
Meeting Date: June 21, 2017
Staff Contact: Mark S. Sanchez, Executive Director

TITLE: C-17-19 – Authorizing an Agreement with John R. O'Donnell for Representation at the Federal Level

ACTION: Recommend Approval

SUMMARY:

Approval authorizes the Executive Director to enter into an agreement with John R. O'Donnell for a one-year period for \$40,000. The contract would be for representation at the Federal level.

Based upon the Water Authority needs and requests at the federal level to support outstanding funding required for the Title XVI funding for water reclamation projects, regional water and wastewater projects, Valley Utilities Project, it is prudent to have direct representation for the Water Authority. Mr. O'Donnell also provides services with federal agencies in Washington, D.C. on behalf of the Water Authority as necessary.

The agreement would be through June 2018. This contract will not exceed a three-year term.

FISCAL IMPACT:

The funding to support this contract is in the FY18 Water Authority budget.

ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY AUTHORITY

**AGREEMENT BETWEEN
THE ALBUQUERQUE BERNALILLO COUNTY
WATER UTILITY AUTHORITY AND
JOHN R. O'DONNELL**

THIS AGREEMENT is made and entered into this ____ day of _____, 2017 by and between the Albuquerque Bernalillo County Water Utility Authority, a political subdivision of the State of New Mexico, (hereinafter referred to as the ("Water Authority")), and John R. O'Donnell, an individual, whose address is 101 Constitution Ave NW, Suite 900, Washington, DC, 20001, (hereinafter referred to as the "Contractor").

RECITALS

WHEREAS, the Water Authority requires the services of professional lobbying and governmental relations services for the Water Authority; and

WHEREAS, the Contractor is qualified and experienced in providing such Services; and

WHEREAS, the Water Authority desires to engage the Contractor to render certain services for the term of this Agreement and the Contractor is willing to provide such services; and

WHEREAS, the Water Authority intends that the Contractor will act on behalf of and in service to the Water Authority in an official capacity.

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

1. Scope of Services and Contractor's Responsibilities. The responsibility of the Contractor shall be to render professional lobbying and governmental relations services for the Water Authority during the term of this Agreement (hereinafter referred to as the "Services"). The Contractor will be responsible to the Water Authority for all services required, including, but not limited to, the following:

A. Represent the Water Authority and advocate its legislative goals in Washington D.C. before the Congress and federal agencies as appropriate during regular and special sessions where issues affecting the Water Authority are discussed, as well as at interim committees where issues affecting the Water Authority are discussed.

B. Meet with the Water Authority (the Executive Director or a designee), assist in developing the Water Authority's legislative priorities, and attend meetings with the Water Authority to establish the Water Authority's legislative program.

C. Recommend and obtain sponsors and co-sponsors for the Water Authority's legislative bills, as well as obtain the support of key legislators or legislative leadership to enhance the Water Authority's ability to pass its legislation.

D. Personally attend and coordinate appropriate staff attendance at legislative sessions, as well as interim committee meetings where issues affecting the Water Authority are discussed.

E. Provide written reports to the Water Authority on status of its legislative program and other legislative matters impacting on Water Authority activities.

F. Periodically brief the Water Authority in person.

G. Be available to the Executive Director by telephone at all times.

The Water Authority reserves the right to delete services as required. If additional services are required such amendments shall be made pursuant to Section 15.

The Executive Director is authorized to request the Services of the Contractor and shall be kept advised by the Contractor. The Water Authority will advise the Contractor of any other individuals authorized to request Services.

2. **Time of Performance.** Services of the Contractor shall commence July 1, 2017 and shall continue through June 30, 2018. The Services shall be undertaken and completed in such sequence as to assure their expeditious completion in light of the purposes of this Agreement. This Agreement may be extended for a period up to two (2) years, one year at a time, upon mutual agreement between the Water Authority and the Contractor. This Agreement shall not exceed a three (3) year term.

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

A. **Compensation.** For performing the Services specified and all expenditures made and expenses incurred by the Contractor in performing Services for the Water Authority from July 1, 2017 through June 30, 2018, and as specified in Section 1 hereof, the Water Authority agrees to pay the Contractor up to a total of Forty Thousand Dollars (\$40,000), which amount includes any applicable gross receipts taxes and which amount shall constitute full and complete compensation for the Contractor's services under this Agreement.

B. **Method of Payment.** Such amounts shall be payable in twelve (12) equal monthly installments of Three Thousand Three Hundred Thirty Three Dollars and Thirty Three cents (\$3,333.33) to the Contractor **upon receipt by the Water Authority of properly documented invoices** 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. **All amounts stated above include any applicable gross receipts taxes.**

C. **Appropriations.** Notwithstanding any other provisions of this Agreement, the terms of this Agreement are contingent upon the Water Authority making the appropriations necessary for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the Water Authority, 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.

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.

5. Personnel.

A. 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. Such personnel shall not be employees of or have any contractual relationships with the Water Authority.

B. 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.

C. None of the work or the 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, any of its departments, agencies, officers, or employees from all damages, claims or liabilities and expenses (including attorney's fees) arising out of or resulting in any way from the performance of professional services for the Water Authority, and caused by any error, omission, or negligent act of the Contractor or any person employed by the Contractor, or of any others for whose acts the Contractor is legally liable. 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 work under this Agreement until any applicable insurance required in Exhibit A to this Agreement has been obtained and proper evidence of insurance has been submitted to the Water Authority.

