

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

**INTERLOCAL AND SUBRECIPIENT AGREEMENT
FOR THE PROVISION OF FIRST TIME WATER AND WASTEWATER SERVICES**

This Interlocal Cooperation Act and Subrecipient agreement is made under the Texas Interlocal Cooperation Act and the American Rescue Plan Act. It is entered into by the County of El Paso (“**County**”), a political subdivision of the State of Texas, and the Lower Valley Water District, a municipal utility district (“**LVWD**” or “**Subrecipient**”).

RECITALS

WHEREAS, the County is a duly organized political subdivision of the State of Texas engaged in the administration of county government and related services for the benefit of the citizens of the County; and

WHEREAS, LVWD is a non-profit, public utility serving the a portion of southeastern El Paso County, Texas and organized under the laws of the State of Texas; and

WHEREAS, the Parties are authorized to enter into this Agreement under the Texas Interlocal Cooperation Act, Texas Government Code Ch. 791; and

WHEREAS, Coronavirus Disease 2019 (“**COVID-19**”) is a virus identified as the cause of an outbreak of respiratory illness detected in the United States; and

WHEREAS, on March 13, 2020, after the Centers for Disease Control identified COVID-19 as a global pandemic, the President of the United States, the Governor of Texas and both the El Paso County Judge and Mayor of El Paso locally, declared the COVID-19 pandemic a disaster in their respective overlapping jurisdictions; and

WHEREAS, through the remainder of the year 2020, the disease infected over 32 million and killed over 575,000 Americans; and

WHEREAS, on March 11, 2021, President Biden signed the America Plan Rescue Act (“**ARP Act**” or “**ARPA**”) into law, seeking to respond to the COVID-19 emergency and bring back jobs; and

WHEREAS, the ARP Act was created to provide a substantial infusion of resources to help turn the tide on the pandemic, address its economic fallout and lay the foundation for a strong and equitable recovery; and

WHEREAS, the U.S Department of the Treasury launched the Coronavirus State and Local Fiscal Recovery Funds (“**CSLFRF**”), established by the ARP Act; and

WHEREAS, the CSLFRF is seeking to support urgent COVID-19 response efforts to continue to decrease the spread of the virus and bring the pandemic under control; replace lost public sector revenue to strengthen support for vital public services and help retain jobs; support immediate economic stabilization for households and businesses; and address systemic public health and economic challenges that have contributed to the unequal impact of the pandemic on certain populations; and

WHEREAS, the CSLFRF allocated funds to government entities and detailed four eligible uses (1) responding to the public health emergency and negative economic impacts; (2) revenue loss; (3), premium pay; and (4), water, sewer, and broadband infrastructure; and

WHEREAS, the County received funds from the ARP Act administered by the United States Department of Treasury (“Granting Agency”) for the CSLFRF program (“Program Funds”); and

WHEREAS, one authorized use of CSLFRF Program Funds is “to make necessary investments” in water, and/or sewer infrastructure;

WHEREAS, the County and the District, each pursuant to its statutory and constitutional authority, are responsible for public health and welfare and emergency response, and are desirous that the necessary agreements be entered into by and between the parties to procure, design, construct, and operate first-time water and sewer services in six subdivisions located in southeast El Paso County as more fully described in this document; and

WHEREAS, on February 21, 2022, Governor Abbott issued a proclamation renewing the State’s Disaster Declaration related to COVID-19; and

WHEREAS, the County and District find that this agreement is necessary to protect the health, safety, and welfare of the County and District’s residents; and

WHEREAS, the County intends to forgo a competitive procurement as justified pursuant to 2 C.F.R. § 200.320(c)(3) because: the competitive solicitation requirement will cause unnecessary delay; and, waiting for the completion of a competitive procurement would greatly increase the time to respond to the urgent public health and sanitation needs of the residents of El Paso County. In addition, waiting for completion of a competitive procurement would greatly increase the time to respond to the urgent needs of affected colonias residents of El Paso County. A non-competitive procurement as to contracting with a sub-recipient under the ARPA is appropriate to provide assistance to those suffering from the secondary effects of this infection on the community at large, which are devastating the finances and health and safety of the entire population of the region;

WHEREAS, all expenditures under this Agreement will be incurred during the period that begins on the Effective Date and ends on December 31, 2024; and

WHEREAS, the Program Scope falls within Granting Agency Expenditure Category 5 (Water and Sewer Infrastructure) and Category 7 Transfers to Other Units of Governments.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and for other valuable consideration, the receipt, adequacy, and sufficiency of which are acknowledged, the Parties agree as follows:

SECTION 1 - ADOPTION OF RECITALS.

