

FRYINGPAN-ARKANSAS PROJECT

Storage Recovery Study

Request for Proposals

February 3, 2020



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Storage Recovery Study

Request for Proposals

Section 1. Background

1.1 Introduction

The Southeastern Colorado Water Conservancy District is requesting proposals from qualified engineering firms (consultants) to provide engineering services for the **Fryingpan-Arkansas Project Storage Recovery Study** (Study). The Study will include the evaluation of methods to recover lost storage in Pueblo Dam including dredging, enlargement, and alternative storage.

The Owner invites Proposals according to the requirements set forth in this RFP, including the format and content guidelines in Section 5. The Proposals will be reviewed and evaluated using the single-step, best-value selection process described in Section 6. The capitalized terms in this RFP have the meanings as first used in the text of this RFP and as defined in Attachment A (Definition of Terms).

At completion of the evaluation process, the **Southeastern Colorado Water Conservancy District** (Owner) will select a Proposer to award, or enter negotiations for award of, the Storage Recovery Study Contract [see Attachment B (Draft Contract)].

This RFP is subject to revision after the date of issuance via written addenda. The Request for Proposal, reference documents, and any such addenda will be posted on the Southeastern Colorado Water Conservancy's web site (not distributed directly to potential Proposers) at www.secwcd.org. It is each Proposer's responsibility to obtain all RFP addenda prior to submitting its Proposal.

In no event will the Owner be liable for any costs incurred by any Proposer or any other party in developing or submitting a Proposal.

1.2 RFP Organization

This RFP consists of seven Sections and seven Attachments:

- Section 1: Background
- Section 2: Study Overview
- Section 3: Progressive Design-Build Services
- Section 4: Selection Process
- Section 5: Proposal Submission Requirements
- Section 6: Proposal Evaluation and Selection
- Section 7: Conditions for Proposers

- Attachment A: Definition of Terms
- Attachment B: Draft Contract
- Attachment C: Study Background Documents

The contents of the RFP Attachments take priority over any conflicting statements in the RFP Sections.

Certain Study background documents are being made available as Attachment C (Study Background Documents) for the purpose of preparing Proposals.

1.3 Owner's Objectives

The Owner's objectives for delivery of the Study are as follows:

- **Quality:** Provide a study that addresses conceptual technical and cost needs for recovering storage in Pueblo Dam and Reservoir Provide a study that can be used to develop an overall storage recovery plan.
- **Cost:** Provides accurate and updated capital costs for planning purposes.
- **Schedule:** Achieve the scheduled completion date of the Study.

The Owner is committed to working in close collaboration with the Consultant during the Study to achieve the Study objectives.

Section 2. Study Overview

2.1 Study Scope

The Southeastern District was created under Colorado State Statutes on April 29, 1958, by the District Court of Pueblo, Colorado, for the purpose of developing and administering the Fryingpan-Arkansas Project. The Southeastern District extends along the Arkansas River from Buena Vista to Lamar, and along Fountain Creek from Colorado Springs to Pueblo, Colorado. The Southeastern District consists of portions of nine counties.

The Fryingpan-Arkansas Project (Project) is a transmountain diversion which supplies southeastern Colorado with improved supplemental water supply for irrigation, municipal and industrial uses, hydroelectric power generation, and recreational opportunities. The Project also provides flood control for the area and is designed to maintain or improve fish and wildlife habitats. The Project acquired its name from the fact that it imports approximately 57,000 acre-feet of water each year from the Fryingpan River basin on the western slope of the Continental Divide and delivers it via a system of tunnels and reservoirs along with the Arkansas River to the eastern slope. After deductions of elements such as evaporation and transit loss annual allocated water are approximately 44,000 acre-feet.

