



**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 **Burns & McDonnell Engineering Company, Inc.**, a Missouri corporation ("Contractor"), collectively (the "Parties"), to be effective for all purposes December 18, 2024 ("Effective Date").

WHEREAS, the County Purchasing Officer 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. 25-26 ("RFP") on September 3, 2024, requesting proposals for an Electric Distribution System Electrification Study, as described in the RFP; and

WHEREAS, Contractor timely responded to the RFP by submitting a response dated October 1, 2024 ("Contractor's Response"); and

WHEREAS, based on the evaluation factors set out in the RFP, Contractor 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 4, 2024; and

WHEREAS, the County Council approved this Agreement at a public meeting held on December 17, 2024; and

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

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

1) SECTION A. SERVICES:

- a) **Generally.** Contractor will collect and assess County's current electrical system data and conduct a power Electrification Study to provide information on the Electrical Distribution system's current condition ("Services"). Contractor will define projects and funding sources required to maintain system resilience to meet the increased demands on the Los Alamos County Electric Distribution system due to electrification and growth.
- b) **Project Initiation.** As identified in Proposed Project Schedule attached as Exhibit A, and agreed to by County, Contractor shall schedule an in-person Kick-Off Meeting with the County's designated Utilities Department staff ("Project Team"), as determined by the Deputy Utility Manager for Electric Distribution or designee ("Project Manager") at a date, time, to be agreed upon by both Parties.

- i) In preparation for and prior to the Kick-Off Meeting, Contractor shall review Code Sections identified below and related plans, studies, and information, which include, but are not limited to the following:
 - (1) Utility Rules and Regulations at https://library.municode.com/nm/los_amos_county/codes/code_of_ordinances?nodeId=PTIICOOR_CH40UT
 - (2) Utility Construction Standards: <https://losalamosnm.egnyte.com/fl/nViBAulAID>.
 - (3) County Preliminary Climate Action Plan at <https://www.losalamosnm.us/Initiatives/Sustainability-and-Conservation-Initiatives/Greenhouse-Gas-Emissions-Inventory-and-Climate-Action-Plan>
- ii) Within five days of execution of contract, County will provide the following documents via secure link emailed to Contractor. In preparation for and prior to the Kick-Off Meeting, Contractor shall review :
 - (1) Utility Board Recommendations
 - (2) Electric Distribution Condition Assessment
 - (3) System Maps
 - (4) Utility Customer information: PV connected customers, Consumption Data
 - (5) PV interconnection Agreement
- iii) As part of the Kick-Off Meeting, the Parties shall, at a minimum:
 - (1) Establish a mutually agreed upon Project Schedule to accomplish key tasks with durations for each task conforming substantially to the Contractor's Proposed Project Schedule attached as Exhibit A. The Project Schedule shall include, at a minimum, Contractor's anticipated need for travel to Los Alamos, due dates for deliverables, and Project milestones.
 - (2) Review the scope of work and identify any Project issues to be addressed in the course of the Project that were not identified in the County's RFP or in the Contractor's Proposal.
 - (3) Establish communication protocols, meeting frequency, and meeting format, with meetings occurring either in-person or online in a virtual format.
 - (4) Identify document format and data transfer methods between Contractor and Project Team related to the performance of the Agreement.
- c) **Project Management.** Contractor shall perform the following project management duties.
 - i) Project Documentation and Meeting Materials. Contractor shall:
 - (1) Produce agendas, meeting materials, and provide notes for all calls and meetings, and shall be responsible for preparing, organizing, and maintaining documents created in service of this Agreement. All notes shall be prepared in typed form and furnished electronically to the Project Manager within five (5) business days after the date of the meeting, throughout the term of the Agreement.
 - (2) In coordination with County Project Team, identify and collect the required data that shall be necessary to complete the Electrification Study. This includes information released upon execution of contract as well as any additional data needed.

ii) **Project Reports.** Contractor shall:

Provide to the Project Manager a monthly Project Status report that includes a summary of accomplishments by task, Project assessment, and deliverables for the reporting period in the form mutually agreed upon by County and Contractor.

