

PROFESSIONAL SERVICES AGREEMENT

INTRODUCTION

THIS CONTRACT AGREEMENT dated _____, 20____; by and between

ABC Consultant
123 Address
Anywhere, USA 12345
Project 01
City, State
ABC Company, Inc.

ABC Architect/Engineer

Addenda/amendments One, Two, Three
 Alternates None

Phone (505) 000-0000 Fax: (505) 000-0000
 hereinafter called the Subconsultant, and ABC Contractor
 hereinafter called the Contractor,
 hereinafter called the Project, located at City, State
 for the use and benefit of Owner
 hereinafter called the Owner, in accordance with plans and specifications
 prepared by
 hereinafter called the Architect/Engineer, including services outlined on
Exhibit "A"
 and as modified by the Owner's acceptance of Project 01
 now, therefore, the parties hereto have agreed and hereby do agree:

AGREEMENT ON THE PART OF THE CONSULTANT

1. The Subconsultant agrees to furnish all material and perform all work as hereinafter described in accordance with general conditions, special conditions, specifications and contract documents between the Contractor and the Owner. The Subconsultant hereby agrees to be bound to the Contractor, by the same terms, as the Contractor's contract with the Owner and assume toward the Contractor all obligations and responsibilities which the Contractor, by contract, assumes toward the Owner. Subconsultant agrees to perform this contract to the entire satisfaction of the Contractor and the Owner. The word Contractor and/or General Contractor used throughout the plans and specifications shall mean this Subconsultant as applicable to this Subconsultant's scope of work. The Subconsultant, by his execution of this agreement, acknowledges that he has fully examined these documents and has had all questions answered, to his satisfaction by the Architect/Engineer, and Contractor. Contractor shall recover damages it may sustain, as well as costs and attorney's fees which may arise from the enforcement of and suit for damages under this agreement attributable to Subconsultant negligence.
2. The Subconsultant agrees to furnish a Certificate(s) of Insurance to the Contractor in the amount equal to requirements (unless waived) approved by the Contractor. Premiums for such insurance shall be paid by the Subconsultant unless otherwise agreed to by the Contractor. The Subconsultant further agrees to carry sufficient compensation, contractual liability, and public liability insurance, in the minimum amount stipulated in the contract documents, to protect his workmen at all times and save the Contractor harmless, and to fully indemnify the Contractor from liability or suit arising from the negligent acts or omissions of the Subconsultant, including costs attached to the same. Failure to deliver certificates of insurance defined in the Insurance Paragraph(s) of this agreement within ten (10) days of the date of this agreement and prior to commencing work shall constitute sufficient cause for withholding of periodic payments, termination of this agreement, or other such action as the Contractor, in his sole discretion, may undertake to protect his interests.
3. The Subconsultant agrees to prosecute the work to be performed hereunder and endeavor to cause no delay whatever to the Contractor, separate Contractors, or other Subconsultants on the project. Subconsultant understands the phased construction requirements for this project and agrees to cooperate in the fullest extent possible. Should the Subconsultant fail to provide sufficient materials, equipment, or workmen to meet work schedules, fail to properly coordinate his work, become insolvent or unable to perform, fail to promptly pay bills or meet payrolls, refuse to follow the plans and specifications, cause delay to the Contractor, or in any other way fail to act in accordance with the terms of this agreement, it is agreed that the Contractor shall have the right to:
 - a. Withhold payments on account of labor and material already furnished until such time as satisfactory progress is resumed and maintained.
 - b. Upon three (3) days written notice given to the Subconsultant at his last known address, hire additional workmen, purchase materials, rent equipment or employ others to perform such portions of the work under this agreement and for the account of the Subconsultant, without terminating this agreement.