The recitals above are incorporated by reference, are made a part of this Agreement for all purposes.

SECTION 2 - PURPOSE.

The County shall grant CSLFRF funds to the Subrecipient to:

- Oversee the procurement of construction products and services, contract management, construction and project management, and accept the system(s) upon completion of the project or projects;
- Procure, manage, accept ownership of, maintain, and run a wastewater treatment and delivery works in certain areas of northwest El Paso County as described in the attachments and exhibits to this Agreement.

SECTION 3 - TERM.

This Agreement will commence on the date the last Party executed it and will end on December 31, 2024 (the "Term").

SECTION 4 - FUNDING AMOUNTS.

The County's share of the project, to be paid exclusively with ARPA funds, shall be **\$17,698,097**. Unless otherwise agreed to in a writing executed by the Parties, any additional funding for cost overruns, or for any other purpose, in excess of this amount shall be provided by LVWD, and the County shall not be responsible for reimbursement of these costs. However, the Parties agree that, in the event of cost-overruns, they shall immediately begin negotiations to address the additional costs upon reasonably prompt notification from LVWD that it anticipates such overruns.

Payments from the County to LVWD shall be made on a reimbursement basis. County shall promptly reimburse LVWD for expenses it has incurred under the agreement upon receipt of written documentation detailing such expenses. LVWD shall comply with, and ensure that its contractors comply, with all laws including (without limitation) the Davis Bacon Act, Texas's prevailing wage laws, and the ARPA. Failure to document compliance with these laws shall be deemed reasonable grounds to withhold reimbursement of funds until such documentation is received by El Paso County.

The Parties understand that the County will not pay for any expense that is not authorized by this Agreement.

The County may also withhold any disbursement from the Subrecipient if the County Auditor reasonably believes and provides documentation to support the decision: that the Subrecipient has not complied with all obligations under this Agreement; the Subrecipient has breached any representations and warranties; the submitted expenditures are not in accordance to the approved Program Budget as provided in this Agreement; the Subrecipient has not met all Granting Agency requirements; the expenses are not considered allowable expenses under Granting Agency regulations or federal, state or local laws, the expenses have not been incurred, or that any proof of expenses provided by the Subrecipient are not adequate. The LVWD shall have no fewer than 30 days to contest any decision made under this paragraph and, in the event the County does not release payment(s) withheld under this paragraph, the LVWD shall have the right to contest the decision through appropriate legal action.

If an expenditure made with Program Funds is deemed ineligible after the County has rendered payment, the Subrecipient is responsible for the return of the Funds. Upon notice from the County or Granting Agency that an expense has been deemed ineligible, the Subrecipient shall return the Funds to the County. This provision shall survive past the term of this Agreement.

SECTION 5 – SCOPE OF SERVICES

PROJECT SCOPE: The project will consist of the procurement, acceptance, maintenance, and operation of a new water and sewer system in northwest El Paso County, Texas as generally described in the Preliminary Engineering Report prepared for El Paso County (March 18, 2022). The report is attached as **Attachment A** and incorporated by reference for all purposes. Design services shall be provided by an engineering firm contracted by El Paso County. The County's engineering firm will be paid for from County funds outside of this Agreement.

5.1 – County Duties

The County agrees to perform the following duties:

- Provide financial support for the project as described in Section 4, above.
- Establish and maintain effective internal controls over the use of Funds, to ensure compliance with Federal statutes, regulations and the terms and conditions of the Federal award.
- Provide as needed guidance and direction to the Subrecipient based on scope of work and deliverables.
- Procure and fund engineering design services.

5.2 – LVWD Duties

LVWD agrees to undertake and perform the following duties:

- Provide the County all necessary certifications and representations as required by Federal statutes, or regulations, on at least an annual basis.