iii) **Site visits**

Contractor shall coordinate with County staff acceptable times and dates to come on-site to do multiple visual inspections, as identified in the Project Schedule, of the community within ten (10) business days of the Kickoff Meeting, and prior to beginning the Electrification Study, in order to gather information and evaluate critical and sensitive areas.

d) **Comprehensive Electrification Power Study.** Contractor shall perform the following tasks and provide a single comprehensive Los Alamos County Electrification Power Study to include the following:

i) **Task 1 – Existing System Assessment**

- (1) **Initial Assessment** – Contractor shall conduct an initial assessment to identify any near-term concerns and familiarize the project team with the County electric distribution system. Contractor shall review data sources to include, but not be limited to, substation/feeder demand, load profiles, critical customers, outage history, system maps and applicable models to understand system asset health and gain insights into the power flow characteristics and load serviceability of the County system.
- (2) **Distribution Asset Health and Reliability Assessment** – Contractor will review the “Electric Distribution Condition Assessment” provided by County, Windmil models and GIS data to gain an understanding of the condition of the existing infrastructure and provide recommendations on equipment upgrade opportunities, resiliency improvement, placement of new protective devices and any other areas of concern.
- (3) **Substation Assessment** – Contractor shall perform a walk down of County owned substation yards to visually inspect the condition of equipment to assess the overall condition and functionality of key components to include the following:
 - (a) A general review of transformers, circuit breakers, switchgear, busbars, grounding systems, and protective relays to identify any signs of wear, malfunction, or potential safety risks.
 - (b) The condition of site access, security, and the substation layout, alongside a review of control and SCADA systems, if applicable, to ensure proper operation.
 - (c) Environmental considerations, such as oil spill containment with a focus on compliance with local and national regulations.
 - (d) Recommendations will be provided for necessary repairs, upgrades, or operational improvements to enhance the substation’s efficiency and safety including a general risk assessment of the current state of the substation and a list of action items to address critical issues
- (4) **System Models and Power Flow Assessment** – Contractor shall evaluate system maps and applicable system models to understand data quality and accuracy of the mapping systems. Contractor will perform analysis to identify threats, risks, vulnerabilities, and redundancies of the existing system. Contractor shall consider

Critical customers such as hospitals, laboratory buildings, police stations, etc. as determined by County and planned capital projects that are recently completed, or soon to be completed during this analysis to identify any potential risks based on the current operating configuration of the County system. As needed, Contractor will evaluate and provide contingency scenarios to identify risks to County customers during certain loss of power events. As needed and based on the results of the power flow assessment, Contractor shall recommend near-term capital projects to resolve observed planning criteria violations and/or system deficiencies.

- (5) **Hosting Capacity Assessment** – Contractor will review the existing Distributed Energy Resources (DER) connected to the County system and identify the present thermal limits on circuits and substations to hosting new generation. As needed and requested by County, Contractor shall perform a detailed hosting capacity analysis that considers both thermal and voltage violations using power flow simulations. Once hosting capacity analysis is performed, the remaining hosting capacity for each feeder and substation transformer will be documented for the current configuration. Contractor shall provide visual analysis of the hosting capacity. A meeting, as scheduled at the Kick-Off Meeting will be held with the County project team to discuss hosting capacity, planning criteria, and potential near-term capital projects to increase hosting capacity. These discussions will be documented in the comprehensive final report.
- (6) **System Resiliency Assessment** – Contractor shall investigate areas of resiliency and reliability improvement. At a meeting, as scheduled at the Kick-Off Meeting, the Contractor shall present potential resiliency measures, potential microgrids, Battery Energy Storage Systems (BESS), and various distribution system upgrades in order to identify possible investments needed for the Los Alamos County Electric Distribution system. Contractor shall also provide recommendations and opportunities for improvements to Fault Location, Isolation, and Service Restoration (FLISR), Volt/VAR Optimization (VVO), and Advanced Distribution Management Systems (ADMS). All recommendations, discussion points and action items will be documented in the final comprehensive report.
- (7) **Current and Future Supply Markets Assessment** – Contractor shall review the current supply market available to County and then review any potential new supply markets that could become available to County in the future.
- (8) **Transmission Service Assessment** – Contractor shall review the current demand of the County system and document the existing transmission service. Contractor will identify any near-term risks to serving load growth and use this information to make recommendations for system load growth and customer demand projections

ii) **Task 2 - Adoption Modeling and Forecasting.**

(1) **Demographics Data Collection -**

Contractor shall collect demographic and psychographic data for the census tracts that fall within the boundary of Los Alamos County. Information collected will include the following:

