
Meeting Date: September 25, 2019
Staff Contact: John M. Stomp, Chief Operating Officer

TITLE: C-19-33 – Approval of Contract with Hazen and Sawyer for the Winrock Water Resource Recovery Plant

ACTION: Recommend Approval

BACKGROUND:

Winrock shopping center has been undergoing major renovations over the last several years and approached the Water Authority about developing a reuse project that would provide non-potable water for irrigation, landscaping and potential food crops. Winrock solicited and obtained funding of \$ 2.1 million from the State Legislature to design and construct a water resource recovery plant that will be located adjacent to Winrock.

SUMMARY:

The Albuquerque Bernalillo County Water Utility Authority issued the Request for Proposals (RFP) P2020000001, Winrock On-Site Water Resource Recovery Plant to solicit proposals from qualified vendors to provide engineering design and consulting services for the project described above.

The RFP was posted on BidSync and advertised in the local newspaper. Eight (8) responses were submitted for evaluation. The Selection Advisory Committee reviewed, evaluated, and scored the responses in accordance with the evaluation criteria published in the RFP.

Based on the recommendations of the Selection Advisory Committee, the Executive Director recommends the award of a contract to Hazen and Sawyer, as they had the highest composite score, are qualified to perform the work, and meets 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>	
Hazen & Sawyer	89
NCS Engineers	76
Stantec	83
Tierra West	83
Smith Engineering Company	85
Huitt-Zollars, Inc.	85
Wilson & Co.	88

This approval is intended to delegate signature authority to the Executive Director to enter into a contract with Hazen and Sawyer to provide engineer design and consulting services based on the Recommendation of Award of RFP P2020000001.


If approved by the Board, an Agreement will be executed between the Water Authority and Hazen to enable them to provide these services.


FISCAL IMPACT:

The fiscal impact is expected to be \$ 300,000.00, excluding taxes, for the current fiscal year from grant funding received from the State Legislature. The Water Authority is administering and managing the project. Approval of this item shall also serve as delegation of authority for the Executive Director to approve all future amendments to this purchase order, if any.

Memo

To: Mark S. Sanchez, Executive Director

From: Candida Kelcourse, Purchasing Administrator 

Through: Jonathan Daniels, Chief Purchasing Officer 

Date: September 4, 2019

Re: Recommendation of Award, P2020000001, Winrock On-Site Water Resource Recovery Plant

The Albuquerque Bernalillo County Water Utility Authority issued the referenced Request for Proposals (RFP) to solicit proposals from qualified vendors to provide engineering services for the Winrock On-Site Water Resource Recovery Plant Project.

The RFP was posted on the BidSync website and advertised in the local newspaper. Eight (8) responses were received and submitted for evaluation. The Selection Advisory 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 preferences applied for the offeror(s) with an asterisk (*). The largest total composite score possible without preferences applied is 100.

<u>Offeror</u>	<u>Total Composite Score</u>
Hazen & Sawyer	89
NCS Engineers	76*
Stantec	83
Tierra West	83*
Smith Engineering Company	85*
Huitt-Zollars, Inc.	85*
Wilson & Co.	88*
Carollo Engineers	88*

The Committee recommends the award of contract to **Hazen & Sawyer, DPC** as that company had the highest average composite score after final scoring and is qualified to perform the work. I concur with the Committee's recommendation.

Water Authority Board approval is required for this procurement.

Approved:

Recommended:



Mark S. Sanchez Date
Executive Director

 9/5/19

John M. Stomp Date
Chief Operating Officer

Enclosures: Composite Score Sheet

Composite Score Tabulation
P2020000001 WINROCK ON-SITE WATER RESOURCE RECOVERY PLANT