The Subconsultant expressly agrees to accept and to abide by the above clauses and further agrees that termination of contract shall not be made on the basis of any legal action against the Contractor to secure additional compensation of damages. However Subconsultant can stop work for a non payment. Subconsultant further agrees that in the event it becomes necessary to invoke this clause or the Subconsultant defaults on or abandons his work, outlined in Subconsultant's proposal dated __, excluding additional work, the paragraph (2) above applies.
4. The Subconsultant definitely agrees that under no condition will he remove from the jobsite any materials for which the Contractor or project becomes liable under the Federal Miller Act or similar state stature, where services are provided, without express written permission from the Contractor.
5. This Subconsultant agrees to perform his work in accordance with ABC Contractor Construction Progress Schedule as issued and revised. The start of each activity must be coordinated with the General Contractor prior to moving on the jobsite. Any deviation from the schedule must be approved by the Contractor. It is understood that the construction schedule may be changed by the General Contractor in accordance with subsequent updated schedules without changing any other terms or conditions of this Agreement.
6. Pursuant to Title III - Emergency Planning and Community Right-to-Know Act, Three (3) copies of applicable Material Safety Data Sheets (MSDS's) must be furnished to the contractor ten (10) days prior to the delivery of materials to the job site along with your HAZARDOUS COMMUNICATION PROGRAM. It shall also be the Subconsultant's responsibility to include this requirement in any lower tier Professional Services Agreements or material contracts and furnish same to Contractor. Failure to comply with this regulation is a breach of this Contract and payment due will be withheld until breach is rectified. Refer to enclosed Hazardous Material Notification Memo.

AGREEMENT ON THE PART OF THE CONTRACTOR

7. The Contractor agrees to pay the Subconsultant for the performance of this work fees outlined in Exhibit "A" in current funds, subject to additions and deductions for changes as may be agreed upon, and to make payment on account thereof promptly in accordance with the following provisions:
- a. Subconsultant shall prepare monthly payment applications.
 - b. If the payment application is not received by the 25th of the month, it will not be included in the Contractor's payment application to the Owner and Subconsultant's payment will be delayed accordingly until the next month's business.
 - c. No payments under this contract will be considered due until five (5) days after receipt by Contractor of such payment by the Owner, and only when all conditions of this contract relative to sales tax information, payroll reporting requirements, insurance certificates, previous payments certification, release of claims and satisfactory rate of progress have been met. The Subconsultant hereby acknowledges that it relies solely and exclusively on the credit of the Owner, not the Contractor, for payment for this Subconsultant's work. Receipt of payment by the Contractor from the Owner shall be a condition precedent to any payment to this Subconsultant. Provisions of this paragraph apply to the Subconsultant's rights and remedies against payment bond.
 - d. The Contractor reserves the right, and such right is hereby acknowledged, to withhold a fair and equitable amount from any payment due hereunder pending satisfactory settlement of any legitimate back-charges by the Contractor, claims or disputes attributable to Subconsultant's negligence.
 - e. Subconsultant shall not be entitled to receive final payment hereunder until the entire work to be done has been accepted by the Owner and final payment made to Contractor. Final payment will not be made until Subconsultant has submitted all required lien waivers, sales tax affidavits, operation and accuracy, etc. Acceptance of work or making of said final payment shall not relieve Subconsultant of liability for defects in said work which may thereafter be discovered said work refers to that outlined on Subconsultant's proposal dated _____, Exhibit "A".

PROVISIONS RELATING TO PERSONNEL

8. The Subconsultant agrees to cooperate to the fullest extent with Contractor's superintendent in charge, and further agrees to remove any workmen immediately that are not satisfactory to Contractor or Owner. Subconsultant agrees to perform the work included in this agreement at such times of the day, and days of the week, as may be designated by Contractor from time to time provided terms outlined in Subconsultant's proposal, Exhibit "A", dated _____ are met.
9. No overtime will be paid by the Contractor unless specifically agreed to in writing. No overtime work will commence by Subconsultant until authorized by Contractor in writing.
10. No extra work or changes under the contract shall be performed without written notice from the Contractor. Contractor may, if directed by the Owner, direct Subconsultant to proceed with certain changes or extras before a price agreement is reached. In such cases the Subconsultant will be directed in writing to proceed and will be paid an equitable amount for such work. If time allows, the price of all changes and extras will be agreed on prior to commencement of work, and the Subconsultant will be issued a written change to this contract. No modification of contract price shall be made and no work of lesser value than that called for in plans and specifications shall be accepted, except on written change orders signed by the Contractor. Subconsultant agrees to indemnify and hold harmless the Contractor for claims arising from losses or casualty which occurs while Subconsultant is completing any change order or extra work which has not as yet been incorporated into the contract, if attributable to Subconsultant's negligence.

