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ConsensusDocs® 205
STANDARD SHORT FORM AGREEMENT BETWEEN OWNER AND CONSTRUCTOR
(Lump Sum Price)



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**STANDARD SHORT FORM AGREEMENT BETWEEN OWNER AND
CONSTRUCTOR
(Lump Sum Price)**

This Agreement is made this [] day of [], [], by and between

OWNER, Taos Soil and Water Conservation District

and

CONSTRUCTOR, []

Tax identification number (TIN) []. Contractor License No., if applicable []

Owner and Constructor are collectively the "Parties."

PROJECT: Ute Mountain Livestock Well

ARTICLE 1 THE WORK

THE WORK Constructor shall use its diligent efforts to perform the "Work," as described in Exhibit A, in an expeditious manner consistent with the Contract Documents. Constructor shall provide all labor, materials, equipment, and services necessary to complete the Work in full accord with and reasonably inferable from the Contract Documents.

ARTICLE 2 PRICE

PRICE As full compensation for performance by Constructor of the Work, Owner shall pay Constructor the lump sum price of [] dollars (\$[]). The lump sum price, "Contract Price," is subject to adjustment as provided in this Agreement.

ARTICLE 3 EXHIBITS

EXHIBITS The following attached exhibits are made part of this Agreement:

- (a) Exhibit A: The Work, 1 page.
- (b) Exhibit B: Existing Contract Documents, 2 pages.

ARTICLE 4 ETHICS

ETHICS Each Party shall perform their obligations with integrity. Each shall: (a) avoid conflicts of interest; (b) promptly disclose to the other Party any conflicts that arise; and (c) warrant that it has not and shall not pay nor receive any contingent fees or gratuities to or from the other Party, including its agents, officers, and employees, subcontractors, suppliers, or others to secure preferential treatment.

ARTICLE 5 CONSTRUCTOR'S RESPONSIBILITIES

5.1 CONSTRUCTOR'S RESPONSIBILITIES Constructor shall be responsible for supervision and coordination of the Work, including the construction means, methods, techniques, sequences, and procedures utilized, unless the Contract Documents give other specific instructions.



5.1.1 Except for permits and fees that are the responsibility of Owner pursuant to this Agreement, Constructor shall obtain and pay for all necessary permits, licenses, and renewals pertaining to the Work.

5.1.2 Constructor shall pay all applicable taxes for the Work provided by Constructor.

5.1.3 Owner may elect to perform work at the Worksite directly or by others retained by Owner. The Parties shall coordinate the activities of all forces at the Worksite and shall agree upon fair and reasonable schedules and operational procedures for Worksite activities. Owner shall require each separate contractor to cooperate with Constructor and to assist with the coordination of activities and the review of construction schedules and operations. Contract Price and Contract Time may be equitably adjusted in accordance with this Agreement for changes made necessary by the coordination of construction activities, and the construction schedule shall be revised accordingly.

5.1.4 Before commencing the Work, Constructor shall examine and compare the drawings and specifications with information furnished in the Contract Documents; relevant field measurements made by Constructor; and any visible conditions at the Worksite affecting the Work.

5.1.5 COMPLIANCE WITH LAWS Constructor shall comply with all laws at its own costs. Constructor shall be liable to Owner for all loss, cost, or expense, attributable to any acts or omissions by Constructor, its employees, subcontractors, suppliers, and agents for failure to comply with laws, including fines, penalties, or corrective measures.

5.1.6 WARRANTY

5.1.6.1 Constructor warrants that all materials and equipment shall be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. Constructor further warrants that the Work will be free from material defects not intrinsic in the design or materials required in the Contract Documents. Constructor's warranty does not include remedies for defects or damages caused by normal wear and tear during normal usage, use for a purpose for which the Project was not intended, improper or insufficient maintenance, modifications performed by Owner or others retained by Owner, or abuse.

5.1.6.2 If, prior to the Date of Substantial Completion and within one year after the date of Substantial Completion of the Work, any portion of the Work is found to be not in conformance with the Contract Documents ("Defective Work"), Owner shall promptly notify Constructor in writing. Unless Owner provides written acceptance of the condition, Constructor shall promptly correct the Defective Work at its own cost and time and bear the expense of additional services required for correction of any Defective Work for which it is responsible.

5.1.7 SAFETY Constructor shall have overall responsibility for safety precautions and programs in the performance of the Work, except that Constructor's subcontractors shall also be responsible for the safety of persons or property in the performance of their work, and for compliance with the provisions of laws. Constructor shall prevent against injury, loss, or damage to persons or property by taking reasonable steps to protect its employees and other persons at the Worksite; materials and equipment stored at on-site or off-site locations for use in the Work; and property located at the Worksite and adjacent to Work areas, whether or not the property is part of the Work.

5.1.8 HAZARDOUS MATERIALS A Hazardous Material is any substance or material identified now or in the future as hazardous under any federal, state, or local law or regulation, or any other substance or material which may be considered hazardous or otherwise subject to statutory or regulatory



requirement governing handling, disposal, or clean-up. Constructor shall not be obligated to commence or continue work until any Hazardous Material discovered at the Worksite has been removed, or rendered or determined to be harmless by Owner as certified by an independent testing laboratory and approved by the appropriate government agency. If Constructor incurs additional costs or is delayed due to the presence or remediation of Hazardous Material, Constructor shall be entitled to an equitable adjustment in the Contract Price or the Contract Time.

