
Meeting Date: June 26, 2019

Staff Contact: Judy Bentley, Human Resources Manager

TITLE: C-19-24 - Intergovernmental Agreement with the City of Albuquerque for Group Benefits Program

ACTION: Recommend Approval

Summary:

The Water Authority Human Resources department is requesting approval to enter into an agreement with the City of Albuquerque (City) to maintain a group benefits program for eligible employees and their dependents, including medical, dental vision, life, and other group voluntary benefits. The services and benefits provided to employees through the group benefits program are provided by contracted providers. By entering into this agreement, the Water Authority can participate in the City's Provider agreements to offer eligible Water Authority employees and their dependents the same benefits available to City employees.

The City recently converted to being self-insured. The administrative fees for FY20 is \$19,370.00. Additionally, insurance premiums that previously were paid to Presbyterian, will now be paid to the City. The City of Albuquerque agreement may be extended annually by mutual agreement.

If approved by the Board, the agreement will be executed by the Water Authority to participate in the City of Albuquerque for Group Benefits Program. By entering into this agreement, the Water Authority will be able to provide group medical insurance to Water Authority employees and their dependents.

FISCAL IMPACT:

\$4,500,000 which is budgeted in the FY20 Operating Budget.

INTERGOVERNMENTAL AGREEMENT

THIS AGREEMENT is made and entered into by and between the City of Albuquerque, New Mexico, a municipal corporation ("City"), and Albuquerque Bernalillo County Water Utility Authority, a government entity 400 Marquette NW #5027 Albuquerque, NM 87102, (hereinafter referred to as "Entity").

RECITALS

WHEREAS, the City maintains a group benefits program for eligible employees and their dependents, including medical, dental, vision, life, and other group voluntary benefits; and

WHEREAS, the services and benefits provided to City employees through the group benefits program are provided by contracted providers ("Providers"); and

WHEREAS, the Entity wishes to participate in the City's Provider agreements to offer eligible Entity employees and their dependents the same benefits available to City employees; and

WHEREAS, the City and Entity are willing to enter into a cooperative agreement to offer the City group benefits program to Entity employees.

NOW THEREFORE, in consideration of the premises and mutual obligations herein, the parties hereto do mutually agree as follows:

1. **PARTICIPATION.** As provided herein, the Entity shall participate in the City group benefits program and shall be entitled to the same plan of benefits and the same monthly premium structure available to the City. In order to receive the benefits of participation, the Entity must offer to its employees only the medical, dental and vision plans contracted by the City. Competing or alternative plans are not allowed. The Entity may also elect to participate in other benefit plans the City offers its employees at the same rate but exclusivity is not required. These options include: gym membership and/or employee assistance program with the medical plan (the employer's FICA expense due to the imputed income for employees' gym enrollment is the Entity's responsibility to pay), life insurance, short term disability, long term disability, flexible spending accounts, legal insurance, and home and auto insurance, and deferred compensation.

A. **ELIGIBILITY, ENROLLMENT, AND OTHER PARTICIPATION CRITERIA.** The following are guidelines for enrollment provided by the City, which reflects eligibility, enrollment and participation criteria. These guidelines for enrollment apply to employees of all Entities electing to participate in the City group benefits program.

I. **ELIGIBILITY TO PARTICIPATE:**

- a. Regular employees (including those on probation) scheduled to work twenty (20) hours, or more per week;
- b. Elected officials;

c. Unclassified employees scheduled to work thirty (30) hours or more each week (excluding temporary, students, and seasonal employees scheduled to work fewer than six (6) months in a twelve (12) month period);

d. Children under age twenty-six (26) AND who meet at least one (1) of the following criteria:

i. Natural child of the employee, spouse or domestic partner;

ii. Placed in the employee's home and in process for legal adoption or guardianship by the employee, spouse or domestic partner;

iii. Adopted by the employee, spouse or domestic partner;

iv. A court order exists that requires the employee, spouse or domestic partner to provide medical insurance coverage for the child;

v. A court document exists that shows the employee, spouse or domestic partner has full, permanent custody of the child; and

vi. Children over age twenty-six (26) may **continue** participating in the group insurance plans if they are physically or mentally handicapped and are not eligible for any other plan. This continuation is subject to normal enrollment guidelines and approval by the insurance carrier.

e. Legal spouse of an employee; and

f. Domestic partner of an employee. A domestic partner is defined as a person of the same or opposite sex who lives with the employee in a long-term relationship of indefinite duration. There must be an exclusive mutual commitment similar to that of marriage, in which the partners agree to be financially responsible for each other's welfare and share financial obligations. These benefits are also available to the domestic partner's children provided that the child meets the definition of eligibility stated above in Sections 1.A.I.d.

