

AGREEMENT FOR ENGINEERING SERVICES

This Agreement, made this _____ day of _____, 2021, by and between **WEBB COUNTY, a political subdivision of the State of Texas**, hereafter referred to as the OWNER, and **Enprotec / Hibbs & Todd, Inc.** hereinafter referred to as the ENGINEER.

The Engineering services to be provided for pursuant to this "Agreement for Engineering Services" ("Agreement") are for the development of construction plans and specifications as well as pre-construction services and construction administration services regarding upgrades and improvements, which could also consist of new construction, to include either microfiltration or ultrafiltration ("MF/UF") to the Colorado Acres Reverse Osmosis Water Treatment Plant (the "Project") located in Webb County Texas.

General Engineering Services:

ENGINEER agrees to perform the various professional engineering services for the planning, design, and construction of said Project in accordance with the provisions of this Agreement. These professional engineering services shall include but are not limited to: (A) *Preliminary Design Phase* which shall consist of (1) Analyzing requirements of governmental authorities having jurisdiction to approve the portions of the Project designed by ENGINEER, (2) Preparing an Engineering Feasibility Report which contains schematic layouts, sketches, and conceptual design criteria with appropriate exhibits to indicate considerations available to OWNER which ENGINEER recommends and which said Report contents are consistent with Texas Water Development Board (TWDB) Guidelines for the Preparation of Engineering Feasibility Reports, which will be accompanied by ENGINEER's opinion of Total Project Costs, which includes opinion of probable Construction Costs, allowances for contingencies, and for the estimated total costs of design, professional and related services provided by ENGINEER, (3) Preparing an Environmental Information Document ("EID") for the Project in accordance with TWDB's instructions for the Preparation of EID documents, and (4) Preparing a Step one Reverse Osmosis ("RO") Design Report in accordance TCEQ guidelines for OWNER's review. (B) *Final Design Phase* which shall consist of (1) Acceptance by OWNER of the Preliminary Design Documents by OWNER with revised Opinion of probable Construction Cost subject to OWNER directed modification, (2) Prepare final Drawings indicating Scope of Work, (3) Prepare and Furnish Bidding Documents for review by OWNER, Legal Counsel to TWDB, TCEQ, and other appropriate advisers, (5) Submit two copies of final drawing with revised probable Construction Cost to OWNER, (6) provide the number of prime contracts for Work designed by ENGINEER upon which ENGINEER'S compensation has been established for RO System Improvements, and (7) OWNER approval of submittals, (C) *Construction Phase* which shall consist of (1) providing prime contract and overseeing General Administration of Construction Contract as OWNER'S Representative, (2) Construction Site Visits with observations of Contractor's Work at various intervals appropriate to the stages of construction, (3) Recommending to disapprove observed Defective Work and approve Work that will conform to the Contract Documents, (4) Issue necessary clarification and interpretation of Contract Document for an orderly completion of Contractor's Work as well as issue Field Orders, (5) Recommend to OWNER Change Orders and Work Change Directives, (6) take appropriate action with respect to Shop Drawing and Samples, (7) evaluate and determine acceptability of material and/or equipment substitutes, (8) require, if needed, special inspection or tests of Contractor's Work, (9) Render formal written decisions on all Claims made by OWNER and Contractor regarding acceptability of Work or interpretation of the Contract, (10) Review of Pay application and accompanying documentation submitted by Contractor, (11) Receive and Review Contractor Documents, including, but not limited to (a) maintenance and operating manuals, (b) bonds and insurance certificates, (12) Conduct with OWNER and Contractor inspection of Project to determine if Work is Substantially Completed, (13) Conduct a Final Inspection to determine Contractor's Work is acceptable to ENGINEER. The above is a General Description of Engineering Services required for the Project; however, the ENGINEER's Scope of Services under this Agreement is more specifically set out in this "Agreement for Engineering Services" ("Agreement") and under **EXHIBIT C** to this Agreement, which is attached to this Agreement and incorporated herein to this Agreement verbatim.

The project may be paid for in whole or in part with financial assistance from the State of Texas. The State of Texas nor any of their departments, agencies, boards, or employees is or will be a party to this Agreement or any subagreement. The ENGINEER agrees to perform the various professional engineering services for the planning, design, and construction of said Project in accordance with the provisions of this Agreement.

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SECTION A - GENERAL PROVISIONS

1. General

(a) This Agreement represents the entire and integrated Agreement between the OWNER and the ENGINEER for the Project and supersedes all prior negotiations, representations or agreements, either written or oral. In the event any provisions of this Agreement or any subsequent addendum shall be held to be invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provision, term, condition or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party. The General Provisions of this Agreement supersede any conflicting SPECIAL PROVISIONS.

(b) The ENGINEER will cooperate and work closely with OWNER and/or TDA, TCEQ and TWDB representatives.

(c) The ENGINEER will attend conferences or public hearings or meetings with the OWNER and/or TDA, TWDB, TCEQ or other interested parties and provide as assistance in connection with such undertakings as may be reasonably necessary in connection with this Project.

2. Responsibilities of the ENGINEER

(a) The ENGINEER shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all design drawings, specifications, reports, and other services furnished by the ENGINEER under this Agreement. The ENGINEER shall keep the OWNER informed of the performance of the ENGINEER'S duties under this Agreement. The ENGINEER, shall promptly and without additional compensation, correct or revise any errors, omissions, or other deficiencies in the design drawings, specifications, reports, and other services.

(b) The ENGINEER shall perform services (1) with professional skill and care ordinarily provided by competent engineers or architects practicing under the same or similar circumstances and professional license, and (2) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect. ENGINEER shall comply with all applicable state, federal and local laws, ordinances, rules, and regulations relating to the work to be performed and Engineer's performance. Additionally, ENGINEER shall follow any applicable requirements provided by OWNER in effect on the date of execution of any agreement OWNER may have executed with any state agency which has participated in funding this project.

(c) The OWNER'S review or approval of design drawings, specifications, reports, and other services furnished hereunder shall not in any way relieve the ENGINEER of responsibility for the technical adequacy of the work. Neither the OWNER'S or any local, or state agency review, approval or acceptance of, nor payment for any of the services shall be construed as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

(d) The ENGINEER shall be and shall remain liable, in accordance with applicable law, for all damages to the OWNER caused by the ENGINEER'S negligent performance of any of the services furnished under this Agreement, except for errors, omissions or other deficiencies to the extent attributable to the OWNER or OWNER-furnished data. The ENGINEER shall not be responsible for any time delays in the Project caused by circumstances beyond the ENGINEER'S control.

(e) The ENGINEER'S obligations under this Section 2 are in addition to the ENGINEER'S other express or implied assurances under this Agreement or State law and in no way diminish any other rights that the OWNER may have against the ENGINEER for faulty materials, equipment, or work.

