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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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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

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**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

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**2.01 General**

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

ARTICLE 3--TIMES FOR RENDERING SERVICES

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**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

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**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

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**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

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**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

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**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 Agreement, 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

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### 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:\_\_\_\_\_



SUGGESTED FORMAT  
(for use with 1910-1-FA, 1997 Edition)

This is **EXHIBIT A**, consisting of \_\_\_\_\_ pages, referred to in and part of the **Standard Form of Agreement between OWNER and ENGINEER for Professional Services -- Funding Agency Edition**, dated \_\_\_\_\_, \_\_\_\_\_.

Initial:  
OWNER \_\_\_\_\_  
ENGINEER \_\_\_\_\_

**ENGINEER's Services**

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**PART 1 -- BASIC SERVICES**

A.1.00 ENGINEER shall provide the following Basic Services.

**A.1.01 Study and Report Phase.**

A. ENGINEER shall:

1. Consult with OWNER to define and clarify OWNER's requirements for the Project and available data.
2. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project designed or specified by ENGINEER, including but not limited to mitigating measures identified in the environmental assessment.
3. Identify and evaluate alternate solutions as listed below available to OWNER and, after consultation with OWNER, recommend to OWNER those solutions which in ENGINEER's best judgment meet OWNER's requirements for the Project. The following alternate solutions will be evaluated:
  4. Prepare a Preliminary Engineering Report (the "Report") in accordance with AGENCY guidance. This Report will be accompanied by ENGINEER's opinion of Total Project Costs for each solution which is so recommended for the Project with each component separately itemized.
  5. Prepare applications and supporting documents for private or governmental grants, loans or advances in connection with the Project.
  6. Prepare feasibility studies and rate schedules if required for the Project.
  7. Perform or provide the following additional Study and Report Phase tasks or deliverables:

8. Furnish review copies of the Report to OWNER and AGENCY within \_\_\_ days of authorization to begin services and review it with OWNER and AGENCY.

9. Revise the Report in response to OWNER's, AGENCY's, and other parties' comments, as appropriate, and furnish final copies of the revised Report to the OWNER and AGENCY within \_\_\_ days of completion of reviewing it with OWNER and AGENCY.

B. ENGINEER's services under the Study and Report Phase shall be considered complete and subject to payment on the date when the Report is approved by OWNER, AGENCY, and other governmental authorities having jurisdiction. Unless ENGINEER is otherwise notified in writing payment for ENGINEER's services under the Study and Report Phase shall be made within \_\_\_\_\_ days of submission of final copies of the revised Report.

#### **A.1.02 Preliminary Design Phase.**

A. After acceptance by OWNER and AGENCY of the Report, selection by OWNER of a recommended solution and indication of any specific modifications or changes in the scope, extent, character or design requirements of the Project desired by OWNER, and upon written authorization from OWNER, ENGINEER shall:

1. On the basis of the above acceptance, selection, and authorization, prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications and written descriptions of the Project.

2. Provide necessary field surveys and topographic and utility mapping for design purposes.

3. Provide three copies of maps showing the general location of required construction easements and permanent easements and the land to be acquired.

4. Advise OWNER if additional reports, data or other information or services of the types described in Exhibit B are necessary and assist OWNER in obtaining such reports, data or other information and services.

5. Based on the information contained in the Preliminary Design Phase documents, submit a revised opinion of probable Construction Cost and any adjustments to Total Project Costs known to ENGINEER, which will be itemized as provided in paragraph A1.01.A.5.

6. Perform or provide the following additional Preliminary Design Phase tasks or deliverables:

7. Furnish the Preliminary Design Phase documents for review by and with OWNER and AGENCY.

8. Submit \_\_\_ final copies of the Preliminary Design Phase documents and revised opinion of probable Construction Cost to OWNER and AGENCY within \_\_\_ days of authorization to proceed with this phase.

B. ENGINEER's services under the Preliminary Design Phase shall be considered complete and subject to payment when the Preliminary Design Phase documents are approved by OWNER, AGENCY and other governmental authorities having jurisdiction.

#### **A.1.03 Final Design Phase.**

A. After acceptance by OWNER and AGENCY of the Preliminary Design Phase documents and revised opinion of probable Construction Cost as determined in the Preliminary Design Phase, but subject to any OWNER-directed modifications or changes in the scope, extent, character or design requirements of or for the Project, and upon written authorization from OWNER, ENGINEER shall:

1. On the basis of the above acceptance, direction, and authorization, prepare final Drawings and Specifications showing the scope, extent and character of the work to be performed and furnished by Contractor. Specifications will be prepared, where appropriate, in general conformance with the 16 division format of the Construction Specifications Institute.

2. Prepare and provide technical criteria, written descriptions, design data and forms for OWNER's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design of the Project, and assist OWNER in consultations with appropriate authorities.

3. Advise OWNER of any adjustments to the opinion of probable Construction Cost and any adjustments to Total Project Costs known to ENGINEER, itemized as provided in paragraph A1.01.A.5.

4. Perform or provide the following additional Final Design Phase tasks or deliverables:

5. Prepare and furnish Bidding Documents for review and approval by OWNER, its legal counsel and other advisors, as appropriate, and AGENCY, and assist OWNER in the preparation of other related documents. Bidding Documents will comply with AGENCY's requirements in effect as of the date of this Agreement.

6. Submit \_\_\_ final copies of the Bidding Documents and a revised opinion of probable Construction Cost to OWNER and AGENCY within \_\_\_ days of authorization to proceed with this phase.

B. In the event that the Work designed or specified by ENGINEER is to be performed or furnished under more than one prime contract, or if ENGINEER's services are to be separately sequenced with the work of one or more prime contractors (such as in the case of fast-tracking), OWNER and ENGINEER shall, prior to commencement of the Final Design Phase, develop a schedule for performance of ENGINEER's services during the Final Design, Bidding or Negotiating, Construction and Post-Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate prime contracts. This schedule is to be prepared and included in or become an amendment to Exhibit A whether or not the work under such contracts is to proceed concurrently.

C. The number of prime contracts for Work designed or specified by ENGINEER upon which the ENGINEER's compensation has been established under this Agreement is \_\_\_\_\_.

D. ENGINEER's services under the Final Design Phase shall be considered complete when the final Bidding Documents are approved by OWNER, AGENCY, and other governmental authorities having jurisdiction.

#### **A.1.04 Bidding or Negotiating Phase.**

A. After acceptance by OWNER and AGENCY of the Bidding Documents and the most recent opinion of probable Construction Cost as determined in the Final Design Phase, and upon written authorization by OWNER to proceed, ENGINEER shall:

1. Assist OWNER in advertising for and obtaining bids or negotiating proposals for the Work and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, attend pre-Bid conferences, if any, and receive and process Contractor deposits for accessing the Bidding Documents.

2. Issue Addenda as appropriate to clarify, correct or change the Bidding Documents.

3. Consult with OWNER as to the acceptability of subcontractors, vendors, suppliers and other persons and entities proposed by Contractor for those portions of the Work as to which such acceptability is required by the Bidding Documents.

4. Determine the acceptability of substitute materials and equipment proposed when substitution is necessary because the specified item is incompatible with the Project or fails to comply with applicable codes.

5. Perform or provide the following additional Bidding or Negotiating Phase tasks or deliverables:

6. Attend the Bid opening, prepare Bid tabulation sheets and assist OWNER in evaluating Bids or proposals and in assembling and awarding contracts for the Work.

B. The Bidding or Negotiating Phase shall be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective Contractors (except as may be required if Exhibit F is a part of this Agreement).

#### **A.1.05 Construction Phase.**

A. Upon successful completion of the Bidding and Negotiating Phase, and upon written authorization from OWNER, ENGINEER shall:

1. *General Administration of Construction Contract.* Consult with OWNER and act as OWNER's representative as provided in the General Conditions. The extent and limitations of the duties, responsibilities and authority of ENGINEER as assigned in said General Conditions shall not be modified, except as ENGINEER may otherwise agree in writing. All of OWNER's instructions to Contractor will be issued through ENGINEER who shall have authority to act on behalf of OWNER in dealings with Contractor to the extent provided in this Agreement and said General Conditions except as otherwise provided in writing.

