



Town of Mesilla, New Mexico

****FOR THE HEALTH & SAFETY OF ALL PUBLIC,
MASKS ARE REQUIRED TO ENTER THE PUBLIC MEETING****

THE BOARD OF TRUSTEES (BOT) OF THE TOWN OF MESILLA WILL HOLD A REGULAR MEETING ON MONDAY, JANUARY 24, 2022, AT 6:00 P.M., AT THE MESILLA TOWN HALL, 2231 AVENIDA DE MESILLA.

1. **PLEDGE OF ALLEGIANCE**
2. **ROLL CALL & DETERMINATION OF A QUORUM**
3. **CHANGES TO THE AGENDA & APPROVAL**
4. **PUBLIC INPUT – The public is invited to address the Board for up to 3 minutes.**
Space is limited and may require persons giving public input IN PERSON to rotate if capacity of the room is exceeded.
5. **APPROVAL OF CONSENT AGENDA:** (The Board will be asked to approve by one motion the following items of recurring or routine business. The Consent Agenda is marked with an asterisk *)
 - a) ***BOT MINUTES** – Minutes of a regular meeting January 10, 2022.
 - b) ***PZHAC CASE #BL#0923** – 3331 Gandy Lane, submitted by Justin Sevey of Dr. Green Organics for a cannabis license. **Zoned: Single Family Residential (R-1).**
6. **CLOSED SESSION** – pursuant to NMSA 1978 Chapter 10-15-1(H)(2): discussion limited to the hiring of someone in the Community Development Coordinator Position. – **Board of Trustees.**
7. **STATEMENT REGARDING CLOSED SESSION AND ROLL CALL VOTE** – discussion limited to the hiring of someone in the Community Development Coordinator Position pursuant to NMSA 1978 Chapter 10-15-1(H)(2). – **Board of Trustees.**
8. **ACTION ON MATTERS FROM CLOSED SESSION** – the hiring of someone in the Community Development Coordinator Position pursuant to NMSA 1978 Chapter 10-15-1(H)(2). – **Board of Trustees.**
9. **NEW BUSINESS:**
 - a) **For Approval:** an award to Bohannan Huston for design services for the SCADA system (funded through Capital Outlay). – **Rod McGillivray, Public Works Director.**
 - b) **For Appointment:** A Mayor Pro-Tem to serve for one year pursuant to MTC 2.15.060. – **Board of Trustees.**
 - c) **For Appointment:** representatives to serve on each of the following committees: - **Nora L. Barraza, Mayor.**
 - Southwestern Area Workforce Development Board
 - South Central Council of Governments, Inc.
 - Lower Rio Grande Water Users Organization
 - Metropolitan Planning Organization (MPO)
 - South Central Regional Transit District (RTD)
 - MPO Technical Advisory Committee
 - MPO Bicycle Committee.
 - Board of Adjustments (Resident, a P&Z Member & BOT member).
10. **BOARD OF TRUSTEE COMMITTEE REPORTS**
11. **BOARD OF TRUSTEE/STAFF COMMENTS**
12. **ADJOURNMENT**

NOTICE: If you need an accommodation for a disability to enable you to fully participate in the hearing or meeting, please contact us at 524-3262 at least one week prior to the meeting. The Mayor and Trustees request that all cell phones be turned off or set to vibrate. Members of the audience are requested to step outside the Board Room to respond to or to conduct a phone conversation. A copy of the agenda packet can be found online at www.mesillanm.gov.

Posted 1/21/2022 online and at the following locations: Town Clerk's Office 2231 Avenida de Mesilla, Public Safety Building 2670 Calle de Parian, Mesilla Community Center 2251 Calle de Santiago, Shorty's Food Mart 2290 Avenida de Mesilla, Ristrammn Chile Co., 2531 Avenida de Mesilla and the U.S. Post Office 2253 Calle de Parian.