5.1.9 MATERIALS BROUGHT TO THE WORKSITE Constructor shall be responsible for the proper delivery, handling, application, storage, removal, and disposal of all materials and substances brought to the Worksite by Constructor in accordance with the Contract Documents and used or consumed in the performance of the Work.

5.1.10 CONCEALED OR UNKNOWN SITE CONDITIONS If a condition encountered at the Worksite is (a) a subsurface or other physical condition which is materially different from those indicated in the Contract Documents, or (b) an unusual and unknown physical condition which is materially different from conditions ordinarily encountered and generally recognized as inherent in the Work provided for in the Contract Documents, Constructor shall stop Work and give prompt written notice of the condition to Owner and Design Professional. Owner shall investigate and then issue an Interim Directive specifying the extent to which Owner agrees that a concealed or unknown condition exists and directing how Constructor is to proceed. Constructor shall not be required to perform any Work relating to the condition without the written mutual agreement of the Parties. Any change in the Contract Price or Contract Time as a result of the unknown condition shall be made by Change Order.

5.1.11 CLEANING UP Constructor shall regularly remove debris and waste materials at the Worksite resulting from the Work. Prior to discontinuing Work in an area, Constructor shall clean the area and remove all rubbish and its construction equipment, tools, machinery, waste, and surplus materials. Constructor shall minimize and confine dust and debris resulting from construction activities. At the completion of the Work, Constructor shall remove from the Worksite all construction equipment, tools, surplus materials, waste materials, and debris.

ARTICLE 6 OWNER'S RESPONSIBILITIES

6.1 OWNER'S RESPONSIBILITIES Any information or services to be provided by Owner shall be provided in a timely manner.

6.1.1 WORKSITE INFORMATION To the extent Owner has obtained, or is required to obtain the following Worksite information, then Owner shall provide Constructor the following:

6.1.1.1 information describing the physical characteristics of the Worksite, including surveys, Worksite evaluations, legal descriptions, data, or drawings depicting existing conditions, subsurface, and environmental studies, reports, and investigations;

6.1.1.2 tests, inspections, and other reports dealing with environmental matters, hazardous material, and other existing conditions, including structural, mechanical, and chemical tests required by the Contract Documents or by law;

6.1.1.3 the limits of Pollution Liability Insurance covering the Worksite held by Owner; and any other information or services requested in writing by Constructor which are required for Constructor's performance of the Work and under Owner's control.

6.1.2 BUILDING PERMIT, FEES, AND APPROVALS Except for those required of Constructor pursuant to this Agreement, Owner shall secure and pay for all other permits, approvals, easements,



assessments, and fees required for the development, construction, use, or occupancy of permanent structures or for permanent changes in existing facilities, including the building permit.

ARTICLE 7 SUBCONTRACTS

SUBCONTRACTS Constructor agrees to bind every subcontractor and supplier (and require every subcontractor to so bind its subcontractors and suppliers) to all the provisions of this Agreement and the Contract Documents as they apply to the subcontractor's and supplier's portions of the Work.

ARTICLE 8 CONTRACT TIME

8.1 DATE OF COMMENCEMENT The Date of Commencement is the Agreement date on page one, unless otherwise set forth below: [_____].

8.2 TIME Substantial Completion of the Work shall be achieved by September 22, 2020. Time is of the essence for obligations of the Contract Documents.

ARTICLE 9 SCHEDULE OF THE WORK

9.1 SCHEDULE OF THE WORK Before submitting its first application for payment, Constructor shall submit to Owner, a Schedule of the Work showing the dates on which Constructor plans to begin and to complete various parts of the Work, including dates on which information and approvals are required from Owner.

ARTICLE 10 DELAYS AND EXTENSIONS OF TIME

10.1 If Constructor is delayed at any time in the commencement or progress of the Work by any cause beyond the control of Constructor, Constructor shall be entitled to an equitable extension of the Contract Time. Examples of causes beyond the control of Constructor include, but are not limited to, the following: (a) acts or omissions of Owner, Design Professional, or others; (b) changes in the Work or the sequencing of the Work ordered by Owner or arising from an Owner decision that impacts Contract Time; (c) encountering Hazardous Materials, or concealed and unknown conditions; (d) delay authorized by Owner pending dispute resolution or suspension by Owner; (e) transportation delays not reasonably foreseeable; (f) labor disputes not involving Constructor; (g) general labor disputes impacting the Project but not specifically related to the Worksite; (h) fire; (i) terrorism, (j) epidemics, (k) adverse governmental actions, (l) unavoidable accidents or circumstances; (m) adverse weather conditions not reasonably anticipated. Constructor shall process any requests for equitable extensions of Contract Time in accordance with the provisions of ARTICLE 12.