2. *Selecting Independent Testing Laboratory.* Assist OWNER in the selection of an independent testing laboratory to perform the services identified in paragraph B.1.00.O.

3. *Pre-Construction Conference.* Along with the Resident Project Representative, participate in a Pre-Construction Conference prior to commencement of Work at the Site.

4. *Baselines and Benchmarks.* As appropriate, establish baselines and benchmarks for locating the Work which in ENGINEER's judgment are necessary to enable Contractor to proceed.

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

a. Make visits to the Site at intervals appropriate to the various stages of construction, as ENGINEER deems necessary, but at least monthly, in order to observe as an experienced and qualified design professional the progress and quality of the various aspects of Contractor's work. Such visits and observations by ENGINEER and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of the work in progress, or to involve detailed inspections of the work beyond the responsibilities specifically assigned to ENGINEER in this Agreement and the Contract Documents, but rather are to be limited to spot checking, selective sampling and similar methods of general observation of the work based on ENGINEER's exercise of professional judgment as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and such observations, ENGINEER shall determine in general if such work is proceeding in accordance with the Contract Documents and ENGINEER shall keep OWNER informed of the progress of the work. The responsibilities of ENGINEER contained in this paragraph are expressly subject to the limitations set forth in this paragraph A.1.05.A.5 and other express or general limitations in this Agreement and elsewhere.

b. The purpose of ENGINEER's visits to and representation by the Resident Project Representative, if any, at the Site will be to enable ENGINEER to better carry out the duties and responsibilities assigned to and undertaken by

ENGINEER during the Construction Phase, and, in addition, by the exercise of ENGINEER's efforts as an experienced and qualified design professional, to express an informed professional opinion that the completed Work of Contractor will conform in general to the Contract Documents and that the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents has been implemented and preserved by Contractor. ENGINEER shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct or have control over Contractor's work nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by Contractor, for safety precautions and programs incident to the work of Contractor or for any failure of Contractor to comply with laws, rules, regulations, ordinances, codes or orders applicable to Contractor's furnishing and performing the Work. Accordingly, ENGINEER neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Contract Documents.

6. *Defective Work.* During such visits and on the basis of such observations, ENGINEER shall have authority to recommend to OWNER that Contractor's work be disapproved and rejected while it is in progress if ENGINEER believes that such work will not produce a completed Project that conforms generally to the Contract Documents or that it will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents.

7. *Clarifications and Interpretations; Field Orders.* Issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of the work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. ENGINEER may issue Field Orders authorizing minor variations from the requirements of the Contract Documents.

8. *Change Orders and Work Change Directives.* Recommend Change Orders and Work Change Directives to OWNER, as appropriate, and shall prepare Change Orders and Work Change Directives as required.

9. *Shop Drawings and Samples.* Review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Such reviews and approvals or other action will be completed within 14 days of receipt of Contractor's submittal by ENGINEER and will not extend to means, methods, techniques, sequences or procedures of construction or to safety precautions and programs incident thereto.

10. *Substitutes.* Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, but subject to the provisions of paragraph A.2.01.A.21 of this Exhibit A.

11. *Inspections and Tests.* Require such special inspections or tests of the work as deemed reasonably necessary, and receive and review all certificates of inspections, tests and approvals required by laws, rules, regulations, ordinances, codes, orders or the Contract Documents. ENGINEER's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests or approvals comply with the requirements of the Contract Documents. ENGINEER shall be entitled to rely on the results of such tests.

12. *Disagreements between OWNER and Contractor.* Render formal written decisions on all claims of OWNER and Contractor relating to the acceptability of the work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of the work. In rendering such decisions, ENGINEER shall be fair and not show partiality to OWNER or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.

13. *Applications for Payment.* Based on ENGINEER's observations as an experienced and qualified design professional and on review of Applications for Payment and the accompanying support documentation:

a. Recommend the amounts that Contractor be paid. Such recommendations of payment will be in writing and will constitute ENGINEER's representation to OWNER, based on such observations and review, that, to the best of ENGINEER's knowledge, information and belief, the work has progressed to the point indicated, the quality of such work is generally in accordance with the Contract Documents (subject to an evaluation of such work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's

being entitled to such payment appear to have been fulfilled in so far as it is ENGINEER's responsibility to observe the work. In the case of unit price work, ENGINEER's recommendations of payment will include final determinations of quantities and classifications of such work (subject to any subsequent adjustments allowed by the Contract Documents). The responsibilities of ENGINEER contained in paragraph A.1.05.A.5.a. are expressly subject to the limitations set forth in paragraph A.1.05.A.5.b. and other express or general limitations in this Agreement and elsewhere.

b. By recommending any payment ENGINEER shall not thereby be deemed to have represented that observations made by ENGINEER to check the quality or quantity of Contractor's work as it is performed and furnished have been exhaustive, extended to every aspect of the work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to ENGINEER in this Agreement and the Contract Documents. Neither ENGINEER's review of Contractor's Work for the purposes of recommending payments nor ENGINEER's recommendation of any payment including final payment will impose on ENGINEER responsibility to supervise, direct or control such Work or for the means, methods, techniques, sequences or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with laws, rules, regulations, ordinances, codes or orders applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on ENGINEER to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any of the Work, materials or equipment has passed to OWNER free and clear of any liens, claims, security interests or encumbrances, or that there may not be other matters at issue between OWNER and Contractor that might affect the amount that should be paid.

14. *Contractor's Completion Documents.* Receive and review maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Contract Documents, certificates of inspection, tests and approvals, and marked-up record documents including Shop Drawings, Samples and other data approved as provided under paragraph A.1.05.A.9 and marked-up record Drawings which are to be assembled by Contractor in accordance with the Contract Documents to obtain final payment, but the extent of such review will be limited as provided in paragraph A.1.05.A.13.; and ENGINEER shall transmit these documents to OWNER.

15. *Record Drawings.* Prepare and furnish to OWNER a set of reproducible Project Record Drawings showing appropriate record information based on Project documentation received from RPR and Contractor.

16. *Substantial Completion.* Following notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with OWNER, AGENCY's representative, and Contractor, conduct an inspection to determine if the Work is substantially complete. If after considering any objections of OWNER, ENGINEER considers the Work substantially complete, ENGINEER shall deliver a certificate of Substantial Completion to OWNER, AGENCY, and Contractor.

17. Perform or provide the following additional Construction Phase tasks or deliverables:

18. *Final Notice of Acceptability of the Work.* In company with OWNER's and AGENCY's representatives, conduct a final inspection to determine if the completed Work of Contractor is acceptable so that ENGINEER may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, ENGINEER shall also provide a notice in the form attached hereto as Exhibit E (the "Notice of Acceptability of Work") that the Work is acceptable (subject to the provisions of paragraph A.1.05.A.13.b) to the best of ENGINEER's knowledge, information and belief and based on the extent of the services provided by ENGINEER under this Agreement.

B. Unless otherwise notified in writing by OWNER, ENGINEER shall provide the services of a Resident Project Representative (RPR) at the Site to assist ENGINEER and to provide more continuous observations of such work on a full-time basis unless part-time services are expressly approved by AGENCY and this Agreement is amended accordingly. ENGINEER will, prior to the pre-construction conference, submit a resume of the RPR's qualifications for approval by OWNER and AGENCY. The duties, responsibilities, and limitations of authority of the RPR are as set forth in Exhibit D. The furnishing

of such Resident Project Representative services will not extend ENGINEER's responsibilities or authority beyond the specific limits set forth elsewhere.

C. *Limitation of Responsibilities.* ENGINEER shall not be responsible for the acts or omissions of any Contractor, or any of their subcontractors, vendors, suppliers, or of any other individual or entity performing or furnishing any of the Work. ENGINEER shall not be responsible for any Contractor's failure to perform or furnish the Work in accordance with the Contract Documents.