MISCELLANEOUS PROVISIONS

11. Unless otherwise specifically agreed herein, payments on this contract are to be made in the same manner and amount as provided in the general contract between the Contractor and Owner, and as allowed and approved by the Owner, but in no event, will exceed ninety percent until the work has been accepted by the Owner. The remaining balance shall become due at the time of final approval by the Owner, such time shall be paid only when all obligations and agreements, except as provided herein, are fully carried out by the Subconsultant, outlined in Subconsultant's proposal dated _____ (Exhibit "A"), and the Subconsultant agrees to present in writing a full, detailed, and itemized statement of his claims and accounts, whether claimed under this contract or otherwise, together with the Owner's acceptance of his work, including also all just credits to Contractor, and to give in writing all information at his request that may be called for concerning accounts and claims and give the Contractor a reasonable time to consider same. In case of disagreement, each party agrees to make an honest and diligent effort to pursue dispute resolution in the jurisdiction where the services are provided.
12. Should the Subconsultant fail to promptly pay, when due, his labor payroll, freight, express, or material bills, which failure would cause the Contractor, at his Option, to advance funds to cover same; then the Contractor shall be entitled to charge ten percent for rendering this service. The Contractor is not obligated by this paragraph to make advances to the Subconsultant but may instead rely on the alternate method of withholding funds due the Subconsultant herein mentioned.
13. This Subconsultant further agrees to pay all City (Where Applicable), State and Federal Taxes of every nature, and that if this work is to be performed in a state foreign to the state of incorporation, in the event the Subconsultant is a corporation, then and in that event, the Subconsultant agrees to domesticate in the foreign state for the purposes of carrying out this contract. In this connection, it is understood and agreed that the Subconsultant shall

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pay all Social Security and State Unemployment Taxes in connection with his work, together with any and all required Sales or use Taxes. Unless using tax certificate exemption furnished by the State of New Mexico for Non-taxable certificate [#00-0000000-00-000000 dated 00/00/00](#).

14. The Subconsultant is to obtain and pay for all licenses and permits and to pay legal fees as well as complying with ordinances connected with this contract, and to comply with applicable state and federal statutes as well as applicable rules and regulations of state and federal regulatory bodies.

15. Subconsultant shall furnish the following information:

Incorporated? Yes No Federal ID No: NM CRS No:

Licensed Professional in the State of New Mexico? Yes No License Held: License No.

Small Business Concern? Yes No Minority Business Enterprise? Yes No

Disadvantaged Business Enterprise? Yes No Woman-Owned Business Enterprise? Yes No

Experience Modifier Rating (EMR)

Delays

16. No allowance of an extension of time, for any cause whatever, shall be claimed by the Subconsultant or be made to him unless the Subconsultant shall have made written request to the Contractor for such extension within forty-eight hours after the cause for such extension occurred, and unless the Contractor and Subconsultant have agreed in writing upon the allowance of additional time to be made. If such extension of time is requested as aforesaid and the Contractor and Subconsultant cannot agree thereupon, the Owner shall determine by certificate in writing what, if any, extension of time shall be allowed.

Damages

17. It is understood and agreed that notice of any damage which the Subconsultant alleges the Contractor or other Subconsultants have caused him or are causing him must be filed in writing with the Contractor within ten (10) days from commencement of such alleged damage and a full accounting filed within ten (10) days after the extent of damage is known or the cause of damage ceases, otherwise same will be considered void by both parties. The Subconsultant further agrees to make no claims against the contractor if his schedule or schedules created or furnished from time to time by the Contractor is or are not adhered to, it being understood that the Contractor will endeavor to expedite completion of the project as rapidly as possible and in so endeavoring may prepare schedules that in all cases may not be adhered to. Subconsultant hereby waives any and all claims and releases the Contractor from any delays, acceleration and extra costs attributable to scheduling, interference or failure to coordinate. Excluding additional work not on Subconsultant's proposal dated _____.

Authorization to Proceed

18. Upon execution of the Professional Services Agreement, the Subconsultant shall provide to Contractor a copy of the Subconsultant's Affirmative Action Plan. If the agency awarding the project contract work determines that the Subconsultant has become in non-compliance with his previously approved affirmative action program, this Professional Services Agreement may be deemed terminated forthwith and if not cured within 5 days, the Contractor shall be at liberty to take action deemed necessary including termination of contract.