10.2 In addition, if Constructor incurs additional costs as a result of a delay that is caused by items (a) through (d) in §10.1, Constructor may be entitled to an equitable adjustment in the Contract Price subject to ARTICLE 12

10.3 In the event delays to the Work are encountered for any reason, Constructor shall provide prompt written notice to Owner of the cause of such delays after Constructor first recognizes the delay. The Parties each agree to undertake reasonable steps to mitigate the effect of such delays.

10.4 NOTICE OF DELAY CLAIMS If Constructor requests an equitable extension of the Contract Time or an equitable adjustment in the Contract Price as a result of a delay, Constructor shall give Owner written notice of the claim. If Constructor causes delay in the completion of the Work, Owner shall be entitled to recover its additional costs, subject to ARTICLE 17.



ARTICLE 11 ALLOWANCES

11.1 ALLOWANCES All allowances stated in the Contract Documents shall be included in the Contract Price. While Owner may direct the amounts of, and particular suppliers or subcontractors for, specific allowance items, if Constructor reasonably objects to a supplier or subcontractor, it shall not be required to contract with them. Owner shall select allowance items in a timely manner so as not to delay the Work. Allowances shall include the costs of materials and equipment delivered to the Worksite less applicable trade discounts and including requisite taxes, unloading and handling at the Worksite, and labor and installation, unless specifically stated otherwise. Constructor's overhead and profit for the allowances shall be included in the Contract Price, but not in the allowances. The Contract Price shall be adjusted by Change Order to reflect the actual costs when they are greater than or less than the allowances.

ARTICLE 12 CHANGES

12.1 Constructor may request or Owner may order changes in the Work or the timing or sequencing of performance of the Work that impacts the Contract Price or the Contract Time. All such changes in the Work that affect the Contract Time or Contract Price shall be formalized in a Change Order.

12.2 The Parties shall negotiate in good faith an appropriate adjustment to the Contract Price or the Contract Time and shall conclude these negotiations as expeditiously as possible. Acceptance of the Change Order and any adjustment in the Contract Price or Contract Time shall not be unreasonably withheld. Constructor shall not be obligated to perform changes in the Work without a Change Order or Interim Directive.

12.3 INTERIM DIRECTIVES

12.3.1 Owner may issue a written Interim Directive directing a change in the Work before agreeing on an adjustment to the Contract Price or the Contract Time, or directing Constructor to perform Work that Owner believes is not a change.

12.3.2 The Parties shall negotiate expeditiously and in good faith for appropriate adjustments, as applicable, to the Contract Price or the Contract Time arising out of an Interim Directive. As the directed work is performed, Constructor shall submit its costs for such work with its application for payment. If there is a dispute as to the cost of the Work, Owner shall pay Constructor fifty percent (50%) of its actual (incurred or committed) cost to perform the work. In such event, the Parties reserve their rights as to the disputed amount, subject to the requirements of ARTICLE 19.

12.3.3 When Owner and Constructor agree upon the adjustment in the Contract Price or the Contract Time, for a change in the Work directed by an Interim Directed Change, such agreement shall be the subject of a Change Order.

12.4 COST OR CREDIT DETERMINATION

12.4.1 An increase or decrease in the Contract Price or the Contract Time resulting from a change in the Work shall be determined by one or more of the following methods:

- (a) unit prices set forth in this Agreement or as subsequently agreed;
- (b) a mutually accepted, itemized lump sum; or
- (c) costs calculated on a basis agreed upon by Owner and Constructor plus ten% (10%) overhead and ten (10%) profit.

12.4.1.1 If a cost or credit determination cannot be agreed to above, the cost of the change in the Work shall be determined by the reasonable actual expense incurred or savings realized



in the performance of the Work resulting from the change. If there is a net increase in the Contract Price, Constructor's overhead and profit shall be adjusted accordingly. In case of a net decrease in the Contract Price, Constructor's overhead and profit shall not be adjusted unless ten percent (10%) or more of the Project is deleted. Constructor shall maintain a documented itemized accounting evidencing the expenses and savings.

12.5 UNIT PRICES If unit prices are included in the Contract Documents or are subsequently agreed to by the Parties, but the character or quantity of such unit price items as originally contemplated is so different in a proposed Change Order that the original unit prices will cause substantial inequity to Owner or Constructor, such unit prices shall be equitably adjusted.

ARTICLE 13 PAYMENT

13.1 SCHEDULE OF VALUES Within twenty-one (21) Days from the date of execution of this Agreement, Constructor shall prepare and submit to Owner and, if directed, Design Professional, a schedule of values apportioned to the various divisions or phases of the Work. Each line item contained in the schedule of values shall be assigned a monetary price such that the total of all items shall equal the Contract Price.

