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Meeting Date: December 9, 2020  
Staff Contact: H. Warren, Field Division Manager

**TITLE: C-20-35 – Approving Increase to Price Agreement Cap Pipestone Equipment for Cla-val Parts and Service**

**ACTION: Recommend Approval**

**SUMMARY:**

The Albuquerque Bernalillo County Water Utility Authority (Water Authority) currently uses Cla-Val parts and service in its Water and Wastewater operations. The parts and service are provided by Pipestone Equipment who is the sole authorized distributor for Cla-Val Company in New Mexico.

This product was procured pursuant to the authority contained in section 7(a)(21) of the Rules Governing Procurement for The Albuquerque/Bernalillo County Water Utility Authority. Resolution R-18-14 requires board approval for any purchase in an amount exceeding \$500,000.

The Water Authority's operations staff is recommending additional funding to be added to the price agreement cap to allow for continued purchase of Cla-Val parts and service through the end of the contract term. The estimated expenditure under this price agreement is expected to exceed \$500,000, however actual expenses will be incurred as product is ordered.

If approved by the Board, the purchase order will be adjusted to include the increased contract cap. Approval of this item shall also serve as delegation of authority for the Executive Director to approve all future amendments to this contract, if any.

**FISCAL IMPACT:**

The Water Authority has budgeted funds to cover this agreement.



# Water Utility Authority

<b>PURCHASE ORDER NO.</b>	
<b>BP001198</b>	
Printed 12/09/2019	Page 1

**INQUIRIES TO:**

Albuquerque Bernalillo Water Utility Authority  
 PURCHASING SECTION  
 PO BOX 568  
 ALBUQUERQUE, NM 87103-0568  
 PHONE NO: 505-289-3227

**INVOICE TO:**

ABCWUA  
 ATTN: ACCOUNTS PAYABLE  
 PO BOX 568  
 ALBUQUERQUE, NM 87103-0568

**VENDOR:**

PIPESTONE EQUIPMENT LLC  
 676 MOSS ST UNIT A  
 GOLDEN, CO 80401

**SHIP TO:**

VARIOUS DEPARTMENTS  
 VARIOUS LOCATIONS  
 ALBUQUERQUE, NM 87103

Buyer Name ANDREA L CHANDLER			FOB FOB Destination Prepay and Add to Invoice	Ship Via Common	Contract Start 03/05/2019	Contract Expiration 03/04/2021
LINE	QTY	UNIT	DESCRIPTION	UNIT PRICE	EXTENDED PRICE	
	0.00		PROVIDE CLA-VAL REPLACEMENT PARTS AND SERVICES AT THE FOLLOWING RATES:  CLA-VAL COMPLETE VALVES 15% OFF CURRENT LIST PRICE  CLA-VAL PARTS 15% OFF CURRENT LIST PRICE  SERVICE CALLS \$125.00 PER HOUR  TRAVEL TIME, IF NECESSARY \$85.00/HOUR  MILEAGE AT IRS RATE  FREIGHT IS PREPAID AND ADDED TO THE INVOICE  CONTRACT TERM: 03/05/2019 - 03/04/2020 CONTRACT EXT: 03/05/2020 - 03/05/2021  VENDOR CONTACT: DAVE BUCHWALD DBUCHWALD@PIPESTONEEQ.COM  WATER AUTHORITY CONTACT: JOEL BERMAN (505) 289-3524 JBERMAN@ABCWUA.ORG  INVOICE MAY BE EMAILED TO:	\$0.00	\$0.00	



# Water Utility Authority

<b>PURCHASE ORDER NO.</b>	
<b>BP001198</b>	
Printed 12/09/2019	Page 2

**INQUIRIES TO:**

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 GOLDEN, CO 80401

**SHIP TO:**

VARIOUS DEPARTMENTS  
 VARIOUS LOCATIONS  
 ALBUQUERQUE, NM 87103

<b>Buyer Name</b> ANDREA L CHANDLER			<b>FOB</b> FOB Destination Prepay and Add to Invoice	<b>Ship Via</b> Common	<b>Contract Start</b> 03/05/2019	<b>Contract Expiration</b> 03/04/2021
LINE	QTY	UNIT	DESCRIPTION	UNIT PRICE	EXTENDED PRICE	
			vendorinvoices@abcwua.org  OEP2019-054  PURCHASE ORDER ADJUSTMENT TO EXTEND AGREEMENT THROUGH 03/04/2021. (AC 12/05/2019)			
<b>TOTAL</b>						<b>\$0.00</b>

**Authorization to Proceed: Purchasing Officer signature on Purchase Order indicates Chief Operating Officer, Chief Financial Officer and Executive Director have reviewed and approved.**

Jonathan Daniels  
 Purchasing Officer

Albuquerque Bernalillo County Water Utility Authority (Water Authority)

TERMS AND CONDITIONS

**IMPORTANT: READ CAREFULLY BEFORE PROVIDING GOODS, SERVICES OR CONSTRUCTION. FAILURE TO DO SO WILL NOT RELIEVE VENDOR OF RESPONSIBILITY TO PERFORM OR DELIVER IN ACCORDANCE WITH ALL APPLICABLE PROVISIONS.**