- Provide the County requested financial and performance information necessary for the County to relate adequate metrics regarding the financial award.
- Comply with all federal, state, and local laws and regulations applicable to the project or projects.
- Notwithstanding anything in this Agreement to the contrary, LVWD shall not be required to take any action, or refrain from taking any action that may, in LVWD's sole discretion, cause it to violate applicable Internal Revenue Code statutes, rules, or regulations or other applicable law.
- LVWD must use any real property acquired in order to complete the project for the purpose for which it was acquired, i.e. water and/or sewer infrastructure, and may not be converted to any other use, as long as the property is needed for its original purpose under this Agreement and as required by 2 C.F.R. 200.311. When the property is no longer needed under this Agreement, LVWD must obtain disposition instructions from the Federal awarding agency and/or the County. Such instructions must provide for one of the alternatives in 2 C.F.R. 200.311.
- Any real property acquired under this agreement must be held in trust by LVWD as trustee for the beneficiaries of the project described in this Agreement and as required by 2 C.F.R. 200.316. The federal awarding agency may require LVWD to record "appropriate notices of record to indicate that personal or real property has been acquired or improved with a Federal award and that use and disposition conditions apply to the property."
- If applicable, LVWD must submit reports to the County or the Federal awarding agency at least annually on the status of real property in which the federal Government retains an interest under 2 C.F.R. 200.300.
- LVWD must comply with all records retention requirements under 2 C.F.R. 200.334.
- LVWD (or the County) may seek prior written approval from the "cognizant" federal agency in advance of the incurrence of special or unusual costs under 2 C.F.R. 200.407. The absence of prior written approval will not affect the reasonableness or allocability of the element, unless prior approval is specifically required under certain subsections enumerated in 2 C.F.R. 200.407.
- Any income from the projects resulting from the Agreement must be used in accordance with federal law and regulation, including (without limitation) 2 C.F.R. 200.307.
- Procurement under this Agreement must be consistent with the standards in 2 C.F.R. 200.317 through 200.327.
- LVWD must comply with all federal reporting requirements and must cooperate with the County which must "manage and monitor" LVWD as a subrecipient to insure compliance

with the requirements of federal law and regulation, including (without limitation) 2 CFR 200.332.

- The Parties agree that within this document, and all attachments, the County has: (1) clearly identified this award as a subaward of funds under the ARPA's SLFRF and related programs; (2) reasonably identified any and all compliance requirements for the use of these funds; and (3) reasonably identified any and all reporting requirements for the expenditure of SLFRF funds.
- If applicable, LVWD will provide all labor certifications including (without limitation) prevailing wage rate certifications.
- If applicable, LVWD will provide National Pollutant Discharge Elimination System (NPDES) permit number(s) and/or Public Water System (PWS) ID number(s).

SECTION 6 – BUDGET

The Subrecipient will adhere to the program budget attached as **Attachment “B”** (the “**Program Budget**”), and incorporated in this Agreement for all purposes. The items set forth in the Program Budget are accepted as Allowable Expenses and shall be used in accordance with the Program Scope. The County shall immediately notify Subrecipient if any item provided in the Program Budget is no longer acceptable as an Allowable Expense. The Subrecipient will obtain the advance written approval of the County Administrator or her designee for any changes to the Program Budget, such changes include (without limitation) increases in budget, decreases in budget, and changes in budget category amounts. If the County determines that unexpended funds are present, then the County may adjust the Sub-grant Amount to remove such amounts at the County's discretion.

SECTION 7 - TERMINATION.

The Agreement may be terminated under any of the following provisions:

- The Granting Agency or County may terminate the Agreement if Subrecipient fails to comply with the terms and conditions of the ARP Act, other federal law, or this Agreement. Before terminating this Agreement under to this provision, the County will provide written notice of intent to terminate enumerating the reasons for which the termination is being sought and provide at least 30 calendar days to the Subrecipient to cure such failure. If the Agreement is terminated under to this provision, Subrecipient will reimburse the County all unused funds as of the date of termination.
- Consent. County, with the written consent of the Subrecipient, may terminate the Agreement. The County and Subrecipient must then agree upon the termination conditions, including (without limitation) the effective date and, in the case of partial termination, the portion to be terminated.