Working Hours

19. Normal working hours for this project will be from ___ am to ___ pm Monday through Friday. All work should be scheduled during normal working hours. Subconsultant shall obtain approval for any deviation by submitting a written request to contractor to be received at least seventy-two hours in advance.
20. Subconsultant agrees to comply with all governmental rules and regulations contained in the Specifications including, but not limited to Davis-Bacon Act, Contract Work Hours and Safety Standards Act-Overtime Compensation, Payrolls, and Basic Records, Withholding of Funds, Professional Services Agreement's compliance with Davis-Bacon and Related Act Requirements, Certification of Eligibility, and Disputes Concerning Labor Standards Contract Termination-Debarment; and compliance with Copeland Act Requirements. Although the above rules and regulations are listed by reference only, it shall be the Subconsultant's responsibility to include the above rules and regulations in any lower tier Professional Services Agreement and to assure compliance by sub-Subconsultants with these rules and regulations.
21. Subconsultant shall submit, [when required by Contract](#), on a **weekly** basis an original and one (1) copy of the weekly Certified Payroll Reports ([within 3 days from actual pay date](#)) to the Contractor for subsequent transmittal to the State Labor Commissioner, Engineer and Owner. Failure to comply with this provision is a breach of this Subcontract and payment due will be withheld until breach is rectified.

Scope of Work

See Exhibit "A"

22. Subject only to the terms and conditions set forth herein, and all contract documents pertaining to the Project, the Subconsultant agrees to furnish all labor and material necessary to complete the work described on Subconsultant's proposal dated _____, Exhibit "A" added to this contract document:

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- A. Perform complete as required all surveying in accordance with the plans and specifications for Project as prepared by ABC Architect/Engineer
- B. Included are all items where and as indicated on the Drawings and in accordance with, but not by way of limitation to, the Contract Specifications and the ABC Company, Inc.'s specifications.
- C. Any damages assessed the Contractor for delays caused by this Subconsultant's negligent acts as applicable to his scope of work will be deducted from monies due this Subconsultant.
- D. Final payment will not be made until Subconsultant has submitted all required lien waivers, sales tax affidavits, related to the Subconsultant's scope of work.
- E. Subconsultant to be bound by the terms of the Contract Documents insofar as the same are applicable to this Subconsultant's scope of work.
- F. Monthly progress payments are to be made from itemized statements in accordance with provisions as contained herein and as approved by the Contractor and Owner.
- G. Services will be provided on an "as needed" basis for this agreement. Overtime and Saturdays will be charged at 150% of the standard rates. Sundays and Holidays will be charged at 200% of the standard rates.
- H. This is a unit price agreement. All quantities are estimated. Final payment will be based on actual percent (%) completed. Unit prices are as follows:

<u>SERVICE</u>	<u>STANDARD HOURLY RATE</u>
A	
B	
C	
D	

Changes in Scope of Work

- 23. Review, approval, or rejection of Subconsultant's submittals does not in any way change the terms of this Agreement or relieve Subconsultant of fulfillment of this order. Subconsultant must notify the Contractor, in writing, of any deviations from the specifications.

Terminations

- 24. Terminate this contact in accordance with applicable provisions of this agreement under the following terms and conditions:
 - (1) Prior to termination of this contract, Contractor shall give written notice to the Subconsultant by certified mail at his last known address of the nature and extent of the breach or corrective measurements required of the Subconsultant and shall allow seven (30) days from the date of mailing notice to correct such breach. In the event that Subconsultant has not corrected such breach within the allowed period, Contractor shall have the right to declare this contract terminated.
 - (2) In the event the contract is terminated for breach of contract or non-performance, the Contractor prime will pay the subcontractor for work completed and accepted by the prime as correct and complete as described in the scope of work and such work delivered prior to any notification of material breach of contract or act of contractual nonperformance on the part of the subcontractor. The subcontractor shall reimburse to the prime contractor such reasonable fees having been paid in excess of the work and scope accepted by the prime contractor in 24 (1).