Town of Mesilla, New Mexico

****FOR THE HEALTH & SAFETY OF ALL PUBLIC,
MASKS ARE REQUIRED TO ENTER THE PUBLIC MEETING****

**BOARD OF TRUSTEES (BOT)
TOWN OF MESILLA
REGULAR MEETING
MONDAY, JANUARY 10, 2022
6:00 P.M.**

TRUSTEES: Nora Barraza, Mayor
Stephanie Johnson-Burick, Mayor Pro Tem
Bivian Cadena, Trustee
Veronica Garcia, Trustee
Adrianna Merrick, Trustee

STAFF: Kevin Hoban, Fire Chief
Rod McGillivray, Public Works Director
Enrique Salas, Marshal
Gloria Maya, Recorder

PUBLIC: Joseph Cervantes

1. PLEDGE OF ALLEGIANCE

Mayor Barraza led the Pledge of Allegiance.

2. ROLL CALL & DETERMINATION OF A QUORUM

Roll Call.

Present: Mayor Barraza, Mayor Pro Tem Johnson-Burick, Trustee Cadena, Trustee Garcia, Trustee Merrick

3. CHANGES TO THE AGENDA & APPROVAL

Motion: To approve agenda, Moved by Mayor Pro Tem Johnson-Burick, Seconded by Trustee Garcia.

Roll Call Vote: Motion passed (summary: Yes =4).

Mayor Pro Tem Johnson-Burick Yes

Trustee Cadena Yes

Trustee Garcia Yes

Trustee Merrick Yes

Mayor Barraza welcomed the Trustee Cadena and Trustee Merrick.

4. PUBLIC INPUT – The public is invited to address the Board for up to 3 minutes.

Space is limited and may require persons giving public input IN PERSON to rotate if capacity of the room is exceeded.

No Input

1
2 **5. APPROVAL OF CONSENT AGENDA: (The Board will be asked to approve by one**
3 **motion the following items of recurring or routine business. The Consent Agenda is**
4 **marked with an asterisk *)**

5 **Motion: To approve consent agenda, Moved by Mayor Pro Tem Johnson-Burick, Seconded by Trustee**
6 **Garcia.**

7
8 **Roll Call Vote:** Motion passed (summary: Yes =4).

9 Mayor Pro Tem Johnson-Burick Yes

10 Trustee Cadena Yes

11 Trustee Garcia Yes

12 Trustee Merrick Yes

13
14 a) ***BOT MINUTES** – Minutes of a work session and regular meeting December 27, 2021.

15 *Approved by consent agenda*

16 b) ***BOT MINUTES** – Minutes of a public hearing on December 27, 2021. *Approved by*

17 *consent agenda*

18 c) ***BOT MINUTES** – Minutes of a special meeting December 30, 2021. *Approved by*

19 *consent agenda*

20
21 **6. CLOSED SESSION** – pursuant to NMSA 1978 Chapter 10-15-1(H)(7): discussion limited to
22 pending litigation of which the Town is or may become a participant – Verizon, Strain,
23 Bustamante. – **Board of Trustees.**

24 **Motion: To enter Closed Session pursuant to NMSA 1978 Chapter 10-15-1(H)(7): discussion limited to**
25 **pending litigation of which the tow is or may become a participant, Moved by Mayor Pro Tem Johnson-**
26 **Burick, Seconded by Trustee Garcia.**

27
28 **Roll Call Vote:** Motion passed (summary: Yes =4).

29 Mayor Pro Tem Johnson-Burick Yes

30 Trustee Cadena Yes

31 Trustee Garcia Yes

32 Trustee Merrick Yes

33
34 **ENTERED CLOSED SESSION AT 6:05 P.M.**

35
36 **7. STATEMENT REGARDING CLOSED SESSION AND ROLL CALL VOTE** – discussion
37 was limited to pending litigation of which the Town is or may become a participant – Verizon,
38 Strain, Bustamante per pursuant to NMSA 1978 Chapter 10-15-1(H)(7). – **Board of Trustees.**

39 **Motion: To enter Regular Meeting pursuant to NMSA 1978 Chapter 10-15-1(H)(7): after discussion**
40 **limited to pending litigation of which the tow is or may become a participant – no action taken, Moved**
41 **by Mayor Pro Tem Johnson-Burick, Seconded by Trustee Garcia.**

42
43 **Roll Call Vote:** Motion passed (summary: Yes =4).

