

TECHNICAL ASSISTANCE AGREEMENT

This Technical Assistance Agreement (“Agreement”) is made and entered into by and between the North American Development Bank (the “NADB”) and the City of Douglas, Arizona (the “Sponsor”).

RECITALS

NADB is an international organization created pursuant to the Agreement between the Government of the United States of America and the Government of the United Mexican States concerning the Establishment of a North American Development Bank.

One of the purposes of NADB is to help preserve, protect, and enhance the environment of the border region in order to advance the well-being of the people of the United States and Mexico. In carrying out such purpose, NADB is authorized to provide assistance for the development of environmental infrastructure projects in the border region.

Sponsor has requested technical assistance from NADB for the development of a “Preliminary Engineering Report” (the “Work”), necessary to advance a project entitled “Drinking Water and Wastewater Collection West Expansion in Douglas, Arizona” (the “Project”). NADB has authorized technical assistance for the performance of the Work.

NOW, THEREFORE, IN CONSIDERATION of the mutual promises, conditions, terms, and agreements contained in this Agreement, the sufficiency of which is hereby acknowledged, NADB and Sponsor do mutually agree to the following:

ARTICLE 1

FINANCIAL ASSISTANCE

A. NADB will provide technical assistance grant funding for the benefit of Sponsor in an amount not to exceed U.S.\$325,215.49 (the “Funds”), which are contributed through the Project Development Assistance Program (PDAP), funded by the U.S. Environmental Protection Agency (EPA), and therefore managed in conformity with the conditions of such Program. The Funds shall be used exclusively to carry out the Work, in accordance with the terms and conditions of this Agreement. In no event will NADB be obligated to provide grant assistance to Sponsor from NADB’s own assets.

B. If Sponsor will match or share costs for implementation of the Work, all Sponsor contributions, including cash and in-kind (the “Matching Contribution”), shall be accepted provided such contributions meet the following requirements:

- (i) the Matching Contribution is verifiable from Sponsor’s records;

(ii) the Matching Contribution is necessary and reasonable for proper and efficient accomplishment of the Work;

(iii) the Matching Contribution is not included as contributions under any other U.S. Federally assisted program.

(iv) the Matching Contribution is identified in the approved budget for the Work;

(v) Volunteer services furnished by professional and technical personnel, consultants, and other personnel may be counted as Matching Contribution, provided those services are necessary for the Work and their cost is consistent with that of similar work performed for Sponsor.

(vi) When an employer other than Sponsor furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (plus an amount of fringe benefits that is reasonable, allowable, and allocable, but exclusive of overhead costs), provided these services are in the same skill for which the employee is normally paid.

(vii) Donated supplies may include such items as expendable equipment, office supplies, laboratory supplies or workshop and classroom supplies. The value assessed for donated supplies included in the Matching Contribution shall be reasonable and shall not exceed the fair market value of the property at the time of the donation.

ARTICLE 2

SCOPE OF WORK

A. Sponsor agrees to expeditiously initiate and timely complete, in all respects, the Work as outlined in the work plan contained in Exhibit A (the "Work Plan" or "Scope of Work"), attached hereto and incorporated herein.

B. Sponsor agrees to make no change in the Work Plan without first submitting a written request to NADB and obtaining NADB's written approval of the required change and, if necessary, an amended Agreement. Authorization from NADB must be in accordance with the authorized representatives noted in the Execution of this Agreement or as authorized by NADB's Managing Director in writing. Sponsor may not deviate from the approved Work Plan and budget without written approval from NADB.

C. Sponsor will provide a specified budget and performance period in which to complete the Work. Sponsor, in coordination with NADB's Project Manager, will develop a performance schedule and a payment schedule. The performance schedule will ensure that all required tasks are incorporated into the milestone reviews. The payment schedule will complement the

required activities to be accomplished. Depending on the complexity of the disbursement of the Funds because of matching by other institutions, a performance and payment schedule will be developed that assures effective controls and accountability for disbursed Funds. For projects where the Funds are combined with other funds, the schedule will need to adequately identify the sources of funding for specific tasks in order to ensure that the Funds are used solely for authorized purposes.