D. *Duration of Construction Phase.* The Construction Phase will commence with the execution of the Construction Agreement for the Project or any part thereof and will terminate upon written recommendation by ENGINEER of final payment to contractor. If the Project involves more than one prime contract as indicated in paragraph A.1.03.C., Construction Phase services may be rendered at different times in respect to the separate Construction Agreements.

#### **A.1.06 Post-Construction Phase.**

A. Upon written authorization from OWNER during the Post-Construction Phase, ENGINEER shall:

1. Provide assistance to OWNER in connection with the refining and adjusting of any Project equipment or system, in training OWNER's staff to operate and maintain the Project, equipment, and system, and, in developing systems and procedures for control of the operation and maintenance of and record keeping for the Project.

2. Together with OWNER and AGENCY's representative, visit the Project to observe any apparent defects in the completed Work, assist OWNER in consultations and discussions with Contractor concerning correction of such defects, and make recommendations as to replacement or correction of defective Work.

3. Perform or provide the following additional Post-Construction Phase tasks or deliverables:

4. In company with OWNER (or OWNER's representative) and AGENCY's representative, perform a warranty inspection of the Project in the 11th month following Substantial Completion to ascertain whether items of Construction are subject to correction.

B. The ENGINEER shall provide a total of \_\_\_\_\_ hours of assistance and necessary reimbursable expenses in providing services during the Post-Construction Phase.

C. The Post-Construction Phase services may commence during the Construction Phase and will terminate one year after the date of Substantial Completion.

### **PART 2 -- ADDITIONAL SERVICES**

#### **A.2.01 Additional Services Requiring OWNER's Authorization in Advance.**

A. If authorized in writing by OWNER, and with AGENCY concurrence, ENGINEER shall furnish or obtain from others Additional Services of the types listed below. These services will be paid for by OWNER as indicated in Article 4 of the Agreement.

1. Preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.

2. Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by OWNER.
3. Services resulting from significant changes in the scope, extent or character of the portions of the Project designed or specified by ENGINEER or its design requirements including, but not limited to, changes in size, complexity, OWNER's schedule, character of construction or method of financing; and revising previously accepted studies, reports, Drawings, Specifications or Contract Documents when such revisions are required by changes in laws, rules, regulations, ordinances, codes, standards or orders enacted subsequent to the Effective Date of this Agreement or are due to any other causes beyond ENGINEER's control. Redesign to reduce Project costs to within the funds available as stated in Exhibit F shall not be considered Additional Services.
4. Services resulting from evaluation by ENGINEER during the Study and Report Phase at OWNER's request of alternative solutions in addition to those specified in Part 1.
5. Services required as a result of OWNER's providing incomplete or incorrect Project information, with respect to Exhibit B.
6. Providing renderings or models for OWNER's use.
7. Preparing documents for alternate bids requested by OWNER for Contractor's work which is not executed or documents for out-of-sequence work.
8. Undertaking investigations and studies including, but not limited to, detailed consideration of operations, maintenance and overhead expenses; the preparation of detailed cash flow and economic evaluations and appraisals; evaluating processes available for licensing and assisting OWNER in obtaining process licensing; detailed audits or inventories required in connection with construction performed by OWNER.
9. Furnishing services of ENGINEER's Consultants for other than Basic Services.
10. Services attributable to more prime construction contracts than specified in paragraph A.1.03.C.
11. Services (which are not part of Basic Services) during out-of-town travel required of ENGINEER other than for visits to the Site or OWNER's office.
12. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering and constructability review requested by OWNER; and performing or furnishing services required to revise studies, reports, Drawings, Specifications or other Bidding Documents as a result of such review processes.
13. Determining the acceptability of substitute materials and equipment proposed during the Bidding or Negotiating Phase when substitution prior to the award of contracts is allowed by the Bidding Documents, or when it is learned after completing of the Final Design phase that the specified material or equipment is no longer manufactured or cannot be delivered in sufficient time to permit its timely incorporation into the Work.
14. Assistance in connection with Bid protests, rebidding or renegotiating contracts for construction, materials, equipment or services. Rebidding or renegotiating contracts to reduce the contract costs to funds available as stated in Exhibit F shall not be considered Additional Services.
15. Providing construction surveys and staking to enable Contractor to perform work, other than required under paragraph A.1.05.A, and any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.
16. Providing Construction Phase Services beyond the Contract Times set forth in Exhibit C.
17. Preparation of operating, maintenance and staffing manuals to supplement Basic Services under paragraph A.1.06.A.
18. Preparing to serve or serving as a consultant or witness for OWNER in any litigation, arbitration or other dispute resolution process related to the Project.



19. Providing more extensive services required to enable ENGINEER to issue notices or certifications requested by OWNER under paragraph 6.01.G.
20. Services in connection with Work Change Directives and Change Orders to reflect changes requested by OWNER so as to make the compensation commensurate with the extent of the Additional Services rendered.
21. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or-equal" items; and services after the award of the construction contract in evaluating and determining the acceptability of a substitution.
22. Additional or extended services during construction made necessary by (1) emergencies or acts of God endangering the Work, (2) work damaged by fire or other cause during construction, (3) a significant amount of defective, neglected or delayed work by Contractor, (4) acceleration of the progress schedule involving services beyond normal working hours, or (5) default by Contractor.
23. Evaluating an unreasonable claim or an excessive number of claims submitted by Contractor or others in connection with the Work.
24. Assistance provided by ENGINEER to OWNER in excess of the hours specified in paragraph A.1.06 (Post-Construction Phase).
25. Other services performed or furnished by ENGINEER not otherwise provided for in this Agreement.

SUGGESTED FORMAT  
(for use with 1910-1-FA, 1997 Edition)

This is **EXHIBIT B**, consisting of \_\_\_\_\_ pages, referred to in and part of the **Agreement between OWNER and ENGINEER for Professional Services -- Funding Agency Edition**, dated \_\_\_\_\_, \_\_\_\_\_.

Initial:

OWNER \_\_\_\_\_

ENGINEER \_\_\_\_\_

OWNER's Responsibilities

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**PART 1 -- FURTHER RESPONSIBILITIES OF OWNER**

**B.1.00** In addition to other responsibilities of OWNER as set forth in this Agreement, OWNER shall:

A. Provide ENGINEER with all criteria and full information as to OWNER's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which OWNER will require to be included in the Drawings and Specifications; and furnish copies of OWNER's standard forms, conditions and related documents for ENGINEER to include in the Bidding Documents, when applicable.

B. Furnish to ENGINEER any other available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Project Site.

C. Following ENGINEER's assessment of initially-available Project information and data, upon ENGINEER's request, furnish or otherwise make available such additional Project related information and data as is reasonably required to enable ENGINEER to complete its Basic and Additional services. Such additional information or data would generally include the following:

1. property descriptions;
2. zoning, deed and other land use restrictions;
3. property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points;
4. data prepared by or services of others, including without limitation explorations and tests of subsurface conditions at or contiguous to the Site, drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site, or hydrographic surveys, with appropriate professional interpretation thereof;
5. environmental assessments, audits, investigations and impact statements, and other relevant environmental or cultural studies as to the Project, the site and adjacent areas; and
6. data or consultations as required for the Project but not otherwise identified in the Agreement or the Exhibits thereto.

D. Give prompt written notice to ENGINEER whenever OWNER observes or otherwise becomes aware of a Hazardous Environmental Condition or of any development that affects the scope or time of performance of ENGINEER's services, or any defect or nonconformance in ENGINEER's services or in the work of any Contractor.

E. Furnish as appropriate other services or direct ENGINEER to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement as required.

F. Arrange for safe access to and make all provisions for ENGINEER and ENGINEER's Consultants to enter upon public and private property as required for ENGINEER to perform services under the Agreement.

G. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals and other documents presented by ENGINEER (including obtaining advice of an attorney, insurance counselor and other consultants as OWNER deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.

H. Obtain reviews, approvals and permits from all governmental authorities having jurisdiction to approve all Phases of the Project designed or specified by ENGINEER and such reviews, approvals and consents from others as may be necessary for completion of each Phase of the Project.

