



INCORPORATED COUNTY OF LOS ALAMOS SERVICES AGREEMENT

This **SERVICES AGREEMENT** ("Agreement") is entered into by and between the **Incorporated County of Los Alamos**, an incorporated county of the State of New Mexico ("County"), and **Wilson & Company Inc., Engineers & Architects**, a Kansas corporation ("Consultant"), to be effective for all purposes January 8, 2020.

WHEREAS, the County Purchasing Agent determined in writing that the use of competitive sealed bidding was either not practical or not advantageous to County for procurement of the Services and County issued Request for Proposals No. 20-23 ("RFP") on September 15, 2019, requesting proposals for Otowi 2 Well ("OW-2") Equipment Sizing, Selection, Controls Design, Site Improvements, Alternative Power Options Evaluation Professional Engineering Services, as described in the RFP; and

WHEREAS, Consultant timely responded to the RFP by submitting a response dated October 8, 2019 ("Consultant's Response"); and

WHEREAS, based on the evaluation factors set out in the RFP, Consultant was the successful Offeror for the services listed in the RFP; and

WHEREAS, the Board of Public Utilities approved this Agreement at a public meeting held on December 18, 2019; and

WHEREAS, the County Council approved this Agreement at a public meeting held on January 7, 2020; and

WHEREAS, Consultant shall provide the Services, as described below, to County.

NOW, THEREFORE, for and in consideration of the premises and the covenants contained herein, County and Consultant agree as follows:

SECTION A. SERVICES: All Services listed below shall be delivered in accordance with the Project Schedule (Schedule), as "Exhibit B," attached hereto and made a part hereof for all purposes. Revisions to this Schedule may only be made upon the written agreement of the parties. The circumstances behind the need for any revision shall only be the result of demonstrably forces beyond the control of either party.

1. General Consultant Services

- a. Consultant shall perform an evaluation of a minimum of at least two (2) alternatives for the energizing of the OW-2 well pump: (a) gas-powered pump motor solely dedicated to pumping water from OW-2 to Pajarito Booster Pump 1 Tank ("BP1T"), plus an emergency manual switch for a trailer-mounted emergency generator; or (b) grid-fed electrically energized pump motor, along with gas-powered emergency generator. Consultant shall provide a technical report summarizing the technical elements, operational considerations, and life span costs and benefits for each alternative; recommendation of

the best alternative and best approach, including phasing and/or bid alternates that would ultimately result in a fully operational OW-2 facility. Upon approval by County, the selected alternative shall become part of the design documents to be prepared by the Consultant.

- b. Consultant shall develop and provide final complete design documents such that OW-2 sustainable yield and water conveyance capacity is between 1,200 Gallons per Minute ("GPM") and 1,300 GPM. The final complete design documents shall include provisions for the water to be conveyed to the existing County's Pajarito Booster 1 Tank, in White Rock, using the existing sixteen (16) inch concrete cylinder pipeline under New Mexico State Road 4, and the new twelve (12) inch pipeline recently installed under the access road to OW-2.
- c. Consultant's design services shall be completed in a manner and according to Exhibit B to ensure that all project improvements related to Otowi 4 Well ("OW-4") are fully operable no later than March 31, 2021 and all project improvement related to OW-2 are fully available for normal production no later than January 31, 2021.