ARTICLE 3

PROCUREMENT OF SERVICES

A. Sponsor shall procure the professional or non-professional services required for the full and timely completion of the Work. Procurement of any professional or non-professional services will be in accordance with NADB's procurement policies and procedures. Sponsor and NADB will agree on a procurement plan for the Work that promotes economy, efficiency, fairness, transparency, and competition.

B. In procuring services and managing any contract for performance of the Work, Sponsor shall maintain the highest standard of conduct, avoiding any situation that may be perceived as a potential conflict of interest.

ARTICLE 4

EQUIPMENT

If this Agreement includes the acquisition of equipment with the Funds, Sponsor shall comply with the following requirements:

(i) Sponsor shall not use equipment acquired with the Funds to provide services to non-governmental entities or organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by NADB, for as long as NADB retains an interest in the equipment.

(ii) Sponsor shall use the equipment in the Project for which it was acquired as long as needed, whether or not the Project continues to be supported by the Funds and shall not encumber the property without approval of NADB. When no longer needed for the original Project, Sponsor shall use the equipment in connection with its other activities.

(iii) During the time that equipment is used on the Project for which it was acquired, Sponsor shall make it available for use on other Projects if such other use will not interfere with the work on the Project for which the equipment was originally acquired.

(iv) When acquiring replacement equipment, Sponsor may use the equipment to be replaced as trade-in or sell the equipment and use the proceeds to offset the costs of the replacement equipment subject to the approval of NADB.

(v) Equipment records shall be maintained accurately and shall include the following information:

(a) A description of the equipment.

(b) Manufacturer's serial number, model number, national stock number, or other identification number.

(c) Source of the equipment, including the award number.

(d) Whether title vests in Sponsor or NADB.

(e) Acquisition date (or date received if the equipment was furnished by NADB) and cost.

(f) Location and condition of the equipment and the date the information was reported.

(g) Unit acquisition cost.

(vi) Ultimate disposition data shall be provided, including date of disposal and sales price or the method used to determine current fair market value where Sponsor compensates NADB for its share.

(vii) A control system shall be in effect to ensure adequate safeguards to prevent loss, damage, or theft of the equipment. A copy of the control system (Inventory) must be submitted to NADB. Any loss, damage, or theft of equipment shall be investigated and fully documented; if the equipment was owned or purchased by NADB, Sponsor shall promptly notify NADB.

(viii) Adequate maintenance procedures shall be implemented to keep the equipment in good condition.

(ix) Where Sponsor is authorized or required to sell the equipment, proper sales procedures shall be established which provide for competition to the extent practicable and result in the highest possible return.

ARTICLE 5

SPONSOR OBLIGATIONS

- A. Upon execution of this Agreement, Sponsor agrees to:
- i. Carry out the procurement of the professional or non-professional services necessary for execution of the Work, in accordance with the procurement plan developed in consultation with NADB, and subject to NADB's no objection.
 - ii. Subject to the no objection from NADB, contract a consultant to carry out the Work (the "Consultant") by entering into a consulting agreement (the "Consulting Agreement") prepared in accordance with the procurement plan developed by Sponsor, in consultation with NADB.
 - iii. Provide NADB, for its no objection, with a copy of the Consulting Agreement including any attachments and/or task orders with the Consultant, upon execution of the Agreement. NADB will not provide any payment of invoices to Sponsor or Consultant without receiving the original Consulting Agreement and any amendments thereto.
 - iv. Obtain NADB's written no objection prior to making any modifications or amendments to the Consulting Agreement, and to provide NADB a copy of any such amendments once executed.
 - v. Designate a project manager (the "Project Manager") who will ensure completion of the Work by the Consultant and work with NADB as needed.
 - vi. Verify that the Work is on schedule and that the Consultant is in compliance with the approved schedule. Sponsor will provide NADB a copy of the Consultant's most updated schedule of performance (with Gantt Chart if available) within ten (10) working days after receiving the executed original copy of the Agreement. The schedule may be updated only with written concurrence by NADB, and a copy of a revised schedule will be provided to NADB immediately thereafter.
 - vii. Provide all necessary information regarding the Work to NADB.
 - viii. Cover any cost exceeding the Funds granted by NADB to guarantee completion of the Work.
 - ix. Comply with all federal and state regulations, policies, guidelines, and requirements with respect to the acceptance and use of the Funds and performance of the Work.

