



**AGREEMENTS FOR ENGINEERING SERVICES
(Publicly Funded Project)**

THIS Agreement, made this 16th day of April 20 09 by and between Sandoval County hereinafter referred to as the OWNER, and Universal Asset Management hereinafter referred to as the ENGINEER.

The OWNER intends to construct a Project consisting of an inland brackish water treatment plant including water supply wells, power supply and plant residual treatment and disposal.

In Sandoval County, State of New Mexico, which 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 subagreement. 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 OWNER and the ENGINEER for the Project 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) OWNER and ENGINEER each is bound and the partners, successors, executors, administrators and legal representatives of OWNER 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 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 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 OWNER or ENGINEER to any Contractor, Contractor's subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them
 - (2) All duties and responsibilities undertaken pursuant to this Agreement will be for sole and exclusive benefit of OWNER and ENGINEER and not for the benefit of any other party.
- (c) The ENGINEER will work closely with the Funding Agency, as necessary, for funding to be provided.
- (d) The ENGINEER will attend conferences and public hearings with the OWNER, representatives of the Funding Agency, or other interested parties and provide assistance in connection with such undertakings as provided for in the scope of work detailed in the Attachments.

2. Approvals

- (a) This Agreement shall not become effective until approved by the Funding Agency. Such approval shall be evidenced by the signature of a duly authorized representative of the Funding Agency in the space provided in the Attachments to this Agreement. The approval shall in no way commit the Funding Agency to render financial assistance to the OWNER. The Funding Agency is without liability for any payment hereunder, but in the event such assistance is provided, the approval shall signify that the provisions of this Agreement are consistent with the requirements of the Funding Agency.
- (b) Review or approval of documents by or for the Funding Agency under this Agreement is for administrative purposes only and does not relieve the ENGINEER or OWNER of their responsibilities to design, construct and operate the Project as required under law, regulations, permits and good management practices.

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 OWNER 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.

- (b) The ENGINEER shall perform the professional services necessary to accomplish the work specified in this Agreement, in accordance with this Agreement and applicable Funding Agency requirements in effect on the date of execution of any assistance agreement for this Project.
- (c) The OWNER, or Funding Agency 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 OWNER, nor 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.
- (d) The ENGINEER shall be and shall remain liable, in accordance with applicable law, for all damages to the OWNER 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 OWNER or OWNER-furnished data. The ENGINEER shall not be responsible for any time delays in the Project caused by circumstances beyond the ENGINEER'S control.
- (e) 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 OWNER wishes greater assurance as to probable Construction Cost, OWNER 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. 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.
- (h) 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 OWNER may have against the ENGINEER for faulty materials, equipment, or work.

4. Responsibilities of the OWNER

- (a) The OWNER shall designate in writing a person authorized to act as the OWNER's representative. The OWNER or its representative shall receive and examine documents submitted by the ENGINEER, interpret and define the OWNER's policies and render decisions and authorizations promptly in writing.
- (b) 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 without responsibility for verifying accuracy of OWNER furnished data and information.

- (c) The OWNER 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 OWNER may make and retain copies of Documents for information and reference in connection with use on the Project by OWNER. Such Documents are not intended or represented to be suitable for reuse by OWNER 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 OWNER'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 OWNER and ENGINEER.

5. Changes

- (a) The OWNER may, at any time, with prior approval of the Funding Agency, 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 OWNER 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 OWNER's notification of change, unless the OWNER 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 OWNER.

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 before termination.
- (b) This Agreement may be terminated in whole or in part in writing by the OWNER 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 OWNER prior to termination.
- (c) If termination for default is effected by the OWNER, 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 costs to the OWNER because of the ENGINEER's default. If the ENGINEER effects termination for default, or if the OWNER 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) deliver or otherwise make available to the OWNER 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 OWNER 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 OWNER. In such event, adjustment of the Agreement price shall be made as provided in paragraph 9 of this clause.

7. Payment

- (a) The ENGINEER will submit to the OWNER for services rendered an itemized bill showing charges for such services accompanied by any additional documentation requested by the OWNER. Such invoices are limited to no more than one per month. Compensation will be based on the lump sum or standard hourly rate with a maximum method of payment as detailed in the Attachments.
- (b) The OWNER shall notify the ENGINEER of any disputed amounts in the invoices within fourteen (14) calendar days of receipt. If OWNER contests an invoice, OWNER may withhold only that portion so contested, and must pay the undisputed portion.
- (c) Final Payment under this Agreement or settlement upon termination of this Agreement shall not constitute a waiver of the OWNER's claims against the ENGINEER under this Agreement.
- (d) If OWNER fails to make any payment due ENGINEER within forty-five (45) calendar days after OWNER'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 ten (10) calendar days prior written notice, the ENGINEER may suspend services under this Agreement until ENGINEER is paid in full. OWNER waives any and all claims against ENGINEER for any such suspension.

8. 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 OWNER 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 OWNER, changes in the Work as directed by the OWNER in writing, or other causes beyond the ENGINEER'S control, then the Contract Time may be extended by OWNER 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 and shall strictly apply toward liquidated damages.
- 5. The ENGINEER shall promptly notify OWNER in writing of any conditions that may delay delivery of work beyond the Contract Time.
- 6. 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.

(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 OWNER, 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 OWNER of delays in completing the services under this Agreement that are beyond 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 OWNER, then the ENGINEER agrees to pay the OWNER the amount specified in the ATTACHMENT, not as a penalty, but as liquidated damages.

2. The parties agree that the amount of the likely damages to the OWNER 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 OWNER.
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 OWNER.
4. The OWNER and ENGINEER agree that as mutually agreeable, reasonable Liquidated Damages for delay (but not as a penalty), ENGINEER shall pay OWNER for each calendar day that expires after the Contract Time specified in the Agreement until the Work is complete and accepted by the OWNER. OWNER shall have no more than ten (10) calendar days to accept or reject the Work.

