

**STATE OF NEW MEXICO  
AGREED-UPON PROCEDURES CONTRACT**

**(Tier 3)**

**Acequia de Santa Cruz (Santa Cruz Ditch)**

hereinafter referred to as the "Agency," and

**Macias, Gutierrez & Co., CPAs, PC**

hereinafter referred to as the "Contractor," agree:

**As required by the Audit Rule, NMAC Section 2.2.2.1 et seq., Contractor agrees to, and shall, inform the Agency of any restriction placed on Contractor by the Office of the State Auditor pursuant to NMAC Section 2.2.2.8, and whether the Contractor is eligible to enter into this Contract despite the restriction.**

**IT IS MUTUALLY AGREED BETWEEN THE PARTIES:**

1. **SCOPE OF WORK** (Include in Paragraph 25 any expansion of scope)

- A. The Contractor shall perform an agreed-upon procedures engagement for Tier 3 of the Audit Act (Section 12-6-1 et seq., NMSA 1978) in accordance with the procedures fully described in Exhibit A of this Contract for the period ending **12/31/2011**.
- B. The engagement shall be performed pursuant to:
1. The American Institute of Certified Public Accountants (AICPA) Attestation Standards (Clarified), (AT-C Section 100 for Common Concepts and AT-C Section 215 for Agreed-Upon Procedures Engagements);
  2. The AICPA Statements on Standards for Accounting and Review Services (Clarified), (AR-C Section 60 for General Principles and AR-C Section 80 for Compilation Engagements); and
  3. The applicable provisions of NMAC Section 2.2.2, *Audits of Governmental Entities: Requirements for Contracting and Conducting Audits of Agencies*.

2. **DELIVERY AND REPRODUCTION**

- A. In order to meet the delivery terms of this Contract, the Contractor shall deliver the following documents to the State Auditor on or before the deadline set forth for the Agency in NMAC Section 2.2.2.9:
1. an organized, bound and paginated hard copy of the Agency's agreed-upon procedures report for review; and
  2. a copy of the signed management representation letter provided to the IPA by the Agency as required by AT-C 215.28.
- B. Reports postmarked by the Agency's due date will be considered received by the due date for purposes of NMAC Section 2.2.2.9. Unfinished or excessively deficient reports will not satisfy this requirement; such reports will be rejected and returned to the Contractor and the State Auditor may take action in accordance with NMAC Section 2.2.2.16. If the State Auditor does not receive copies of the management representation letter with the agreed-upon procedures report or prior to submittal of the agreed-upon procedures report, the State Auditor will not consider the report submitted to the State Auditor.
- C. As soon as the Contractor becomes aware that circumstances exist that will make the Agency's agreed-upon procedures report late, the Contractor shall immediately provide written notification of the situation to the State Auditor. The notification shall include an explanation regarding why the agreed-upon procedures report will be late, when the IPA expects to submit the report and a concurring signature by the Agency.

- D. Pursuant to NMAC Section 2.2.2.16, the Contractor shall prepare a written and dated engagement letter that identifies the specific responsibilities of the Contractor and the Agency.
- E. After its review of the agreed-upon procedures report pursuant to NMAC Section 2.2.2.16, the State Auditor shall authorize the Contractor to print and submit the final agreed-upon procedures report. Within five business days from the date of the authorization to print and submit the final agreed-upon procedures report, the Contractor shall provide the State Auditor with an electronic version of the agreed-upon procedures report, in PDF format. After the State Auditor officially releases the agreed-upon procedures report by issuance of a release letter, the Contractor shall deliver 1 copies of the agreed upon procedures report to the Agency. The Agency or IPA shall ensure that every member of the Agency's governing authority shall receive a copy of the report.

