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**STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES
FUNDING AGENCY EDITION**

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly By

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PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
a practice division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

AMERICAN CONSULTING ENGINEERS COUNCIL

AMERICAN SOCIETY OF CIVIL ENGINEERS

This document has been accepted by
United States Department of Agriculture
Rural Utilities Service, Water and Waste Programs

This Agreement has been prepared for use with the Standard General Conditions of the Construction Contract -- Funding Agency Edition (No. 1910-8-FA) (1997 Edition) of the Engineers Joint Contract Documents Committee. Their provisions are interrelated and a change in one may necessitate a change in the other.

Rural Development

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Rural Development
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TABLE OF CONTENTS

ARTICLE 1--SERVICES OF ENGINEER 2
 1.01 Scope 2

ARTICLE 2--OWNER'S RESPONSIBILITIES 2
 2.01 General 2

ARTICLE 3--TIMES FOR RENDERING SERVICES 2
 3.01 General 2
 3.02 Suspension 2

ARTICLE 4--PAYMENTS TO ENGINEER 2
 4.01 Methods of Payment for Services and Reimbursable Expenses of ENGINEER 2
 4.02 Other Provisions Concerning Payments 2

ARTICLE 5--OPINIONS OF COST 3
 5.01 Opinions of Probable Construction Cost 3
 5.02 Designing to Construction Cost Limit 3
 5.03 Opinions of Total Project Costs 3

ARTICLE 6--GENERAL CONSIDERATIONS 3
 6.01 Standards of Performance 3
 6.02 Authorized Project Representatives 4
 6.03 Design without Construction Phase Services 5
 6.04 Use of Documents 5
 6.05 Insurance 5
 6.06 Termination 6
 6.07 Controlling Law 6
 6.08 Successors, Assigns, and Beneficiaries 6
 6.09 Dispute Resolution 7
 6.10 Hazardous Environmental Condition 7
 6.11 Allocation of Risks -- Indemnification 7
 6.12 Notices 8
 6.13 Survival 8
 6.14 Severability 8
 6.15 Waiver 8
 6.16 Headings 8

ARTICLE 7-- DEFINITIONS 8
 7.01 Defined Terms 8

ARTICLE 8--EXHIBITS AND SPECIAL PROVISIONS 11
 8.01 Exhibits Included 11
 8.02 Agency Concurrence 12
 8.03 Total Agreement 12

STANDARD FORM OF AGREEMENT
BETWEEN
OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES
FUNDING AGENCY EDITION

THIS IS AN AGREEMENT effective as of _____, _____ ("Effective Date") between _

_____ ("OWNER") and

_____ ("ENGINEER").

OWNER intends to _____

_____ ("Project").

Financial assistance for this project is expected to be provided by _____

("AGENCY"), a governmental entity. Nothing herein creates any contractual relationship between AGENCY and ENGINEER.

OWNER and ENGINEER in consideration of their mutual covenants as set forth herein agree as follows:

ARTICLE 1--SERVICES OF ENGINEER

1.01 Scope

A. ENGINEER shall provide the Basic and Additional Services set forth herein.

B. Upon this Agreement becoming effective, ENGINEER is authorized to begin Basic Services as set forth in Exhibit A.

ARTICLE 2--OWNER'S RESPONSIBILITIES

2.01 General

A. OWNER shall have the responsibilities set forth herein and in Exhibit B.

ARTICLE 3--TIMES FOR RENDERING SERVICES

3.01 General

A. ENGINEER's services and compensation under this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project through completion. Unless specific periods of time or specific dates for providing services are specified in this Agreement, ENGINEER's obligation to render services hereunder will be for a period which may reasonably be required for the completion of said services.

B. If in this Agreement specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided and if such periods of time or dates are changed through no fault of ENGINEER, the rates and amounts of compensation provided for herein shall be subject to equitable adjustment. If OWNER has requested changes in the scope, extent or character of the Project, the time of performance of ENGINEER's services shall be adjusted equitably.

C. For purposes of this Agreement, the term "day" means a calendar day of 24 hours.

3.02 Suspension

A. If OWNER fails to give written authorization to proceed with any phase of services within a reasonable period of time after completion of the immediately preceding phase, or if ENGINEER's services are delayed through no fault of ENGINEER, ENGINEER may, after giving seven days' written notice to OWNER, suspend services under this Agreement.