The Fryingpan-Arkansas consists of 5 jurisdictional dams, 16 diversion sites, 27.2 miles of tunnels, 10.7 miles of conduit, and a 7.5-megawatt hydroelectric powerplant. The Southeastern District is responsible for a portion of the repayment of the construction costs and annual operation, maintenance and replacement of the Project. Property within the Southeastern District boundaries and that benefit from the Project are assessed an ad valorem tax. In addition to administering this repayment responsibility, the Southeastern District allocates supplemental water from the Fryingpan-Arkansas Project for use by various private and mutual ditch companies, and for use by the many municipal and domestic water suppliers who directly serve the Southeastern District 's approximately 893,000 constituents.

In addition to repayment of the Project, the Southeastern District also engages in water management and planning activities for the purpose of meeting present and future water supply needs of water users within its boundaries.

The Southeastern District functions under a governmental general fund and an Activity Enterprise fund. The fiscal year for the Southeastern District and its Enterprise is January through December.

The Southeastern Colorado Water Conservancy District (District) commissioned GEI Consultants to complete a Water and Storage Needs Assessment in 1997, and the study was completed in 1998. The task was to assess the water and storage needs of District members. The planning horizon for the study was 50 years. More than 20 years have elapsed since the completion of the study. Sedimentation in Pueblo Reservoir has reduced the available storage space by approximately 20,000 acre-feet over the past 45 years. Additional reductions may be shown at Turquoise Reservoir and Twin Lakes. Results are pending regarding Reclamation surveys to be certain of the amount.

The District Board desires to develop an integrated storage plan for Pueblo Dam and the Upper Arkansas Basin. A Recovery of Storage Program will look at methods such as dredging, enlargement or alternative storage to regain the amount of Project Storage that has been lost.

2.2 Study Budget and Funding

The anticipated engineering fee for the Study is between \$150,000 to \$250,000. The Owner intends to use District funds to finance the Study.

2.3 Study Schedule

As indicated in Section 4, it is anticipated that the Storage Recovery Study Contract will be executed on or about **March 20, 2020**. The Study is expected to be completed no later than **August 1, 2020**.

Section 3. Study Services

3.1 General

The purpose of this study is to evaluate methods and conceptual costs of storage recovery at Pueblo Dam. The information prepared in this report will be used to develop an overall storage recovery strategy.

The scope will consist of the following subtasks:

- Evaluation and documentation of storage recovery methodologies.
- Development of conceptual costs for storage recovery methods.
- Preparation of a report documenting the evaluation and findings.

The Consultant will provide the following study scope of services:

- Conduct Study initiation workshop with Owner to discuss project objectives, schedule, and exchange information.
- Review existing information and develop alternatives cost estimating methodology based on available information. Evaluate methodologies including dredging, enlargement, and alternative storage.
- Develop conceptual cost estimates for methodologies.
- Conduct review meeting with Owner to discuss study findings and costs.
- Submit draft report summarizing findings.
- Address Owner comments on draft report.
- Submit final report (paper and electronic format).
- Present findings to Owner at a scheduled meeting.

3.2 Roles and Responsibilities

Owner: The Owner will cooperate with the Consultant and will fulfill its responsibilities in a timely manner to facilitate the Consultant's timely and efficient performance of services. Owner responsibilities include:

- Review submissions and provide comments to Consultant.
- Furnish existing studies and provide complete, accurate and reliable data and information regarding the Study, including record drawings (if available), preliminary studies etc.
- Provide information and provide (or engage Consultant to perform) additional studies that may be necessary to complete the Project.
- Provide adequate funding.

Consultant: The Consultant will cooperate with the Owner and will provide in a timely manner services necessary to complete the Study scope specified in this RFP. Consultant responsibilities include :

- Prepare study documents.
- Implement quality-management procedures.

The roles and responsibilities of the Owner and the Consultant are more fully described in Attachment B (Draft Contract).

Section 4. Selection Process

4.1 Acknowledgement of RFP

Each potential Proposer should provide the Owner, within **seven (7)** days of receipt of this RFP, an acknowledgement that it has received the RFP and is a potential Proposer. Such acknowledgement shall identify and provide full contact information for the Proposer Contact, who shall be the Proposer's single point of contact for the receipt of any future documents, notices and addenda associated with this RFP. Such acknowledgement must be sent in writing and a copy electronically transmitted to the Owner Contact.

