
Meeting Date: February 5, 2025

Staff Contact: David Laughlin, Planning & Engineering Division Manager

TITLE: C-25-7 – Approval of Contract with 23 Consultants for On Call Engineering and Related Services**ACTION: Recommend Approval****Summary:**

The Albuquerque Bernalillo County Water Utility Authority issued the Request for Proposals (RFP) P2025000001, On Call Professional Engineering and Related Services to solicit proposals from qualified vendors to provide as needed engineering and related services.

The RFP was posted on BidNet and advertised in the local newspaper. Twenty-Four (24) responses were submitted for evaluation. Pursuant to Section 2(f) of the Rules Governing Procurement for the Albuquerque/Bernalillo County Water Utility Authority, in lieu of the Selection Advisory Committee, the Executive Director may name an ad hoc advisory committee to evaluate Proposals used for procurement of professional Architectural (including Landscape Architectural Services), Engineering, Construction Management and other related Professional Services upon determining that there are specialized and compelling aspects of a specific project and that an ad hoc committee evaluation would be beneficial and in the best interest of the Water Authority. The Ad Hoc Advisory Committee reviewed, evaluated, and scored the responses in accordance with the evaluation criteria published in the RFP.

Based on the recommendation of the Ad Hoc Advisory Committee, the Executive Director recommends the award of a contract to ACME Engineering, Wilson & Co., AECOM, Bohannon Huston, Carollo, CDM Smith, Cobb Fendley, EMA, Garver, Hazen & Sawyer, HDR Engineering, Horrocks Engineers, Huitt Zollars, Jacobs Engineering, Molzen Corbin, Parametrix, Plummer, Short Elliot Hendrickson, Smith Engineering, Souder Miller, Stantec Consulting, Water Works Engineers, and NV5 Inc., as these Consultants had the highest composite scores, are qualified to perform the work, and meet the requirements of the RFP. The highest total composite score possible without preferences applied is 100. All scores listed are the combined average of all Committee members with applicable preferences applied. The respective scores are as follows:

<u>Respondent Score</u>	
JACOBS ENGINEERING GROUP INC.	103
MOLZEN CORBIN AND ASSOCIATES	101
BOHANNAN HUSTON INC	99
HAZEN AND SAWYER	97
SMITH ENGINEERING COMPANY	97

CDM SMITH INC	95
AECOM TECHNICAL SERVICES INC	94
CAROLLO ENGINEERS	93
HORROCKS ENGINEERS INC	93
WILSON & COMPANY INC	92
PARAMETRIX INC	91
STANTEC CONSULTING SERVICES INC	91
COBB FENDLEY & ASSOCIATES INC	86
GARVER LLC	86
NV5 INC	86
HDR ENGINEERING INC	85
MILLER ENGINEERS INC	85
WATER WORKS ENGINEERS LLC	84
HUITT ZOLLARS INC	82
ALAN PLUMMER AND ASSOCIATES INC	80
ACME ENGINEERING, LLC	78
SHORT ELLIOTT HENDRICKSON INCORPORATED	78
EMA INC	75
WISS JANNEY ELSTNER ASSOC.	62

Approval of this item will delegate signature authority to the Executive Director to enter into a contract with ACME Engineering, Wilson & Co., AECOM, Bohannon Huston, Carollo, CDM Smith, Cobb Fendley, EMA, Garver, Hazen & Sawyer, HDR Engineering, Horrocks Engineers, Huitt Zollars, Jacobs Engineering, Molzen Corbin, Parametrix, Plummer, Short Elliot Hendrickson, Smith Engineering, Souder Miller, Stantec Consulting, Water Works Engineers, and NV5 Inc., to perform as needed engineering and related services. Approval of this item shall also serve as delegation of authority for the Executive Director to approve all future amendments to these agreements, if any.

If approved by the Board, Agreements will be executed between the Water Authority and these Vendors for on call engineering services.

FISCAL IMPACT:

The funding to support these contracts will come out of the FY25-FY31 Water Authority budget. The term of the agreements will be for six years.



Memo

To: Mark S. Sanchez, Executive Director
David Laughlin, Planning & Engineering Division Manager

From: Armida Magallanes, Purchasing Administrator *AM*

Through: Candida Kelcourse, Purchasing Officer *OK*

Date: September 23, 2024

Re: Ad Hoc Committee for P2025000001, "On-Call Professional Engineering Services"

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

- David Laughlin, Chair
- Ege Richardson, Member
- Marta Ortiz, Member
- Joel Berman, Member

Pursuant to Section 2(f) of the Rules Governing Procurement for the Albuquerque/Bernalillo County Water Utility Authority, in lieu of the Selection Advisory Committee, the Executive Director may name an ad hoc advisory committee to evaluate Proposals used for procurement of professional Architectural (including Landscape Architectural Services), Engineering, Construction Management and other related Professional Services upon determining that there are specialized and compelling aspects of a specific project and that an ad hoc committee evaluation would be beneficial and in the best interest of the Water Authority. The Ad Hoc Advisory Committee shall review competitive sealed qualifications based Requests for Proposals in accordance with requirements of the Ordinance.

