less than **\$1,000,000.00** for injury to any one person and **\$1,000,000.00** on account of any one accident and in the amount of not less than **\$1,000,000.00** for property damage. The comprehensive liability insurance shall name the CITY an additional insured with specific endorsements so naming the CITY for any claims against the CITY arising from the work performed by the ENGINEER under this Agreement. The ENGINEER further agrees to procure and maintain professional liability (errors and omissions, or "E&O") insurance in an amount not less than \$2,000,000.00 per claim and in the aggregate. Prior to commencement of any work, the ENGINEER shall furnish to the CITY a certificate that complies with this paragraph. The certificate shall provide that the policy shall not be canceled until at least thirty (30) calendar days prior written notice shall have been given to the CITY. ENGINEER shall provide annual updates of the certificate to demonstrate the policy remains in effect for the duration of this Agreement. The failure to have valid policies of

insurance in full force and effect at any time during the term of this agreements shall constitute a material breach of this agreement.

Employer's liability coverage will be required of the Contractor and any subcontractor for any class of employee engaged in work under this agreement that is not protected under the Workmen's Compensation Statute. All insurance will be by insurers acceptable to the City and authorized to do business in the state of New Mexico, and who are rated A,A- (A.M. Best Ratings) or AA+/- (S&P). Except as provided below, coverage shall be on an occurrence basis. All insurance policies shall contain a waiver of subrogation against the City. All insurance policies shall be primary. Coverage shall be on ISO coverage forms. Deductibles in excess of \$10,000 per claim may only be approved by the City. Coverage shall be as broad as that provided in ISO CG 20 01 04 13. Self-insured retentions must be declared and approved by the City. Automobile coverage shall be ISO Form CA 001 covering Code 1 (any auto) with the limits of **\$2,000,000** per accident for bodily injury a property damage. If an E&O policy is on a claims made basis, then the date of the policy must be shown and must be before the date of the Contract or the beginning of the scope of work under the Contract, be maintained and evidence for such coverage to be provided for at least five (5) years after completion of the work under the Contract. If such coverage is cancelled or not renewed, and not replaced with another claims made policy form with a retroactive date prior to the effective date of the Contract, then Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work under the Contract.

14. Environmental Condition of Site

- (a) CITY will disclose 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 Sites subject to this agreement, including type, quantity, and location.
- (b) CITY 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 Sites.
- (c) If Engineer encounters an undisclosed Constituent of Concern, then Engineer shall notify (1) CITY 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 CITY: (1) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and (2) warrants that the applicable sites are in full compliance with applicable Laws and Regulations.
- (e) If the presence at the Site(s) 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 calendar days notice.

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

15. Mutual Waiver

To the fullest extent permitted by law, CITY and Engineer waive against each other, and the other's employees, officers, directors, 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.

16. Independent Contractor

Engineer will, at all times during the performance of this Agreement and in connection with the Services, be deemed to be an Independent Contractor. No relationship of employer-employee or agency or other fiduciary capacity is created by this Agreement or by Engineer's performance of the Services.

17. Equal Employment Opportunity

The ENGINEER shall comply with Executive Order 11246, entitled "Equal Employment Opportunity", as amended by Executive Order 11375, and as supplemented in Department of Labor regulations 41 CFR Part 60.

18. Gratuities

(a) If the CITY finds after a notice and hearing that the ENGINEER or any of the ENGINEER's agents or representatives offered or gave gratuities (in the form of entertainment, gifts, or otherwise), to any official, employee, or agent of the CITY or the FUNDING AGENCY in an attempt to secure this Agreement, or favorable treatment in awarding, amending or making any determinations related to the performance of this Agreement, the CITY may, by written notice to the ENGINEER, terminate this Agreement. The CITY may also pursue other rights and remedies that the law or this Agreement provides. However, the existence of the facts on which the CITY bases such findings shall be in issue and may be reviewed in proceedings under the Remedies clause of this Agreement.

(b) In the event this Agreement is terminated as provided in paragraph (a), the CITY may pursue the same remedies against the ENGINEER as it could pursue in the event of a breach of the Agreement by the ENGINEER. As a penalty, in addition to any other damages to which it may be entitled by law, the CITY may pursue exemplary damages in an amount (as determined by the CITY) which shall be not less than three nor more than ten times the costs the

ENGINEER incurs in providing any such gratuities to any such officer or employee.