3. Responsibilities of the OWNER

(a) The OWNER designates the Webb County Engineer as the person authorized to act as the OWNER'S representative. The OWNER or its representative shall receive and examine documents submitted by the ENGINEER, interpret and define the OWNER'S policies and render decisions and authorizations promptly in writing.

(b) The OWNER shall provide the ENGINEER copies of any and all completed or draft designs, plans, reports, studies, surveys and technical papers for the proposed project area, which OWNER may have, which would be of use to assist the ENGINEER in the design of the project.

4. Changes

(a) The OWNER may, at any time, by written order make changes within the general scope of this Agreement in the services or work to be performed. If such changes cause an increase or decrease in the ENGINEER'S cost or time required to perform any services under this Agreement, whether or not changed by any order, the OWNER shall make an equitable adjustment and modify this Agreement in writing. The ENGINEER must assert any claim for adjustment under this clause in writing within thirty (30) days from the date it receives the OWNER'S notification of change, unless the OWNER grants additional time before the date of final payment. At no additional cost to OWNER, OWNER shall have the right, within the first sixty (60) business days of notice to proceed, to direct ENGINEER to prepare construction plans and specifications for construction of the project in two or more phases.

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

5. Termination of Contract

(a) This Agreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this Agreement through no fault of the terminating party, provided that no such termination may be effected unless the other party is given (1) not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate and (2) an opportunity for consultation with the terminating party before termination.

(b) This Agreement may be terminated in whole or in part in writing by the OWNER for its convenience, provided that the ENGINEER is given (1) not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the OWNER prior to termination.

(c) If termination for default is effected by the OWNER, an equitable adjustment in the price provided for in this Agreement shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due to the ENGINEER at the time of termination may be adjusted to cover any additional costs to the OWNER because of the ENGINEER'S default.

(d) If termination for default is effected by the ENGINEER, or if termination for convenience is effected by the OWNER, the equitable adjustment shall include a reasonable profit for services or other work

performed. The equitable adjustment for any termination shall provide for payment to the ENGINEER for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by the ENGINEER relating to commitments which had become firm prior to the termination.

(e) Upon receipt of a termination action under paragraphs (a) or (b) above, the ENGINEER shall (1) promptly discontinue all affected work (unless the notice directs otherwise), (2) proceed to cancel promptly all existing orders and contracts insofar as these orders or contracts are chargeable to this agreement. As soon as practicable after receipt of notice of termination, the Engineer shall submit a statement showing in detail the services performed under this agreement to the date of termination and (2) deliver or otherwise make available to the OWNER within ten (10) days copies of all data, design drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the ENGINEER in performing this Agreement, whether completed or in process.

(f) Upon termination under paragraphs (a) or (b) above, the OWNER may take over the work and may award another party an Agreement to complete the work under this Agreement.

(g) If, after termination for failure of the ENGINEER to fulfill contractual obligations, it is determined that the ENGINEER had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of the OWNER. In such event, adjustment of the Agreement price shall be made as provided in paragraph (d) of this clause.

6. Payment

(a) The ENGINEER will submit to the OWNER for services rendered an itemized billing statement showing charges for such services accompanied by any additional documentation requested by the OWNER. These statements shall be sworn to be true and correct by the ENGINEER, or an officer or agent thereof, having knowledge of the facts set forth. The ENGINEER shall not include on these statements any item payable or chargeable under any other agreement with the County. The Engineer shall not be entitled to any compensation or expense reimbursement other than as set forth in this Agreement. The County Engineer shall review each statement and approve it with modifications, if any, as he may deem appropriate. The County agrees to pay each statement plus all amounts payable within 30 days after the County Auditor approves it. Further, the approval or payment of each statement shall not be considered evidence of performance by the Engineer to the point indicated by such statement or of the receipt or acceptance by the County of the work covered by the statement.

(b) Payments for ENGINEERING SERVICES of the Design Phase (Section B-1 through B-9 of this Agreement) and for ADDITIONAL ENGINEERING SERVICES of the Design Phase (Section D of this Agreement) which are contracted by a Firm Fixed Price Method, are due and payable monthly on the basis of the ENGINEER'S estimate of the percentage of completion of the phase or task, as appropriate.

(c) Payments for ENGINEERING SERVICES during the Construction Phase (Section B-11 through B-22 of this Agreement) are due and payable monthly based on percent ratios identical to those approved by the ENGINEER as a basis upon which to make partial payments to the contractor(s). Owner shall make payment to the ENGINEER within 30 days after receipt of an acceptable invoice.

(d) Payment for ADDITIONAL ENGINEERING SERVICES for the Construction Phase (Section D of this Agreement) performed in accordance with this Agreement are due and payable in accordance with the following:

1. One hundred percent (100%) of the firm fixed price upon completion and acceptance by the OWNER of completed ADDITIONAL ENGINEERING SERVICES.

(e) No payment request made under this clause shall exceed the estimated amount and value of the work and services performed by the ENGINEER under this Agreement. The ENGINEER shall prepare the

estimates of work performed and shall supplement them with such supporting data as the OWNER may require.

(f) Reimbursable Expenses incurred by ENGINEER directly related to the Project, as follows:

1. Permitting and other fees required by authorities having jurisdiction over the Project;
2. Printing, reproductions, plots, and standard form documents;
3. Postage, handling, and delivery;
4. Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner in writing or required for the Project;
5. Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective.
6. For Reimbursable Expenses the compensation shall be the expenses incurred by ENGINEER plus One percent (1 %) of the expenses incurred.

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

(h) Final payment under this Agreement or settlement upon termination of this Agreement shall not constitute a waiver of the OWNER'S claims against the ENGINEER under this Agreement.

7. Project Design

(a) Unless otherwise approved by the Owner, the ENGINEER shall specify materials, equipment, and processes which are readily available through competitive procurement and consistent with the OWNER'S requirements and applicable granting agency regulations or requirements.

(b) Project design criteria should be consistent with the criteria set forth in any applicable Facilities Plan and that meets the requirements of applicable granting agency regulations or requirements.

8. Audit and Access to Records

(a) The ENGINEER shall maintain books, records, documents, and other evidence directly pertinent to performance on work under this Agreement in accordance with generally accepted accounting principles and practices consistently applied, and State regulations in effect on the date of execution of this Agreement. The ENGINEER shall also maintain the financial information and data used by the ENGINEER in the preparation of support of the cost submission required under state and federal regulations in effect on the date of execution for any negotiated agreement or amendment thereof and a copy of the cost summary submitted to the Owner. The OWNER, or any state or federal agency participating in, or contributing funding to this project, or any of their duly authorized representatives shall have access to such books, records, documents, and other evidence for inspection, audit, and copying during normal business hours. The ENGINEER will provide proper facilities for such access and inspection.

(b) The ENGINEER agrees to make paragraphs (a) through (f) applicable to all agreements and subcontracts it awards and to make paragraphs (a) through (f) of this clause applicable to all amendments directly related to Project performance.