- (a) Household income
- (b) Age
- (c) Education
- (d) building size
- (e) consumer purchasing behaviors
- (f) Business information including type of business and building size

(2) Customer Energy Consumption and Utilization

- (a) Contractor shall develop assumptions to determine demand from electrification (energy and power) for each of the following types of potential electrification:
 - (i) Building electrification (space and water heating)
 - (ii) Solar PV & Battery Energy Storage Sizing (“BESS”)
 - (iii) Residential Electric Vehicle (“EV”) using vehicle registration data, and
 - (iv) County fleet electrification power demand and energy consumption for suitable vehicles.
- (b) For building electrification, if energy utilization is not available from metering or billing data by customer class (residential, small C&I, large C&I, etc.), Contractor shall develop assumptions around building energy utilization. And estimate the electric demand from buildings using fossil fuel space and water heating that could convert to electrified options.
- (c) Based on census tract data and information provided by County, Contractor shall model residential and commercial PV solar and (BESS) sizing and generation output for residential customers based on assumed system sizes, and estimated charging demand by kilowatt for each vehicle.

- (3) Modeling and Forecasting** – Contractor shall develop and present multiple adoption models, as mutually agreed upon by Contractor and County, for purposes of forecasting the future growth and adoption of building electrification, Solar PV and BESS, residential EV and the County fleet conversion over a thirty (30)-year period.

iii) Task 3 – 30-Year Electric Distribution System Master Plan

- (1) Electrification Scenario System Impact Analysis** – Contractor shall provide three electrification scenarios, which will be analyzed to identify the gap between the capability of the existing system and the potential power requirement. For each of the three scenarios, Contractor shall identify major capital projects will in order to enable adequate service to County customers through new substations and substation expansions. Analysis shall provide recommendation as to the likely sequence of major upgrades for each electrification scenario based on different growth rates forecasted, challenges and benefits of increased levels of electrification and DER growth.
- (2) Transmission Source Requirement Analysis** – Contractor shall conduct analysis on the gap between the current transmission service that County receives and the projected customer demand. Analysis shall document the potential transmission source requirement in order for Project Team to determine appropriate next steps and determine if Utility scale BESS investments should be considered.
- (3) Finance and Regulations**
 - (a) Contractor shall provide to the Project Team, information pertaining to resources for pursuing potential funding sources for the major capital projects identified in the analysis and information regarding current supply chain conditions and impacts to the regular replacement and upgrade of utility equipment.
 - (b) Contractor shall work to identify any potential updates to the County Rules and Regulations based on the findings and recommendations from this study.
 - (c) Contractor shall identify time, cost and barriers to Electric Distribution system upgrades or replacement. Contractor shall provide recommendations for potential financial and policy solutions to alleviate barriers to system capital expansion.

- (d) Contractor shall review existing Los Alamos County Department of Public Utility (“DPU”) electric Rules and Regulations for any required updates that are identified in County’s proposed plan. This will include but not be limited to recommendations regarding the addition of new rates, adding load management programs, and updating line extension policies.
 - (e) Contractor shall identify possible funding sources for large-scale projects. This will include but not be limited to exploring federal and state grants, modified cost sharing arrangements through line extension policy changes, pursuing other available grants and credits, traditional debt financing, or a coordinated funding plan with County Finance staff.
- (4) **LAC Staffing Requirements** – Contractor shall assess the current DPU staffing levels and roles / skills, as well as contemplated future workforce plans and provide recommendations for future staffing needs based on electrification scenarios identified.