13.2 PROGRESS PAYMENTS Constructor shall submit to Owner a monthly application for payment no later than the 25th day of the calendar month for the preceding calendar month however, the final application for payment must be submitted on or before September 24, 2020. Constructor's applications for payment shall be itemized and supported by Constructor's schedule of values based on a percentage of completion and shall include any other substantiating data as required by this Agreement. Payment applications shall include payment requests on account of properly authorized Change Orders or Interim Directives. Payment applications shall also include BLM verification that the items billed are approved for payment. Owner shall pay the amount due on any payment application, less any amounts as set forth below, no later than twenty-one (21) Days after Constructor has submitted a complete and accurate payment application. Owner may deduct, from any progress payment, such amounts as may be retained pursuant to §**Error! Reference source not found.**

13.3 ADJUSTMENT OF CONSTRUCTOR'S PAYMENT APPLICATION Owner may adjust or reject a payment application or nullify a previously approved payment application, in whole or in part, as may reasonably be necessary to protect Owner from loss or damage based upon the following, to the extent that Constructor is responsible for such under this Agreement:

13.3.1 Constructor's repeated failure to perform the Work as required by the Contract Documents;

13.3.2 loss or damage arising out of or relating to this Agreement and caused by Constructor to Owner or to others retained by Owner to whom Owner may be liable;

13.3.3 Constructor's failure to properly pay either Subcontractors or Suppliers following receipt of payment from Owner for that portion of the work or for supplies, provided that Owner is making payments to Constructor in accordance with the terms of this Agreement;

13.3.4 rejected or Defective Work not corrected in a timely fashion;

13.3.5 reasonable evidence of delay in performance of the Work such that the Work will not be completed within the Contract Time;

13.3.6 reasonable evidence demonstrating that the unpaid balance of the Contract Price is insufficient to fund the cost to complete the Work; and



13.3.7 uninsured third-party claims involving Constructor or reasonable evidence demonstrating that third-party claims are likely to be filed unless and until Constructor furnishes Owner with adequate security in the form of a surety bond, letter of credit, or other collateral or commitment which are sufficient to discharge such claims if established.

No later than seven (7) Days after receipt of an application for payment, Owner shall give written notice to Constructor disapproving or nullifying it or a portion of it, specifying the reasons for the disapproval or nullification. When the above reasons for disapproving or nullifying an application for payment are removed, payment shall be made for the amounts previously withheld.

13.4 SUBSTANTIAL COMPLETION When Substantial Completion of the Work or a designated portion thereof is achieved, Constructor shall prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, and the respective responsibilities of Owner and Constructor for interim items such as security, maintenance, utilities, insurance, and damage to the Work, and fixing the time for completion of all items on the list accompanying the Certificate. The Certificate of Substantial Completion shall be submitted by Constructor to Owner for written acceptance of responsibilities assigned in the Certificate. Unless otherwise provided in the Certificate of Substantial Completion, warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or a designated portion.

13.4.1 Upon acceptance by Owner of the Certificate of Substantial Completion, Owner shall pay to Constructor the remaining contract balance less a sum equal to one hundred and fifty percent (150%) of the estimated cost of completing or correcting remaining items on that part of the Work, as agreed to by Owner and Constructor as necessary to achieve final completion. Uncompleted items shall be completed by Constructor in a mutually agreed timeframe. Owner shall pay Constructor monthly the amount retained for unfinished items as each item is completed.

13.5 FINAL COMPLETION When final completion has been achieved, Constructor shall prepare for Owner's acceptance a final application for payment stating that to the best of Constructor's knowledge, and based on Owner's inspections, the Work has reached final completion in accordance with the Contract Documents.

13.5.1 Final payment of the balance of the Contract Price shall be made to Constructor within fifteen (15) Days after Constructor has submitted to Owner a complete and accurate application for final payment and the following submissions:

- (a) an affidavit declaring any indebtedness connected with the Work to have been paid, satisfied, or to be paid with the proceeds of final payment, so as not to encumber Owner's property;
- (b) as-built drawings, manuals, copies of warranties, and all other close-out documents required by the Contract Documents;
- (c) release of any liens, conditioned on final payment being received;
- (d) consent of any surety, if applicable; and
- (e) any outstanding known and unreported accidents or injuries experienced by Constructor or its subcontractors at the Worksite.

13.6 Claims not reserved by Owner in writing with the making of final payment shall be waived except for claims relating to liens or similar encumbrances, warranties, Defective Work, and latent defects. Unless Constructor provides written identification of unsettled claims known to Constructor at the time of making application for final payment, acceptance of final payment constitutes a waiver of such claims.

13.7 LATE PAYMENT Payments due but unpaid shall bear interest from the date payment is due at the statutory rate at the place of the Project.



ARTICLE 14 INDEMNITY

14.1 To the fullest extent permitted by law, Constructor shall indemnify and hold harmless Owner, Owner's officers, directors, members, consultants, agents, and employees and Design Professional (the "Indemnitees") from all claims for bodily injury and property damage, other than to the Work itself and other property insured under §15.3, including reasonable attorneys' fees, costs, and expenses, that may arise from the performance of the Work but only to the extent caused by the negligent or intentionally wrongful acts or omissions of Constructor, subcontractors, suppliers, or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable. Constructor shall be entitled to reimbursement of any defense costs paid above Constructor's percentage of liability for the underlying claim to the extent provided in the section immediately below.

14.2 NO LIMITATION ON LIABILITY In any and all claims against the Indemnitees by any employee of Constructor, anyone directly or indirectly employed by Constructor or anyone for whose acts Constructor may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Constructor under Workers' Compensation acts, disability benefit acts, or other employment benefit acts.