The Subconsultant expressly agrees to accept and to abide by the above clauses and further agrees that termination of contract shall not be made on the basis of any legal action against the Contractor to secure additional compensation of damages. Subconsultant can stop or terminate work for a non payment, changed conditions negating proposed work or other reasonable cause(s). Subconsultant further agrees that in the event it becomes necessary to invoke this clause or the Subconsultant defaults on or abandons his work, outlined in Subconsultant's proposal dated____, excluding additional work, the paragraph (2) above applies.

In the event of the termination of the General Contract between the Contractor and the Owner, this Subconsultant shall also be terminated, upon written notice of the Contractor to the Subconsultant, and Contractor shall only be liable for labor and materials furnished and/or materials ordered for the project, up to the date of receipt of the written notice of termination, but only to the extent of the amount of work performed by Subconsultant prior to Subconsultant' receipt of written notice.

- 25. Subcontractor shall submit a Statement and Acknowledgement Standard Form 1413 to the Contractor. Failure to comply with this provision is a breach of this Subcontract and payment due will be withheld until breach is rectified.

Compensation & Payment

- 26. The Contractor agrees that he will present to the Owner any reasonable claim for payment, time extension or any other reasonable item which the Subconsultant in good faith chooses to submit, provided that the Subconsultant agrees to prepare all notices in a proper manner sufficiently in advance of the time for notice to permit the contractor to submit notice. Subconsultant agrees to prepare the documentation, comply with all other requirements of the Owner-Contractor agreement, and do all things necessary to enable the Contractor to present Subconsultant's claim. The Contractor agrees to cooperate with the Subconsultant in presenting Subconsultants claims, and Subconsultant agrees to cooperate with all other Subconsultants of Contractor in presenting claims, to the extent that such cooperation is reasonable. Subconsultant may not recover more from the Contractor than the amount the Contractor recovers from the Owner in his recovery on claims, which are essentially claims against the owner. The Subconsultant will be responsible for all legal fees and costs, which are incurred by the Contractor in pursuing a Subconsultant's claim against the Owner.

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27. All correspondence, invoices, other forms required by this agreement, and submittals shall be sent to the following address:

ABC Contractor
123 Address
Anywhere, USA 01234

Insurance

28. Contractor requires a Certificate of Insurance for each Professional Services Agreement. Subconsultant shall procure and maintain during the entire period of performance under this Professional Services Agreement insurance coverage by a company rated "A" by A. M. Best & Company and coverage shall comply with the following requirements:

- a. Subconsultant will provide proof of coverage by submitting to Contractor a Certificate of Insurance on an ACORD 25 form.
- b. The minimum coverages required are:

<u>TYPE</u>	<u>MINIMUM COVERAGE</u>
General Liability Insurance (Coverage to be Determined)	\$ _____ Each Occurrence \$ _____ Fire Damage (Any one fire) \$ _____ Medical Expense (Any one person) \$ _____ Personal & Advanced Injury \$ _____ General Aggregate \$ _____ Products
Automobile Liability Insurance (Coverage to be Determined)	\$ _____ Combined Single Limit (each accident) for ANY AUTO
Workers' Compensation (Limits to be Determined)	WC Statutory Benefits \$ _____ Employer's Liability
Professional Liability (Coverage to be Determined)	\$ _____ Each Claim and in the Aggregate

- c. Subconsultant's name as shown in this Agreement must be listed as the "Insured" on the certificate.
- d. Special provisions shall include the following paragraph and requirements of the paragraph shall be fully enforceable:
- e. The Certificate Holder shall be: ABC Contractor
123 Address
Anywhere, USA 01234
- f. The notice period for cancellation of any policy shall be thirty (30) days.
- g. The Certificate of Insurance must be signed by an authorized representative.
- h. Subconsultant agrees to procure and maintain and to require each of its sub-subcontractors to procure and maintain equivalent insurance coverage as described above.
- i. The Contractor has the right to refuse access to this or any other project if the Subconsultant has failed to provide proof of insurance as defined above or if the submitted insurance does not meet the requirements of this Agreement