4.2 Communications and Owner Contact

On behalf of the Owner, **Chris Woodka** will act as the sole point of contact for this RFP and shall administer the RFP process. All communications shall be submitted in writing, by fax, or by email, and shall specifically reference this RFP. In person meetings to discuss the RFP will be allowed between February 3 and February 21, 2020. Contact Chris Woodka to arrange an Owner meeting, if desired. All other questions or comments should be directed to the Owner Contact as follows:

Chris Woodka
Senior Policy and Issues Manager
Southeastern Colorado Water Conservancy District
31717 United Avenue
Pueblo, CO 81001

info@secwcd.com

No oral communications from the Owner Contact or other individual is binding. No contact with board members or any public official concerning the Study during the selection process is allowed. A violation of this provision may result in disqualification of Proposer.

4.3 Procurement Schedule

The current procurement schedule is as follows:

Issue RFP	February 3, 2020
Pre-Proposal Meetings (Optional)	February 3 – February 21, 2020
Deadline for questions	February 25, 2020
Submit Proposal	February 28, 2020

Proposal evaluation/selection	February 20-March 5, 2020
Notice of Award	March 5, 2020
Board Approval	March 19, 2020
Contract Execution	March 20, 2020
Award Contract	March 21, 2020
Submit Draft Study	June 26, 2020
Submit Final Study	August 1, 2020

4.4 Pre-Proposal Meetings

Owner will conduct optional pre-proposal meetings with each proposer that intends to respond to the RFP. The meeting will be held at a mutually agreed upon date and time between the Proposer and Owner between January 28 and February 14, 2016. The purpose of the meeting will be to discuss Study goals and issues and to provide the Proposer an opportunity to become more familiar with the Study. In addition, the meeting will provide the Owner with an opportunity to meet key team members and to better understand the Proposer's approach and experiences with the Storage Recovery and condition assessment process. The meeting will be informal. At this meeting, Owner will offer information about the Study and the selection process. Proposers shall advise the Owner Contact **prior to the meeting** of the names of individuals who will attend the pre-proposal meeting.

Section 5. Proposal Submission Requirements

5.1 Submittal Place and Deadline

Four (4) Proposal paper documents must be received no later than **2:00 pm February 28, 2020**, addressed to:

**James Broderick
Executive Director
Southeastern Colorado Water
Conservancy District
31717 United Avenue
Pueblo, CO 81001**

The Proposal may be submitted electronically by email to info@secwcd.com by the date and time stated above. If submitted electronically, a paper copy must also be sent as above and received by the end of business on March 2, 2020.

Each Proposer assumes full responsibility for timely delivery of its Proposal at the required location. Any Proposal received after the submittal deadline will be deemed non-responsive and returned. The delivered packaging containing the Proposal documents must note “Proposal Enclosed” on its face.

5.2 Submission Format

The Proposal must not exceed **25** total pages (most or all 8½ x 11 inch with 1-inch or greater margins), excluding the transmittal letter, index or table of contents, front and back covers, title pages’/separation tabs, and appendices. Eleven-point font or larger must be used in Proposal Parts 1 - 7. The proposal should focus on the Study approach and the team’s experience.

5.3 Submission Content

The content requirements set forth in this RFP represent the minimum content requirements for the Proposal. It is the Proposer’s responsibility to include information in its Proposal to present all relevant qualifications and other materials. The Proposal, however, should not contain standard marketing or other general materials. It is the Respondent’s responsibility to modify such materials so that only directly relevant information is included in the Proposal.

The Proposal must include the following information in the order listed:

- Transmittal Letter
- Part 1 – Executive Summary
- Part 2 – Consultant Profile
- Part 3 – Study Team
- Part 4 – Experience
- Part 5 – Study Approach
- Part 6 – Contract Markup (not included in page count)
- Part 7 – Fee and Rate Proposal

5.3.1 Transmittal Letter

Proposers must submit a transmittal letter (maximum two pages) on the Proposer's letterhead. It must be signed by a representative of the Proposer who is authorized to sign such material and to commit the Proposer to the obligations contained in the Proposal. The transmittal letter must include the name, address, phone number and e-mail address for the Proposer Contact and must specify who would be the Consultant's signatory to any contract documents executed with the Owner. The transmittal letter may include other information deemed relevant by the Proposer.