- 1. General:** This purchase order is authorization to provide the goods, services or construction described on its face in accordance with the Terms and Conditions set out below and any attached offer submitted by Vendor and accepted by the Water Authority. These constitute the terms of the contract between the parties. If this purchase order results from a formal solicitation or separate contract, all or part of those documents are also made a part of the contract as specified in those documents referenced in this purchase order and will control over any conflicting provisions in these Terms and Conditions. Unless otherwise provided, this is an indefinite quantity contract; it is not exclusive to Vendor; the Water Authority may make similar purchases from other vendors as needed; and the Water Authority is not obligated to make any amount of purchases under the contract.
- 2. Packing, Shipping and Invoicing:** Department name AND purchase order number MUST be on all invoices, packages, packing slips, bills of lading, etc. The Department's count will be accepted by the Vendor as final and conclusive on all shipments not accompanied by a packing slip. Vendor will bear all risk of loss or damage until delivery to the Water Authority. Shipment is F.O.B. Destination unless purchase order states otherwise.
- 3. Delivery and Inspection:** Delivery will be strictly in accordance with the Water Authority's delivery schedule and instructions. Final inspection and acceptance will not be deemed to be a waiver by the Water Authority of its right to (a) cancel, reject or return, at Vendor's risk and expense, all or any portion of the goods, services or construction, or (b) make a claim for damages. Payment prior to inspection does not constitute acceptance.
- 4. Payment Terms/Discounts:** Payment terms are net thirty (30) days unless otherwise specified in the contract. Discounts, if offered, will be computed from the date of actual delivery or receipt of invoice, whichever is later.
- 5. Taxes:** All applicable gross receipts taxes are assumed to be included unless otherwise specified. The Water Authority will furnish, on request, a Non-Taxable Transaction Certificate. Determination of whether the tax is due and payment of the tax is the responsibility of the Vendor. Applicable taxes should be included in each invoice and may not be billed more than sixty (60) days after providing the goods, services or construction to which the taxes apply.
- 6. Commercial Warranty:** Vendor agrees that it will provide the Water Authority with the most favorable commercial warranties which Vendor gives to any customer for the goods, services, or construction and that the rights and remedies provided herein will extend to the Water Authority and are in addition to and do not limit any rights afforded to the Water Authority by law or under this contract. Vendor agrees not to disclaim warranties of fitness for a particular purpose or merchantability. All of Vendor's representations and warranties, both express and implied, constitute conditions of this contract. In the event that the goods, services or construction are found to be defective or fail within the warranty period, Vendor will, at its own expense, promptly remedy the defects.
- 7. New Material:** All items provided under this contract will be NEW and of most current production, unless otherwise specified.
- 8. Indemnification:** Vendor agrees to indemnify and hold harmless the Water Authority, its Board, officers, agents and employees against any and all damages, claims, expenses or other liability, including attorneys' fees, arising out of any (a) alleged or actual infringement or misappropriation of any copyright, patent, trademark, trade secret or other right based upon the goods, services or construction provided by Vendor pursuant to this contract; (b) negligence or willful misconduct of Vendor; (c) Vendor's failure to perform fully its obligations herein in a timely manner; or (d) breach of any of Vendor's representations and warranties herein.
- 9. Insurance:** Vendor will maintain in effect during the term of the contract, insurance of the kinds, in the amounts and in the form specified by the Water Authority, including, but not limited to: Commercial General Liability Insurance, Business Automobile Liability Insurance, and Workers' Compensation Insurance. As proof that such insurance is in effect, Vendor will furnish certificate(s) of insurance in a form satisfactory to the Water Authority prior to providing goods, services or construction under the contract.
- 10. Right to Audit/Inspection of Plant:** Vendor will maintain complete and accurate records of all financial transactions associated with this contract, including, but not limited to, invoices and other official documentation which sufficiently support all charges under this contract. Vendor will retain such records for six (6) years after final payment, or longer if required by law. Authorized representatives of the Water Authority may inspect and copy records pertaining to this contract at the Vendor's business office during normal business hours. Vendor will include this audit provision in any subcontracts that it may issue under this contract. The Water Authority may inspect, at any reasonable time, Vendor's plant or place of business related to the performance of this contract.
- 11. Default:** The Water Authority will have the right to cancel all or any part of this contract without cost to the Water Authority if the Vendor fails to meet the provisions of this contract and, except as otherwise provided herein, to hold the Vendor liable for any excess cost incurred by the Water Authority due to Vendor's default. Vendor will not be liable if failure to perform the contract arises out of causes beyond the control and without the fault or negligence of Vendor; such causes include, but are not restricted to, acts of God or the public enemy, acts of the State or federal government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of subcontractors due to any of the above, unless the Water Authority determines that the supplies or services to be furnished by the subcontractor were obtainable from other sources. The rights and remedies of the Water Authority provided in this paragraph are not be exclusive and are in addition to and do not limit any rights afforded to the Water Authority by law or under this contract.
- 12. Termination:** The Water Authority will also have the right to terminate the contract upon the occurrence of any one or more of the following events: (a) if sufficient appropriations are not made by the Water Authority Board. Such event will not be an event of default and the contract may be terminated at the end of the Water Authority's then current fiscal year upon written notice given by the Water Authority to Vendor; (b) without notice to Vendor, upon receipt of a notice of debarment of or ineligibility to receive funds by Vendor from any agency of the federal government or the State of New Mexico or a local public body of the State. (c) if Vendor is found to have engaged or is engaging in Unfair Business Practices as described in Section 2-376 of the Water Authority Procurement Ordinance; or (d) at any time for convenience by giving at least thirty (30) days' notice in writing to Vendor. In such event, Vendor will be paid under the terms of the contract for all goods, services or construction provided to and accepted by the Water Authority prior to the effective date of termination.
- 13. Assignment/Changes:** Neither the contract, nor any interest therein, nor claim thereunder, may be assigned or transferred by Vendor, except as expressly authorized in writing by the Water Authority. No such assignment or transfer will relieve Vendor from the obligations and liabilities under this contract. The terms of the contract may not be changed without the prior written approval of the Water Authority.
- 14. Compliance With Laws:** In performing the contract, Vendor will comply with all applicable laws, ordinances and codes of the federal, State and local governments, including, but not limited to the New Mexico Governmental Conduct Act, the New Mexico Human Rights Act, Title VII of the federal Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, and all federal, State and local statutes, regulations and executive orders relating to civil rights. In addition, Vendor certifies that (1) it has not, either directly or indirectly, entered into action in restraint of free competitive bidding; (2) it will comply with the Ethical Conduct provisions (§2-390) and Unfair Business Practices provisions (§2-376) of the Water Authority Procurement Ordinance; and (3) it presently has no interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of this contract. Vendor will obtain and maintain, and furnish to the Water Authority upon request, any and all permits, licenses, approvals, certificates and other documents required by the Water Authority, or otherwise required by applicable law.
- 15. Governing Law:** This Contract is governed by the laws of the State of New Mexico without regard to principles of conflicts of law. Any and all actions or proceedings relating to the subject matter of this contract will be maintained by and subject to the jurisdiction of State and federal courts located in Bernalillo County, New Mexico, which courts will have exclusive jurisdiction for such purposes.

**IMPORTANT NOTICE:** Before accepting a purchase order, always check for authenticity and require identification. The Water Authority will not be liable for purchases made by unauthorized individuals. (Rev. 07/01/2018)

**ALBUQUERQUE-BERNALILLO COUNTY WATER UTILITY AUTHORITY  
CONTRACT CONTROL FORM**

CCN: 2019-0057 Purchase Order No.: R0003186/ GL/JL: 21180/527500

Purchasing Contact: Rachel Lopez 289-3271

User Contact: Katherine Yuhas 289-3056

Type of Agreement: Purchasing/Professional Services

Description: P2019000005 On-Call Water Resources Services

Vendor: Hazen and Sawyer, D.P.C.