An Ad Hoc Advisory Committee is recommended for the evaluation of RFP responses related to on-call Professional Engineering services.

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 to start the Request for Proposals process.

APPROVED:

Mark S. Sanchez

9/26/24 09:59 MDT

Mark S. Sanchez
Executive Director

Date

RECOMMENDED:

David Laughlin

9/26/24 08:07 MDT

David Laughlin
Planning & Engineering Division Manager

Date

Memo

To: Mark S. Sanchez, Executive Director
David Laughlin, Planning & Engineering Division Manager

From: Armida Magallanes, Purchasing Administrator *AM*

Through: Candida Kelcourse, Purchasing Officer *CK*
Armida Magallanes, Purchasing Administrator

Date: 12/9/2024

Re: Recommendation of Award P2025000001 On Call Professional Engineering Services

The Albuquerque Bernalillo County Water Utility Authority issued the referenced Request for Proposals (RFP) to solicit proposals from qualified vendors for On Call Professional Engineering Services.

The RFP was posted on BidNet and advertised in the local newspaper. Twenty-Four (24) responsive offers 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 all applicable preferences applied as indicated in the scoring details. The largest total composite score possible without preferences applied is Carollo Engineers.

<u>Offeror</u>	<u>Total Composite Score</u>
JACOBS	103
MOLZEN CORBIN	101
WH PACIFIC	86
AECOM	94
HORROCKS	93
PARAMETRIX	80
WILSON CO., INC.	92
WATER WORKS ENGINEERS	84
HDR	85
COBB, FENDLEY ASSOC., INC.	86
CDM SMITH	95
STANTEC CONSULTING	91
SMITH ENGINEERS	97
HUITT-ZOLLARS, INC.	82
EMA, INC.	75
SHORT, ELLIOTT, HENDRICKSON, INC.	78
ACME ENGINEERING LLC	78

PLUMMER ASSOC., INC.	91
SOUDER MILLER ASSOC.	85
HAZEN & SAWYER	97
GARVER LLC	86
CAROLLO ENGINEERS	93
BOHANAN, HUSTON, INC.	99
WISS, JANNEY, ELSTNER ASSOC., INC.	62

The committee recommends the award of contract to the below listed, as those companies had the highest average composite scores after final scoring and is qualified to perform the work. The Purchasing Department concurs with the Committee's recommendation.

JACOBS
MOLZEN CORBIN
WH PACIFIC
AECOM
HORROCKS
PARAMETRIX
WILSON CO., INC.
WATER WORKS ENGINEERS
HDR
COBB, FENDLEY ASSOC., INC.
CDM SMITH
STANTEC CONSULTING
SMITH ENGINEERS
HUITT-ZOLLARS, INC.
EMA, INC.
SHORT, ELLIOTT, HENDRICKSON, INC.
ACME ENGINEERING LLC
PLUMMER ASSOC., INC.
SOUDER MILLER ASSOC.
HAZEN & SAWYER
GARVER LLC
CAROLLO ENGINEERS
BOHANAN, HUSTON, INC.

Approved:

Recommended:

Mark S. Sanchez

12/11/24 09:58 MST

Mark S. Sanchez
Executive Director

Date

David Laughlin

12/11/24 09:41 MST

David Laughlin
Planning & Engineering Division Manager

Date

Enclosures: Composite Score Sheet

Evaluation Portal Administration

Composite Score Tabulation: P2025000001 On-Call Professional Engineering SVS

Hide Pref

Total # of Evaluations:		JAC	CE	MC	AEC	CDMS	BHI	HS	HDR	SCSI	SEC	GAR	HZI	HOR	WC	PA	PAI	WWE	WHP	SEH	CFA	SMA	EI	AE	WJE
		4	4	4	4	4	4	4	4	4	4	4	4	4	4	4	4	4	4	4	4	4	4	4	4
Evaluation Criteria	Max Points	JAC	CE	MC	AEC	CDMS	BHI	HS	HDR	SCSI	SEC	GAR	HZI	HOR	WC	PA	PAI	WWE	WHP	SEH	CFA	SMA	EI	AE	WJE
General Information	5	4.8	5.0	4.5	4.5	4.8	4.5	4.5	4.5	4.5	4.8	4.3	4.3	4.3	4.5	4.8	4.5	4.0	4.3	3.5	4.0	4.3	3.5	3.5	3.8
Assigned Personnel	35	32.0	33.8	32.5	32.5	32.5	32.8	31.5	31.8	29.3	29.0	30.8	30.8	26.5	30.0	27.3	29.0	27.8	27.3	28.0	27.8	27.5	29.8	25.0	24.8
Experience & Specialized Capabilities of the Offeror	35	33.0	34.0	31.5	33.0	31.3	30.5	31.8	31.3	31.5	26.8	30.5	31.8	30.3	27.3	28.3	30.0	30.5	29.8	30.5	25.0	24.5	25.0	24.3	21.8
Cost Control/Rate Factors	15	12.5	12.0	12.0	11.0	11.8	11.0	9.8	11.3	10.0	11.0	9.5	9.8	12.3	10.3	11.0	9.8	10.3	10.3	9.8	9.5	9.8	10.0	10.8	7.8
Quality and Content of Proposal	10	9.5	9.8	9.0	9.3	9.3	9.3	9.0	8.5	9.0	9.3	8.8	8.3	8.0	8.3	8.8	8.8	8.3	8.0	8.5	8.3	8.3	8.0	8.3	7.5
Total	100	90.0	93.0	88.0	89.0	87.0	86.0	84.0	85.0	83.0	79.0	81.0	82.0	80.0	79.0	78.0	80.0	79.0	78.0	78.0	73.0	72.0	75.0	70.0	62.0
Preferences (%)		13%	0%	13%	5%	8%	13%	13%	0%	8%	18%	5%	0%	13%	13%	13%	0%	5%	8%	0%	13%	13%	0%	8%	0%
Preferences (pts)		13	0	13	5	8	13	13	0	8	18	5	0	13	13	13	0	5	8	0	13	13	0	8	0
Total w/ Pref	100	103.0	93.0	101.0	94.0	95.0	99.0	97.0	85.0	91.0	97.0	86.0	82.0	93.0	92.0	91.0	80.0	84.0	86.0	78.0	86.0	85.0	75.0	78.0	62.0

BACK

DRAFT AGREEMENT
P2025000001 On Call Professional Engineering and Related 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, hereinafter referred to as "Owner" or the "Water Authority", and _____, hereinafter referred to as the "Consultant," a _____ whose address is _____.

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

1. Scope of Services: Consultant shall perform the on-call professional (architect/engineering) services (hereinafter the "Services") described in Exhibit A to this Agreement in a satisfactory and proper manner, as determined by Owner. Projects may be awarded by Work Order to Consultant in accordance with the process outlined in Exhibit A, but Owner is under no obligation to award any Projects to Consultant under this Agreement.

2. Term of Agreement: This Agreement shall be effective on December 11th, 2024, and continue for **six (6) years**, unless sooner terminated. If all Projects awarded pursuant to the Agreement are not completed by the end of the term, the Agreement shall continue until completion of all such Projects. New Projects shall not be awarded during a continuation after the end of the term, unless the Agreement is amended by written agreement of the parties.

The Term of Agreement for each Work Order shall commence on the date of final execution by Owner of the Work Order Authorization Form and continue until the date stated in the Work Order. If the Work Order Project is completed sooner, the Work Order shall terminate at such time. If the Project is in progress but not completed by the end of the term, the Work Order shall continue until Project completion, but may not exceed the term allowed by the Procurement Ordinance for contracts of this type; except that the Chief Procurement Officer may approve, by written Determination, a continuation beyond the term allowed.

3. Compensation and Method of Payment:

3.1 Total Compensation. For performing the Services specified in Section 1 hereof, Owner agrees to pay Consultant up to the amount of Four Hundred Ninety-Nine Thousand, Nine Hundred Ninety-Nine Dollars and 00/100 (\$499,999.00), plus any applicable gross receipts taxes (the "Total Compensation"). The actual compensation payable shall be the summation of the Total Contract Price of all individual Work Orders awarded under this Agreement. Owner is not obligated to pay any amount to Consultant under this Agreement except pursuant to a Work Order for Services signed by the parties.

3.2 Work Order Contract Price. Owner shall pay Consultant in current funds for Consultant's performance of a Work Order, the Work Order Total Contract Price subject to any applicable Work Order Adjustments. Such amount shall constitute full and complete compensation for Consultant's Services under the applicable Work Order, including all expenditures made and expenses incurred by Consultant in performing such Services. The Contract Price of each Work Order shall consist of the Basic Services Fee, which may be fixed or estimated, and estimated Reimbursable Expenses and subconsultants' charges, plus any applicable gross receipts taxes.

3.2.1 The estimated amounts which make up the Work Order Contract Price are not the minimum or maximum amounts which may be payable to Consultant under this Agreement.

3.2.2 Consultant shall give Owner written notice if it becomes apparent that an estimated amount will be exceeded. Upon such notice, Owner and Consultant shall promptly review the Services remaining to

be performed and compensation for such Services. Owner may suspend or terminate Consultant's Services for Owner's convenience, agree to compensation exceeding said estimated amount, or agree to a reduction in the remaining Services to be rendered by Consultant. If Owner decides not to suspend Consultant's Services during negotiations and Consultant exceeds the estimated amount before Owner and Consultant have agreed to an increase in the compensation due Consultant or a reduction in the remaining Services, the Consultant shall be paid for all Services rendered under the Work Order.

3.3 *Work Order Basic Services Compensation.* The Basic Services Fee may be fixed or estimated and may be broken down into various phases which may also be fixed or estimated in amount. The amount of a phase or the total Basic Services Fee under a Work Order may be:

- an amount, which may be fixed or estimated, equal to Consultant's Direct Labor Costs ("DLC") times a multiplier of _____ for the Services of Consultant's personnel engaged on the Work Order Project; or
- as otherwise provided in the Work Order, and approved by the Chief Engineer and Purchasing Officer.

3.3.1 DLC amounts used in a Work Order incorporate all labor, overhead, and profit.

3.3.2 "Direct Labor Costs" or "DLC" means salaries and wages paid to employees but does not include payroll-related costs or benefits.

3.3.3 Consultant shall obtain an Independent Auditor's Report of the Direct Labor Cost to certify with reasonable assurance that the DLC proposed by the Consultant is free of material misstatement and presents fairly the DLC for the Consultant. The Report will be required as requested by the Water Authority.

3.3.4 If various phases are established for the Basic Services of a Work Order, Consultant may alter the allocation of funds between the phases to be consistent with Services actually rendered, but shall not exceed subtotals established for all fixed amount phases or for all estimated phases, and the total for all Basic Services, unless approved in writing by Owner.

3.4 *Reimbursable Expenses.*

3.4.1 Reimbursable Expenses include actual and reasonable expenses incurred by Consultant solely and directly in connection with the performance of Consultant's Services as follows:

- Expenses of transportation (including coach class air travel) and living expenses in connection with out-of-state travel as directed and approved in advance by the Owner. Transportation and living expenses incurred within the City of Albuquerque are not reimbursable unless expressly approved by the Owner in advance.
- Fees paid for securing approval of authorities having jurisdiction over a Project.
- Professional models and renderings if requested by Owner.
- Reproductions, printing, binding, collating and handling of reports, and drawings and specifications or other Project-related work product, other than that used solely in-house by Consultant.
- Shipping or mailing of all reports, drawings, specifications, and other items in connection with the Project.
- Other expenses approved in writing by Owner.

3.4.2 Consultant shall not be entitled to receive payment for legal services which Consultant procures or employs for any matter related to a Project except when advance written approval is given by Owner's Attorney.

3.4.3 *Reimbursable Expenses* shall be billed at the actual cost to Consultant unless otherwise provided herein.

3.5 *Subconsultants' Charges*. Subconsultants' charges shall be billed to Owner at the actual cost to Consultant times a multiplier of up to 10%, unless otherwise provided herein.

3.6 *Payments to Consultant*. The portion of the Work Order Total Contract Price billed each billing period for Consultant's Services on a Work Order Project will be based:

- For DLC Services, on the Direct Labor Costs for the cumulative hours charged to the Project by Consultant's principals and employees during the billing period multiplied by the above-designated multiplier, plus Reimbursable Expenses and subconsultants' charges, if any, billed to Consultant during the billing period.
- For other types of Services, as provided in the Work Order.

3.7 *Additional Services*. Consultant may receive compensation for providing Additional Services for a Work Order Project as described in the applicable Work Order and Work Order Adjustment.

3.7.1 Additional Services are services not included in the description of Basic Services for the Project and not reasonably inferable as part of the Basic Services. Prior to commencing any Additional Services, Consultant shall prepare an Additional Services Proposal detailing the scope of the Additional Services and the proposed fee. Consultant shall perform the Additional Services only after written acceptance of the Additional Services Proposal by Owner and execution of a Work Order Adjustment amending the applicable Work Order. Upon acceptance by Owner, each Additional Services Proposal and the Services performed by Consultant pursuant to such Additional Services Proposal shall become part of this Agreement and shall be subject to all the terms and conditions of this Agreement.

3.7.2 Owner shall pay Consultant for Additional Services of Consultant's personnel engaged directly on the Project, as set out in the Additional Services Proposal approved by Owner or as otherwise described in the Work Order Adjustment. The compensation and methods of payment for Additional Services shall be those described above for a Work Order or as otherwise provided in the approved Additional Services Proposal.

3.8 *Invoice Required*. Payments shall be made to Consultant upon receipt by Owner of a properly documented invoice for payment as determined by the budgetary and fiscal guidelines of Owner and on the condition that Consultant has accomplished the Services to the satisfaction of Owner. Applicable taxes will be stated separately on each invoice and paid by Owner at current rates. Taxes may not be billed more than sixty (60) days after completion of the Services to which they apply.

3.9 *Gross Receipts Tax/Non-Taxable Transactions*. Consultant shall use and require the use of non-taxable transaction certificates by subcontractors and suppliers whenever allowed by law. In any event, Consultant shall not include gross receipts taxes paid to others as a part of the base dollar amount upon which Consultant calculates its gross receipts taxes when billing Consultant's fees and expenses to Owner.

3.10 *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, or any Work Order, may be terminated at the end of Owner's then current fiscal year upon written notice given by Owner to Consultant. Such event shall not constitute an event of default. All payment obligations of Owner and all of its interest in this Agreement, or Work Order, whichever applies, will cease upon the date of termination. Owner's decision as to whether sufficient appropriations are available shall be accepted by Consultant and shall be final.

3.11 *Non-Exclusivity.* Owner is not obligated to purchase any Services or award any Work Orders under this Agreement and shall have the unilateral right at all times to solicit offers or otherwise contract with other consultants to provide professional services similar to those described in this Agreement at any time.

3.12 *Final Payment.* Consultant, by its acceptance of final payment of the amounts due under a Work Order awarded pursuant to this Agreement, releases Owner, its officers and employees, from all liabilities and obligations for fees and costs due under this Agreement and all Work Orders, including, but not limited to, all damages, losses, costs, liability, and expenses (including, but not limited to, attorneys' fees and costs of litigation) that Consultant may have. All representations, including standard of care issues made in this Agreement will survive final payment and termination or completion of this Agreement.

4. Consultant's Responsibilities and Limitations.

4.1 *General Terms and Conditions.* Except as limited by this Agreement, Consultant's duties and responsibilities, Consultant's relationship with the Contractor, and the limitations of Consultant's authority during the Project shall be in accordance with the General Terms and Conditions, as amended and in effect on the date of Owner's execution of this Agreement, or such other or additional terms and conditions of the Contract between Owner and the Contractor for construction of the Project, all of which are incorporated herein as though set forth in full. Said Contract shall not be modified without Consultant's written consent, to the extent such changes affect the Services required by this Agreement.

4.2 *Standard of Care.* Consultant shall perform the Services required by this Agreement as expeditiously as is consistent with professional standards of care and the orderly progress of the Work Order Projects. Failure of Consultant to perform in such a manner or to meet a Work Order Project Schedule shall constitute a basis for termination and/or withholding of payment until timely performance is achieved by Consultant.

4.3 *Responsible Party.* Consultant shall provide the services of the following named New Mexico registered architect(s) or engineer(s) who will be in responsible charge of providing the Services required of Consultant under this Agreement in accordance with the New Mexico Architectural Act and/or the New Mexico Engineering and Surveying Act.

Architect or Engineer's name

New Mexico Certificate Number

This responsible party shall not be changed without prior approval of Owner, which approval shall not be unreasonably withheld. The Work Order Authorization Form may be signed by another architect or engineer employed by Consultant who will be in responsible charge of providing the services required of Consultant for that Work Order and Owner's signature on the Form shall indicate approval of that individual.

4.4 *Limit on Authority.* Consultant agrees not to purport to bind Owner to any obligation not assumed herein by Owner, unless Consultant has express written authority to do so, and then only within the strict limits of that authority.

5. Owner's Responsibilities:

5.1 Owner's responsibilities with respect to the Project, Consultant and the Contractor are described in the General Terms and Conditions and other documents which make up Owner's Contract with the Contractor for construction of the Project, all of which are incorporated herein.

5.2 Owner shall make accessible to Consultant, but may not provide a hard copy, all of its maps, records, reports, or other data pertinent to the Services to be performed by Consultant pursuant to this Agreement, and also make accessible any other maps, records, or other materials available to Owner from any other public agency or body.

5.3 Consultant shall indicate to Owner any additional information needed for the rendering of Services hereunder. Owner shall provide to Consultant such information as is available to Owner and Owner's consultants and contractors, and Consultant shall be entitled to rely upon the accuracy and completeness thereof.

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

7. Personnel:

7.1 Consultant 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 Owner.

7.2 All the Services required hereunder will be performed by Consultant 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. All Services shall be performed in accordance with the standards of the profession.

7.3 None of the work or Services covered by this Agreement shall be subcontracted without the prior written approval of Owner. Any work or Services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this Agreement. Such agreements shall not be construed as a diminution of Consultant's liability and responsibilities to Owner.

7.4 The Consultant shall not replace the project manager without providing written notice to the Owner, except under extraordinary circumstances. The Consultant shall submit a resume and the qualifications of the proposed substitute project manager along with the written notification and the Owner shall review and approve or deny the proposed substitute.

8. Indemnity:

8.1 *Indemnification by Consultant.* Consultant agrees to indemnify, and hold harmless Owner and its officers, agents and employees from and against liability, claims, damages, losses or expenses, including attorneys' fees, only to the extent that the liability, damages, losses or costs are caused by or arise out of the acts or omissions of Consultant, its officers, agents or employees in the performance of this Agreement. Nothing in the Agreement shall be construed to require Consultant to indemnify and hold harmless Owner, its officers, agents and employees from and against liability, claims, damages, losses or expenses, including attorneys' fees, arising out of the acts or omissions of Owner or its officers, agents and employees. Receipt by Owner of Consultant's Services under this Agreement and Owner's authorization for Consultant to proceed with the various phases of Services shall not be construed as approval of Consultant's work product by Owner or as the giving of instructions or directions by Owner. This indemnification provision is subject to the limitations and provisions of Section 56-7-1 NMSA 1978.

8.2 *Time and Expenses.* Consultant's time and expenses spent in defending allegations in claims or lawsuits arising from the acts or omissions of Consultant shall be at Consultant's own expense. Consultant shall cooperate with Owner in defending claims and lawsuits arising out of the acts or omissions of Consultant. This will not require of Consultant analyses, computations, and other architect/engineering work which is not in the scope of this Agreement.

8.3 *Indemnification by Contractor.* Owner will require in the general conditions of any construction contract, language which states that the Contractor is required to indemnify and save harmless Owner and Consultant and their officers, agents, and employees from and against all suits, actions or claims of any character brought because of any injury or damage received or sustained by any person, persons or property arising out of the performance of the Work by Contractor, or by reason of any act or omission, neglect or misconduct of Contractor, his agents or employees or any subcontractor, his agents or employees. Owner shall require the Contractor to name Owner and Consultant as additional insureds on the Contractor's commercial general liability insurance policy.

9. Insurance: Consultant 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 Owner.

10. Liability: Notwithstanding any provision herein to the contrary, neither Party shall be liable to the other or any third party for any incidental, indirect, punitive, or consequential damages arising out of or connected in any way to this Agreement or the work performed hereunder. As between the Parties hereto, the maximum aggregate liability for any and all claims and damages arising under this Agreement is limited to the total compensation value of the Agreement. Neither the Water Authority nor the Contractor 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 New Mexico Tort Claims Act (Section 41-4-1, et seq. N.M.S.A. 1978) and any amendments hereto. This paragraph is intended only to define the liabilities between the Parties hereto and it is not intended to modify, in any way, the Parties' liabilities as governed by common law or the New Mexico Tort Claims Act. By entering into this Agreement, the Water Authority and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive any sovereign immunity, nor do they waive any limitation(s) of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

11. Reports and Information: At such times and in such forms as Owner may require, there shall be furnished to Owner such statements, records, reports, data and information, Owner may request pertaining to matters covered by this Agreement. Unless authorized by Owner, Consultant 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 Owner.

12. Establishment and Maintenance of Records: Records shall be maintained by Consultant in accordance with applicable law and requirements prescribed by Owner with respect to all matters covered by this Agreement. Except with respect to lump sum fees, records of Consultant's expenses and those of its consultants pertaining to the Services provided shall be kept on the basis of generally accepted accounting principles. Except as otherwise authorized by Owner, 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 Owner until all applicable statutes of limitation have run. This Section 11 shall survive and continue beyond the termination of this Agreement or any of its provisions.

13. Audits: At any time during normal business hours and as often as Owner may deem necessary,

there shall be made available to Owner, or its representative, for examination all of Consultant's records with respect to all matters covered by this Agreement. Consultant shall permit Owner 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. Owner shall have the right to audit all such records and billings both before and after payment. Payment under this Agreement shall not foreclose the right of Owner to recover excessive or illegal payments. Consultant and its sub-consultants shall not be compensated under this Agreement for time or costs incurred in complying with this Section.

14. Ownership and Use of Documents:

14.1 *Ownership.* All designs, drawings, specifications, notes, computer discs and generated work, regardless of the media used, and other work developed in the performance of this Agreement are the sole property of Owner. This includes, but is not limited to, original construction documents such as calculations, technical data, and data related specifically to any Project awarded under this Agreement, field notes, project manuals, and related documents and other such items developed by Consultant in connection with an awarded Project. All such documents shall vest in and shall become the sole property of Owner whether the Project for which they are made is constructed or not. Production costs of such materials shall be included within Consultant's Basic Services Fee for a Project. With respect to computer programs and computer data, Owner, at its option and at its cost, may require that Consultant provide any and all computer licensing agreements necessary to permit Owner to use computer programs and data related to an awarded Project. As part of the Basic Services Fee, Consultant may maintain and retain a complete reproducible set of any and all record documents developed for a Project. Delivery of original documents shall not be required by Owner prior to completion of the performance or termination of a Project. Owner agrees that Consultant shall not be liable for claims, liabilities or losses arising out of, or connected with the decline of accuracy or readability of accepted electronic data due to inappropriate storage conditions or duration.

14.2 *Prohibition on Reuse.* All documents, including drawings and specifications prepared by Consultant pursuant to this Agreement, are instruments of service in respect to an awarded Project. They are not intended or represented by Consultant to be suitable for reuse by Owner on any other project. The original drawings may be marked by Owner or Consultant to designate the restrictions on use of these documents as set forth in this Section.

14.3 *Copyright.* No reports, maps, or other documents produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of Consultant. However, Consultant may use these documents as reference and research materials and as representations of the design of an awarded Project, including photographs of the work among Consultant's promotional and professional materials, provided however that such documents and materials shall not include Owner's confidential or proprietary information in the event Owner has previously advised Consultant in writing of matters that Owner considers confidential or proprietary. Owner shall provide professional credit for Consultant in promotional materials for an awarded Project if so requested, in writing, by Consultant.