I. Provide, as required for the Project:

1. accounting, bond and financial advisory, independent cost estimating and insurance counseling services;
2. legal services with regard to issues pertaining to the Project as OWNER requires, Contractor raises, or ENGINEER reasonably requests;
3. such auditing services as OWNER requires to ascertain how or for what purpose Contractor has used the moneys paid; and
4. placement and payment for advertisement for Bids in appropriate publications.

J. Advise ENGINEER of the identity and scope of services of any independent consultants employed by OWNER to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering and constructability review.

K. Furnish to ENGINEER data as to OWNER's anticipated costs for services to be provided by others for OWNER so that ENGINEER may make the necessary calculations to develop and periodically adjust ENGINEER's opinion of Total Project Costs.

L. If Resident Project Representative services are not provided pursuant to paragraph A.1.05.B.1 or otherwise, provide a representative to observe the progress and quality of the Work.

M. If OWNER designates a construction manager, an individual or entity other than, or in addition to, ENGINEER to represent OWNER at the site, define and set forth in this Exhibit B the duties, responsibilities and limitations of authority of such other party and the relation thereof to the duties, responsibilities and authority of ENGINEER.

N. Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings and Substantial Completion, final payment, and warranty inspections.

O. Provide the services of an independent testing laboratory to perform all inspections, tests and approvals of samples, materials and equipment required by the Contract Documents, or to evaluate the performance of materials, equipment and facilities of OWNER, prior to their incorporation into the Work, with appropriate professional interpretation thereof;

P. Provide inspection or monitoring services by an individual or entity other than ENGINEER (and disclose the identity of such individual or entity to ENGINEER) as OWNER determines necessary to verify:

1. that Contractor is complying with any Laws or Regulations applicable to Contractor's performing and furnishing the Work; or

2. that Contractor is taking all necessary precautions for safety of persons or property and complying with any special provisions of the Contract Documents applicable to safety.

Q. Provide ENGINEER with the findings and reports generated by the entities providing services pursuant to paragraphs B.1.00.P. and Q.

R. Perform or provide the following additional services:

Rural Development  
RUS Internal Use Only

SUGGESTED FORMAT  
(for use with 1910-1-FA, 1997 Edition)

This is **EXHIBIT C**, consisting of \_\_\_\_\_ pages, referred to in and part of the **Agreement between OWNER and ENGINEER for Professional Services -- Funding Agency Edition**, dated \_\_\_\_\_, \_\_\_\_\_.

Initial:  
OWNER \_\_\_\_\_  
ENGINEER \_\_\_\_\_

**Payments to ENGINEER for Services and Reimbursable Expenses**

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Article 4 of the Agreement is supplemented as follows:

**ARTICLE 4 -- PAYMENTS TO THE ENGINEER -- PERCENTAGE OF CONSTRUCTION COST METHOD**

**C.4.01 General**

A. OWNER shall pay ENGINEER for all services described in Part 1 of Exhibit A performed or furnished by ENGINEER, with the exception of the Resident Project Representative as follows:

1. For services performed or furnished under paragraph A.1.01, the Lump Sum amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) after the Study and Report Phase Services are considered complete as defined in Exhibit A.
2. For services performed or furnished under paragraphs A.1.02 through A.1.06 (excluding the services of the Resident Project Representative), an amount equal to \_\_\_\_\_ percent of the Construction Cost determined in accordance with Attachment 1. Accordingly the estimated total compensation will be \$ \_\_\_\_\_.
3. The Percent of Construction Cost compensation for services performed or furnished under paragraphs A.1.02 through A.1.06 shall be payable as follows:
  - a. A sum which equals 50 percent of the total compensation payable under paragraph C.4.01.A.2, above, after the Final Design Phase documents are completed and submitted to OWNER and AGENCY.
  - b. A sum which, together with the compensation provided under paragraph C.4.01.A.3.a, above, equals 70 percent of the total compensation payable under paragraph C.4.01.A.2, after Final Design Phase services are considered complete as defined in Exhibit A.
  - c. A sum, which, together with the compensation provided in paragraphs C.4.01.A.3.a and b, above, equals 80 percent of the total compensation payable under paragraph C.4.01.A.2, immediately after contracts for Work are awarded.
  - d. A sum equal to 15 percent of the total compensation payable under paragraph C.4.01.A.2 will be paid for general engineering review of the Contractor's Work during the construction period on percentage ratios identical to those approved by the ENGINEER as a basis upon which to make partial payments to the CONTRACTOR(s). Payments will be made on a monthly basis. However, payment under this paragraph and of such additional sums as are due the ENGINEER by reason of any necessary adjustments in the payment computations will be in an amount so that the aggregate of the sums paid to the ENGINEER under paragraphs C.4.01.A.3.a through C.4.01.A.3.d will equal 95

percent of the total compensation payable under paragraph C.4.01.A.2 as appropriately adjusted to reflect the actual Construction Cost incurred by OWNER.

e. A final payment which, together with the compensation provided in paragraphs C.4.01.A.3.a through C.4.01.A.3.d above, equals 100 percent of the total compensation payable under paragraph C.4.01.A.2, shall be made when it is determined that all services required by this Agreement under paragraphs A.1.02 through A.1.05 have been completed. Such payment includes payment for Post Construction phase services. ENGINEER remains responsible to OWNER for the technical adequacy and completeness of such services.

4. Progress invoicing prior to award of the Construction Agreement shall be based on ENGINEER's most recent estimate of probable Construction Cost for the Project, with appropriate adjustment upon award of the Construction Agreement(s). The initial construction award amount shall set the percentage figure to be applied in making such adjustments, and shall remain constant thereafter regardless of the impact of Change Orders. Final invoicing shall be based on final Construction Cost, including all Change Orders.

B. *Period of Service.* The compensation amount stipulated in paragraph C.4.01.A.2 is conditioned on a period of service not exceeding \_\_\_\_\_ months. Should such period of service to complete the Work be extended beyond this period, the compensation amount for ENGINEER's services shall be appropriately adjusted.

C. *Payments Upon Termination.* In the event of termination at any time during the performance of the services for which the ENGINEER's compensation is the amount set forth in paragraph C.4.01.A.2, ENGINEER shall be paid through the Effective Date of Termination according to the portion of services rendered. Provisions of paragraph 6.06.A of the Agreement shall apply in determining payment.

D. *Construction Cost Limit.* If paragraph 5.02 of the Agreement is amended and supplemented by Exhibit F, ENGINEER shall so modify the Contract Documents thereunder without an increase in compensation for services referenced in paragraph C.4.01.

#### **C.4.02 For Resident Project Representative Services**

A. OWNER shall pay ENGINEER for Resident Project Representative services under paragraph A.1.05 (Construction Phase) as follows:

1. Services and Reimbursable Expenses completed in accordance with Attachment 1.
2. The total compensation for Resident Project Representative services is predicated on the Contract Times not exceeding \_\_\_\_\_ months and is estimated to be \$\_\_\_\_\_ which such compensation shall not be exceeded without written approval of OWNER and concurrence of AGENCY.
3. ENGINEER will submit itemized invoices pursuant to paragraph 4.02.A for services furnished and Reimbursable Expenses incurred during the billing period. The invoice will be due and payable by the OWNER to the ENGINEER on or before the 10th day of the following period.
4. Payment for Resident Project Representative Services shall be on a monthly basis prorated according to the percentage of construction completed.

#### **C.4.03 For Additional Services**

- A. Additional Services are those services described in Part 2 of Exhibit A.
- B. OWNER shall pay ENGINEER for Additional Services as follows:

1. For services of ENGINEER's employees engaged directly on the Project pursuant to Part 2 of Exhibit A, an amount equal to the cumulative hours devoted to the Project by each billing class of ENGINEER's employees times the hourly rates for each applicable billing class plus Reimbursable Expenses.

2. ENGINEER's Standard Hourly Rates Schedule and Reimbursable Expenses Schedule is attached to this Exhibit C as Attachment 1.

3. The estimated total compensation for services un  
be exceeded without written approval of OWNER and the written concurrence of AGENCY.

#### **C.4.04 Reimbursable Expenses**

A. Compensation to ENGINEER under paragraph C.4.01 includes payment for the following categories of Reimbursable Expenses: transportation and subsistence incidental thereto; costs associated with obtaining bids or proposals from Contractor(s); toll telephone calls, facsimiles and courier services; reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items.