9. Project Design

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

10. 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 OWNER. The Funding Agency, the Comptroller General of the United States, the U.S. Department of Labor, OWNER, 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) of this clause 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) and the General Accounting Office.
- (d) The ENGINEER agrees to disclose all 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 OWNER for the Project. In addition, those 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.

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- (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.

11. 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 OWNER 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 OWNER's prior written approval.

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

13. 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 an undisclosed Constituent of Concern, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- (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 consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.

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- (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 calendar 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 "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.

14. Mutual Waiver

To the fullest extent permitted by law, Owner 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.

15. 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.

16. 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.

17. Gratuities

- (a) If the OWNER 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 OWNER 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 OWNER may, by written notice to the ENGINEER, terminate this Agreement. The OWNER may also pursue other rights and remedies that the law or this Agreement provides. However, the existence of the facts on which the OWNER 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 OWNER 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 OWNER may pursue exemplary damages in an amount (as determined by the OWNER) 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.

18. 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 OWNER 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.

19. 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 OWNER, 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.

20. Remedies

Unless otherwise provided in this Agreement, all claims, counter-claims, disputes, and other matters in question between the OWNER and the ENGINEER arising out of or relating to this Agreement or the breach of it will be decided by non-binding mediation or arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the OWNER is located.

21. Assurance Against Debarment

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

SECTION B — ENGINEERING SERVICES

The ENGINEER shall furnish ENGINEERING SERVICES as follows in accordance with the this Agreement:
GENERAL PROVISIONS of the Agreement and as authorized by the appropriate Attachment to

1. Engineering Services During the Planning Phase

- (a) The ENGINEER shall complete the ENGINEERING SERVICES described in EXHIBIT A within the time specified in Attachment I - 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.
- (b) The ENGINEER shall, prior to completion of ninety (90) percent of the Planning Phase service, prepare and furnish to the OWNER an estimate for total compensation to be paid to the ENGINEER for providing the services to be performed in the Design Phase.

2. Engineering Services During the Design Phase

- (a) 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.
- (b) 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 OWNER as indicated in Section C and set out in Attachment.
- (c) The ENGINEER shall review the Engineering Report prepared for this Project and, if necessary and upon consultation with and concurrence of the OWNER, 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.
- (d) The ENGINEER shall assist the OWNER 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 OWNER. 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 OWNER's goals.
- (e) The Contract Documents furnished by the ENGINEER under Section B-4 shall utilize Funding Agency endorsed construction contract documents, as appropriate.
- (f) Prior to the advertisement for bids, the ENGINEER shall provide for each construction contract to be awarded by the OWNER, the number of copies specified in Attachment II of the detailed design drawings, specifications, and contract documents for use by the OWNER 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 OWNER 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 OWNER's rights to such items under Section A-6(e).

- (g) 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.
- (h) The ENGINEER shall prepare and furnish to the OWNER 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 OWNER to initiate property and easement acquisitions.
- (i) The ENGINEER shall, prior to completion of ninety (90) percent of the Design Phase service, prepare and furnish to the OWNER 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.
- (j) 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.

3. Engineering Services During the Construction Phase

- (a) 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.
- (b) 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.
- (c) Upon award of each construction contract, the ENGINEER shall furnish to the OWNER, for each contract, the number specified in Attachment III of the sets of the design drawings, specifications and contract documents for execution by the OWNER and contractor. The ENGINEER shall provide additional copies of such contract documents to the OWNER at the cost of reproduction.
- (d) 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.
- (e) The ENGINEER shall interpret the general intent of the design drawings and specifications to endeavor to protect the OWNER against defects and deficiencies in construction on the part of the contractors.
- (f) 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 Owner informed of the progress of the Work.

- (g) 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.
- (h) The ENGINEER shall review each contractor's applications for progress and final payments and submit sufficient copies of same to the OWNER with the ENGINEER's recommendation for approval or disapproval.
- (i) The ENGINEER shall prepare necessary contract change orders for approval of the OWNER, 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.
- (j) 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 OWNER, the Funding Agency and others as required.
- (k) 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 OWNER, the Funding Agency and others as required.
- (l) The ENGINEER shall provide the OWNER 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.
- (m) 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.

4. Engineering Services During the Operation Phase

- (a) 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.
- (b) 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.
- (c) The ENGINEER shall provide to the OWNER monthly operation reports on the performance of the Project.
- (d) The ENGINEER shall train operating personnel and prepare curricula and training material for operating personnel.
- (e) Eleven (11) months after the initiation of the Project operation, the ENGINEER shall advise the OWNER in writing whether the Project meets the project performance standards.
- (f) 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 OWNER 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 OWNER 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 OWNER 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 OWNER 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, 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, 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 OWNER'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 OWNER; 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 OWNER-requested changes to the Drawings and Specifications.
14. Provide services in making revisions to Drawings and Specifications occasioned by the OWNER'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

(Describe, attach or indicate "None")

1. Page 1, Section A – GENERAL PROVISIONS - (c) The ENGINEER will work closely with the Funding Agency, as necessary, for funding to be provided.

change to:

The ENGINEER will work closely with the *County who will work closely with the Funding Agency (NMED)* as necessary, for funding to be provided.

2. Page 1, Section A – APPROVALS - (a) This Agreement shall not become effective until approved by the Funding Agency.

change to:

This Agreement shall not become effective until approved by the *County and NMED*.

3. Page 2, Section A – GENERAL PROVISIONS – Responsibilities of the ENGINEER (e) 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.