Vendor No.: 142776

Vendor Contact: Greg Gates ggates@hazenandsawyer.com Ph:505-835-6800

Contract Term: execution To: (3 years)

Amount Added with this supplement: \$ 0

Contract Total: \$ Open

APPROVALS REQUIRED:	Approved by (initial)	Approval Date
Purchasing Administrator:	CK	3/1/2019
Purchasing Officer:	JD	3/1/19
Attorney:	PSA	3/4/19
CFO:		
COO:		
Vendor:		
Executive Director:		3/28/19
Other:		

Board Approval Required?  Yes  No

Bill No. C-19-6 Date: 2/27/19 Approved: \$ 500,000 excluding NM GRT

1. What item is being requested for review? (CIRCLE ONE)

**NEW CONTRACT** / ADDITIONAL SERVICES / CHANGE ORDER / DEVELOPER AGREEMENT  
PURCHASE ORDER or ADJUSTMENT / SUPPLEMENT / GRANT (please specify)

2. What will this item do? On-Call Water Resources Services

3. Why is it needed? In order to provide On-Call Water Resources Services to the Water Authority

4. How much will it cost and what is the funding source? Actual expenditures will vary as services are ordered.

5. Does this action require/authorize any movement of funds within the CIP administratively or commits to a clean-up in the future? Finance to handle

6. What will happen if this/these item(s) is/are not approved? Services won't be provided.

**AGREEMENT**  
**BETWEEN THE ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY**  
**AUTHORITY**  
**AND**  
**HAZEN AND SAWYER, D.P.C**  
**P2019000005 WATER RESOURCES ON-CALL SERVICES**

**THIS AGREEMENT** is made and entered into on the date of the last signature entered below by and between the Albuquerque Bernalillo County Water Utility Authority, a New Mexico political subdivision, P.O. Box 568, Albuquerque, New Mexico 87103-0568 (hereinafter referred to as the "Water Authority"), and HAZEN AND SAWYER, D.P.C. (hereinafter referred to as the "Contractor"), a New York Corporation, whose address is 498 Seventh Ave., 11<sup>th</sup> Floor, New York, NY 10018.

In consideration of mutual obligations stated herein, the parties agree as follows:

**1. Scope of Services:** The Contractor shall provide the services described in Exhibit A attached hereto (hereinafter the "Services") in a satisfactory and proper manner, as determined by the Water Authority.

**2. Term of Agreement:** This Agreement shall commence on the date of final execution by the Water Authority and continue for a period of three (3) years. This term may be extended by mutual written agreement of the parties up to the maximum number of years allowed by the Procurement Ordinance.

**3. Compensation and Method of Payment:**

**3.1 Compensation.** For performing the Services specified in Section 1 hereof, the Water Authority agrees to pay the Contractor in accordance with Exhibit B, plus any applicable gross receipt taxes and such amounts shall constitute full and complete compensation for the Contractor's Services under this Agreement, including all expenditures made and expenses incurred by the Contractor in performing such Services.

**3.2 Method of Payment.** Such amount shall be paid to the Contractor in accordance with Exhibit B, Payment Schedule, upon receipt by the Water Authority of a properly documented invoice for payment as determined by the budgetary and fiscal guidelines of the Water Authority and on the condition that the Contractor has accomplished the Services to the satisfaction of the Water Authority. Applicable taxes will be stated separately on each invoice and paid by the Water Authority at current rates. Taxes may not be billed more than sixty (60) days after completion of the Services to which they apply.

**3.3 Appropriations.** Notwithstanding any other provisions in this Agreement, the terms of this Agreement are contingent upon the Water Authority Board making the appropriations necessary for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the Water Authority Board, this Agreement may be terminated at the end of the Water Authority's then current fiscal year upon written notice given by the Water Authority to the Contractor. Such event shall not constitute an event of default. All payment obligations of the Water Authority and all of its interest in this Agreement will cease upon the date of termination. The Water Authority's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

**3.4 Non-Exclusivity.** Unless specifically provided herein, this Agreement is not exclusive to

the Contractor and the Water Authority may contract with other businesses to provide similar services at any time. In addition, if this Agreement is for the purchase of Services on an as needed basis, the Water Authority is not obligated to make any purchase of Services hereunder.

**4. Independent Contractor:** Neither the Contractor nor its employees are considered to be employees of the Water Authority for any purpose whatsoever. The Contractor is considered as an independent contractor at all times in the performance of the Services described in Section 1. The Contractor further agrees that neither it nor its employees are entitled to any benefits from the Water Authority 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 Water Authority under the provisions of the Merit System Ordinance as now enacted or hereafter amended.

**5. Personnel:**

5.1 The Contractor represents that it has, or will secure at its own expense, all personnel required in performing all of the Services required under this Agreement in a timely manner. Such personnel shall not be employees of or have any contractual relationships with the Water Authority.

5.2 All the Services required hereunder will be performed by the Contractor or under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state and local law to perform such Services.

5.3 None of the work or Services covered by this Agreement shall be subcontracted without the prior written approval of the Water Authority. Any work or Services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this Agreement.

**6. Indemnity:** The Contractor agrees to defend, indemnify and hold harmless the Water Authority and its officials, agents and employees from and against any and all claims, actions, suits or proceedings of any kind brought against said parties because of any injury or damage received or sustained by any person, persons or property to the extent arising out of or resulting from the negligent acts, errors, omissions, or negligent performance by the Contractor under this Agreement or wrongful misconduct of the Contractor or Contractor's agents or employees or any subcontractor or its agents or employees. The indemnity required hereunder shall not be limited by reason of the specification of any particular insurance coverage in this Agreement.

**7. Insurance:** The Contractor shall not commence any work under this Agreement until the insurances required in Part II of the RFP, Special Instructions, have been obtained and the proper certificates, riders or endorsements (or policies) have been submitted to the Water Authority.

**8. Reports and Information:** At such times and in such forms as the Water Authority may require, there shall be furnished to the Water Authority such statements, records, reports, data and information, as the Water Authority may request pertaining to matters covered by this Agreement. Unless authorized by the Water Authority, the Contractor will not release any information concerning the work product including any reports or other documents prepared pursuant to the Agreement until the final product is submitted to the Water Authority.

**9. Establishment and Maintenance of Records:** Records shall be maintained by the Contractor in accordance with applicable law and requirements prescribed by the Water Authority with respect to all matters covered by this Agreement. Except as otherwise authorized by the Water Authority, such records shall be maintained for a period of three (3) years after receipt of final payment under this Agreement and shall be available to the Water Authority until all applicable statutes of limitation have run. This Section 9 shall survive and continue beyond the termination

of this Agreement or any of its provisions.

**10. Audits:** At any time during normal business hours and as often as the Water Authority may deem necessary, there shall be made available to the Water Authority for examination all of the Contractor's records with respect to all matters covered by this Agreement. The Contractor shall permit the Water Authority 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.

**11. Publication, Reproduction and Use of Material:** 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. The Water Authority 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. Contractor does not assume Liability for reuse of data, drawings and other documents for any purpose other than the purpose intended in this Agreement.

**12. Ethical Conduct:** The Contractor warrants that it will perform the Services under this Agreement in compliance with the Ethical Conduct provisions (§2-390) and Unfair Business Practices provisions (§2-376) of the Procurement Ordinance, the Water Authority Code of Conduct, the Governmental Conduct Act (Sections 10-16-1 through 10-16-18, NMSA 1978), the New Mexico criminal statutes prohibiting bribes, gratuities and kickbacks, (Sections 30-41-1 through 30-41-3 NMSA 1978), and any other Water Authority or New Mexico laws, ordinances, rules and regulations, policies, procedures and administrative instructions applicable to ethical conduct. Contractor warrants that it presently has no interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of this Agreement.