B. If ENGINEER's services are delayed or suspended in whole or in part by OWNER, or if ENGINEER'S services are extended by Contractor's actions or inactions for more than three months through no fault of ENGINEER, ENGINEER shall be entitled to equitable adjustment of rates and amounts of compensation provided for elsewhere in this Agreement to reflect, among other things, reasonable costs incurred by ENGINEER in connection with such delay or suspension and reactivation and the fact that the time for performance under this Agreement has been revised.

ARTICLE 4--PAYMENTS TO ENGINEER

4.01 Methods of Payment for Services and Reimbursable Expenses of ENGINEER

A. *For Basic Services.* OWNER shall pay ENGINEER for Basic Services performed or furnished under Exhibit A, Part 1, as set forth in Exhibit C.

B. *For Additional Services.* OWNER shall pay ENGINEER for Additional Services performed or furnished under Exhibit A, Part 2, as set forth in Exhibit C.

C. *For Reimbursable Expenses.* In addition to payments provided for in paragraphs 4.01.A and 4.01.B, OWNER shall pay ENGINEER in accordance with Exhibit C for Reimbursable Expenses incurred by ENGINEER and ENGINEER's Consultants.

4.02 Other Provisions Concerning Payments

A. *Preparation of Invoices.* Invoices will be prepared in accordance with ENGINEER's standard invoicing practices and in a manner acceptable to OWNER. Invoices will be submitted to OWNER by ENGINEER no more than once per month. The amount billed in each invoice will be calculated on the basis set forth in Exhibit C.

B. *Payment of Invoices.* Invoices are due and payable within 60 days of receipt. If OWNER fails to make any payment due ENGINEER for services and expenses within 60 days after receipt of ENGINEER's invoice therefor, and funds are available for the Project, the amounts due ENGINEER will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said 60th day; and, in addition, ENGINEER may, after giving seven days' written notice to OWNER, suspend services under this Agreement until ENGINEER has been paid in full all amounts due for services, expenses, and other related charges. Payments will be credited first to interest and then to principal.

C. *Disputed Invoices.* In the event of a disputed or contested invoice, only that portion so contested may be withheld from payment, and the undisputed portion will be paid.

D. *Payments Upon Termination.*

1. In the event of termination under paragraphs 6.06A.1.b. and 6.06.A.2, ENGINEER will be entitled to invoice OWNER and will be paid in accordance with Exhibit C for all services performed or furnished and expenses incurred through the effective date of termination.

2. In the event of termination by OWNER for convenience or by ENGINEER for cause, ENGINEER, in addition to invoicing for those items identified in paragraph 4.02.D.1, shall be entitled to invoice OWNER and shall be paid a reasonable amount for services and expenses directly attributable to termination, including those provided or incurred after the effective date of termination, including, but not limited to, reassignment of personnel, costs of terminating contracts with ENGINEER's Consultants and other related close-out costs, using methods and rates for Additional Services set forth in Exhibit C.

E. *Records of ENGINEER's Costs.* Records of ENGINEER's costs pertinent to ENGINEER's compensation under this Agreement shall be kept in accordance with generally accepted accounting practices. To the extent necessary to verify ENGINEER's charges and upon OWNER's timely request, copies of such records will be made available to OWNER at cost.

F. *Legislative Actions.* In the event of legislative actions after the Effective Date of the Agreement by any level of government that impose taxes, fees, or costs on

ENGINEER's services in connection with this Project or compensation therefor, such new taxes, fees, or costs shall be invoiced to and paid by OWNER as a Reimbursable Expense to which a Factor of 1.0 shall be applied. Should such taxes, fees, or costs be imposed, they shall be in addition to ENGINEER's estimated total compensation.

ARTICLE 5--OPINIONS OF COST

5.01 Opinions of Probable Construction Cost

A. ENGINEER's opinions of probable Construction Cost provided for herein are to be made on the basis of ENGINEER's experience and qualifications and represent ENGINEER's best judgment as an experienced and qualified professional generally familiar with the industry. However, since ENGINEER has no control over the cost of labor, materials, equipment or services furnished by others, or over the Contractor's methods of determining prices, or over competitive bidding or market conditions, ENGINEER cannot and does not guarantee that proposals, bids or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by ENGINEER. If OWNER wishes greater assurance as to probable Construction Cost, OWNER shall employ an independent cost estimator as provided in Exhibit B.

