

This document is not intended to be and is not intended to contain legal advice for any individual person or entity. Instead, it is intended as a starting point, covering some, not necessarily all, of the issues that a water system owner or operator may wish to discuss and consider in consultation with their legal advisor. Owners or operators should consult their legal advisor concerning their facts and circumstances and the language which would best suit their needs. The New Mexico Environment Department accepts no liability for the use of all or part of this document by any person or entity.

**AGREEMENT FOR CERTIFIED WATER OPERATOR SERVICES  
(Publicly Funded Project)**

THIS Agreement, made this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ by and between  
\_\_\_\_\_ hereinafter referred to as the OWNER, and  
\_\_\_\_\_ hereinafter referred to as the CERTIFIED  
OPERATOR.

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## **SECTION A - GENERAL PROVISIONS**

### **1. General**

This Agreement represents the entire and integrated Agreement between the OWNER and the CERTIFIED OPERATOR for the specified term 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.

### **2. Responsibilities of the CERTIFIED OPERATOR**

(a) The CERTIFIED OPERATOR shall be responsible for the professional quality, technical accuracy, reports, and other services furnished by the CERTIFIED OPERATOR under this Agreement. If this Agreement involves data generation, the CERTIFIED OPERATOR shall comply with EPA quality assurance requirements. The CERTIFIED OPERATOR shall keep the OWNER informed of the performance of the CERTIFIED OPERATOR'S duties under this Agreement.

(b) The CERTIFIED OPERATOR shall perform the professional services necessary to accomplish the work specified in this Agreement, in accordance with this Agreement and requirements in effect on the date of execution of any assistance agreement for the Specified Term.

(c) The CERTIFIED OPERATOR shall be and shall remain liable, in accordance with applicable law, for all damages to the OWNER caused by the CERTIFIED OPERATOR'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 CERTIFIED OPERATOR shall not be responsible for any circumstances beyond the CERTIFIED OPERATOR'S control.

(d) The CERTIFIED OPERATOR's obligations under this clause are in addition to the CERTIFIED OPERATOR'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 CERTIFIED OPERATOR for faulty materials, equipment, or work.

(e) The CERTIFIED OPERATOR shall inform the OWNER immediately upon learning of any change of circumstance that effects the ability of the CERTIFIED OPERATOR to perform the services detailed in this contract, including, but not limited to, loss of driver's license, loss of operator certification or personal health constraints.

### **3. Responsibilities of the OWNER**

(a) The OWNER shall designate in writing a person authorized to act as the OWNER's representative. The OWNER or its representative shall receive and examine documents submitted by the CERTIFIED OPERATOR, interpret and define the OWNER's policies and render decisions and authorizations promptly in writing.

(b) The OWNER shall provide to the CERTIFIED OPERATOR full and free access to enter upon all property required for the performance of the CERTIFIED OPERATOR's services under this Agreement.

(c) The OWNER may make and retain copies of Documents for information and reference in connection by OWNER. Any such reuse or modification without written verification or adaptation by CERTIFIED

OPERATOR will be at OWNER's sole risk and without liability or legal exposure to CERTIFIED OPERATOR. Any verification or adaptation as stated above, will entitle CERTIFIED OPERATOR to further compensation at rates to be agreed upon by OWNER and CERTIFIED OPERATOR.

#### **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 CERTIFIED OPERATOR'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 CERTIFIED OPERATOR 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.

(b) No services for which the CERTIFIED OPERATOR 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 CERTIFIED OPERATOR is given (1) not less than ten (10) calendar days written notice (delivered by certified, 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 CERTIFIED OPERATOR at the time of termination may be adjusted to cover any additional costs to the OWNER because of the CERTIFIED OPERATOR's default. If termination for default is effected by the CERTIFIED OPERATOR, 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 CERTIFIED OPERATOR for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by the CERTIFIED OPERATOR relating to commitments which had become firm prior to the termination.

(d) Upon receipt of a termination action under paragraphs (a) or (b) above, the CERTIFIED OPERATOR shall (1) promptly discontinue all affected work (unless the notice directs otherwise), and (2) deliver or otherwise make available to the OWNER all data, reports, estimates, summaries and such other information and materials as may have been accumulated by the CERTIFIED OPERATOR in performing this Agreement, whether completed or in process.

(e) 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.

(f) If, after termination for failure of the CERTIFIED OPERATOR to fulfill contractual obligations, it is

determined that the CERTIFIED OPERATOR had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of the OWNER.

## **6. Payment**

(a) The CERTIFIED OPERATOR will submit to the OWNER for services rendered an itemized bill showing charges for such services accompanied by any additional documentation requested by the OWNER.

(b) No payment request made under this clause shall exceed the estimated amount and value of the work and services performed by the CERTIFIED OPERATOR under this Agreement. The CERTIFIED OPERATOR shall prepare the estimates of work performed and shall supplement them with such supporting data as the OWNER may require.