19. Covenant Against Contingent Fees

The ENGINEER represents that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the ENGINEER for the purpose of securing business. For breach or violation of this assurance the CITY shall have the right to annul this Agreement without liability or, at its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fees.

20. Cost and Pricing Data on Federally-funded Projects (delete section if not applicable)

The ENGINEER and its subcontractor(s) assure that cost and pricing data submitted for evaluation with respect to negotiation of prices for negotiated agreements, lower tier subagreements, or amendments are based on current, accurate, and complete data supported by their books and records. If the CITY, or Funding Agency determines that any price (including profit) negotiated in connection with this Agreement, any lower tier subagreement, or any amendment thereunder was increased by any significant sums because the data provided was incomplete, inaccurate, or not current at the time of submission, then such price or cost or profit shall be reduced accordingly; and this Agreement shall be modified in writing to reflect such action. Failure to agree on a reduction shall be subject to the Remedies clause of this Agreement.

21. Remedies

In the event a dispute arises as to the rights and obligations among the parties hereto, the parties agree to attempt to resolve the dispute through mediation as a condition precedent to seeking legal and equitable remedies. The parties agree to evenly split the costs of any such mediation services. The parties shall mutually agree upon the choice of mediator. In the event the parties have not agreed upon a mediator within twenty (20) days of written notice to the other regarding the dispute, then a list of seven potential mediators will be obtained from the New Mexico Association of Counties and the parties shall utilize a striking process until a mediator is agreed upon.

22. Assurance Against Debarment

The ENGINEER assures that neither it nor any of its subcontractors are suspended or debarred by EPA or USDA-RD.

23. Order of Precedence.

Request for Proposals No. 2020-0101 and the Engineer's proposal are incorporated by reference into this agreement and are made a part of this agreement. In the event of any conflict among these documents, the following order of precedence shall apply:

- (a) Any contract amendment(s), in reverse chronological order; then
- (b) this contract itself; then
- (c) the Request for Proposals; then
- (d) the Engineers Best and Final Offer(s), in reverse chronological order; then
- (e) the Engineer's proposal; then
- (f) the Engineer's standard agreement terms and conditions (which may or may not have been submitted as part of the Engineer's proposal).

24. Maximum Allowable Construction Cost (for CDBG funded projects)

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

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

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

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

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

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

required to reduce the Probable Construction Cost.

(g) If the CITY elects to reduce the Probable Construction Cost, the CITY shall cooperate with the Engineer in revising the quality and scope of the Project; and the Engineer, without additional charge if its cost estimate was negligent, shall modify the Drawings and Specifications as necessary to bring the Construction Cost within the MACC as the CITY's sole and exclusive remedy on account of such negligence. The Engineer shall then assist the CITY through the Bidding process. When the cost estimate or an evaluation prepared by the Engineer indicates that the Project exceeds the MACC, the provisions outlined in this paragraph shall apply.

(h) The MACC shall not exceed **AMOUNTS IDENTIFIED BY THE CITY BY TASK ORDERS.**

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

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

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

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

(b) Termination for Convenience of the CITY. The CITY may terminate this contract at any time by giving at least ten (10) days' notice in writing to the Engineer. If the Contract is terminated by the CITY as provided herein, the Engineer will be paid for the time provided and expenses incurred up to the termination date. If this Contract is terminated due to the fault of the Engineer, paragraph 1 hereof relative to termination shall apply.

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

(d) Personnel.

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

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

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

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

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

(g) Records and Audits. The Engineer shall maintain accounts and records, including personnel, property and financial records, adequate to identify and account for all costs pertaining to the Contract and such other records as may be deemed necessary by the CITY and to assure proper accounting for all project funds, both federal and non-federal shares. These records will be made available for audit purposes to the CITY or any authorized representative, and will be retained for six (6) years after the expiration of this Contract unless permission to destroy them is granted by the CITY and the funding agency.

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

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

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

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

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

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

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

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

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

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

7. The Engineer will include the provisions of paragraphs A through G in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor

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

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

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

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

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

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

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

4. The contractor will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the

subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135. The Contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

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

(o) Interest of Members of the CITY. No member of the governing body of the CITY and no other officer, employee, or agent of the CITY, who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this contract; and the Engineer shall take appropriate steps to assure compliance.