- x. Comply with all requirements of NADB related to development of the Project (including all public information and notice requirements).
- xi. Verify that the Consultant is not barred from receiving federal or state funds.

ARTICLE 6

PAYMENT OF FUNDS

A. NADB shall contribute the Funds exclusively to cover the costs incurred in the performance of the Work, up to the limit set forth in Article 1 herein, under the terms authorized by EPA.

B. NADB shall reimburse Sponsor when NADB determines, at its sole discretion, that expenditures have been properly documented and justified.

C. Funds will be disbursed periodically by NADB to Sponsor only upon receipt of invoices or other form of payment request in compliance with the Consulting Agreement and the requirements of NADB.

D. All requests for payment shall be submitted on the appropriate form as noted in Exhibit "B".

E. If the Work is not carried out in compliance with the approved performance schedule, Sponsor shall provide an explanation for delays in performance.

F. Sponsor shall request payment of Funds consistent with the deliverables and payment provisions provided in the Consulting Agreement.

G. Payment of invoices will be direct wired to Sponsor's bank account provided in Exhibit "B" of this Agreement.

H. Prior to any payment, the Sponsor shall provide the NADB appropriate documentation required for processing the payment, including evidence that allows to validate Sponsor's bank account.

I. Sponsor shall immediately notify NADB of any change in the bank account information established in Exhibit "B" of this Agreement. Subject to NADB approval, any such change will require an amendment to the Agreement.

J. Sponsor shall invoice monthly for work completed by the Consultant. At no time will Sponsor exceed three (3) months without invoicing for tasks completed or without providing an explanation as to the reason for delays in performance of the Work. If performance of the Work is not in compliance with the approved performance schedule, Sponsor must provide an explanation as to why performance is delayed.

K. Invoices are due and payable within 30 days of receipt of a properly submitted invoice, provided all applicable requirements of NADB are met.

L. Final payment will be made by NADB upon submittal of a final invoice by Sponsor. Sponsor must submit the final invoice in a period not to exceed 30 days from the date on which Sponsor receives formal notification by NADB that the Work has been fully completed to the satisfaction of NADB. Unless otherwise authorized by NADB, submittal of invoices beyond the 30-day period may result in penalties applied to final payment in order to cover NADB administrative costs.

ARTICLE 7

ALLOWABLE AND UNALLOWABLE COSTS

A. Eligible, allowable costs shall be limited to those costs that are necessary, reasonable, and directly related to the efficient achievement of the objectives of this Agreement and the Work.

B. Allowable costs are those expenses that are incurred within the approved Scope of Work and funded in the budget for the Work.

C. Sponsor is restricted from using the Funds for advocacy purposes. Sponsor may not use the Funds for: (1) lobbying or influencing legislation before Congress; (2) partisan or political advocacy purposes; or 3) an activity with an objective that could affect or influence the outcome of a regulatory or adjudicatory proceeding.

ARTICLE 8

INTELLECTUAL PROPERTY

Sponsor may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under a grant award by NADB. NADB and EPA reserve a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use the Work for NADB functions and purposes, and to authorize others to do so at their discretion. Sponsor is subject to applicable regulations in the United States governing patents and inventions. NADB and EPA have the right to: (i) obtain, reproduce, publish, or otherwise use the data first produced under an award; and (ii) authorize others to receive, reproduce, publish, or otherwise use such data for environmental or public health reasons as determined by NADB.

ARTICLE 9

AUTHORITY

NADB and Sponsor each represent and warrant that they possess full legal authority to enter into and fulfill all the terms of this Agreement.

ARTICLE 10

TERM OF AGREEMENT

A. This Agreement shall commence on the latest date of execution by either of the parties hereto as authorized by the signatures in the Execution of Agreement Section below, and shall continue, unless earlier terminated pursuant to Article 12 of this Agreement, until Sponsor has completed the Work.

B. The Agreement and the obligations of the parties pursuant to the Agreement shall automatically terminate within **10 (ten)** months of its execution unless specifically addressed by an amendment signed by the parties after proper justification by Sponsor for extension of the Agreement.