14.4 *Additional Copies.* In the event Owner requires additional copies of the documents prepared under this Agreement, prior to Consultant's delivery of the original documents to Owner, Consultant agrees to promptly provide copies upon request and Owner agrees to reimburse Consultant for reasonable costs of reproduction, not to exceed actual costs of reproduction including labor costs expended in providing the requested copies.

15. Ethical Conduct:

15.1 *General.* Consultant 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), 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. Consultant warrants that is 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.

15.2 *Employee Conflicts.* Consultant further covenants that, in the performance of this Agreement, no person having a direct or indirect interest which would conflict in any manner or degree with his or her performance in connection with this Agreement shall be employed by Consultant. Consultant also agrees that neither it nor anyone employed by it shall have an interest, direct or indirect, in any company hired for an awarded Project as a contractor, subcontractor, supplier, or manufacturer, except for those areas of construction for which Owner provides construction phase inspection that is independent of Consultant.

15.3 *Litigation.* Consultant agrees to not serve in the capacity of architect, engineer, consultant, expert, or expert witness for any party to litigation or pending litigation holding an adverse position to, or claim against, Owner on the same subject matter for which Consultant performs Services pursuant to the terms of this Agreement.

16. Unfair Business Practices: Consultant agrees to comply with the Unfair Business Practices provisions (§2-376) of the Procurement Ordinance and the New Mexico Unfair Business Practices Act, Section 57-12-1 et seq. NMSA 1978 (the "Act"). If during the term of this Agreement Consultant has been found to engage in any Unfair Business Practices Consultant 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 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.

17. Compliance with Laws: In providing the Services outlined herein, Consultant 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.

18. 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.

19. Assignability: Consultant 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 Owner thereto.

20. Dispute Resolution:

20.1 *Mediation Procedures.* In the event a dispute concerning this Agreement arises, any party seeking

relief shall mail or deliver a written demand to the other party, describing the relief sought and the basis for such relief within a reasonable time after the claim, dispute or other matter in question has arisen. Owner and Consultant shall attempt to informally negotiate a resolution of such demand. In the event the negotiations fail or no resolution is reached within fifteen (15) days after receipt of the demand, whichever first occurs, the dispute shall be submitted to non-binding mediation. Each party shall pay in equal shares all fees and costs assessed by the mediator. Unless agreed in writing otherwise, the failure of any party making a demand to request mediation within thirty (30) days of the original submission of the demand shall be deemed a waiver of mediation requirements herein, and the parties shall proceed pursuant to arbitration. In the event the dispute is submitted to arbitration, the parties may enter into a written agreement to stay arbitration pending completion of mediation.

20.2 *Arbitration.* If mediation is not successful, any dispute concerning this Agreement, or the performance, interpretation, or breach thereof, shall then be settled by arbitration pursuant to the Uniform Arbitration Act, Section 44-7A-1 et seq. NMSA 1978 (the “NMUAA”) then in effect. The arbitrator(s) shall have no power to render an award, which has the effect of altering or amending or changing in any way any provision of this Agreement. The award of the arbitrator(s) shall be final and binding. Judgment upon any such award shall be rendered only by any state or federal court sitting in Bernalillo County, New Mexico. Any and all arbitration proceedings, including discovery ordered by the arbitrator(s) shall take place in Bernalillo County, New Mexico. In any such arbitration, the arbitrator(s) shall have the powers of a court having jurisdiction as well as all of the powers pursuant to the NMUAA. Without limiting the generality of the foregoing, the arbitrator(s) shall have the power to issue orders for injunctive relief.

20.3 *Demand for Arbitration.* Notice of demand for arbitration must be filed in writing with the other parties subject to this Section in accordance with the NMUAA. The demand must be made within a reasonable time after the claim, dispute or other matter in question has arisen, or mediation has terminated, whichever event occurs last. In no event may the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

20.4 *Injunctive Relief.* Owner and Consultant consent and agree to the issuance of any temporary restraining order or preliminary injunction, by any Court sitting in Bernalillo County, New Mexico having jurisdiction, upon the application of any party to the arbitration. Such authority of a Court to order injunctive relief shall terminate upon completion of the appointment of an arbitrator(s) who will then have jurisdiction to issue orders for injunctive relief. Any party to the arbitration may apply to the arbitrator(s) for issuance of an injunction or similar relief, and such application shall be heard by the arbitrator(s) within ten (10) days after the application is filed. Any Court in Bernalillo County having jurisdiction to render an order confirming the award of the arbitrator(s) shall have jurisdiction to enter an order confirming the issuance of such injunction and making it an order of the Court.

20.5 *Consolidation and Joinder.* Owner and Consultant consent to the joinder in arbitration of any party necessary for the complete resolution of all disputes arising out of the performance of contracts pertaining to the Work of the Project, including but not limited to the Contractor and its subcontractors and suppliers and any other interested party. Owner and Consultant also consent to the consolidation of any arbitration under this Agreement with any other arbitration involving the performance of contracts pertaining to the Work of an awarded Project.

20.6 *Dispute Resolution.* In the event Owner enters into a construction contract for an awarded Project, Owner shall include a similar dispute resolution provision (with appropriate changes in the description of the parties) in its contract with the Contractor.

21. Project Suspension: If an awarded Project is suspended for more than three (3) months or abandoned in whole or in part, Consultant shall be compensated for its Services performed prior to receipt of written notice from Owner of such suspension or abandonment, together with expenses then due. If the Project is resumed after being suspended for more than three (3) months, Consultant's compensation shall be subject to renegotiation. In the event fees cannot be agreed upon, Owner may select another consultant, and Consultant shall be entitled to no further fees.

22. Termination:

22.1 Termination for Default. If either party should fail to fulfill in timely and proper manner its obligations under this Agreement, or if either party should violate any of the covenants, agreements, or stipulations of this Agreement, such party, in addition to remedies available under the terms of this Agreement, thereupon shall have the right to terminate this Agreement by giving written notice to the other party of such termination and specifying the effective date thereof at least fifteen (15) days before the effective date of such termination. Consultant shall be responsible for all direct and consequential costs and damages which may arise out of Consultant's failure to complete the Services in accordance with the schedule of Consultant's Services defined in or pursuant to this Agreement, provided however, Consultant shall not be responsible for damages caused by Owner's delay. Consultant shall not be entitled to delay damages against Owner for delay of the performance of this Agreement caused by Owner or any third parties.

22.2 Termination Due to Abandonment. In the event that an awarded Project is abandoned by Owner, Owner may terminate the applicable Work Order at any time by giving at least fifteen (15) days written notice to Consultant.

22.3 Termination for Convenience of Owner. Owner may terminate this Agreement, in whole or in part, without cause and for Owner's convenience at any time by giving at least fifteen (15) days written notice to Consultant.

22.4 Termination Due to Non-Funding. In the event the construction project funds out of which this Agreement is funded are depleted to the extent the funds are inadequate for Owner to make the payments required pursuant to this Agreement, Owner may terminate this Agreement by giving at least ten (10) days written notice to Consultant.

22.5 Effect of Termination. Upon Consultant's receipt of a notice of termination, Consultant shall promptly discontinue all Services affected, unless otherwise directed in writing by Owner. All finished or unfinished documents, data, sketches, calculations, summaries, estimates, records, schedules, studies, surveys, drawings, maps, models, photographs, reports, and such other information and data accumulated in the performance of Services under this Agreement, whether complete or in progress, prepared by Consultant under this Agreement shall become Owner's property regardless of the cause for termination. Consultant shall be entitled to receive compensation for actual work satisfactorily completed hereunder, including reimbursable expenses authorized by Owner which are then due, but shall not be entitled to recover any consequential damages, including, but not limited to, loss of anticipated profits, for any termination allowed pursuant to this Section. In the event of termination, Owner may take over the Work of the Project and continue the Project by contract with another party or with its own staff.

23. Formal Notices: All notices herein provided to be given, or which may be given, by either party to the other shall be deemed to have been fully given when made in writing and deposited in the United States mail, postage prepaid. In the instance of termination of this Agreement, notice shall be sent by certified mail, addressed as follows:

Albuquerque Bernalillo County Water Utility Authority
One Civic Plaza NW, Room 5012
Albuquerque, New Mexico 87102

Nothing herein contained shall preclude the giving of any such written notice by personal service. The address to which notices shall be mailed to either party may be changed by written notice given by such party to the other as hereinabove provided. In addition, nothing contained herein shall preclude the transmission of routine correspondence, messages and information between the respective parties to this Agreement, either at a Project site or at the home offices of either party, or by an official of either party or their representatives.

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: Consultant agrees to pay to Owner all costs and expenses including reasonable attorneys' fees incurred by Owner in exercising any of its rights or remedies in connection with the enforcement of this Agreement.

26. Entire Agreement: The RFP, Consultant's Proposal submitted in response to the RFP, and all Exhibits and other documents attached or referred to in this Agreement, or within the standard of care of the industry, 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. The terms RFP, Proposal, Agreement and Work Order as used herein, include all Addenda, modifications, amendments, supplements and adjustments to these documents unless otherwise stated. In the event of a conflict, the documents shall have precedence as follows: the Exhibits to the Agreement, the Agreement, the RFP and the Consultant's Proposal.

The Work Order Documents for any Work Orders issued to the Consultant are also incorporated into and made a part of this Agreement as though set forth in full. In the event of a conflict, the Work Order Documents, shall have precedence.

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.

27. 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.

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

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

**ALBUQUERQUE BERNALILLO
COUNTY WATER UTILITY
AUTHORITY**

Approved By:

Mark S. Sanchez, Executive Director
Date: _____

Reviewed by:

Christopher P. Melendrez, General Counsel
Date: _____

CONSULTANT:

By: _____

Title: _____

Date: _____

New Mexico Architect/Engineer Certificate No:

EXHIBITS

EXHIBIT A – SCOPE OF SERVICES