II. **ENROLLMENT.** A permanent/probationary employee may enroll without regard to pre-existing medical conditions within thirty-one (31) days of the date on which permanent employment begins, during scheduled annual open enrollment periods, under the loss of coverage provision or under the Health Insurance Portability and Accountability Act (HIPAA) provision. In addition, newly eligible dependents may be enrolled within thirty-one (31) days of the qualifying event or open enrollment period (typically 3 weeks long). Children placed in an employee's home pending legal adoption may be added within thirty-one (31) days from date of placement; or, a dependent for which the employee is assigned permanent legal guardianship may be added within thirty-one (31) days from the date of the signed order. Newborns must be enrolled within thirty-one (31) days from the date of birth or any medical expenses related to that birth will be the responsibility of the employee. Dependent children between the age of two (2) and three (3) can be added to the employees' dental plan at any time, provided the employee is enrolled in dental at the time the child's enrollment form is submitted or electronically enrolled. An employee may enroll within thirty-one (31) days of the date the employee marries or acquires a child through birth or adoption.

III. **CHANGING BENEFIT ELECTIONS AND QUALIFYING**

LIFE EVENTS. The Internal Revenue Service makes many of the rules for enrollment and eligibility because it allows the salary to be reduced by the premiums before taxes are calculated (Internal Revenue Code Section 125). Important rules to know are:

a. Once an election has been made during the initial enrollment period of thirty-one (31) days from the hire date then the election is locked until the next open enrollment; and

b. Exceptions to this are qualifying life events due to a life status change ("Life Status Change"). Qualifying Life Events do not allow employees to change their Gym Membership election unless they are enrolling in medical insurance from not being enrolled at all. The only time to elect participation, or disenrollment, is during open enrollment. Documentation must be provided for the Life Status Change and forms, or electronic submission, must be completed within thirty-one (31) days of the qualifying event. Qualifying Life Events and acceptable documents are:

- i. Marriage - Marriage certificate;
- ii. Domestic Partnership meeting eligibility requirements

– Affidavit:

(a) The Affidavit of Domestic Partnership is a legal document in which both the employee and the domestic partner swear that they meet the following criteria:

- (1) Both are unmarried and have been so during the past twelve (12) months;
- (2) Reside in the same residence for at least twelve (12) months and intend to do so indefinitely;
- (3) Meet the age requirements for marriage in the State of New Mexico;
- (4) Are not related by blood to the degree prohibited in a legal marriage in the State of New Mexico; and
- (5) Are financially responsible for each other's welfare and share financial obligations.

(b) In addition to the notarized Affidavit, three (3) proofs of financial interdependence of the following documents are also required:

- (1) Joint lease/mortgage or ownership of property;
- (2) Jointly owned motor vehicle, bank or credit account (only one qualifies);

- of the employee's life insurance;
 - of the employee's retirement benefits;
 - beneficiary in the employee's will;
 - attorney or legal designee by the employee;
- (3) Domestic partner named as beneficiary
 - (4) Domestic partner named as beneficiary
 - (5) Domestic partner named as primary
 - (6) Domestic partner assigned as power of
 - (7) Both names on a utility bill; or
 - (8) Both names on an investment account.

(c) The employee's domestic partner is not required to visit the Human Resources Office in order to receive benefits. The employee may submit the signed and notarized Affidavit of Domestic Partnership with the other required documents; and

(d) The Federal Government does not recognize domestic partners as qualified dependents and therefore the premium paid for their coverage cannot be pre-tax. In addition, the employee must pay tax on the portion of the premium paid by the Entity for the domestic partner and his/her covered children. Employees wanting to change benefit elections involving a domestic partner must adhere to the same rules regarding Qualifying Life Events:

- iii. Divorce – A court issued divorce decree;
- iv. Birth – A hospital certificate or state issued birth certificate;
- v. Adoption - A court issued adoption certificate of adoption;
- vi. Legal Guardianship - A court issued decree of legal guardianship;
- vii. Death – A death certificate;
- viii. Change in employment status affecting benefits eligibility (for the employee or the employee's spouse or domestic partner) - Letter/form from employer that is notification of the job change, coverage ending or new eligibility;
- ix. Involuntary loss of coverage – Official notification of loss;

x. Dependent change of residence that affects benefits eligibility - notification of change; and

xi. Gaining or losing eligibility for Medicare or Medicaid by the employee or a dependent (sixty (60) day window to request the change of coverage).

c. Dependent child losing eligibility - Official notification of loss or calculation of reaching age twenty-six (26); and

d. Missing the initial enrollment period, thirty-one (31)-day qualifying event period or the annual open enrollment period may result in delayed enrollment, a delay in notification of loss of coverage and paying for coverage no longer provided (such as an ex-spouse.) Alternatively delayed enrollment may result in double deductions for premiums due for backdated coverage. The effective date will depend on the event.

2. **OPEN ENROLLMENT.** Open Enrollment is a three (3) week (or longer) period established annually (usually in May) that allows all benefits eligible employees to make changes to their benefit elections without having experienced a Life Status Change. This is the only opportunity to make changes without a Qualifying Life Event. Members are not required to make a new election, except when the City requires a positive open enrollment. A positive open enrollment means that all benefits-eligible employees must take action in order to continue to receive their elected benefits. Annual premium changes also occur at this time and the Entity is responsible for making payroll deduction adjustments to ensure the monthly premium due July 1st is accurate.

3. **WHEN COVERAGE BEGINS.**

A. For newly eligible employees, coverage begins according to the Entity's own policy, but no later than 31 days from the employee's hire date, after submission of enrollment forms to the Entity's Human Resources Office or electronic enrollment. When enrolling during an open enrollment period, coverage begins on the first (1st) day of the City's fiscal year.

B. Qualifying Life Events – Coverage begins on the first day of the pay period following the event date. Three (3) exceptions to this are for the birth of a child, marriage and divorce. The coverage begins on the date of birth if documentation and forms are completed and submitted to the Human Resources Office within the thirty-one day (31-day) enrollment period, or electronically submitted. Delaying the submission of documentation and forms may result in extra deductions for premiums due. Losing or gaining eligibility for Medicaid allows a sixty day (60-day) enrollment period. An ex-spouse or domestic partner is not eligible to continue participation in the insurance program, except through COBRA. Therefore, when the divorce decree is submitted to the Human Resources Office with the cancellation form, the end of coverage will be back dated to the day following the court stamped date on the decree or the employee's signature on the Domestic Partnership Termination form.

4. **TERMINATION OF COVERAGE.** Benefits terminate at the end of the pay period in which the Life Status Change occurs. Exceptions to this are:

A. Retirement - End of month prior to PERA retirement date;

B. Dependent reaching age limit - End of dependent's twenty-sixth (26th) birth month; and

C. Ex-Spouses - lose coverage the day after the divorce is final. Divorces not reported in a timely manner may result in disciplinary action, full responsibility of claims and loss of COBRA rights.

5. **ELIGIBILITY CHANGES.** The employee is responsible for reporting and submitting to the Entity's Human Resources Office any dependent eligibility changes. Employees will be responsible for any costs incurred by dependents after a Life Status Change has rendered either the employee or the dependent ineligible to receive benefits.

6. **HOME ADDRESS CHANGES.** The employee is responsible for submitting home address change information on the appropriate form or electronic submission to the Entity's Human Resources Office.

7. **VERIFICATION PROCEDURES.** All dependent information recorded by the insured on the enrollment form is subject to verification by the Entity.

A. Employees are required to provide a copy of a marriage certificate when enrolling a spouse and a birth certificate or other acceptable proof of legal child dependent status when enrolling dependent children.

B. Employees are required to provide an affidavit and other related documents in order to prove eligibility when enrolling a domestic partner and/or domestic partner's child(ren).

C. During the course of each City fiscal year, the City may conduct an audit to verify dependent eligibility.

D. The Entity will be required to terminate any dependent from all insurance coverage, if the employee fails to submit requested evidence of eligibility or dependent status. Employees who have falsified enrollment documents to fraudulently obtain Entity insurance coverage may be subject to disqualification from participation in the City's group benefit program. Such employees may be subject to legal or disciplinary action as may be determined by the Entity and/or the City.