5.3.2 Part 1 – Executive Summary

The executive summary (maximum three pages) must include a concise overview of the key elements of the Proposal and must summarize and refer to information in the Proposal. The executive summary shall not be used to convey additional information not found elsewhere in the Proposal.

5.3.3 Part 2 – Consultant Profile

A general description of the company proposed as the Consultant must be provided in Part 2 of the Proposal. Information concerning Key Personnel and other firms that may be included on the Study Team, including the project manager and lead technical staff should be provided in Part 3 of the Proposal. The Consultant Profile must include the following information.

- **General**

Provide general information about the Consultant, such as lines of business and service offerings, locations of home and other offices, number of employees (professional and non-professional), years in business, and evidence of required licenses.

- **Legal structure**

Identify whether the Consultant is organized as a corporation, limited liability company (LLC), general partnership, joint venture, limited partnership, or other form of legal entity.

- **Study office location**

Identify where the Consultant intends to maintain its Study office(s) and where most of the design work will be performed.

5.3.4 Part 3 – Study Team

The composition, organization and management of the Study Team must be described as follows:

- Identify all Key Personnel on the Study Team and describe their specific responsibilities.
- Provide an organizational chart showing the reporting relationships and responsibilities of the Key Personnel and describe the Consultant’s approach to the management of such Key Personnel.
- Provide resumes for all Key Personnel in Appendix B of the Proposal. Resumes must be limited to two pages per individual and include:
 - Academic and professional qualifications
 - Professional registration (as applicable)
 - Experience as it relates to the Study and to the individual’s specified role on the Study

5.3.5 Part 4 – Experience

The Proposal must describe the performance history and experience of the Study Team on similar Studies. In addition the Proposal should include relevant experience with preparation of Condition Assessments and Capital Improvements Plans.

5.3.6 Part 5 – Study Approach

Provide a conceptual description (maximum six pages) of the Consultant’s approach for managing and performing its services. The following items should be addressed:

- Discuss how a collaborative relationship with the Owner would be established.
- Identify the work components critical to the Study’s success and how these components would be achieved.
- Schedule.

In addition, the Study Approach must include brief descriptions of the Consultant’s approach to the following:

- Communications
- Quality management

5.3.7 Part 6 – Contract Comments (not included in page count)

The Proposal must include in Appendix A (Contract Comments) any general comments related to the Draft Contract (including its attachments), setting forth any suggested revisions/inclusions requested by the Proposer. The

draft Contract is general in nature at this point and is included to provide the Proposer the intended legal form that will be used for this Study.

The Owner is not obligated to accept any of the requested exceptions, modifications, additions, etc. submitted by the Proposer in the Contract Markup when negotiating and finalizing the Contract. Furthermore, the Owner may request additional revisions during negotiations and before finalizing the Contract.

Proposers are encouraged to carefully review RFP Attachment B (Draft Contract) and to submit written questions and comments by the deadline specified in Section 4. Based on its assessment of the comments submitted, the Owner (at its sole discretion) may modify the Draft Contract or address the comments during the final contract negotiations. The Owner expects that this review and comment process will substantially reduce the need for extensive post-selection negotiation.

5.3.8 Part 7 – Fee and Rate Proposal

The Proposer must provide a fee and rate schedule based on the scope of services. Furnish a fee schedule showing anticipated hours per team member and hourly rates for the scope of services.

Please be advised that the Owner is not interested in proposed fees or rates that provide excessive discounts from the Consultant's anticipated actual costs for the requested services. If Owner determines (at its sole discretion) that the fees and rates included in a Proposal are unacceptably below industry norms or that a Proposer's fees and rates are substantially or unacceptably below other Proposals, the Owner may (at its sole discretion) either declare that Proposal to be non-responsive or seek additional detailed information from that Proposer concerning the cost basis for its fee and rate proposal, prior to rendering a decision on the Proposal's responsiveness.