B. Reimbursable Expenses reasonably and necessarily incurred in connection with services provided under paragraphs C.4.02 and C.4.03 include providing and maintaining field office facilities including furnishings and utilities, subsistence and transportation for Resident Project Representatives and their assistants, and will be paid at the rates set forth in Attachment 1.

#### **C.4.05 ENGINEER's Consultants' Charges;**

A. Compensation to ENGINEER for services provided under Exhibit C includes:

1. ENGINEER's Consultants' charges.
2. ENGINEER'S general and administrative overhead and profit associated with its responsibility for and the expenses of such services and direct costs.

#### **C.4.06 Standard Hourly Rates**

A. Standard Hourly Rates set forth in Attachment 1 include salaries and wages paid to personnel in each billing class, the cost of customary and statutory benefits, general and administrative overhead, and operating margin or profit.

#### **C.4.07 Adjustments**

A. All adjustments to ENGINEER's compensation shall be in accordance with generally accepted accounting practices as applied on a consistent basis by ENGINEER and consistent with ENGINEER's overall compensation practices and procedures.

B. The Standard Hourly Rates and Reimbursable Expenses Schedules used in determining compensation payable to ENGINEER will be adjusted annually (as of \_\_\_\_\_) to reflect equitable changes in the various components of said schedules.

**C.4.08 Summary of Payments to ENGINEER**

A. The compensation provisions of this Exhibit C are summarized as follows:

<u>Description of Service</u>	<u>Amount</u>	<u>Basis of Payment</u>
1. Study and Report Phase Complete	\$ _____	Lump Sum
2. Basic Services		
a. Final Design Phase Documents Completed and Submitted to OWNER and AGENCY	\$ _____ *	Percentage
b. Final Design Phase Complete	\$ _____ *	Percentage
c. Contracts Awarded	\$ _____ *	Percentage
d. Construction Phase Periodic Payments (Aggregate)	\$ _____ *	Percentage
e. Construction Phase Complete	\$ _____ *	Percentage
3. Resident Project Representative Services	\$ _____ **	Attachment 1
4. Additional Services	\$ _____ **	Hourly   Expenses
<b>TOTAL ESTIMATED CONTRACT AMOUNT</b>	<b>\$ _____ **</b>	

\* Compensation items so designated are estimates only, and ENGINEER's total compensation amount shall be based on final Construction Cost, including change orders.

\*\* Compensation items so designated are estimates only, and ENGINEER shall be paid in full for all authorized Project-related services.

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(for use with 1910-1-FA, 1997 Edition)

This is **EXHIBIT C**, consisting of \_\_\_\_\_ pages, referred to in and part of the **Agreement between OWNER and ENGINEER for Professional Services -- Funding Agency Edition**, dated \_\_\_\_\_, \_\_\_\_\_.

Initial:  
OWNER \_\_\_\_\_  
ENGINEER \_\_\_\_\_

**Payments to ENGINEER for Services and Reimbursable Expenses**

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Article 4 of the Agreement is supplemented as follows:

**ARTICLE 4 -- PAYMENTS TO THE ENGINEER -- LUMP SUM METHOD**

**C.4.01 General**

A. OWNER shall pay ENGINEER for all services described in Part 1 of Exhibit A performed or furnished by ENGINEER, with the exception of Resident Project Representative services, as follows:

1. For services performed or furnished under paragraph A.1.01, the Lump Sum amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) after the Study and Report Phase Services are considered complete as defined in Exhibit A.
2. For services performed or furnished under paragraphs A.1.02 through A.1.06 (excluding the services of the Resident Project Representative), the Lump Sum amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_).
3. The Lump Sum compensation for services performed or furnished under paragraphs A.1.02 through A.1.06 shall be payable as follows:
  - a. A sum which equals 50 percent of the Lump Sum compensation payable under paragraph C.4.01.A.2, above, after the Final Design Phase documents are completed and submitted to OWNER and AGENCY.
  - b. A sum which, together with the compensation provided under paragraph C.4.01.A.3.a, above, equals 70 percent of the Lump Sum compensation payable under paragraph C.4.01.A.2, after Final Design Phase Services are considered complete as defined in Exhibit A.
  - c. A sum, which, together with the compensation provided in paragraphs C.4.01.A.3.a and b, above, equals 80 percent of the Lump Sum compensation payable under paragraph C.4.01.A.2, immediately after Contracts for Work are awarded.
  - d. A sum equal to 15 percent of the Lump Sum compensation payable under paragraph C.4.01.A.2 will be paid for general engineering review of the Contractor's Work during the construction period on percentage ratios identical to those approved by the ENGINEER as a basis upon which to make partial payments to the CONTRACTOR(s). Payments will be made on a monthly basis. However, payment under this paragraph and of such additional sums as are due the ENGINEER by reason of any necessary adjustments in the payment computations will be in an amount so that

the aggregate of the sums paid to the ENGINEER under paragraphs C.4.01.A.3.a through C.4.01.A.3.d will equal 95 percent of the Lump Sum amount stipulated in paragraph C.4.01.A.2.

e. A final payment which, together with the compensation provided in paragraphs C.4.01.A.3.a through C.4.01.A.3.d., equals 100 percent of the Lump Sum compensation payable under paragraph C.4.01.A.2. shall be made when it is determined that all services required under paragraphs A.1.02 through A.1.05 have been completed. Such payment includes payment for Post-Construction Phase services. ENGINEER remains responsible to OWNER for the technical adequacy and completeness of such services.

B. *Period of Service.* The compensation amount stipulated in paragraph C.4.01.A.2 is conditioned on a period of service not exceeding \_\_\_\_\_ months. Should such period of service be extended, the compensation amount for ENGINEER's services shall be appropriately adjusted.

C. *Payments Upon Termination.* In the event of termination at any time during the performance of the Basic Services for which the ENGINEER's compensation is the amount set forth in paragraph C.4.01.A.2, ENGINEER shall be paid through the Effective Date of Termination according to the portion of services rendered. Provisions of Paragraph 6.06.A of the Agreement shall apply in determining payment.

D. *Construction Cost Limit.* If paragraph 5.02 of the Agreement is amended and supplemented by Exhibit F, ENGINEER shall so modify the Contract Documents thereunder without an increase in compensation for Basic Services provided and furnished under paragraph C.4.01.

#### **C.4.02 For Resident Project Representative Services**

A. OWNER shall pay ENGINEER for Resident Project Representative services under paragraph A.1.05 (Construction Phase) as follows:

1. Services and Reimbursable Expenses in accordance with Attachment 1.
2. The total compensation for Resident Project Representative services is predicated on the Contract Times not exceeding \_\_\_\_\_ months and is estimated to be \$\_\_\_\_\_ which such compensation shall not be exceeded without written approval of OWNER and concurrence of AGENCY.
3. ENGINEER will submit itemized invoices pursuant to paragraph 4.02.A for services furnished and Reimbursable Expenses incurred during the billing period. The invoice will be due and payable by the OWNER to the ENGINEER on or before the 10th day of the following period.
4. Payment for Resident Project Representative Services shall be on a monthly basis prorated according to the percentage of construction completed.

#### **C.4.03 For Additional Services**

A. Additional Services are those services described in Part 2 of Exhibit A.

B. OWNER shall pay ENGINEER for Additional Services as follows:

1. For services of ENGINEER's employees engaged directly on the Project pursuant to Part 2 of Exhibit A, an amount equal to the cumulative hours devoted to the Project by each billing class of ENGINEER's employees times the hourly rates for each applicable billing class plus Reimbursable Expenses.
2. ENGINEER's Standard Hourly Rates Schedule and Reimbursable Expenses Schedule is attached to this Exhibit C as Attachment 1.
3. The estimated total compensation for services under this paragraph C.4.03 is estimated to be \$\_\_\_\_\_, which shall not be exceeded without the written approval of OWNER and the written concurrence of AGENCY.