5.02 Designing to Construction Cost Limit

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

5.03 Opinions of Total Project Costs

A. ENGINEER assumes no responsibility for the accuracy of opinions of Total Project Costs.

ARTICLE 6--GENERAL CONSIDERATIONS

6.01 Standards of Performance

A. The standard of care for all professional engineering and related services performed or furnished by ENGINEER under this Agreement will be the care and skill ordinarily used by members of ENGINEER's profession practicing under similar circumstances at the same time and in the same locality. ENGINEER makes no

warranties, express or implied, under this Agreement or otherwise, in connection with ENGINEER'S services.

B. ENGINEER shall be responsible for the technical accuracy of its services and documents resulting therefrom, and OWNER shall not be responsible for discovering deficiencies therein. ENGINEER shall correct such deficiencies without additional compensation, except to the extent such action is directly attributable to deficiencies in OWNER-furnished information.

C. ENGINEER shall perform or furnish professional engineering and related services in all phases of the Project to which this Agreement applies. ENGINEER shall serve as OWNER's prime professional for the Project. ENGINEER may employ such ENGINEER's Consultants as ENGINEER deems necessary to assist in the performance or furnishing of the services. ENGINEER shall not be required to employ any ENGINEER's Consultant unacceptable to ENGINEER.

D. ENGINEER and OWNER shall comply with applicable Laws and Regulations, and OWNER-mandated standards. This Agreement is based on these requirements as of its Effective Date. Changes to these requirements after the Effective Date of this Agreement may be the basis for modifications to OWNER's responsibilities or to the scope, schedule, and compensation for ENGINEER's services.

E. OWNER shall be responsible for, and ENGINEER may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data and other information furnished by OWNER to ENGINEER pursuant to this Agreement. ENGINEER may use such requirements, reports, data and information in performing or furnishing services under this Agreement.

F. OWNER shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the services of ENGINEER and shall bear all costs incident thereto.

G. Prior to the commencement of the Construction Phase, OWNER shall notify ENGINEER of any variations from the language indicated in Exhibit E, "Notice of Acceptability of Work," or of any other notice or certification that ENGINEER will be requested to provide to OWNER or third parties in connection with the Project. OWNER and ENGINEER shall reach agreement on the terms of any such requested notice or certification and OWNER shall authorize such Additional Services as are

necessary to enable ENGINEER to provide the notices or certifications requested under this paragraph.

H. All Contract Documents and Applications for Payment shall be subject to AGENCY concurrence.

I. ENGINEER shall not be required to sign any documents, no matter by whom requested, that would result in the ENGINEER's having to certify, guarantee or warrant the existence of conditions whose existence ENGINEER cannot ascertain. OWNER agrees not to make resolution of any dispute with ENGINEER or payment of any amount due to ENGINEER in any way contingent upon ENGINEER's signing any such certification.

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

K. ENGINEER neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.

L. ENGINEER shall not be responsible for the acts or omissions of any Contractor(s), subcontractor or supplier, or of any of the Contractor's agents or employees or any other persons (except ENGINEER's own employees) at the Site or otherwise furnishing or performing any of the Contractor's work; or for any decision made on interpretations or clarifications of the Contract Documents given by OWNER without consultation and advice of ENGINEER.

M. The General Conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract -- Funding Agency Edition" as prepared by the Engineers Joint Contract Documents Committee (Document No. 1910-8-FA, 1996 edition) unless OWNER, ENGINEER, and AGENCY mutually agree to use other General Conditions as specifically referenced in Exhibit I.

6.02 Authorized Project Representatives

A. Contemporaneous with the execution of this Agreement, ENGINEER and OWNER shall designate specific individuals to act as ENGINEER's and OWNER's representatives with respect to the services to be performed or furnished by ENGINEER and responsibilities of OWNER under this Agreement. Such individuals shall have authority to transmit instructions, receive information and render decisions relative to the Project on behalf of each respective party.

6.03 Design without Construction Phase Services

A. Should OWNER provide Construction Phase services with either OWNER's representatives or a third party, ENGINEER's Basic Services under this Agreement will be considered to be completed upon completion of the Final Design Phase or Bidding or Negotiating Phase as outlined in Exhibit A.

B. It is understood and agreed that if ENGINEER's Basic Services under this Agreement do not include construction observation, or review of the Contractor's performance, or any other Construction Phase services, then OWNER assumes all responsibility for interpretation of the Contract Documents and for construction observation or review and waives any claims against the ENGINEER that may be in any way connected thereto.