Section 6. Proposal Evaluation and Selection

6.1 General

The Proposals will be reviewed and evaluated by the Owner according to the requirements and criteria outlined in this Section 6. During the Proposal evaluation process, requests for clarification may be submitted to one or more Proposers regarding its Proposal or related matters. Failure to respond in a timely manner to any such questions or requests may be grounds for elimination of the Proposer from further consideration. In addition, the Owner may require that all or a limited number of Proposers participate in interviews.

6.2 Responsiveness

Each Proposal will be reviewed to determine whether it is responsive to the RFP. Failure to comply with the requirements of this RFP may result in a Proposal being rejected as non-responsive. At its sole discretion, however, the Owner may waive any such failure to meet a requirement of this RFP and may request clarification or additional information to remedy a failure.

6.3 Comparative Evaluation Criteria

The Owner will evaluate and rank the responsive Proposals according to the following criteria in order of priority:

- **Study Approach and Demonstrated Value**
- **Study Experience**
- **Study Team**
- **Ability to Meet Schedule**
- **Fee and Rate Proposal**

6.4 Selection

After the evaluation process is complete, the Owner will notify Proposers of the rankings. The top-ranked Proposer will be selected for contract award.

Section 7. Conditions for Proposers

7.1 Owner Authority

Owner is a **Water Conservancy District** in the State of **Colorado**

7.2 Rights of the Owner

The Southeastern District reserves, holds, and may exercise, at its sole discretion, the following rights and options regarding this RFP and selection process in accordance with the provisions of applicable law:

- To transmit the RFP to and invite a SOP from any firm at any time during the selection process.
- To determine that any SOP received complies, or fails to comply, with the terms of this RFP.
- To waive any technical non-conformance with the terms of this RFP.
- To change or alter the schedule for any events called for in this RFP upon the issuance of notice to all prospective respondents who have received a copy of this RFP.
- To conduct investigations of any or all the respondents, as Southeastern District deems necessary or convenient, to clarify the information provided as part of the SOP, and to request additional information to support the information included in any SOP.
- To suspend or terminate any portion of or all the selection process described in this RFP at any time (in its sole discretion). If terminated, Southeastern District may commence a new selection process or exercise any other rights provided under applicable law without an obligation to the respondents.
- To eliminate from further consideration any respondent who communicates with Southeastern District Board director or staff regarding this RFP, other than the designated contact person listed herein.

7.3 Conflict of Interest

The following laws mandate the public disclosure of certain information concerning persons doing business or seeking to do business with the Owner, including affiliations and business and financial relationships such persons may have with Owner officers.

7.4 Proprietary Information

All materials submitted to the Owner become public property. If the Proposal contains proprietary information that the Proposer does not want disclosed, each page containing such information must be identified and marked "PROPRIETARY" at the time of submittal. Owner will, to the extent provided by law, endeavor to protect such information from disclosure. The final decision as to what information must be disclosed, however, lies with to **the Southeastern Colorado Water Conservancy District**. Failure to identify proprietary information will result in all unmarked sections being deemed non-proprietary and available upon public request. Proposers shall not be permitted to mark entire Proposal as proprietary.

7.5 Other Information

Officials not to Benefit

No Member of the Delegation to the Congress, Resident Commissioner, or official of the District shall benefit from the RFP other than as a water user or landowner in the same manner as other water users or landowners.

Equal Employment Opportunity

- (a) The District will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The District will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The District agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.
- (b) The District will, in all solicitations or advertisements for employees placed by or on behalf of the District, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (c) The District will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- (d) The District will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency Contracting Officer, advising the labor union or workers' representative of the District's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous

places available to employees and applicants for employment.

- (e) The District will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (f) The District will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (g) In the event of the District's noncompliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be cancelled, terminated, or suspended in whole or in part and the District may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (h) The District will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The District will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the District becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the District may request the United States to enter into such litigation to protect the interests of the United States.