8. **COBRA CONTINUATION.** The Comprehensive Omnibus Budget Reconciliation Act (COBRA) of 1985 provides for continuation of health care coverage for a covered employee and covered dependents due to a qualifying event that causes loss of coverage.

A. A qualifying event is defined as termination of employment (other than for gross misconduct) or reduction in hours of employment; covered employee's death; a divorce or legal separation of a spouse from a covered employee; a covered employee's entitlement to Medicare; or if a child no longer satisfies the plan's definition of a dependent child ("Qualifying Event").

B. COBRA continuation coverage may be available for eighteen (18) months in the event of termination or thirty-six (36) months in the event of death, divorce/legal separation,

entitlement to Medicare, or loss in dependent status. All continuation of health benefits under COBRA legislation are subject to premium payments of one hundred percent (100%) plus a two percent (2%) administrative fee. Coverage will terminate earlier than permitted by legislation if the participant becomes ineligible due to other coverage or if the participant fails to make premium payments.

C. The covered employee or dependent is required to notify the Entity's Human Resources Office of a divorce, legal separation, and/or child losing dependent status within sixty (60) days after the date of the event or notice of the event, whichever is later.

D. Responsibilities of each party are as follows:

I. **The Entity.**

a. The Entity shall be subject to all the terms and conditions of City Provider agreements for those benefits in which the Entity participates. The City, upon request, will provide the Provider agreements to the Entity. Entity agrees that all terms and conditions contained herein shall be directly enforceable by Provider against Entity;

b. The Entity shall review its group voluntary benefit programs and determine the merits of participation in the City-sponsored benefit programs, such as voluntary life, disability, deferred compensation programs and all other applicable benefit programs. Participation with Voluntary Benefit programs are subject to negotiations between Entity and the respective Provider;

c. The Entity shall administer eligibility, enrollment and participation criteria in the same manner as the City, as required by City Provider agreements, as set forth in Section 1.A. above. Service contracted individuals shall not be eligible to participate in benefits under this Agreement;

d. The Entity is responsible for verification of the eligibility status of its employees as outlined in Section 1.A. above, in a satisfactory manner as determined by the City;

e. The Entity shall make monthly premium payments directly to each Provider and/or the City of Albuquerque by the first of the month for that month's coverage. Failure to do so may result in the cancellation of this Agreement;

f. If the Entity is not paying the monthly premium as invoiced by the Provider and/or City of Albuquerque then the Entity is responsible for sending to each Provider a roster of participating employees that includes premium details that total to the payment made to the Provider;

g. The Entity shall promote and highly encourage participation in the BetterHealth Wellness program and completion of the Personal Health Assessment throughout its entire benefits eligible member population;

h. The Entity shall collaborate to the extent possible on wellness projects that are initiated for all Entities by the Health and Wellness Coordinator in the City's Insurance and Benefits Office;

i. The Entity shall develop and maintain a premium payment and reconciliation system as required by City Provider agreements; and

j. The Entity shall administer and be responsible for working with the City and Providers to insure the functions of enrollment and the transmission of eligibility information.

i. **Payment of Premiums (Employer).**

(a) The Entity will pay monthly premiums for all participating employees. The Entity will initiate payment of the aggregate premium to become due on or before the first (1st) day of the month of coverage based on enrollment lists generated by the Entity on the fifteenth (15th) calendar day of the month prior to the month for which payment will become due. The lists will be financially adjusted to reflect enrollments and terminations which have occurred during the thirty (30) day period immediately preceding issuance of the lists. The lists will also be adjusted to reflect adjustments resulting from employer/Provider reconciliation actions.

(b) The fifteen (15) day rule will apply to new enrollments and terminations which occur during the plan year. The fifteen (15) day rule affects payment fees as follows:

(1) Enrollment - The Entity will pay a full monthly premium for covered members who enroll on or before the fifteenth (15th) calendar day of the month of enrollment but will not pay a monthly premium for members who enroll on or after the sixteenth (16th) calendar day of the month of enrollment; and

(2) Termination - The Entity will not pay a monthly premium for covered members who terminate coverage on or before the fifteenth (15th) calendar day of the month of termination but will pay a monthly premium for members who terminate coverage on or after the sixteenth (16th) calendar day of the month of termination.