(c) 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 CERTIFIED OPERATOR 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 CERTIFIED OPERATOR 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 CERTIFIED OPERATOR or its sureties under this Agreement or applicable performance and payment bonds.

(d) Final Payment under this Agreement or settlement upon termination of this Agreement shall not constitute a waiver of the OWNER's claims against the CERTIFIED OPERATOR under this Agreement.

(e) If OWNER fails to make any payment due CERTIFIED OPERATOR within thirty days after OWNER's acceptance of CERTIFIED OPERATOR's invoice, the amount due CERTIFIED OPERATOR shall be increased at the rate of 1.5% per month from said thirtieth day. In addition, after ten (10) days prior written notice, the CERTIFIED OPERATOR may suspend services under this Agreement until CERTIFIED OPERATOR is paid in full.

## **7. Audit and Access to Records**

(a) The CERTIFIED OPERATOR shall maintain logs, records, documents, and other evidence directly pertinent to performance of work under this Agreement in accordance with generally accepted principles and practices consistently applied, in effect on the date of execution of this Agreement. All time spent at the system will be recorded in a log that will also include tasks accomplished. This log as well as all other operator logs and records will be kept at the system at all times. The location these records will be kept shall be \_\_\_\_\_.

(b) The CERTIFIED OPERATOR agrees to disclose all information and reports resulting from access to records under paragraphs (a) of this clause.

## **8. Subcontracts**

Any subcontractors and outside associates or consultants required by the CERTIFIED OPERATOR in connection with services under this Agreement will be limited to such individuals or firms as the OWNER specifically authorizes during the performance of this Agreement. The OWNER must give prior approval for any substitutions, additions or deletions to such subcontractors, associates, or consultants.

## **9. Insurance**

The CERTIFIED OPERATOR agrees to obtain and maintain, at the CERTIFIED OPERATOR's expense, such insurance as will protect the CERTIFIED OPERATOR from claims under the Workman's Compensation Act and such comprehensive general liability insurance as will protect the OWNER and the CERTIFIED OPERATOR from all claims for bodily injury, death, or property damage which may arise from the performance by the CERTIFIED OPERATOR or by the CERTIFIED OPERATOR's employees of the CERTIFIED OPERATOR's functions and services required under this Agreement. Such insurance shall be in an amount not less than \$\_\_\_\_\_ for injury to any one person and \$\_\_\_\_\_ on account of any one accident and in the amount of not less than \$\_\_\_\_\_ for property damage. The CERTIFIED OPERATOR further agrees to procure and maintain professional liability (errors and omissions) insurance in an amount not less than \$\_\_\_\_\_ per claim and in the aggregate. Prior to commencement of any work, the CERTIFIED OPERATOR shall furnish to the OWNER a certificate that complies with this paragraph. The certificate shall provide that the policy shall not be changed or canceled until at least ten (10) days prior written notice shall have been given to the OWNER.

## **10. Remedies**

Unless otherwise provided in this Agreement, all claims, counter-claims, disputes, and other matters in question between the OWNER and the CERTIFIED OPERATOR arising out of or relating to this Agreement or the breach of it will be decided by non-binding mediation or arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the OWNER is located.

## **11. Term**

This Contract shall terminate on \_\_\_\_\_, unless terminated pursuant to paragraph 5 of this Contract. In accordance with Section 13-1-150 NMSA 1978, no contract term, including extensions and renewals, shall exceed four years.

## **SECTION B - CERTIFIED OPERATOR SERVICES**

The CERTIFIED OPERATOR shall furnish SERVICES as follows in accordance with the GENERAL PROVISIONS of the Agreement and as authorized by the appropriate Attachment to this Agreement:  
(Double click the box, to indicate which tasks to be completed)

1. The CERTIFIED OPERATOR shall perform, but not be limited to:

- ☐ Collect routine water samples as required under state and federal drinking water regulations
- ☐ Laboratory responsibilities including chain of custody for sampling
- ☐ Facility improvements
- ☐ Create, update and follow a preventive maintenance schedule, to include:
  - ☐ Pumps, Motors, Compressors
  - ☐ Chemical make up, feed and monitoring equipment calibration
  - ☐ Storage tanks to include inspection, cleaning, painting and disinfecting
  - ☐ Exercising valves and hydrants
  - ☐ Distribution system flushing
- ☐ Create/maintain system site map
- ☐ Create/maintain sampling plan
- ☐ Monitor disinfectant and maintain sufficient disinfectant residual throughout the distribution system

- ☐ Maintain cleanliness of well house(s) and keep free of health and safety hazards
- ☐ Conduct periodic security inspections
- ☐ Accompany state or federal inspectors during a sanitary survey or other water system inspection and provide them information as requested
- ☐ Be on call 24 hours / 7 days per week
- ☐ Respond to and repair water leaks
- ☐ Connect new service connections
- ☐ Disconnect delinquent service connections
- ☐ Install new water hydrants
- ☐ Respond to on-site water quality calls and concerns
- ☐ Repair, calibrate and/or replace meters
- ☐ Repair and replace valves
- ☐ Repair major failure to booster pumps and well house tanks
- ☐ Collect additional samples as required by NMED/EPA for compliance
- ☐ Perform modifications to well house(s) as needed
- ☐ Perform street repair, as necessary
- ☐ Inspect outside contracting
- ☐ Perform maintenance to the water distribution system, not listed on routine checklist.
  