7.6 Addenda

If any revisions to the RFP or procurement process become necessary or desirable (at the Owner's sole discretion), the Owner may issue written addenda. **The Owner will not transmit addenda to potential Proposers.** The Owner will post all addenda on the Owner Study website at the following address: www.secwcd.org. **It is Proposer's responsibility to obtain all addenda prior to submitting its Proposal.**

7.7 Protests

Any protest to an Owner's action in connection with this procurement must be filed in writing no later than **20** business days following such action and must be in strict accordance with the Owner's applicable procedures and with applicable law.

Attachment A

Definition of Terms

The definitions of some of the capitalized terms used in this RFP are presented below:

Consultant – The entity that is selected to enter the Progressive Design-Build Contract with the Owner and that will be the single point of accountability to the Owner for delivery of the services and the Study.

Draft Contract – The draft contract, including the agreement and its attachments, presented as RFP Attachment B (Draft Contract).

Key Personnel – The individuals, employed by Consultant or other firms included on the Study Team, who would fill certain key roles in delivery of the Study and related services by the Consultant, including the following positions: Study manager, safety manager, design manager, and construction manager.

Owner or District – **Southeastern Colorado Water Conservancy District**

Project – Fryingpan-Arkansas Project (Fry-Ark)

Proposer – The entity responding to this RFP by submitting the Proposal.

Study – **Storage Recovery Study**

Study Team – The Consultant, Key Personnel and any additional firms (such as subcontractors and sub consultants) included in the Proposal.

Attachment B

Draft Contract

Attachment B is included to provide the Proposer with the general form and content that the Owner intends to use for the contract for this Study. The Owner recognizes that there will be minor modifications to the final contract form that will be identified during contract negotiations.

Agreement for Engineering Services

Between the

Southeastern Colorado Water Conservancy District

and

Consultant

This Agreement is entered into effective _____, between the Southeastern Colorado Water Conservancy District (DISTRICT), Pueblo, Colorado, and _____ (CONSULTANT), effective _____ under the terms and conditions set forth herein. District and CONSULTANT are jointly referred to herein as the “Parties.”

RECITALS

WHEREAS, the DISTRICT desires to employ CONSULTANT’s services for the Pueblo Dam Hydroelectric Project (PDHP) Operator services; and

WHEREAS, CONSULTANT desires to provide such services to DISTRICT under the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the Parties contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

Terms of Agreement

1. During the term of this Agreement, CONSULTANT hereby agrees to provide the DISTRICT with the scope of services as outlined in **Attachment A** of this Agreement.
2. Unless otherwise agreed to in writing by the Parties, CONSULTANT will perform all services under this Agreement by and through the persons of Kleinfelder, Inc.
3. CONSULTANT will communicate regularly with the DISTRICT regarding status of the project budget and schedule as well as technical activities including information coordination with DISTRICT.
4. DISTRICT will designate an individual to be the primary contact for CONSULTANT, but CONSULTANT will remain available to work with other DISTRICT staff or board members upon request.
5. Beginning April 1, 2019, and on the last day of each month thereafter, CONSULTANT will bill the District for services performed during the preceding month. The total fees shall not exceed the amounts shown in **Attachment A** without prior written District approval. Also included will be an itemization of expenses incurred during the preceding month. CONSULTANTS will pro-rate expenses with other CONSULTANT clients when appropriate.
6. Within thirty (30) days of billing, the DISTRICT will remit billed amounts to CONSULTANT.
7. This Agreement remains in effect from _____, 2020 through December 31, 2020. Either party may seek to amend, extend or terminate the Agreement with 30 days written notice to the other party.
8. All work done by CONSULTANT shall be of the professional standard of care defined herein as performing Services in a manner consistent with that level of care and skill ordinarily exercised by other members of CONSULTANT's profession practicing in the same locality under similar conditions and at the date the Services are provided ("Standard of Care"). No other representation, guarantee or warranty, express or implied is included or intended in this Agreement or in any communication (express or written), certification, report, opinion, document or Instrument of Service.
9. Pursuant to this Agreement, CONSULTANT will be treated as an independent CONSULTANT. The Agreement is non-exclusive; CONSULTANT has and will continue to have other business activities and perform services for persons other than DISTRICT. CONSULTANT shall have the sole right to control and direct the means, manner and method by which the services required by this Agreement will be performed. Neither CONSULTANT, its employees nor sub-CONSULTANTS are to be considered employees or agents of the DISTRICT. DISTRICT shall not withhold from CONSULTANT compensation any amount that would normally be withheld from an employee's pay.