6.04 Use of Documents

A. All Documents are instruments of service in respect to this Project and ENGINEER shall retain an ownership and property interest therein (including the right of reuse at the discretion of the ENGINEER) whether or not the Project is completed.

B. Copies of OWNER-furnished data that may be relied upon by ENGINEER are limited to the printed copies (also known as hard copies) that are delivered to the ENGINEER pursuant to Exhibit B. Files on electronic media of text, data, or graphics or of other types (collectively termed electronic files) that are furnished by OWNER to ENGINEER are only for convenience of ENGINEER. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.

C. Copies of Documents that may be relied upon by OWNER are limited to the printed copies (also known as hard copies) that are signed or sealed by the ENGINEER.

Electronic files that are furnished by ENGINEER to OWNER are only for convenience of OWNER. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.

D. Because data stored on electronic media can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the party delivering the data. ENGINEER shall not be responsible to maintain documents stored in electronic media format after acceptance by OWNER.

E. When transferring documents in electronic media format, ENGINEER makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by ENGINEER at the beginning of this Project.

F. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

G. OWNER may make and retain copies of Documents for information and reference in connection with use on the Project by OWNER. Such Documents are not intended or represented to be suitable for reuse by OWNER or others on extensions of the Project or on any other project. Any such reuse or modification without written verification or adaptation by ENGINEER, as appropriate for the specific purpose intended, will be at OWNER's sole risk and without liability or legal exposure to ENGINEER, or to ENGINEER's Consultants. OWNER shall indemnify and hold harmless ENGINEER and ENGINEER's Consultants from all claims, damages, losses, and expenses including attorneys' fees arising out of or resulting therefrom.

H. Any verification or adaptation of the Documents for extensions of the Project or for any other project will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER.

6.05 Insurance

A. ENGINEER shall procure and maintain insurance as set forth in Exhibit G, "Insurance."

B. OWNER shall procure and maintain insurance as set forth in Exhibit G, "Insurance." OWNER shall cause ENGINEER and ENGINEER's Consultants to be listed as additional insureds on any general liability or property insurance policies carried by OWNER which are applicable to the Project.

C. OWNER shall require Contractor to purchase and maintain general liability and other insurance as specified in the Contract Documents and to cause ENGINEER and ENGINEER's Consultants to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractor for the Project.

D. All policies of property insurance shall contain provisions to the effect that ENGINEER's and ENGINEER's Consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder.

E. OWNER and ENGINEER shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of ENGINEER's services and at renewals thereafter during the life of the Agreement.

F. At any time, OWNER may request that ENGINEER, at OWNER's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested and if commercially available, ENGINEER shall obtain, and shall require ENGINEER's Consultants to obtain such additional insurance coverage, increased limits, or revised deductibles for such periods of time as requested by OWNER, and Exhibit G will be supplemented to incorporate these requirements.

6.06 Termination

A. The obligation to provide further services under this Agreement may be terminated:

1. *For cause,*

a. by either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

b. by ENGINEER:

1) upon seven days written notice if ENGINEER believes that ENGINEER is being requested by OWNER to furnish or perform services contrary to ENGINEER's responsibilities as a licensed professional; or

2) upon seven days written notice if the ENGINEER's services for the Project are delayed or suspended for more than ninety days for reasons beyond ENGINEER's control.

3) ENGINEER shall have no liability to OWNER on account of such termination.

c. Notwithstanding the foregoing, this Agreement will not terminate as a result of such substantial failure if the party receiving such notice begins, within seven days of receipt of such notice, to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. *For convenience,* by OWNER effective upon the receipt of notice by ENGINEER.

B. The terminating party under paragraphs 6.06.A.1 or 6.06.A.2 may set the effective date of termination at a time up to 30 days later than otherwise provided to allow ENGINEER to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

6.07 Controlling Law

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

6.08 Successors, Assigns, and Beneficiaries

A. OWNER and ENGINEER each is hereby bound and the partners, successors, executors, administrators and legal representatives of OWNER and ENGINEER (and to the extent permitted by paragraph 6.08.B the assigns of

OWNER and ENGINEER) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

B. Neither OWNER nor ENGINEER may assign, sublet or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

C. Unless expressly provided otherwise in this Agreement:

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

2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of OWNER and ENGINEER and not for the benefit of any other party. The OWNER agrees that the substance of the provisions of this paragraph 6.08.C. shall appear in the Contract Documents.