### **3. COMPENSATION**

- A. The total amount payable by the Agency to the Contractor under this Contract, including New Mexico gross receipts tax and expenses, shall not exceed \$817.03.
- B. Contractor agrees not to, and shall not, perform any services in furtherance of this Contract prior to approval by the State Auditor. Contractor acknowledges and agrees that it will not be entitled to payment or compensation for any services performed by Contractor pursuant to this Contract prior to approval by the State Auditor.
- C. The Agency shall pay the Contractor the New Mexico gross receipts tax levied on the amounts payable under this Contract and invoiced by the Contractor. Payment is subject to availability of funds pursuant to the Appropriations Paragraph set forth below.
- D. Pursuant to NMAC Section 2.2.2.16, the State Auditor may authorize progress payments to the Contractor by the Agency; provided that the authorization is based upon evidence of the percentage of services completed as of the date of the request for partial payment. Progress payments up to 90% do not require State Auditor approval, provided that the Agency certifies receipt of services. Final payment for services rendered by the Contractor shall not be made until the State Auditor has stated in a letter to the Agency that the agreed-upon procedures report has been released and that the agreed-upon procedures were conducted in accordance with the provisions of this Contract; and the State Auditor has received the electronic copy of the Excel version of the summary of findings form and the management representation letter.
4. **TERM.** Unless terminated pursuant to Paragraphs 5 or 19, this Contract shall terminate one calendar year after the latest date on which it is signed.

### **5. TERMINATION, BREACH AND REMEDIES**

- A. This Contract may be terminated:
1. By either party without cause, upon written notice delivered to the other party and the State Auditor at least ten (10) days prior to the intended date of termination.
  2. By either party, immediately upon written notice delivered to the other party and the State Auditor, if a material breach of any of the terms of this Contract occurs. Unjustified failure to deliver the agreed-upon procedures report in accordance with Paragraph 2 shall constitute a material breach of this Contract.
  3. By the Agency pursuant to Paragraph 19, immediately upon written notice to the Contractor and the State Auditor.
  4. By the State Auditor, immediately upon written notice to the Contractor and the Agency after determining that the agreed-upon procedures engagement has been unduly delayed, or for any other reason.
- B. By termination, neither party may nullify obligations already incurred for performance or failure to perform prior to the date of termination. If the Agency or the State Auditor terminates this Contract, the Contractor shall be entitled to compensation for work performed prior to termination in the amount of earned, but not yet paid, progress payments, if any, that the State Auditor has authorized as provided in Paragraph 3(D). If the Contractor terminates this Contract for any reason other than Agency's breach of this Contract, the Contractor shall repay to the Agency the full amount of any progress payments for work performed under the terms of this Contract.
- C. Pursuant to NMAC Section 2.2.2.8, the State Auditor may disqualify the Contractor from eligibility to contract for agreed-upon procedures services with the State of New Mexico if the Contractor knowingly makes false statements, false assurances or false disclosures under this Contract. The State Auditor on behalf of the Agency or the Agency may bring a civil action for damages or any other relief against a Contractor for a material breach of this Contract.
- D. **THE REMEDIES HEREIN ARE NOT EXCLUSIVE, AND NOTHING IN THIS SECTION 5 WAIVES OTHER LEGAL RIGHTS AND REMEDIES OF THE PARTIES.**

### **6. STATUS OF CONTRACTOR**

The Contractor and its agents and employees are independent contractors performing professional services for the Agency and are not employees of the Agency. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles or any other benefits afforded to employees of the Agency as a result of this Contract. The Contractor agrees not to purport to bind the State of New Mexico to any obligation not assumed under this Contract unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

#### 7. ASSIGNMENT

The Contractor shall not assign or transfer any interest in this Contract or assign any claims for money due or to become due under this Contract.

#### 8. SUBCONTRACTING

The Contractor shall not subcontract any portion of the services to be performed under this Contract except pursuant to a Contingency Subcontractor Form in the event the IPA is unable to complete the engagement.

#### 9. RECORDS

The Contractor shall maintain detailed time records that indicate the date, time, and nature of services rendered during the term of this Contract. The Contractor shall retain the records for a period of at least five (5) years after the date of final payment under this contract. The records shall be subject to inspection by the Agency and the State Auditor. The Agency and the State Auditor shall have the right to audit billings both before and after payment. Payment under this Contract shall not foreclose the right of the Agency or the State Auditor on behalf of the Agency to recover excessive or illegal payments.

#### 10. RELEASE

The Contractor, upon receiving final payment of the amounts due under the Contract, releases the State Auditor, the Agency, their respective officers and employees and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this Contract. This paragraph does not release the Contractor from any liabilities, claims or obligations whatsoever arising from or under this Contract.