**13. Unfair Business Practices:** The Contractor agrees to comply with the Unfair Business Practices provisions (§2-376) of the Procurement Ordinance and the New Mexico Unfair Practices Act, Section 57-12-1 et seq. NMSA 1978 (the "Act"). If during the term of this Agreement the Contractor has been found to engage in any Unfair Business Practices the Contractor agrees to report that finding to the Water Authority Central Purchasing Office. Unfair Business Practices are defined as a system or pattern of acts or practices that a federal or State enforcement agency has made a formal finding within the last three (3) years to be discriminatory, deceptive, fraudulent, or abusive (or similar terms) under the Act, or an applicable federal or State consumer protection law relating to the Scope of this Agreement or that have violated a relevant criminal statute, as evidenced by a public enforcement order or judgment, settlement with the enforcement agency or other formal finding by the relevant enforcement agency with regulatory enforcement authority under the applicable consumer protection law, or criminal conviction.

**14. Compliance with Laws:** In providing the Services outlined herein, the Contractor shall comply with all applicable laws, ordinances, and codes of the federal, State, and local governments, including, but not limited to the New Mexico Human Rights Act, Title VII of the federal Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, and all federal, State and local statutes, regulations and executive orders relating to civil rights.

**15. Changes:** If changes occur in the terms and conditions of this Agreement, scope of services, or the description of the Project, a supplemental agreement may be negotiated at the request of either party.

**16. Assignability:** The Contractor 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 Water Authority thereto.

**17. Termination for Cause.** If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner its obligations under this Agreement or if the Contractor shall violate any of the covenants, agreements, or stipulations of this Agreement, and fail to cure any such default within fifteen (15) days after receipt of a notice of default from the Water Authority, the Water Authority shall thereupon have the right to terminate this Agreement without further notice to the Contractor. The notice of default shall specify the date of termination. In the event of termination for cause, all finished or unfinished documents, data, and reports prepared by the Contractor under this Agreement shall, at the option of the Water Authority, become its property, and the Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder. Notwithstanding the above, the Contractor shall not be relieved of liability to the Water Authority for damages sustained by the Water Authority by virtue of any breach of this Agreement by the Contractor, and the Water Authority may withhold any payments to the Contractor for the purposes of set-off until such time as the exact amount of damages due the Water Authority from the Contractor is determined.

**18. Termination for Convenience of the Water Authority:** The Water Authority may terminate this Agreement at any time by giving at least thirty (30) days' notice in writing to the Contractor. If the Contractor is terminated by the Water Authority as provided herein, the Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder. If this Agreement is terminated due to the fault of the Contractor, the preceding Section hereof relative to termination shall apply.

**19. 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.

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

**21. Entire Agreement:** The RFP and Contractor's Proposal submitted in response to the RFP, and all Exhibits and other documents attached or referred to in this Agreement are hereby incorporated into and made a part hereof as though set forth in full in this Agreement to the extent they are consistent with its conditions and terms. In the event of a conflict, the documents shall have precedence as follows: Exhibits, Agreement, RFP and Proposal.

This Agreement and incorporated documents contain the entire agreement of the parties and supersede any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.

**22. Applicable Law:** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New Mexico, and the ordinances, rules and regulations of the Water Authority.

**23. Approval Required:** This Agreement shall not become effective or binding until approved by the Executive Director of the Water Authority.

IN WITNESS WHEREOF, the Water Authority and the Contractor have executed this Agreement as of the date first written below.

**ALBUQUERQUE BERNALILLO COUNTY  
WATER UTILITY AUTHORITY**

**HAZEN AND SAWYER, D.P.C.:**

Approved By:

  
\_\_\_\_\_  
Mark S. Sanchez, Executive Director

Date: 3/28/19

  
\_\_\_\_\_

By: Greg Gates

Title: Vice President

Date: 03/19/2019

Reviewed by:

  
\_\_\_\_\_  
Peter Auh, General Counsel

Date: 3/28/19

## **EXHIBIT A**

### **SCOPE OF SERVICES**

This on call contract may include hydrogeological services, groundwater modeling, geochemical modeling, water resources planning and analysis, permitting of projects with federal, state and local regulatory agencies, economic analyses of proposed water projects and NEPA (National Environmental Policy Act) requirements. This work must be performed to maintain compliance with all NMED, OSE and federal permits and to follow the policies of the Water Authority's water resource management strategy, WATER2120.

The Water Authority intends to award multiple agreements to a pool of contractors for the following services, or any combination of the following services. Services required include, but are not limited to:

#### **A. Water Resources Planning**

1. Water Resource Management Modeling – USGS MRG MODFLOW, OSE Administrative model experience
2. Preparation of grant applications to fund water resources supply projects
3. Analysis of the impacts of climate change on the water supply
4. Annual preparation of the operating plan for the utility
5. Analysis and report preparation on the efficacy of various water conservation programs
6. Analysis and recommendation for the best water resource project option
7. Research the occurrence, fate and potential treatment of emerging contaminants and provide reports to the Authority
8. Economic analyses

#### **B. Implementation of Water 2120**

1. Technical support for protests of permits with the OSE
2. Establish a procedure for measurement and evaluation of the aquifer level every five years and projections for what will occur in the next five years
3. Annual aquifer level mapping
4. Provide support for development of legislation to allow for water leasing and banking on a local, regional and interstate basis
5. Services to protect and enhance the Rio Grande State Park and the Bosque
6. Green energy projects and carbon footprint reduction

#### **C. Ground Water and Hydrogeology**

1. Groundwater modeling including particle tracking and capture zone/ zone of contribution & time, fate and transport of contamination
2. Geochemical modeling
3. Environmental Investigations – RCRA, CERCLA, WQCC, PSTB, permitting, corrective action and compliance knowledge, remediation system design and O&M
4. Review and preparation of comments on technical reports related to groundwater contamination sites

#### **D. Permitting and Compliance Reporting**

1. Permitting of water resources projects with the NM Environment Department and Office of the State Engineer and the EPA
2. Preparation of reports for compliance with permit

Exhibit B

Compensation will be on a time and expense basis or lump sum as negotiated by task, with labor billed based on the hourly rate sheet presented below (exclusive of New Mexico Gross Receipts Tax [NMGRT]). Rates presented will be escalated annually on the contract date by 3 percent. The titles of our proposed staff can be found in **Appendix C** listed on each resume, which can be cross referenced with the table below to determine hourly rates.

Category	Direct -	Fully Loaded (A*2.97)
Vice President	\$105	\$312
Associate Vice President	\$90	\$267
Senior Associate	\$80	\$238
Associate	\$70	\$208
Senior Principal Engineer	\$60	\$178
Principal Engineer	\$50	\$149
Assistant Engineer	\$40	\$119
Designer	\$30	\$89
Technician	\$25	\$74

Subconsultant expenses will be billed at actual cost, plus 10 percent.