EVALUATION CRITERIA	EVALUATION FACTORS (Max pts)	OFFERORS							
		Hazen	NCS	Stantec	Tierra West	Smith	Huitt Zollars	Wilson & Co	Carollo
1. General Information: Establishment of the firm; number of employees; technical disciplines; registrations; location the services will be performed.	5	4	4	4	5	5	5	5	5
2. Assigned Personnel: Organization plan for the management of the Services; organizational chart; list of all consultants and subconsultants to be used for the Services and a summary description of the proposed work to be performed by each; qualifications of all personnel including unique knowledge, experience, field(s) of specialization, and education.	15	13	10	13	9	10	12	12	11
3. Experience of the Offeror: Previous projects of a similar nature; client contacts; examples of the Project Manager's experience.	25	21	17	21	17	18	18	18	23
4. Technical Approach: Offeror's understanding of the Scope of Services; list of deliverables; a detailed work breakdown; projected person-hours; schedule for the Project; use of subconsultants and other third party contractors; quality control procedures; specialized problem solving.	35	32	26	28	24	26	27	27	27
5. Cost Control: Cost control and estimating techniques; cost control of the design process; cost control of the construction cost; cost estimating techniques; comparison of bid awards to final cost estimates	10	9	7	8	8	7	7	8	8
6. Quality and Content of Proposal: Each Offeror shall exhibit their ability to submit a quality Proposal communicating a realistic approach, technical soundness, and enhancements to elements that are outlined in this RFP. Points may be deducted in this category if Proposal contains errors in spelling, punctuation, grammar, formatting or organizational mistakes. Clarity and realism in approach, technical soundness, and proposed enhancements to elements that are outlined in the RFP may also affect points in this category.	10	9	7	8	6	8	6	9	9
TOTAL COMPOSITE SCORES		89	71	83	68	75	75	78	83
Resident Business Preference	Up to 5%		5		5	5	5	5	5
Resident Veteran Business Preference	Up to 10%								
Recycled Content Goods Preference	Up to 5%								
Local Business Preference	Up to 5 %				5	5	5	5	
Small Business Preference	Up to 5%				5				
Pay Equity Preference (NOT CURRENTLY AVAILABLE)	Up to 5%								
15% Preference Max		0	5	0	15	10	10	10	5
TOTAL COMPOSITE SCORES WITH PREFERENCES		89	76	83	83	85	85	88	88
RANKING		1	8	6	7	4	5	2	3
		Hazen	NCS	Stantec	Tierra West	Smith	Huitt Zollars	Wilson & Co	Carollo

**AGREEMENT
BETWEEN THE
ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY AUTHORITY
AND
HAZEN AND SAWYER, D.P.C.
2020000001 WINROCK ON-SITE WATER RESOURCE RECOVERY PLANT
PROJECT NO. 02199.00**

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 Hazen and Sawyer, D.P.C., hereinafter referred to as the "Consultant," a New York Corporation, whose address is 498 7th Ave., 11th fl., New York, NY 10018.

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

1. Scope of Services: Consultant shall perform the following professional engineering services (hereinafter the "Services") for the Project identified above in a satisfactory and proper manner, as determined by Owner:

- Basic Services as described in Exhibit A to this Agreement.
- Additional Services which are not included in Exhibit A and not reasonably inferable as part of the Basic Services. Prior to commencing any Additional Service, Consultant shall prepare an Additional Services Proposal detailing the scope of the Additional Services and the proposed fee. Consultant shall perform the Additional Service only after written acceptance of the Additional Services Proposal by Owner and execution of an amendment to this Agreement by the parties. 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.

2. Term of Agreement: This Agreement shall commence on the date of final execution by Owner and continue through **June 30, 2022**. If the Project is completed sooner, the Agreement shall terminate at such time. If the Project is in progress but not completed by the end of the term, the Agreement 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 _____ Dollars (\$_____), plus any applicable gross receipts taxes (the "Total Compensation"). Such amount consists of:

- the **Basic Services Fee**, estimated to be \$ _____ ,
- **Reimbursable Expenses** estimated to be \$ _____ , and
- **subconsultants' charges** estimated to be \$ _____ .

The estimated Total Compensation constitutes full and complete compensation for Consultant's Services under this Agreement, including all expenditures made and expenses incurred by Consultant in performing such Services.