ARTICLE 11

RECORDS

A. **Records Maintenance:** Sponsor shall maintain and retain any books, records, documents, and other evidence in its possession sufficient to reflect all project costs incurred in the performance of the Work under this Agreement in accordance with generally accepted accounting principles and practices in the country of origin. Sponsor shall ensure that any consultant(s) retained in connection with the Work shall maintain books, records, documents, and other evidence pertinent to the Project or performance of Work under this Agreement or the Consulting Agreement, in accordance with generally accepted accounting principles and practices in the country of origin.

B. **Access:** NADB, or its representatives or agents acting at the direction of NADB, shall have access to such books, records, documents, and other evidence specified in Article 11(A) above for inspection, audit, and copying during normal business hours. Sponsor will make available such information and provide proper facilities for such access and inspection.

C. **Duration:** Books, records, documents, and other evidence maintained under Article 11(A) above shall be retained and made available for the duration of this Agreement and for three (3) years thereafter in accordance with accounting principles and practices. In addition, any records which relate to any controversy arising under this Agreement or relating to the Work, or to litigation or the settlement of claims arising under this Agreement or relating to the Work, shall be maintained, and made available until three (3) years after the date of resolution of such matter.

D. **Single Audit Act:** Recipients of technical assistance under this Agreement that are U.S. entities are subject to the Single Audit Act Amendment of 1996 and OMB Circular A-133 – Revised June 24, 1997.

E. **Disadvantaged Business Enterprises.** Notwithstanding Article 3 of this Agreement, grant funds provided to U.S. Sponsor pursuant to this Agreement are subject to the requirements of EPA's Disadvantaged Business Enterprises (DBE) regulation at 40 CFR, Part 33. Recipient shall be responsible for providing the fair share objectives/goals and analysis/study required by the regulation, within the timeframe stipulated by the regulation.

ARTICLE 12

TERMINATION

A. A Party may terminate this Agreement by 30-day advance written notice (certified mail, return receipt requested or private delivery service with confirmation of receipt) to the other Party. Upon termination by NADB, Sponsor may immediately withdraw its request for Project certification and financing by NADB and shall immediately inform the Consultant(s) of the termination.

B. If Sponsor breaches the Agreement, NADB may suspend or cancel further disbursements of the Funds until such time as the breach is remedied to the satisfaction of NADB, may terminate the Agreement, and may take any other remedial action available to it at law or equity. A breach of this Agreement resulting in termination shall occur in the event:

- i. Sponsor defaults in the due observance or performance of any of its obligations under this Agreement, which failure remains unremedied for a period of thirty (30) days from the date Sponsor receives notice of such failure; or
- ii. Sponsor ceases to pursue implementation of the Project diligently, expeditiously and in good faith; or
- iii. The validity of this Agreement, or any material provision of this Agreement, is contested by the Sponsor or any governmental authority, or any section of this Agreement shall for any reason be invalid, ineffective, or unenforceable.

C. In terminating this Agreement because of a breach by Sponsor, NADB may take any of the following immediate actions:

- i. temporarily withhold payments pending correction of the deficiency by Sponsor;
- ii. disallow (that is, deny both use of the Funds and any applicable matching credit) for all or part of the cost of the activity not in compliance;
- iii. wholly or partly suspend or terminate the award;
- iv. withhold further awards.

ARTICLE 13

NADB IMMUNITY

NADB shall have no liability (in tort, contract or otherwise) to Sponsor or any of its officers, employees, agents or representatives for any claims, liabilities, losses, damages, or expenses arising out of any act or omission of NADB pursuant to this Agreement.

ARTICLE 14

DISPUTES

If any dispute arises under this Agreement, the parties hereto shall consult with each other to reach resolution through consensus. In the event resolution by consensus cannot be achieved, the parties will submit to binding arbitration pursuant to a process to be determined by NADB at its sole discretion, waiving all rights to resolution of the dispute by a court of law or other judicial proceeding.

ARTICLE 15

ASSIGNMENT

This Agreement may not be assigned to any person or entity by either party hereto without the written consent of the other party.