(c) If an employee fails to notify the Entity's Human Resources Office of termination of employment or other loss of eligibility and the Entity has continued to issue a premium on behalf of the employee, the Entity will be entitled to a premium refund from the Provider and/or City of Albuquerque for the overpayment, not to exceed a ninety (90) day refund from the date of preparation and submittal of a termination form or electronic eligibility file, to the Provider. If through administrative error, the Entity continues to pay a premium for a terminated employee after submittal of termination forms to the Provider, the Entity will be entitled to a refund, from the Provider, of all payments made after submittal of termination forms. The Entity will make such adjustments on the monthly payment report.

(d) On each monthly payment, the Entity will include adjustments for prior month new enrollments and terminations, applying the fifteen (15) day rule. The Entity, by identifying a covered member on the payment document as terminated or by

failing to list a covered member on the payment document, authorizes the Provider to immediately discontinue (terminate) Services to the member pending resolution of the non-payment problem.

ii. **Payment of Premiums (Employee); and**

(a) Premium payments for active employees are deducted each pay period from employee payroll checks. Except as provided herein, Federal, State and FICA taxes are deducted after the health, dental and vision payments have been deducted, reducing taxable income. These pre-tax premiums cannot be used again at year-end for employee tax purposes;

(b) Entity employees on approved inactive status, for which payroll deductions for insurance are not made, are responsible for making premium payments directly to the Entity's Human Resources Office. Such inactive status includes Worker's Compensation/disability, Family Medical Leave or any Leave Without Pay status. Failure to make premium payments will result in cancellation of insurance; and

(c) Individuals participating under COBRA will make monthly payments of one hundred two percent (102%) directly to the COBRA administrator.

iii. **Reconciliation of Payment Discrepancies.**

(a) All monthly payments shall be subject to reconciliation by the Provider and/or City of Albuquerque. The Provider/City shall compare information on the payment roster with Provider/City of Albuquerque information to identify discrepancies in covered members, payment fees, contract types or other discrepancies. Upon identifying discrepancies, the Provider/City of Albuquerque will first research its own files to account for enrollments, terminations, changes in contract types (e.g., single, couple, single parent or family) which recently have been received by the Provider/City of Albuquerque. If a roster is not provided by the Entity with the payment then the Provider/City of Albuquerque will rely on its own records of enrollment and reconciliation will become the responsibility of the Entity.

(b) After completing an internal accounting of discrepancies, the Provider/City of Albuquerque will transmit to the Entity a list of covered members for whom names or status do not match. The list transmitted to the Entity for a specific month shall be the basis for all further reconciliation of discrepancies and financial adjustments for the month reconciled. No subsequently discovered discrepancies shall be applied retroactively. After submittal to the Entity of a specific month's discrepancy list, additional names may not be added for adjustment purposes; however, names or amounts transmitted shall remain subject to this reconciliation process until a mutually satisfactory resolution of all identified discrepancies has been reached.

(c) Adjustments for any amounts payable or refundable to either party will be made only for a sixty (60) day period from the first (1st) day of the month reconciled.

(d) The Entity will research discrepancies, make a determination as to the financial amounts identified by the Provider/City of Albuquerque, make the appropriate adjustment on the subsequent monthly payment and provide the Provider/City of Albuquerque with an explanation and supporting documentation for any disputed amounts.

k. Default in Payments. In the event the Entity fails to make premium payments to a Provider/City of Albuquerque within the grace period required in the Provider agreements, the Provider/City of Albuquerque may suspend its performance and the Entity employees shall not be eligible for coverage until such time payment by the Entity is made in full as specified in the Provider agreements;

l. The Entity shall be responsible for sending proper notification in a timely manner of new and terminating employees to the COBRA administration Provider;

m. The Entity shall attend at least two (2) meetings scheduled by the City for all Entities and Providers;

n. The Entity will be responsible for all fees and/or taxes related to the Affordable Care Act outside of those included in the premium; and

o. The Entity shall be responsible for all costs associated with the administration of this Agreement, including payment of premiums and other miscellaneous administration costs, including but not limited to printing and mailing, incurred for Entity employees.