44 Mayor Pro Tem Johnson-Burick Yes

45 Trustee Cadena Yes

46 Trustee Garcia Yes

47 Trustee Merrick Yes

48
49 **ENTERED REGULAR MEETING AT 7:21 P.M.**

50
51 **8. NEW BUSINESS:**

52 a) Presentation of an update on Capital Outlay Projects. – **Rod McGillivray, Public Works**
53 **Director.**

1
2 Mr. McGillivray gave an update on Capital Outlay Projects.
3
4 Mayor Barraza stated this includes vehicles for the Marshal's department.
5
6 Trustee Garcia asked if we had overspent or had any money left over.
7
8 Mr. McGillivray responded there was very little money left over.
9
10 Mayor Pro Tem Johnson-Burick asked about Colonia funding.
11
12 Trustee Garcia asked if we could apply for multi projects at a time.
13
14 Mr. McGillivray responded we are looking at Colonia funding to replace the waterlines on University Avenue.
15 It is recommended that we apply for one project at a time.
16
17 Mayor Pro Tem Johnson-Burick asked about the status of Calle de Cura. Roads are backing up when it rains.
18
19 Mayor Barraza stated planning to do this right, so we do not have to tear up roads to repair waterlines.
20
21 **9. *STAFF REPORTS:**
22 Community Development
23 Community Programs
24 Finance Department
25 Fire Department
26 Marshal Department
27 Public Works Department
28
29 **10. BOARD OF TRUSTEE COMMITTEE REPORTS**
30 Mayor Pro Tem Johnson-Burick: MPO meeting January 12th 1:00 p.m. at Dona Ana County
31
32 Trustee Garcia: MPO and Architectural meetings
33
34 Mayor Barraza stated committee assignments will be done at the next meeting.
35
36 **11. BOARD OF TRUSTEE/STAFF COMMENTS**
37 Fire Chief Hoban stated the department is being asked to answer calls in the county. The department will
38 be applying for a PRC Certificate so we can receive compensation. We have staff that will be attending
39 training.
40
41 Marshal Salas stated Animal Control and Codes is moving forward.
42
43 Trustee Merrick stated she is excited and looking forward to a good year.
44
45 Mayor Pro Tem Johnson-Burick welcomed the new trustees.
46
47 Trustee Garcia welcomed the new trustees. A shout out in appreciation of Law Enforcement. Sad to see
48 Ms. Stoeher-Hernandez leave.
49
50 Trustee Cadena stated she is here to work for Mesilla and to represent its citizens.
51

1 Mayor Barraza stated there is a NMML Mayor Summit on Friday in Santa Fe. Newly Elected Officials
2 along with MOLI pTraining will be March 23-25 in Santa Fe; highly recommends this training to the new
3 trustees. New Mexico Municipal Day is scheduled for February 3rd & 4th; let staff know if you would like
4 to attend. Mr. Baca, Animal Control and Codes Officer, is doing a great job. Beginning in March we will
5 begin enforcing the ordinances regarding signs, etc. She asks that phone calls received by the trustees are
6 referred to her. She is available for any questions or concerns the new trustees may have.

7
8 **12. ADJOURNMENT**

9 **The Town of Mesilla Trustees unanimously agreed to adjourn the meeting. (Summary: Yes-4).**

10 **MEETING ADJOURNED AT 7:53 P.M.**

11 **APPROVED THIS 24th DAY OF JANUARY, 2022.**

12
13
14
15
16
17 _____
18 **Nora L. Barraza**
19 **Mayor**

20
21 **ATTEST:**

22
23
24
25 _____
26 **Cynthia Stoenner-Hernandez**
Town Clerk/Treasurer

BOARD ACTION FORM

ITEM:

SCADA Design Services Proposal from Bohannon Huston dated November 8, 2021

BACKGROUND:

The Town of Mesilla Public Works Department is requesting authority to enter into a contract with BHI for design services for the SCADA system grant appropriation SAP 21-F2322-STB dated January 10, 2022