Indemnification

- 29. The Subconsultant agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Contractor against damages, liability and costs arising from the negligent acts, errors or omissions of the Subconsultant in the performance of professional services under this Agreement, to the extent that the Subconsultant is responsible for such damages, liabilities and costs on a comparative basis of fault and responsibility between the Subconsultant and the Contractor. The Subconsultant shall not be obligated to indemnify the Contractor for the Contractor's own negligence.
- 30. This Subconsultant is to be in compliance with the Williams-Steiger Occupational Safety and Health Act of 1970. In the event that Subconsultant fails or refuses within three (3) days of written notice to comply with the provisions of OSHA. Contractor shall have a right to step in and correct any violations at Subconsultant's expense. Subconsultant agrees to promptly replace railing, toe boards, nettings, opening protections, which he has removed during his operation. Subconsultant agrees to save and hold harmless the Contractor from liability and damages, fines, costs and attorney's fees incurred by the

Contractor due to the Subconsultant's failure to comply with safety laws and regulations.

Liquidated Damages

31. If the Contract provides for liquidated or other damages for delay beyond the completion date set forth in the Contract, and such damages are assessed by the Owner against the Contractor, then the Contractor may assess such damages against the Subconsultant in proportion to its share of the responsibility for such delay and damage. The amount of such assessment against the Subconsultant, if any, shall not exceed the Subconsultant's proportionate share of the responsibility for such delay and damage.

Assignment

32. Neither party (i.e., Consultant or Contractor) shall assign this contract or any part thereof without the written consent of the other.

Equal Opportunity Compliance

33. AFFIRMATIVE ACTION:

A. The Subconsultant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, national origin or ancestry, or physical or mental handicap. The Subconsultant will take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, national origin or ancestry, physical or mental handicap. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment, recruitment advertising, layoff, termination, disciplinary actions and grievances, rates of pay or other forms of compensation, other terms and conditions of employment and selection for training, including apprenticeship.

B. The Subconsultant will make reasonable accommodation to the known physical or mental handicap of an otherwise qualified employee or applicant for employment as required bylaw, under the New Mexico State Human Rights Act (Sections 28-1-1 to 28-1-7, 28-1-9 to 28-1-14 NMSA 1978).

C. The Subconsultant will in all solicitations or advertisements for employees placed by or on behalf of the Subconsultant; state that all qualified applicants will receive consideration of employment without regard to race, color, religion, sex, age national origin or ancestry, or physical or mental handicap.

D. The Subconsultant will send to each labor union, organization, or representative of workers, with which it has a collective bargaining agreement or other contract or understanding, and training programs, a notice advising the labor union, organization or worker's representatives and training programs of its Equal Employment Opportunity (EEO) policy and request their cooperation in meeting its EEO obligations. The Subconsultant shall post copies of the notice in conspicuous places available to employees, applicants for employment and the general public.

E. The Subconsultant will post in conspicuous places available to employees, applicants for employment and the general public, nondiscrimination notices required to be posted by state and federal agencies.

F. In the event of the Subconsultant's noncompliance with the nondiscrimination clauses of this Contract or with any other applicable laws, rules or orders pertaining to Affirmative Action/Equal Employment Opportunity and Nondiscrimination, this Professional Services Agreement may be canceled, terminated or suspended in whole or in part.

G. The Subconsultant will include the provisions of Paragraphs (A) through (G) in every sub-subcontract or material contract (purchase order) so that such provisions shall be binding upon every sub-Subconsultant/supplier. The Subconsultant shall take such action, with respect to any sub-subcontract, as necessary to enforce such provisions, including sanctions provided for noncompliance.

34. Subconsultant certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. Subconsultant further agrees that it will obtain identical certifications from non-exempt Subconsultants and suppliers before the award of contracts under which Subconsultant or supplier will be subject to the Equal Opportunity clause. Subconsultant will submit separate Certification of Non-Segregated facilities to the General Contractor.

35. The Subconsultant shall take all reasonable precautions in the performance of the work under this contract to protect the safety and health of employees and of members of the public and shall comply with all applicable safety and health regulations and requirements (including reporting requirements). Subconsultant agrees to observe and comply with all applicable federal, state and local safety rules and regulations including, but not limited to, the Secretary of Labor's "Safety and Health Regulations for Construction", 29 CFR 1926, and the "Occupational Safety and Health Standards", 29 CFR 1910 in effect on the effective date of this Professional Services Agreement. Subconsultant agrees to indemnify and hold Contractor harmless for, of and from any loss, including but not limited to any fines, penalties and corrective measures Contractor may sustain by reason of Subconsultant's failure to comply with said laws, rules and regulations in connection with the performance of said Contract.