II. The City.

a. The City may conduct periodic audits of Entity eligibility, enrollment, verification, payment, reconciliation and other criteria designed to assure that the benefits program is being administered in accordance with the provisions of this Agreement and Provider agreements. The City will provide a written report of audit findings to the Entity;

b. The City shall assist the Entity (upon request) with benefits staff training, interpretation of Provider agreements and advocating on behalf of employees in administering the benefits program;

c. The City shall assist the Entity in scheduling and conducting open enrollment meetings and in otherwise providing technical benefit interpretations and explanations; and

d. The City shall negotiate an employee benefits program for eligible employees, including medical, dental, vision, life insurance, and other group voluntary benefits. The City retains the right to modify the plan of benefits or premium structure during annual contract negotiations to obtain benefits for employees.

9. **Term of Agreement.** This Agreement shall commence July 1, 2019, and shall be undertaken and completed in such sequence as to assure its expeditious completion in light of the purposes of this Agreement; provided, however, that in any event, all of the Services required hereunder shall be completed by June 30, 2020.

10. **Administrative Fees and Establishment of Segregated Account for Self-Insurance of Medical Plan.**

A. **Administration Fees.** The Entity agrees to pay the City Human Resources Department an annual fee in the amount of Nineteen Thousand Three Hundred Seventy Dollars and no/100 (\$19,370.00), which amount includes any applicable gross receipts taxes and which amount shall constitute full and complete compensation for the Entity's participation.

Annual Participation Fee		\$500.00
Per Benefits Eligible	#629 Employees x \$30.00	\$18,870.00
Employee Per Year Fee		
		\$19,370.00

This annual fee is determined by the City and may be changed. The fee is for costs associated with City work performed in providing the group benefits program participation and is not for costs incurred by the Entity in administration of the benefits program. During the first year, the fee may be prorated depending on when the participation begins.

B. **Method of Payment.** Such amount shall be payable in full by the end of the last City fiscal quarter following the effective date of this Agreement and shall include any applicable gross receipts taxes. Such amount shall be paid to the City upon receipt by the Entity of a requisition for payment.

C. **Group Self-Insurance Fund**

A. The "group self-insurance fund" is created. The fund and any income produced by the fund shall be held in a protected fund for the benefit of the City of Albuquerque employees and dependents and the Participating Entities employees and dependents, and invested by Chief Investment Officer as allowed. Money in the fund shall be used solely for the purposes of the fund and shall not be used to pay any general or special obligation or debt of the city, other than as authorized by this section. Balances in the fund in excess of amounts needed for the purposes of the fund shall not be used to pay dividends or refunds, however described, to individual public employees or their dependents, but may be used, to reduce future contributions, to provide additional benefits or as a reserve to stabilize premiums.

B. Disbursements from the fund shall be made by payment dispersal as authorized by the Human Resources Director or designee for the following reasons: to purchase health insurance for city and participating entity employees participating in the group self-insurance plan and their covered dependents from an insurance company determined to be the best responsible bidder, as allowed by City procurement code; to contract with and pay one or more claims administrators; to contract with and pay qualified independent actuaries, financial auditors and claims management and procedure auditors; to contract with and pay consultants, financial advisors and investment advisors for independent consulting and advice; to make lump sum advances to any person of firm acting as a professional claims administrator, such advances to be used exclusively to pay benefits for participating employees and their dependents; to pay any other costs and expenses incurred in carrying out this section; and as otherwise provided by law.

C. The fund shall be maintained in actuarially sound condition as evidenced by the annual written certification of an actuary qualified for such work that as of June 30 of the current year the fund was actuarially sound. The Accounting Division shall annually submit to the administration a report on the financial status of the group self-insurance medical fund as part of the Comprehensive Annual Financial Report. A claims management and procedure audit may be conducted by a qualified claims auditor periodically at the discretion of the Chief Administrative Officer (CAO). With respect to claims files, the claims audit may be limited to a random sampling dependent upon the scope of work agreed upon by the CAO.

11. **Independent Contractor.** Neither the Entity nor its employees are considered to be employees of the City for any purpose whatsoever. The Entity is considered as an independent contractor at all times. The Entity further agrees that neither it nor its employees are entitled to any benefits from the City under the provisions of the Workers' Compensation Act of the State of New Mexico, or to any of the benefits granted to employees of the City under the provisions of the Merit System Ordinance as now enacted or hereafter amended.

12. **Liability.** Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, §41-4-1 et seq., as amended.