- Subrecipient may terminate this Agreement by sending to the County written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the County reasonably determines in the case of partial termination that the reduced or modified portion of the Disbursement will not accomplish the purposes for which the federal award was made, the County may terminate the Disbursement in part, or its entirety, and seek the Subrecipient's reimbursement of some or all of the funds previously disbursed by the County.
- Close out. Regardless of the reason or method of termination of this Agreement, the Subrecipient will remain responsible for complying with all close out procedures, and records retention required under the OMB Requirements and the Program Fund Requirements. This close-out period may extend beyond the term of this agreement.
- Non-Appropriation of Funds by the County. If the County fails to appropriate sufficient funds to carry out the obligations of the County under this Agreement, then the County may terminate this Agreement upon 30 calendar day notice to the Subrecipient.

SECTION 8 - AUDIT AND INSPECTION.

- Subrecipient shall keep all records related to this Agreement for a period of five years after December 31, 2026. Until termination of this Agreement, Subrecipient shall allow the County, the Granting Agency, federal inspectors general, and/or the Comptroller of the United States to inspect all records reasonably related to this Agreement within three calendar days from notice in order to make audits, examinations, excerpts, and transcripts. The Subrecipient shall provide copies to the requesting party of any records requested at the Subrecipient's expense. Further, the Subrecipient shall allow timely and reasonable access to the non-Federal entity's personnel for the purpose of interview and discussion related to such documents. Subrecipient shall maintain appropriate records for the periods required by law to provide accountability for all expenditures of grant funds, reporting measures, and funds received from County under this Agreement. Records maintained by the Subrecipient shall, at a minimum, identify the supporting documentation prepared by the County to permit an audit of its accounting systems and payment verification with respect to the expenditure of any funds awarded under this Agreement.
- Subrecipient shall comply with 2 CFR part 200 Subpart F – Audits. In accordance with 2 CFR §200.510, Subrecipient shall prepare financial statements and a schedule of expenditures of federal awards. Subrecipient shall provide the County with its annual financial statement within **150** calendar days of the end of Subrecipient's operating year. This financial statement shall be prepared by an actively licensed public accountant. This provision survives completion of the project.
- In addition, if expending more than \$750,000 of Federal awards during an operating year, from any Federal source, Subrecipient shall comply with the audit provisions contained in 2 CFR subpart F and the Single Audit Act Amendments of 1996 (31 U.S.C. §§7501-7507). Subrecipient shall submit its annual audit to the County within **150** days of the end of Subrecipient's fiscal year in which available funds were expended by Subrecipient pursuant to

this Agreement. Subrecipient must clear any deficiencies noted in the audit reports within **30** calendar days after receipt of any noted deficiencies. If the audit shows that the entire funds disbursed hereunder, or any portion thereof, were not expended in accordance with the conditions of this Agreement, Subrecipient shall be held liable for reimbursement to the County of all funds not expended in accordance with those regulations and Agreement provisions within **30** calendar days after County has notified Subrecipient of such non-compliance. Any reimbursement by Subrecipient shall not preclude the County from taking any other action or pursuing other remedies. Failure to comply with these audit requirements constitutes a violation of the Agreement and may result in the return of past or future payments made under to this Agreement. If Subrecipient expends less than \$750,000 in federal awards during its fiscal year, it is exempt from this requirement, except as noted in 2 CFR §200.503, but records must be available for review or audit.

SECTION 9 - REVERSION OF ASSETS.

Subrecipient shall transfer to the County any funds at hand (not previously expended by Subrecipient in accordance with this Agreement) at the time of expiration or termination of this Agreement. Subrecipient shall transfer such funds within **30** calendar days of the expiration or termination of the Agreement.

SECTION 10 - MANDATORY DISCLOSURES.

Both the County and the Subrecipient are required to disclose, in a timely manner, to the Granting Agency, any and all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the federal ARP Act Award. Additionally, both the County and the Subrecipient are required to report certain civil, criminal or administrative proceedings to System for Award Management (SAM), as outlined in 2CFR §200.113.

SECTION 11 - INDEMNIFICATION.