Expenses will be invoiced at actual cost or standard rates (e.g. IRS standard mileage rate). Expenses will include travel or other similar costs incurred in performance of the work.



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Meeting Date: February 27, 2019  
Staff Contact: Rick Shean, Water Rights Manager

**TITLE: C-19-6 – Approval of Contract with Daniel B. Stephens and Associates, John Shomaker and Associates, Hazen and Sawyer, Tetrattech and Intera (the Vendors) for water resources on call services**

**ACTION: Recommend Approval**

**Summary:**

The Albuquerque Bernalillo County Water Utility Authority (Water Authority) issued the subject Request for Proposals (RFP) to find qualified contractors to provide water resources services resulting from Water Authority work within the City of Albuquerque, Village of Los Ranchos, New Mexico Department of Transportation (NMDOT) and Bernalillo County right-of-way (ROW).

Requesting approval to delegate signature authority to the Executive Director to enter into a contract with all of the Vendors to perform water resources services.

If approved by the Board, an Agreement will be executed between the Water Authority and the Vendors for services related to water resources planning, implementation of Water 2120, groundwater and hydrogeology investigations and evaluations, permitting and compliance reporting.

**FISCAL IMPACT:**

The funding to support these contracts will come out of the FY19-21 Water Authority budget. The term of the agreements will be for three years.

## Memo

**To:** Mark S. Sanchez, Executive Director  
Katherine M. Yuhas, Water Resources Manager

**From:** Candida Kelcourse, Purchasing Administrator *CK*

**Through:** Jonathan Daniels, Chief Purchasing Officer *JD*

**Date:** October 30, 2018

**Re:** Ad Hoc Committee for P2019000005, "Water Resources On-Call Services"

The following individuals are recommended to serve as members of the Ad Hoc Advisory Committee ("Committee") for the Request for Proposals for "Water Resources On-Call Services." This Committee will review and evaluate proposals and submit a ranked list of offerors to you for selection.

- Katherine Yuhas, Committee Chair
- John Stomp, Member
- Rick Shean, Member
- Kate Mendoza, Member
- Diane Agnew, Member

I will manage the Request for Proposals and serve as a procedural advisor to the Committee. Subject Matter Experts may be added throughout the RFP process as deemed necessary by the Purchasing Department.

I respectfully request your approval of this Committee in order to start the Request for Proposals process.

APPROVED:



Mark S. Sanchez

Executive Director

Date: 10/30/18

RECOMMENDED:



Katherine Yuhas

Water Resources Manager

Date: 10/30/18

Original: RFP File

Copy: Luz del Carmen Carreon, Executive Services Coordinator

# Memo

**To:** Mark S. Sanchez, Executive Director  
**From:** Candida Kelcourse, Purchasing Administrator *CK*  
**Through:** Jonathan Daniels, Chief Purchasing Officer *JD*  
**Date:** January 29, 2019  
**Re:** Recommendation of Award, P2019000005, Water Resources On-Call RFP

The Albuquerque Bernalillo County Water Utility Authority issued the referenced Request for Proposals (RFP) to solicit proposals from qualified vendors to services related to water resources.

The RFP was posted on the Sicomm website and advertised in the local newspaper. Seven (7) responses were received and submitted for evaluation. The Ad Hoc evaluation committee reviewed, evaluated, and scored the responses in accordance with the evaluation criteria published in the RFP.

Listed are all the respondents' average composite scores with small and/or local preferences and the NM Resident Preference applied for the offeror(s) with an asterisk (\*). The largest total composite score possible without preferences applied is 1000.

<u>Offeror</u>	<u>Total Composite Score</u>
John Shoemaker & Associates, Inc.	1015*
Tetra Tech, Inc.	997*
Daniel B. Stephens & Associates, Inc.	959*
Hazen & Sawyer, DPC	952
Intera Incorporated	809
NV5, Inc.	552
Hydro Geo Chem, Inc.	502

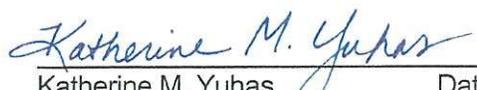
The committee recommended the award of contracts to **John Shoemaker & Assoc., Tetra Tech, Daniel B. Stephens, Hazen & Sawyer, and Intera** as these five companies had the highest average composite scores and are qualified to perform the work. I concur with the committee's recommendation.

Water Authority Board approval is required for this procurement.

Approved:

Recommended:

 2/4/19  
Mark S. Sanchez Date  
Executive Director

 2/1/19  
Katherine M. Yuhar Date  
Water Resources Manager

Enclosures: Composite Score Sheet

PURCHASING DIVISION

**Water Resources On-Call Services**  
**Request for Proposals No. P2019000005**

EVALUATION CRITERIA	EVALUATION FACTORS	OFFERORS						
		Daniel B. Stephens	Hydro Geo Chem	NV5	John Shomaker	Hazen & Sawyer	Intera	Tetra Tech
1. Basic Qualifications	Up to 300	260	156	162	248	293	233	277
2. Staffing	Up to 300	265	144	170	258	284	262	270
3. Technical Approach	Up to 300	258	126	142	263	281	228	254
4. Cost Proposal	Up to 100	76	76	78	96	94	86	96
<b>TOTAL COMPOSITE SCORES</b>		<b>859</b>	<b>502</b>	<b>552</b>	<b>865</b>	<b>952</b>	<b>809</b>	<b>897</b>
Resident Business Preference	Up to 5%	50			50			50
Resident Veteran Business Preference	Up to 10%							
Recycled Content Goods Preference	Up to 5%							
Local Business Preference	Up to 5 %	50			50			50
Small Business Preference	Up to 5%				50			
Pay Equity Preference (NOT CURRENTLY AVAILABLE)	Up to 5%							
15% Preference Max:		100	0	0	150	0	0	100
<b>TOTAL COMPOSITE SCORES WITH PREFERENCES</b>		<b>959</b>	<b>502</b>	<b>552</b>	<b>1015</b>	<b>952</b>	<b>809</b>	<b>997</b>
<b>RANKING</b>		<b>3</b>	<b>7</b>	<b>6</b>	<b>1</b>	<b>4</b>	<b>5</b>	<b>2</b>
		Daniel B. Stephens	Hydro Geo Chem	NV5	John Shomaker	Hazen & Sawyer	Intera	Tetra Tech

Details

File #: C-19-6 Version: 1  
 Type: Communication  
 Title: Approval of Contract with Daniel B. Stephens and Associates, John Shomaker and Associates, Hazen and Sawyer, Tetrattech and Intera (the Vendors) for water resources on call services  
 Mover: Debbie O'Malley                      Second: Trudy E. Jones  
 Result: Pass  
 Agenda note:  
 Minutes note:  
 Action: Approved  
 Action text: Approved

Consent Votes (6:0)

Person Name	Vote
Debbie O'Malley	For
Klarissa J. Peña	Excused
Maggie Hart Stebbins	For
Sarita Nair	For
Steven Michael Quezada	For
Pablo Rael	No Vote
Ken Sanchez	For
Timothy M. Keller	No Vote
Trudy E. Jones	For

## **Kelcourse, Candida**

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**From:** Auh, Peter  
**Sent:** Monday, March 18, 2019 10:08 AM  
**To:** Kelcourse, Candida; Lopez, Rachel G.  
**Subject:** RE: P201900000 On-Call Water Resources Services

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

I'm okay with Hazen Sawyer's proposed language for Para. 11 on page 27. *inserted*

I don't think we need to add "negligent" before "performance" in this pasted portion of Para. 6 on page 26:  
"....negligent acts, errors, omissions, and performance by the Contractor..." because the "negligent" in front of "acts, errors, omissions..." applies to "performance" but I don't want to get into a debate about the Oxford comma, so let's just let them add the second "negligent." I'm okay with deleting the phrase in Para. 6 that is marked by the red line, and okay with adding "wrongful" in front of "misconduct."