#### **C.4.04 For Reimbursable Expenses**

A. Compensation to ENGINEER under paragraph C.4.01 includes payment for the following categories of Reimbursable Expenses: transportation and subsistence incidental thereto; costs associated with obtaining bids or proposals from Contractor(s); toll telephone calls, facsimiles and courier services; reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items.

B. Reimbursable Expenses reasonably and necessarily incurred in connection with services provided under paragraphs C.4.02 and C.4.03 include providing and maintaining field office facilities including furnishings and utilities, subsistence and transportation for Resident Project Representatives and their assistants, and will be paid at the rate set forth in Attachment 1.

#### **C.4.05 ENGINEER's Consultants' Charges**

- A. Compensation to ENGINEER for services provided under Exhibit C includes:
1. ENGINEER's Consultants' charges.
  2. ENGINEER's general and administrative overhead and profit associated with its responsibility for and the expenses of such services and direct costs.

#### **C.4.06 Standard Hourly Rates**

A. Standard Hourly Rates set forth in Attachment 1 include salaries and wages paid to personnel in each billing class, the cost of customary and statutory benefits, general and administrative overhead, and operating margin or profit.

#### **C.4.07 Adjustments**

A. All adjustments to ENGINEER's compensation shall be in accordance with generally accepted accounting practices as applied on a consistent basis by ENGINEER and consistent with ENGINEER's overall compensation practices and procedures.

B. The Standard Hourly Rates and Reimbursable Expenses Schedules used in determining compensation payable to ENGINEER will be adjusted annually (as of \_\_\_\_\_) to reflect equitable changes in the various components of said schedules.

**C.4.08 Summary of Payments to ENGINEER**

A. The compensation provisions of this Exhibit C are summarized as follows:

<u>Description of Service</u>	<u>Amount</u>	<u>Basis of Payment</u>
1. Study and Report Phase Complete	\$ _____	Lump Sum
2. Basic Services		
a. Final Design Phase Documents Completed and Submitted to OWNER and AGENCY	\$ _____	Lump Sum
b. Final Design Phase Complete	\$ _____	Lump Sum
c. Contracts Awarded	\$ _____	Lump Sum
d. Construction Phase Periodic Payments (Aggregate)	\$ _____	Lump Sum
e. Construction Phase Complete	\$ _____	Lump Sum
3. Resident Project Representative	\$ _____*	Attachment 1
4. Additional Services	\$ _____	Hourly   Expenses
<b>TOTAL ESTIMATED CONTRACT AMOUNT</b>	<b>\$ _____*</b>	

\* Compensation amounts so designated are estimates only, and ENGINEER shall be paid in full for all authorized Project-related services.

RUS Internal Use Only

This is **Attachment 1** consisting of \_\_\_\_\_ pages, referred to in and part of the **Agreement between OWNER and ENGINEER for Professional Services -- Funding Agency Edition** dated \_\_\_\_\_, \_\_\_\_\_.

Initial:  
 OWNER \_\_\_\_\_  
 ENGINEER \_\_\_\_\_

**Standard Hourly Rates and Reimbursable Expenses Schedule**

Current agreements for engineering services stipulate that the Standard Hourly Rates and Reimbursable Expenses are subject to periodic review and adjustment as stated in Exhibit C. Hourly rates in effect on the date of the Agreement are:

Billing Class 9	Senior Associate	\$ _____/hour
Billing Class 8	Staff Manager	_____/hour
Billing Class 7	Professional VI	_____/hour
Billing Class 6	Professional V	_____/hour
Billing Class 5	Professional IV	_____/hour
Billing Class 4	Professional III	_____/hour
Billing Class 3	Professional II	_____/hour
Billing Class 2	Technician II	_____/hour
Billing Class 1	Technician I	_____/hour
Principal		_____/hour
Support Staff		_____/hour

Reimbursable Expenses rates in effect on the date of the Agreement are:

FAX Receipt and Transmission	\$ _____/page
8½"x11" Black and White Copies	_____/page
8½"x11" Color Copies	_____/page
Blue Print Copies	_____/sq. ft.
Reproducible Copies (Mylar)	_____/sq. ft.
Reproducible Copies (Paper)	_____/sq. ft.
Mileage (auto)	_____/mile
Field Truck Daily Charge	_____/day
Mileage (Field Truck)	_____/mile
Field Survey Equipment	_____/day
Confined Space Equipment	_____/day plus expenses
Resident Project Representative Equipment	_____/month
Computer CPU Charge	_____/hour
Personal Computer Charge	_____/hour
CAD Charge	_____/hour
CAE Terminal Charge	_____/hour
Flow Meter Charge	_____/week, or \$ _____/month
Rain Gauge	_____/week, or \$ _____/month
Sampler Charge	_____/week, or \$ _____/month
Soil Sampling	_____/sample
Groundwater Sampling	_____/sample
Electronic Media Charge	_____/hour
Long Distance Phone Calls	at cost
Meals and Lodging	_____
Engineer's Consultants	cost plus 15 percent

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This is **EXHIBIT D**, consisting of \_\_\_\_\_ pages, referred to in and part of the **Agreement between OWNER and ENGINEER for Professional Services -- Funding Agency Edition**, dated \_\_\_\_\_, \_\_\_\_\_.

Initial:  
OWNER \_\_\_\_\_  
ENGINEER \_\_\_\_\_

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

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**D.6.02 Resident Project Representative**

A. ENGINEER shall furnish a Resident Project Representative ("RPR"), assistants and other field staff to assist ENGINEER in observing progress and quality of the Work. The RPR, assistants and other field staff under this Exhibit D shall provide full time representation unless waived by AGENCY.

B. Through such additional observations of Contractor's work in progress and field checks of materials and equipment by the RPR and assistants, ENGINEER shall endeavor to provide further protection for OWNER against defects and deficiencies in the Work. However, ENGINEER shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over Contractor's work nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences or procedures selected by Contractor, for safety precautions and programs incident to the Work, for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's performing and furnishing the Work, or responsibility of construction for Contractor's failure to furnish and perform the Work in accordance with the Contract Documents. In addition, the specific limitations set forth in paragraph A.1.05 are applicable.

C. The duties and responsibilities of the RPR are limited to those of ENGINEER in ENGINEER's Agreement with the OWNER and in the construction Contract Documents, and are further limited and described as follows:

1. *General:* RPR is ENGINEER's agent at the Site, will act as directed by and under the supervision of ENGINEER, and will confer with ENGINEER regarding RPR's actions. RPR's dealings in matters pertaining to the Contractor's work in progress shall in general be with ENGINEER and Contractor, keeping OWNER advised as necessary. RPR's dealings with subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with OWNER with the knowledge of and under the direction of ENGINEER.
2. *Schedules:* Review the progress schedule, schedule of Shop Drawing submittals and schedule of values prepared by Contractor and consult with ENGINEER concerning acceptability.
3. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.
4. *Liaison:*
  - a. Serve as ENGINEER's liaison with Contractor, working principally through Contractor's superintendent and assist in understanding the intent of Contract Documents; and assist ENGINEER in serving as OWNER's liaison with Contractor when Contractor's operations affect OWNER's on-Site operations.
  - b. Assist in obtaining from OWNER additional details or information, when required for proper execution of the Work.