TO THE EXTENT ALLOWED BY LAW AND EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, LOWER VALLEY WATER DISTRICT WILL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE COUNTY AND ITS RESPECTIVE OFFICERS, OFFICIALS, AGENTS, VOLUNTEERS, REPRESENTATIVES, AND EMPLOYEES FROM ALL CLAIMS OF PROPERTY DAMAGE, PROPERTY LOSS, PERSONAL INJURY, DEATH, ILLNESS, INTELLECTUAL PROPERTY RIGHT INFRINGEMENT, REGULATORY COMPLIANCE RELATED TO LVWD AND/OR LVWD'S EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, INVITEES, OR LICENSEES ACTIONS OR OMISSIONS RELATED TO THIS AGREEMENT. THE OBLIGATION UNDER THIS SECTION REMAINS IN EFFECT FOR ALL CLAIMS ARISING DURING THE TERM OF THIS AGREEMENT. BY ENTERING INTO THIS AGREEMENT, THE PARTIES DO NOT WAIVE, AND SHALL NOT BE DEEMED TO WAIVE ANY RIGHT, IMMUNITY, OR DEFENSE THAT PARTY MAY HAVE UNDER APPLICABLE LAW, STATUTE, RULE, OR REGULATION.

SECTION 12 - LIABILITY FOR FUNDS.

The Subrecipient shall repay the County any funds that the Subrecipient accepts or disburses under this Agreement in violation of this Agreement, the OMB Requirements, the Program Funding Requirements, or the Granting Agency requirements but only to the extent provided in Section 4, Funding Amount, above.

SECTION 13 - COMPLIANCE WITH FEDERAL REGULATIONS.

The Subrecipient will comply with all requirements of Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards codified under Title 2 of the Code of Federal Regulations part 200 as may be amended, including all appendixes (“**OMB Requirements**”). For the Parties’ convenience, Appendix II (“Contract Requirements”) of these regulations is attached as **Attachment C**. However, the Subrecipient understands that Attachment C is only a portion of the OMB requirements and that the Subrecipient must refer to Title 2 of the Code of Federal Regulations part 200 for all requirements. Further, the Subrecipient understands that the County must also comply with the OMB requirements and the County depends on the Subrecipient’s cooperation in order to comply with such OMB requirements. As such, the Subrecipient will perform any obligations reasonably requested by the County that are necessary to ensure that the County complies with the OMB requirements. In addition, the Subrecipient will comply with all Program Funds requirements listed under the interim, and subsequently, final codified rules of the ARP Act (“**Program Fund Requirements**”). In addition, the Subrecipient will perform any obligations reasonably requested that are necessary to ensure that the County complies with Program Fund Requirements.

SECTION 14 - POST CLOSE OUT.

As required under the OMB Requirements, the closeout of a Federal award does not affect the right of the Granting Agency or the County to disallow costs and recover from the Subrecipient funds on the basis of a later audit or other review. To the extent allowed by the OMB requirements and the Program Fund Requirements, and only to the extent provided in Section 4 above, the Subrecipient shall repay the County any funds that are determined to be disallowed costs even if performance obligations or work has been completed.

SECTION 15 - ADDITIONAL REQUIREMENTS.

Attachments listed on this section are incorporated into this Agreement in full and are considered to be an essential part of this Agreement. Subrecipient will comply with the requirements of all of the attachments incorporated to this Agreement. If there are any conflicts between any attachment and this Agreement, then the most stringent requirement governs.

- Attachment **A** - Program Scope
- Attachment **B** - Program Budget
- Attachment **C** - 2 CFR Part 200, Appendix II, Contract Requirements

- Attachment **D** - Granting Agency Requirements
- Attachment **E** - Required Subrecipient Information
- Attachment **F** - Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
- Attachment **G** - Certification for Disclosure of Lobbying Activities

SECTION 16 - COPYRIGHTS, LICENSES, AND PATENTS.

If this Contract results in a copyrightable material, the County's approval must be obtained to copyright the work. Additionally, the County reserves a royalty fee along with a nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use the work for government purposes. Any discovery or invention arising out of or developed in the course of the services aided by this Agreement shall be promptly and fully reported to the County for a determination as to whether patent protection on such invention or discovery shall be sought and how the rights in the invention or discovery, including rights under any patent issued thereon, shall be disposed of and administered, in order to protect the public interest. Nothing in this Section relieves the Subrecipient from complying with the OMB Requirements regarding intellectual property.