#### 11. CONFIDENTIALITY

All information provided to or developed by the Contractor from any source whatsoever in the performance of this Contract shall be kept confidential and shall not be made available to any individual or organization by the Contractor, except in accordance with this Contract or applicable standards, without the prior written approval of the Agency and the State Auditor.

#### 12. PRODUCT OF SERVICES; COPYRIGHT AND REPORT USE

Nothing developed or produced, in whole or in part, by the Contractor under this Contract shall be the subject of an application for copyright by or on behalf of the Contractor. The Agency and the State Auditor may post an agreed-upon procedures report on their respective websites once it is publicly released by the State Auditor.

#### 13. CONFLICT OF INTEREST

The Contractor represents and warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Contract. Each of the Contractor and the Agency certifies that it has followed the requirements of the Governmental Conduct Act, Section 10-16-1, et seq., NMSA 1978, regarding contracting with a public officer, state employee or former state employee, as required by the applicable professional standards.

#### 14. INDEPENDENCE

The Contractor represents and warrants its personal, external and organizational independence from the Agency in accordance with the *Government Auditing Standards 2011 Revision*, issued by the Comptroller General of the United States, and NMAC Section 2.2.2.8. The Contractor shall immediately notify the State Auditor and the Agency in writing if any impairment to the Contractor's independence occurs or may occur during the period of this Contract.

#### 15. AMENDMENT

This Contract shall not be altered, changed or amended except by prior written agreement of the parties and with the prior written approval of the State Auditor. Any amendments to this Contract shall comply with the Procurement Code, Sections 13-1-28 through 13-1-199, NMSA 1978.

#### 16. MERGER

This Contract supersedes all of the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Contract. Contractor and Agency shall enter into and execute an engagement letter pursuant to NMAC Section 2.2.2.10, consistent with Generally Accepted Auditing Standards (GAAS) and Government Auditing Standards (GAGAS). **The engagement letter and any associated documentation included with or referenced in the engagement letter shall not be interpreted to amend this Contract. Conflicts between the engagement letter and this Contract are governed by this Contract, and shall be resolved accordingly.**

**17. APPLICABLE LAW**

The laws of the State of New Mexico shall govern this Contract. By execution of this Contract, Contractor irrevocably consents to the exclusive personal jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising from or related to this Contract.

**18. AGENCY BOOKS AND RECORDS**

The Agency is responsible for maintaining control of all books and records at all times and the Contractor shall not remove any books and records from the Agency's possession for any reason.

**19. APPROPRIATIONS**

The terms of this Contract are contingent upon sufficient appropriations and authorization being made by the Agency's governing body for the performance of this Contract. If sufficient appropriations and authorization are not made by the Agency's governing body, this Contract shall terminate upon written notice being given by the Agency to the Contractor. The Agency's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. This section of the Contract does not supersede the local public body's requirement to have an annual examination of its financial affairs pursuant to Section 12-6-3(B), NMSA 1978.

**20. PENALTIES FOR VIOLATION OF LAW**

The Procurement Code, Sections 13-1-28 through 13-1-199, NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kickbacks.

**21. EQUAL OPPORTUNITY COMPLIANCE**

The Contractor shall abide by all federal and state laws, rules and regulations, and executive orders of the Governor of the State of New Mexico pertaining to equal employment opportunity. In accordance with all such laws, rules, regulations and orders, the Contractor assures that no person in the United States shall, on the grounds of race, age, religion, color, national origin, ancestry, sex, physical or mental handicap or serious medical condition, spousal affiliation, sexual orientation or gender identity be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Contract. If the Contractor is found not to be in compliance with these requirements during the life of this Contract, the Contractor shall take appropriate steps to correct these deficiencies.

**22. WORKING PAPERS**

The Contractor shall retain its working papers of the Agency's agreed-upon procedures conducted pursuant to this Contract for a period of at least five (5) years after the date shown on the agreed-upon procedures report, or longer if requested by the Agency, oversight agency for audit, pass through-entity or the State Auditor. The State Auditor shall have access to the working papers at the State Auditor's discretion. When requested by the State Auditor or the Agency, the Contractor shall deliver the original or clear, legible copies of all working papers to the requesting entity.