ARTICLE 16

BINDING

This Agreement shall bind the successors, assigns and legal representatives of the parties hereto subject to the requirements of Article 15.

ARTICLE 17

AMENDMENTS

This Agreement may only be amended in writing by mutual consent of the parties hereto.

ARTICLE 18

ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties. Any oral representation or modification concerning this Agreement, including amendments, shall be of no force.

ARTICLE 19

REPRESENTATION

For the purposes of this Agreement, the representative and address for NADB is Renata Manning-Gbogbo, Director of Technical Services & Grants, 203 S. St. Mary's St., Suite 300, San Antonio, TX 78205, Ph: (877) 277-1703 and Fax (915) 975-8280, rmanning@nadb.org. The project manager for NADB is Mr. Gerardo Calza, gcalza@nadb.org.

For the purposes of this Agreement, the representative and address for the Sponsor is Ana Urquijo, City Manager, City of Douglas, 425 E 10th Street, Douglas, AZ 85607. Phone: (520) 417-7300, e-mail: ana.urquijo@douglasaz.gov. The Project Manager for the Sponsor is Luis Pedroza, Phone: (520) 417-7319, email: luis.pedroza@douglasaz.gov.

ARTICLE 20

NOTICES AND COMMUNICATIONS

Notices and communications between the Parties shall be mailed (certified mail, return receipt requested, or private delivery service), delivered by hand to the addresses specified in Article 19 above, or delivered by electronic mail, unless otherwise stipulated in this Agreement or agreed to in writing by the parties hereto. Notices and communications shall be deemed given on the date the notice or communication is postmarked or, if delivered by hand, received at the place of business of the other or, if delivered by E-mail, on the date sent.

EXECUTION OF THIS AGREEMENT:

A. The parties acknowledge and agree that this Agreement may be executed by electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature. Without limitation, "electronic signature" shall include faxed versions of an original signature or electronically scanned and transmitted versions (e.g., via pdf) of an original signature.

B. The signers assume and understand all terms and conditions of this Agreement, and further certify that they have received signed copies of this Agreement on the date below.

IN WITNESS WHEREOF, the duly authorized representatives of the Parties have executed this Agreement, in duplicate originals in English, on the date set forth below.

NORTH AMERICAN DEVELOPMENT BANK

CITY OF DOUGLAS

By: *Renata Manning Gbogbo*
Name: Renata Manning-Gbogbo
Title: Director of Technical Services & Grants
DATE: September 12, 2023

By: _____
Name: Ana Urquijo
Title: City Manager
DATE:

Exhibit "A"
Scope of Work

(Please refer to electronic file)

Exhibit "B"
BANK INFORMATION

Beneficiary Name: CITY OF DOUGLAS

Bank Name: Wells Fargo

ACH Routing #: 122105278

Account #: 2010811194

SAMPLE INVOICE FORMAT

<p>North American Development Bank 203 S. St. Mary's St. Suite 300 San Antonio, Texas 78205</p> <p>Attention: Marielena Constandse</p> <p>Project: 1301_Preliminary Engineering Report for the Drinking Water and Wastewater Collection West Expansion project in Douglas, Arizona</p> <p>For Professional Services Rendered for the Period _____ to _____ 2023</p>	<p>CITY OF DOUGLAS Ana Urquijo 425 E. 10th STREET DOUGLAS, AZ 85607</p> <p>Invoice No: _____ Date: _____</p> <p>TAA No: TAA23-022/NADBC23-117</p>
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Task	Description	Contract Amount/Unit Cost	Percentage Complete [or milestones]	Quantity Completed To Date	Less Previous Billings	Amount Due This Invoice
1	Preliminary Engineering Report for the Drinking Water and Wastewater Collection West Expansion project in Douglas, Arizona	\$ 325,215.49		\$ -	\$ -	\$ -
	Total :	\$ 325,215.49		\$ -	\$ -	\$ -
	Total Amount This Invoice:					\$ -

Bank Information:	
Bank Name:	_____
Sponsor Name of Bank Account:	_____
Account Number:	_____
ACH Routing No.:	_____
Bank Address:	_____
Tax Registration Number:	_____