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

(d) The ENGINEER agrees to disclose all information and reports resulting from access to records under

paragraphs (a) and (b) of this clause to any of the agencies referred to in paragraph (a).

(e) Records under paragraphs (a) and (b) above shall be maintained and made available by the ENGINEER during performance of services under this Agreement and for three (3) years from the date of project acceptance by OWNER. In addition, those records which relate to any controversy arising under this Agreement, litigation, the settlement of claims arising out of such performance or to costs or items to which an audit exception has been taken shall be maintained and made available by the ENGINEER until three (3) years after the date of resolution of such appeal, litigation, claim or exception.

(f) This right of access clause applies to financial records pertaining to all agreements (except formally advertised, competitively awarded, fixed price agreements) and all agreement amendments regardless of the type of agreement related this Agreement for Engineering Services. In addition, this right of access applies to all records pertaining to all agreements and agreement amendments:

1. to the extent the records pertain directly to Agreement performance; or,
2. if there is any indication that fraud, gross abuse or corrupt practices may be involved; or,
3. if the Agreement is terminated for default or for convenience.

9. Subcontracts

(a) Any subcontractors and outside associates or consultants required by the ENGINEER in connection with services under this Agreement will be limited to such individuals or firms as were specifically identified and agreed to during negotiations, or as the OWNER specifically authorizes during the performance of this Agreement. The OWNER must give prior approval, in writing, for any substitutions, additions or deletions to such subcontractors, associates, or consultants.

(b) The ENGINEER may not subcontract services to subcontractors or consultants without the OWNER'S prior written approval.

(c) The ENGINEER shall not propose a subcontract without first determining that the entity to perform the work is a responsible contractor that possesses the potential ability to perform successfully under the terms and conditions of the proposed procurement. The ENGINEER shall provide a written statement on its finding of the responsibility of the contractor and shall include the proposed cost and pricing information for the work. For the purposes of this section a responsible contractor is one that has:

1. Financial resources, technical qualifications, experience, organization and facilities adequate to carry out the project, or a demonstrated ability to obtain these;
2. Resources to meet the completion schedule contained in the subagreement;
3. A satisfactory performance record for completion of subagreement;
4. Accounting and auditing procedures adequate to control property, funds and assets.

10. Insurance

The ENGINEER further agrees to obtain and maintain, at the ENGINEER'S expense, such insurance as will protect the ENGINEER from claims under the Workman's Compensation Act and such comprehensive general liability insurance as will protect the OWNER and the ENGINEER from all claims for bodily injury, death, or property damage which may arise from the performance by the ENGINEER or by the ENGINEER'S employees of the ENGINEER'S functions and services required under this Agreement.

The ENGINEER further agrees to obtain and maintain throughout the duration of this contract, insurance coverage written by companies authorized to do business in the State of Texas and rated A- or better in

the following types and amounts:

TYPE	AMOUNT
Workers' Compensation	Statutory Limit
Employer's Liability	Minimum limits of \$1,000,000 each-occurrence each accident/\$1,000,000 by disease each-occurrence/\$1,000,000 by disease aggregate
Professional Liability (E&O)	\$1,000,000.00 per Claim \$2,000,000.00 per Project Aggregate
Commercial General Liability	Minimum combined single limits of \$1,000,000 per-occurrence and \$2,000,000 general aggregate for bodily injury and property damage, which coverage shall include products/completed operations (\$1,000,000 products/completed operations aggregate), and XCU (Explosion, Collapse, Underground) hazards. Coverage must be written on an occurrence form. Contractual Liability must be maintained covering the Contractors obligations contained in the contract
Commercial Auto Liability	Minimum combined single limits of \$1,000,000 per-occurrence for bodily injury and property damage, including owned, non-owned, and hired car coverage
Errors & Omissions	Professional Liability with minimum limits of \$1,000,000 or higher, depending on the type, size, and scope of services. This coverage must be maintained for at least two (2) years after the project is completed. If coverage is written on a claims-made basis, a policy retroactive date equivalent to the inception date of the contract (or earlier) must be maintained during the full term the contract.

1. The Webb County shall be named as an additional insured with respect to General Liability and Automobile Liability.
2. All liability policies shall contain no cross liability exclusions or insured versus insured restrictions.
3. A waiver of subrogation in favor of the Webb County shall be contained in the Workers Compensation, and all liability policies.
4. All insurance policies shall be endorsed to require the insurer to immediately notify the Webb County of any material change in the insurance coverage.
5. All insurance policies shall be endorsed to the effect that the Webb County will receive at least sixty- (60) days' notice prior to cancellation or non-renewal of the insurance.
6. All insurance policies, which name the Webb County as an additional insured, must be endorsed to read as primary coverage regardless of the application of other insurance.
7. Required limits may be satisfied by any combination of primary and umbrella liability insurances.
8. Contractor may maintain reasonable and customary deductibles, subject to approval by the Webb County.

9. Insurance must be purchased from insurers that are financially acceptable to the Webb County.

All insurance must be written on forms filed with and approved by the Texas Department of Insurance. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent and shall contain provisions representing and warranting the following:

1. Sets forth all endorsements and insurance coverages according to requirements and instructions contained herein.
2. Shall specifically set forth the notice-of-cancellation or termination provisions to the Webb County.

Upon request, Contractor shall furnish the Webb County with certified copies of all insurance policies.

11. Data and Copyrights

The OWNER, or any participating federal or state agency, has an unrestricted right to use any data or information generated in the performance of this Agreement and the OWNER, or any participating federal or state agency has a royalty-free, irrevocable license to use any plans, specifications, reports, data or information generated as a part of this agreement. Any reuse or adaptation will be at OWNER's sole risk and without liability or legal exposure to ENGINEER.

12. Gratuities

(a) If the OWNER finds after a notice and hearing that the ENGINEER or any of the ENGINEER'S agents or representatives offered or gave gratuities (in the form of entertainment, gifts, or otherwise), to any official, employee, or agent of the OWNER, or any participating federal or state agency in an attempt to secure this Agreement or favorable treatment in awarding, amending or making any determinations related to the performance of this Agreement, the OWNER may, by written notice to the ENGINEER, terminate this Agreement. The OWNER may also pursue other rights and remedies that the law or this Agreement provides. However, the existence of the facts on which the OWNER bases such findings shall be in issue and may be reviewed in proceedings under the Remedies clause of this Agreement.

(b) In the event this Agreement is terminated as provided in paragraph (a), the OWNER may pursue the same remedies against the ENGINEER as it could pursue in the event of a breach of the Agreement by the ENGINEER. As a penalty, in addition to any other damages to which it may be entitled by law, the OWNER may pursue exemplary damages in an amount (as determined by the OWNER) which shall be not less than three nor more than ten times the costs the ENGINEER incurs in providing any such gratuities to any such officer or employee.

13. Covenant Against Contingent Fees

The ENGINEER assures that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the ENGINEER for the purpose of securing business. For breach or violation of this assurance the OWNER shall have the right to annul this Agreement without liability or, at its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fees.