SUPPORTING INFORMATION:

Copy of Proposal from BHI dated November 8, 2021

BOT OPTIONS:

1. Approve the application.
2. Modify the application with conditions.
3. Reject the application.

November 8, 2021

Rod McGillivray, Public Works Director
Town of Mesilla
2231 Avenida De Mesilla
Mesilla, NM 88046

Re: **Electrical Engineering Service Proposal
SCADA system for Municipal Water System – REVISED**

Dear Mr. McGillivray

On behalf of Bohannon Huston, Inc. (BHI), please find enclosed the Engineering Services Request scope and fee related to the Supervisory Control and Data Acquisition (SCADA) design. This proposal is based on our earlier discussion describing the desired SCADA system additions to your water production and storage system on the western escarpment. BHI will provide the engineering services described to create plans that can be bid as a complete package. We will also provide support during the bidding and construction phase by performing duties to ensure the project is fully completed. Funding for this project is state appropriation SAP 21-F2322-STB.

If this proposal scope of work is acceptable, please submit your purchase order authorization for my execution. New Mexico Gross Receipts Tax will be added to all invoices.

Sincerely,



Matthew R. Thompson, P.E.
Senior Vice President

MRT/dg
Enclosure(s)

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

THIS Agreement, made this _____ day of _____ 2021 (effective date) by and between Town of Mesilla hereinafter referred to as the OWNER, and Bohannon Huston Inc. hereinafter referred to as the ENGINEER. This contract expires on _____.

The OWNER intends to construct a Project consisting of Design phase engineering services will be provided for one (1) water production well, water disinfection, and water storage facility to incorporate a Remote Telemetry Unit (RTU) and Supervisory Control and Data Acquisition (SCADA) operator interface as defined in Attachment III. This scope of work is based on the scope of improvements as discussed with Client Utilities staff on September 10th, 2021

in Doña Ana County 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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- Attachment II - Engineering Services During the Planning 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 III - Engineering Services During the Design Phase
Authorization to proceed date: This _____ day of _____, 2021
Contract Time shall be 240 calendar days from Authorization to proceed date. This phase expires on _____.

- Attachment IV - Engineering Services During the Construction Phase
Authorization to proceed date: This 150 day of _____, 20_____
Contract Time shall be _____ 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

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 _____
Title _____

By:  _____ Date: 11/8/2021
ENGINEER
Type Name Matthew R. Thompson, PE
Title Senior Vice President
Address 425 S. Telshor Blvd.
Suite C-103
Las Cruces, NM 88011

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

ATTACHMENT III – Engineering Services During the Design Phase

1. As set forth in the AGREEMENT FOR ENGINEERING SERVICES dated the ____ day of ____, 2021 (effective date) by and between the Town of Mesilla, the OWNER, and Bohannon Huston Inc., the ENGINEER, the OWNER and ENGINEER agree this ____ day of ____, 2021 (authorization to proceed date) that ENGINEER shall furnish ENGINEERING SERVICES During the Design 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:

SCADA System Addition:

• RTU drawings, electrical drawings, and specifications for the SCADA Operator terminal for monitoring and control of water production well and storage will be developed:

• Confirm with Operations staff:

• a. Sequence of operations of water production well pump.

• b. Pump protection features and operation modes.

• c. Product specification requirements.

• d. SCADA terminal screen programming expectations.

• e. Critical alarm list.

• Prepare RTU power distribution diagrams.

• Prepare RTU elevation drawings.

• Prepare electrical component plan drawings for contractor bidding and component installation.

• Specify standard component and wire identification tagging conventions.

• Specify SCADA terminal computer, software, and alarm notification method.

• Specify Operator interface screen programming requirements.

• Specify SCADA communication equipment and protocols.

All design services products will meet or exceed industry standards for the type of facility being designed. All construction work defined will meet EPEC, NFPA 70, NFPA 70E, New Mexico Electrical code requirements, and Client of Las Cruces Utilities requirements.