Insert one word:

Responsibilities of the ENGINEER (e) ENGINEER'S opinions of probable Construction Cost *estimates* 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.

4. Page 3, Section A – GENERAL PROVISIONS –Termination of Contract (a), (b) and (d) all have references to 14 calendar days, change to thirty (30) days as follows:

(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)~~ *thirty (30)* 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 before termination.

(b) This Agreement may be terminated in whole or in part in writing by the OWNER for its convenience, provided that the ENGINEER is given (1) not less than ~~fourteen-(14)~~ *thirty (30)* calendar days written notice (delivered by certified, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the OWNER prior to 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) deliver or otherwise make available to the OWNER within ~~fourteen-(14)~~ *thirty (30)* 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.

5. Page 4, Section A – GENERAL PROVISIONS – 7. Payment (d)

(d) If OWNER fails to make any payment due ENGINEER within forty-five (45) calendar days after OWNER'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 ten (10) calendar days prior written notice, the ENGINEER may suspend services under this Agreement until ENGINEER is paid in full. OWNER waives any and all claims against ENGINEER for any such suspension.

Change wording to clarify intention of paragraph:

(d) If OWNER fails to make any payment due ENGINEER within forty-five (45) calendar days after OWNER'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, the ENGINEER may suspend services upon written notice after 10 calendar days of nonpayment.* OWNER waives any and all claims against ENGINEER for any such suspension.

6. Page 4, Section A – GENERAL PROVISIONS – 8. Time (a) PROGRESS AND COMPLETION

Add an additional paragraph as follows:

7. The project timeline is anticipated to take one hundred eighty (180) to complete, however, the time in which it takes the funding agency (NMED) to review documents shall not be considered and/or counted within the 180 day timeline.

7. Page 8, Section A – GENERAL PROVISIONS - Cost and Pricing Data on Federally-funded projects – Deleted – is not applicable.

8. Page 1, Exhibit F- Owner's Responsibilities (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.

Insert

Furnish to Engineer any other available information *currently in possession of the County*, and pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Site.

000828

ATTACHMENTS

(Please check the appropriate box and include applicable Exhibit)

- ☒ **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 _____, ____ by and between the _____ the OWNER, and _____, the ENGINEER, the OWNER and ENGINEER agree this ____ day of _____, ____ that the OWNER 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 \$600,000, ~~excluding~~ including 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 OWNER, with Funding Agency concurrence.
3. Compensation for ADDITIONAL ENGINEERING SERVICES (provided by the engineer upon written authorization from the Owner and concurrence of the funding agency), shall be by the
- ☐ **LUMP SUM** method of payment. The total amount of compensation for ADDITIONAL ENGINEERING SERVICES, as described in the appropriate 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 OWNER 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 180 calendar days not to include review time by NMED. (or as specified in the Attachments or Exhibits).

5. The OWNER and ENGINEER agree that as mutually agreeable, reasonable Liquidated Damages for delay (but not as a penalty), ENGINEER shall pay OWNER One thousand dollars (\$1,000.00) (minimum ~~fifty dollars~~ ~~[\$50.00~~ one thousand \$1,000.00] per day) for each calendar day that expires after the Contract Time specified in the Agreement (See attached project schedule - Gantt chart, bar chart, etc.) until the Work is complete and accepted by the OWNER. OWNER shall have no more than ten (10) calendar days to accept or reject the Work.

6. The ENGINEER agrees to obtain and maintain, at the ENGINEER's expense, such insurance as will protect the ENGINEER from claims under the Workman's Compensation Act and such comprehensive general liability and automobile insurance as will protect the OWNER and the ENGINEER from all claims for bodily injury, death, or property damage which may arise from the performance by the ENGINEER, or by the ENGINEER's employees, for the ENGINEER's functions and services required under this Agreement. Such insurance shall be in an amount not less than \$1,000,000 for injury to any one person and \$2,000,000 on account of any one accident and in the amount of not less than \$300,000 for property damage. The ENGINEER further agrees to procure and maintain professional liability (errors and omissions) insurance in an amount not less than \$1,000,000 per claim and in the aggregate. Prior to commencement of any work, the ENGINEER shall furnish to the OWNER a certificate that complies with this paragraph. The certificate shall provide that the policy shall not be canceled until at least ten (10) calendar days prior written notice shall have been given to the OWNER. ENGINEER shall provide annual updates of the certificate to demonstrate the policy remains in effect for the duration of this Agreement.

7. The method for interim or partial payments, such as milestone or time & materials, shall be monthly.

19. Appendix 1 to Exhibit C1.01 Resident Project Representative C.1.General:

RPR is Engineer's agent at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's actions.

Change to:

RPR is approved by the County representative in writing, and is the Engineer's agent at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's actions.

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.

ATTEST: Sally Padilla
TYPE NAME: SALLY Padilla
TITLE: COUNTY CLERK
DATE: 4/16/09

OWNER: SANDOVAL COUNTY
BY: Juan Vigil
TYPE NAME: JUAN VIGIL
TITLE: COUNTY MANAGER
DATE: April 16, 2009

ATTEST: _____
TYPE NAME: _____
TITLE: _____
DATE: _____

ENGINEER: UNIVERSAL ASSET MANAGEMENT
BY: Gary M. Lee
TYPE NAME: Gary M. Lee, P.E.
TITLE: President
ADDRESS: 801 Westchester Avenue
Harrisonville, MO 64701
DATE: 4/16/2009

REVIEWED: FUNDING AGENCY NMED
NAME: NMED-Construction Programs Bureau
BY: Stephanie DuBois
TYPE NAME: Stephanie DuBois
DATE: 4-24-09

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ATTACHMENTS

(Please check the appropriate box and include applicable Exhibit)

- ☒ **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 _____, 2009 by and between the Sandoval County, the OWNER, and Universal Asset Management, the ENGINEER, the OWNER and ENGINEER agree this day of 2009 that the OWNER shall compensate the ENGINEER for services 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 \$600,000, including 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 OWNER with Funding Agency concurrence.