3.1.1 The estimated amounts contained in this Section 3 are not the minimum or maximum amounts which may be payable to Consultant under this Agreement.

3.1.2 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 exercise its right to 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 hereunder.

3.2 *Basic Services Compensation.* The Basic Services Fee shall consist of:

- a lump sum amount distributed as follows over the Phases listed below:

Preliminary Design Phase	\$ _____	
Final Design Phase	\$ _____	
SUBTOTAL Lump Sum Services (Fixed Amount)		\$ _____

- an amount equal to Consultant's Direct Labor Costs ("DLC") times a factor of _____ for the Services of Consultant's personnel engaged on the Project distributed as follows over the Phases listed below:

Construction Phase	\$ _____	
Post Construction Phase	\$ _____	
SUBTOTAL DLC Services (Estimated Amount)		\$ _____
TOTAL Basic Services Fee		\$ _____

3.2.1 The lump sum amounts stated above include compensation for Consultant's Services and Services of subconsultants, if any; and appropriate amounts have been incorporated to account for labor, overhead, profit, and Reimbursable Expenses. The DLC amounts above incorporate all labor, overhead, and profit.

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

3.2.3 A schedule of all personnel who will be assigned to the Project along with their titles and DLC hourly wage is attached to this Agreement as Exhibit B, and may be adjusted annually (as of _____) to reflect equitable changes in the compensation payable to Consultant.

3.2.4 Consultant may alter the allocation of funds between the Phases set out above to be consistent with Services actually rendered, but shall not exceed the Subtotals for Lump Sum or DLC Services or the Total set out above unless approved in writing by Owner.

3.3 *Reimbursable Expenses.*

3.3.1 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 State of New Mexico are not reimbursable unless expressly approved by the Owner in advance.
- Fees paid for securing approval of authorities having jurisdiction over the 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.

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

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

3.4 *Subconsultants' Charges.* Subconsultants' charges shall be billed to Owner at the actual cost to Consultant times a factor of _____ unless otherwise provided herein.

3.5 *Monthly Payments.* The portion of the Total Compensation billed each month for Consultant's Services will be based:

- For Lump Sum Services, upon the agreement of the project managers of Owner and Consultant as to the percentage of total Services actually completed for each Phase during the billing period;
- For DLC Services, on the Direct Labor Costs attributable to the cumulative hours charged to the Project by Consultant's principals and employees multiplied by the above-designated factor during the billing period;
- For Reimbursable Expenses on those billed during the billing period; and
- For subconsultant's charges on those billed to Consultant during the billing period.

3.6 *Additional Services.* Owner shall pay Consultant for Additional Services of Consultant's personnel engaged directly on the Project, pursuant to an Additional Services Proposal approved by Owner, utilizing one or a combination of the following methods:

- Payment of a lump sum amount which includes compensation for Consultant's Services and Services of subconsultants, if any, and incorporates amounts to account for labor, overhead, profit, and Reimbursable Expenses.
- Payment of an amount equal to the cumulative hours charged for the Additional Services by each class of Consultant's personnel times Standard Hourly Rates for each applicable

billing class for all Services performed on the Project, which amount incorporates all labor, overhead, profit, Reimbursable Expenses and subconsultants' charges, if any.

- Payment of an amount equal to Consultant's Direct Labor Costs times a factor of _____ for the Services of Consultant's personnel engaged in providing the Additional Services which amount incorporates all labor, overhead, profit, Reimbursable Expenses, and subconsultants' charges, if any.
- As otherwise provided in the approved Additional Services Proposal.

A Schedule of Standard Hourly Rates for Consultant's personnel is attached to this Agreement as Exhibit C, and may be adjusted annually (as of _____) to reflect equitable changes in the compensation payable to Consultant.

3.7 *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.

3.8 *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.

3.9 *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 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 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.

