

**DRAFT AGREEMENT**

**THIS AGREEMENT** is made and entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_ by and between the Albuquerque Bernalillo County Water Utility Authority, New Mexico a municipal corporation, (hereinafter referred to as the " Water Authority "), and \_\_\_\_\_, hereinafter referred to as the "Contractor"), a \_\_\_\_\_, whose address is \_\_\_\_\_.

**RECITALS**

**WHEREAS**, the Water Authority issued a Request For Proposals number B2013000123, titled "Valve Insertion Equipment", which is Exhibit A to this Agreement; and

**WHEREAS**, the Contractor submitted its proposal, dated \_\_\_\_\_, in response to B2013000123, which proposal is Exhibit B to this Agreement; and

**WHEREAS**, the Water Authority desires to engage the Contractor to render certain services in connection therewith, and the Contractor is willing to provide such services.

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

**1. Scope of Services.** The Contractor shall perform the following services (hereinafter the "Services") in a satisfactory and proper manner, as determined by the Water Authority:

Provide training on the operation of the valve insurance equipment in accordance with Exhibit A as supplemented by Exhibit B.

**2. Time of Performance.** Services of the Contractor shall commence on the date of final execution of this Agreement and shall be undertaken and completed in such sequence as to assure their expeditious completion in light of the purposes of this Agreement; provided, however, that in any event, all of the Services required hereunder shall be completed within one (1) year of the date of execution of this Agreement. This Agreement may be extended for up to two (2) additional one-year periods upon written agreement of the parties.

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

**A. Compensation.** For performing the Services specified in Section 1 hereof, the Water Authority agrees to pay the Contractor up to the amount of \_\_\_\_\_

Dollars (\$ \_\_\_\_\_), 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, including all expenditures made and expenses incurred by the Contractor in performing such Services.

**B. Method of Payment.** Such amount shall be paid to the Contractor in installments, which include any applicable gross receipts taxes, as follows: TBD. Payments shall be made to the Contractor upon completion of each task, upon receipt by the Water

Authority of a properly documented requisition 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.

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

**4. Independent Contractor.** The Contractor is considered as an independent contractor at all times in the performance of the services described in Section 1. The Contractor further agrees that neither it nor its employees are entitled to any benefits from the Water Authority under the provisions of the Workers' Compensation Act of the State of New Mexico, or to any of the benefits granted to employees of the Water Authority under the provisions of the Merit System Ordinance as now enacted or hereafter amended.

**5. Personnel.**

**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 Services covered by this Agreement shall be subcontracted without the prior written approval of the Water Authority. Any work or Services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this Agreement.

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

**7. Insurance.** The Contractor shall not commence any work under this Agreement until the insurances required in Exhibit A, Section 1.25, have been obtained and the proper certificates (or policies) have 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 (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 rules and 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 authorized by the Water Authority, the Contractor will not release any information concerning the work product including any reports or other documents prepared pursuant to the Agreement until the final product is submitted to the Water Authority.

**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. The Contractor understands and will comply with the City's Accountability in Government Ordinance, §2-10-1 et seq. R.O.A. 1994, and also agrees to provide requested information and records and appear as a witness in hearings for the City's Board of Ethics and Campaign Practices pursuant to Article XII, Section 8 of the Albuquerque City Charter.

**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 providing the Scope of Services outlined herein, 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 Scope of Services of the Contractor 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 obligation 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 five (5) days written notice to the Contractor of such termination and specifying the effective date of such termination. In such event, all finished or unfinished documents, data, and reports prepared by the Contractor under this Agreement shall, at the option of the Water Authority, become its property, and the Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder. Notwithstanding the above, the Contractor shall not be relieved of liability to the Water Authority for damages sustained by the Water Authority by virtue of any breach of this Agreement by the Contractor, and the Water Authority may withhold any payments to the Contractor for the purposes of set-off until such time as the exact amount of damages due the Water Authority from the Contractor is determined.

**18. Termination for Convenience of 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. Exhibits A and B, attached hereto, are hereby made a part of this Agreement.

**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 City of Albuquerque.

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

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

**ALBUQUERQUE BERNALILLO COUNTY  
WATER UTILITY AUTHORITY**

**CONTRACTOR:**

**Approved By:**

**By:** \_\_\_\_\_

\_\_\_\_\_  
**Executive Director**

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Date:** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_, **Director**

**Department** \_\_\_\_\_

**Date:** \_\_\_\_\_