I'm not okay with deleting "defend" at the beginning of Para. 6. There is a big difference between an obligation to defend and an obligation to indemnify and hold harmless. In Sec. 4.2 on page 12, the Contractor is required to obtain insurance coverage and name the Water Authority as an additional insured, which is the functional equivalent of an obligation to defend--i.e. we would be entitled to tender defense of a claim caused by HS directly to the insurance company--so I'm not going to agree to delete "defend" from Para. 6.

Peter S. Auh  
General Counsel  
Albuquerque Bernalillo County Water Utility Authority PO Box 568 | Albuquerque NM | 87103  
505-289-3092 (ofc) | 505-803-2212 (cell) [www.abcwua.org](http://www.abcwua.org)

-----Original Message-----

From: Kelcourse, Candida  
Sent: Monday, March 18, 2019 9:54 AM  
To: Lopez, Rachel G. <[rlopez@abcwua.org](mailto:rlopez@abcwua.org)>; Auh, Peter <[pauh@abcwua.org](mailto:pauh@abcwua.org)>  
Subject: RE: P201900000 On-Call Water Resources Services

Hi Peter,

Have you gotten a chance to review Rachel's questions below?

Respectfully,

Candida Kelcourse  
Purchasing Administrator  
Albuquerque Bernalillo County Water Utility Authority PO Box 568 | Albuquerque NM | 87103  
505-289-3227 (ofc)  
[www.abcwua.org](http://www.abcwua.org)

-----Original Message-----

From: Lopez, Rachel G.  
Sent: Thursday, March 07, 2019 1:27 PM  
To: Auh, Peter <[pauh@abcwua.org](mailto:pauh@abcwua.org)>  
Cc: Kelcourse, Candida <[ckelcourse@abcwua.org](mailto:ckelcourse@abcwua.org)>  
Subject: FW: P201900000 On-Call Water Resources Services

Hi Peter,

Gregory Gates with Hazen and Sawyer are proposing changes to their agreement for the On-Call Water Resources Services contract. I informed him of part 1 section of the RFP indicated that all exceptions must be submitted in writing with the offerors proposal.

Can you review the proposed changes he is requesting in the attached document?

1. Page 26, Section 6 - they are proposing revised language.
2. Page 27, Section 11 - they are proposing revised language 3. Page 30, Section 20 - proposing to delete language.

Thank you,

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Rachel Lopez  
Contract Compliance Specialist  
Albuquerque Bernalillo County Water Utility Authority PO Box 568 | Albuquerque NM | 87103  
505-289-3271 (ofc)  
www.abcwua.org

-----Original Message-----

From: Gates, Gregory <GGates@hazenandsawyer.com>  
Sent: Thursday, March 07, 2019 1:06 PM  
To: Lopez, Rachel G. <rlopez@abcwua.org>  
Subject: RE: P201900000 On-Call Water Resources Services

Thanks Rachel. I'm definitely aware of the proposal requirements. I looked back through and it looks like we did not submit these - that was, however, our intent. I'm not sure why they weren't in the final. If it is possible to get a determination from legal, it would be appreciated. That said, I certainly understand that we missed the designated opportunity. Likewise, I don't want to cause any undue stress or delays. Thanks.

Greg Gates, PE

Water Resources Practice Lead | Hazen and Sawyer  
100 Sun Ave NE, Suite 650, Albuquerque, NM 87109  
505-835-6800 (main) | 505-259-1679 (mobile) ggates@hazenandsawyer.com | hazenandsawyer.com

-----Original Message-----

From: Lopez, Rachel G. <rlopez@abcwua.org>  
Sent: Thursday, March 7, 2019 12:56 PM  
To: Gates, Gregory <GGates@hazenandsawyer.com>  
Subject: FW: P201900000 On-Call Water Resources Services

Hi Greg,

Candida said to let you know that part 1 section of the RFP indicated that all exceptions must be submitted in writing with the offerors proposal. After that I will have to run the changes through our legal department to find out if the changes are acceptable.

Thank you,

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Rachel Lopez

Contract Compliance Specialist

Albuquerque Bernalillo County Water Utility Authority PO Box 568 | Albuquerque NM | 87103

505-289-3271 (ofc)

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-----Original Message-----

From: Gates, Gregory <GGates@hazenandsawyer.com>

Sent: Thursday, March 07, 2019 12:09 PM

To: Lopez, Rachel G. <rlopez@abcwua.org>

Subject: RE: P201900000 On-Call Water Resources Services

Rachel - We had a few potential changes for consideration as attached. Is the Water Authority amenable to these changes? Thanks much.

Greg Gates, PE

Water Resources Practice Lead | Hazen and Sawyer

100 Sun Ave NE, Suite 650, Albuquerque, NM 87109

505-835-6800 (main) | 505-259-1679 (mobile) ggates@hazenandsawyer.com | hazenandsawyer.com

-----Original Message-----

From: Lopez, Rachel G. <rlopez@abcwua.org>

Sent: Tuesday, March 5, 2019 2:04 PM

To: Gates, Gregory <GGates@hazenandsawyer.com>

Subject: P201900000 On-Call Water Resources Services

External Email - think before you click

Hi Gregory,

Please have the attached agreement executed by someone authorized to bind the company. Please email me the signed agreement.