- ☐ Other: \_\_\_\_\_  
\_\_\_\_\_
  
- ☐ Other: \_\_\_\_\_  
\_\_\_\_\_
  
- ☐ Other: \_\_\_\_\_  
\_\_\_\_\_

2. The CERTIFIED OPERATOR shall be responsible for the following administrative services:  
(Double click the box, to indicate which tasks to be completed)

- ☐ An annual analysis and evaluation of the water system and its components stating forth the status of each component, evaluation, opinions and recommendations for the optimal performance and maintenance and repairs and or up-grades recommended.
- ☐ Reading and documentation of each water meter and the reporting of this information to the water system for billing.
- ☐ The review, up keep, verification and documentation of system maps, distribution lines, values, hydrants, and other components in duplicate. One copy for the Board of Directors for safe keeping and the other to be placed in the well house / water system office.
- ☐ The review, up keep, verification and documentation of the system testing and maintenance logs to be provided to the Board of Directors and the other placed in wellhouse / water system office.
- ☐ Assist in preparing the Consumer Confidence Report.
- ☐ Attend regular Meetings of the Board of Directors and Meetings of Membership to report on work completed on the water system as well as short-term and long-term needs of the water system.
- ☐ The timely response to the water system members as requested by the Board of Directors.
- ☐ The timely response to local officials regarding the location of distribution lines and similar requests.
- ☐ Any other administrative duties of a reasonable nature that may be requested from time to

time by the Board of Directors.

- ☐ Be the liaison between the water system and New Mexico Environment Department on compliance issues as directed by the OWNER.

☐ Other: \_\_\_\_\_  
\_\_\_\_\_

☐ Other: \_\_\_\_\_

3. The Certified Operator shall provide a minimum of \_\_\_\_\_ (\_\_\_\_) professional hours a month at the water system and shall endeavor, to the best of his/her ability, to perform the Administrative and Operational Tasks listed above within the monthly fee and the specified term limits of this agreement. All billable work shall be invoiced monthly stating the Task and the date and number of hours provided as well as any materials required and purchased.
4. The CERTIFIED OPERATOR 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.

#### **SECTION C – EMERGENCY RESPONSE**

In the event of an emergency, the CERTIFIED OPERATOR agrees to respond within \_\_\_\_\_ hours. An emergency includes any unplanned event that has resulted or may result in the reduction in the quantity or quality of water delivered to some or all of the system's customers, to include, but not be limited to, natural disaster (e.g. fire, flood, earthquake), failure of system components (distribution, storage, treatment, source and pumps), vandalism or terrorism, power failure. In the event the CERTIFIED OPERATOR is unable to respond within the required amount of time, he/she will provide for an alternate certified operator to respond to the emergency.

#### **SECTION D - SPECIAL PROVISIONS**

(attach or indicate "None")



**ATTACHMENT I - Compensation for CERTIFIED OPERATOR Services**

1. As set forth in the AGREEMENT FOR CERTIFIED OPERATOR SERVICES dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between the \_\_\_\_\_, the OWNER, and \_\_\_\_\_, the CERTIFIED OPERATOR, the OWNER and CERTIFIED OPERATOR agree this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ that the OWNER shall compensate the CERTIFIED OPERATOR for services described in Section B designated SPECIFIED TERM services.

2. Compensation for CERTIFIED OPERATOR SERVICES, as described in Section B, shall be a flat monthly rate of \$\_\_\_\_\_/month, not including approved reimbursables and gross receipt tax.

3. Compensation for EMERGENCY RESPONSE SERVICES, as described in Section C, shall be an hourly rate of \$\_\_\_\_\_/hour, not including approved reimbursables and gross receipt tax.

4. The amount of compensation shall not change unless the scope of services to be provided by the CERTIFIED OPERATOR changes and this Agreement is formally amended according to Section A-4.

5. Signatures

IN WITNESS THEREOF, 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.

ATTEST: \_\_\_\_\_  
Type Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

OWNER: \_\_\_\_\_  
By \_\_\_\_\_  
Type Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

ATTEST: \_\_\_\_\_  
OPERATOR: \_\_\_\_\_  
Type Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

CERTIFIED  
By \_\_\_\_\_  
Type Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

REVIEWED: FUNDING AGENCY  
NAME: \_\_\_\_\_  
By \_\_\_\_\_  
Type Name \_\_\_\_\_  
Date \_\_\_\_\_