6.09 Dispute Resolution

A. OWNER and ENGINEER agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights under law.

B. If and to the extent that OWNER and ENGINEER have agreed on a method and procedure for resolving disputes between them arising out of or relating to this Agreement, such dispute resolution method and procedure, if any, is set forth in Exhibit H, "Dispute Resolution."

6.10 Hazardous Environmental Condition

A. OWNER represents to ENGINEER that to the best of its knowledge a Hazardous Environmental Condition does not exist.

B. OWNER has disclosed to the best of its knowledge to ENGINEER the existence of all Asbestos, PCB's, Petroleum, Hazardous Waste, or Radioactive Material located at or near the Site, including type, quantity and location.

C. If a Hazardous Environmental Condition is encountered or alleged, ENGINEER shall have the obligation to notify OWNER and, to the extent of applicable Laws and Regulations, appropriate governmental officials.

D. It is acknowledged by both parties that ENGINEER's scope of services does not include any services related to a Hazardous Environmental Condition. In the event ENGINEER or any other individual or entity encounters a Hazardous Environmental Condition, ENGINEER may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until OWNER: (i) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (ii) warrants that the Site is in full compliance with applicable Laws and Regulations.

E. OWNER acknowledges that ENGINEER is performing professional services for OWNER and that ENGINEER is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of "hazardous substances," as those terms are defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA), if such "hazardous substances" are or may be encountered at or near the Site in connection with ENGINEER's activities under this Agreement.

F. If ENGINEER's services under this Agreement cannot be performed because of a Hazardous Environmental Condition, the existence of the condition shall justify ENGINEER's terminating this Agreement for cause on 30 days notice.

6.11 Allocation of Risks -- Indemnification

A. To the fullest extent permitted by law, ENGINEER shall indemnify and hold harmless OWNER, OWNER's officers, directors, partners and employees from and against any and all costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of ENGINEER or ENGINEER's officers, directors, partners, employees, agents and ENGINEER's Consultants in the performance and furnishing of ENGINEER's services under this Agreement.

B. To the fullest extent permitted by law, OWNER shall indemnify and hold harmless ENGINEER, ENGINEER's officers, directors, partners, employees and agents and ENGINEER's Consultants from and against any and all costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of OWNER or OWNER's officers, directors, partners, employees, and OWNER's consultants with respect to this Agreement or the Project.

C. To the fullest extent permitted by law, ENGINEER's total liability to OWNER and anyone claiming by, through, or under OWNER for any cost, loss, or damages caused in part by the negligence of ENGINEER and in part by the negligence of OWNER or any other negligent entity or individual, shall not exceed the percentage share that ENGINEER's negligence bears to the total negligence of OWNER, ENGINEER, and all other negligent entities and individuals.

D. In addition to the indemnity provided under paragraph 6.11.B. and to the fullest extent permitted by law, OWNER shall indemnify and hold harmless ENGINEER and its officers, directors, partners, employees, and ENGINEER's Consultants from and against all, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused by, arising out of or resulting from a Hazardous Environmental Condition, provided that (i) any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than completed Work), including the loss of use resulting therefrom, and (ii) nothing in this paragraph

6.11.D. shall obligate OWNER to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.

6.12 Notices

A. Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, or by certified mail (return receipt requested), or by facsimile, or by a commercial courier service. All notices shall be effective upon the date of receipt.

6.13 Survival

A. All express representations, indemnifications or limitations of liability included in this Agreement will survive its completion or termination for any reason.

6.14 Severability

A. Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and ENGINEER, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

6.15 Waiver

A. Non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

6.16 Headings

The headings used in this Agreement are for general reference only and do not have special significance.

ARTICLE 7-- DEFINITIONS

7.01 Defined Terms

A. Wherever used in this Agreement (including the Exhibits) and printed with initial or all capital letters, the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

1. *Addenda*--Written or graphic instruments issued prior to the opening of Bids which clarify, correct or change the Bidding Documents.

2. *Additional Services*--The services to be performed for or furnished to OWNER by ENGINEER in accordance with Exhibit A, Part 2, of this Agreement.

3. *AGENCY*--The Federal or state agency named on page 1 of this Agreement.

4. *Agreement*--This "Standard Form of Agreement between OWNER and ENGINEER for Professional Services -- Funding Agency Edition" including those Exhibits listed in Article 8.