Thank you,

Rachel

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Rachel Lopez

Contract Compliance Specialist

Albuquerque Bernalillo County Water Utility Authority PO Box 568 | Albuquerque NM | 87103

505-289-3271 (ofc)

[https://nam05.safelinks.protection.outlook.com/?url=https%3A%2F%2Furldefense.proofpoint.com%2Fv2%2Furl%3Fu%3Dhttps-3A\\_\\_nam05.safelinks.protection.outlook.com\\_-3Furl-3Dwww.abcwua.org-26amp-3Bdata-3D02-257C01-257CGGates-2540hazenandsawyer.com-257C6902859d78e344273b7d08d6a1ae2834-257C083fc4d272ad412bae7d6b81b83916dd-257C0-257C1-257C636874167381666887-26amp-3Bsdata-3DWB97wOst-252Fk-252FY9W0m4TWiMOPRXmQVik4cACKKAjVgqK4-253D-26amp-3Breserved-](https://nam05.safelinks.protection.outlook.com/?url=https%3A%2F%2Furldefense.proofpoint.com%2Fv2%2Furl%3Fu%3Dhttps-3A__nam05.safelinks.protection.outlook.com_-3Furl-3Dwww.abcwua.org-26amp-3Bdata-3D02-257C01-257CGGates-2540hazenandsawyer.com-257C6902859d78e344273b7d08d6a1ae2834-257C083fc4d272ad412bae7d6b81b83916dd-257C0-257C1-257C636874167381666887-26amp-3Bsdata-3DWB97wOst-252Fk-252FY9W0m4TWiMOPRXmQVik4cACKKAjVgqK4-253D-26amp-3Breserved-)

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-----Original Message-----

From: No Reply  
Sent: Tuesday, March 05, 2019 1:43 PM  
To: Lopez, Rachel G. <rlopez@abcwua.org>  
Subject: Scan from a Xerox Color

Please open the attached document. It was scanned and sent to you using a Xerox Color.

Number of Images: 22  
Attachment File Type: PDF

Device Name: Color C60  
Device Location:

For more information on Xerox products and solutions, please visit

[https://nam05.safelinks.protection.outlook.com/?url=https%3A%2F%2Furldefense.proofpoint.com%2Fv2%2Furl%3Fu%3Dhttps-3A\\_\\_nam05.safelinks.protection.outlook.com\\_-3Furl-3Dhttp-253A-252F-252Fwww.xerox.com-252F-26amp-3Bdata-3D02-257C01-257CGGates-2540hazenandsawyer.com-257C6902859d78e344273b7d08d6a1ae2834-257C083fc4d272ad412bae7d6b81b83916dd-257C0-257C1-257C636874167381666887-26amp-3Bsdata-3DVhhAva39pT76ytmU4tzMp4KdrJf5k0Bq00luXNDPzbQ-253D-26amp-3Breserved-3D0%26d%3DDwIFAw%26c%3DXk3HT0PclLbx0YEZpz9tYQ%26r%3DrJYndu57zeifr2SDgp3hMA3xKFLzk9IZ6C7WSQb  
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# Water Utility Authority

<b>PURCHASE ORDER NO.</b>	
<b>BP001207</b>	
Printed 04/02/2019	Page 1

**INQUIRIES TO:**

Albuquerque Bernalillo Water Utility Authority  
PURCHASING SECTION  
PO BOX 568  
ALBUQUERQUE, NM 87103-0568  
PHONE NO: 505-289-3227

**INVOICE TO:**

ABCWUA  
ATTN: ACCOUNTS PAYABLE  
PO BOX 568  
ALBUQUERQUE, NM 87103-0568

**VENDOR:**

HAZEN AND SAWYER  
498 SEVENTH AVE 11TH FL  
NEW YORK, NY 10018

**SHIP TO:**

WATER AUTHORITY  
ONE CIVIC PLAZA  
5TH FLOOR RM 5027  
ALBUQUERQUE, NM 87102

Buyer Name		FOB		Ship Via	Contract Start	Contract Expiration
CANDIDA KELCOURSE				Common	03/28/2019	03/27/2022
LINE	QTY	UNIT	DESCRIPTION		UNIT PRICE	EXTENDED PRICE
	0.00		PER THE TERMS AND CONDITIONS OF AGREEMENT NUMBER CCN 2019-0057  HOURLY RATES:  VICE PRESIDENT: \$312.00  ASSOCIATE VICE PRESIDENT: \$267.00  SENIOR ASSOCIATE: \$238.00  ASSOCIATE: \$208.00  SENIOR PRINCIPAL ENGINEER: \$178.00  PRINCIPAL ENGINEER: \$149.00  ASSISTANT ENGINEER: \$119.00  DESIGNER: \$89.00  TECHNICIAN: \$74.00  RATES ARE SUBJECT TO NM GRT  CONTRACT TERM: 3/28/2019 - 3/27/2022  REF. CCN #2019-0057  VENDOR CONTACT: Greg Gates, PE 505-835-6800 ggates@hazenandsawyer.com		\$0.00	\$0.00



# Water Utility Authority

<b>PURCHASE ORDER NO.</b>	
<b>BP001207</b>	
Printed 04/02/2019	Page 2

**INQUIRIES TO:**

Albuquerque Bernalillo Water Utility Authority  
 PURCHASING SECTION  
 PO BOX 568  
 ALBUQUERQUE, NM 87103-0568  
 PHONE NO: 505-289-3227

**INVOICE TO:**

ABCWUA  
 ATTN: ACCOUNTS PAYABLE  
 PO BOX 568  
 ALBUQUERQUE, NM 87103-0568

**VENDOR:**

HAZEN AND SAWYER  
 498 SEVENTH AVE 11TH FL  
 NEW YORK, NY 10018

**SHIP TO:**

WATER AUTHORITY  
 ONE CIVIC PLAZA  
 5TH FLOOR RM 5027  
 ALBUQUERQUE, NM 87102

Buyer Name CANDIDA KELCOURSE			FOB	Ship Via Common	Contract Start 03/28/2019	Contract Expiration 03/27/2022
LINE	QTY	UNIT	DESCRIPTION	UNIT PRICE	EXTENDED PRICE	
			WATER AUTHORITY CONTACT: Katherine Yuhas 505-289-3056 kyuh@abcwua.org  INVOICES MAY BE EMAILED TO: vendorinvoices@abcwua.org  P2019000005			
<b>TOTAL</b>						<b>\$0.00</b>

**Authorization to Proceed: Purchasing Officer signature on Purchase Order indicates Chief Operating Officer, Chief Financial Officer and Executive Director have reviewed and approved.**

Jonathan Daniels  
 Purchasing Officer

Albuquerque Bernalillo County Water Utility Authority (Water Authority)

TERMS AND CONDITIONS

**IMPORTANT: READ CAREFULLY BEFORE PROVIDING GOODS, SERVICES OR CONSTRUCTION. FAILURE TO DO SO WILL NOT RELIEVE VENDOR OF RESPONSIBILITY TO PERFORM OR DELIVER IN ACCORDANCE WITH ALL APPLICABLE PROVISIONS.**