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

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

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

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

SECTION B -ENGINEERING SERVICES

The ENGINEER shall furnish ENGINEERING SERVICES as follows in accordance with the GENERAL PROVISIONS of the Agreement and as authorized by the appropriate Task Order

Attachment to this Agreement:

Engineering Services During the Planning Phase

1. The ENGINEER shall complete the ENGINEERING SERVICES described in EXHIBIT A – Planning Services scope of work and cost proposal within the time specified in Attachment I – Compensation for Engineering Services During the Planning Phase from the date of written authorization to proceed unless otherwise mutually agreed to in writing by both parties. Any supporting documentation or revisions regarding the ENGINEER's services under this Agreement necessary to obtain the approval of the Funding Agency and all State regulatory agencies will be provided promptly.
2. The ENGINEER shall, prior to completion of ninety (90) percent of the Planning Phase service, prepare and furnish to the CITY an estimate for total compensation to be paid to the ENGINEER for providing the services to be performed in the Design Phase.

Engineering Services During the Design Phase

3. The ENGINEER shall complete the ENGINEERING SERVICES described in EXHIBIT B – Design Services scope of work and cost proposal and section B-3 through B-11 described herein within the time specified in Attachment II – Compensation for Engineering Services During the Design Phase from the date of written authorization to proceed unless otherwise mutually agreed to in writing by both parties. Any supporting documentation or revisions regarding the ENGINEER's services under this Agreement necessary to obtain the approval of the Funding Agency and all State regulatory agencies will be provided promptly.
4. The ENGINEER shall perform the necessary design surveys, accomplish the detailed design of the Project, prepare contract documents including design drawings, specifications and invitations for bids, and prepare a final opinion of probable Project costs based on the final design of the Project. The design drawings prepared shall be in sufficient detail to show the character and extent of the Project and to permit the actual location of the proposed improvements on the Project site. It is also understood that if subsurface explorations such as borings, or soil tests are required to determine amounts of rock excavation or foundation conditions, the ENGINEER will furnish coordination of said explorations as an Additional Engineering Service, and the costs incident to such explorations, no matter whether they are performed by the ENGINEER or by others shall be paid for by the CITY as indicated in Section C and set out in Attachment II.
5. The ENGINEER shall review the Engineering Report prepared for this Project and, if necessary and upon consultation with and concurrence of the CITY, Funding Agency or delegated State as appropriate, shall revise design criteria, design standards, treatment process sizing and other appropriate preliminary design information included in the Plan or other preliminary engineering reports in order to complete the final design for the Project in accordance with the performance standards and accepted engineering practices.

6. The ENGINEER shall assist the CITY in obtaining necessary permits and approvals from appropriate Federal, State, and local regulatory agencies. The cost of obtaining such permits and approvals shall be borne by the CITY. However, this shall not be construed as a guarantee that the ENGINEER can cause a permit or permit condition to be granted or further the CITY's goals.

7. The Contract Documents furnished by the ENGINEER under Section B-4 shall utilize Funding Agency endorsed construction contract documents, as appropriate.

8. Prior to the advertisement for bids, the ENGINEER shall provide for each construction contract to be awarded by the CITY, the number of copies specified in Attachment II of the detailed design drawings, specifications, and contract documents for use by the CITY and appropriate Federal, State and local agencies from whom approval of the Project must be obtained. The ENGINEER shall provide additional copies of the above specified documents to the CITY at the cost of reproduction. Originals of such items as documents, survey notes, and tracings, prepared by the ENGINEER are and shall remain the property of the ENGINEER, but this shall in no way infringe upon the CITY's rights to such items under Section A-6(e).

9. The ENGINEER shall establish baselines for locating the work together with a suitable number of benchmarks adjacent to the work and show their location in the Contract Documents. This information and the Contract Documents will provide the contractor sufficient reference from which to execute the contract work. The ENGINEER is not obligated to set construction grade stakes for the construction of the Project.

10. The ENGINEER shall prepare and furnish to the CITY three (3) copies of maps or drawings showing the approximate location of needed construction easements, permanent easements, rights-of-way and land to be acquired. Such maps or drawings shall be furnished promptly to enable the CITY to initiate property and easement acquisitions.