No underground utility investigations, geotechnical, right-of-way acquisition or environmental clearances are included in this scope of work. All construction is to be within Client owned property.

ENGINEERING SERVICES

The Engineer's Services shall consist of the two major tasks described below. The Engineer shall coordinate all available process information with Owner's Project Manager prior to beginning. The services described below are based on a conventional "design-bid-build" procurement process with a contractor "request-for-proposals" bid process, whether public or selected. Contract documents and technical specifications

files will be developed based on project requirements. The electronic drawings shall be in a format by sheet number to correspond with the hard copy.

TASK 1 – CONSTRUCTION DOCUMENTS

Project Kick-off

1. Project kick off meeting with Owner staff to discuss design specific criteria.

60% Preliminary Construction Documents:

1. Confirm SCADA terminal screen expectations.
2. Functional design of RTUs and associated system equipment and components.
3. Preparation of control system layout, schematics, and network diagrams.
4. Functional description and sequence of operations specification section for SCADA system programming.
5. Deliver 60% draft construction drawings, specification list, and cost estimate to Owner for approval.

100% Final Draft Construction Documents:

1. Incorporate 60% draft design comments from Owner.
2. Deliver 100% draft construction drawings, specifications, and cost estimate to Owner for approval.

Final Stamped Construction Documents:

1. Incorporate 100% draft design comments.
2. Deliver final stamped construction drawings, contract document set, and final construction estimate to Client Purchasing for bid solicitation.

Contract Documents and Technical Specifications:

Technical specifications for the construction of Remote Telemetry Units (RTUs) and SCADA elements will be provided in Construction Standards Institute (CSI) standard format for incorporation as part of contract documents. Owner will provide all construction contract documents. BHI will compile all contract documents and specifications into a project manual for contracting construction services.

Construction Cost Estimate:

Construction cost estimates will be provided for each draft and final submittal. The cost estimate will be in bid schedule unit price format with plan quantities and unit costs shown for each work element. Unit costs will be aggregate costs from BHI current bidding database for installed prices – all material, equipment, labor, overhead and profit included.

B. Cost Proposal – Include hourly breakdown for each task

ENGINEERING SERVICES:

<u>Task</u>	<u>Description</u>	<u>Fee Amount</u>
<u>1</u>	<u>Construction Documents</u>	<u>\$ 12,550</u>

C. Reimbursable Expense Schedule

N/A

D. Contract Time shall be 240 calendar days from the date of the OWNERS signature on Attachment III. Design phase services shall be completed and accepted by the OWNER by _____ (DATE). If design phase services have not been completed and accepted by _____ the ENGINEER shall pay the OWNER liquidated damages as outlined in the Agreement.

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

LUMP SUM method of payment. The total amount of compensation for ENGINEERING SERVICES During the Design Phase, as described, including reimbursable expenses shall not exceed \$12,550.00, 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 Design 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 _____
Title _____

By:  _____ Date: 11/8/2021

ENGINEER
Type Name Matthew R. Thompson, PE
Title Senior Vice President
Address 425 S. Telshor Blvd.
Suite C-103
Las Cruces, NM 88011

REVIEWED AND APPROVED: FUNDING AGENCY
AGENCY NAME: _____

By _____

Type Name _____

Date _____

ATTACHMENT IV – Engineering Services During the Construction Phase

1. As set forth in the AGREEMENT FOR ENGINEERING SERVICES dated the ____ day of _____, 2021 (effective date) by and between the Town of Mesilla, the OWNER, and Bohannon Huston Inc., the ENGINEER, the OWNER and ENGINEER agree this ____ day of _____, 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:

TASK 2 - BID ADMINISTRATION

Objective: Provide technical assistance to the Owner to solicit bids for the construction of the Project through a competitive design-bid-build process in conformance with current state and local procurement procedures.

Approach: Engineer will provide the following services throughout the bid phase of the project.