13. **Discrimination Prohibited.** The Entity shall not discriminate against any person on the basis of race, color, religion, gender, sexual preference, sexual orientation, national origin or ancestry, age, physical handicap, or disability.

14. **ADA Compliance.** The Entity agrees to meet all the requirements of the ADA. The Entity agrees to be responsible for knowing all applicable requirements of the ADA and to defend, indemnify and hold harmless the City, its officials, agents and employees from and against any and all claims, actions, suits or proceedings of any kind brought against said parties as a result of any acts or omissions of the Entity or its agents in violation of the ADA.

15. **Reports and Information.** At such times and in such forms as the City may require, there shall be furnished to the City such statements, records, reports, data and information, as the City may request pertaining to matters covered by this Agreement. Unless otherwise authorized by the City or required by law, the Entity will not release any information concerning the work product including any reports or other documents prepared pursuant to this Agreement.

16. **Establishment and Maintenance of Records.** Records shall be maintained by the Entity in accordance with applicable law and requirements prescribed by the City with respect to all matters covered by this Agreement. Except as otherwise authorized by the City, such records shall be maintained for a period of three (3) years after receipt of final payment under this Agreement.

17. **Audits and Inspections.** At any time during normal business hours and as often as the City may deem necessary, there shall be made available to the City for examination all of the Entity's records with respect to all matters covered by this Agreement. The Entity shall permit the City to audit, examine, and make excerpts or transcripts from such records, and to make audits of all

contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement. The Entity understands and will comply with the City's Accountability in Government Ordinance, §2-10-1 et seq. and the Inspector General Ordinance, §2-17-1 et seq. R.O.A. 1994, and also agrees to provide requested information and records and appear as a witness in hearings for the City's Board of Ethics and Campaign Practices pursuant to Article XII, Section 8 of the Albuquerque City Charter.

18. **Ownership, Publication, Reproduction and Use of Material.** The City is the owner of and shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data or other materials prepared under this Agreement. No material produced in whole or in part under this Agreement shall be subject to copyright in the United States or in any other country.

19. **Compliance With Laws.** In performing the Services required hereunder, the Entity shall comply with all applicable laws, ordinances, and codes of the Federal, State and local governments.

20. **Changes.** Any changes to this Agreement shall be mutually agreed upon by and between the City and the Entity, and shall be incorporated in written amendments to this Agreement.

21. **Assignability.** The Entity shall not assign any interest in this Agreement and shall not transfer any interest in this Agreement (whether by assignment or novation), without the prior written consent of the City thereto.

22. **Termination for Cause.** If, through any cause, the Entity shall fail to fulfill in a timely and proper manner its obligations under this Agreement or if the Entity shall violate any of the covenants, agreements, or stipulations of this Agreement, the City shall thereupon have the right to terminate this Agreement by giving written notice to the Entity of such termination and specifying the effective date thereof at least ninety (90) days before the effective date of such termination. Such termination will not entitle the Entity to a refund of any portion of the participation fee paid to the City under this Agreement. Notwithstanding the above, the Entity shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Entity.

23. **Termination for Convenience.** Either the City or the Entity may terminate this Agreement at any time by giving at least ninety (90) days notice in writing to the other party. Such termination will not entitle the Entity to a refund of any portion of the participation fee paid to the City under this Agreement.

24. **Construction and Severability.** If any part of this Agreement is held to be invalid or unenforceable, such holding will not affect the validity or enforceability of any other part of this Agreement so long as the remainder of the Agreement is reasonably capable of completion.

25. **Enforcement.** The Entity agrees to pay to the City all costs and expenses including reasonable attorney's fees incurred by the City in exercising any of its rights or remedies in connection with the enforcement of this Agreement.

26. **Entire Agreement.** This Agreement contains the entire agreement of the parties and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.

27. **Applicable Law and Venue.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New Mexico, and the laws, rules and regulations of the City of Albuquerque. The venue for actions arising out of this Agreement is Bernalillo County, New Mexico.

28. **Binding Agreement.** This Agreement shall not become binding upon the City until approved by the highest approval authority of the City required under this Agreement.

IN WITNESS WHEREOF, the City and the Entity have executed this Agreement as of the date first above written.

CITY OF ALBUQUERQUE

Approved By:

Mary L. Scott, Director
Human Resources Department

ENTITY: Albuquerque Bernalillo
County Water Utility Authority

By: _____