2. Consultant Services during Design

- a. Consultant shall size and provide detailed performance specifications for selected well pump and pump controls, to include the method to make the existing County's Supervisory Control and Data Acquisition ("SCADA") system connection fully operational, in accordance with Project Schedule, "Exhibit B" to this Agreement;
- b. Consultant shall provide a design of two identical Motor Control Centers ("MCC") to be installed at both OW-2 OW-4. Installation and removal of the MCCs shall be included under the same construction project and included in the final design documents;
- c. Consultant shall design and include in the final design documents detailed performance specifications for the selected pump-energizing option for both normal and emergency conditions;
- d. Consultant shall design and include in the final design documents a permanent housing facility for all equipment (concrete block or pre-cast concrete structure);
- e. Consultant shall include in the final design documents site improvements, including re-grading of site, pump start-up flow disposal, site drainage, and site security fencing at the site of the newly completed and tested Otowi-2 Wellhead in Los Alamos Canyon;
- f. Consultant shall prepare and include in the final design documents Consultant's deliverables for County review and approval at completion stages of 50% and 100%;
- g. Consultant shall prepare and provide an engineer's opinion of cost at each stage of the design work; and
- h. Consultant shall submit a complete application for Substantial Modifications to the County's Water System for approval by the New Mexico Environment Department's ("NMED") Drinking Water Bureau, and assure that all design work is approved by the NMED Construction Grants, prior to the County's bidding of the project; and
- i. Consultant shall assist County during the project bidding with tasks, including by not limited to clarification of bidding documents, preparing addenda for prospective bidders, and other bidding related tasks as requested by County.

3. Consultant Services during Construction

- a. Consultant shall assist County in coordinating all relevant regulatory compliance with NMED and Office of the State Engineer ("OSE"), in connection with the design, installation, and construction of equipment at OW-2 and OW-4;

- b. Consultant shall, as requested by County, perform general project administration duties, such as review and recommend County action with respect to construction contractor's Pay Applications;
- c. Consultant shall, as requested by County, review construction contractor's and County's requests with regard to unforeseen field conditions and events, make appropriate recommendations, and prepare relevant change order documents on behalf of County;
- d. Consultant shall, as requested by County, consult with County staff regarding the selected construction contractor's proposed acceptance of substantial completion and final completion, as defined in the construction documents;
- e. Consultant shall, as requested by County, assist County staff during start-up of the both OW-2 and OW-4, making sure they operate as specified;
- f. Consultant shall, as requested by County, assist County staff with construction observation and field compliance verification duties throughout the construction period;
- g. Consultant shall, as requested by County, provide general project administration records and information to County, including a monthly narrative of project execution progress and percent completion;
- h. Consultant shall, as requested by County, assist County in verifying construction contractor's partial payment requests, and make appropriate recommendations to County;
- i. Consultant shall document and provide to County all As-Built conditions throughout the construction and installation period, and
- j. Consultant shall, as requested by County, assist County in verifying final payment quantities and issue appropriate recommendations to County.

4. Consultant Services Following Construction

- a. Consultant shall draft and provide to County three (3) copies of the Standard Job Operations Procedures ("SOJP");
- b. Consultant shall assemble all equipment operations and maintenance manuals for well OW-2;
- c. Consultant shall prepare, stamp and seal Record Drawings and Post-Construction Information Documents for OW-2 and OW-4 MCC and provide to County, as relevant; and
- d. Consultant shall prepare all required submittals to OSE and NMED to meet conditions, requirements, and approval of the respective regulatory agencies.

SECTION B. TERM: The term of this Agreement shall commence January 8, 2020, and shall continue through December 31, 2023, unless sooner terminated, as provided herein. At County's sole option the Agreement may be renewed for up to two (2) consecutive one-year periods, unless sooner terminated, as provided therein. Engineering services shall be completed as shown on the Project Schedule of Services (Schedule) shown as "Exhibit B" to this Agreement.

SECTION C. COMPENSATION:

1. **Amount of Compensation.** County shall pay compensation for performance of the Services in an amount not to exceed TWO HUNDRED FIVE THOUSAND EIGHT HUNDRED THIRTEEN AND 54/100 DOLLARS (\$205,813.54) which amount does not include applicable New Mexico gross receipts taxes ("NMGRT"). Compensation shall be paid in accordance with the rate schedule set out in Exhibit "A," attached hereto and made a part hereof for all purposes.

- 2. Monthly Invoices.** Consultant shall submit itemized invoices to County's Project Manager showing amount of compensation due, amount of any NMGR, and total amount payable. Payment of undisputed amounts shall be due and payable thirty (30) days after County's receipt of the invoice.