3. Compensation for ADDITIONAL ENGINEERING SERVICES (provided by the engineer upon written authorization from the Owner and concurrence of the funding agency), shall be by the

- € **LUMP SUM** method of payment. The total amount of compensation for ADDITIONAL ENGINEERING SERVICES, as described in the appropriate 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 OWNER with Funding Agency concurrence 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 180 calendar days (or as specified in the Attachments or Exhibits).

4. The OWNER and ENGINEER agree that as mutually agreeable, reasonable Liquidated - Damages for delay (but not as a penalty), ENGINEER shall pay OWNER One Thousand dollars (\$1,000.00) for each calendar day that expires after the Contract Time specified in the Agreement (See attached project schedule - Gantt chart, bar chart, etc.) until the Work is complete and accepted by the OWNER. OWNER shall have no more than ten (10) calendar days to accept or reject the Work.
5. The ENGINEER agrees to obtain and maintain, at the ENGINEER's expense, such insurance as will protect the ENGINEER from claims under the Workman's Compensation Act and such comprehensive general liability and automobile insurance as will protect the OWNER and the ENGINEER from all claims for bodily injury, death, or property damage which may arise from the performance by the ENGINEER, or by the

ENGINEER's employees, for the ENGINEER's functions and services required under this Agreement. Such insurance shall be in an amount not less than \$1,000,000 for injury to any one person and \$2,000,000 on account of any one accident and in the amount of not less than \$300,000 for property damage. The ENGINEER further agrees to procure and maintain professional liability (errors and omissions) insurance in an amount not less than \$1,000,000 per claim and in the aggregate. Prior to commencement of any work, the ENGINEER shall furnish to the OWNER a certificate that complies with this paragraph. The certificate shall provide that the policy shall not be canceled until at least ten (10) calendar days prior written notice shall have been given to the OWNER. ENGINEER shall provide annual updates of the certificate to demonstrate the policy remains in effect for the duration of this Agreement.

6. The method for interim or partial payments, such as milestone or time materials, shall be: See Attachment 1.

This is **Attachment I**, consisting of 1 page, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated April 16, 2009.

Payments to Engineer for Planning Services

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

Compensation For Basic Services

1. A Lump Sum amount of \$600,000 based on the following assumed distribution of compensation:

PROJECT TASK STATEMENT OF WORK	COMPENSATION	DELIVERABLE
Step 1 Visioning Statement & Team Commissioning	\$0	
Step 2 Water Chemistry (Review Existing Data)	\$5,000	Memorandum
Step 3 Investigating at Bench Level	\$20,000	Memorandum
Step 4 Characterization of Waste Products & Review of Potential Markets	\$25,000	Memorandum
Step 5 Process Selection	\$25,000	Memorandum
Step 6 Identification of Non-Commercialized Processes & Techniques	\$5,000	Memorandum
Step 7 Analysis of Possible Integration With Other Infrastructure Systems	\$5,000	Memorandum
Step 8 Development of Pilot Testing Program	\$10,000	Memorandum
Step 9 Review & Approval of Pilot Testing Program	\$5,000	Approval
Step 10 Sandoval County & NMED Review & Approval to Proceed		
Step 11 Develop & Implement the Infrastructure Necessary to Complete Field Pilot Testing	\$55,000	Construction/ Procurement
Step 12 Evaluate Energy Resources & Options	\$17,500	Memorandum
Step 13 Review & Confirm Existing Permits & Key Environmental Issues	\$7,500	Memorandum
Step 14 Implementation of a Pilot Test	\$111,000	Field Testing Activities
Step 15 Analysis of Pilot Test Data to Measure Technical Risks	\$23,500	Memorandum
Step 16 Analysis of Pilot Test Data to Determine Environmental & Regulatory Issues	\$35,200	Memorandum
Step 17 Analysis of Pilot Test Data and Develop O&M Cost Projections	\$25,000	Memorandum
Step 18 Draft a Financial plan	\$20,000	Memorandum
Step 19 Create a Project Implementation Plan	\$10,000	Plan
Step 20 Prepare & Deliver a Final preliminary Engineering Report (PER)	\$24,025	Report
Step 21 PER Presentation to County Commission/Planning & Zoning	\$975	Memorandum
Equipment	\$31,650	
Analytical	\$43,300	
Chemicals	\$49,350	
Travel and Lodging	\$11,371	
Gross Receipts Tax 6.125% **	\$34,629	
TOTAL COMPENSATION	\$600,000	

2. Engineer may alter the distribution of compensation between individual phases noted herein to be consistent with services actually rendered, but shall not exceed the total Lump Sum amount unless approved in writing by the Owner.
3. The Lump Sum includes compensation for Engineer's services and services of Engineer's Consultants, if any. Appropriate amounts have been incorporated in the Lump Sum to account for labor, overhead, and profit.
4. The portion of the Lump Sum amount billed for Engineer's services will be based upon Engineer's estimate of the proportion of the total services actually completed during the billing period to the Lump Sum.

This is **Appendix 1 to Attachment I**, consisting of 1 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated April 16, 2009.

Deleted

This is **Appendix 2 to Attachment I**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated April 16, 2009.