ARTICLE 15 INSURANCE

15.1 Before commencing the Work and as a condition precedent to payment, Constructor shall procure and maintain in force Workers' Compensation Insurance, Employers' Liability Insurance, Business Automobile Liability Insurance, and Commercial General Liability Insurance (CGL). The CGL policy shall include coverage for liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, contractual liability, and broad form property damage. Constructor shall maintain completed operations liability insurance for one year after Substantial Completion, or as required by the Contract Documents, whichever is longer. If requested, Constructor shall provide Owner with certificates of the insurance coverage required. Constructor's Employers' Liability, Business Automobile Liability, and CGL policies, as required in this article, shall be written with at least the following limits of liability:

15.1.1 Employers' Liability Insurance:

- (a) \$[] bodily injury by accident per accident;
- (b) \$[] bodily injury by disease policy limit;
- (c) \$[] bodily injury by disease per employee.

15.1.2 Business Automobile Liability Insurance \$[] per accident.

15.1.3 CGL Insurance:

- (a) \$[] per occurrence;
- (b) \$[] general aggregate;
- (c) \$[] products/completed operations aggregate;
- (d) \$[] personal and advertising injury limit.

15.2 Employers' Liability, Business Automobile Liability, and CGL coverage required in the subsection above may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or umbrella liability policies. Constructor shall maintain in effect all insurance coverage required in the section immediately above with insurance companies lawfully authorized to do business in the jurisdiction in which the Project is located. If Constructor fails to obtain or maintain any insurance coverage required under this Agreement, Owner may purchase such



coverage and charge the expense to Constructor, or terminate this Agreement. To the extent commercially available to Constructor from its current insurance company, insurance policies required under §15.1 shall contain a provision that the insurance company or its designee must give Owner written notice transmitted in paper or electronic format: (a) 30 Days before coverage is nonrenewed by the insurance company and (b) within 10 Business Days after cancelation of coverage by the insurance company. Prior to commencing the Work and upon renewal or replacement of the insurance policies, Constructor shall furnish Owner with certificates of insurance until one year after Substantial Completion or longer if required by the Contract Documents. In addition, if any insurance policy required under §15.1 is not to be immediately replaced without lapse in coverage when it expires, exhausts its limits, or is to be cancelled, Constructor shall give Owner prompt written notice upon actual or constructive knowledge of such condition.

15.3 PROPERTY INSURANCE Unless otherwise directed in writing by Owner, before starting the Work, Constructor shall obtain and maintain a Builder's Risk Policy upon the entire Project for the full cost of replacement at the time of loss, INCLUDING EXISTING STRUCTURES. This insurance shall also: (a) name Constructor, subcontractors, subsubcontractors, suppliers, and Design Professional as insureds; (b) be written in such form as to cover all risks of physical loss except those specifically excluded by the policy. The Builder's Risk Policy shall insure at least against and not exclude: (a) the perils of fire, lightning, explosion, windstorm, hail, smoke, aircraft (except aircraft, including helicopter, operated by or on behalf of the Contractor) and vehicles, riot and civil commotion, theft, vandalism, malicious mischief, debris removal, flood, earthquake, earth movement, water damage, wind damage, testing if applicable, collapse however caused; (b) damage resulting from defective design, workmanship, or material; (c) coverage extension for damage to existing buildings, plant, or other structures at the Worksite, when the Project is contained within or attached to such existing buildings, plant or structures. Coverage shall be to the extent loss or damage arises out of Constructor's activities or operations at the Project; (d) equipment breakdown, including mechanical breakdown, electrical injury to electrical devices, explosion of steam equipment, and damage to steam equipment caused by a condition within the equipment; (e) testing coverage for running newly installed machinery and equipment at or beyond the specified limits of their capacity to determine whether they are fit for their intended use; and (f) physical loss resulting from terrorism.

15.3.1 The Party that is the primary cause of a Builder's Risk Policy claim shall be responsible for any deductible amounts or coinsurance payments. If no Party is the primary cause of a claim, then the Party obtaining and maintaining the Builder's Risk Policy pursuant to §15.3 shall be responsible for the deductible amounts or coinsurance payments. This policy shall provide for a waiver of subrogation. This insurance shall remain in effect until final payment has been made or until no person or entity other than Owner has an insurable interest in the property to be covered by this insurance, whichever is sooner. Partial occupancy or use of the Work shall not commence until Constructor has secured the consent of the insurance company or companies providing the coverage required in this subsection. Before commencing the Work, Constructor shall provide a copy of the property policy or policies obtained in compliance with §15.3.

15.3.2 If the Owner elects to purchase the property insurance required by this Agreement, including all of the same coverages and deductibles for the same duration specified in §15.3, then Owner shall give written notice to Constructor and Design Professional before the Work is commenced and provide a copy of the property policy or policies obtained in compliance with §15.3. Owner may then provide insurance to protect its interests and the interests of Constructor, Subcontractors, Suppliers, and Subsubcontractors. The cost of this insurance shall be paid by Owner in a Change Order. If Owner gives written notice of its intent to purchase property insurance required by this Agreement and fails to purchase or maintain such insurance, Owner shall be responsible for costs reasonably attributed to such failure.