- 1. General:** This purchase order is authorization to provide the goods, services or construction described on its face in accordance with the Terms and Conditions set out below and any attached offer submitted by Vendor and accepted by the Water Authority. These constitute the terms of the contract between the parties. If this purchase order results from a formal solicitation or separate contract, all or part of those documents are also made a part of the contract as specified in those documents referenced in this purchase order and will control over any conflicting provisions in these Terms and Conditions. Unless otherwise provided, this is an indefinite quantity contract; it is not exclusive to Vendor; the Water Authority may make similar purchases from other vendors as needed; and the Water Authority is not obligated to make any amount of purchases under the contract.
- 2. Packing, Shipping and Invoicing:** Department name AND purchase order number MUST be on all invoices, packages, packing slips, bills of lading, etc. The Department's count will be accepted by the Vendor as final and conclusive on all shipments not accompanied by a packing slip. Vendor will bear all risk of loss or damage until delivery to the Water Authority. Shipment is F.O.B. Destination unless purchase order states otherwise.
- 3. Delivery and Inspection:** Delivery will be strictly in accordance with the Water Authority's delivery schedule and instructions. Final inspection and acceptance will not be deemed to be a waiver by the Water Authority of its right to (a) cancel, reject or return, at Vendor's risk and expense, all or any portion of the goods, services or construction, or (b) make a claim for damages. Payment prior to inspection does not constitute acceptance.
- 4. Payment Terms/Discounts:** Payment terms are net thirty (30) days unless otherwise specified in the contract. Discounts, if offered, will be computed from the date of actual delivery or receipt of invoice, whichever is later.
- 5. Taxes:** All applicable gross receipts taxes are assumed to be included unless otherwise specified. The Water Authority will furnish, on request, a Non-Taxable Transaction Certificate. Determination of whether the tax is due and payment of the tax is the responsibility of the Vendor. Applicable taxes should be included in each invoice and may not be billed more than sixty (60) days after providing the goods, services or construction to which the taxes apply.
- 6. Commercial Warranty:** Vendor agrees that it will provide the Water Authority with the most favorable commercial warranties which Vendor gives to any customer for the goods, services, or construction and that the rights and remedies provided herein will extend to the Water Authority and are in addition to and do not limit any rights afforded to the Water Authority by law or under this contract. Vendor agrees not to disclaim warranties of fitness for a particular purpose or merchantability. All of Vendor's representations and warranties, both express and implied, constitute conditions of this contract. In the event that the goods, services or construction are found to be defective or fail within the warranty period, Vendor will, at its own expense, promptly remedy the defects.
- 7. New Material:** All items provided under this contract will be NEW and of most current production, unless otherwise specified.
- 8. Indemnification:** Vendor agrees to indemnify and hold harmless the Water Authority, its Board, officers, agents and employees against any and all damages, claims, expenses or other liability, including attorneys' fees, arising out of any (a) alleged or actual infringement or misappropriation of any copyright, patent, trademark, trade secret or other right based upon the goods, services or construction provided by Vendor pursuant to this contract; (b) negligence or willful misconduct of Vendor; (c) Vendor's failure to perform fully its obligations herein in a timely manner; or (d) breach of any of Vendor's representations and warranties herein.
- 9. Insurance:** Vendor will maintain in effect during the term of the contract, insurance of the kinds, in the amounts and in the form specified by the Water Authority, including, but not limited to: Commercial General Liability Insurance, Business Automobile Liability Insurance, and Workers' Compensation Insurance. As proof that such insurance is in effect, Vendor will furnish certificate(s) of insurance in a form satisfactory to the Water Authority prior to providing goods, services or construction under the contract.
- 10. Right to Audit/Inspection of Plant:** Vendor will maintain complete and accurate records of all financial transactions associated with this contract, including, but not limited to, invoices and other official documentation which sufficiently support all charges under this contract. Vendor will retain such records for six (6) years after final payment, or longer if required by law. Authorized representatives of the Water Authority may inspect and copy records pertaining to this contract at the Vendor's business office during normal business hours. Vendor will include this audit provision in any subcontracts that it may issue under this contract. The Water Authority may inspect, at any reasonable time, Vendor's plant or place of business related to the performance of this contract.
- 11. Default:** The Water Authority will have the right to cancel all or any part of this contract without cost to the Water Authority if the Vendor fails to meet the provisions of this contract and, except as otherwise provided herein, to hold the Vendor liable for any excess cost incurred by the Water Authority due to Vendor's default. Vendor will not be liable if failure to perform the contract arises out of causes beyond the control and without the fault or negligence of Vendor; such causes include, but are not restricted to, acts of God or the public enemy, acts of the State or federal government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of subcontractors due to any of the above, unless the Water Authority determines that the supplies or services to be furnished by the subcontractor were obtainable from other sources. The rights and remedies of the Water Authority provided in this paragraph are not be exclusive and are in addition to and do not limit any rights afforded to the Water Authority by law or under this contract.
- 12. Termination:** The Water Authority will also have the right to terminate the contract upon the occurrence of any one or more of the following events: (a) if sufficient appropriations are not made by the Water Authority Board. Such event will not be an event of default and the contract may be terminated at the end of the Water Authority's then current fiscal year upon written notice given by the Water Authority to Vendor; (b) without notice to Vendor, upon receipt of a notice of debarment of or ineligibility to receive funds by Vendor from any agency of the federal government or the State of New Mexico or a local public body of the State. (c) if Vendor is found to have engaged or is engaging in Unfair Business Practices as described in Section 2-376 of the Water Authority Procurement Ordinance; or (d) at any time for convenience by giving at least thirty (30) days' notice in writing to Vendor. In such event, Vendor will be paid under the terms of the contract for all goods, services or construction provided to and accepted by the Water Authority prior to the effective date of termination.
- 13. Assignment/Changes:** Neither the contract, nor any interest therein, nor claim thereunder, may be assigned or transferred by Vendor, except as expressly authorized in writing by the Water Authority. No such assignment or transfer will relieve Vendor from the obligations and liabilities under this contract. The terms of the contract may not be changed without the prior written approval of the Water Authority.
- 14. Compliance With Laws:** In performing the contract, Vendor will comply with all applicable laws, ordinances and codes of the federal, State and local governments, including, but not limited to the New Mexico Governmental Conduct Act, the New Mexico Human Rights Act, Title VII of the federal Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, and all federal, State and local statutes, regulations and executive orders relating to civil rights. In addition, Vendor certifies that (1) it has not, either directly or indirectly, entered into action in restraint of free competitive bidding; (2) it will comply with the Ethical Conduct provisions (§2-390) and Unfair Business Practices provisions (§2-376) of the Water Authority Procurement Ordinance; and (3) it presently has no interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of this contract. Vendor will obtain and maintain, and furnish to the Water Authority upon request, any and all permits, licenses, approvals, certificates and other documents required by the Water Authority, or otherwise required by applicable law.
- 15. Governing Law:** This Contract is governed by the laws of the State of New Mexico without regard to principles of conflicts of law. Any and all actions or proceedings relating to the subject matter of this contract will be maintained by and subject to the jurisdiction of State and federal courts located in Bernalillo County, New Mexico, which courts will have exclusive jurisdiction for such purposes.

**IMPORTANT NOTICE:** Before accepting a purchase order, always check for authenticity and require identification. The Water Authority will not be liable for purchases made by unauthorized individuals. (Rev. 07/01/2018)