Insurance Certificates

ACORD <small>TM</small> CERTIFICATE OF LIABILITY INSURANCE		NLZ R022	DATE 02-26-2009
PRODUCER LOCKTON COMPANIES LLC-KC/PHS 330028 P: (866) 467-8730 F: (877) 538-8526 PO BOX 29611 CHARLOTTE NC 28229		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
INSURED UNIVERSAL ASSET MANAGEMENT LLC PO BOX 298 HARRISONVILLE MO 64701		INSURERS AFFORDING COVERAGE INSURER A: Hartford Casualty Ins Co INSURER B: INSURER C: INSURER D: INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.					
INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> General Liab	37 SBA AP9985	10/01/08	10/01/09	EACH OCCURRENCE \$2,000,000
					FIRE DAMAGE (Any one fire) \$300,000
					MED EXP (Any one person) \$10,000
					PERSONAL & ADV INJURY \$2,000,000
					GENERAL AGGREGATE \$4,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC				PRODUCTS - COMP/OP AGG \$4,000,000
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	37 SBA AP9985	10/01/08	10/01/09	COMBINED SINGLE LIMIT (Ea accident) \$2,000,000
					BODILY INJURY (Per person) \$
					BODILY INJURY (Per accident) \$
					PROPERTY DAMAGE (Per accident) \$
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$
	EXCESS LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				<input type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
	OTHER				

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

Those usual to the Insured's Operations.

CERTIFICATE HOLDER County of Sandoval State of New Mexico PO BOX 40 BERNALILLO, NM 87004	ADDITIONAL INSURED; INSURER LETTER: CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE (10 DAYS FOR NON-PAYMENT) TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE <i>[Signature]</i>
---	---

ACORD™ CERTIFICATE OF LIABILITY INSURANCE		8/28/2009	DATE (MM/DD/YYYY) 2/27/2009
PRODUCER Lockton Companies, LLC-1 Kansas City 444 W. 47th Street, Suite 900 Kansas City MO 64112-1906 (816) 960-9000		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
INSURED UNIVERSAL ASSET MANAGEMENT, LLC 1078237 801 WESTCHESTER AVENUE HARRISONVILLE, MO 64701-1784		INSURERS AFFORDING COVERAGE INSURER A: NEW HAMPSHIRE INSURANCE COMPANY INSURER B: INSURER C: INSURER D: INSURER E:	NAIC #

COVERAGES UNIAS01 P5

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR	ADD'L LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
		GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	NOT APPLICABLE			EACH OCCURRENCE \$ XXXXXXXX DAMAGE TO RENTED PREMISES (Ea occurrence) \$ XXXXXXXX MED EXP (Any one person) \$ XXXXXXXX PERSONAL & ADV INJURY \$ XXXXXXXX GENERAL AGGREGATE \$ XXXXXXXX PRODUCTS - COMPIOP AGG \$ XXXXXXXX
		AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	NOT APPLICABLE			COMBINED SINGLE LIMIT (Ea accident) \$ XXXXXXXX BODILY INJURY (Per person) \$ XXXXXXXX BODILY INJURY (Per accident) \$ XXXXXXXX PROPERTY DAMAGE (Per accident) \$ XXXXXXXX
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO	NOT APPLICABLE			AUTO ONLY - EA ACCIDENT \$ XXXXXXXX OTHER THAN AUTO ONLY: EA ACC \$ XXXXXXXX AGG \$ XXXXXXXX
		EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> UMBRELLA FORM RETENTION \$	NOT APPLICABLE			EACH OCCURRENCE \$ XXXXXXXX AGGREGATE \$ XXXXXXXX \$ XXXXXXXX \$ XXXXXXXX \$ XXXXXXXX
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (If yes, describe under SPECIAL PROVISIONS below)	NOT APPLICABLE			WC STATUTORY LIMITS OTH-ER E.L. EACH ACCIDENT \$ XXXXXXXX E.L. DISEASE - EA EMPLOYEE \$ XXXXXXXX E.L. DISEASE - POLICY LIMIT \$ XXXXXXXX
A		OTHER PROFESSIONAL LIABILITY	7505690	8/28/2008	8/28/2009	\$2,000,000 PER CLAIM/\$2,000,000 ANNUAL AGGREGATE

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

CERTIFICATE HOLDER

10457970
 SANDOVAL COUNTY
 STATE OF NEW MEXICO
 P.O. BOX 40
 BERNALILLO NM 87004

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

David J. Foster

This is **EXHIBIT A**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated April 16, 2009.

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

A.1.01 Planning Services Scope of Work and Cost Proposal

A. Engineer shall:

1. Consult with Owner to define and clarify Owner's requirements for the Project and available data.
2. Advise Owner of any need for Owner to provide data or services of the types described in Exhibit B which are not part of Engineer's Basic Services.
3. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project designed or specified by Engineer, including but not limited to mitigating measures identified in the environmental assessment.
4. Identify and evaluate alternate solutions available to Owner and, after consultation with Owner, recommend to Owner those solutions which in Engineer's judgment meet Owner's requirements for the Project.
5. Prepare a Preliminary Engineering Report (the "PER") by a Registered New Mexico Professional Engineer which will, as appropriate, contain schematic layouts, sketches, and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and those alternate solutions available to Owner which Engineer recommends. For each recommended solution Engineer will provide the following, which will be separately itemized: opinion of probable Construction Cost; proposed allowances for contingencies; the estimated total costs of design, professional, and related services to be provided by Engineer and its Consultants; and, on the basis of information furnished by Owner, a summary of allowances for other items and services included within the definition of Total Project Costs. The PER shall be performed in accordance with RUS bulletin 1780-2.
6. Perform or provide the following Study and Report Phase tasks or deliverables:
 - Step 1 Visioning Statement** – A team workshop review will be conducted to review the goals and objectives of the project and confirm the tasks associated with the scope of this endeavor.
 - Step 2 Understanding Water Chemistry** – In-depth review and analysis of the basic water chemistry with particular emphasis on scaling.
 - Step 3 Investigating at Bench Level the Treatability of the Water** – Understanding at the laboratory level this water's response to oxidation, precipitation, clarification, filtration, ion exchange distillation, membrane desalination, etc.
 - Step 4 Characterization of Waste Products** – Determination of recoverable saleable products and disposal.
 - Step 5 Process Selection** – There is a wide array of process and equipment alternatives to be considered. In order to insure that all options are properly considered, ENGINEER proposes to utilize a modified Zachman Framework tool to isolate and select the most practical treatment scheme. The viewpoints

outlined in the visioning process will serve to grade all potential process and technology options. Each option will be assessed based upon Form, Function, Economy and Time.

- Step 6 Identification of Non-Commercialized Processes and Technologies.**
- Step 7 Analysis of Possible Integration** with other infrastructure systems to promote ultimate sustainability and reduce carbon foot print.
- Step 8 Develop Pilot testing Program** – ENGINEER will create a pilot testing program protocol outlining the equipment, testing procedure and operational procedures to be utilized to confirm and validate the process in Step 5 process selection
- Step 9** The above program will be discussed with the Owner and State Regulators to establish consensus as to the protocol to be utilized.
- Step 10 Develop Pilot Testing Program-** to complete field pilot testing including:
- Site and road requirements
 - Energy requirements
 - Raw water supply
 - Tail water and treated water management
 - Decommissioning plan
- Step 11 Evaluate Energy Resources** – The Engineer shall review various energy options including extension of local power utility, co-generation and renewable energy resources and make a recommendation based upon initial phase of project and future build out.
- Step 12 Permit Process** – Confirm that they have been previously obtained by the Owner.
- Step 13 Implementation of a Pilot Test** – A minimum of a 60 day pilot test shall be performed to confirm the viability of the selected process train and to establish base design criteria for the purposes of completing the PER.
- Step 14 Analysis of Pilot Test Data To Measure Technical Risks** associated with plant scale-up and determine mitigation strategies. ENGINEER would use a classical “Reliability Centered Maintenance” methodology to accomplish this task.
- Step 15 Analysis of Pilot Test Data to Determine Environmental and Regulatory issues** associated with plant scale-up , including:
- Projecting capital costs
 - Developing less conservative design criteria than would normally be selected
 - Verifying process performance
 - Securing approval of appropriate regulatory agencies
 - Determining risks of plant scale-up
- Step 16 Analysis of Pilot Test Data to Develop O&M Costs** - To develop operation and maintenance cost projections. ENGINEER will specifically analyze the

maintenance costs in such a manner as to position the project for Equipment Breakdown Insurance providing additional credit enhancement by protecting the Owner from loss of revenues due to equipment failure and insuring plant performance upon which the financial projections are based.

Step 17 Draft a Financial Plan that incorporates the credit enhancement opportunities developed as a result of the RFP/Pilot Test methodology.

Step 18 Create an Implementation Plan and schedule for plant scale-up addressing the first phase plant.

Step 19 Deliver a Final Report in accordance with bulletin RUS-1780-2 includes the following:

- Standard operating format for future budgeting, asset management, and water quality with a sustainable objective
- Plant layout/architecture conceptualization
- Marketing plan and Communication plan
- Communication material organization structure recommendation
- Wholesale customer engagement plan

Step 20 Prepare Public Education Program including the following:

- Communication Plan
- Communication Material

7. Furnish 10 review copies of the Report and any other deliverables to Owner within 180 calendar days of authorization to begin services and review it with Owner. Within 30 calendar days of receipt, Owner shall submit to Engineer any comments regarding the Report and any other deliverables.

8. Revise the Report and any other deliverables in response to Owner's comments, as appropriate, and furnish 10 copies of the revised Report and any other deliverables to the Owner within 30 calendar days of receipt of Owner's comments.

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

This is **EXHIBIT B**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated April 16, 2009.

B.1.01 Preliminary Design Phase

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

B.1.02 Final Design Phase

- A. After acceptance by Owner of the Preliminary Design Phase documents, revised opinion of probable Construction Cost as determined in the Preliminary Design Phase, and any other deliverables subject to any Owner-directed modifications or changes in the scope, extent,

character, or design requirements of or for the Project, and upon written authorization from Owner, Engineer shall:

1. Prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor. If appropriate, Specifications shall conform to the 16-division format of the Construction Specifications Institute.
 2. Provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design of the Project; assist Owner in consultations with such authorities; and revise the Drawings and Specifications in response to directives from such authorities.
 3. Advise Owner of any adjustments to the opinion of probable Construction Cost known to Engineer.
 4. Perform or provide the following additional Final Design Phase tasks or deliverables: TBD
 5. Prepare and furnish Bidding Documents for review by Owner, its legal counsel, and other advisors, and assist Owner in the preparation of other related documents. Within TBD days of receipt, Owner shall submit to Engineer any comments and, subject to the provisions of Paragraph 6.01.G, instructions for revisions.
 6. Revise the Bidding Documents in accordance with comments and instructions from the Owner, as appropriate, and submit TBD final copies of the Bidding Documents, a revised opinion of probable Construction Cost, and any other deliverables to Owner within TBD calendar days after receipt of Owner's comments and instructions.
- B. Engineer's services under the Final Design Phase will be considered complete on the date when the submittals required by Paragraph B1.02.A.6 have been delivered to Owner.
- C. In the event that the Work designed or specified by Engineer is to be performed or furnished under more than one prime contract, or if Engineer's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), Owner and Engineer shall, prior to commencement of the Final Design Phase, develop a schedule for performance of Engineer's services during the Final Design, Bidding or Negotiating, Construction, and Post-Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate prime contracts. This schedule is to be prepared and included in or become an amendment to Exhibit A whether or not the work under such contracts is to proceed concurrently.
- D. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Agreement is _____. If more prime contracts are awarded, Engineer shall be entitled to an equitable increase in its compensation under this Agreement.