3.9.1 The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, the Owner may immediately terminate this Agreement by giving Consultant written notice of such termination. The Owner's decision as to whether sufficient appropriations are available shall be accepted by the Consultant and shall be final. Consultant hereby waives any rights to assert an impairment of contract claim against the Owner or the New Mexico Environment Department or the State of New Mexico in the event of immediate or early termination of this Agreement by the Owner or the Department.

3.10 *Non-Exclusivity.* With respect to the purchase of Services on an as needed basis, Owner is not obligated to make any such purchases under this Agreement and Owner may contract with other firms to provide such services at any time.

3.11 *Final Payment.* Consultant, by its acceptance of final payment of the amounts due under this Agreement, releases Owner, its officers and employees, from all liabilities and obligations for

fees and costs due under this Agreement, including, but not limited to, all damages, losses, costs, liability, and expenses (including, but not limited to, attorney's 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 Project. Failure of Consultant to perform in such a manner or to meet the Project Schedule attached as Exhibit B 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.

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.

5.0 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 not 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.

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. 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.

11. 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.

12. 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.

13. Ownership and Use of Documents:

13.1 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 the Project, field notes, project manuals, and related documents and other such items developed by Consultant in connection with the 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 are included within Consultant's Basic Services Fee. 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 the Project. As part of the Basic Services Fee, Consultant may

maintain and retain a complete reproducible set of any and all record documents developed under this Agreement. Delivery of original documents shall not be required by Owner prior to completion of the performance or termination of this Agreement. Electronic data delivered to and accepted by Owner shall not include the professional stamp or signature of an engineer or architect. 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.

13.2 *Prohibition on Reuse.* All documents, including drawings and specifications prepared by Consultant pursuant to this Agreement, are instruments of service in respect to the Project. They are not intended or represented by Consultant to be suitable for reuse by the 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.

13.3 *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 the 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 the Project if so requested, in writing, by Consultant.

13.4 *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.

14. Ethical Conduct:

14.1 *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.

14.2 *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 the 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.

14.3 *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.

15. 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.

16. 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.

17. 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.

18. 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.

19. Dispute Resolution:

19.1 *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.

19.2 *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.

19.3 *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.

19.4 *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.

19.5 *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 the Project.

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

20. Project Suspension: If the 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.

21. Termination:

21.1 *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.

21.2 *Termination Due to Abandonment.* In the event that the Project is abandoned by Owner, Owner may terminate this Agreement at any time by giving at least fifteen (15) days written notice to Consultant.

21.3 *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.

21.4 *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.

This contract is funded in whole or in part by funds made available under a New Mexico Environment Department Grant Agreement. Should the New Mexico Environment Department early terminate the grant agreement, the Owner may early terminate this contract by providing Consultant written notice of such termination. In the event of termination pursuant to this paragraph, the Owner's only liability shall be to pay Consultant for acceptable goods delivered and services rendered before the termination date.

21.5 *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.

22. 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 the Project site or at the home offices of either party, or by an official of either party or their representatives.

23. 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.

24. 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.

25. 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, and Agreement as used herein, include all Addenda, modifications, amendments and supplements 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 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.

26. 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.

27. 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 last written below.

**ALBUQUERQUE BERNALILLO
COUNTY WATER UTILITY
AUTHORITY**

Approved By:

Mark S. Sanchez, Executive Director

Date: _____

Recommended By:

John M. Stomp III, P.E.
Chief Operating Officer

Date: _____

Reviewed by:

Peter Auh, General Counsel

Date: _____

CONSULTANT:

By: _____

Title: _____

Date: _____

New Mexico Architect/Engineer Certificate No:

EXHIBIT A

SCOPE OF SERVICES

- A. The project is to provide planning and design services which includes, but are not limited to the following: diversion and screening of sewer flows from the existing sanitary sewer system to the new Plant; new lift station; on-site water resource recovery plant; facility enclosure with odor control; non-potable water pump station and storage, expansion of and connection to existing non-potable piping; discharge of Plant effluent and solids to existing sanitary sewer and; power supply and site development. It is anticipated that the Plant will utilize membrane bioreactor (MBR) technology for treatment. However other technologies may be considered and ultimately selected during the pre-design phase of this project.