14. [Intentionally left blank.]

15. Remedies

Unless otherwise provided in this Agreement, all claims, counter-claims, disputes, and other matters in question between the OWNER and the ENGINEER arising out of or relating to this Agreement or the breach

of it will be decided by a court of competent jurisdiction within the State in which the OWNER is located.

16. Compliance Standards

Under Section 231.006 of the Family Code, ENGINEER certifies that the individual or business entity named in this contract, bid or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.

ENGINEER has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Agreement.

ENGINEER represents and warrants that, pursuant to Section 2270.002 of the Texas Government Code, ENGINEER does not boycott Israel and will not boycott Israel during the term of the contract.

ENGINEER certifies that it is not listed on the federal government's terrorism watch list as described in Executive Order 13224.

ENGINEER represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.

17. Debarment Prohibition

(a) The ENGINEER agrees that at the time of execution of this Agreement that neither the ENGINEER nor any of its subcontractors are named on the master lists of debarments, suspensions, and voluntary exclusions/40 CFR PT 32 (Master List) and that it will not make any sub-agreement awards to any entity that is named on the Master List.

18. Address of Notices and Communications

All notices and communications under this Agreement shall be mailed by standard mail, certified mail, return receipt requested, or delivered to the ENGINEER at the following address:

Enprotec / Hibbs & Todd, Inc.
402 Cedar Street
Abilene, TX 79601
(325) 698-5560
[http: jordan.hibbs@e-t.com](http://jordan.hibbs@e-t.com)
Responsible Principal – Jordan S. Hibbs, P.E.

All notices and communications under this Agreement shall be mailed by standard mail, certified mail, return receipt requested, or delivered to the OWNER at the following address:

Webb County	with a copy to:	Webb County Engineer
Webb County Judge		1620 Santa Ursula, 2 nd Floor
1000 Houston Street, 3 rd Floor		Laredo, Texas 78040
Laredo, Texas 78040		

19. Limit of Appropriation

Prior to the execution of this Agreement, the ENGINEER has been advised by OWNER, and the ENGINEER fully understands and agrees this understanding and agreement is of the absolute essence to this Agreement, that the total maximum compensation that the ENGINEER may become entitled to hereunder, and the total

maximum sum that the OWNER shall become liable to pay to the ENGINEER, shall not, under any conditions, circumstances or interpretation, exceed the sum under this Agreement.

Notwithstanding any other provisions of this Agreement, OWNER'S obligations to pay any amount due under this agreement are contingent upon availability and continuation of funds for the payments and other obligations due hereunder. The OWNER may terminate this agreement, for non-appropriation of funds, and all payment obligations of the OWNER cease on the date of termination. Should termination be accomplished in accordance with this Section, the OWNER shall be liable only for payments due through the date of termination. This provision shall not be construed to abridge any other right of termination OWNER may have.

20. Successors and Assigns

The OWNER and the ENGINEER bind themselves and their successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement. Neither the OWNER nor the ENGINEER shall assign, sublet or transfer its or his interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body that may be a party.

21. Compliance and Standards

The ENGINEER agrees to perform the work in accordance with the applicable generally accepted standards and shall use that degree of care and skill commensurate with the engineering profession to comply with all applicable state, federal and local laws, ordinances, rules, and regulations relating to the work to be performed and ENGINEER's performance.

22. Ownership of Documents, Copyright

All documents including the original drawings, estimates, specifications, field notes and data will remain the property of ENGINEER as instruments of service. However, it is to be understood that the OWNER shall have free access to all such information with the right to make and retain copies of drawings and all other documents including field notes and data. Any reuse without specific written verification or adaption by ENGINEER will be at OWNER's sole risk and without liability or legal exposure to ENGINEER. Copies of all complete or partially completed mylar reproducible, preliminary layouts, record drawings, sketches and other documents prepared pursuant to this Agreement shall be delivered to OWNER when and if this Agreement is terminated or upon completion of this Agreement, whichever occurs first. The ENGINEER may retain one set of reproducible copies of the documents and these copies shall be for the ENGINEER's sole use in preparation of studies or reports for OWNER only. The ENGINEER is expressly prohibited from selling, licensing or otherwise marketing or donating these documents, or using the documents in the preparation of other work for any other client, without the prior express written permission of the County.

23. Indemnification

ENGINEER SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND OWNER, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED DAMAGES, COSTS, ATTORNEY FEES, AND EXPENSES TO THE EXTENT CAUSED BY, ARISING OUT OF, OR RESULTING FROM ANY ACTS OF NEGLIGENCE, INTENTIONAL TORTS, WILLFUL MISCONDUCT, PERSONAL INJURY OR DAMAGE TO PROPERTY, AND/OR OTHERWISE RELATED TO ENGINEER'S PERFORMANCE, AND/OR FAILURES TO PAY A SUBCONTRACTOR OR SUPPLIER BY THE ENGINEER

OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, CONSULTANTS UNDER CONTRACT TO ENGINEER, OR ANY OTHER ENTITY OVER WHICH THE ENGINEER EXERCISES CONTROL, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY ENGINEER WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS AND/OR OWNER WHEN NAMED A DEFENDANT IN ANY LAWSUIT AND ENGINEER MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL AND/OR OWNER. ENGINEER AND OWNER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

24. Modifications

This instrument contains the entire Agreement between the parties related to the rights herein granted and obligations herein assumed. Any oral or written representations or modifications concerning this instrument shall be of no force and effect excepting a subsequent modification in writing signed by both parties.

25. Authority of County Engineer

The County Engineer shall decide any and all questions that may arise as to the interpretation of this Agreement and all questions as to the acceptable fulfillment of this Agreement by the ENGINEER. His decision shall be final. It is mutually agreed by both parties that the County Engineer shall act as referee in all questions arising under the terms of this Agreement between the parties and that the decisions of the County Engineer in these matters shall be final and binding alike on both parties. Nothing contained in this section shall be construed to authorize the County Engineer to alter, vary or amend any of the terms or provisions of this Agreement.

26. Inconsistencies

Where there exists any inconsistency between this Agreement and other provisions of collateral contractual agreements that are made a part hereof by reference or otherwise, the provisions of this Agreement shall control.

27. Law of Texas

This Agreement shall be governed by and construed in accordance with the laws of the State of Texas and shall be enforced in the Webb County, Texas.

28. Headings

The headings used herein are for convenience of reference only and shall not constitute a part hereof or affect the construction or interpretation hereof.

29. Waiver

The failure on the part of any party to exercise or to delay in exercising, and no course of dealing with respect to any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies provided herein are cumulative and not exclusive of any remedies provided by law or in equity, except as expressly set forth herein.

30. Counterparts

This Agreement may be executed in any number of and by the different parties hereto on separate counterparts, each of which when so executed shall be deemed to be an original, and such counterparts shall together constitute but one and the same document.