Subconsultant shall notify ABC Contractor and Owner's of adjacent property and of Underground Facilities and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property. All damage, injury or loss to any property by Subconsultant or any other person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, shall be remedied by Subconsultant (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or Engineer's Consultant or anyone employed by any of them or anyone for whose acts may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Subconsultant or the person or organization directly or indirectly employed by any of them). Subconsultant's duties and responsibilities for safety and for protection of the Work shall continue until

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such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Section 109.9 of the Contract Specifications that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

- 36. Subconsultant is responsible for his employees observing all applicable health and safety regulations and programs including the General Contractor's Safety Program. The total cost of any fines assessed the General Contractor as a result of safety violations by Subconsultant's workman shall be borne by the Subconsultant.

Title VI Compliance

The Subconsultant will comply with all provisions of Title VII of the US Civil Rights Act of 1964, as amended. Subconsultants, required by Section 5 of these Special Provisions to take affirmative action steps and/or to submit a written Affirmative Action Plan, will follow the guidelines found in Executive Order 11246, Revised Order No. 4 (41 CFR Part 60-2 or 60-4 as appropriate), 41 CFR Part 60-250 and 41 CFR Part 60-74 1 in the preparation of its Affirmative Action Plan and in the performance of its Affirmative Action/Equal Employment Opportunity duties under this Contract. Subconsultant will also comply with all applicable provisions of Executive Order 11246, Section 203 pertaining to Professional Services Agreements in excess of \$10,000.

Applicable Law

- 37. This Subconsultant's work will comply with all applicable federal and state statutes, rules and regulations of the State of New Mexico as they relate to Subconsultant's scope of work.

Consent to Jurisdiction and Venue

- 38. It is understood and agreed that both parties to this contract have read and understood the contract and all plans and specifications connected therewith. This contract shall be interpreted under the laws of the State of New Mexico. In the event of any litigation or arbitration on this contract, the parties agree, in advance, that the exclusive venue and place of jurisdiction is where services are provided.
- 39. Notwithstanding any other provision contained elsewhere in the general contract or this Professional Services Agreement, and superseding any contrary terms of those agreements, the Subconsultant agrees that, in the event of any picket or other form of labor dispute at the construction site, whether that dispute or picket is in connection with the Contractor, Subconsultant, or any other contractor or Subconsultant on this construction site. Subconsultant will continue to perform the work required herein without interruption or delay, provided the Subconsultant's personnel and equipment safety is provided by the Contractor or owner.
- 40. This contract constitutes the entire agreement between the parties and contains all of the stipulations and provisions agreed upon by the parties. This contract supersedes and takes precedence over all proposals, correspondence, and oral agreements between the Subconsultant and Contractor which were made prior to and including the date hereof and are not specifically identified and incorporated in writing in this Professional Services Agreement. If conflict between the terms and conditions of this agreement and of those of the specifications should arise or be present, the terms and conditions of this Professional Services Agreement shall take precedence over the specifications.

In witness whereof, the parties have executed this agreement, by their proper officers or duly authorized agents, Subconsultant agrees to execute and return Professional Services Agreement to Contractor within ten (10) from receipt of this Professional Services Agreement. In the event that Subconsultant fails to execute and return such Professional Services Agreement within 14 days of the date of mailing, Subconsultant shall be bound to all terms and conditions of the Professional Services Agreement as though it were in full force and effect and, by failure to execute within the appropriate time, waives all rights it might have to object to the specific language, terms, and conditions of such contract.

ABC CONTRACTOR

By _____
Title _____

SUBCONSULTANT

By _____
Title _____
Legal Address _____

CONTRACTOR IS COMMITTED TO A PROGRAM OF EQUAL OPPORTUNITY, MERIT EMPLOYMENT POLICIES AND AFFIRMATIVE ACTION AND PROHIBITS ANY DISCRIMINATION BASED ON RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN OR CITIZENSHIP STATUS.