SECTION D. TAXES: Consultant shall be solely responsible for timely and correctly billing, collecting and remitting all NMGR levied on the amounts payable under this Agreement.

SECTION E. STATUS OF CONSULTANT, STAFF, AND PERSONNEL: This Agreement calls for the performance of services by Consultant as an independent contractor. Consultant is not an agent or employee of County and will not be considered an employee of County for any purpose. Consultant, its agents or employees shall make no representation that they are County employees, nor shall they create the appearance of being employees by using a job or position title on a name plate, business cards, or in any other manner, bearing County's name or logo. Neither Consultant nor any employee of Consultant shall be entitled to any benefits or compensation other than the compensation specified herein. Consultant shall have no authority to bind County to any agreement, contract, duty or obligation. Consultant shall make no representations that are intended to, or create the appearance of, binding County to any agreement, contract, duty, or obligation. Consultant shall have full power to continue any outside employment or business, to employ and discharge its employees or associates as it deems appropriate without interference from County; provided, however, that Consultant shall at all times during the term of this Agreement maintain the ability to perform the obligations in a professional, timely and reliable manner.

SECTION F. STANDARD OF PERFORMANCE: Consultant agrees and represents that it has and will maintain the personnel, experience and knowledge necessary to qualify it for the particular duties to be performed under this Agreement. Consultant shall perform the Services described herein in accordance with a standard that meets the industry standard of care for performance of the Services.

SECTION G. DELIVERABLES AND USE OF DOCUMENTS: All deliverables required under this Agreement, including material, products, reports, policies, procedures, software improvements, databases, and any other products and processes, whether in written or electronic form, shall remain the exclusive property of and shall inure to the benefit of County as works for hire; Consultant shall not use, sell, disclose, or obtain any other compensation for such works for hire. In addition, Consultant may not, with regard to all work, work product, deliverables or works for hire required by this Agreement, apply for, in its name or otherwise, any copyright, patent or other property right and acknowledges that any such property right created or developed remains the exclusive right of County. Consultant shall not use deliverables in any manner for any other purpose without the express written consent of County.

SECTION H. EMPLOYEES AND SUB-CONTRACTORS: Consultant shall be solely responsible for payment of wages, salary or benefits to any and all employees or contractors retained by Consultant in the performance of the Services. Consultant agrees to indemnify, defend and hold harmless County for any and all claims that may arise from Consultant's relationship to its employees and sub-contractors.

SECTION I. INSURANCE the term of this Agreement with an insurer acceptable to County. Consultant shall assure that all sub-contractors maintain like insurance. Compliance with the terms and conditions of this Section is a condition precedent to County's obligation to pay compensation for the Services and Consultant shall not provide any Services under this

Agreement unless and until Consultant has met the requirements of this Section. County requires Certificates of Insurance or other evidence acceptable to County that Consultant has met its obligation to obtain and maintain insurance and to assure that sub-contractors maintain like insurance. Should any of the policies described below be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. General Liability Insurance and Automobile Liability Insurance shall name County as an additional insured.

1. **General Liability Insurance:** ONE MILLION DOLLARS (\$1,000,000.00) per occurrence; TWO MILLION DOLLARS (\$2,000,000.00) annual aggregate.
2. **Workers' Compensation:** In an amount as may be required by law. County may immediately terminate this Agreement if Consultant fails to comply with the Worker's Compensation Act and applicable rules when required to do so.
3. **Automobile Liability Insurance for Consultant and its Employees:** ONE MILLION DOLLARS (\$1,000,000.00) combined single limit per occurrence; TWO MILLION DOLLARS (\$2,000,000.00) annual aggregate on any owned, and/or non-owned motor vehicles used in performing Services under this Agreement.
4. **ERRORS AND OMISSIONS/PROFESSIONAL LIABILITY INSURANCE:** Whichever is applicable to the particular profession or service to be provided, with a limit of not less than ONE MILLION (\$1,000,000.00) each Claim, with a TWO MILLION \$2,000,000 annual aggregate, without any restrictive "negligent act, negligent error, or negligent omission" clause, and sufficient to protect the Consultant, the Board, and the City, for a five (5) year period from completion of this contract, against any and all claims which may arise from the Consultant's negligent performance of work described herein.