**23. DESIGNATED ON-SITE STAFF**

The Contractor's on-site individual accountant responsible for supervision of work and completion of the agreed-upon procedures engagement is **James Macias**. The Contractor shall notify the Agency and the State Auditor in writing of any changes in staff assigned to perform the agreed-upon procedures engagement.

**24. INVALID TERM OR CONDITION**

If any term or condition of this Contract shall be held invalid or unenforceable, the remainder of this Contract shall not be affected.

**25. OTHER PROVISIONS**

## Exhibit A

### Tier 3 Agreed-Upon Procedures

This engagement is to be performed pursuant to the AICPA Statements on Standards for Attestation Engagements (Clarified), AT-C Section 215 for agreed-upon procedures engagements.

The scope of the agreed-upon procedures engagement shall encompass any and all state-funded capital outlay appropriations that meet Tier 3 criteria. Testwork shall: (1) be applied to only capital outlay expenditures that meet the Tier 3 criteria; and (2) extend to the end of fieldwork.

Request and review all state-funded capital outlay awards, joint powers agreements, correspondence and other relevant documentation for the capital outlay award funds expended by the recipient that meet the Tier 3 criteria.

1. Verify the local public body's revenue calculation and tier determination documented on the form provided at [www.osanm.org](http://www.osanm.org) under "Tiered System Reporting Main Page."
2. Perform the following tests all state-funded capital outlay expenditures:
  - a. Determine that the amount recorded as disbursed agrees to adequate supporting documentation. Verify that amount, payee, date and description agree to the purchase order, contract, vendor's invoice and canceled check, as appropriate.
  - b. Determine that the cash disbursements were properly authorized and approved in accordance with the budget, legal requirements and established policies and procedures.
  - c. Determine that the bid process (or request for proposal process if applicable), purchase orders, contracts and agreements were processed in accordance with the New Mexico Procurement Code and State Purchasing Regulations (Section 13-1-28 through 13-1-199 NMSA 1978 and 1.4.1 NMAC).
  - d. Determine the physical existence (by observation) of the capital asset based on expenditures to date.
  - e. Verify that status reports were submitted to the state agency charged with oversight per the terms of the agreement and verify that the amounts in the status report agree with the general ledger and other supporting documentation.
3. If the project was funded in advance, determine if the award balance (and cash balance) appropriately reflects the percentage of completion based on the project schedule and expenditures to date.
4. If the project is complete, determine if there is an unexpended balance and whether it was reverted per statute and agreement with the grantor.
5. Determine whether cash received for the award was accounted for in a separate fund or separate bank account that is non-interest bearing if so required by the capital outlay award agreement.
6. Determine whether reimbursement requests were properly supported by costs incurred by the recipient. Determine whether the costs were paid by the local public body prior to the request for reimbursement.
7. If information comes to the IPA's attention (regardless of materiality) indicating any fraud, illegal acts, noncompliance, or any internal control deficiencies, such instances must be disclosed in the report as required by Section 12-6-6 NMSA 1978. The findings must include the required content per Section 2.2.2.10(L) NMAC.
8. Prepare and submit to the Office of the State Auditor an agreed-upon procedures report that complies with AICPA AT-C Section 215. Additionally, the report shall include the following.
  - a. Table of Contents.
  - b. Official Roster.
  - c. The capital outlay amount awarded, amount received, amount expended, the remaining balance, and the actual legislation and effective dates for each capital outlay appropriation for which there were expenditures during the fiscal year.
  - d. The procedures performed and the results of those procedures.
  - e. Schedule of Findings and Responses.

SIGNATURE PAGE

This Contract is made effective as of the date of the latest signature.

AGENCY

Acequia de Santa Cruz (Santa Cruz Ditch)

CONTRACTOR

Macias, Gutierrez & Co., CPAs, PC

PRINTED NAME: Lonnie J Sanchez  
SIGNATURE: *Lonnie J Sanchez*  
TITLE: Treasurer  
DATE: 11/2/18

PRINTED NAME: JAMES R. MACIAS  
SIGNATURE: *James R. Macias*  
TITLE: PRESIDENT  
DATE: 11/1/18

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f. Exit conference information (Section 2.2.2.16(E)(3) NMAC).

g. Summary of Findings form (Section 2.2.2.16(E)(4) NMAC). The Summary of Findings form must be submitted electronically in a separate Excel file in addition to being included with the final report.