5. *Application for Payment*--The form acceptable to ENGINEER which is to be used by Contractor in requesting progress or final payments for the completion of its Work and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

6. *Asbestos*--Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

7. *Basic Services*--The services to be performed for or furnished to OWNER by ENGINEER in accordance with Exhibit A, Part 1 of this Agreement.

8. *Bid*--The offer or proposal of the bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

9. *Bidding Documents*--The advertisement or invitation to Bid, instructions to bidders, the Bid form and attachments, the required form of Bid bond, and

the proposed Contract Documents and Addenda, if any.

10. *Change Order*--A document recommended by ENGINEER, which is signed by Contractor, OWNER, and AGENCY to authorize an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Construction Agreement.

11. *Construction Agreement*--The written agreement, contained in the Contract Documents between OWNER and Contractor covering the Work to be performed or furnished with respect to this Project.

12. *Construction Cost*--The cost to OWNER to construct those portions of the entire Project designed or specified by ENGINEER. Construction Cost does not include costs of services of ENGINEER AND other design professionals and consultants, cost of land, rights-of-way, or compensation for or damages to properties, or OWNER's costs for legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project or the cost of other services to be provided by others to OWNER pursuant to Exhibit B of this Agreement. Construction Cost is one of the items comprising Total Project Costs.

13. *Contract Documents*--The Construction Agreement between OWNER and Contractor, Addenda (which pertain to the Contract Documents), Contractor's Bid (including documentation accompanying the Bid and any post Bid documentation submitted prior to the notice of award) when attached as an exhibit to the Construction to proceed, the bonds, appropriate certifications, the General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Construction Agreement, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders and ENGINEER's written interpretation and clarifications issued on or after the Effective Date of the Construction Agreement. Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents.

14. *Contract Price*--The moneys payable by OWNER to Contractor for completion of the Work in

accordance with the Contract Documents and as stated in the Construction Agreement.

15. *Contract Times*--The numbers of days or the dates stated in the Construction Agreement to: (i) achieve Substantial Completion, and (ii) complete the Work so that it is ready for final payment as evidenced by ENGINEER's written recommendation of final payment.

16. *Contractor*--An individual or entity with whom OWNER enters into a Construction Agreement covering Work to be performed or furnished with respect to the Project.

17. *Correction Period*--The time after Substantial Completion during which Contractor must correct, at no cost to OWNER, any Defective Work, normally one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee or specific provision of the Contract Documents.

18. *Defective*--An adjective which when modifying the word Work refers to Work that is unsatisfactory, faulty or deficient, in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to ENGINEER's recommendation of final payment.

19. *Documents*--Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by ENGINEER to OWNER pursuant to this Agreement.

20. *Drawings*--Those parts of the Contract Documents prepared or approved by Engineer which graphically show the scope, extent and character of the Work to be furnished and performed by Contractor, and which have been prepared or approved by ENGINEER and are referred to in the Contract Documents. Shop Drawings are not Drawings as so defined.

21. *Effective Date of the Construction Agreement*--The date indicated in the Construction Agreement on which it becomes effective. If no such date is

indicated it means the date on which AGENCY concurs with the Construction Agreement.

22. *Effective Date of the Agreement*--The date indicated in this Agreement on which it becomes effective. If no such date is indicated it means the date on which AGENCY concurs with the Agreement.

23. *ENGINEER's Consultants*--Individuals or entities having a contract with ENGINEER to perform or furnish Basic or Additional Services with respect to this Project as ENGINEER's independent professional associates, consultants, subcontractors or vendors. The term ENGINEER includes ENGINEER's Consultants.

24. *Field Order*--A written order issued by ENGINEER which directs minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

25. *General Conditions*--That part of the Contract Document which sets forth terms, conditions, and procedures that govern the Work to be performed or furnished by Contractor with respect to the Project.

26. *Hazardous Environmental Condition*--The presence at the Site of Asbestos, PCB's, Petroleum, Hazardous Waste, or Radioactive Materials in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.

27. *Hazardous Waste*-- The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

28. *Laws and Regulations; Laws or Regulations*--Any and all applicable laws, rules, regulations, ordinances, codes, standards, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

29. *PCB's*--Polychlorinated biphenyls.

30. *Petroleum*--Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

31. *Radioactive Materials*--Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

32. *Record Drawings*--The Drawings as issued for construction on which the ENGINEER has shown changes due to Addenda or Change Orders and other information which ENGINEER considers significant based on the Drawings, Shop Drawings, and other documents furnished by Contractor to ENGINEER and which were annotated by Contractor to show all changes made during construction.