SECTION 17 – NOTICE

The parties will send all notices required by this Agreement in writing and delivered by certified mail to the addresses described in this Section. All notices are considered received three (3) business days after the postmark date. Either Party may change their address by sending a written notice to the other party. A new address is not official until the change of address notice is received by the other party as provided in this section. Upon receipt of proper notification of change of address, the notified party will send all further notifications to the new address. Parties will address notices as follows:

To the County of El Paso: **THE COUNTY OF EL PASO**
 Attn: County Administrator
 Address: 500 E. San Antonio Street. Suite 302A
 El Paso, Texas 79901

To LVWD:

Copy to: Lower Valley Water District
 Attn: Gerald Grijalva, General Manager
 1557 FM 1110
 P.O. Box 909
 Clint, Texas 79836

The Parties may exchange invoices, accompanying reporting, and administrative re-authorizations via e-mail.

SECTION 18 - AMENDMENTS.

This Agreement may be amended at any time by written instruments executed by the authorized officials of County and LVWD. The Parties note that this agreement is the product of novel funding provided in the first instance by the federal government under the ARPA. The Parties agree to work together to amend this Agreement as necessary to ensure compliance with the ARPA.

SECTION 19 – GENERAL PROVISIONS

- **GOVERNING LAW.** This Agreement is governed by Texas law.
- **VENUE.** The venue for disputes regarding this Agreement shall lie in a state or federal court of appropriate jurisdiction sitting in El Paso County, Texas.
- **NO OTHER RELATIONSHIP.** No term or provision in this Agreement is intended to create a partnership, joint venture, employment, or agency arrangement between any of the parties.
- **THIRD-PARTY BENEFICIARIES.** There are no third-party beneficiaries for this Agreement.
- **NO PERSONAL LIABILITY.** This Agreement does not create any personal liability on the part of any employee, officer, or agent of any public body that may be a Party to this Agreement.
- **PUBLIC INFORMATION.** This Agreement is public information. The Parties agree that the County is a governmental body for purposes of the Public Information Act, codified as Chapter 552 of the Texas Government Code and as such is required to release information in accordance with the Public Information Act. The Parties agree that they will mark any information that they consider to be confidential, proprietary, and/or trade secret in their communications in connection with this Agreement. The Parties agree to provide notice to the other Parties in accordance with the Public Information Act in the event any Party receives a request for information under the Public Information Act for information that another Party has marked as confidential, proprietary, and/or trade secret.
- **SOVEREIGN IMMUNITY ACKNOWLEDGED AND RETAINED.** The Parties acknowledge and agree that no provision of this Agreement is in any way intended to constitute a waiver by any Party of any immunities from suit or liability that a Party may have by operation of law. The Parties retain all governmental rights, immunities, or defenses.

- **GOVERNMENTAL FUNCTION.** The Parties agree that they are entering this Agreement in the exercise of their respective governmental functions under the Texas Tort Claims Act. The Parties also agree that they are entering into this Agreement as a governmental entity performing a governmental function.
- **INDEPENDENT CONTRACTOR RELATIONSHIP.** This Agreement does not create an employee-employer relationship between the parties.
- **HEADINGS.** The headings and subheadings of this Agreement are for information purposes only and are not substantive terms.
- **SUCCESSORS AND ASSIGNS.** This Agreement is binding on Subrecipient and the County of El Paso, and the County of El Paso's and Subrecipient's successors and assigns. Neither party may assign, sublet, or transfer its interest or obligations in this Agreement without the written consent of the other.
- **NO WAIVER.** Either party may waive any default without waiving any prior or subsequent defaults. Either party's failure to exercise or delay in exercising any right under this Agreement, will not operate as a waiver of such right.
- **COMPLIANCE WITH LAWS.** The parties will comply with all applicable laws, administrative orders, and any rules or regulations relating to the obligations under this Agreement.
- **DISCRIMINATION PROHIBITED.** Subrecipient shall comply with all laws prohibiting discrimination and as may be further specified in Program Scope and the applicable local, state and federal requirements. Failure to do so in any manner which impairs the quality of performance under this Agreement or affects the administration of the funds provided under this Agreement, shall constitute a breach of this Agreement. Subrecipient covenants that during the term of this Agreement, the Subrecipient, its associates, officers, board or committee members, and/or employees shall have no interest, direct or indirect, which will conflict in any manner with the performance of the services under this Agreement and that none of its paid personnel shall be employees of the County or have any contractual relationship with the County.
- **SUBCONTRACTING.** Unless allowed under the Program Scope, the Subrecipient may not subcontract any activities under this Agreement without the prior written consent of the County.
- **TIME IS OF THE ESSENCE.**
 - Time is of the essence with respect to the rights and obligations of the Parties as described herein.