SECTION J. RECORDS: Consultant shall maintain, throughout the term of this Agreement and for a period of six (6) years thereafter, records that indicate the date, time, and nature of the services rendered. Consultant shall make available, for inspection by County, all records, books of account, memoranda, and other documents pertaining to County at any reasonable time upon request.

SECTION K. APPLICABLE LAW: Consultant shall abide by all applicable federal, state and local laws, regulations, and policies and shall perform the Services in accordance with all applicable laws, regulations, and policies during the term of this Agreement. In any lawsuit or legal dispute arising from the operation of this Agreement, Consultant agrees that the laws of the State of New Mexico shall govern. Venue shall be in the First Judicial District Court of New Mexico in Los Alamos County, New Mexico.

SECTION L. NON-DISCRIMINATION: During the term of this Agreement, Consultant shall not discriminate against any employee or applicant for an employment position to be used in the performance of the obligations of Consultant under this Agreement, with regard to race, color, religion, sex, age, ethnicity, national origin, sexual orientation or gender identity, disability or veteran status.

SECTION M. INDEMNITY: Consultant shall indemnify, hold harmless and defend County, its Council members, employees, agents and representatives, from and against all liabilities, damages, claims, demands, actions (legal or equitable), and costs and expenses, including without limitation attorneys' fees, of any kind or nature, arising from Consultant's performance hereunder or breach hereof and the performance of Consultant's employees, agents, representatives and sub-contractors.

SECTION N. FORCE MAJEURE: Neither County nor Consultant shall be liable for any delay in the performance of this Agreement, nor for any other breach, nor for any loss or damage arising from uncontrollable forces such as fire, theft, storm, war, or any other force majeure that could not have been reasonably avoided by exercise of due diligence.

SECTION O. NON-ASSIGNMENT: Consultant may not assign this Agreement or any privileges or obligations herein without the prior written consent of County.

SECTION P. LICENSES: Consultant shall maintain all required licenses including, without limitation, all necessary professional and business licenses, throughout the term of this Agreement. Consultant shall require and shall assure that all of Consultant's employees and sub-contractors maintain all required licenses including, without limitation, all necessary professional and business licenses.

SECTION Q. PROHIBITED INTERESTS: Consultant agrees that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. Consultant further agrees that it will not employ any person having such an interest to perform services under this Agreement. No County Council member or other elected official of County, or manager or employee of County shall solicit, demand, accept or agree to accept a gratuity or offer of employment contrary to Section 31-282 of the Los Alamos County Code.

SECTION R. TERMINATION:

1. **Generally.** County may terminate this Agreement with or without cause upon ten (10) days prior written notice to Consultant. Upon such termination, Consultant shall be paid for Services actually completed to the satisfaction of County at the rate set out in Section C. Consultant shall render a final report of the Services performed to the date of termination and shall turn over to County originals of all materials prepared pursuant to this Agreement.
2. **Funding.** This Agreement shall terminate without further action by County on the first day of any County fiscal year for which funds to pay compensation hereunder are not appropriated by County Council. County shall make reasonable efforts to give Consultant at least ninety (90) days advance notice that funds have not been and are not expected to be appropriated for that purpose.

SECTION S. NOTICE: Any notices required under this Agreement shall be made in writing, postage prepaid to the following addresses, and shall be deemed given upon hand delivery, verified delivery by telecopy (followed by copy sent by United States Mail), or three (3) days after deposit in the United States Mail:

County:

Project Manager, Dept. of Public Utilities
Incorporated County of Los Alamos
1000 Central Avenue, Suite 130
Los Alamos, New Mexico 87544

Consultant:

Daniel Aguirre, PE, Senior Vice President
Wilson & Company Inc., Engineers & Architects
4401 Masthead Street, NE, Suite 150
Albuquerque, New Mexico 87109

SECTION T. INVALIDITY OF PRIOR AGREEMENTS: This Agreement supersedes all prior contracts or agreements, either oral or written, that may exist between the parties with reference to the services described herein and expresses the entire agreement and understanding between the parties with reference to said services. It cannot be modified or changed by any oral promise

made by any person, officer, or employee, nor shall any written modification of it be binding on County until approved in writing by both County and Consultant.