This is **EXHIBIT C**, consisting of 5 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated April 16, 2009.

C.1.01 Bidding or Negotiating Phase

- A. After acceptance by Owner of the Bidding Documents and the most recent opinion of probable Construction Cost as determined in the Final Design Phase, and upon written authorization by Owner to proceed, Engineer shall:
1. Assist Owner in advertising for and obtaining bids or proposals for the Work and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, attend pre-Bid conferences, if any, and receive and process contractor deposits or charges for the Bidding Documents.
 2. Issue Addenda as appropriate to clarify, correct, or change the Bidding Documents.
 3. Provide information or assistance needed by Owner in the course of any negotiations with prospective contractors.
 4. Consult with Owner as to the acceptability of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors for those portions of the Work as to which such acceptability is required by the Bidding Documents.
 5. Perform or provide the following additional Bidding or Negotiating Phase tasks or deliverables: TBD
 6. Attend the Bid opening, prepare Bid tabulation sheets, and assist Owner in evaluating Bids or proposals and in assembling and awarding contracts for the Work.
- B. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective contractors

C.1.02 Construction Phase

- A. Upon successful completion of the Bidding and Negotiating Phase, and upon written authorization from Owner, Engineer shall:
- I. *General Administration of Construction Contract.* Consult with Owner and act as Owner's representative as provided in the General Conditions. The extent and limitations of the duties, responsibilities, and authority of Engineer as assigned in the General Conditions shall not be modified, except as Engineer may otherwise agree in writing. All of Owner's instructions to Contractor will be issued through Engineer, which shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and the General Conditions except as otherwise provided in writing.
 - II. *Resident Project Representative (RPR).* Provide the services of an RPR at the Site to assist the Engineer and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in Exhibit C-2. 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 C-2.

III. *Selecting Independent Testing Laboratory.* Assist Owner in the selection of an independent testing laboratory to perform the services identified in Exhibit C-3.

IV. *Pre-Construction Conference.* Participate in a Pre-Construction Conference prior to commencement of Work at the Site.

V. *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.

VI. *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.

VII. *Visits to Site and Observation of Construction.* In connection with observations of Contractor's Work while it is in progress:

- a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, to observe as an experienced and qualified design professional the progress and quality of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of Contractor's Work in progress or to involve detailed inspections of Contractor's Work in progress beyond the responsibilities specifically assigned to Engineer in this Agreement and the Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.
- b. The purpose of Engineer's visits to, and representation by the Resident Project Representative, if any, at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Engineer shall not, during such visits or as a result of such observations of Contractor's Work in progress, supervise, direct, or have control over Contractor's Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety on the Site, for safety precautions and programs incident to Contractor's Work, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work. Accordingly, Engineer neither guarantees

the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.

- VIII. *Defective Work.* Recommend to Owner that Contractor's Work be rejected while it is in progress if, on the basis of Engineer's observations, Engineer believes that such Work will not produce a completed Project that conforms generally to the Contract Documents or that it will threaten the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents.
- IX. *Clarifications and Interpretations; Field Orders.* Issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of Contractor's work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. Engineer may issue Field Orders authorizing minor variations in the Work from the requirements of the Contract Documents.
- X. *Change Orders and Work Change Directives.* Recommend Change Orders and Work Change Directives to Owner, as appropriate, and prepare Change Orders and Work Change Directives as required.
- XI. *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.
- XII. *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 of this Exhibit C-3.
- XIII. *Inspections and Tests.* Require such special inspections or tests of Contractor's work as deemed reasonably necessary, and receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Contract Documents. Engineer shall be entitled to rely on the results of such tests.
- XIV. *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.

XV. *Applications for Payment.* Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:

- a. Determine the amounts that Engineer recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the quality of such Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe Contractor's Work. In the case of unit price work, Engineer's recommendations of payment will include final determinations of quantities and classifications of Contractor's Work (subject to any subsequent adjustments allowed by the Contract Documents).
- b. By recommending any payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Contract Documents. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control Contractor's Work in progress or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any portion of the Work in progress, materials, or equipment has passed to Owner free and clear of any liens, claims, security interests, or encumbrances, or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.

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

XVII. Substantial Completion. Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, conduct an inspection to determine if the Work is substantially complete. If after considering any objections of Owner, Engineer considers the Work substantially complete, Engineer shall deliver a certificate of Substantial Completion to Owner and Contractor.

XVIII. Additional Tasks. Perform or provide the following additional Construction Phase tasks or deliverables: TBD

XIX. Final Notice of Acceptability of the Work. Conduct a final inspection to determine if the completed Work of Contractor is acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice in the form attached hereto as Exhibit C-4 (the "Notice of Acceptability of Work") that the Work is acceptable to the best of Engineer's knowledge, information, and belief and based on the extent of the services provided by Engineer under this Agreement.

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

This is **Appendix 1 to Exhibit C**, consisting of 5 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated April 16, 2009.