11. The ENGINEER shall, prior to completion of ninety (90) percent of the Design Phase service, prepare and furnish to the CITY an estimate for total compensation to be paid to the ENGINEER for providing the services to be performed in the Construction Phase and Operation Phase.

12. Section B-3 through B-11 and those ADDITIONAL ENGINEERING SERVICES designated for the Design Phase in Attachment II will take effect upon execution of Attachment II.

Engineering Services During the Construction Phase

13. ENGINEER shall complete the ENGINEER SERVICES described in EXHIBIT C – Construction Services scope of work and cost proposal and section B-13 through B-24 described herein, within the time specified in Attachment III – Compensation for Engineering Services During the Construction Phase from the date of written authorization to proceed unless otherwise mutually agreed to by both parties.

14. The ENGINEER shall attend the bid opening and tabulate the bid proposals, analyze the responsiveness of the bidders, check references, and make recommendations for awarding the contract(s) for construction to the lowest responsible, responsive bidder.
15. Upon award of each construction contract, the ENGINEER shall furnish to the CITY, for each contract, the number specified in Attachment III of the sets of the design drawings, specifications and contract documents for execution by the CITY and contractor. The ENGINEER shall provide additional copies of such contract documents to the CITY at the cost of reproduction.
16. The ENGINEER shall review and approve, for conformance with the design concept all shop drawings and other submittals required by the Contract Documents to be furnished by contractors.
17. The ENGINEER shall interpret the general intent of the design drawings and specifications to endeavor to protect the CITY against defects and deficiencies in construction on the part of the contractors.
18. The ENGINEER shall provide general engineering review of the work of the contractors as construction progresses to ascertain that the contractors are conforming to the general design concept. Engineer shall, in connection with observations of Contractor's Work while it is in progress make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, but at least monthly, to observe as an experienced and qualified design professional the progress and quality of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of Contractor's Work in progress or to involve detailed inspections of Contractor's Work in progress beyond the responsibilities specifically assigned to Engineer in this Agreement and the Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Contract Documents, and Engineer shall keep CITY informed of the progress of the Work.
19. The ENGINEER's undertaking hereunder shall not relieve the contractor of its obligation to perform the work in conformity with the Contract Documents and in a workmanlike manner; nor shall it make the ENGINEER an insurer of the contractor's performance. Engineer shall not at any time supervise, direct, or have control over Contractor's work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to the Contractor's work in progress, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work.

20. The ENGINEER shall review each contractor's applications for progress and final payments and submit sufficient copies of same to the CITY with the ENGINEER's recommendation for approval or disapproval.
21. The ENGINEER shall prepare necessary contract change orders for approval of the CITY, the Funding Agency and others as required. The ENGINEER shall make an independent assessment of the Contractor's cost and time proposal and the impacts on the Contract Price and Contract Time as part of the review and recommendation process for each change order.
22. The ENGINEER shall make a site visit prior to issuing the certificate of substantial completion of all construction and submit a written report to the CITY, the Funding Agency and others as required.
23. Prior to submission of recommendation for final payment on each contract, the ENGINEER shall submit a certificate of substantial completion of work done under that contract to the CITY, the Funding Agency and others as required.
24. The ENGINEER shall provide the CITY with record drawings as specified in the scope of work for Attachment III. Such drawings will be based upon the Resident Project Representative's construction data and the construction records provided by the contractor during construction and reviewed by the Resident Project Representative.
25. Section B-13 through B-24 and those ADDITIONAL ENGINEERING SERVICES designated for the Construction Phase in Attachment III will take effect upon execution of Attachment III.

Engineering Services During the Operation Phase

26. The ENGINEER shall complete the ENGINEERING SERVICES described in EXHIBIT D – Operational Services scope of work and cost proposal and section B-26 through B-31 within the time specified in Attachment IV – Compensation for Engineering Services During the Operation Phase from the date of written authorization to proceed unless otherwise mutually agreed to in writing by both parties.
27. The ENGINEER shall review the first year's operation of the Project and revise the operation and maintenance manual for the Project as necessary to accommodate actual operating experience.
28. The ENGINEER shall provide to the CITY monthly operation reports on the performance of the Project.
29. The ENGINEER shall train its operating personnel and prepare curricula and training material for operating personnel.
30. Eleven (11) months after the initiation of the Project operation, the ENGINEER shall advise the CITY in writing whether the Project meets the project performance standards.

31. Section B-26 through B-30 and those ADDITIONAL ENGINEERING SERVICES designated for the Operation Phase in Attachment IV will take effect upon execution of Attachment IV.

SECTION C - ADDITIONAL ENGINEERING SERVICES

ADDITIONAL ENGINEERING SERVICES as detailed in the Attachments shall be provided by the ENGINEER upon written authorization by the CITY and concurrence of Funding Agency. Compensation for performing the designated ADDITIONAL ENGINEERING SERVICES will be included on Attachment I, Attachment II, Attachment III, or Attachment IV. ADDITIONAL ENGINEERING SERVICES could include such things as the following.

1. Provide Resident Project Observation. The ENGINEER shall, prior to the preconstruction conference, submit a resume of the Resident Project Representative's qualifications, anticipated duties and responsibilities for approval by the CITY and the Funding Agency. Resident observation includes checking lines and grades, keeping records of full measurements and the contractor's activities, passing information between the ENGINEER and contractor, reviewing of contractor's request for progress payments, inspection of completed work for compliance with Contract Documents and keeping of a daily diary per Funding Agency requirements. Performance of this service will not guarantee the contractor's performance, but it endeavors to protect the CITY against defects and deficiencies in the Project and verify compliance with the contract Documents. Period of service for calculating compensation will be as specified in the Attachments.
2. Prepare site, boundary, and topographic surveys for treatment works, dams, reservoirs, and other similar special surveys as may be required.
3. Conduct laboratory tests, well tests, borings, and specialized geological, soils, hydraulic, or other studies recommended by the ENGINEER.
4. Prepare property surveys, detailed descriptions of sites, maps, drawings, or estimates related thereto; assist in negotiating for land and easement rights.
5. Appear before courts or boards on matters of litigation related to the project.
6. Assist CITY with developing a user charge system. Design a user charge system to produce adequate revenues required for the operation, maintenance and replacement of the Project that meets applicable EPA or other requirements.
7. Prepare an operation and maintenance manual.
8. Provide construction-staking services.

9. Prepare or review environmental assessments and impact statements; review and evaluate the effects on the design requirements for the Project of any such statements and documents prepared by others; and assist in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
10. Provide 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, CITY'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, rules, regulations, ordinances, codes, standards or orders enacted subsequent to the Effective Date of this Agreement or are due to any other causes beyond ENGINEER's control.
11. Provide services resulting from evaluation by ENGINEER during the Study and Report Phase at CITY's request of alternative solutions in addition to those specified in Exhibit A to Attachment I.
12. Prepare for, coordinate with, participate in and respond to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering and constructability review requested by CITY; and performing or furnishing services required to revise studies, reports, Drawings, Specifications or other Bidding Documents as a result of such review processes.
13. Provide services in connection with Work Change Directives and Change Orders to reflect CITY-requested changes to the Drawings and Specifications.
14. Provide services in making revisions to Drawings and Specifications occasioned by the CITY's acceptance of substitute materials or equipment other than "or-equal" items; and services after the award of the construction contract in evaluating and determining the acceptability of a substitution.
15. Provide additional or extended services during construction made necessary by (1) emergencies or acts of God endangering the Work, (2) work damaged by fire or other cause during construction, (3) a significant amount of defective, neglected or delayed work by Contractor, (4) acceleration of the progress schedule involving services beyond normal working hours, or (5) default by Contractor.

SECTION D - SPECIAL PROVISIONS OR MODIFICATIONS TO THE STANDARD LANGUAGE IN THIS AGREEMENT

1. Attorney Fees

In the event this Agreement results in dispute, mediation, litigation, or settlement between the

parties to this Agreement, the prevailing party of such action shall NOT be entitled to an award of attorneys' fees and court costs.