SECTION U. CAMPAIGN CONTRIBUTION DISCLOSURE FORM: A Campaign Contribution Disclosure Form was submitted as part of the Consultant's Response and is incorporated herein by reference for all purposes. This Section acknowledges compliance with Chapter 81 of the Laws of 2006 of the State of New Mexico.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date(s) set forth opposite the signatures of their authorized representatives to be effective for all purposes on the date first written above.

ATTEST

INCORPORATED COUNTY OF LOS ALAMOS

NAOMI D. MAESTAS
COUNTY CLERK

BY: _____
PHILO S. SHELTON, III, P.E. **DATE**
UTILITIES MANAGER

Approved as to form:

J. ALVIN LEAPHART
COUNTY ATTORNEY

**WILSON & COMPANY INC., ENGINEERS &
ARCHITECTS, A KANSAS CORPORATION**

BY: _____
NAME: _____ **DATE**
TITLE: _____

Exhibit "A"
Compensation Rate Schedule
AGR20-23

ATTACHED

EXHIBIT A

| Task 1: General Engineering Services | | | | Task 2: Engineering Services During Design | | | | Task 3: Engineering Services During Construction | | | | Task 4: Engineering Services Following Construction | | | | Total Hours | | | | | | | | | | | | |
|---|-----|----------------------------------|-----|---|--------------|-------------------|--------------|---|-------------|-------------------|--------------|--|-------------|---------------------------------------|-------------|----------------|------------------------------------|------|-------------------------------|------|------------------------|------|--|------|--------------------------|------|------|--------------|
| 1a: Kickoff | | 1b: Project Administration | | 1c: Power Alternative Analysis | | 2a: 50% Design | | 2b: 100% Design | | 2c: Permitting | | 3a: Bidding | | 3b: Construction Administration | | | 3c: Construction Observation | | 3d: Start-up Assistance | | 4a: SOP Development | | 4b: Development of Record Drawings | | 4c: Contract Closeout | | | |
| 1a | hrs | 1b | hrs | 1c | hrs | 2a | hrs | 2b | hrs | 2b | hrs | 2c | hrs | 3a | hrs | | 3b | hrs | 3c | hrs | 3d | hrs | 4a | hrs | 4b | hrs | 4c | hrs |
| Project Manager | 4 | 38 | | 15 | | 10 | | 10 | | 4 | | | | 0 | | 2 | | 0 | | 0 | | 0 | | 2 | | 5 | | 90 |
| WWW Sr. Engineer | 0 | 20 | | 20 | | 1 | | 1 | | 0 | | | | 14 | | 44 | | 0 | | 0 | | 10 | | 5 | | 10 | | 125 |
| WWW Jr. Engineer | 0 | 0 | | 0 | | 46.5 | | 46.5 | | 0 | | | | 21 | | 98 | | 0 | | 0 | | 0 | | 0 | | 20 | | 232 |
| WWW CADD | 0 | 0 | | 0 | | 64 | | 64 | | 0 | | | | 0 | | 0 | | 0 | | 0 | | 0 | | 30 | | 0 | | 158 |
| WWW Operations | 0 | 0 | | 0 | | 0 | | 0 | | 0 | | | | 0 | | 0 | | 0 | | 20 | | 60 | | 0 | | 0 | | 80 |