15.3.3 The Parties each waive all rights against each other and their respective employees, agents, contractors, subcontractors, suppliers, and subsubcontractors, and design professionals for damages caused by risks covered by the property insurance except such rights as they may have to the proceeds of the insurance.

15.3.4 POLLUTION LIABILITY INSURANCE Constructor is/ is not required to maintain pollution liability insurance. Unless indicated affirmatively, the obligation to procure such insurance is not triggered. If applicable: in the following amounts: [] per occurrence, and shall apply for [] year(s) after Final Completion.

15.4 ADDITIONAL LIABILITY COVERAGE Owner shall require Constructor to purchase and maintain liability coverage. If required, Constructor shall provide:

15.4.1 ADDITIONAL INSURED. Owner shall be named as an additional insured on Constructor's CGL insurance specified, for on-going operations and completed operations excess/umbrella liability, commercial automobile liability, and any required pollution liability, but only with respect to liability for bodily injury, property damage, or personal and advertising injury to the extent caused by the negligent acts or omissions of Constructor, or those acting on Constructor's behalf, in the performance of Constructor's Work for Owner at the Worksite. The insurance of the Constructor and its Subcontractors (both primary and excess) shall be primary to any insurance available to the Additional Insureds. Any insurance available to the Additional Insureds shall be excess and non-contributory.

ARTICLE 16 BONDS

16.1 Performance and Payment Bonds are/ are not required of Constructor. Such bonds shall be issued by a surety admitted in the state in which the Project is located and must be acceptable to Owner. Owner's acceptance shall not be withheld without reasonable cause. The penal sum of the Payment Bond shall equal the penal sum of the Performance Bond.

ARTICLE 17 LIMITED MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES

17.1 LIMITED MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES Except for (a) losses covered by insurance required by the Contract Documents, or (b) specific items of damages excluded from this waiver as mutually agreed upon by the Parties and identified below, the Parties agree to waive all claims against each other for any consequential damages that may arise out of or relate to this Agreement. The following items of damages are excluded from this mutual waiver: []. This article shall also apply to the termination of this Agreement and shall survive such termination. The Parties shall require similar waivers in contracts with subcontractors and others retained for the project.

ARTICLE 18 NOTICE TO CURE AND TERMINATION

18.1 NOTICE TO CURE A DEFAULT If Constructor persistently fails to supply enough qualified workers, proper materials, or equipment to maintain the approved Schedule of the Work or fails to make prompt payment to its workers, Subcontractors, or Suppliers, disregards law or orders of any public authority having jurisdiction, or is otherwise guilty of a material breach of a provision of this Agreement, Constructor may be deemed in default. If Constructor fails to commence and to continue satisfactory correction of such default with diligence and promptness within seven (7) days after written notification, then Owner shall give Constructor a second written notice to correct the default within a three (3) business Day period. If Constructor fails to promptly commence and continue satisfactory correction of the default following receipt of such second notice, Owner, without prejudice to any other rights or remedies, shall have the right to take reasonable steps it deems necessary to correct deficiencies and charge the cost to



Constructor, who shall be liable for such payments including reasonable overhead, profit, and attorneys' fees.

18.2 TERMINATION BY OWNER Upon expiration of the second notice for default period pursuant to §18.1, Owner may terminate this Agreement by written notice. Termination for default is in addition to any other remedies available to Owner. If Owner's costs arising out of Constructor's failure to cure, including the costs of completing the Work and reasonable attorneys' fees, exceed the unpaid Contract Price, Constructor shall be liable to Owner for such excess costs. If Owner's costs are less than the unpaid Contract Price, Owner shall pay the difference to Constructor. If Owner exercises its rights under this section, upon the request of Constructor, Owner shall furnish to Constructor a detailed accounting of the costs incurred by Owner.

18.2.1 Owner shall make reasonable efforts to mitigate damages arising from Constructor default and shall promptly invoice Constructor for all amounts due.

18.3 OBLIGATIONS ARISING BEFORE TERMINATION Even after termination the provisions of this Agreement still apply to any Work performed, payments made, events occurring, costs charged or incurred, or obligations arising before the termination date.

ARTICLE 19 DISPUTE MITIGATION AND RESOLUTION

19.1 CLAIMS FOR ADDITIONAL COST OR TIME Except as provided in §10.3 and §10.4 for any claim for an increase in the Contract Price or the Contract Time, Constructor shall give Owner written notice of the claim within fourteen (14) Days after the occurrence giving rise to the claim or within fourteen (14) Days after Constructor first recognizes the condition giving rise to the claim, whichever is later. Except in an emergency, notice shall be given before beginning the Work. Any change in the Contract Price or the Contract Time resulting from such claim shall be authorized by Change Order.

19.2 WORK CONTINUANCE AND PAYMENT Constructor shall continue the Work and maintain the Schedule of the Work during any dispute resolution proceedings. If Constructor continues to perform, Owner shall continue to make payments in accordance with the Agreement.

19.3 DIRECT SETTLEMENT DISCUSSIONS If a dispute arises out of or relates to this Agreement or its breach, the Parties shall endeavor to settle the dispute through direct discussions. Within five (5) Business Days, the Parties' representatives, who shall possess the necessary authority to resolve such matter and who shall record the date of first discussions shall conduct direct discussions and make a good faith effort to resolve such dispute.