5. *Interpretation of Contract Documents:* Report to ENGINEER when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by ENGINEER.
6. *Shop Drawings and Samples:*
- a. Record date of receipt of approved Shop Drawings and Samples.
  - b. Receive Samples which are furnished at the Site by Contractor, and notify ENGINEER of availability of Samples for examination.
  - c. Advise ENGINEER and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample for which RPR believes that the submittal has not been approved by ENGINEER.
7. *Modifications:* Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report with RPR's recommendations to ENGINEER. Transmit to Contractor in writing decisions as issued by ENGINEER.
8. *Review of Work, Rejection of Defective Work, Inspections and Tests:*
- a. Conduct on-Site observations of Contractor's work in progress to assist ENGINEER in determining if the Work is in general proceeding in accordance with the Contract Documents.
  - b. Report to ENGINEER whenever RPR believes that any part of Contractor's work in progress will not produce a completed Project that conforms generally to the Contract Documents or will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise ENGINEER of that part of Contractor's work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
  - c. Verify that tests, equipment and systems startups and operating and maintenance training are conducted in the presence of appropriate personnel, and that Contractor maintains adequate records thereof; and observe, record and report to ENGINEER appropriate details relative to the test procedures and startups.
  - d. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections and report to ENGINEER.
9. *Inspections, Tests, and System Startups:*
- a. Consult with ENGINEER in advance of scheduled major inspections, tests, and systems startups of important phases of the Work.
  - b. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate OWNER's personnel, and that Contractor maintains adequate records thereof.
  - c. Observe, record, and report to ENGINEER appropriate details relative to the test procedures and systems startups.
10. *Records:*
- a. Maintain at the job Site orderly files for correspondence, reports of job conferences, reproductions of original Contract Documents including all Work Change Directives, Addenda, Change Orders, Field Orders, additional Drawings issued subsequent to the execution of the Contract, ENGINEER's clarifications and interpretations of the Contract Documents, progress reports, Shop Drawing and Sample submittals received from and delivered to Contractor and other Project related documents.
  - b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the job Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to ENGINEER.

- c. Record names, addresses and telephone numbers of all Contractors, subcontractors and major suppliers of materials and equipment.
- d. Maintain records for use in preparing Project documentation.
- e. Upon completion of construction furnish original set of all RPR Project documentation to ENGINEER.

11. *Reports:*

- a. Furnish to ENGINEER periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- b. Draft and recommend to ENGINEER proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
- c. Furnish to ENGINEER and OWNER copies of all inspection, test, and system startup reports.
- d. Report immediately to ENGINEER the occurrence of any Site accidents, any Hazardous Environmental Conditions, emergencies, or acts of God endangering the Work, and property damaged by fire or other causes.

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

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

14. *Completion:*

- a. Before ENGINEER issues a Certificate of Substantial Completion, submit to Contractor a list of observed items requiring completion or correction.
- b. Observe whether Contractor has had performed inspections required by Laws and Regulations applicable to the Work, including but not limited to those to be performed by public agencies having jurisdiction over the Work.
- c. Participate in a final inspection in the company of ENGINEER, OWNER, AGENCY's representative and Contractor and prepare a final list of items to be completed or corrected.
- d. Observe whether all items on final list have been completed or corrected and make recommendations to ENGINEER concerning acceptance and issuance of the Notice of Acceptability of the Work.

D. Limitations of Authority of RPR

Resident Project Representative shall not:

- 1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items), unless authorized by ENGINEER.
- 2. Exceed limitations of ENGINEER's authority as set forth in the Agreement or the Contract Documents.
- 3. Undertake any of the responsibilities of Contractor, subcontractors, suppliers, or Contractor's superintendent.



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

Rural Development

RUS Internal Use Only

SUGGESTED FORMAT  
(for use with No. 1910-1-FA, 1997 Edition)

This is **EXHIBIT E**, consisting of \_\_\_\_\_ pages, referred to in and part of the **Agreement between OWNER and ENGINEER for Professional Services -- Funding Agency Edition**, dated \_\_\_\_\_, \_\_\_\_\_.

Initial:  
OWNER \_\_\_\_\_  
ENGINEER \_\_\_\_\_

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**NOTICE OF ACCEPTABILITY OF WORK**

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PROJECT:

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OWNER:

CONSTRUCTION Contract Identification:

AGENCY:

CONTRACTOR:

EFFECTIVE DATE OF THE CONSTRUCTION AGREEMENT:

ENGINEER:

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To: \_\_\_\_\_ OWNER

And To: \_\_\_\_\_ AGENCY

And To: \_\_\_\_\_ CONTRACTOR

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The undersigned hereby gives notice to the above OWNER, AGENCY, and CONTRACTOR that the completed Work furnished and performed by CONTRACTOR under the above Contract is acceptable, expressly subject to the provisions of the related Contract Documents and the terms and conditions set forth on the reverse side hereof.

By: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_, 19\_\_\_\_

*(Reverse side of Notice)*

**CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK**

The Notice of Acceptability of Work (Notice) on the front side of this sheet is expressly made subject to the following terms and conditions to which all persons who receive said Notice and rely thereon agree:

1. Said Notice is given with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.
2. Said Notice reflects and is an expression of the professional judgment of ENGINEER.
3. Said Notice is given as to the best of ENGINEER's knowledge, information and belief as of the date hereof.
4. Said Notice is based entirely on and expressly limited by the scope of services ENGINEER has been employed by OWNER to perform or furnish during construction of the Project (including observation of Contractor's Work) under ENGINEER's Agreement with OWNER and under the Contract referenced on the reverse hereof, and applies only to facts that are within ENGINEER's knowledge or could reasonably have been ascertained by ENGINEER as a result of carrying out the responsibilities specifically assigned to ENGINEER under ENGINEER's Agreement with OWNER and the Contract referenced on the reverse hereof.
5. Said Notice is not a guarantee or warranty of CONTRACTOR's performance under the Contract referenced on the reverse hereof nor an assumption of responsibility for any failure of CONTRACTOR to furnish and perform the Work thereunder in accordance with the Contract Documents.

SUGGESTED FORMAT  
(for use with No. 1910-1-FA, 1997 Edition)

This is **EXHIBIT F**, consisting of \_\_\_\_ pages, referred to in and part of the **Agreement between OWNER and ENGINEER for Professional Services -- Funding Agency Edition**, dated \_\_\_\_\_, \_\_\_\_\_.

Initial:  
OWNER \_\_\_\_\_  
ENGINEER \_\_\_\_\_

**Construction Cost Limit**

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Paragraph 5.02 of the Agreement is amended and supplemented to include the following agreement of the parties:

**F.5.02. Designing to Construction Cost Limit.**

A. A Construction Cost limit in the amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) is hereby agreed to.

B. A bidding or negotiating contingency of \_\_\_\_\_ percent will be added to any Construction Cost limit established.

C. The acceptance by OWNER at any time during Basic Services of a revised opinion of probable Construction Cost in excess of the then established Construction Cost limit will constitute a corresponding increase in the Construction Cost limit.

D. ENGINEER will be permitted to determine what types of materials, equipment and component systems and the types and quality thereof are to be included in the Drawings and Specifications and to make reasonable adjustments in the scope, extent and character of the Project to the extent consistent with the Project requirements, sound engineering practices and the requirements of governmental authorities having jurisdiction in order to bring the Project within the Construction Cost limit.

E. If the Bidding or Negotiating Phase has not commenced within three months after completion of the Final Design Phase, or if industry-wide prices are changed because of unusual or unanticipated events affecting the general level of prices or times of delivery in the construction industry, the established Construction Cost limit will not be binding on ENGINEER, and OWNER shall consent to an adjustment in such Construction Cost limit commensurate with any applicable change in the general level of prices in the construction industry between the date of completion of the Final Design Phase and the date on which proposals or Bids are sought.

F. If the lowest bona fide proposal or Bid exceeds the established Construction Cost limit, OWNER shall (1) give written approval to increase such Construction Cost limit, (2) authorize negotiating or rebidding the Project within a reasonable time, or (3) cooperate in revising the Project's scope, extent or character to the extent consistent with the Project's requirements and with sound engineering practices. In the case of (3), ENGINEER shall modify the Contract Documents as necessary to bring the Construction Cost within the Construction Cost Limit.

G. All services of ENGINEER in respect of paragraph F.5.02.F shall be at the sole expense of ENGINEER. The providing of such services will be the limit of ENGINEER's responsibility in this regard and, having done so, ENGINEER shall be entitled to payment for services and expenses in accordance with this Agreement and will not otherwise be liable for damages attributable to the lowest bona fide proposal or bid exceeding the established Construction Cost.

SUGGESTED FORMAT  
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This is **EXHIBIT G**, consisting of \_\_\_\_ pages, referred to in and part of the **Agreement between OWNER and ENGINEER for Professional Services -- Funding Agency Edition**, dated \_\_\_\_\_, \_\_\_\_\_.