iv) **Task 4 – Deliverables**

Contractor, in coordination with County Project Team shall provide the following deliverables as a result of this Agreement:

- (1) Establish a mutually agreed upon Project Schedule to accomplish key tasks defined herein and durations by which each task is completed, with all tasks to be completed no later than twelve months from Agreement execution.
- (2) Establish communication protocols, meeting frequency, and a meeting format, with meetings occurring either in-person or online in a virtual format as mutually agreed upon by the Parties.
- (3) Document the format and data transfer methods between Offeror and Project Team as identified by County
- (4) Participate in two in-person public meetings to gather information on public interest and to provide relevant information on electrification. During these meetings, Contractor shall share general information regarding the process to convert homes to all electric, average costs of major equipment items (water heaters, furnace, etc.), and the impact on the electric system as a result. Contractor shall also provide general information relating to EV installation of charging equipment, impact to the electric utility, and living with an electric vehicle. The structure and content of these meetings will be mutually agreed upon by Project Team and Contractor. One meeting will be held at the Los Alamos town site and one meeting will be held in White Rock. The time and date of both meetings will be mutually agreed upon during the kick-off meeting.
- (5) Contractor shall conduct five separate presentations, either in-person or virtually as mutually agreed upon during the Kick-Off meeting, with the Los Alamos County Council and Board of Public Utilities throughout the duration of this project.
- (6) Final Comprehensive Report – Contractor shall provide County with a single Final Comprehensive Report documenting all project meeting discussions, summaries of analyses performed, and recommendations. The Final Comprehensive Report will also include specific items requested by County as follows:
 - (a) Electrification load growth forecasts
 - (b) Major capital projects necessary to serve forecasted load growth
 - (c) Possible funding sources for major capital projects identified in the study
 - (d) Future transmission level source requirements for County and discussions of BESS needs

- (e) Assessment of current and future staffing requirements based on growth projections
- (f) Applicable updates to the DPU Rules and Regulations based on this study
- (g) Assessment of conditions identified in the County Climate Action Plan that will impact the electric system
- (h) Assessment of conditions identified in the County Transit Fleet Electric Conversion Plan that will impact the electric system
- (i) Contractor shall deliver draft Comprehensive Report to the Project Team for review and to solicit feedback. Project Team will provide written feedback to the comprehensive report within two weeks.
- (j) Contractor shall present the executive summary of findings and recommendations to the County Council and Board of Public Utilities at times and dates mutually agreed upon during the Kick-Off Meeting.
- (k) Contractor shall provide a Final Comprehensive Report which is sealed by a licensed engineer of the State of New Mexico.

SECTION B. TERM: The term of this Agreement shall commence December 18, 2024, and shall continue through July 30, 2025, unless sooner terminated, as provided herein.

SECTION C. COMPENSATION:

1. **Amount of Compensation.** County shall pay compensation for performance of the Services in an amount not to exceed THREE HUNDRED NINETY-EIGHT THOUSAND AND NO/100 DOLLARS (\$398,000.00), 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 B, attached hereto and made a part hereof for all purposes.
2. **Monthly Invoices.** Contractor shall submit itemized monthly invoices to County's Project Manager showing amount of compensation due, amount of any NMGRT, 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: Contractor shall be solely responsible for timely and correctly billing, collecting and remitting all NMGRT levied on the amounts payable under this Agreement.

SECTION E. STATUS OF CONTRACTOR, STAFF, AND PERSONNEL: This Agreement calls for the performance of services by Contractor as an independent contractor. Contractor is not an agent or employee of County and shall not be considered an employee of County for any purpose. Contractor, 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 Contractor nor any employee of Contractor shall be entitled to any benefits or compensation other than the compensation specified herein. Contractor shall have no authority to bind County to any agreement, contract, duty, or obligation. Contractor shall make no representations that are intended to, or create the appearance of, binding County to any agreement, contract, duty, or obligation. Contractor 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 Contractor 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: Contractor agrees and represents that it has and shall maintain the personnel, experience, and knowledge necessary to qualify it for the particular duties to be performed under this Agreement. