



LOWER RIO GRANDE
Public Water Works Authority
PO Box 2646 Anthony, New Mexico 88021 (575) 233-5742

Teleconference Meeting Page 1 of 2

Date: November 10, 2021

Time: 9:30 a.m.

Places: Online Zoom meeting

Event: Regular Board Meeting

Name	Company Name	Contact Information Phone Number	Email Address
Martin Lopez	LRG- General Manager	575-233-5742 Ext1004	
Karen Nichols	LRG- Projects Manager	575-233-5742 Ext1018	
Patricia Charles	LRG- Projects Specialist	575-233-5742 Ext1021	
Kathi Jackson	LRG- Finance Manager	575-233-5742 Ext1005	
John Schroder	LRG- Accounting Assistant	575-233-5742 Ext1006	
Mike Lopez	LRG- Operations Manager	575-233-5742 Ext1011	
Esperanza Holguin	LRG- Board Chair	575-644-9543	
Furman Smith	LRG- Board Vice Chair	575-382-5982	
Joe Evaro	LRG- Board Director	575-618-0182	
Henry Magallanez	LRG- Board Director	575-525-9683	
Paul Smith	LRG- Board Director	505-710-4671	
Glory Juarez	LRG- Board Director	575-494-2750	
Matt Thompson	Bohannon Huston	575-532-2670	



Teleconference Meeting

Page 2 of 2

Date: November 10, 2021

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LOWER RIO GRANDE PUBLIC WATER WORKS AUTHORITY

Draft Minutes —REGULAR BOARD OF DIRECTORS MEETING

9:30 a.m. Wednesday, November 10, 2021 ONLINE VIA ZOOM

Contact us at 575-233-5742 or board@LRGauthority.org for information, assistance, online meeting link, or to subscribe to email board meeting reminders. Email the board address or dial extension 1021 or 1018 and leave a message if requesting phone or log-in information for online meetings. Agendas are final 72 hours prior to the meeting and may be obtained at any LRGPWWA Office or at www.LRGauthority.org/noticesavisos.html

- I. **Call to Order, Roll Call to Establish Quorum:** Director Mr. Magallanez called the meeting to order at 9:31 a.m. Mr. P. Smith representing District #1 was present, District #2 vacant, Mr. Evaro representing District #3 was present, Mrs. Holguin representing District #4 was absent, Mr. Magallanez representing District #5 was present, Mrs. Juarez representing District #6 was present, Mr. F. Smith representing District #7 joined the meeting at 9:38 a.m. Staff present were General Manager, Martin Lopez, Projects Manager Karen Nichols, Projects Specialist Patricia Charles, Finance Manager Kathi Jackson, Accounting Assistant John Schroder, Operations Manager Mike Lopez. Guests in attendance were Matt Thompson & Elsa Baldonado with Bohannon Huston, Tiffany Goolsby with SCCG, Lilla Reid with Souder, Miller & Associates.
- II. **Pledge of Allegiance:** postponed due to online meeting
- III. **Motion to approve Agenda:** Mr. P. Smith made the motion to approve the agenda with a change, moving # IX New Business to follow # V Presentations. Mr. Magallanez seconded the motion, the motion passed with all in favor.
- IV. **Approval of Minutes: Motion to approve the minutes for October 20, 2021 Board Meeting:** Mr. Magallanez made the motion to approve the minutes for October 20, 2021 board meeting. Mrs. Juarez seconded the motion, the motion passed with all in favor.
- V. **Presentations: Water Master Plan by Matt Thompson with Bohannon Huston:** Mr. Thompson said this is the final presentation for the Master Plan. This plan gives a full view of the whole system. They looked at every aspect of the water utility. Data was collected to understand the deficiencies and understand what modifications are needed. This document will aide LRGPWWA in requesting future funding. Now that this system has increased in size a Water Master Plan was needed. He explained the steps in gathering information and the figuring out the future needs of LRGPWWA it will also aide in updating the Capital Improvements Plan. Ms. Nichols said some of the plan is available on our website under the Departments tab, then Projects, then Water Master Plan. Mr. Thompson will give all information to Ms. Nichols to make available to the Board Members. Mr. Thompson acknowledged that Mrs. Baldonado was the Engineer in charge of creating the Water Master Plan and wanted her to get the credit for the work. He will also provide flyers to give to the public.
- VI. **Public Input - 3 minutes per person – Jose Guerra customer in District 1:** Mr. Guerra did not attend the meeting to provide input.
- VII. **Managers' Reports**

- A. General Manager:** Mr. Lopez provided a written report and stood for questions. An Operations Employee contracted COVID and has now returned to work in isolation. Sent out a news letter informing our customers that the LRGPWWA has applied to participate in NM Human Services Dept. Income Support Division Program. This program will assist with water/sewer accounts that have been disconnected; could be disconnected; or to pay current billing. Priority is given to the disconnected accounts, followed by the to be disconnected and then the current billings. Customers will have to apply individually to the program, then the money would be sent directly to LRGPWWA. As soon as we have more information, we will make sure we send it out to our customers.
- B. Projects:** Ms. Nichols provided a written report and stood for questions. Central Office Building Project – the notice of award has been issued and the contract is being signed and NMED has signed off on it and are ready to move forward.
- C. Operations:** Mr. Lopez provided a written report and stood for questions. The Organ Ponds were plugged and backing up, they took a lot of work from all of our staff and the help of Henry and his staff from Enviro-Tech. He included before and after pictures of the ponds and wanted to congratulate his staff for all the hard work.
- D. Finance:** Ms. Jackson proved a written report and stood for questions. The report in the packet is for period ending 10/31/21 revenues were \$310,497.02 and expenses were \$312,038.10. There were no large expenses this month.

VIII. Unfinished Business: NONE

IX. New Business:

- A. Motion to adopt Resolution FY2022-14 Adopting a Water Master Plan:** Mr. P Smith made the motion to adopt Resolution FY2022-14 adopting a Water Master Plan. Mr. Evaro seconded the motion, the motion passed with all in favor. Tiffany Goolsby, Grant Admin. for the CDBG funding, which paid for the Water Master Plan. This is part of the close out of the project a required Public Hearing will be held at 5:30 p.m. today it is designed to let the public know what the CDBG funding was spent on and to tell them about the Water Master Plan.
- B. Motion to approve engineering agreement with Souder, Miller & Associations for Stern Drive Ph. II Project:** Mr. Magallanez made the motion to approve the engineering agreement with Souder, Miller & Associates for Stern Drive Ph II Project. Mr. Evaro seconded the motion, the motion passed with all in favor. Ms. Nichols said Lilla Reid from Souder, Miller & Associates is present at this meeting to answer any questions about the agreement and/or the project, there were no questions.
- C. Motion to approve engineering agreement with Daniel B. Stephens & Associates for East Mesa Phase II Design Project:** Mr. Smith made the motion to approve the engineering agreement with Daniel B. Stephens & Associates for the East Mesa Phase II Design Project. Mr. Evaro seconded the motion, the motion passed with all in favor. Ms. Nichols said this agreement is for the design portion of Phase II of the East Mesa Project, paid with Colonia's funds.

- D. Motion to approve general legal services agreement with Law Office of Joshua Smith:** Mr. Magallanez made the motion to approve the general legal services agreement with Law office of Joshua Smith. Mr. P Smith seconded the motion, the motion passed with all in favor.
- E. Motion to approve USDA-RD legal services agreement with Law Office of Joshua Smith for South Valley Water Supply/Treatment Project:** Mr. Evaro made the motion to approve USDA-RD legal services agreement with Law office of Joshua Smith for South Valley Water Supply/Treatment Project. Mr. P Smith seconded the motion, the motion passed with all in favor.
- F. Motion to approve USDA-RD legal services agreement with Law Office of Joshua Smith for Mesquite-Brazito Sewer Project 2:** Mr. Magallanez made the motion to approve USDA-RD legal services agreement with Law office of Joshua Smith for Mesquite-Brazito Sewer Project 2. Mr. Evaro seconded the motion, the motion passed with all in favor. Mr. Evaro had to leave the board meeting at 10:15 a.m.
- X. Other discussion and agenda items for next meeting at 9:30 a.m. Wednesday, December 08, 2021**
- A. Have any Board Members participated in training? If so, please give us a copy of your certificate:**
No new certificates and no one attended any trainings.
- B. GM Evaluation:** Mr. P Smith and Mr. F Smith wanted Ms. Nichols to make sure that Mrs. Holguin received the General Manager evaluations. Mrs. Juarez asked if she needed to do the evaluation even though she has not been on the board of director for a full year it was suggested she fill the form out anyway, she will get on the evaluation site and fill the form out.
- C. Please turn in your Board Member Handbook to Patty no later than the November 10th meeting so we can update it:** Ms. Charles said she had received handbooks from Mr. F Smith, Mr. Evaro and Mrs. Holguin. Mr. P Smith said he would deliver his to the Desert Office.
- D. Closed Session – Personnel, needs to added to December meeting.**
- XI. Motion to Adjourn:** Mrs. Juarez made the motion to adjourn board meeting at 10:30 a.m. Mr. Magallanez seconded the motion, the motion passed with all in favor.

These minutes will be presented to the board for approval on the 8th Day of December, 2021 at a regular meeting of the Board of Directors:

SEAL:

Esperanza Holguin, Board Chair

Attest:

Joe Evaro, Secretary

DRAFT

LOWER RIO GRANDE PUBLIC WATER WORKS AUTHORITY

Meeting Notice & Agenda—REGULAR BOARD OF DIRECTORS MEETING

9:30 a.m. Wednesday, November 10, 2021 ONLINE VIA ZOOM

Contact us at 575-233-5742 or board@LRGauthority.org for information, assistance, online meeting link, or to subscribe to email board meeting reminders. Email the board address or dial extension 1021 or 1018 and leave a message if requesting phone or log-in information for online meetings. Agendas are final 72 hours prior to the meeting and may be obtained at any LRGPWWA Office or at www.LRGauthority.org/noticesavisos.html

- I. Call to Order, Roll Call to Establish Quorum: District #1 (Mr. P. Smith) __, #2 (Vacant) __, #3 (Mr. Evaro) __, #4 (Mrs. Holguin) __, # 5 (Mr. Magallanez) __, District #6 (Mrs. Juarez) __, #7 (Mr. F. Smith) __
- II. Pledge of Allegiance - postponed due to online meeting
- III. Motion to approve Agenda
- IV. Approval of Minutes: Motion to approve the minutes for October 20, 2021 Board Meeting
- V. Presentations: Water Master Plan by Matt Thompson with Bohannon Huston
- VI. Public Input - 3 minutes per person – Jose Guerra customer in District 1
- VII. Managers' Reports
 - A. General Manager
 - B. Projects
 - C. Operations
 - D. Finance
- VIII. Unfinished Business
- IX. New Business
 - A. Motion to adopt Resolution FY2022-14 Adopting a Water Master Plan
 - B. Motion to approve engineering agreement with Souder, Miller & Associations for Stern Drive Ph. II Project
 - C. Motion to approve engineering agreement with Daniel B. Stephens & Associates for East Mesa Phase II Design Project
 - D. Motion to approve general legal services agreement with Law Office of Joshua Smith
 - E. Motion to approve USDA-RD legal services agreement with Law Office of Joshua Smith for South Valley Water Supply/Treatment Project
 - F. Motion to approve USDA-RD legal services agreement with Law Office of Joshua Smith for Mesquite-Brazito Sewer Project 2
- X. Other discussion and agenda items for next meeting at 9:30 a.m. Wednesday, December 08, 2021
 - A. Have any Board Members participated in training? If so, please give us a copy of your certificate

B. GM Evaluation

C. **Please turn in your Board Member Handbook to Patty no later than the November 10th meeting so we can update it.**

XI. Motion to Adjourn

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aide or service to attend or participate in the hearing or meeting, please contact the LRGPWWA office at 575-233-5742, PO Box 2646, Anthony NM 88021 OR 215 Bryant St., Mesquite NM at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the LRGPWWA office if a summary or other type of accessible format is needed.

Si usted es una persona con una discapacidad que necesita un lector, amplificador, intérprete de lenguaje de signos o cualquier otra forma de ayudante auxiliar o servicio para asistir o participar en la audiencia o reunión, póngase en contacto con la oficina de LRGPWWA, 575-233-5742, PO Box 2646, Anthony, NM 88021 o 215 Bryant St., Mesquite, NM por lo menos una semana antes de la reunión o tan pronto como sea posible. Documentos públicos, incluyendo el orden del día y actas, pueden proporcionarse en diferentes formatos accesibles. Póngase en contacto con la oficina LRGPWWA si es necesario un resumen u otro tipo de formato accesible.

LOWER RIO GRANDE PUBLIC WATER WORKS AUTHORITY

Minutes —REGULAR BOARD OF DIRECTORS MEETING

9:30 a.m. Wednesday, October 20, 2021 ONLINE VIA ZOOM

Contact us at 575-233-5742 or board@LRGauthority.org for information, assistance, online meeting link, or to subscribe to email board meeting reminders. Email the board address or dial extension 1021 or 1018 and leave a message if requesting phone or log-in information for online meetings. Agendas are final 72 hours prior to the meeting and may be obtained at any LRGPWWA Office or at www.LRGauthority.org/noticesavisos.html

- I. **Call to Order, Roll Call to Establish Quorum:** Vice Chair Mr. F Smith called the meeting to order at 9:36 a.m. Mr. P Smith representing District #1 was present, District #2 is vacant, Mr. Evaro representing District #3 was present, Mrs. Holguin representing District #4 was absent, Mr. Magallanez representing District # 5 was present, Mrs. Juarez representing District #6 was absent, Mr. F Smith representing District #7 was present. Staff members present were General Manager Martin Lopez, Projects Manager Karen Nichols, Projects Specialist Patricia Charles, Finance Manager Kathi Jackson, Accounting Assistant John Schroder, Operations Manager Mike Lopez. Guests present were Tyler Hopkins from Bohannon, Huston and Lilla Reid from Souder, Miller & Associates.
- II. **Pledge of Allegiance:** Postponed due to online meeting
- III. **Motion to approve Agenda:** Mr. Magallanez made the motion to approve the agenda, Mrs. Juarez seconded the motion, the motion passed with all in favor.
- IV. **Approval of Minutes: Motion to approve the minutes for**

September 15, 2021 Regular Board Meeting and October 6, 2021 Special Board Meeting
Mr. Evaro made the motion to approve the minutes for September 15th and October 6th Board Meetings. Mr. Magallanez seconded the motion, the motion passed with all in favor.
- V. **Presentations:** NONE
- VI. **Public Input -** NONE
- VII. **Managers' Reports**
 - A. **General Manager:** Mr. Lopez provided a written report and stood for questions. He congratulated Mike Lopez and the Operations department for a satisfactory NMED Sanitary Survey for Valle Del Rio, South Valley System and Alto De Las Flores MDWCA System. Congratulations to Kathi Jackson and her staff for a 2020 Audit with no findings. Mr. F Smith asked how long it took for a system to become a Mutual Domestic. Mr. Lopez said in the case of Rincon they will file with the Secretary of State. They will probably try to disorganize as a Water Cooperative and form a Mutual Domestic. After submitting to the Secretary of State it should he guesstimates, it will take a month or less.
 - B. **Operations:** Mr. M Lopez provided a written report and stood for questions. The recent Sanitary Survey's were satisfactory (no deficiencies) for Valle Del Rio, South Valley System and the Alto De las Flores MDWCA. Tomorrow morning Operations is going to have Sanitary Survey's on High Valley and Talavera systems, looking forward to getting satisfactory marks on both Survey's. The

water usage was very low compared to same time last year, September this year was 39.63 million gallons and September last year usage was 53.20 million gallons.

- C. Finance:** Ms. Jackson provided a written report and stood for questions. We took in \$335,142.29 for the month of September and expenses were \$275,518.94. For the quarter our revenue was \$1,147,010.32 and expenses were \$990,834.33. She recalled that our first year in business the budget for the year was \$900,000.00 and now our expenses for the quarter are that amount, so we have grown a bit. Ms. Nichols asked if the Audit was complete, Ms. Jackson said it was pretty much complete. Auditor is finishing it up but it is a clean Audit, no findings it should be finished up in the next week or two.
- D. Projects:** Ms. Nichols provided a written report and stood for questions. She said Today's agenda includes closing documents for additional DWSRLF funds \$300K. Negotiations have been completed with the low bidder, and sole-source posting has been made on the State Procurement. The Forty-Year Water Plan has been completed, needs update for new mergers after Brazito combine and commingle. On the agenda as well is the award of construction for Vado Water System Improvement Project.

VIII. Unfinished Business: NONE

IX. New Business:

- A. Motion to adopt Resolution FY2022-12 Adopting FY2022 1st Quarter Budget:** Mr. Evaro made the motion to adopt Resolution FY2022-12 adopting FY2022 1st quarter budget. Mrs. Juarez seconded the motion, the motion passed with all in favor.
- B. Motion to accept engineer's recommendation for award of construction contract for Vado Water System Improvement Project to Ducross Construction:** Ms. Nichols said Ducross Construction was the lowest bidder, we have not worked with them before. Souder, Miller & Associates has worked with them on other Projects before. Mr. Magallanez made the motion to accept engineers' recommendation for award of construction contract. Mr. P Smith seconded the motion, the motion passed with all in favor.
- C. Motion to adopt RFP Committee report and recommendation for Stern Drive Phase II Waterline Extension Project and select Souder, Miller & Associates for the project:** Ms. Nichols said we received one proposal for this project, it was from Souder, Miller & Associates. They designed the Project previously and the RFP Committee recommended their selection. Mr. Evaro made the motion to adopt RFP Committee recommendation for selecting Souder, Miller & Associates for this Project. Mr. Magallanez seconded the motion, the motion passed with all in favor.
- D. Motion to award construction contract for the Central Operations Facility Project to C&E Industrial Services, Inc. contingent upon NMED-CPB approval and provided that no valid protests of the sole-source procurement are received by end-of-business today (OR SEE X. B. AND POSTPONE THIS UNTIL SPECIAL BOARD MEETING DATE IS SET):** Ms. Nichols said we had bid this project twice. The first time we received no bids and the second time we received three bids but all very high. All bids were rejected and had Wilson & Company negotiate with the lowest bidder to

configure a project we could build. We have secured the Capital Outlay funding and have determined that will use it for construction. We are in the process of securing \$300k from Drinking Water State loan funds. She could not provide a contract at the moment because a clause had to be added to the Contract and was not ready for this meeting. Mr. Magallanez made the motion to award construction contract for the Central Operations Facility Project to C&E Industrial Services, Inc. contingent upon NMED-DPB approval and provided that no valid protests of the sole-source procurement are received by end-of-business today. Mr. Evaro seconded the motion, the motion passed with four yes, Mrs. Juarez abstained from the vote.

- E. Motion to adopt Resolution FY2022-13 Approving Amended & Restated DW-4213 Loan Agreement for Central Operations Facility Project additional funding:** Ms. Nichols said our funding 100% loan and instead of adding the additional \$300,000 loan to the package, NMFA restricted the entire loan at a lower interest rate to save us a significant amount of money. Mr. P Smith made the motion to adopt Resolution FY2022-13 approving amended & restated DW-4213 Loan Agreement for Central Operations Facility Project additional funding. Mr. Evaro seconded the motion, the motion passed with four yes, Mrs. Juarez abstained from the vote.
- F. Motion to approved terminations of memberships:** Ms. Charles said the members on this list had gone thru the Collections process and had arrived to the last step in the process. She requested that the members listed have their membership terminated. Mr. Lopez said we had collected ½ of the money owed from one of the members on this list. Mr. P Smith made the motion to approve the termination of membership. Mr. Magallanez seconded the motion, the motion passed with all in favor.
- G. Motion for Authorization to develop Iron and Manganese projects for the Valle Del Rio and Brazito systems:** Ms. Nichols said we get a lot of brown and black water complaints from Valle Del Rio and Brazito customers. We would like to develop a Project for removal of these constituents. We currently have an Arsenic system at a well at Desert Sands. The well will probably not be used any longer so the Arsenic system could be moved to Valle Del Rio and used for the removal of Iron and Manganese there. The Brazito wells are larger capacity so we would need to develop a Project for those wells. Mr. P Smith made the motion to authorize the development of an Iron and Manganese Project for Valle Del Rio and Brazito Systems. Mrs. Juarez seconded the motion, the motion passed with all in favor.
- X. Other discussion and agenda items for next meeting at 9:30 a.m. Wednesday, November 10, 2021**

 - A. Have any Board Members participated in training? If so, please give us a copy of your certificate:** Ms. Nichols thanked Mrs. Juarez for attending the Open Meeting Act and Inspection of Public Records Act compliance training. We will add her training to our Board Training Certificates files. No other directors provided training certificates.
 - B. Set date for Special Board meeting to award Central Operations Facility Project construction contract or recess this meeting to reconvene at 9:30 a.m. on date of Special Board Meeting. No action was needed on this item.**

C. GM Evaluation: Mr. Lopez said Ms. Nichols is working on a password protected web page with the evaluation form on it. The board members will then be able to fill out the form and send it directly from there to the Board Chair. Mrs. Juarez asked when the evaluation would be needed. An email will be sent to all board members as soon as the web page is ready.

D. Please turn in your Board Member Handbook to Patty no later than the November 10th meeting so we can update it.

XI. Motion to Adjourn: Mrs. Juarez made the motion to adjourn the board meeting at 10:13 a.m. Mr. P Smith seconded the motion, the motion passed with all in favor.

These minutes will be presented to the board for approval on the 10th Day of November, 2021 at a regular meeting of the Board of Directors:

SEAL:

Esperanza Holguin, Board Chair

Attest:

Joe Evaro, Secretary

LRGPWWA
Manager's Report
November 10, 2021

- Sent farm lease agreement for Vado property to tenant (1-year renewal)
- Mountain Valley Subdivision (Berino) preliminary plot approved by DAC BOCC
- A developer is trying to coordinate a subdivision in Brazito off East Organ Road and obtain sewer service from the Sewer Project 2
- An operations employee has contracted COVID (has returned to work-isolated)
- Sent out a newsletter informing customer that the LRGPWWA has applied to participate in NM Human Services Department Income Support Division program that could assist with water/sewer accounts that have been disconnected; could be disconnected; or to pay current billing. Priority by the State is for the disconnected followed by the “could be disconnected” and then the current billing

**LOWER RIO GRANDE PUBLIC WATER WORKS AUTHORITY
PROJECTS REPORT – 11/10/2021**

LRG-17-01 – Mesquite-Brazito Sewer Project 2 – Bohannon Huston, Inc. – Design Stage – USDA-RD LOC \$15,030,780 (\$6,189,000 Loan/\$8,030,000 Grant) –27th Request for Funds from RCAC bridge loan has been submitted. LOC documents were submitted 4/26/21. Closing instructions were received from RD. RD Authorization to bid was received 8/31/21 and rescinded on 9/1/21 because our RCAC interim loan for construction was not yet in place, although we had requested it. Loan resolution was adopted at the September meeting, and RCAC is processing the loan application. Met with BHI on 10/27/21 to discuss breaking the project into additional bid lots.

LRG-11-03 – Interconnect & Looping Project – see LRG-18-02 for current portion – Stern Drive Line Ext.

LRG-11-05 – South Valley Water Supply & Treatment Project WTB #252– Bohannon Huston - Construction stage - \$160,000 Loan and \$676,600 Grant RD Funds: Construction contract was awarded to Morrow, USDA-RD concurrence has been received, pre-construction conference was held on 11/3/21. Construction should commence on 12/6/21. Engineering Agreement Amendment #1 has been submitted to RD for concurrence for resident project representation.

LRG-17-01 – Water Master Plan – BHI - WTB #252/CDBG 19-C-NR-I-06-G-100 \$50,000 + \$60,000 LRG funds: CDBG Close-Out Public Hearing is 5:30 p.m. today. Public outreach via web page is pending.

LRG-17-02 – Central Office Building – Wilson & Co. - DW-4213 \$3,285,619 - SAP 21-F2723-STB \$1,200,000: Contract was awarded to C&E Enterprises, and NMED-CPB/NMFA has been received for architectural contract amendment and the contract.

Forty-Year Water Plan – CE&M – complete – needs update for new mergers after Brazito combine & commingle: pending NM-OSE comments/approval. Currently only includes the initial five systems.

LRG-13-03 – Valle Del Rio Water System Project – Construction Stage & Ph. II Design - \$1,197,708 DWSRLF funding - \$898,281 principal forgiveness – 299,427 loan repayment – Souder, Miller & Associates: Project is on hold pending El Paso Electric Company work to install 3-phase power to the site. Change Order 3 has been approved to get booster skid ordered.

LRG-17-03 –East Mesa Water System Improvements Project – NMFA 3803-PG & 3804-PG \$93,307, 4915-CIF \$207,608 Loan/\$39544 Grant/\$9,562 Match – Design – Final closing date for DWSRLF funds for Phase I construction is 12/3/21. Phase II Colonia's funds are available, engineering contract is pending.

LRG-18-01 Ph. II – High Valley Water System Improvements Ph. II & III Project – NMFA 4916-CIF \$630,384 Grant, \$111,244 Loan – Design & Construction – Souder, Miller & Assoc. – New well is complete, but pit less adapter will not arrive until late November, pump-tests have been done, water samples have been sent to the lab, and results have been received. Interconnect line with Vista Del Rey is installed except for the master meter that hasn't arrived yet. Phase III Colonia's funds closing is final, engineering contract is pending.

LRG-18-02 – Stern Drive Waterline Extension Project – Design/Build – SMA - \$150,000 SAP – Engineering contract is on today's agenda.

LRG-19-09 – S. Valley Service Area Line Extensions - SMA –We have Task Order with SMA to do community outreach to see where there is interest from potential new customers, and determine whether a PER is needed. SMA has identified potential locations and potential new customers and is working on cost estimates and phasing recommendations after confirming that the work would require a Technical Memo, not a PER. Report has been submitted, and staff review is pending.

LRG-20-01 – Mesquite Wetlands Closure – Plan/Design - BHI - \$250,000 SAP: Work from CO #3 is finished. We have \$12,947.30 remaining funds that will be used for fence repairs. The contractor has declined that work, and we will use a fence company.

LRG-21-01 – Vado Area Water System Improvements – Plan/Design/Construct – SMA - \$139,000 SAP 20-E4038-GFR – Contract was awarded to DuCross Construction, NMED-CPB approval is pending. DR #5 has been submitted.

Other projects:

NM 2022 Legislature: Capital Outlay online request forms are available 10/5/21. I'm working on requests for furniture/fixtures/equipment for the Central Operations Facility, iron & manganese treatment for Valle Del Rio, and a vector truck. \$2 Billion in legislative funding is expected to be available for projects, plus earmarked severance tax bonding capacity estimated at \$64.2 million for water projects and \$32.1 million each for tribal projects in colonias.

Infrastructure Capital Improvements Plan 2023-2027: ICIP has been submitted.

Reporting to Funding Agencies: Quarterly CIF Reports were submitted for 1stst Quarter, SAP monthly reporting is up to date.

Documents Retention & Destruction – Sorting of old association documents for storage or destruction is ongoing, and staff is implementing approved retention/destruction schedules for LRGPWWA documents.

Website and Email – Notices and Minutes pages are up to date.

Training –I did not attend any trainings for this period. Patty attended Climate Change Impacts Webinar for Rio Grande Valley/Basin & Range.

As Needed Engineering Services - Currently we have one active Task Orders: Bohannon Huston, Inc. for a State Land Office lease renewal was completed, Task Order with Cobb Fendley for an NM DOT permit on Greatview Ct., and Souder, Miller & Associates Vado Dr. NM DOT permit Task Orders are complete. Task Order with Souder, Miller & Associates for an NM DOT permit on Greatview Ct. is still pending.

Collection & Lien Procedures - 309 first notifications, 306 certified letters have been sent and 131 liens have been filed to date. 53 liens have been released following payment in full of the account.

Water Audits –Most recent results are available on the boards website.

Rate Study – Implementation of rate adjustment began July 1, met with Karl Pennock, RCAC, for an update on 10/28/21

Cyber Security Assessment – Final follow-up meeting with Karl Pennock, RCAC, was held on 7/14/21. Our insurance company is requiring training for all employees on phishing & malware, I've found a

source for that, and Patty will administer it. All but one employee, have taking the Cyber Training. Everyone got a certificate for the training. The feed back that was received from the employees was very positive.

NM Board of Licensure for PEs & Surveyors – I have been appointed by the Governor to this board and assigned to the Professional Engineering Committee. Attended a committee meeting on 11/4/21.

Lower Rio Grande PWWA

Operators Report

November 10, 2021

- Backflow inspections are Current. (Mesquite District)
- For the month of October, we were issued 295 work and service orders.
- For the month of September, we were issued 258 work and service orders.
- For the month of October, we installed 3 new water service connections in the South Valley.
- We had no main or service line breaks at Alto De las Flores.
- We had no main or service line breaks at Talavera MDWCA.
- We had two Main line water breaks in South valley area.
- Well #6 is running very well however the production meter at well #8 has failed I'am waiting on approval for an ABB Mag Meter.
- We are waiting on electrical parts for the Gas Chlorine System at the El Centro well, Justin has done a very nice job painting the main building and the gas chlorine room.

- The Organ Ponds were plugged and backing up, they took a lot of work from all of our staff and the help of Henry and his staff from Enviro-Tech However the ponds have never looked better. My hats off to all of my staff!!

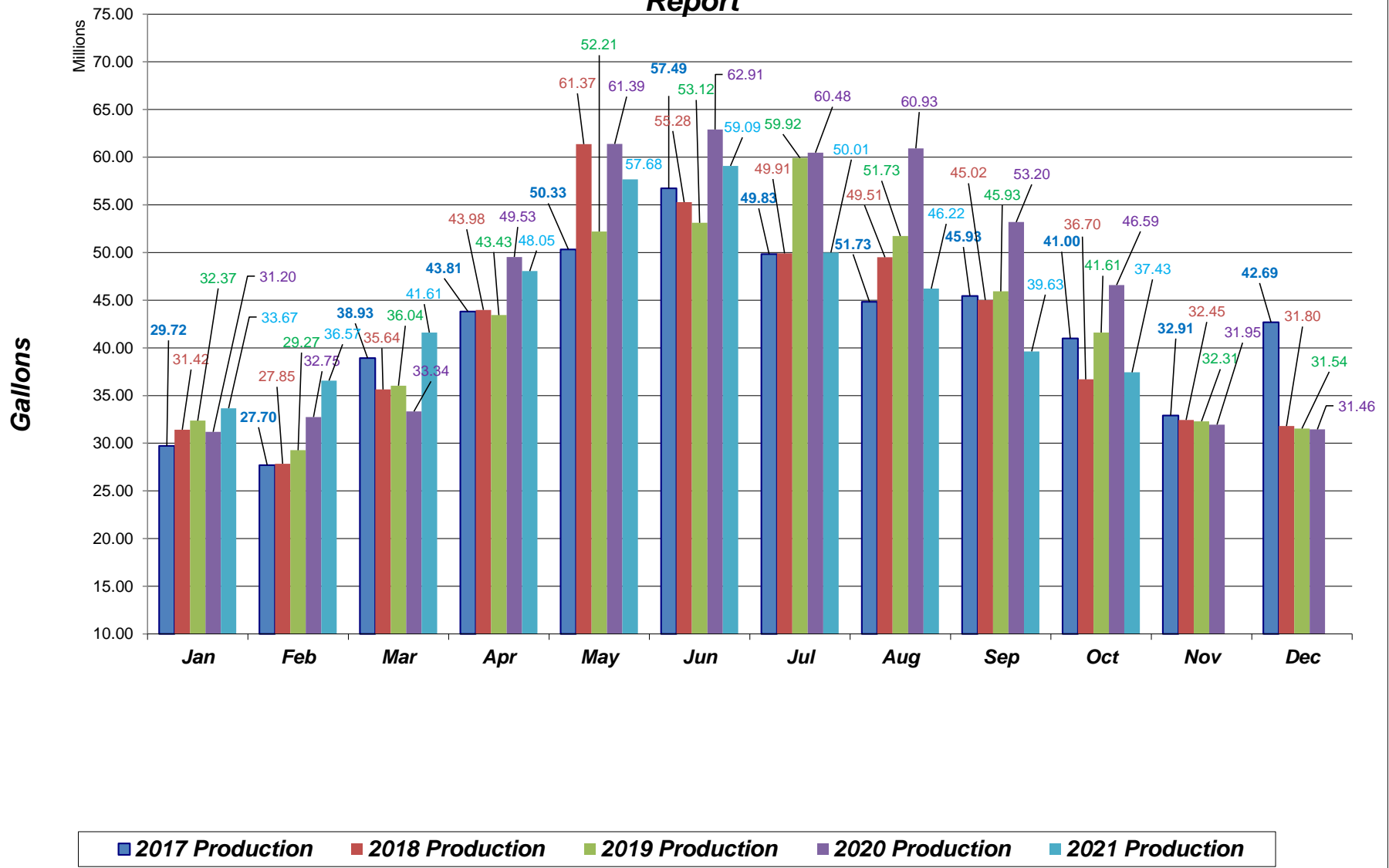
NMED: All of our Monthly Bac-T-Samples were taken for the month of October and all samples were negative.

Mesquite and Organ Sewer Reports. The Organ and the Mesquite Wastewater reports have been sent out July 1st.

Chlorine: No problems.

Reports: NMED, State Engineers, and the water conservation reports have been sent.

Lower Rio Grande PWWA Water Production Report



Organ Ponds – Before Pictures



Organ Ponds – After Pictures





Lower Rio Grande Public Water Works Authority

Income Statement

Group Summary

For Fiscal: FYE 2022 Period Ending: 10/31/2021

AcctNumber	Current Total Budget	MTD Activity	YTD Activity	Budget Remaining
Revenue				
40000 - Operating Revenue	3,122,500.00	258,549.27	1,193,509.40	1,928,990.60
40001 - Activation & Connection Fees-Sewer	500.00	266.67	1,600.00	-1,100.00
40002 - Installation Fees	75,000.00	2,913.49	31,670.97	43,329.03
40003 - Activation & Connection Fees-Water	5,000.00	3,799.99	10,296.99	-5,296.99
40005 - Backflow Testing	7,000.00	750.00	1,825.00	5,175.00
40006 - Tampering Fee/Line Breaks	0.00	156.06	1,273.94	-1,273.94
40007 - Delinquency Fee	75,000.00	9,100.00	32,200.00	42,800.00
40008 - Penalties-Water	75,000.00	6,978.96	25,066.28	49,933.72
40009 - Membership Fees	5,000.00	1,050.00	2,950.00	2,050.00
40010 - Impact Fees	40,000.00	5,524.98	30,991.02	9,008.98
40011 - Returned Check Fees	500.00	35.00	105.00	395.00
40012 - Credit Card Fees	12,000.00	1,464.00	6,074.00	5,926.00
40013 - Miscellaneous Revenue	200.00	10.00	984.30	-784.30
40015 - Penalties-Sewer	6,000.00	3,057.88	13,244.60	-7,244.60
40016 - Meter Test Fee	0.00	-15.00	-15.00	15.00
40017 - Hydrant Meter Rental Fee	5,000.00	0.00	500.00	4,500.00
40019 - DAC Trash Coupons	1,000.00	54.00	260.00	740.00
40020 - Miscellaneous Revenue-Sewer	5,000.00	60.83	244.42	4,755.58
40025 - DAC Sewer Revenue	0.00	0.00	14,486.01	-14,486.01
45000 - Tower Rent	5,000.00	500.00	2,000.00	3,000.00
45001 - Billing Adjustments-Water	0.00	-365.94	-646.15	646.15
45005 - Fiscal Agent Fees	50,000.00	6,877.43	20,706.31	29,293.69
45010 - Interest	0.00	29.84	114.57	-114.57
45015 - Copy/Fax	100.00	5.00	28.75	71.25
45020 - Other Income	45,000.00	3,185.87	48,258.08	-3,258.08
45022 - Annual Farm Rental	5,000.00	0.00	0.00	5,000.00
45025 - Contract Services	40,000.00	5,908.69	17,485.70	22,514.30
45030 - Transfers In	0.00	500.00	500.00	-500.00
49000 - Recovered Bad Debts	0.00	100.00	800.00	-800.00
Revenue Total:	3,579,800.00	310,497.02	1,456,514.19	2,123,285.81
Expense				
60000 - Cost of Goods Sold-Sewer	1,000.00	0.00	0.00	1,000.00
60001 - Transfer to Reserves	0.00	10,000.00	40,000.00	30,000.00
60005 - Accounting Fees	500.00	0.00	0.00	500.00
60010 - Audit	14,000.00	9,356.13	9,356.13	4,643.87
60020 - Bank Service Charges	15,000.00	3,113.23	12,489.97	2,510.03
60025 - Cash Short/Over	500.00	0.00	62.02	437.98
60026 - Computer Hardware	10,000.00	2,881.91	2,881.91	7,118.09
60030 - Dues and Subscriptions	3,000.00	0.00	2,403.56	596.44
60035 - Engineering Fees	60,000.00	0.00	19,328.37	40,671.63
60040 - Interest Expense	0.00	2,331.07	2,331.07	-2,331.07
60045 - Late Fees	1,000.00	0.00	0.00	1,000.00
60050 - Legal Fees	5,000.00	1,633.36	2,270.32	2,729.68

60055 - Legal Notices	2,500.00	82.75	565.25	1,934.75
60060 - Licenses & Fees	5,000.00	75.00	425.00	4,575.00
60065 - Meals	2,500.00	43.29	43.29	2,456.71
60075 - Permit Fees	1,500.00	0.00	1,830.48	-330.48
60080 - Postage	3,000.00	441.93	559.13	2,440.87
60090 - Professional Fees-Other	10,000.00	0.00	0.00	10,000.00
60100 - Project Development	0.00	5,000.00	19,000.00	-19,000.00
60120 - Retirement Account Fees	6,500.00	685.11	4,290.66	2,209.34
60125 - Easements & Leases	10,000.00	0.00	0.00	10,000.00
60130 - Training	5,000.00	0.00	583.89	4,416.11
60140 - Travel:Airfare Per Diem	3,000.00	0.00	0.00	3,000.00
60150 - Travel:Lodging Per Diem	4,000.00	0.00	483.95	3,516.05
60155 - Travel:Meals Per Diem	2,000.00	0.00	0.00	2,000.00
60160 - Travel:Mileage/Parking Per Diem	1,500.00	0.00	0.00	1,500.00
60165 - Travel:Vehicle Rental Per Diem	1,000.00	0.00	0.00	1,000.00
60600 - Debit Service	148,000.00	14,789.90	24,154.83	123,845.17
60625 - Interest paid to NMED	14,000.00	0.00	0.00	14,000.00
60650 - Interest paid to NMFA	37,000.00	3,508.37	11,725.29	25,274.71
60675 - Interest paid to USDA	125,000.00	11,596.26	46,385.04	78,614.96
63000 - Regular Pay	1,120,000.00	75,400.43	374,895.97	745,104.03
63001 - Overtime	54,500.00	2,358.16	18,431.20	36,068.80
63006 - Holiday Pay	56,500.00	5,777.37	15,828.45	40,671.55
63007 - Sick Pay	50,000.00	5,480.33	22,816.91	27,183.09
63008 - Annual Leave Pay	118,000.00	7,890.60	31,804.14	86,195.86
63010 - 401K 10% Company Contribution	5,000.00	0.00	0.00	5,000.00
63020 - 401K Employee Contribution	2,000.00	0.00	0.00	2,000.00
63040 - Administrative Labor	5,000.00	0.00	0.00	5,000.00
63070 - Employee Benefits-401K Contrib	168,500.00	2,941.42	13,703.45	154,796.55
63100 - Insurance-Dental	12,500.00	1,111.38	4,661.88	7,838.12
63110 - Insurance-Health	250,000.00	23,609.96	98,511.14	151,488.86
63115 - Salaries: Insurance - Work Comp	15,000.00	1,555.00	4,318.00	10,682.00
63125 - Insurance: Life & Disability	12,500.00	-78.66	-41.21	12,541.21
63130 - Mileage	1,500.00	0.00	0.00	1,500.00
63135 - Drug Testing	500.00	70.00	105.00	395.00
63160 - Payroll Taxes-Medicare	20,500.00	1,405.12	6,724.63	13,775.37
63170 - Payroll Taxes-Social Security	80,500.00	6,008.19	28,754.11	51,745.89
63195 - Taxes, Liability, Insurance: Cobra Fee	0.00	85.00	310.00	-310.00
63200 - Vision Insurance	4,000.00	309.78	1,295.01	2,704.99
64100 - Sewer:DAC Waste Water Flow Charge	50,000.00	11,863.41	27,480.05	22,519.95
64200 - Sewer:Electricity-Sewer	9,000.00	438.54	4,443.76	4,556.24
64300 - Sewer:Lab & Chemicals-Sewer	10,000.00	989.75	4,559.95	5,440.05
64500 - Sewer:Supplies & Materials	28,500.00	0.00	0.00	28,500.00
64501 - Pre Paid Tank Site Lease	1,625.00	1,375.00	1,375.00	250.00
65010 - Automobile Repairs & Maint.	50,000.00	1,965.98	11,282.98	38,717.02
65230 - Computer Maintenance	70,000.00	3,411.34	39,078.25	30,921.75
65240 - Equipment Rental	2,500.00	355.31	732.46	1,767.54
65250 - Fuel	60,000.00	6,705.57	35,607.45	24,392.55
65255 - GPS Insights Charges	7,000.00	570.50	2,291.49	4,708.51
65260 - Kitchen & Cleaning Supplies	1,000.00	0.00	0.00	1,000.00

65270 - Lab Chemicals-Water	5,000.00	1,308.63	1,937.13	3,062.87
65275 - SCADA Maintenance Fee	2,000.00	0.00	0.00	2,000.00
65276 - Test Equipment Calibration	2,000.00	0.00	0.00	2,000.00
65277 - Generator Maintenance Contract	3,000.00	0.00	5,662.96	-2,662.96
65278 - Meter Testing/Repair/Replacement	61,175.00	0.00	75.00	61,100.00
65280 - Lab Chemicals-Water:Chemicals	35,000.00	3,734.68	13,976.92	21,023.08
65300 - Locates	2,500.00	0.00	0.00	2,500.00
65310 - Maint. & Repairs-Infrastructure	65,000.00	7,469.24	60,298.03	4,701.97
65320 - Maint. & Repairs-Office	12,500.00	1,322.25	4,065.35	8,434.65
65330 - Maintenance & Repairs-Other	21,500.00	1,749.74	15,763.15	5,736.85
65340 - Materials & Supplies	94,000.00	3,734.41	18,459.21	75,540.79
65345 - Non Inventory-Consumables	50,000.00	1,078.84	15,497.50	34,502.50
65350 - Office Supplies	10,000.00	2,212.54	4,325.98	5,674.02
65360 - Printing and Copying	47,500.00	4,108.70	19,294.18	28,205.82
65370 - Tool Furniture	10,000.00	2,201.09	18,730.58	-8,730.58
65390 - Uniforms-Employee	15,000.00	1,331.94	4,374.71	10,625.29
65490 - Cell Phone	20,000.00	18.78	7,449.39	12,550.61
65500 - Electricity-Lighting	6,000.00	413.21	1,986.62	4,013.38
65510 - Electricity-Offices	15,000.00	808.59	5,663.03	9,336.97
65520 - Electricity-Wells	200,000.00	11,247.60	75,324.16	124,675.84
65530 - Garbage Service	3,000.00	224.48	884.72	2,115.28
65540 - Natural Gas	3,000.00	125.09	473.79	2,526.21
65550 - Security/Alarm	5,000.00	0.00	3,082.93	1,917.07
65560 - Telephone	20,000.00	3,406.28	6,762.88	13,237.12
65561 - Telstar Maintenance Contract	7,000.00	0.00	0.00	7,000.00
65570 - Wastewater	2,000.00	774.40	774.40	1,225.60
66200 - Insurance-General Liability	90,000.00	36,440.83	56,447.83	33,552.17
66700 - Water Conservation Fee	15,000.00	1,188.99	5,848.46	9,151.54
Expense Total:	3,579,800.00	312,038.10	1,297,299.14	2,352,500.86
Total Surplus (Deficit):	0.00	-1,541.08	159,215.05	-229,215.05



<http://LRGauthority.org>

LOWER RIO GRANDE

Public Water Works Authority

P.O. Box 2646

Anthony, New Mexico 88021

(575) 233-5742

Resolution Number FY2022-14 Adopting a Water Master Plan

WHEREAS, the Lower Rio Grande Public Water Works Authority applied for and received Community Development Block Grant funding for a Water Master Plan; and

WHEREAS, the Water Master Plan has been completed.

NOW THEREFORE, be it resolved, the Board of Directors adopts and passes this resolution adopting the attached Water Master Plan

PASSED, APPROVED, AND ADOPTED: November 10, 2021

Esperanza Holguin, Board Chair

Seal:

Joe Evaro, Secretary

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

THIS Agreement, made this _____ day of November 2021 (effective date) by and between Lower Rio Grande Public Water Works Authority hereinafter referred to as the OWNER, and Miller Engineers, Inc. d/b/a Souder, Miller & Associates hereinafter referred to as the ENGINEER. This contract expires on November 15, 2025.

The OWNER intends to construct a Project consisting of design and construction of water system improvements along Stern Drive including new 12-inch waterline.

in Doña Ana 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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Authorization to proceed date: This _____ day of _____, 20_____
Contract Time shall be _____ calendar days from Authorization to proceed date. This phase expires on _____.
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Authorization to proceed date: This _____ day of _____, 20_____
Contract Time shall be _____ calendar days from Authorization to proceed date. This phase expires on _____.

- ☒ Attachment IV - Engineering Services During the Construction Phase
Authorization to proceed date: This _____ day of November, 2021
Contract Time shall be 150 calendar days from Authorization to proceed date. This phase expires on _____.
- ☐ Attachment V - Engineering Services During the Operation Phase
Authorization to proceed date: This _____ day of _____, 20_____
Contract Time shall be _____ calendar days from Authorization to proceed date. This phase expires on _____.
- ☐ Attachment VI – Amendments to Agreements for Engineering Services
Authorization to proceed date: This _____ day of _____, 20_____
Contract Time shall be _____ calendar days from Authorization to proceed date. This phase expires on _____.
- ☐ _____

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 amendment 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) The OWNER and the ENGINEER each is bound and the partners, successors, executors, administrators and legal representatives of the OWNER and the 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 to all covenants, agreements, and obligations of the Agreement. Neither the OWNER nor the 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 the OWNER or the ENGINEER to any Contractor, Contractor's subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them; and

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

(c) The ENGINEER will work closely with the OWNER to confirm all Funding Agency requirements are met.

(d) The ENGINEER will attend conferences and public hearings with the OWNER, at which representatives of the Funding Agency and interested parties will also be in attendance, 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 reviewed and 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 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 errors or omissions 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 to the proportionate extent, in accordance with applicable law, for 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) The ENGINEER'S opinions of probable Construction Cost are to be made on the basis of the 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 the 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, the ENGINEER cannot and does not guarantee that proposals, bids, or actual Construction Cost and project schedules will not vary from opinions of probable Construction Cost prepared by the ENGINEER. If the OWNER wishes greater assurance as to probable Construction Cost, the OWNER shall employ an independent cost estimator.

(f) During the Construction Phase, the ENGINEER shall not at any time supervise, direct, or have control over the Contractor's work, nor shall the ENGINEER have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by the 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 the Contractor to

comply with Laws and Regulations applicable to the Contractor's furnishing and performing the Work.

(g) The standard of care of all professional engineering and related services performed or furnished by the 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. The ENGINEER makes no warranties, expressed or implied, under this Agreement or otherwise, in connection with the 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) The OWNER shall be responsible for, and the ENGINEER may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by the OWNER to the ENGINEER pursuant to this Agreement. The 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 the 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 the OWNER. Such documents are not intended or represented to be suitable for reuse by the OWNER or others on extensions of the Project or on any other project. Any such reuse or modification without written verification or adaptation by the ENGINEER will be at the OWNER's sole risk and without liability or legal exposure to the ENGINEER. Any verification or adaptation as stated above, will entitle the ENGINEER to further compensation at rates to be agreed upon by the OWNER and the ENGINEER.

5. Changes

(a) The OWNER and the ENGINEER may, at any time, with prior approval of the Funding Agency, make changes within the general scope of this Agreement in the services or work to be performed. Any such change must be in writing and approved by both parties to this Agreement. 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.

(c) All changes to the scope, cost or time of this Agreement and services described in the Attachments must be in writing and documented in Attachment VI – Amendment to Agreements for Engineering Services.

6. Termination of Contract

(a) This Agreement may be terminated in whole or in part 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. Any termination must be in writing. 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 to cure the default 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 6(c) 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 pay the ENGINEER applicable gross receipt taxes and reimbursable expenses at the rates set forth in the appropriate Attachment. The amounts payable to the ENGINEER for reimbursable expenses will be the project-related internal expenses, such as reproduction, and all invoiced external reimbursable expenses allocatable to the project, including consultants, multiplied by a factor of 1.1 (1.1 MAXIMUM). Mileage will be reimbursed at the current federally approved IRS rate. Mileage and per diem will not be multiplied by a factor. Reimbursable expenses shall not exceed the estimate in the Attachments without prior written approval of the OWNER, with Funding Agency concurrence. Copies of invoices from consultants, mileage logs, and receipts for which the ENGINEER is requesting reimbursement must accompany the ENGINEER'S invoice.

(c) The OWNER shall notify the ENGINEER of any disputed amounts in the invoices within fourteen (14) calendar days of receipt. If the OWNER contests an invoice, the OWNER may withhold only that portion so contested, and must pay the undisputed portion.

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

(e) If the OWNER fails to make any payment due to the ENGINEER within forty-five (45) calendar days after the OWNER's receipt of the ENGINEER's invoice, the amount due to the ENGINEER shall be increased at the rate of 1.5% per month from said forty-fifth day. Any payment of interest under this contract is not reimbursable from grant or loan funds. In addition, after ten (10) calendar days' prior written notice, the ENGINEER may suspend services under this Agreement until the ENGINEER is paid in full. The OWNER waives any and all claims against the ENGINEER for any such suspension.

8. Time

(a) PROGRESS AND COMPLETION

1. The ENGINEER has prepared and the OWNER has approved a schedule for the performance of the ENGINEER's services. This schedule is reflected in the contract time(s) as detailed in the Attachment(s) and represents reasonable times in which to complete the services. The schedule includes reasonable times required for the OWNER and other applicable parties to the agreement to provide necessary information, provide any applicable services not included in the ENGINEER's Scope of Work and make decisions necessary for completion of the work. The schedule also includes reasonable allowances for review and approval times required by the OWNER and by public authorities having jurisdiction over the Project. The schedule shall be equitably adjusted as the Project progresses, allowing for changes in scope, character or size of the Project requested by the OWNER, or for delays or other causes beyond the ENGINEER's reasonable control.
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 negligence of the OWNER, changes in the Work as agreed upon by the OWNER and the ENGINEER in writing, or other causes beyond the ENGINEER'S control, then the Contract Time may be extended per Section 5 of this Agreement. Extensions of time not associated with modifications or changes 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, as found in Subsection (b) of this Section.
5. The ENGINEER shall promptly notify the OWNER in writing of any conditions that may delay delivery of work beyond the Contract Time.
6. The 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 provide for completion within the Contract Time. It is expressly understood and agreed, by and between the 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. The ENGINEER agrees to promptly notify the 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 Attachments, 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 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 the ENGINEER agree that reasonable liquidated damages for delay (but not as a penalty) due from the ENGINEER to the OWNER are \$100.00 (minimum one-hundred dollars [\$100.00] per day) for each calendar day that expires after the Contract Time specified in the Agreement until the Work is complete and accepted by the OWNER. The 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 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, the OWNER, and the State water pollution control agency, or their duly authorized representatives, shall have access to such books, records, documents, and other evidence for inspection, audit, and copying during normal business hours. The ENGINEER will provide proper facilities for such access and inspection.

(b) The ENGINEER agrees to make paragraphs (a) through (f) applicable to 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.

(f) This right of access clause applies to financial records pertaining to agreements (except formally advertised, competitively awarded, fixed price agreements) and agreement amendments regardless of the type of agreement. In addition, this right of access applies to 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 but will not dictate whom the ENGINEER must hire.

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

12. Insurance

The ENGINEER agrees to obtain and maintain, at their expense, such insurance as specified in Attachment I.

13. Environmental Condition of Site

(a) The OWNER has disclosed to the 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) The OWNER represents to the ENGINEER that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to the ENGINEER, exist at the Site.

(c) If the ENGINEER encounters an undisclosed Constituent of Concern, then the ENGINEER shall notify: 1) the OWNER; and 2) appropriate governmental officials if the ENGINEER reasonably concludes that doing so is required by applicable Laws or Regulations.

(d) It is acknowledged by both parties that the ENGINEER'S scope of services does not include any services related to Constituents of Concern. If the 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 the 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 the 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.

(e) If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of the 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 the ENGINEER is performing professional services for the OWNER and that the 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 the ENGINEER'S activities under this Agreement.

14. Mutual Waiver

To the fullest extent permitted by law, the OWNER and the 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

The 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 the ENGINEER'S performance of the Services.

16. Equal Employment Opportunity

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

17. Gratuities

(a) If the OWNER find 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 Subsection (a) of this Section, 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) confirm 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 confirms that it and its subcontractors have not been suspended or debarred by EPA, USDA, or the State of New Mexico.

SECTION B –ENGINEERING SERVICES

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

1. The ENGINEER shall complete the ENGINEERING SERVICES described in Attachment II – Engineering Services During the Planning Phase within the time specified from the date of written authorization to proceed unless otherwise mutually agreed to in writing by both parties.
2. The ENGINEER shall complete the ENGINEERING SERVICES described in Attachment III – Engineering Services During the Design Phase within the time specified from the date of written authorization to proceed unless otherwise mutually agreed to in writing by both parties.
3. ENGINEER shall complete the ENGINEER SERVICES described in Attachment IV – Engineering Services During the Construction Phase within the time specified from the date of written authorization to proceed unless otherwise mutually agreed to by both parties.
4. The ENGINEER shall complete the ENGINEERING SERVICES described in Attachment V – Engineering Services During the Operation Phase within the time specified from the date of written authorization to proceed unless otherwise mutually agreed to in writing by both parties.

SECTION C – SPECIAL PROVISIONS OR MODIFICATIONS TO THE STANDARD LANGUAGE IN THIS AGREEMENT

(Mark those that apply or describe, attach or indicate “None”)

☐ None

1. The OWNER and ENGINEER agree that the contract time identified in each Attachment to this Agreement is considered met upon substantial completion of the Work associated with each Phase. Substantial completion is understood as submittal of a final draft of the required documentation and/or completion of tasks identified for each Phase. Liquidated damages shall not apply to the time required for final review and acceptance by the OWNER and/or the Funding Agency, and time required by the ENGINEER to make minor adjustments to the Work as requested by the OWNER, State regulatory agencies, or Funding Agency. The time required by the ENGINEER to make such minor adjustments however, shall not exceed 21 days, after which time liquidated damages as identified in Section A.8 shall apply.

2. The standard rates identified within each Exhibit to the present Agreement are effective as of the date of the Agreement and will be adjusted annually and submitted to the OWNER in the month of January of each subsequent year that the Agreement remains in force, to reflect equitable changes in the compensation payable to ENGINEER. The only rate that will be adjusted automatically with or without notification is the mileage rate which is tied to the current IRS rate as of the date of each invoice.

3. Final submittal of documents shall also be submitted in pdf format that can be transmitted electronically (i.e. files must be small enough to be transmitted by email and to be uploaded). All elements of the final submittal must also be submitted in their original editable formats including but not limited to CAD files, water model files, GIS files, Microsoft Word files, etc. Files in editable formats shall not contain the engineer's stamp. All elements of the final stamped submittal will be submitted in their original PDF format. All elements of the final submittal shall be submitted in their original format, full size PDF format, and PDF format reduced for electronic transmission.

The reports, plans, technical specifications and other engineering products created as a result of the contract, as provided by the ENGINEER and its subconsultants, are created specifically for the project and are intended to be used only for this project. The OWNER agrees, to the fullest extent permitted by law, to indemnify and hold the ENGINEER and its subconsultants harmless from any claim, liability or cost (including reasonable attorney's fees and defense costs) arising or allegedly arising out of any reuse or modification to the plans and technical NER or any person or entity that acquires the plans and technical specification from or through the OWNER.

☐ For Planning Grant Funds from NMFA Insert the note: For Preliminary Engineering Reports or other documents paid for using NMFA Planning Grant Funds, the community can only submit one reimbursement request. This request for payment must be based on a final invoice and can only occur after the document is approved by the pertinent reviewing agency. Interim payments to the engineer will be at the discretion of the community as agreed upon in this contract.

☒ The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, the OWNER may immediately terminate this Agreement by giving the ENGINEER written notice of such termination. The OWNER's decision as to whether sufficient appropriations are available shall be accepted by the ENGINEER and shall be final. The ENGINEER hereby waives any rights to assert an impairment of contract claim against the OWNER or NMED or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the OWNER or the Department

☒ This contract is funded in whole or in part by funds made available under a NMED Grant Agreement. Should the NMED early terminate the grant agreement, the OWNER may early terminate this contract by providing the ENGINEER written notice of such termination. In the event of termination pursuant to this paragraph, the OWNER's only liability shall be to pay the ENGINEER or vendor for acceptable goods delivered and services rendered before the termination date.

☐ MODEL CONTRACT CLAUSE FOR ENGINEERING AGREEMENTS
used for Clean Water State Revolving Fund (CWSRF) or Drinking Water State Revolving Fund (DWSRF) projects.

1. PRIVITY OF CONTRACT

This contract is expected to be funded in part with funds from the U.S. Environmental Protection Agency. Neither the United States nor any of its departments, agencies or employees is, or will be, a party to this contract or any lower tier contract. This contract is subject to the applicable EPA procurement regulations in effect on the date of the assistance award for this project.

2. CHANGES

1. The OWNER may at any time, by written order make changes within the general scope of this contract in the services 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 contract, whether or not changed by any order, the OWNER shall make an equitable adjustment and modify this contract in writing. The ENGINEER must assert any claim for adjustment under this clause in writing within 30 days from the date it receives the OWNER'S notification of change, unless the OWNER grants additional time before the date of final payment.

2. No claim by the ENGINEER for an equitable adjustment shall be allowed if made after final payment under this contract.

3. No services for which the ENGINEER will charge an additional compensation shall be furnished without the written authorization of the OWNER.

3. TERMINATION

a. This contract 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 contract through no fault of the terminating party, provided that no termination may be effected unless the other party is

given (1) not less than ten (10) 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 prior to termination.

b. This contract 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 ten (10) 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 prior to termination.

c. If termination for default is effected by the OWNER, an equitable adjustment in the price provided for in this contract 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 all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the Engineer in performing this contract, 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 a contract to complete the work under this contract.

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 sub-agreement price shall be made as provided in paragraph (c) of this clause.

4. REMEDIES

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

5. AUDIT; ACCESS TO RECORDS

a. The ENGINEER shall maintain books, records, documents and other evidence directly pertinent to performance on EPA funded work under this contract in accordance with generally accepted accounting principles and practices consistently applied, and the applicable EPA regulations in effect on the date of execution of this contract. The ENGINEER shall also maintain the financial information and data used in the preparation or support of any cost submission required under applicable regulations for negotiated contracts or change orders and

a copy of the cost summary submitted to the OWNER. The United States Environmental Protection Agency, the Comptroller General of the United States, the United States Department of Labor, the OWNER, and [the State] or any of their authorized representatives shall have access to all such books, records, documents and other evidence for the purpose of inspection, audit and copying during normal business hours. The ENGINEER will provide proper facilities for such access and inspection.

b. If this is a fixed price contract awarded through sealed bidding or otherwise on the basis of effective price competition, the ENGINEER agrees to make paragraphs (a) through (f) of this clause applicable to all negotiated change orders and contract amendments affecting the contract price. In the case of all other types of prime contracts, the ENGINEER agrees to make paragraphs (a) through (f) applicable to all contract awards in excess of \$10,000, at any tier, and to make paragraphs (a) through (f) of this clause applicable to all change orders directly related to project performance.

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

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).

e. Access to records is not limited to the required retention periods. The authorized representatives designated in paragraph (a) of this clause shall have access to records at any reasonable time for as long as the records are maintained.

f. This right of access clause applies to financial records pertaining to all contracts (except for fixed price contracts awarded through sealed bidding or otherwise on the basis of effective price competition) and all contract change orders regardless of the type of contract, and all contract amendments regardless of the type of contract. In addition, this right of access applies to all records pertaining to all contracts, contract change orders and contract amendments:

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

6. COVENANT AGAINST CONTINGENT FEES

The ENGINEER assures that no person or selling agency has been employed or retained to solicit or secure this contract 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 fee.

7. 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, the State or EPA in an attempt to secure a contract or favorable treatment in awarding, amending or making any determinations related to the performance of this contract, the OWNER may, by written notice to the ENGINEER, terminate this contract. The OWNER may also pursue other rights and remedies that the law or this contract provides.

b. In the event this contract 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 contract by the ENGINEER, and as a penalty, in addition to any other damages to which it may be entitled by law, be entitled to 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.

8. FINAL PAYMENT

Upon satisfactory completion of the work performed under this contract, as a condition before final payment under this contract or as a termination settlement under this contract the ENGINEER shall execute and deliver to the OWNER a release of all claims against the OWNER arising under, or by virtue of, this contract, except claims which are specifically exempted by the ENGINEER to be set forth therein. Unless otherwise provided in this contract, by State law or otherwise expressly agreed to by the parties to this contract, final payment under this contract or settlement upon termination of this contract shall not constitute a waiver of the OWNER'S claims against the ENGINEER under this contract.

9. 40 CFR Part 33

The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in termination of this contract or other legal available remedies.

IN WITNESS THEREOF, the parties hereto have executed, or caused to be executed, by their duly authorized officials, this Agreement 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 C.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date of the signature by the required approval authorities below.

By: _____ Date: _____

OWNER

Type Name Esperanza Holquin

Title Board Chair

By:  _____ Date: 28Oct2021

ENGINEER

Type Name Lilla J. Reid, P.E.

Title Vice President

Address 3500 Sedona Hills Parkway

Las Cruces, NM 88011

REVIEWED AND APPROVED: FUNDING AGENCY

AGENCY NAME: _____

By _____

Type Name _____

Date _____

ATTACHMENT I – 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 not less than \$500,000 for injury to any one person and \$1,000,000 on account of any one accident and in the amount of not less than \$1,000,000 for property damage. The ENGINEER further agrees to procure and maintain professional liability (errors and omissions) insurance in an amount not less than \$1,000,000 per claim and in the aggregate. Prior to commencement of any work, the ENGINEER shall furnish to the OWNER a certificate that complies with this paragraph. The certificate shall provide that the policy shall not be canceled until at least ten (10) calendar days prior written notice shall have been given to the OWNER. ENGINEER shall provide annual updates of the certificate to demonstrate the policy remains in effect for the duration of this Agreement.

ATTACHMENT IV – Engineering Services During the Construction Phase

1. As set forth in the AGREEMENT FOR ENGINEERING SERVICES dated the ____ day of November, 2021 (effective date) by and between the Lower Rio Grande Public Water Works Authority, the OWNER, and Miller Engineers, Inc. d/b/a Souder, Miller & Associates, the ENGINEER, the OWNER and ENGINEER agree this ____ day of November, 2021 (authorization to proceed date) that ENGINEER shall furnish ENGINEERING SERVICES During the Construction Phase in accordance with the GENERAL PROVISIONS of the Agreement and OWNER shall compensate the ENGINEER for services described as set forth below:

A. Perform or provide the following tasks and/or deliverables:

Construction phase services for a new 12-inch waterline along Stern Drive as detailed in the attached Exhibit A.

B. Cost Proposal – Include hourly breakdown for each task

See attached detailed cost proposal (Exhibit B).

C. Reimbursable Expense Schedule

NA

D. Contract Time shall be 150 calendar days from the date of the OWNERS signature on Attachment IV. Construction phase services shall be completed and accepted by the OWNER by March 31, 2022 (DATE). If construction phase services have not been completed and accepted by May 30, 2022 the ENGINEER shall pay the OWNER liquidated damages as outlined in the Agreement.

2. Compensation for ENGINEERING SERVICES During the Construction Phase shall be by the

☒ **LUMP SUM** method of payment. The total amount of compensation for ENGINEERING SERVICES During the Construction Phase, as described, including reimbursable expenses shall not exceed \$53,922.00, excluding gross receipt tax.


☐ **STANDARD HOURLY RATE WITH MAXIMUM** method of payment. The total amount of hourly charges, including reimbursables, for ENGINEERING SERVICES During the Construction Phase, as described, shall not exceed \$____, excluding gross receipt tax, without prior written approval of the OWNER, with Funding Agency concurrence.

3. 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.

4. Signatures

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date of the signature by the required approval authorities below.

By: _____ Date: _____
OWNER
Type Name Esparanza Holquin
Title Board Chair

By:  _____ Date: 28Oct2021
ENGINEER
Type Name Lilla J. Reid, P.E.
Title Vice President
Address 3500 Sedona Hills Parkway
Las Cruces, NM 88011

REVIEWED AND APPROVED: FUNDING AGENCY

AGENCY NAME: _____

By _____

Type Name _____

Date _____

Scope of Services

Project Description

Souder, Miller & Associates (SMA) prepared this Scope of Services to provide Bid, Construction and Construction Observation Services to Lower Rio Grande Public Water Works Authority (Owner) for approximately 500 linear feet of new 12-inch waterline along Stern Drive. SMA proposes to complete the following scope of work.

Project Management

1. **Project Management Plan (PMP) Preparation:** SMA will prepare a PMP to outline and document the following to ensure the entire project team has information necessary for a successful project:
 - a. Project team roles and responsibilities
 - b. SMA role in the project
 - c. Subconsultants for the project
 - d. Critical issues for the project
 - e. Project scope, budget and schedule including identification of critical path items
 - f. Change management and mitigation
 - g. QAQC Plan
 - h. Risk identification and safety plan

The PMP is intended to be a living document and the PM will update the PMP throughout the project as necessary.

2. **Kick-off Meeting:** SMA will hold an internal kick-off meeting to review the PMP with all of the project team members.
3. **Ongoing Project Management:** SMA will set up project budget and files, keep project records, update PMP as necessary, and prepare monthly invoices as outlined in the contract. The fee for these monthly project management tasks is based on an overall project duration of three (3) months.

Bid Phase Services

4. **Advertisement:** SMA will arrange to have the Advertisement for Bids published in one newspaper of general circulation nearest to the Owner's location two (2) times, approximately a week apart. The cost of the Advertisement is included in SMA's fee.
5. **Distribute Bid Documents:** SMA will update the bid package with current wage rates and a current NMDOT permit and make available electronic copies of the construction documents to interested Contractors during bidding and to local plan rooms. Contractors may obtain copies by contacting SMA to obtain access via the SMA web site. SMA will provide three (3) copies of 24" x 36" final design drawings, contract documents and technical specifications to the Contractor to whom the project is awarded.
6. **Substitution Evaluation:** SMA will evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by bidders, provided that such proposals are allowed

Exhibit A

Bid, Construction Phase and Construction Observation Services

Scope of Services

- by the contract documents prior to award of contracts for the Work. Engineer shall issue a bid addendum to allow approved “or equals” and substitutes.
7. **Answer Questions During Bidding:** SMA will accept and answer questions from Contractors during bidding.
 8. **Prepare Addenda:** If any additional information needs to be included in the construction documents, SMA will prepare addenda and distribute these addenda to all interested Contractors, to the Owner and to the Funding Agency.
 9. **Pre-bid Conference:** Prior to the bid opening, SMA will conduct a pre-bid conference to review the project and to address any outstanding issues with the construction documents. A field review of the project may be conducted during this pre-bid conference. SMA assumes that the Owner can arrange to hold the pre-bid conference at facilities that do not require any fees for their use, so no costs for facility use are included.
 10. **Open Bids:** The Contractors will submit their bids to to SMA at their office at 3500 Sedona Hills Drive up to the bid opening deadline. After the bid opening deadline, SMA will read the bids received aloud, and will adjourn the bid opening meeting.
 11. **Preparation of Bid Tabulation:** SMA will examine and tabulate the bids received to identify any math or extension errors.
 12. **Preparation of Recommendation of Award:** SMA will examine the bid packages received for completeness. SMA will check that the Contractors are properly licensed and will verify the references for the low bidder. SMA will then make a written recommendation to the Owner for the award of the construction contract.

Construction Phase Services

13. **Conform Contract Documents:** Once the Owner and Agency have approved the recommendation of award, SMA will prepare the Notice of Award for execution by the Owner and the Contractor. SMA will also prepare the contract documents for execution. Four (4) original copies will be prepared for execution by the Owner and Contractor and for concurrence by the Funding Agency. SMA will distribute the fully executed copies to the Owner, the Contractor the Funding Agency, and will keep one original.
14. **Pre-construction Conference:** SMA will conduct a pre-construction conference to address construction related issues with the Owner and Contractor. The cut-off for pay periods will be set as well as the Notice to Proceed date. SMA will prepare the Notice to Proceed for execution by the Contractor and the Owner.
15. **Submittal and Shop Drawing Review:** SMA will review submittals and other data that the Contractor is required to submit for conformance with the information in the contract documents and compatibility with the design concept of the project as a functioning whole. Such reviews will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. SMA will verify and document whether Contractor submittals are in accordance with the technical specifications. SMA will create and maintain a log of all submittals and shop drawings.

Exhibit A

Bid, Construction Phase and Construction Observation Services

Scope of Services

16. **Respond to Requests for Information:** SMA will respond to the Contractor's Requests for Information (RFIs) in writing. SMA will create and maintain a log of all RFIs. This may include issuing necessary clarifications and interpretations of the contract documents and technical specifications as appropriate.
17. **Field Orders:** SMA may issue field orders authorizing minor variations from the requirements of the contract documents and technical specifications.
18. **Site Visits:** SMA will make periodic visits to the site to observe the progress and quality of the various aspects of the Contractor's work. Based on the information obtained, and to the extent possible during such visits and observations, SMA will determine if the work is proceeding in accordance with the contract documents and technical specifications and will keep the Owner informed of the progress of the work. During such visits, SMA will recommend to the Owner that the Contractor's work be disapproved and rejected while it is in progress if SMA believes that such work will not produce a completed project that conforms generally to the contract documents and technical specifications or that will prejudice the integrity of the design concept of the completed project as a functioning whole as indicated in the contract documents and technical specifications. These visits will coincide with the progress meetings. The fee is based on making two site visits.
19. **Progress Meetings:** SMA will establish, coordinate and attend regular project meetings throughout the duration of the project. The fee is based on attending one 3onthly meeting for the 16 calendar day construction project duration and preparing agendas and meeting minutes for these meetings.
20. **Preparation of Periodic Pay Requests:** SMA will prepare periodic pay requests for the work accomplished during the pay period as verified by the construction observer. Based on the construction observer review of applications for payment and engineer review of accompanying support documentation, SMA will recommend the amounts that the Contractor be paid. Such recommendations of payment will be based on such observations and review that, to the best of SMA's knowledge, the work has progressed to the point indicated, the quality of such work is generally in accordance with the contract documents, and the conditions precedent to the Contractor being entitled to such payment appear to have been fulfilled.
21. **Preparation of Contract Change Orders:** SMA will recommend action on any proposed contract changes including review of proposed pricing. SMA will prepare formal change orders required for the project.
22. **Complete Acceptance Meeting:** SMA will schedule and arrange acceptance meetings when notified by the Contractor that the project is ready for acceptance. SMA will complete one (1) substantial completion acceptance meeting, prepare and distribute a "punchlist" outlining items to be addressed, and complete one (1) follow-up final completion meeting after Contractor indicates that the "punchlist" has been completed and make a recommendation to the Owner regarding project acceptance.

Closeout Services

23. **Preparation of Close-out Documents:** At the completion of the project, SMA will complete forms, provide direction, and coordinate completion of the closeout documents required by the NMED listed below:
 - a. Certification of Substantial Completion
 - b. Engineer & Community Acceptance
 - c. Record Drawings & O&M Manuals Acceptance
 - d. Consent of Surety to Final Payment
 - e. Affidavit of Payment and Release of Liens
 - f. Labor Standards Certification
24. **Maintain Records:** SMA will maintain records of all contract documents, change orders, RFIs, pay requests, funding reimbursement requests, financial status reports, certified payroll, and design and construction documents during the entire construction period and will deliver one (1) copy of the complete project records to the Owner at the completion of construction in digital PDF format.
25. **Preparation of Record Drawings:** SMA will update the construction plans to reflect changes made during construction. Record Drawings will be prepared utilizing the project documentation provided by the Contractor. **SMA will submit the original record drawings and three (3) hardcopies (and one digital pdf copy)** to the Owner upon completion.
26. **Preparation of Operation and Maintenance (O&M) Manual:** SMA will prepare an O&M Manual to include operation and maintenance information provided by the manufacturer of manufactured goods installed on the project.
27. **Warranty Meeting:** SMA will schedule and arrange a warranty meeting 11 months after the substantial completion date to make recommendations to the Owner regarding corrections covered by the Contractor's warranty that need to be completed. SMA will complete one (1) warranty meeting, prepare and distribute a "punchlist" outlining items to be addressed, and complete one (1) follow-up meeting after Contractor indicates that the "punchlist" has been completed.

Construction Observation Services

28. **Construction Observation:** SMA will provide an on-site Resident Project Representative (RPR) on a full-time basis during progression of construction. The fee for this work was based on a construction duration of 16 calendar days to substantial completion, and five (5) calendar days between substantial completion and final completion. The fee for Construction Observation Services is based on nine (9) hours on-site per day, 0.5 hours of travel each day, 0.5 hours for report preparation, daily expenses of \$15, and a daily mileage reimbursement of 30 miles at \$0.560/mile. This work will include coordination of the construction schedule with the Contractor and verification of quality of work for conformance with the Construction Documents.
29. **Preconstruction Conference:** The RPR will participate in the pre-construction conference prior to commencement of work at the site.

Schedule

SMA proposes to complete the above scope of services according to the following schedule.

Task	Duration (calendar days)
Bid Phase Services	45 days from the receipt of Agency approval and Owner authorization to Bid
Construction Phase Services	21 days from the construction Notice to Proceed
Project Closeout Services	45 days from Final Completion
Construction Observation Services	21 days from the construction Notice to Proceed

Compensation

The budgets shown below exclude New Mexico Gross Receipts Tax (NMGRT). NMGRT will be added to each invoice based on the current rate at the time of billing. The budgets for the phases shown will be billed on a lump sum basis; therefore, the invoices will not include an itemized breakdown of charges. Invoices will be issued on a monthly basis reflecting the percentage of each task completed to date.

Task	Cost
Bid Phase Services	\$ 13,280.00
Construction Phase Services	\$ 15,118.00
Project Closeout Services	\$ 8,547.00
Construction Observation Services	\$ 16,977.00
Total	\$ 53,922.00

Assumptions

SMA made the following assumptions to develop the fee for the above scope of services:

1. SMA assumes that there is no contamination on the project site. If contamination is found on the project site, and investigation is required, SMA will alert the Owner and additional scope and fee will be negotiated with the Owner.
2. SMA assumes that the existing topographic survey and design plans are adequate for use for construction of the project. If significant changes between the surveyed and designed conditions and the field conditions are observed, SMA will alert the Owner, and additional survey work will be negotiated if required; however, SMA makes no guarantee about the accuracy of the aged survey data.
3. SMA assumes that the bid opening and the preconstruction conference will either be held at SMA's offices or that the Owner can arrange to hold the meetings at facilities that do not require any fees for their use. No costs for use of a third-party facility are included in the fee.
4. SMA assumes that the construction progress meeting can be held at the Contractor's trailer or at the Owner's facilities. No costs for use of a third-party facility are included in the fee.

Exhibit A

Bid, Construction Phase and Construction Observation Services

Scope of Services

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

Summary of Cost Proposal

Souder, Miller & Associates

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

Project Description: LRGPWWA Stern Drive Waterline Project
Project Number: 6330640
Owner: Lower Rio Grande Public Water Works Authority
Date of Submittal: October 28, 2021
Tax Rate on Services: 8.3125%

TOTALS

PHASE/ CATEGORY OF WORK	Subtotal	NMGRT	Total
P5T01 - Bid Administration	\$ 13,280.00	\$ 1,103.90	\$ 14,383.90
P6T01 - Construction Administration	\$ 15,118.00	\$ 1,256.68	\$ 16,374.68
P7T01 - Project Closeout	\$ 8,547.00	\$ 710.47	\$ 9,257.47
P6T10 - Construction Observation	\$ 16,977.00	\$ 1,411.21	\$ 18,388.21
TOTALS	\$ 53,922.00	\$ 4,482.27	\$ 58,404.27

Souder, Miller & Associates
Professional Services and Expenses Task/Hours/Fee Breakdown Related To
CONSTRUCTION PHASE - BASIC ENGINEERING SERVICES

Project Description: LRGPWVA Stern Drive Waterline Project
Project Number: 6330640
Owner: Lower Rio Grande Public Water Works Authority
Date of Submittal: October 28, 2021
Tax Rate on Services: 8.3125%

Note: Figures in this table do not include tax.

Job Description	Principal	Senior Manager II	Senior Eng./Sci./Surv III	Project Eng./Sci./Surv II	Staff EIT/LSIT Sci. I	Eng/CAD Surv/Field Tech IV	Construc. Observer IV	Project Fin./Mgr. Asst. II	Mileage	Expenses	1/2 Day Per Diem	Total SMA	Sub Contracts	Total Task
Billing Rate per Unit	\$ 230	\$ 200	\$ 180	\$ 130	\$ 100	\$ 95	\$ 110	\$ 90	\$ 0.560	\$ 1.00	\$ 15			
Unit	Hrs	Hrs	Hrs	Hrs	Hrs	Hrs	Hrs	Hrs	Mi	Actual	Days	\$	\$	\$
Task														
P5T01 - Bid Administration														
Advertisement								2		200		\$ 380	\$ -	\$ 380
Distribute Bid Documents				2				2				\$ 440	\$ -	\$ 440
Substitution Evaluation			1	4	4							\$ 1,100	\$ -	\$ 1,100
Answer Questions During Bidding			2	4	16							\$ 2,480	\$ -	\$ 2,480
Prepare Addenda	1	1	2	4	16	8						\$ 3,670	\$ -	\$ 3,670
Pre-bid Conference			3	3								\$ 930	\$ -	\$ 930
Open Bids			2	2								\$ 620	\$ -	\$ 620
Preparation of Bid Tabulation			1	2	10							\$ 1,440	\$ -	\$ 1,440
Preparation of Recommendation of Award			2	2	16							\$ 2,220	\$ -	\$ 2,220
Subtotal Hours:	1	1	13	23	62	8	0	4	0	200	0	\$ 13,280	\$ -	\$ 13,280
Subtotal Cost:	\$ 230	\$ 200	\$ 2,340	\$ 2,990	\$ 6,200	\$ 760	\$ -	\$ 360	\$ -	\$ 200	\$ -	\$ 13,280		
P6T01 - Construction Administration														
Conform Contract Documents			1	2	8							\$ 1,240	\$ -	\$ 1,240
Pre-construction Conference			3	3			2					\$ 1,150	\$ -	\$ 1,150
Submittal and Shop Drawing Review			1	1	8							\$ 1,110	\$ -	\$ 1,110
Respond to Requests for Information			1	2	8							\$ 1,240	\$ -	\$ 1,240
Field Orders			1	1	4							\$ 710	\$ -	\$ 710
Site Visits			4	4					120	150		\$ 1,457	\$ -	\$ 1,457
Progress Meetings			8	8								\$ 2,480	\$ -	\$ 2,480
Preparation of Periodic Pay Requests			2	16			2					\$ 2,660	\$ -	\$ 2,660
Preparation of Contract Change Orders			1	12	4							\$ 2,140	\$ -	\$ 2,140
Complete Acceptance Meeting			3	3								\$ 930	\$ -	\$ 930
Subtotal Hours:	0	0	25	52	32	0	4	0	120	150	0	\$ 15,117	\$ -	\$ 15,117
Subtotal Cost:	\$ -	\$ -	\$ 4,500	\$ 6,760	\$ 3,200	\$ -	\$ 440	\$ -	\$ 67	\$ 150	\$ -	\$ 15,117		
P7T01 - Project Closeout														
Preparation of Close-out Documents			1	2	16							\$ 2,040	\$ -	\$ 2,040
Preparation of Record Drawings			1	2	4	20	4					\$ 3,180	\$ -	\$ 3,180
Preparation of Operation and Maintenance (O&M) Manual			1	2	8							\$ 1,240	\$ -	\$ 1,240
QAQC			2	2	2	8						\$ 1,580	\$ -	\$ 1,580
Warranty Meeting				3					30	100		\$ 507	\$ -	\$ 507
Subtotal Hours:	0	0	5	11	30	28	4	0	30	100	0	\$ 8,547	\$ -	\$ 8,547
Subtotal Cost:	\$ -	\$ -	\$ 900	\$ 1,430	\$ 3,000	\$ 2,660	\$ 440	\$ -	\$ 17	\$ 100	\$ -	\$ 8,547		
P6T10 - Construction Observation														
Construction Observation							150		450		15	\$ 16,977	\$ -	\$ 16,977
Number of Visits = <u>15</u>														
Hours per Visit = <u>10</u>														
Frequency of Visits = Daily Full-Time														
Includes Pay Meeting Attendance														
Subtotal Hours:	0	0	0	0	0	0	150	0	450	0	15	\$ 16,977	\$ -	\$ 16,977
Subtotal Cost:	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 16,500	\$ -	\$ 252	\$ -	\$ 225	\$ 16,977		

Total Cost of Construction Phase Services: \$ 53,921

LEGAL SERVICES AGREEMENT

THIS AGREEMENT, made this 1st day of October, 2021, between Lower Rio Grande Public Water Works Authority, hereinafter referred to as “Owner,” and Joshua L. Smith, Attorney at Law, of Law Office of Joshua L. Smith, LLC, hereinafter referred to as “Attorney”;

WHEREAS, the Owner is or will be organized to own and operate the Facility under the provisions NMSA 1978 73-26-1
of New Mexico Code ~~Sanitary Projects Act~~;

WHEREAS, the Owner intends to acquire, construct, or improve a water system, hereinafter called “Facility,” in Dona Ana County, New Mexico;

WHEREAS, the Owner has obtained financing for the Facility from the United States Department of Agriculture, Rural Development, hereafter called “RD,” to help defray the costs of the Facility;

THEREFORE, the Owner and Attorney to hereby agree to the following:

SECTION A - LEGAL SERVICES

The Attorney will perform such services as are necessary to accomplish the above recited objectives including, but not limited to, the following:

1. Preparation and filing of petition for incorporation and supervision and assistance in the taking of such other actions as may be necessary or incidental to cause the Owners to become duly organized and incorporated and to be authorized to undertake the proposed system.
2. Furnish advice and assistance to the governing body of the duly incorporated association in connection with (a) the notice for and conduct of meetings; (b) the preparation of minutes of meetings; (c) the preparation and enactment of such resolutions as may be necessary in connection with the authorization, financing, construction, and initial operation of the system; (d) the preparation of such affidavits, publication notices, ballots, reports, certifications, and other instruments and advice as may be needed in the conduct of such bond elections as may be necessary; (e) the preparation and completion of ~~such bonds or~~ other obligations as may be necessary to finance the system; (f) the completion and execution of documents for obtaining a loan made or insured or a grant made by the United States of America, acting through the Rural Utilities Service, U. S. Department of Agriculture; (g) entering into construction contracts; (h) preparation and adoption of By-Laws, Rules and Regulations, and rate schedules; (i) such other corporate action as may be necessary in connection with the financing, construction, and initial operation of the system.
3. Review of bid opening procedure, construction contracts, and surety and contractual bonds in connection therewith.

4. Preparation, negotiation, or review of contract with a city or other source of water supply when necessary.

5. Preparation, where necessary, and review of deeds, easements and other rights-of-way documents, and other instruments for sites for source of water supply, pumping stations, treatment plants, and other facilities necessary to the system and to provide continuous rights-of-way therefor; rendering title opinions with reference thereto; and providing for the recordation thereof.

6. Obtain necessary permits and certificates from county and municipal bodies, from State regulatory agencies, and from other public or private sources with respect to the approval of the system, the construction and operation thereof, pipeline crossings, and the like.

7. Cooperate with the engineer employed by Owners in connection with preparation of tract sheets, easements, and other necessary title documents, construction contracts, water supply contracts, health permits, crossing permits, and other instruments.

8. When applicable, secure assistance of and cooperate with recognized bond counsel in the preparation of the documents necessary for the financing aspects of the system. The attorney shall pay all bond counsel in perfecting the financing aspects, e.g., assessment procedures and completion of documents. Where bond counsel is retained, the Attorney will not be responsible for the preparation and approval of those documents pertaining to the issuance of the Owner's obligations.

SECTION B – COMPENSATION

The Owner will pay to the Attorney for professional services rendered in accordance herewith, fees as follows:

1. Hourly rate of \$200 per hour, including/excluding New Mexico Gross Revenue Tax, with a maximum fee not to exceed \$10,000.

2. Reimbursable will be paid for actual out-of-pocket expenses for filing of easements, deeds, or other necessary documents, and for mileage, meals, room accommodations, if necessary, and normal long-distance calls and postage, will be paid by the Owner, with a maximum fee not to exceed of \$1000.

3. Said fees to be payable in the following manner and at the following times:

_On a monthly basis upon itemized statements approved by the Owner and USDA/RD.

SECTION C - OTHER PROVISIONS

That upon organization and incorporation the association shall by appropriate resolution adopt and ratify this Agreement, that the association shall be substituted for the individual Owners as a party to this Agreement, and that the Owners as individuals shall thereupon be relieved of all personal liability

existing or arising from this Agreement.

That upon organization and incorporation should the association fail or refuse to adopt and ratify this Agreement by appropriate resolution within 30 days from the date of the commencement of its legal existence, this Agreement shall terminate and Owners shall be liable to the Attorney for payment of \$200.00, which sum represents payment in full for the organization and incorporation of the association and for all other legal services rendered to Owners under the terms of this Agreement to the date of said termination.

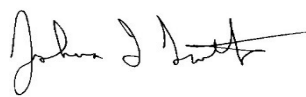
This Agreement shall not become effective until concurred in by RD. Concurrence by RD in no way commits RD to render financial assistance to the Owner.

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

ATTORNEY

Name Joshua L. Smith, Esq.

Title Attorney

Signature 

Date _____

OWNER

Name Esperanza Holguin

Title Chair

Signature _____

Date November 10, 2021

RD CONCURRENCE

Name _____

Title _____

Signature _____

Date _____

Mailing Address:
P.O. Box 28
Mesilla Park, NM 88047

Tel. (575) 636-2220



Law Office of Joshua L. Smith, L.L.C.

Physical Address:
1100 S. Main St., Suite 21
Las Cruces, NM 88005

josh@joshuasmithlaw.com

October 26, 2021

Lower Rio Grande Public Water Works Authority
P.O. Box 2646
Anthony, NM 88021

Re: Representation and Fee Agreement

Dear Lower Rio Grande Public Water Works Authority:

We are pleased to have the opportunity to be of service to you and look forward to working with you.

Fundamental to a sound relationship is a clear understanding of the terms and conditions upon which we will be providing legal services. Accordingly, the purpose of this letter is to clarify and confirm these terms and conditions.

Scope of Services

You have asked us to provide services regarding general advice and representation.

We are willing and able to assist you with any legal matters should the need arise and representation concerning those matters will be controlled by the terms contained herein unless a new fee agreement is executed.

Staffing

I will be the attorney primarily responsible for your representation. From time to time, I may also ask other attorneys in my firm to work on this matter, depending on my availability and the need for attorneys with different specialties or areas of expertise. When questions or comments arise about our services, staffing, billings, or other aspects of our representation please contact me at my office number or email address listed above. It is important that you are satisfied with our services and responsiveness at all times.

We intend to provide quality legal services in an efficient, economical manner. This necessitates involving other firm attorneys with the requisite expertise, and paralegals, who are not attorneys but are experienced in the preparation of documents and the completion of various tasks.

From time to time, internal conferences will take place among our personnel and two or more may attend meetings or proceedings on your behalf. Although this approach might seem to

result in duplication of effort, it is our belief that this practice facilitates communication, improves the quality of work, and ultimately is more economical.

Responsibilities

In reliance upon information and guidance provided by you, we will provide legal counsel and assistance to you in accordance with this letter, keep you reasonably informed of progress and developments, and respond to your inquiries.

To enable us effectively to render these services, you agree to cooperate fully with us in all matters relating to the services requested, to fully and accurately disclose to us all facts that may be relevant to the matter or that we may otherwise request, and to keep us apprised of developments relating to the matter. You also will make yourself reasonably available to attend meetings, conferences, hearings and other proceedings if necessary.

In addition, you will be responsible for advising us whether any document we have prepared or received and sent to you for your approval or review reflects the principal terms of your proposed agreement, or other expectations, as the case may be.

Either at the beginning or during the course of our representation, we may express our opinions or beliefs concerning the matter or various courses of action and the results that might be anticipated. Any such statement made by any member of this firm is intended to be an express of opinion only, based on information available to us at the time, and must not be construed by you as a promise or guarantee of any particular result. No guarantees are possible in legal matters.

Fees, Disbursements and Other Charges

Our fees will be based upon the amount of time spent by the attorneys and paralegals on your matter. Each lawyer and paralegal has an hourly billing rate based generally on his or her experience and any special expertise. The rate multiplied by the time spent on your behalf, measured in tenths of an hour, will be considered by the billing attorney as the basis for determining the fee.

The time for which you will be charged will include, but will not be limited to, telephone and office conferences with a client and counsel, witnesses, consultants, court personnel, and others; conferences among our personnel; factual investigation; legal research; responding to clients' requests to provide information to auditors in connection with reviews or audits of financial statements; drafting of letters, pleadings, briefs, and other documents; travel time; waiting time in court or elsewhere; and time in depositions and other discovery proceedings.

My billing rate is currently \$200.00/hour. Time devoted by paralegals is charged at a billing rate of \$100.00 per hour. These rates may be adjusted from time to time with appropriate notice to you and after discussing the necessity for any adjustment with you.

In addition to our fees, we will be entitled to payment of gross receipts taxes¹ and payment or reimbursement for disbursements and other charges incurred in performing services such as photocopying, messenger and delivery, air freight, computerized research, videotape recording, travel (including mileage, airfare, lodging, meals and ground transportation), long distance telephone, telecopying, word processing, court costs and filing fees. To the extent we directly provide any of these services, we reserve the right to adjust the amount we charge, at any time or from time to time, as we deem appropriate in light of our direct costs, our estimated overhead allocable to the services and outside competitive rates. Unless special arrangements are made, fees and expenses of others (such as experts, investigators, witnesses, consultants and court reporters) and other large disbursements will not be paid by our firm and will be the responsibility of, and billed directly to, you.

Each month we will furnish you with a statement describing our services rendered and separately showing disbursements and other charges in a format and with such detail as you and we may agree. There often is an unavoidable delay in reporting disbursements and other charges and therefore not all disbursements and charges may be billed at the same time as the related legal services.

Our billing statements are due and payable upon receipt. A late charge of 1-1/2% per month will be imposed on fees and costs which are outstanding more than sixty days after the date set forth on the first billing statement for those fees and costs. A late charge of 1-1/2% per month will continue to be imposed each month thereafter on the unpaid balance of each billing statement until it is paid in full.

Although we may from time to time for your convenience furnish estimates of fees or charges that we anticipate will be incurred on your behalf, these estimates are subject to unforeseen circumstances and are by their nature inexact. We will not be bound by any estimates except as otherwise expressly set forth in the engagement letter or otherwise agreed to by us in writing.

You have the right to discharge Law Office of Joshua L. Smith, LLC, LLC or any of its attorneys at any time. Law Office of Joshua L. Smith, LLC, LLC may withdraw from representation of you at any time. Our withdrawal may be based upon, among other things, your failure to promptly pay or make satisfactory arrangements to pay our fees and costs. In the event of discharge or withdrawal, Law Office of Joshua L. Smith, LLC, LLC shall be entitled to reimbursement from you for all copying and related charges incurred by this law firm in connection with the transfer or delivery of copies of records and file documents to you or your successor legal counsel, and for fees for time expended in providing follow up or transition services to the successor counsel, or you at your request, or the request of your successor counsel.

Arbitration

Any controversy, dispute or claim arising out of or relating to our fees, charges, performance of legal services, obligations reflected in this letter, or other aspects of our representation shall be resolved through binding arbitration in Las Cruces, New Mexico in

¹ You may not be familiar with paying gross receipts taxes on legal fees. Unfortunately, New Mexico is one of the few states in the country that levies gross receipts taxes on professional services.

accordance with the rules then in effect of the American Arbitration Association and judgment on the award rendered may be entered in any court having jurisdiction thereof. You acknowledge that by agreeing to arbitration, you are relinquishing your right to bring an action in court to and to a jury trial.

If any controversy, dispute or claim arises between us concerning our fee, charges, performance of legal services, or other aspects of our representation, the prevailing party will be entitled to recover from the losing party all costs and expenses it incurs in bringing and prosecuting or defending any litigation or arbitration, including reasonable attorney's fees and costs of trial and appeal.

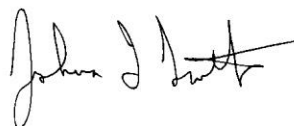
Insurance

NOTICE TO CLIENT: Pursuant to Rule 16-104(c) NMRA of the New Mexico Rules of Professional Conduct, I am required to notify you that this Firm does maintain professional liability malpractice insurance of at least one hundred thousand dollars (\$100,000.00) per occurrence and three hundred thousand dollars (\$300,000.00) in the aggregate

If this letter correctly reflects your understanding of the terms and conditions of our representation, please confirm your acceptance by signing in the space provided below. Upon your acceptance, these terms and conditions will apply retroactively to the date we first performed services on your behalf. If this letter is not signed and returned, you will be obligated to pay us the reasonable value of any services we have performed on your behalf.

We are pleased to have this opportunity to be of service and to work with you.

Very truly yours,



Joshua L. Smith

I have read and understand the terms and conditions set forth in this letter and accept them without exception.

Lower Rio Grande Public Water Works Authority

Date

LEGAL SERVICES AGREEMENT
South Valley Water Supply/Treatment Project

THIS AGREEMENT, made this 1st day of October, 2021, between Lower Rio Grande Public Water Works Authority, hereinafter referred to as “Owner,” and Joshua L. Smith, Attorney at Law, of Law Office of Joshua L. Smith, LLC, hereinafter referred to as “Attorney”;

WHEREAS, the Owner is or will be organized to own and operate the Facility under the provisions NMSA 1978 73-26-1
of New Mexico Code ~~Sanitary Projects Act~~;

WHEREAS, the Owner intends to acquire, construct, or improve a water system, hereinafter called “Facility,” in Dona Ana County, New Mexico;

WHEREAS, the Owner has obtained financing for the Facility from the United States Department of Agriculture, Rural Development, hereafter called “RD,” to help defray the costs of the Facility;

THEREFORE, the Owner and Attorney to hereby agree to the following:

SECTION A - LEGAL SERVICES

The Attorney will perform such services as are necessary to accomplish the above recited objectives including, but not limited to, the following:

1. Preparation and filing of petition for incorporation and supervision and assistance in the taking of such other actions as may be necessary or incidental to cause the Owners to become duly organized and incorporated and to be authorized to undertake the proposed system.
2. Furnish advice and assistance to the governing body of the duly incorporated association in connection with (a) the notice for and conduct of meetings; (b) the preparation of minutes of meetings; (c) the preparation and enactment of such resolutions as may be necessary in connection with the authorization, financing, construction, and initial operation of the system; (d) the preparation of such affidavits, publication notices, ballots, reports, certifications, and other instruments and advice as may be needed in the conduct of such bond elections as may be necessary; (e) the preparation and completion of ~~such bonds or~~ other obligations as may be necessary to finance the system; (f) the completion and execution of documents for obtaining a loan made or insured or a grant made by the United States of America, acting through the Rural Utilities Service, U. S. Department of Agriculture; (g) entering into construction contracts; (h) preparation and adoption of By-Laws, Rules and Regulations, and rate schedules; (i) such other corporate action as may be necessary in connection with the financing, construction, and initial operation of the system.
3. Review of bid opening procedure, construction contracts, and surety and contractual bonds in connection therewith.

4. Preparation, negotiation, or review of contract with a city or other source of water supply when necessary.

5. Preparation, where necessary, and review of deeds, easements and other rights-of-way documents, and other instruments for sites for source of water supply, pumping stations, treatment plants, and other facilities necessary to the system and to provide continuous rights-of-way therefor; rendering title opinions with reference thereto; and providing for the recordation thereof.

6. Obtain necessary permits and certificates from county and municipal bodies, from State regulatory agencies, and from other public or private sources with respect to the approval of the system, the construction and operation thereof, pipeline crossings, and the like.

7. Cooperate with the engineer employed by Owners in connection with preparation of tract sheets, easements, and other necessary title documents, construction contracts, water supply contracts, health permits, crossing permits, and other instruments.

8. When applicable, secure assistance of and cooperate with recognized bond counsel in the preparation of the documents necessary for the financing aspects of the system. The attorney shall pay all bond counsel in perfecting the financing aspects, e.g., assessment procedures and completion of documents. Where bond counsel is retained, the Attorney will not be responsible for the preparation and approval of those documents pertaining to the issuance of the Owner's obligations.

SECTION B – COMPENSATION

The Owner will pay to the Attorney for professional services rendered in accordance herewith, fees as follows:

1. Hourly rate of \$200 per hour, including/excluding New Mexico Gross Revenue Tax, with a maximum fee not to exceed \$10,000.

2. Reimbursable will be paid for actual out-of-pocket expenses for filing of easements, deeds, or other necessary documents, and for mileage, meals, room accommodations, if necessary, and normal long-distance calls and postage, will be paid by the Owner, with a maximum fee not to exceed of \$1000.

3. Said fees to be payable in the following manner and at the following times:

_On a monthly basis upon itemized statements approved by the Owner and USDA/RD.

SECTION C - OTHER PROVISIONS

That upon organization and incorporation the association shall by appropriate resolution adopt and ratify this Agreement, that the association shall be substituted for the individual Owners as a party to this Agreement, and that the Owners as individuals shall thereupon be relieved of all personal liability

existing or arising from this Agreement.

That upon organization and incorporation should the association fail or refuse to adopt and ratify this Agreement by appropriate resolution within 30 days from the date of the commencement of its legal existence, this Agreement shall terminate and Owners shall be liable to the Attorney for payment of \$200.00, which sum represents payment in full for the organization and incorporation of the association and for all other legal services rendered to Owners under the terms of this Agreement to the date of said termination.

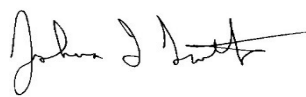
This Agreement shall not become effective until concurred in by RD. Concurrence by RD in no way commits RD to render financial assistance to the Owner.

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

ATTORNEY

Name Joshua L. Smith, Esq.

Title Attorney

Signature 

Date _____

OWNER

Name Esperanza Holguin

Title Chair

Signature _____

Date November 10, 2021

RD CONCURRENCE

Name _____

Title _____

Signature _____

Date _____

LEGAL SERVICES AGREEMENT
Mesquite-Brazito Sewer Project 2

THIS AGREEMENT, made this 1st day of October, 2021, between Lower Rio Grande Public Water Works Authority, hereinafter referred to as “Owner,” and Joshua L. Smith, Attorney at Law, of Law Office of Joshua L. Smith, LLC, hereinafter referred to as “Attorney”;

WHEREAS, the Owner is or will be organized to own and operate the Facility under the provisions NMSA 1978 73-26-1
of New Mexico Code ~~Sanitary Projects Act~~;

WHEREAS, the Owner intends to acquire, construct, or improve a water system, hereinafter called “Facility,” in Dona Ana County, New Mexico;

WHEREAS, the Owner has obtained financing for the Facility from the United States Department of Agriculture, Rural Development, hereafter called “RD,” to help defray the costs of the Facility;

THEREFORE, the Owner and Attorney to hereby agree to the following:

SECTION A - LEGAL SERVICES

The Attorney will perform such services as are necessary to accomplish the above recited objectives including, but not limited to, the following:

1. Preparation and filing of petition for incorporation and supervision and assistance in the taking of such other actions as may be necessary or incidental to cause the Owners to become duly organized and incorporated and to be authorized to undertake the proposed system.
2. Furnish advice and assistance to the governing body of the duly incorporated association in connection with (a) the notice for and conduct of meetings; (b) the preparation of minutes of meetings; (c) the preparation and enactment of such resolutions as may be necessary in connection with the authorization, financing, construction, and initial operation of the system; (d) the preparation of such affidavits, publication notices, ballots, reports, certifications, and other instruments and advice as may be needed in the conduct of such bond elections as may be necessary; (e) the preparation and completion of ~~such bonds or~~ other obligations as may be necessary to finance the system; (f) the completion and execution of documents for obtaining a loan made or insured or a grant made by the United States of America, acting through the Rural Utilities Service, U. S. Department of Agriculture; (g) entering into construction contracts; (h) preparation and adoption of By-Laws, Rules and Regulations, and rate schedules; (i) such other corporate action as may be necessary in connection with the financing, construction, and initial operation of the system.
3. Review of bid opening procedure, construction contracts, and surety and contractual bonds in connection therewith.

4. Preparation, negotiation, or review of contract with a city or other source of water supply when necessary.

5. Preparation, where necessary, and review of deeds, easements and other rights-of-way documents, and other instruments for sites for source of water supply, pumping stations, treatment plants, and other facilities necessary to the system and to provide continuous rights-of-way therefor; rendering title opinions with reference thereto; and providing for the recordation thereof.

6. Obtain necessary permits and certificates from county and municipal bodies, from State regulatory agencies, and from other public or private sources with respect to the approval of the system, the construction and operation thereof, pipeline crossings, and the like.

7. Cooperate with the engineer employed by Owners in connection with preparation of tract sheets, easements, and other necessary title documents, construction contracts, water supply contracts, health permits, crossing permits, and other instruments.

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3. Said fees to be payable in the following manner and at the following times:

_On a monthly basis upon itemized statements approved by the Owner and USDA/RD.

SECTION C - OTHER PROVISIONS

That upon organization and incorporation the association shall by appropriate resolution adopt and ratify this Agreement, that the association shall be substituted for the individual Owners as a party to this Agreement, and that the Owners as individuals shall thereupon be relieved of all personal liability

existing or arising from this Agreement.

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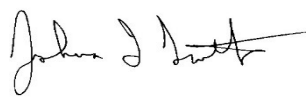
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ATTORNEY

Name Joshua L. Smith, Esq.

Title Attorney

Signature 

Date _____

OWNER

Name Esperanza Holguin

Title Chair

Signature _____

Date November 10, 2021

RD CONCURRENCE

Name _____

Title _____

Signature _____

Date _____