Initial:  
OWNER \_\_\_\_\_  
ENGINEER \_\_\_\_\_

**Insurance**

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Paragraph 6.05 of the Agreement is amended and supplemented to include the following agreement of the parties:

**G.6.05. Insurance.**

A. The limits of liability for the insurance required by paragraph 6.05.A and 6.05.B of the Agreement are as follows:

1. By ENGINEER:

- |                                                         |           |
|---------------------------------------------------------|-----------|
| a. Workers' Compensation:                               | Statutory |
|                                                         |           |
| b. Employer's Liability --                              |           |
| 1) Each Accident:                                       | \$ _____  |
| 2) Disease, Policy Limit:                               | \$ _____  |
| 3) Disease, Each Employee:                              | \$ _____  |
|                                                         |           |
| c. General Liability --                                 |           |
| 1) Each Occurrence (Bodily Injury and Property Damage): | \$ _____  |
| 2) General Aggregate:                                   | \$ _____  |
|                                                         |           |
| d. Excess or Umbrella Liability --                      |           |
| 1) Each Occurrence:                                     | \$ _____  |
| 2) General Aggregate:                                   | \$ _____  |
|                                                         |           |
| e. Automobile Liability --                              |           |
| 1) Bodily Injury:                                       |           |
| a) Each Accident                                        | \$ _____  |
|                                                         |           |
| 2) Property Damage:                                     |           |
| a) Each Accident                                        | \$ _____  |

[or]

- 1) Combined Single Limit  
(Bodily Injury and Property Damage):

Each Accident \$ \_\_\_\_\_

f. Other (specify):  
 \_\_\_\_\_ \$ \_\_\_\_\_

2. By OWNER:

a. Workers' Compensation: Statutory

b. Employer's Liability --  
 1) Each Accident \$ \_\_\_\_\_  
 2) Disease, Policy Limit \$ \_\_\_\_\_  
 3) Disease, Each Employee \$ \_\_\_\_\_

c. General Liability --  
 1) General Aggregate: \$ \_\_\_\_\_  
 2) Each Occurrence (Bodily Injury and  
 Property Damage): \$ \_\_\_\_\_

d. Excess Umbrella Liability --  
 1) Each Occurrence: \$ \_\_\_\_\_  
 2) General Aggregate: \$ \_\_\_\_\_

e. Automobile Liability --  
 1) Bodily Injury:  
 a) Each Accident \$ \_\_\_\_\_  
 2) Property Damage:  
 a) Each Accident \$ \_\_\_\_\_

[or]

1) Combined Single Limit  
 (Bodily Injury and Property Damage):  
 Each Accident \$ \_\_\_\_\_

f. Course of Construction (Builder's Risk) \$ \_\_\_\_\_

g. Other (specify):  
 \_\_\_\_\_ \$ \_\_\_\_\_

B. *Additional Insureds*

1. The following persons or entities are to be listed on OWNER's policies of insurance as additional insureds as provided in paragraph 6.05.B:

a. \_\_\_\_\_  
ENGINEER

b. \_\_\_\_\_  
ENGINEER'S CONSULTANT

c. \_\_\_\_\_  
ENGINEER'S CONSULTANT

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SUGGESTED FORMAT  
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This is **EXHIBIT H**, consisting of \_\_\_\_\_ pages, referred to in and part of the **Agreement between OWNER and ENGINEER for Professional Services -- Funding Agency Edition**, dated \_\_\_\_\_, \_\_\_\_\_.

Initial:  
OWNER \_\_\_\_\_  
ENGINEER \_\_\_\_\_

**Dispute Resolution**

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**H.6.09. Dispute Resolution**

A. OWNER and ENGINEER agree that they shall first submit any and all unsettled claims, counterclaims, disputes and other matters in question between them arising out of or relating to this Agreement or the breach thereof ("disputes"), to mediation by \_\_\_\_\_ prior to either of them requesting arbitration pursuant to paragraphs H.6.09.B through H.6.09.F. The requirement of paragraph H.6.09.C that a request for arbitration must be filed within a reasonable time shall be suspended with respect to a dispute submitted to mediation within that same applicable time limit and shall remain suspended until ten days after the termination of the mediation. The mediator of any dispute submitted to mediation under this Agreement shall not serve as arbitrator of such dispute unless otherwise agreed.

B. If the parties mutually agree, all disputes between OWNER and ENGINEER not resolved under paragraph H.6.09.A will be decided by arbitration in accordance with the \_\_\_\_\_ then obtaining, subject to the limitations and restrictions stated in paragraphs H.6.09.D and H.6.09.E below. Any such agreement so to arbitrate and any other agreement or consent to arbitrate entered into in accordance herewith as provided in this paragraph H.6.09 will be specifically enforceable under the prevailing law of any court having jurisdiction.

C. Notice of the demand for arbitration must be filed in writing with the other party to the Agreement and with the \_\_\_\_\_. The demand must be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event may the request for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

D. Except as provided in paragraph H.6.09.E below, no arbitration arising out of or relating to this Agreement will include by consolidation, joinder or in any other manner any other person or entity who is not a party to this Agreement unless each of the following is met:

1. the inclusion of such other person or entity is necessary if complete relief is to be afforded among those who are already parties to the arbitration;
2. such other person or entity is substantially involved in a question of law or fact which is common to those who are already parties to the arbitration and which will arise in such proceedings; and
3. the written consent of the other person or entity sought to be included and of OWNER and ENGINEER has been obtained for such inclusion, which consent shall make specific reference to this paragraph; but such consent shall



not constitute consent to arbitration of any dispute not specifically described in such consent or to arbitration with any party not specifically identified in such consent.

E. Notwithstanding paragraph H.6.09.D, if a claim, dispute or other matter in question between OWNER and ENGINEER involves the work or services of a Contractor, subcontractor, OWNER's consultant or ENGINEER's Consultants (each, a "Joinable Party"), either OWNER or ENGINEER may join such Joinable Party as a party to the arbitration between OWNER and ENGINEER hereunder, and ENGINEER or OWNER, as appropriate, shall include in each contract with each such Joinable Party a specific provision whereby such Joinable Party consents to being joined in an arbitration between OWNER and ENGINEER involving the work or such Joinable Party. Nothing in this paragraph H.6.09.E nor in the provision of such contract consenting to joinder shall create any claim, right or cause of action in favor of the Joinable Party and against OWNER or ENGINEER that does not otherwise exist.

F. All demands for arbitration and all answering statements thereto which include any monetary claim must contain a statement that the total sum or value in controversy as alleged by the party making such request or answering statement is not more than \$200,000 (exclusive of interest and costs). The arbitrators will not have jurisdiction, power or authority to consider, or make findings (except in denial of their own jurisdiction) concerning any claim, counterclaim, dispute or other matter in question where the amount in controversy of any such claim, counterclaim, dispute or matter is more than \$200,000 (exclusive of interest and costs), or to render a monetary award in response thereto against any party which totals more than \$200,000 (exclusive of interest and costs).

G. By written consent signed by all the parties to this Agreement and containing a specific reference hereto, the limitations and restrictions contained in paragraphs H.6.09.D and H.6.09.E may be waived in whole or in part as to any claim, counterclaim, dispute or other matter specifically described in such consent. No consent to arbitration in respect of a specifically described claim, counterclaim, dispute or other matter in question will constitute consent to arbitrate any other claim, counterclaim, dispute or other matter in question which is not specifically described in such consent or in which the sum or value in controversy exceeds \$200,000 (exclusive of interest and costs) or which is with any party not specifically described therein.

H. The award rendered by the arbitrators will be final, judgment may be entered upon it in any court having jurisdiction thereof, and will not be subject to modification or appeal.

SUGGESTED FORMAT  
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This is **EXHIBIT I**, consisting of \_\_\_\_\_ pages, referred to in and part of the **Agreement between OWNER and ENGINEER for Professional Services -- Funding Agency Edition**, dated \_\_\_\_\_, \_\_\_\_\_.

Initial:  
OWNER \_\_\_\_\_  
ENGINEER \_\_\_\_\_

**Special Provisions**

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Article(s) \_\_\_\_\_ of the Agreement is/are amended to include the following agreement(s) of the parties:

Rural Development  
RUS Internal Use Only