2. Fee Rate

All work performed by the Engineer pursuant to this agreement (and individual task orders) shall be performed at the following rates:

HOURLY RATE UNIT FEE SCHEDULE

EFFECTIVE: MARCH 10, 2020

CLASSIFICATION	HOURLY RATE
TECHNICAL SPECIALIST (PHD or Company Officer for specialty services)	\$325.00
PROJECT PRINCIPAL	\$260.00
STAFF ENGINEER	\$86.00
STAFF ENGINEER 1	\$101.00
STAFF ENGINEER 2	\$103.00
STAFF ENGINEER 3	\$119.00
STAFF ENGINEER 4	\$157.00
PROJECT ENGINEER	\$130.00
PROJECT ENGINEER 1	\$142.00
PROJECT ENGINEER 2	\$143.00
PROJECT ENGINEER 3	\$158.00
PROJECT ENGINEER 4	\$160.00
PROJECT ENGINEER 5	\$185.00
PROJECT ENGINEER 6	\$193.00
SENIOR ENGINEER	\$202.00
SENIOR ENGINEER 1	\$207.00
SENIOR ENGINEER 2	\$215.00
SENIOR ENGINEER 3	\$229.00
SENIOR ENGINEER 4	\$240.00
SENIOR ENGINEER 5	\$245.00
SENIOR ENGINEER 6	\$265.00

CONSTRUCTION INSPECTOR I	\$93.00
CONSTRUCTION INSPECTOR II	\$118.00
CONSTRUCTION MANAGER	\$186.00
CADD DRAFTER I	\$57.00
CADD DRAFTER II	\$72.00
CADD SPECIALIST I	\$117.00
CADD SPECIALIST II	\$125.00
STAFF ADMINISTRATOR I	\$75.00
STAFF ADMINISTRATOR II	\$97.00
PUBLIC INVOLVEMENT SPECIALIST I	\$126.00
PUBLIC INVOLVEMENT SPECIALIST II	\$125.00
PROJECT ARCHITECT I	\$155.00
SENIOR ARCHITECT I	\$185.00
STAFF ARCHITECT I	\$101.00
STAFF ARCHITECT II	\$103.00
STAFF ARCHITECT III	\$119.00
PROJECT ADMIN I	\$72.00
PROJECT ADMIN II	\$115.00
PROJECT ADMIN III	\$135.00

NOTES:

- 1 Applicable Gross Receipts Tax will be added to all billings.
- 2 Per diem and other costs will be charged at actual reimbursable amount
- 3 **Minimum of 1-hour charge.**
- 4 **Mileage will be billed at the IRS standard mileage rate.**
- 5 Outside services and subconsultants will be billed at 1.1 times cost of service.

OFFICE SERVICES	RATE
BLUEPRINTS/ PAPER (PER SQ-FT) (B/W)	At cost
BLUEPRINTS/ PAPER (PER SQ-FT) (COLOR)	At cost

BLUEPRINTS/ MYLAR (PER SQ-FT)	\$0.90/SF
DOCUMENT COPIES (B/W)	\$0.05/copy
DOCUMENT COPIES (COLOR)	\$0.15/copy
DOCUMENT BINDING (EACH)	At cost
FACSIMILE TRANSMISSIONS (EACH)	At cost
SHIPPING AND PACKAGING	At cost

NOTES:

1

Applicable Gross Receipts Tax will be added to all billings.

2

Hourly rate for office personnel will be added to all billings.

3

B/W = Black and White SQ-FT= Square Foot

3. Term

This Agreement is for one year from the date of approval, and shall automatically extend for each subsequent year for a total of four years, unless terminated pursuant to section A paragraph 6 (b), supra. In accordance with Section 13-1-150 NMSA 1978, no contract term, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

4. Increase Fee Rate

The Engineer may increase its fee rate by giving the CITY notice of the increased rate 45 days prior to the end of the current annual term. If the CITY does not accept the increased rate in writing prior to the commencement of the subsequent term then this Agreement shall terminate with no further obligations of the parties.

5. No Guarantee of Work

The CITY does not guarantee a minimum amount of work with the approval of this Agreement.

6. Delegation of Authority for Task Orders

With the approval of this Agreement, the CITY Councilors delegates its authority to approve task orders, for budgeted amounts, to the Mayor or his/her designee.