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

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

C1.01 *Resident Project Representative*

- A. Engineer shall furnish a Resident Project Representative ("RPR"), assistants, and other field staff to assist Engineer in observing progress and quality of the Work. The RPR, assistants, and other field staff under this Exhibit C may provide full time representation or may provide representation to a lesser degree.
- B. Through such additional observations of Contractor's work in progress and field checks of materials and equipment by the RPR and assistants, Engineer shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, Engineer shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over the Contractor's Work nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to the Contractor's work in progress, for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's performing and furnishing the Work, or responsibility for Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.
- C. The duties and responsibilities of the RPR are as follows:
 - 1. *General:* RPR is approved by the County Representative, in writing, and is Engineer's agent at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's actions. RPR's dealings in matters pertaining to the Contractor's work in progress shall in general be with Engineer and Contractor, keeping Owner advised as necessary. RPR's dealings with subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner with the knowledge of and under the direction of Engineer.
 - 2. *Schedules:* Review the progress schedule, schedule of Shop Drawing and Sample submittals, and schedule of values prepared by Contractor and consult with Engineer concerning acceptability.

3. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.
4. *Liaison:*
 - a. Serve as Engineer's liaison with Contractor, working principally through Contractor's superintendent, assist in providing information regarding the intent of the Contract Documents.
 - b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
 - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
5. *Interpretation of Contract Documents:* 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 Startups:*

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

10. *Records:*

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

11. Reports:

- a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- b. Draft and recommend to Engineer proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
- c. Furnish to Engineer and Owner copies of all inspection, test, and system start-up reports.
- d. Immediately notify Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, damage to property by fire or other causes, or the discovery of any Constituent of Concern. .

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

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

14. Completion:

- a. Participate in a Substantial Completion inspection, assist in the determination of Substantial Completion and the preparation of lists of items to be completed or corrected.
- b. Participate in a final inspection in the company of Engineer, Owner, and Contractor and prepare a final list of items to be completed and deficiencies to be remedied.
- c. Observe whether all items on the final list have been completed or corrected and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work.

D. Resident Project Representative shall not:

- 1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).

2. Exceed limitations of Engineer's authority as set forth in the Agreement or the Contract Documents.
3. Undertake any of the responsibilities of Contractor, subcontractors, suppliers, or Contractor's superintendent.
4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work unless such advice or directions are specifically required by the Contract Documents.
5. Advise on, issue directions regarding, or assume control over safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
8. Authorize Owner to occupy the Project in whole or in part.

This is **EXHIBIT D**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated April 16, 2009.

D.1.01 Post-Construction Phase

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

This is **EXHIBIT E**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated April 16, 2009.

E.1.01 Additional Services Requiring Owner's Written Authorization

A. If authorized in writing by Owner, Engineer shall furnish or obtain from others Additional Services of the types listed below.

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

reports, Drawings, Specifications, or other Bidding Documents as a result of such review processes.

11. Preparing additional Bidding Documents or Contract Documents for alternate bids or prices requested by Owner for the Work or a portion thereof.
12. Determining the acceptability of substitute materials and equipment proposed during the Bidding or Negotiating Phase when substitution prior to the award of contracts is allowed by the Bidding Documents.
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 work 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 final completion of the Work.
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 and furnishing to Owner Record Drawings showing appropriate record information based on Project annotated record documents received from Contractor.
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. Other services performed or furnished by Engineer not otherwise provided for in this Agreement.

E2.02 Additional Services Not Requiring Owner's Written Authorization

B. Engineer shall advise Owner that Engineer is commencing to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice from Owner.

1. Services in connection with Work Change Directives and Change Orders to reflect changes requested by Owner.
2. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or-equal" items; and services after the award of the Construction Contract in evaluating and determining the acceptability of a substitution which is found to be inappropriate for the Project or an excessive number of substitutions.
3. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.

4. Additional or extended services during construction made necessary by (1) emergencies or acts of God endangering the Work, (2) the presence at the Site of any Constituent of Concern, (3) Work damaged by fire or other cause during construction, (4) a significant amount of defective, neglected, or delayed work by Contractor, (5) acceleration of the progress schedule involving services beyond normal working hours, or (6) default by Contractor.
5. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of any part of the Work by Owner prior to Substantial Completion.
6. Evaluating an unreasonable claim or an excessive number of claims submitted by Contractor or others in connection with the Work.

This is **EXHIBIT F**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated April 16, 2009.

Owner's Responsibilities

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

F1.01 *In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall at its expense:*

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

- F. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.
- G. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.
- I. Provide, as required for the Project:
1. Accounting, bond and financial advisory, independent cost estimating, and insurance counseling services.
 2. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests.
 3. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the moneys paid.
 4. Placement and payment for advertisement for Bids in appropriate publications.
- J. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructibility review.
- K. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.
- L. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth as an attachment to this Exhibit the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.
- M. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.
- N. Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Substantial Completion and final payment inspections.
- O. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of Samples, materials, and equipment required by the Contract Documents,

or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof.

- P. Provide Engineer with the findings and reports generated by the entities providing services to Owner pursuant to this paragraph.

Pilot Task Cost Estimate

[illegible]

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SANDOVAL COUNTY ADMINISTRATIVE OFFICES

**SANDOVAL COUNTY
COUNTY DEVELOPMENT DIVISION
NOTICE TO PROCEED**

TO: Gary Lee, Universal Asset Management

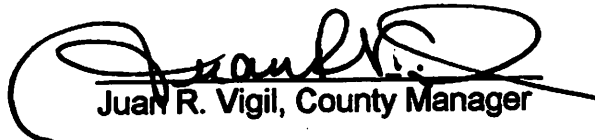
FROM: Juan R. Vigil, Sandoval County Manager

PROJECT NAME: Sandoval County Testing/Engineering Desalination Contract

DATE: May 1, 2009

In accordance with the Professional Services Contract approved by the Sandoval County Board of Commissioners on 4/16/09, recorded by the Clerk (2009011140), for Testing/Engineering Services, not to exceed \$600,000, you are authorized to commence work beginning May 11, 2009.

COMPLETION DATE: 180 calendar days from May 11, 2009


Juan R. Vigil, County Manager

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