1. Request wage rates from NM Dept. of Workforce Solutions
2. Conduct pre-bid meeting at the Owner office and attend onsite tour with potential bidders as necessary.
3. Provide clarification of the contract document's intent during the bidding process and determine the need for issuance of addenda.
4. Prepare addenda when required. Provide Addenda to Owner for distribution to contractors and suppliers on BHITracker Plan holder's List.
5. Attend a Bid Opening at Owner's office.
6. Provide a certified tabulation of bids and assist Owner in evaluating the bids.
7. Assist Owner in verifying contractor compliance with bidding procedures, license requirements, and use of subcontractors.
8. Advise Owner as to any irregularities in the bidder's bid proposal, if necessary.
9. Prepare a recommendation of award letter to the Owner for review by Owner counsel and approval by the Owner's Council.
10. Prepare a Notice of Award to be issued by the Owner to the selected Contractor.
11. Compile as-awarded documents for execution by the contractor and the Owner.

Assumptions:

1. BHITracker will be utilized for bidding documents distribution, if paper copies are requested Owner will pay for all plan reproduction (CD only) and shipping during the bidding phase .
2. The number of prime construction contracts for the work designed and specified will be advertised for bid is one (1) construction contract.
3. Project will be advertising as a single bid. If separate bid packages are required, additional bidding, construction administration and inspection services will be negotiated.

Deliverables:

1. Wage Rates
2. Addenda, as required
3. Certified Bid Tabulation
4. Recommendation for award to Owner staff
5. Notice of Award for execution
6. As-awarded contract documents for execution

TASK 3 – CONSTRUCTION ADMINISTRATION

Objective: BHI will provide construction administration services from contract award to final payment to the contractor. BHI will perform services throughout this period as follows:

Approach: Engineer will provide the following services throughout the construction phase of the project.

1. Provide administration of the construction contract as required and defined in the Conditions of the Contract for Construction. The extent of the Engineer's duties and responsibilities and the limitations of his authority thereunder shall not be modified without the Owner's written consent.
2. Be the representative of the Owner during the construction phase and advise and consult the Owner. Instructions to the Contractor shall be forwarded only through the Engineer. The Engineer shall have authority to act on behalf of the Owner only to the extent provided in the Contract Documents and any amendments thereto.
3. Organize and conduct a pre-construction conference with the key stakeholders, including Owner operations staff, Contractor and their subcontractors. The pre-construction meeting will allow all stakeholders in the project to meet and understand how the Contractor will approach the project and provide a schedule of events. Attendees will be allowed to raise concerns, and protocols will be established. As part of this meeting, attendees will provide contact information that will be copied and provided to all stakeholders. Meeting minutes will be documented and distributed.
4. The Engineer will employ a web portal for construction management called Project Tracker. This web portal will track Requests for Information (RFIs), Design Revisions, Submittals/Shop Drawings, Pay Requests, Change Orders and Field Reports. All key personnel and agencies will be provided access to the website using a user name and password. Once access is established, Project Tracker will allow the user access to the documentation so that they have the latest information available to them at all times. Engineer's assigned "gatekeeper" will monitor and facilitate the flow of information and maintain the website. Email notifications will keep each party responsible aware if they have any outstanding items pending. The web portal will

automatically log all information in summary format, which will be used during construction progress meetings.

5. On the basis of on-site observations, the Engineer will endeavor to guard the Owner against defects and deficiencies in the construction. Engineer will determine if any portion of the Work varies from the requirements of the Contract Documents, and immediately notify the Contractor and the Owner of the nature of the work required to correct such non-compliance.

6. Render interpretations of the documents necessary for the proper execution or progress of the Work with reasonable promptness on written request of either the Owner or the Contractor, and provide written decisions within a reasonable time on all claims, disputes, and other matters in question between the Owner and the Contractor relating to the execution or progress of the Work or the interpretation of the Contract Documents.

7. Review the Contractor's submittals, such as shop drawings, product data, and samples, for the conformance with the information given in the Contract Documents.

8. Review and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Work Progress Schedules, Schedule of Submittals, and Schedule of Values.

9. Determine, certify, and make recommendations to the Owner for payment of the amounts owed to the Contractor subject to the Owner's approval, based on observations at the site and on evaluations of the Contractor's Applications for Payment.