8. Discrimination Prohibited. In performing the Services required hereunder, the Contractor shall not discriminate against any person on the basis of race, color, religion, gender, sexual preference, sexual orientation, national origin or ancestry, age, physical handicap, or disability as defined in the Americans with Disabilities Act of 1990, as currently enacted, or hereafter amended.

9. ADA Compliance. In performing the Services required hereunder, the Contractor agrees to meet all the requirements of the Americans with Disabilities Act of 1990, and all applicable rules and regulations (the "ADA"), which are imposed directly on the Contractor or which would be imposed on the Water Authority as a public entity. The Contractor agrees to be responsible for knowing all applicable requirements of the ADA and to defend, indemnify and hold harmless the Water Authority, its officials, agents and employees from and against any and all claims, actions, suits or proceedings of any kind brought against said parties as a result of any acts or omissions of the Contractor or its agents in violation of the ADA.

10. 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 otherwise 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 this Agreement until the final product is submitted to the Water Authority.

11. 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.

12. Audits and Inspections. 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.

13. 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.

14. Compliance With Laws. In performing the Services required hereunder, the Contractor shall comply with all applicable laws, ordinances, and codes of the federal, state and local governments.

15. Changes. The Water Authority may, from time to time, request changes in the Services to be performed hereunder. Such changes, including any increase or decrease in the amount of the Contractor's compensation, which are mutually agreed upon by and between the Water Authority and the Contractor, shall be incorporated in written amendments to this Agreement.

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, the Water Authority shall thereupon have the right to terminate this Agreement by giving written notice to the Contractor of such termination and specifying the effective date thereof at least five (5) days before the effective date of such termination. In such event, all finished or unfinished documents, data, maps, studies, surveys, drawings, models, photographs 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 Water Authority. The Water Authority may terminate this Agreement at any time by giving at least fifteen (15) days' notice in writing to the Contractor. If the Contractor is terminated by the Water Authority as provided herein, the Contractor will be paid an amount which bears the same ratio to the total compensation as the Services actually performed bear to the total Services of the Contractor covered by this Agreement, less payments of compensation previously made. 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. This Agreement contains the entire agreement of the parties and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.

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 laws, rules and regulations of the Water Authority.

23. Approval Required. This Agreement shall not become effective or binding until approved by the Executive Director.

IN WITNESS WHEREOF, the Albuquerque Bernalillo County Water Utility Authority and the Contractor 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:_____

CONTRACTOR:

John R. O'Donnell

Title:_____

State Taxation and Revenue
Department Identification Number:

_____521-92-6111_____

Federal Taxpayer Identification
Number:

_____521-92-6111_____

Exhibit A

INSURANCE

Insurance. The Contractor shall procure and maintain at its expense until final payment by the Water Authority for Services covered by this Agreement, insurance in the kinds and amounts hereinafter provided with insurance companies authorized to do business in the State of New Mexico, covering all operations under this Agreement, whether performed by it or its agents. Before commencing the Services and on the renewal of all coverages, the Contractor shall furnish to the Water Authority a certificate or certificates in form satisfactory to the Water Authority showing that it has complied with this Section. All certificates of insurance shall provide that thirty (30) days' written notice be given to the Executive Director, Albuquerque Bernalillo County Water Utility Authority, P.O. Box 1293, Albuquerque, New Mexico 87103, before a policy is canceled, materially changed, or not renewed. Various types of required insurance may be written in one or more policies. With respect to all coverages required other than professional liability or workers' compensation, the Water Authority shall be named an additional insured. All coverages afforded shall be primary with respect to operations provided. Kinds and amounts of insurance required are as follows:

A. Commercial General Liability Insurance. A commercial general liability insurance policy with combined limits of liability for bodily injury or property damage as follows:

| | |
|-------------|---|
| \$1,000,000 | Per Occurrence |
| \$1,000,000 | Policy Aggregate |
| \$1,000,000 | Products Liability/Completed Operations |
| \$1,000,000 | Personal and Advertising Injury |
| \$ 50,000 | Fire - Legal |
| \$ 5,000 | Medical Payments |

Said policy of insurance must include coverage for all operations performed for the Water Authority by the Contractor, and contractual liability coverage shall specifically insure the hold harmless provisions of this Agreement.

B. Automobile Liability Insurance. An automobile liability policy with liability limits in amounts not less than \$1,000,000 combined single limit of liability for bodily injury, including death, and property damage in any one occurrence. Said policy of insurance must include coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment both on and off work.

C. Workers' Compensation Insurance. Workers' Compensation Insurance for its employees in accordance with the provisions of the Workers' Compensation Act of the State of New Mexico.

D. Professional Liability (Errors and Omissions) Insurance. Professional liability (errors and omissions) insurance in an amount not less than \$1,000,000 combined single limit of liability per occurrence with a general aggregate of \$1,000,000.

E. Increased Limits. If, during the term of this Agreement, the Water Authority requires the Contractor to increase the maximum limits of any insurance required herein, an appropriate adjustment in the Contractor's compensation will be made.