19.4 MEDIATION Disputes between Owner and Constructor not resolved by direct discussion shall be submitted to mediation pursuant to the Construction Industry Mediation Rules of the American Arbitration Association (AAA). The Parties shall select the mediator within fifteen (15) Days of the request for mediation. Engaging in mediation is a condition precedent to any form of binding dispute resolution.

19.5 BINDING DISPUTE RESOLUTION If neither direct discussions nor mediation successfully resolves the dispute, the Parties shall submit the matter to the binding dispute resolution procedure selected below:

LITIGATION Litigation in either the state or federal court having jurisdiction of the matter in the location of the Project.

19.5.1 COSTS The costs of any binding dispute resolution procedures and reasonable attorneys' fees shall be borne by the non-prevailing Party, as determined by the adjudicator of the dispute.



19.5.2 VENUE The Project location shall serve as the venue.

ARTICLE 20 MISCELLANEOUS

20.1 EXTENT OF AGREEMENT Except as expressly provided, this Agreement is for the exclusive benefit of the Parties and not for the benefit of any third party. This Agreement represents the entire and integrated agreement between the Parties, and supersedes all prior negotiations, representations, or agreements, either written or oral.

20.2 ASSIGNMENT Except as to the assignment of proceeds, neither Party shall assign its interest in this Agreement, in whole or in part, without the written consent of the other Party. The terms and conditions of this Agreement shall be binding upon both Parties, their partners, successors, assigns, and legal representatives.

20.3 GOVERNING LAW The law in effect at the location of the Project shall govern.

20.4 NOTICE Unless changed in writing, a Party's address indicated in Article 1 shall be used when delivering notice to a physical address. Except for Agreement termination and as otherwise specified in the Contract Documents, notice is effective upon transmission by any effective means, including U.S. postal service and overnight delivery service.

20.5 JOINT DRAFTING The Parties expressly agree that this Agreement was jointly drafted, and that they both had opportunity to negotiate terms and to obtain assistance of counsel in reviewing terms before execution. This Agreement shall be construed neither against nor in favor of either Party, but shall be construed in a neutral manner.

OWNER: []

BY: _____ NAME: _____ TITLE: _____

WITNESS: _____ NAME: _____ TITLE: _____

CONSTRUCTOR: []

BY: _____ NAME: _____ TITLE: _____

WITNESS: _____ NAME: _____ TITLE: _____

END OF DOCUMENT. |



EXHIBIT A – THE WORK

STATEMENT OF WORK (SOW) July,2020, FOR THE **UTE MOUNTAIN WELL**

Contracted via Taos Soil Water Conservation District (TSWCD)

Funded by: Bureau of Land Management (BLM), Taos Field Office and New Mexico Association of Conservation Districts (NMACD)

The following SOW reflects work needed to complete an anticipated low yield livestock well on the SW base of BLM managed Ute Mtn via the “**Casing Advance**” method, as subsurface geologic conditions may vary substantially. See attached well construction plan drawing.

Basic Requirements:

- Anticipated total depth is 240 ft to bottom of aquifer. Anticipated Yield is approximately 5 gpm
- Pricing should reflect a +/- 15% variation of quantities per line item
- Cuttings can remain on the site, Contain drill water to drill site or per state requirements.
- Commence well drilling activities on or before August 20, 2020
- Drill via Air Rotary Casing Advance Hammer method
- Use 8 5/8” (0.188”) steel well casing to aquifer bottom, supply and install 200’ of 5” PVC well casing/40’ of screen/cap (0.032”), with 3/8” pea gravel 10’ minimum above screen.
- Completion of well shall be 30 days from commencement of on-site drilling activities but no later than September 22, 2020.

Contractor shall:

- Be licensed to Drill and work in the State of New Mexico
- Supply work plan schedule prior to commencing work.
- Install a 12” diameter surface seal to 20’ depth
- Supply all equipment, labor and supplies/materials to complete well work
- Take and record cutting samples at every change of geologic material as well progresses
- Have all supplies/materials on site prior to commencing drilling activities and materials invoicing
- Estimate final well yield by water return method during well development (no test pump)
- Include NM Gross receipts tax if applicable
- Develop Well for 8 hours
- Itemized Bid Schedule to include line items for Mobilization and Bonding
- Report and document completed well information to NM State Engineer per well permit requirements.