- The times and dates specified in this contract are material to this Agreement. For the purpose of this agreement “**business days**” means Monday through Friday excluding County of El Paso holidays. “**Calendar days**” has the traditional definition used in western calendars and dictionaries and as commonly understood by the public. However, if a deadline, whether defined as falling on a “business day” or a “calendar day” falls on a Saturday, Sunday or County holiday, then the deadline is extended until the next County business day, *except* for the ultimate deadline for performance defined by the ARPA and its regulations or any statute or regulation that amends such deadline.
- **RELEASE.** To the extent allowed by law, the Subrecipient releases the County and its officers, officials, volunteers, agents, representatives, and employees from all claims of property damage, property loss, injury, or death sustained by the Parties while performing any activities related to this Agreement.
- **DAMAGE TO PROPERTY.** The Subrecipient will pay the costs of repairing any damages to the County’s property (including public right of way) caused by their officers, officials, volunteers, representatives, contractors, subcontractors, or agents subject to this Agreement. The Subrecipient will make payment for any damages within thirty (30) calendar days of receiving an invoice from the County.
- **FORCE MAJEURE.** There is no breach of contract should either party’s obligations within this Agreement be delayed due to an act of God, outbreak of hostilities, riot, civil disturbance, acts of terrorism, the act of any government or authority, fire, explosion, flood, theft, malicious damage, strike, lockout, or any cause or circumstances whatsoever beyond either party’s reasonable control. The delayed party must resume performing its obligations in this Agreement promptly after the reason for the delay is resolved and shall take all reasonable steps to insure that the project is completed by the deadline established by the ARPA.
- **PROVISIONS SURVIVING THIS AGREEMENT.** Representations, releases, warranties, covenants, indemnities, and confidentiality survive past the execution, performance, and termination of this Agreement.
- **REPRESENTATIONS AND WARRANTIES.** The person or persons executing this Agreement on behalf of each parties have the authority to sign on behalf of their respective parties.
- **FINES AND PENALTIES.** The Subrecipient is responsible for fiscal penalties, fines, or any other sanctions occasioned as a result of a finding that violations of any applicable local, state, or federal law occurred as a result of the Subrecipient’s actions.
- **EXCLUSION OF INCIDENTAL AND CONSEQUENTIAL DAMAGES.** Neither Party is liable under this Agreement to the other Party for any incidental, consequential, special, punitive, or exemplary damages of any kind—including lost profits, loss of business, mental

anguish, emotional distress and/or attorney fees- as a result of a breach of any term of this Agreement.

- SEVERABILITY. A future finding of invalidity of any provision of this Agreement does not affect the validity of any remaining provisions of this Agreement.
- ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the parties.
- All attachments referenced in this Agreement are incorporated in full to this Agreement by reference.
- COUNTERPARTS. This Agreement may be executed in multiple counterparts which, when taken together, shall be considered as one original.
- EFFECTIVE DATE. This Agreement is made to be effective on the date the last party executed it.

The Parties execute and bind themselves to this Agreement as follow:
THE COUNTY OF EL PASO, TEXAS

Ricardo A. Samaniego
El Paso County Judge
Date: _____

Betsy C. Kelly
County Chief Administrator

Approved as to legal form:

Kevin McCary
Assistant County Attorney

LVWD – Subrecipient

Gerald Grijalva,
General Manager
Date: _____

Approved as to legal form:

Steve Blanco
Counsel for LVWD