10. Any notice given in connection with this Agreement shall be given in writing and shall be delivered either by hand to the other party or by certified mail, return receipt requested, to the other party at the other party's address stated herein. Either party may change its address stated herein by giving notice of the change in accordance with this paragraph.
11. This Agreement may not be assigned by either party without DISTRICT the other party's prior written permission.
12. The waiver by either party of a material breach of any provision of this Agreement shall not operate, or be construed, as a waiver of any subsequent breach.
13. No change, modification or waiver of any term of this Agreement shall be valid unless it is in writing and signed by both DISTRICT and CONSULTANT.
14. No member of the Board of Directors or District employee shall be admitted to any share or part of this Agreement or to any benefit arising from it. However, this clause does not apply to this Agreement to the extent that this Agreement is made with a corporation for the Corporation's general benefit.
15. This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements or understandings between DISTRICT and CONSULTANT.
16. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of Colorado without regard to conflicts of law principles.
17. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.
18. CONSULTANT certifies that it shall comply with the provisions of C.R.S. § 8-17.5-101, *et seq.* CONSULTANT shall not knowingly employ or Agreement with an illegal alien to perform work under this Agreement or enter into an Agreement with a sub-CONSULTANT that knowingly employs or Agreements with an illegal alien to perform work under this Agreement. CONSULTANT represents, warrants and agrees that it (i) has verified that it does not employ any illegal aliens through participation in the Basic Pilot Employment Verification Program administered by the Social Security Administration and the Department of Homeland Security, or (ii) otherwise will comply with the requirements of C.R.S. § 8-17.5-102(2)(b)(I). CONSULTANT shall comply with all reasonable requests made in the course of an investigation by the Colorado Department of Labor and Employment. If CONSULTANT fails to comply with any requirement of this provision, or C.R.S. § 8-17.5-101, *et seq.*, DISTRICT may terminate this Agreement for material breach of Agreement, and CONSULTANT shall be liable for actual

damages to DISTRICT.

If CONSULTANT obtains actual knowledge that a sub-CONSULTANT performing work under this Agreement knowingly employs or Agreement with an illegal alien, CONSULTANT shall:

- a. Notify the sub-CONSULTANT and DISTRICT within three (3) days that CONSULTANT has actual knowledge that the sub-CONSULTANT is employing or Agreement with an illegal alien; and
 - b. Terminate the sub-Agreement with the sub-CONSULTANT if within the three (3) days of receiving the notice required pursuant to sub-paragraph (a) above, the sub-CONSULTANT does not stop employing or Agreement with the illegal alien, unless the sub-CONSULTANT provides information to establish that the sub-CONSULTANT has not knowingly employed or Agreement with an illegal alien.
19. Neither party shall be liable for failure to fulfill its obligations if affected by causes beyond its control such as Force Majeure. Force Majeure includes, but is not limited to, acts of God; acts of a legislative, administrative, or judicial entity; acts of DISTRICT's separate Agreements and CONSULTANTS; war; fires; floods; labor disturbances; and unusually severe or unanticipated weather.
 20. Nothing contained in this Agreement shall create an Agreemental relationship with or cause of action in favor of a third party, against either CONSULTANT or DISTRICT.
 21. Neither party shall be liable to the other for any consequential damages, including but not limited to, loss of profits, loss of use, incidental, indirect, exemplary, punitive, penal, multiple or other special damages incurred by the other party or for which either party may be liable to any third party.
 22. **STATUTE OF LIMITATION REDUCTION.** Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than either the date of Substantial Completion of CONSULTANT's services for acts or failures to act occurring prior to Substantial Completion of CONSULTANT's services, or the date of issuance of the final payment to CONSULTANT for acts or failures to act occurring after Substantial Completion of CONSULTANT services. However, the statute of limitations may commence to run sooner than the dates of Substantial Completion of CONSULTANT's services or final payment to CONSULTANT in accordance with applicable statutory or common law. DISTRICT agrees that any claim or suit for damages made or filed against CONSULTANT by DISTRICT will be made or filed solely against CONSULTANT or its successors or assigns and that no shareholder or employee of CONSULTANT shall