BLM will:

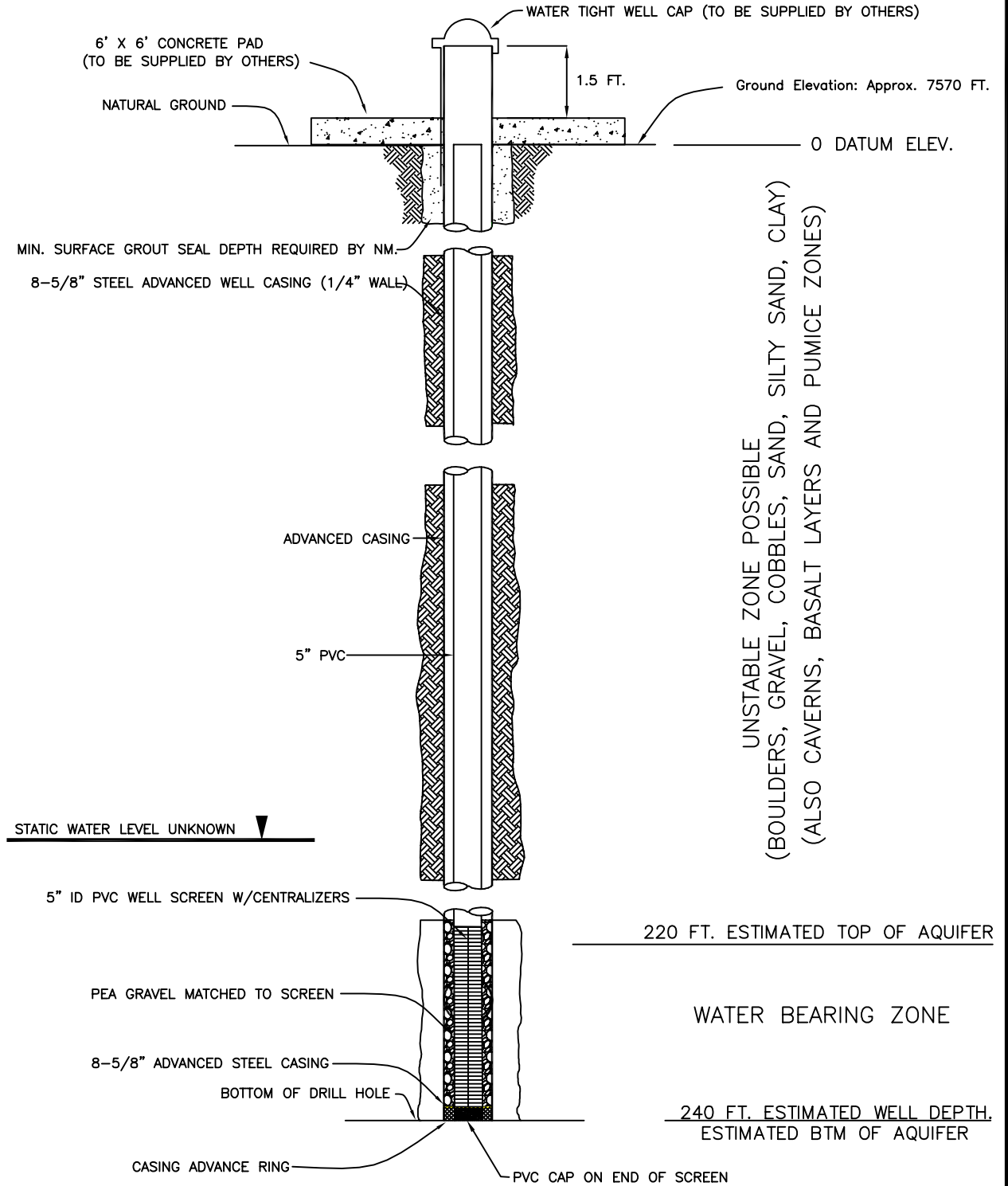
- Secure Livestock Water Well Permit from the State of New Mexico (expires 9-22-20)
- Allow contractor to acquire drill water at Wild Rivers Recreation Area (estimated to need 2,500 gallons per day)
- Allow contractor to camp onsite with equipment (care taken to stay within allowable area)
- Complete well drawdown at a later date
- Have an onsite presence for the entire drilling activities
- Allow for non-domestic materials if cost savings greater than 25%.

TSWCD will:

- Pay on materials invoice when received on site via NMACD
- Pay on well completion (wet or dry well) via NMACD

EXHIBIT B - EXISTING CONTRACT DOCUMENTS
 DRILLING METHOD SHALL BE CASING ADVANCED
 AS AQUIFER IS CONSIDERED TO BE LOW YIELD

THIS DRAWING IS FOR GENERAL DESIGN PURPOSES ONLY. FORMATIONS ENCOUNTERED MAY DIFFER FROM PLAN.



UNSTABLE ZONE POSSIBLE
 (BOULDERS, GRAVEL, COBBLES, SAND, SILTY SAND, CLAY)
 (ALSO CAVERNS, BASALT LAYERS AND PUMICE ZONES)

- NOTE:**
1. DEPTHS AND INFORMATION ARE APPROXIMATE AND ARE FOR VISUAL REFERENCE ONLY
 2. DESIRED YIELD IS 5 GPM MINIMUM. WELL SCREEN AND PEA GRAVEL SHALL BE SIZED ACCORDINGLY.

Drawing NOT TO SCALE

Always Think SAFETY

U.S. DEPARTMENT OF THE INTERIOR BUREAU OF LAND MANAGEMENT	UTE MTN WELL	
DRAWING NO. _____	DATE 6/19/20	DRAWN MVS
DESIGNED _____	SHEET 1 of 1	APPROVED _____

EXHIBIT B – EXISTING CONTRACT DOCUMENTS (CONT'D)