| WWW Project Engineer | 4 | 16 | | 8 | | 38 | | 38 | | 40 | | | | 0 | | 0 | | 0 | | 0 | | 0 | | 0 | | 0 | | 144 |
| Sr. Arch | 4 | 0 | | 0 | | 8 | | 8 | | 0 | | | | 1 | | 1 | | 0 | | 0 | | 0 | | 0 | | 0 | | 22 |
| Proj. Arch | 0 | 0 | | 0 | | 9 | | 9 | | 0 | | | | 2 | | 31 | | 0 | | 0 | | 0 | | 0 | | 0 | | 51 |
| Arch CAD | 0 | 0 | | 0 | | 45 | | 45 | | 0 | | | | 2 | | 4 | | 0 | | 0 | | 0 | | 0 | | 0 | | 96 |
| Electrical Engineer | 4 | 0 | | 4 | | 15.5 | | 15.5 | | 0 | | | | 0 | | 4 | | 0 | | 0 | | 0 | | 0 | | 0 | | 43 |
| Sr. Electrical Designer | 0 | 0 | | 20 | | 28 | | 28 | | 0 | | | | 4 | | 28 | | 0 | | 0 | | 0 | | 0 | | 0 | | 108 |
| Electrical Designer | 0 | 0 | | 0 | | 45 | | 45 | | 0 | | | | 4 | | 0 | | 0 | | 0 | | 0 | | 0 | | 0 | | 94 |
| Mechanical Engineer | 0 | 0 | | 4 | | 7.5 | | 7.5 | | 0 | | | | 1 | | 1 | | 0 | | 0 | | 0 | | 0 | | 0 | | 21 |
| Sr. Mechanical Designer | 0 | 0 | | 20 | | 10 | | 10 | | 0 | | | | 4 | | 18 | | 0 | | 0 | | 0 | | 0 | | 0 | | 62 |
| Mechanical Designer | 0 | 0 | | 0 | | 10 | | 10 | | 0 | | | | 0 | | 2 | | 0 | | 0 | | 0 | | 0 | | 0 | | 22 |
| Const. Observer | 0 | 0 | | 0 | | 0 | | 0 | | 0 | | | | 0 | | 9 | | 240 | | 0 | | 0 | | 0 | | 0 | | 249 |
| Structural Engineer | 0 | 0 | | 0 | | 16 | | 16 | | 0 | | | | 2 | | 6 | | 0 | | 0 | | 0 | | 0 | | 0 | | 40 |
| Structural CAD | 0 | 0 | | 0 | | 12 | | 12 | | 0 | | | | 0 | | 0 | | 0 | | 0 | | 0 | | 0 | | 0 | | 24 |
| Total Hours by Task: | | | | 16 | 74 | 91 | 365.5 | 365.5 | 44 | 44 | 55 | 248 | 240 | 20 | 70 | 37 | 35 | 1661 | | | | | | | | | | |
| Expenses: | | | | \$ 108.31 | \$ 3,000.00 | \$ - | \$ 108.31 | \$ 108.31 | \$ - | \$ - | \$ 216.62 | \$ 15,299.72 | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ 18,841.26 |
| Task Sub-Total (excl. NMGR): | | | | \$ 2,603.01 | \$ 14,102.79 | \$ 9,286.09 | \$ 41,316.82 | \$ 41,316.82 | \$ 4,979.93 | \$ 6,421.22 | \$ 42,224.34 | \$ 22,322.22 | \$ 2,937.32 | \$ 10,137.50 | \$ 4,084.17 | \$ 205,813.54 | | | | | | | | | | | | |

Sub-Consultant Costs:
John Shomaker & Associates

\$14,000.00 (costs are included as expense in Task 3b, above.)

Total Proposed Project Fee: \$ 205,813.54
(excl. NMGR)

- Assumptions:
- 1 Assumes 20-hrs/week of construction observation for 3-months by Wilson & Company staff. Pump Installation observation by JS&I staff
 - 2 Based upon 2-week county review period
 - 3 Assumes all engineering services performed by Wilson & Company and JS&I
 - 4 Assumes As-Built drawings will be prepared from Contractors Redline set
 - 5 Billing rates based upon agreed upon billing rates from LAC On-Call Contract

Exhibit "B"
Project Schedule of Services
AGR20-23

ATTACHED