33. *Reimbursable Expenses*--The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic and Additional Services for the Project for which OWNER shall pay ENGINEER pursuant to Exhibit C.

34. *Resident Project Representative*--The authorized representative of ENGINEER, if any, assigned to assist ENGINEER at the Site during the Construction Phase. The Resident Project Representative will be ENGINEER's agent or employee and under ENGINEER's supervision. As used herein, the term Resident Project Representative includes any assistants of Resident Project Representative agreed to by OWNER. The duties and responsibilities of the Resident Project Representative are as set forth in Exhibit D.

35. *Samples*--Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

36. *Shop Drawings*--All drawings, diagrams, illustrations, schedules and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to ENGINEER to illustrate some portion of the Work.

37. *Site*--Lands or areas, indicated in the Contract Documents as being furnished by OWNER upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands furnished by OWNER which are designated for use of Contractor.

38. *Specifications*--Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.

39. *Substantial Completion*--The time at which the Work (or a specified part thereof) has progressed to the point where it, in the opinion of ENGINEER, is sufficiently complete in accordance with the Contract Documents so that it can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

40. *Supplementary Conditions*--The part of the Contract Documents which amends or supplements the General Conditions.

41. *Total Project Costs*--The sum of the Construction Cost, allowances for contingencies, the total costs of services of ENGINEER or other design professionals and consultants, cost of land, rights-of-way, or compensation for damages to properties, or OWNER's costs for legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project, or the cost of other services to be provided by others to OWNER pursuant to Exhibit B of this Agreement.

42. *Work*--The entire completed construction or the various separately identifiable parts thereof required to be provided under the Contract Documents with respect to this Project. Work includes and is the result of performing or furnishing labor, services and documentation necessary to produce such construction and furnishing, installing and incorporating materials and equipment into the construction, all as required by the Contract Documents.

43. *Work Change Directive*--A written directive to Contractor, issued on or after the Effective Date of the Construction Agreement and signed by OWNER and AGENCY upon recommendation of ENGINEER, ordering an addition, deletion or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times, but is evidence that the parties expect

that the change directed or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

44. *Written Amendment*--A written amendment of the Contract Documents, signed by OWNER, Contractor and AGENCY upon recommendation of ENGINEER on or after the Effective Date of the Construction Agreement and normally dealing with the nonengineering or nontechnical rather than strictly construction-related aspects of the Contract Documents.

ARTICLE 8--EXHIBITS AND SPECIAL PROVISIONS

8.01 Exhibits Included

A. Exhibit A, "ENGINEER's Services," consisting of ___ pages.

B. Exhibit B, "OWNER's Responsibilities," consisting of ___ pages.

C. Exhibit C, "Payments to Engineer for Services and Reimbursable Expenses," consisting of ___ pages.

D. Exhibit D, "Duties, Responsibilities and Limitations of Authority of Resident Project Representative," consisting of ___ pages.

E. Exhibit E, "Notice of Acceptability of Work," consisting of ___ pages.

F. Exhibit F, "Construction Cost Limit," consisting of ___ pages.

G. Exhibit G, "Insurance," consisting of ___ pages.

H. Exhibit H, "Dispute Resolution," consisting of ___ pages.

I. Exhibit I, "Special Provisions," consisting of ___ pages.

8.02 Agency Concurrence

A. Signature of a duly authorized representative of AGENCY in the space provided on the signature page hereof does not constitute a commitment to provide financial assistance or payments hereunder but does

signify that this Agreement conforms to AGENCY's applicable requirements.

8.03 Total Agreement

A. This Agreement (consisting of pages 1 to ___ inclusive, together with the Exhibits identified above) constitutes the entire agreement between OWNER and ENGINEER and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified or canceled by a duly executed written instrument.

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

OWNER:

ENGINEER:

By (Signature):_____

By (Signature):_____

Typed Name:_____

Typed Name:_____

Title:_____

Title:_____

Date:_____

Date:_____

Designated Representative (paragraph 6.02.A.):

Designated Representative (paragraph 6.02.A.):

Title:_____

Title:_____

Address for giving notices:

Address for giving notices:

Phone Number:_____

Phone Number:_____

Fax Number:_____

Fax Number:_____

E-Mail Address:_____

E-Mail Address:_____

AGENCY CONCURRENCE:

AGENCY:_____

By (Signature):_____

Typed Name:_____

Title:_____

Date:_____