10. Prepare all Change Orders, as necessary, as defined in the Conditions of the Contract for Construction.

11. Continuously monitor overall project funding including change orders, bid alternates additional work directives, and funding contingencies. Provide written updates on the overall project budget and "estimates to finish" at monthly.

12. Conduct observations to determine the Dates of Substantial Completion and Final Completion. The Engineer will obtain and forward to the Owner for the Owner's review all closeout documents including written warranties, maintenance and operating instructions, schedules, guarantees, bonds, evidence of insurance required by the Contract Documents, and other related documents required by the Contract Documents and assembled by the Contractor.

Deliverables:

1. Pre-construction conference meeting agenda and minutes.
2. Certification of Contractor pay requests and change orders.
3. Executed Substantial Completion document.
4. Executed Final Completion Document.

5. One (1) digital media of a final Windows file tree from Project Tracker, including a log of all submittals, notations, RFI's, interpretations of documents, and field directives.

6. Record Drawings and Operations and Maintenance Manual:

a. Ensure the Contractor maintains an up-to-date set of project construction drawings as the project work progresses until final completion.

b. Using the Contractor field mark-ups, the Engineer shall modify the original reproducible drawings, delineating recorded built conditions of the project work showing all changes from the as-awarded drawings.

c. Contractor shall be required as part of their contract to provide O&M Manuals for equipment provided. O&Ms shall incorporate product data, installation and maintenance instructions, spare parts lists, and supplier contact information. O&Ms shall include project specific information and instructions such as controller configuration and programming files.

d. Engineer shall review and edit O&M manuals for conformance to project specifications.

B. Cost Proposal – Include hourly breakdown for each task

ENGINEERING SERVICES:

<u>Task</u>	<u>Description</u>	<u>Fee Amount</u>
<u>2</u>	<u>Bid Administration</u>	<u>\$ 4,500</u>
<u>3</u>	<u>Construction Administration</u>	<u>\$ 6,500</u>

C. Reimbursable Expense Schedule

N/A

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 _____ (DATE). If construction phase services have not been completed and accepted by _____ 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 \$11,000.00, 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 _____
Title _____

By:  _____ Date: 11/8/2021
ENGINEER
Type Name Matthew R. Thompson, PE
Title Senior Vice President
Address 425 S. Telshor Blvd.
Suite C-103
Las Cruces, NM 88011

REVIEWED AND APPROVED: FUNDING AGENCY

AGENCY NAME: _____

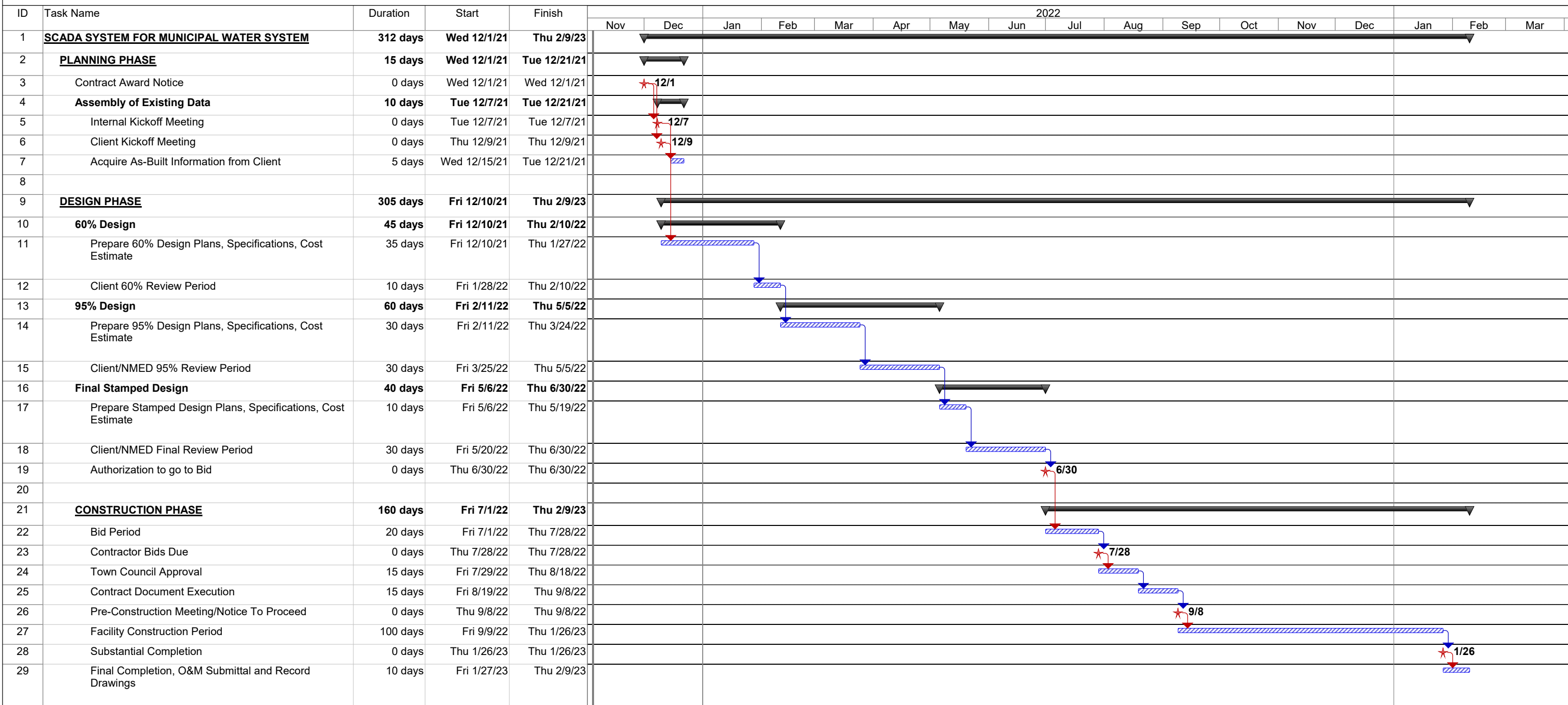
By _____

Type Name _____

Date _____

Name of Project: SCADA to a Municipal Water Production System																		Date: 11/8/2021		
Client: Town of Mesilla																		Prepared by: DG		
Principal-in-Charge/ PM / PA: Matt Thompson																		Reviewed by: MRT		
Task / Activity	Engineer 7	Engineer 6	Engineer 5	Engineer 4	Engineer 3	Engineer 2	Engineer 1	Technical Manager	Technical Specialist 1	Technical Specialist 5	Technical Specialist 6	Technical Specialist 7	Project Administrator 5	Administrative Assistant 2	Administrative Assistant 3	Construction Observer 5	Expenses	Task Sub-Totals		
																		Per-Hrs	Cost	
Hourly Rate:	\$ 245	\$ 220	\$ 183	\$ 163	\$ 143	\$ 123	\$ 105	\$ 143	\$ 72	\$ 107	\$ 120	\$ 135	\$ 160	\$ 65	\$ 75	\$ 108				
PROJECT NAME																			534	\$ 23,580
Construction Documents	4					40						40	2		12				98	\$ 12,520
BidAdministration	2					10						10	2		10		\$ 350		384	\$ 4,490
Construction Administration	2					20						20	2		8				52	\$ 6,570
TOTAL HRS:	8					70						70	6		30				534	\$ 23,580
TOTAL FEES:	\$1,960	\$ -	\$ -	\$ -	\$ -	\$ 8,610	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 9,450	\$ 960	\$ -	\$ 2,250	\$ -	\$ 350		184	\$ 23,580

PROJECT SCHEDULE



TOWN OF MESILLA SCADA SYSTEM FOR MUNICIPAL WATER SYSTEM	Task		Project Summary		Inactive Task		Duration-only		Finish-only	
	Split		External Tasks		Inactive Milestone		Manual Summary Rollup		Progress	
	Milestone		External Milestone		Inactive Summary		Manual Summary		Deadline	
	Summary		Inactive Task		Manual Task		Start-only			