be personally liable to DISTRICT for damages under any circumstances.

23. CONSULTANT will not take title to, will not accept risk of loss with respect to, and will not be responsible for the removal and disposal of any hazardous materials found at the Project site.
24. CONSULTANT will indemnify, defend and hold harmless DISTRICT against any and all liability for leasing company's errors & omissions, bodily injury including death, bodily injury to leasing company's employees, property damage. All policies held by the leasing company, General Liability, Automobile Liability and Umbrella/Excess Liability will be endorsed to show DISTRICT as an Additional Insured, provide Waiver of Subrogation favoring DISTRICT and Leasing Company's policies will be Primary to any insurance carried by DISTRICT and DISTRICT policies will not be required to contribute to any losses or suits.
25. Insurance Requirements:
 - General Liability \$2,000,000 per Occurrence
 - Auto Liability \$2,000,000 per Occurrence
 - Limits can be satisfied with an Umbrella/Excess Liability policy
26. COST ESTIMATES. Any cost estimates, financial analyses and economic feasibility projections provided by CONSULTANT will be on a basis of experience and judgement. Since CONSULTANT has no control over market conditions or bidding procedures, CONSULTANT does not warrant that financial aspects, economic feasibility projections, bids or ultimate construction costs will not vary from these cost estimates.
27. LIMITATIONS OF LIABILITY. Excluding CONSULTANT'S liability for bodily injury or damage to the property of third parties, the total aggregate liability of CONSULTANT arising out of the performance or breach of this Agreement shall not exceed the compensation paid to CONSULTANT under this Agreement. Notwithstanding any other provision of this Agreement, CONSULTANT shall no liability to the DISTRICT for contingent, consequential, or other indirect damages including, without limitation, damages for loss of use, revenue or profit, operating costs and facility downtime, however the same may be caused. The limitations and exclusions of liability set forth in this Article shall apply regardless of the fault, breach of contract, tort, strict liability or otherwise of CONSULTANT, its employees, or subconsultants.
28. ADDITIONAL SERVICES. Services in addition to those specified in Scope of Services will be provided by CONSULTANT if authorized in writing or otherwise confirmed by DISTRICT. Additional services

will be paid for by DISTRICT as indicated in any Letter of Proposal, Task Authorization, or such other document as deemed appropriate by DISTRICT and CONSULTANT. In the absence of an express agreement about compensation, CONSULTANT shall be entitled to an equitable adjustment to its compensation for performing such additional services.

Entered this _____ day of _____ 2020.

Southeastern Colorado Water Conservancy District (DISTRICT)

By: _____

Date

_____(CONSULTANT)

By: _____

Date

ATTACHMENT A

Scope of Services and Fee for Consulting Services

To

Southeastern Colorado Water Conservancy District

Attachment C

Study Background Documents

The following Study documents are provided on the District website at www.secwcd.org:

1. Pueblo Dam Study to Raise the Operating Pool for Southeastern Colorado Water and Storage Needs Assessment Enterprise, prepared by Technical Services Center, Denver, Colorado, Bureau of Reclamation, August 31, 1999.
2. SECWCD/Arkansas Basin Future Water and Storage Needs Assessment, prepared by GEI Consultants, Inc., December 10, 1998.
3. Storage needs in the Arkansas River Basin, prepared by Southeastern Colorado Water Conservancy District, October 3, 2019.