The project also includes any necessary services from the Engineer to complete: site investigations, development plan approvals, design package submittal reviews, asset on-boarding for the project's vertical and linear assets, permitting, contractor bidding and construction administration and inspection phase services.

The project scope will generally include the following components:

- a. Project Coordination
 - i. Selected Engineer shall coordinate with the Water Authority and its representatives; other Water Authority contractors/consultants and their representatives; local, state and federal governmental agencies, to assure that design and installation works are performed in full compliance with applicable local, state, and federal regulations and standards.
 - ii. The Engineer will be responsible for conducting design review meetings at each phase of the design. The Engineer will provide meeting minutes for each review meeting. Review comments received by the Engineer from the Water Authority and other governmental regulatory agencies will be incorporated into the respective design package and be included in a formalized list of responses noting how comments were incorporated into the design package.
 - iii. In coordination with the Water Authority, Engineer will develop a groundwater discharge permit for application of non-potable water for the project which will include Winrock and other potential sites. The discharge permit will be submitted to the New Mexico Environment Department's Ground Water Quality Bureau. Engineer will also coordinate with the Water Authority on working with NMED to determine allowable end uses for non-potable water and associated required treatment and system monitoring.
- b. Pre-Design Package
 - i. Prior to initiating design work the Engineer will complete a DAR that will provide the basis of design for the project. The DAR will include at a minimum, analysis, sizing and selection of the following: available site

sanitary sewer flows to the Plant, wastewater treatment system technology, non-potable water quality treatment criteria, odor control systems, non-potable water demands and uses, non-potable water disinfection and residual requirements, back up water supply connections, Plant discharges to the existing sanitary sewer, site power requirements, site layout options, pre- design drawings, architectural renderings of the facility and a preliminary opinion of construction cost.

- ii. During this phase of design the Engineer will be required to complete any necessary site survey, geotechnical investigation, subsurface utility exploration or other site investigations required for completion of the pre-design package.

c. 30% Design Package

- i. Services shall include development and submittal for review by Water Authority and other regulatory agencies: design drawings, supplemental technical specifications and an updated opinion of construction cost. The 30% design package shall incorporate final recommendations from the DAR.

d. 60% Design Package

- i. Services shall include development and submittal for review by Water Authority and other regulatory agencies: design drawings, supplemental technical specifications and an updated opinion of construction cost. The 60% design package shall include all Water Authority and regulatory comments from the 30% design review.

e. 90% Design Package

- i. Services shall include development and submittal for review by Water Authority and other regulatory agencies: design drawings, supplemental technical specifications and an updated opinion of construction cost. The 90% design package shall include all Water Authority and regulatory comments from the 60% design review.

f. Final Design Package

- i. Services shall include the development of a final design package for bidding including: final design drawings, supplemental technical specifications, a final opinion of construction cost, estimated construction schedule and assistance with development of Water Authority bid documents. The 100% design package shall include all Water Authority and regulatory comments from the 90% design review.

g. Bid Phase

- i. The Engineer shall provide services during the Bid Phase inclusive of: conducting pre-bid meetings, answer bidder questions/provide addendums and review of contractor bids.
- h. Construction Administration and Inspection Services
 - i. The Engineer shall provide services during construction inclusive of: conducting pre-construction and routine construction progress meetings, review contractor submittals, issue interpretations and clarifications, authorize minor changes, change order requests and change orders, certify progress payments, administer construction schedule, conduct progress, substantial and final completion inspections, record drawing development and assisting the Water Authority with its asset onboarding requirements.
- i. Standard Operating Job Procedures and Staff Training Plan
 - i. If required the Engineer may be responsible for development of standard operation job procedures and staff training plans. This will include the development of a Facility Operations Manual for the Plant and associated non-potable system.

EXHIBIT B
CONSULTANT'S PERSONNEL

EXHIBIT C
STANDARD HOURLY RATES