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Meeting Date: August 22, 2018  
Staff Contact: Peter Auh, General Counsel

**TITLE: C-18-27 – Professional Services Contract for Legal Services**

**ACTION: Recommend Approval**

**SUMMARY:**

Professional Services Contract with the law firm of Modrall Sperling Roehl Harris & Sisk, P.A. to represent the Water Authority in an administrative hearing prosecuted by the Air Quality Program of the City of Albuquerque’s Environmental Health Department.

**COMMENTS:**

The Air Quality Program (AQP) of the City’s Environmental Health Department filed a Notice of Charges against the Water Authority, listing five counts of violation by the Southwest Reclamation Plant (SWRP) of its Title V air quality permit. The Water Authority retained the Modrall law firm for its expertise in air quality regulations. Four of the five counts have been settled, but the fifth count—which focuses on whether the SWRP has been “reconstructed” as that term of art is defined in the federal Clean Air Act. Reconstruction occurs if the total amount of fixed capital costs of new components added to the wastewater treatment facility exceeds 50 percent of the fixed capital costs that would be required to construct a comparable new facility. If “reconstruction” has occurred, the SWRP is subject to significantly more onerous and costly reporting requirements.

The Water Authority engaged Carollo Engineering to calculate the dollar amount of fixed capital costs of new components, as well as a valuation of how much it would cost to construct a comparable new facility. Carollo’s analysis resulted in a ratio of 15.1%, well below the 50% threshold for “reconstruction.” Despite what appears to be convincing evidence that the Water Authority has not “reconstructed,” the AQP continues to aggressively litigate this issue and the Water Authority is required to defend against it.

**FISCAL IMPACT:**

FY18- \$80,503. FY19- \$50,000.