31. Terminology and Definitions

All personal pronouns used herein, whether used in the masculine, feminine, or neutral, shall include all other genders; the singular shall include the plural and the plural shall include the singular.

32. Rule of Construction

The parties hereto acknowledge that each party and its legal counsel have reviewed and revised this agreement, and the parties hereby agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this agreement or any amendments or exhibits hereto.

33. Independent Contractor

The ENGINEER agrees that he is acting under this Agreement as an independent contractor. Neither the ENGINEER nor its employees, agents or representatives shall be considered employees of OWNER. Neither party shall be liable or accountable for any obligations incurred by the other party, except as specified herein, as the respective businesses of the parties are operated separately and apart from each other.

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SECTION B - ENGINEERING SERVICES

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

ENGINEERING SERVICES DURING THE DESIGN PHASE

1. The ENGINEER shall complete the ENGINEERING SERVICES described in Section B-2 through B-9 described herein, for the facilities listed in **Section E**, within **330** calendar days from the date of written authorization to proceed, unless otherwise mutually agreed to in writing by both parties, and will be initiated by the ENGINEER promptly after execution of Attachment I. Any supporting documentation or revisions regarding the ENGINEER'S services under this Agreement necessary to obtain the approval of any participating federal or state agency will be provided promptly.
2. The ENGINEER shall perform the necessary design surveys, accomplish the detailed design of the Project, prepare contract documents including design drawings, specifications and invitations for bids, and prepare a final opinion of probable Project cost based on the final design of the Project. The design drawings prepared shall be in sufficient detail to show the character and extent of the Project and to permit the actual location of the proposed improvements on the Project site. It is also understood that if subsurface explorations such as borings, or soil tests are required to determine amounts of rock excavation or foundation conditions, the ENGINEER will coordinate said explorations without additional charge, but the costs incident to such explorations, no matter whether they are performed by the ENGINEER or by others shall be paid for by the OWNER as indicated in Section C and set out in Attachment I.
3. The ENGINEER shall review any existing Facilities Plan prepared for this Project and, if necessary and upon consultation with and concurrence of the OWNER and any participating federal or state agency shall revise design criteria, design standards, and other appropriate preliminary design information included in the Facilities Plan or other preliminary engineering reports in order to complete the final design for the Project in accordance with the performance standards and accepted engineering practices. ENGINEER shall also prepare an "Engineering Feasibility Report" consistent with TWDB Guidelines and Prepare an "Environmental Information Document" also in accordance with TWDB instructions.
4. The ENGINEER shall assist the OWNER in obtaining necessary permits and approvals from appropriate Federal, State, and local regulatory agencies. The cost of obtaining such permits and approvals shall be borne by the OWNER.
5. The Contract Documents furnished by the ENGINEER under Section B-6 shall incorporate any forms and terms provided by any participating federal or state agency.
6. Sixty (60) days prior to the advertisement for bids, the ENGINEER shall provide for each construction contract to be awarded by the OWNER, ten (10) copies of detailed design drawings, specifications, and construction contract documents (which said contract documents shall be approved in writing by the Webb County Civil Legal Division prior to being included in any specification manual or bid documents), in a form approved by OWNER for use by the OWNER and appropriate Federal, State and local agencies from whom approval of the Project must be obtained. Additional copies of the above-specified documents shall be provided to the OWNER by the ENGINEER at production cost. Originals of such items as documents, survey notes, and tracings, prepared by the ENGINEER are and shall remain the property of the ENGINEER, but this shall in no way infringe upon the OWNER'S rights to such items under Section A-8, A-11, A-22.
7. The ENGINEER shall establish baselines for locating the work together with a suitable number of benchmarks adjacent to the work and show their location in the Contract Documents. This information and the Contract Documents will provide the contractor sufficient reference from which

to execute the contract work.

8. The ENGINEER shall prepare and furnish to the OWNER three (3) copies of maps or drawings showing the approximate location of needed construction easements, permanent easements, rights-of-way and land to be acquired. Such maps or drawings shall be furnished promptly to enable the OWNER to initiate property and easement acquisitions.
9. Sections B-1 through B-9 and those ADDITIONAL ENGINEERING SERVICES designated for the Design Phase in Section C will take effect upon execution of Attachment I.

ENGINEERING SERVICES DURING THE CONSTRUCTION PHASE

10. Performance of the services requested during this phase (construction phase) will be initiated by the ENGINEER promptly after execution of Attachment II and the OWNER, (and if applicable) with the concurrence of any participating federal or state agency, issues a written authorization to proceed. This phase of the contract is for 455 Calendar Days.
11. The ENGINEER, along with the Webb County Purchasing Agent, shall attend the bid opening and review the bid proposals and analyze the responsiveness of the bidders.
12. Upon Award of the Contract, the ENGINEER shall furnish to the OWNER, 5 (not less than five) sets of the design drawings, specifications and contract documents, in a form approved by OWNER, for execution by the OWNER and contractor. Additional copies of such contract documents shall be provided to the OWNER by the ENGINEER at production cost.
13. The ENGINEER shall review and approve, or conformance with the design concept all shop drawings and other submittals required by the Contract Documents to be furnished by contractors.
14. The ENGINEER shall interpret the intent of the design drawings and specifications to protect the OWNER against defects and deficiencies in construction on the part of the contractors.
15. The ENGINEER shall provide general engineering review of the work of the contractors as construction progresses to ascertain that the contractors are conforming with the design concept.
16. The ENGINEER'S undertaking hereunder shall not relieve the contractor of its obligation to perform the work in conformity with the Contract Documents and in a workmanlike manner; nor shall it make the ENGINEER an insurer of the contractor's performance; and shall not impose upon the ENGINEER any obligations to see that the work is performed in a safe manner.
17. The ENGINEER shall review each contractor's applications for progress and final payments and submit sufficient copies of same to the OWNER with the ENGINEER'S recommendation for approval or disapproval.
18. The ENGINEER shall prepare necessary contract change orders for approval of the OWNER and any participating federal or state agency as applicable.
19. The ENGINEER shall make an inspection prior to issuing the certificate of substantial completion of all construction and submit a written report to the OWNER, any participating federal or state agency if required, and any others as required.
20. Prior to submission of recommendation for final payment on each contract, the ENGINEER shall submit a certificate of substantial completion of work done under that contract to the OWNER, and any participating federal or state agency as required.

21. The ENGINEER shall provide the OWNER with one set of reproducible record (as-built) drawings, and two sets of prints. Such drawings will be based upon the construction records provided by the contractor during construction and reviewed by the ENGINEER.
22. Section B-10 through B-22 and those ADDITIONAL ENGINEERING SERVICES designated for the Construction Phase in Section C will take effect upon execution of Attachment II.

SECTION C – OUTSIDE CONSULTANTS & TESTING SERVICES

The following designated OUTSIDE CONSULTANTS & TESTING SERVICES shall be provided by the ENGINEER upon written authorization by the OWNER will be initiated by the ENGINEER promptly after execution of Attachment III and the concurrence of any participating federal or state agency if required by OWNER's contract with said state or federal agency. Agreed upon OUTSIDE CONSULTANTS & TESTING SERVICES will be designated by Design Phase (D) or Construction Phase (C) during which the service would be performed. Compensation for performing the designated OUTSIDE CONSULTANTS & TESTING SERVICES will be included on **Attachment III**.

Phase

- "D" **NO OUTSIDE CONSULTANTS & TESTING SERVICES are anticipated to be provided by ENGINEER.**
- "C" **NO OUTSIDE CONSULTANTS & TESTING SERVICES are anticipated to be provided by ENGINEER.**

The following designated CONSULTANTS & TESTING SERVICES shall be provided by the OWNER and OWNER shall coordinate the delivery of said services with the scheduling proposed by ENGINEER. CONSULTANTS & TESTING SERVICES will be designated by Design Phase (D) or Construction Phase (C) during which the service would be performed. Compensation for performing the designated CONSULTANTS & TESTING SERVICES shall be borne by OWNER.

Phase

- "N/A" Environmental Impact Statement – Design Phase.
- "N/A" Geotechnical report (subsurface borings) – Design Phase.
- "C" Materials and Density Testing – Construction Phase.

SECTION D – ADDITIONAL ENGINEERING SERVICES

The following designated ADDITIONAL ENGINEERING SERVICES shall be provided by the ENGINEER upon written authorization by the OWNER and the concurrence of any participating federal or state agency if required by OWNER's contract with said state or federal agency. Agreed upon ADDITIONAL ENGINEERING SERVICES will be designated by Design Phase (D) or Construction Phase (C) during which the service would be performed. The scope and compensation for performing the designated ADDITIONAL ENGINEERING SERVICES will be negotiated between the OWNER and ENGINEER once ENGINEER reviews the scope of work pertaining to the ADDITIONAL SERVICES requested. Compensation will be based on either Exhibit B – Hourly Rate Fee Schedule or Fixed Fee Lump Sum.

Phase

- "D" Design Surveying for Water Treatment Plant Improvements
- "C" Prepare a Comprehensive Plan of Operations Manual for RO Improvements

“C” Start-Up and Commissioning Support for full-scale Water Treatment Plant

“C” Develop an Air Permit by Rule for waste discharge via evaporation.

“C” Develop a liner certification for existing waste ponds.

SECTION E – CONSTRUCTION STANDARDS - ITEMS

The project consists of:

Developing construction plans and specifications regarding upgrades and improvements, which could also consist of new construction, to include either microfiltration or ultrafiltration (“MF/UF”) to the Colorado Acres Reverse Osmosis Water Treatment Plant (the “Project”) located in Webb County Texas.

WEBB COUNTY

ENPROTEC / HIBBS & TODD, INC.

TANO E. TIJERINA
COUNTY JUDGE

ATTESTED:

Margie Ramirez Ibarra
Webb County Clerk

APPROVED AS TO FORM:

Nathan R. Bratton
General Counsel
Civil Legal Division

*The General Counsel, Civil Legal Division’s office, may only advise or approve contracts or legal documents on behalf Webb County, its client. It may not advise or approve a contract or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval, and should seek review and approval of their own respective attorney(s).

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EXHIBIT A
Summary of Engineering Fees

The engineering fee to develop these plans, specifications, bid documents, cost estimates, construction staking and administration as described in this agreement is as follows:

Task	Phase	Fee
Preliminary Design Plans	D	\$ 50,410.00
Final Design	D	\$100,060.00
Bidding	C	\$ 16,320.00
Construction Phase Services	C	\$ 53,500.00
Additional Services (If approved by OWNER):		
a. Surveying	C	\$ 7,550.00
b. Plan of Operation Manual		\$ 3,920.00
c. Commissioning		\$ 7,800.00
d. Air Permit by Rule for Evaporation Pond		\$ 15,680.00
e. Liner Certification		\$ 4,700.00
Total Base Engineering Fee plus Additional Services, Not to Exceed		\$ 259,940.00

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EXHIBIT B
Hourly Rate Fee Schedule

There are no hourly fees contemplated for this project.

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EXHIBIT C
Scope of Services ENGINEER'S SERVICES

This EXHIBIT A, referred to in and part of the Agreement between OWNER and ENGINEER for Professional Services dated XXXXXX, 2021, for the Webb County Colorado Acres RO System Improvements Project.

ENGINEER shall provide Basic and Additional Services as set forth below.

I. Preliminary Design Phase

A. ENGINEER shall:

1. Consult with OWNER to define and clarify OWNER's requirements for the Project and available data. The Project consists of the following elements:
 - a. Upgrades to the Owner's Groundwater Treatment Facility that serves the Colorado Acres area. The project is anticipated to include either micro or ultrafiltration (MF/UF) and Reverse Osmosis (RO).
2. Prepare and submit financial aid applications on behalf of OWNER.
3. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project designed or specified by ENGINEER.
4. Prepare an Engineering Feasibility Report (the "Report") which will, as appropriate, contain schematic layouts, sketches and conceptual design criteria with appropriate exhibits to indicate the agreed-to-requirements, considerations involved and those alternate solutions available to OWNER which ENGINEER recommends. Report content shall be consistent with the Texas Water Development Board's (TWDB) Guidelines for the Preparation of Engineering Feasibility Reports. This Report will be accompanied by ENGINEER's opinion of Total Project Costs which will include: opinion of probable Construction Cost, allowances for contingencies and for the estimated total costs of design, professional, and related services provided by ENGINEER and, on the basis of information furnished by OWNER, allowances for other items and services included within the definition of Total Project Costs.
5. Prepare an Environmental Information Document (EID) in accordance with TWDB's Instructions for the Preparation of EID Documents.
 - a. Prepare proposed project descriptions and graphics necessary to obtain environmental approval of regulatory agencies. This is the first step in obtaining environmental compliance, which is required prior to obtaining design and construction funding for the proposed project improvements. This task also includes coordination with local, state and federal agencies, as identified in the TWDB's guidance document for developing Environmental Information Documents (EID), DW-001.
 - b. Develop a draft EID document, in conformance with TWDB's guidance document DW-001. This document will include a description of proposed improvements at each potentially disturbed site in the project, associated graphics of proposed improvements, discussion of compliance with the

Endangered Species Act and the Historical Preservation Act, as well as a discussion of any anticipated geological, archaeological, biological and socio-economical impacts to the community from completing the proposed project.

- c. Review the draft EID at an Environmental Information Document Review Meeting with Owner.
 - d. Incorporate Owner's review comments into a revised EID. Submit the revised EID to TWDB for review and approval.
 - e. Assist the Owner in responding to TWDB questions and/or comments on the draft EID during review of the EID by the TWDB.
 - f. Assist the Owner in advertisement of the Public Hearing required to officially submit the EID for environmental clearance.
 - g. Assist Owner in conducting the EID Public Hearing.
 - h. Incorporate TWDB review comments (if any) and the meeting notes from the EID Public Hearing into the finalized EID. Submit a final copy of the EID to the Owner, TWDB, TCEQ and EPA for their records.
6. Prepare a Step One RO Design Report in accordance with TCEQ guidelines.
- a. Sampling will be performed and paid for by the OWNER.
 - b. Furnish two (2) draft copies of the Report to OWNER and review it with OWNER.
 - c. Revise the Report in response to OWNER'S and other parties' comments, as appropriate, and furnish two (2) final copies of the Final Report to the OWNER.
 - d. Submit the Report to the TCEQ for Review.
- B. ENGINEER's services under the Preliminary Design Phase will be considered complete on the date when the final copies of the EFR, the Step One RO Design Report and the EID have been delivered to OWNER.

II. Final Design Phase

- A. After acceptance by OWNER 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, ENGINEER shall:
1. On the basis of the above acceptance, direction, and authorization, prepare final Drawings indicating 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. Advise OWNER of any adjustments to the Opinion of Probable Construction Cost and any adjustments to Total Project Costs known to ENGINEER.
 3. Prepare and furnish Bidding Documents for review and approval by OWNER, its legal counsel, the TWDB, the TCEQ, and other advisors, as appropriate, and assist OWNER in the preparation of other related documents.

4. Submit two (2) final copies of the Bidding Documents and a revised opinion of probable Construction Cost to OWNER. Print additional copies of documents as required during bidding.
- B. 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 one (1), as follows:
1. RO System Improvements.
- C. ENGINEER's Services under the Final Design Phase will be considered complete on the date when the submittals required above have been delivered to OWNER.

III. Bidding Phase

- A. After acceptance by OWNER of the Bidding Documents and the most recent opinion of probable Construction Cost as determined in the Final Design Phase, ENGINEER shall:
1. Assist OWNER in advertising for and obtaining bids for the Work for the one (1) prime contract and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, attend pre-bid conferences, and receive and process Contractor deposits or charges for the Bidding Documents.
 2. Issue Addenda as appropriate to clarify, correct, or change the Bidding Documents.
 3. Consult with OWNER as to the acceptability of subcontractors, suppliers, and other individuals and entities proposed by Contractor for those portions of the Work as to which such acceptability is required by the Bidding Documents.
 4. Attend the Bid opening, prepare Bid tabulation sheets, and assist OWNER in evaluating Bids or proposals and in assembling and awarding contracts for the Work.
- B. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective Contractors.

IV. Construction Phase

- A. Upon successful completion of the Bidding Phase, and upon written authorization from OWNER, ENGINEER shall provide the following services:
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. *Pre-Construction Conference.* Participate in a Pre-Construction Conference prior to commencement of Work at the Site.
 3. *Visits to Site and Observation of Construction.* In connection with observations of Contractor's work in progress while it is in progress:

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- a. Make visits to the Site at intervals appropriate to the various stages of construction, as ENGINEER deems necessary, but not less than four (4), in order to observe as an experienced and qualified design professional the progress and quality of the Work. Such visits and observations by ENGINEER, and the Inspector, if any, are not intended to be exhaustive or to extend to every aspect of Contractor's work in progress or to involve detailed inspections of Contractor's work in progress beyond the responsibilities specifically assigned to ENGINEER in this Agreement and the Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on ENGINEER's exercise of professional judgment as assisted by the Inspector, if any. Based on information obtained during such visits and such observations, ENGINEER will determine in general if Contractor's work is proceeding in accordance with the Contract Documents, and ENGINEER shall keep OWNER informed of the progress of the Work.
 - b. The purpose of ENGINEER's visits to, and representation by the Inspector, if any, at the Site, will be to enable ENGINEER to better carry out the duties and responsibilities assigned to and undertaken by ENGINEER during the Construction Phase, and, in addition, by the exercise of ENGINEER's efforts as an experienced and qualified design professional, to provide for OWNER a greater degree of confidence that the completed Work will conform in general to the Contract Documents and that 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 Contractor's work, or for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work. Accordingly, ENGINEER neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Contract Documents.
4. *Defective Work.* Recommended to OWNER that Contractor's work be disapproved and rejected while it is in progress if, on the basis of such observations, 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.
 5. *Clarifications and Interpretations; Field Orders.* Issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of Contractor's work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. ENGINEER may issue Field Orders authorizing minor variations from the requirements of the Contract Documents.
 6. *Change Orders and Work Change Directives.* Recommend Change Orders and Work Change Directives to OWNER, as appropriate, and prepare Change Orders and Work Change Directives as required.
 7. *Shop Drawings and Samples.* Review and take 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 or other action will not extend to means, methods, techniques, sequences or procedures of construction or to safety precautions and programs incident thereto. ENGINEER has an obligation to meet any Contractor's submittal schedule that has earlier been acceptable to ENGINEER.

8. *Substitutes and "or-equal."* Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by contractor, but subject to a reasonable number of substitution requests.
9. *Inspections and Tests.* Require such special inspections or tests of Contractor's work as deemed reasonably necessary, and receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Contract Documents. ENGINEER's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Contract Documents. ENGINEER shall be entitled to rely on the results of such tests.
10. *Disagreements between OWNER and Contractor.* Render formal written decisions on all claims of OWNER and Contractor relating to the acceptability of contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of Contractor's 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.
11. *Applications for Payment.* Based on ENGINEER's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:
 - a. Determine the amounts that ENGINEER recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute ENGINEER's representation to OWNER, based on such observations and review, that to the best of ENGINEER's knowledge, information and belief, Contractor's work has progressed to the point indicated, the quality of such work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and to any other qualifications stated in the recommendation), and the conditions precedent to contractor's being entitled to such payment appear to have been fulfilled in so far as it is ENGINEER's responsibility to observe Contractor's work. In the case of unit price work, ENGINEER's recommendations of payment will include final determinations of quantities and classifications of Contractor's work (subject to any subsequent adjustments allowed by the Contract Documents). The responsibilities of ENGINEER contained in this paragraph are expressly subject to the limitations set forth in subparagraph b. below 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 Contractor's work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to ENGINEER in this Agreement and the Contract Documents. Neither ENGINEER's review of Contractor's work for the

purposes of recommending payments nor ENGINEER's recommendation of any payment including final payment will impose on ENGINEER responsibility to supervise, direct, or control Contractor's work in progress or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on ENGINEER to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any portion of the work in progress, materials, or equipment has passed to OWNER free and clear of any liens, claims, security interests, or encumbrances, or that there may not be other matters at issue between OWNER and Contractor that might affect the amount that should be paid.

12. *Contractor's Completion Documents.*

- a. Receive and review maintenance and operating instructions, schedules, and guarantees.
- b. Receive bonds, certificates, or other evidence of insurance not previously submitted and required by the Contract Documents, certificates of inspection, tests and approvals, Shop Drawings, Samples and other data approved as specified, and the annotated record documents which are to be assembled by Contractor in accordance with the Contract Documents to obtain final payment. The extent of such ENGINEER's review will be limited as stated.
- c. ENGINEER shall transmit these documents to OWNER.

13. *Substantial Completion.* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with OWNER and Contractor, conduct an inspection to determine if the Work is Substantially Complete. If after considering any objections of OWNER, ENGINEER considers the Work Substantially Complete, ENGINEER shall deliver a certificate of Substantial Completion to OWNER and Contractor.

14. *Final Notice of Acceptability of the Work.* Conduct a final inspection to determine if the completed Work of Contractor is acceptable so that ENGINEER may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, ENGINEER shall also provide a "Notice of Acceptability of Work" that the Work is acceptable to the best of ENGINEER's knowledge, information, and belief and based on the extent of the services provided by ENGINEER under this Agreement.

- B. *Duration of Construction Phase.* The Construction Phase will commence with the execution of the first Construction Agreement for the Project or any part thereof and will terminate upon written recommendation by ENGINEER for final payment to Contractors.
- C. *Limitation of Responsibilities.* ENGINEER shall not be responsible for the acts or omissions of any Contractor, or of any of their subcontractors, suppliers, or of any other individual or entity performing or furnishing any of the Work. ENGINEER shall not be responsible for failure of any Contractor to perform or furnish the Work in accordance with the Contract Documents.

VI. *Additional Services Requiring OWNER's Authorization in Advance*

- A. If authorized in writing by OWNER, ENGINEER shall furnish or obtain from others Additional Services of the types listed below. These services will be paid for by OWNER.

1. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by ENGINEER or its design requirements including, but not limited to, changes in size, complexity, OWNER's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date of this Agreement or are due to any other causes beyond ENGINEER's control.
2. Furnishing services of ENGINEER's Consultants for other than Basic Services, or authorized Additional Services set forth in Section VIII below.
3. Services attributable to multiple prime construction contracts, in excess of the one (1) contemplated under this Agreement.
4. Services during out-of-town travel required of ENGINEER other than for visits to the Site or OWNER's office, or the Texas Water Development Board or Texas Commission on Environmental Quality.
5. 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.
6. Assistance in connections with Bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services.
7. Providing assistance in resolving any Hazardous Environmental Condition in compliance with current Laws and Regulations.
8. 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.
9. Other services performed or furnished by ENGINEER not otherwise provided for in this Agreement.

VII. Additional Services

- A. Upon execution of this agreement the ENGINEER shall be authorized to complete the following task:
 1. Provide design surveying for the water treatment plant improvements.
 2. Prepare a Comprehensive Plan of Operations Manual for the RO improvements (to be available upon commissioning of the new water treatment plant [WTP]).
 3. Start-up and Commissioning Support for full-scale WTP.
 4. Develop an Air Permit by Rule for waste discharge via evaporation. Any fees associated with this task will be paid for by the OWNER.
 5. Develop a liner certification for existing waste ponds.

ATTACHMENT I

ATTACHMENT I - Compensation for Engineering Services During the Design Phase

1. As set forth in the AGREEMENT FOR ENGINEERING SERVICES dated the _____ day of _____, 2021, by and between by and between WEBB COUNTY, the OWNER, and Enprotec / Hibbs & Todd, Inc. the ENGINEER, the OWNER and ENGINEER agree this _____ day of _____, 2021, that the OWNER shall compensate the ENGINEER for services described in Section B-1 through B-9 and Section C designated Design Phase services.

2. Compensation for ENGINEERING SERVICES shall be by a FIRM FIXED PRICE METHOD. The FIRM FIXED PRICE is:

\$150,470.00 (See Exhibit A – Summary of Engineering Fees: Subtotal - Design Phase)

3. The amount of compensation shall not change unless the scope of services to be provided by the ENGINEER changes and this Agreement is formally amended according to Section A-6.

4. Signatures

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

OWNER: WEBB COUNTY

Type Name: Luis Perez Garcia, P.E.
Title: Webb County Engineer
Date: _____

ENGINEER: Enprotec / Hibbs & Todd, Inc.

Type Name _____
Title PRINCIPAL
Date _____

DRAFT - Subject to Revision by County

ATTACHMENT II

ATTACHMENT II - Compensation for Engineering Services During the Construction Phase (including Additional Services)

1. As set forth in the AGREEMENT FOR ENGINEERING SERVICES dated the _____ day of _____, 2021, by and between by and between WEBB COUNTY, the OWNER, and Enprotec / Hibbs & Todd, Inc. the ENGINEER, the OWNER and ENGINEER agree this _____ day of _____, 2021, that the OWNER shall compensate the ENGINEER for services described in Section B-10 through B-22 and Section C designated as Construction services.

2. Compensation for ENGINEERING SERVICES shall be by a FIRM FIXED PRICE METHOD. The FIRM FIXED PRICE is:

\$109,470.00 (See Exhibit A – Summary of Engineering Fees: **Subtotal – Construction Phase**)

3. The amount of compensation shall not change unless the scope of services to be provided by the ENGINEER changes and this Agreement is formally amended according to Section A-6.

4. Signatures

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

OWNER: WEBB COUNTY

Type Name: Luis Perez Garcia, P.E.
Title: Webb County Engineer
Date: _____

ENGINEER: Enprotec / Hibbs & Todd, Inc.

Type Name _____
Title PRINCIPAL
Date _____

DRAFT - Subject to Revision by County

ATTACHMENT III

ATTACHMENT III - Compensation for Services During the Outside Consultants & Testing Services Phase

1. As set forth in the AGREEMENT FOR ENGINEERING SERVICES dated the _____ day of _____, 2021, by and between WEBB COUNTY, the OWNER, and Enprotec / Hibbs & Todd, Inc., the ENGINEER, the OWNER and ENGINEER agree this _____ day of _____, 2021, that the OWNER shall compensate the ENGINEER for services described in Section B-1 through B-9 and Section C designated Design Phase services and in Section B-10 through B-22 and Section C designated as Construction services.

2. Compensation for ENGINEERING SERVICES shall be by a FIRM FIXED PRICE METHOD. The FIRM FIXED PRICE is:

NO OUTSIDE CONSULTANTS & TESTING SERVICES are anticipated to be provided by ENGINEER. (See Exhibit A – Summary of Engineering Fees: Subtotal – Outside Consultants & Testing Services Phase)

3. The amount of compensation shall not change unless the scope of services to be provided by the ENGINEER changes and this Agreement is formally amended according to Section A-5.

4. Signatures

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

OWNER: WEBB COUNTY

Type Name: Luis Perez Garcia, P.E.

Title: Webb County Engineer

Date: _____

ENGINEER: Enprotec / Hibbs & Todd, Inc.

Type Name _____

Title: PRINCIPAL

Date _____

DRAFT - Subject to Revision by County