7. Appropriations

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Board of CITY Commissioners for the performance of any individual task order project. If sufficient appropriations and authorization are not made by the Governing

Body of CITY Councilors for any task order project, the individual task order project shall terminate immediately upon written notice being given by the CITY to the ENGINEER. The CITY'S decision as to whether sufficient appropriations are available shall be accepted by the ENGINEER and shall be final. If the CITY proposes an amendment to any task order to unilaterally reduce funding, the ENGINEER shall have the option to terminate the task order agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

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

The parties further certify by their signatures below that no modifications have been made to the standard language of this Agreement, other than those detailed in Section D.

CITY:

APPROVED, ADOPTED, AND PASSED on this 10th day of March 2020.

GOVERNING BODY OF THE CITY OF RIO COMMUNITIES

MARK GWINN
MAYOR

MARGARET "PEGGY" GUTJAHR
MAYOR PRO-TEM

BILL BROWN
COUNCILOR

JIMMIE WINTERS
COUNCILOR

JOSHUA RAMSELL
COUNCILOR

ATTEST BY:

ELIZABETH "LISA" ADAIR, MUNICIPAL CLERK

ENGINEER: HDR ENGINEERING, INC.

By: _____

Name: Paul Bowdoin, PE

Title: Sr. Vice President

Address: 20 East Thomas; Suite 2500
Phoenix, AZ 85012

Date _____

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SAMPLE FORM

AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES
between the
City of Rio Communities
and

_____ -

TASK ORDER NO. _____

In accordance with the Agreement for Engineering Services dated the _____ day of _____, 20_____
by and between _____ hereinafter referred to as the CITY, and _____, hereinafter
referred to as the ENGINEER.

Project: _____

Financing: _____

SECTION D - SPECIAL PROVISIONS OR MODIFICATIONS TO THE STANDARD LANGUAGE IN THIS AGREEMENT

(Describe, attach or indicate "None")

1. (As may be identified by Engineer or CITY by Task Order)

- ATTACHMENT I** - Compensation for Engineering Services During the Planning Phase
- ATTACHMENT II** - Compensation for Engineering Services During the Design Phase
- ATTACHMENT III** - Compensation for Engineering Services During the Construction Phase
- ATTACHMENT IV** - Compensation for Engineering Services During the Operation Phase

1. As set forth in the AGREEMENT FOR ENGINEERING SERVICES dated the _____ day of _____, 20_____
by and between the _____, the CITY, and _____, the ENGINEER,
the CITY and ENGINEER agree this _____ day of _____, 20_____
that the CITY shall compensate the ENGINEER for services described in Section B and Section C and further described in

- EXHIBIT A** – Planning Services scope of work and cost proposal
- EXHIBIT B** – Design Services scope of work and cost proposal
- EXHIBIT C** – Construction Services scope of work and cost proposal
- EXHIBIT D** – Operational Services scope of work and cost proposal

2. Compensation for ENGINEERING SERVICES shall be by the

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

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

3. Compensation for ADDITIONAL ENGINEERING SERVICES, shall be by the

SAMPLE FORM

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

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

4. The amount of compensation shall not change unless the scope of services to be provided by the ENGINEER changes and this Agreement is formally amended according to Section A-5. Contract Time under Section B. and for the purpose of Section A.8 shall be _____ calendar days (or as specified in the Attachments or Exhibits)

5. CITY shall pay ENGINEER applicable gross receipt taxes and reimbursable expenses at the rates set forth in the appropriate EXHIBIT. The amounts payable to ENGINEER for reimbursable expenses will be the project related internal expenses, such as mileage, per diem and reproduction, actually incurred or allocated by ENGINEER, plus all invoiced external reimbursable expenses, including consultants, allocable to the project, the latter multiplied by a factor of _____. Reimbursable expenses shall not exceed the estimate in the EXHIBIT without prior written approval of the CITY, with Funding Agency concurrence.

6. The method for interim or partial payments, such as milestone or time & materials, shall be as detailed below: _____

7. Signatures

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

ATTEST: _____
Type Name _____
Title _____
Date _____

CITY OF RIO COMMUNITIES
By: _____
Type Name _____
Title MAYOR _____
Date _____

ATTEST: _____
Type Name _____
Title _____
Date _____

ENGINEER: _____
By: _____
Type Name _____
Title _____
Address _____
Date _____

REVIEWED: FUNDING AGENCY (if applicable)
NAME: _____
By _____
Type Name _____
Date _____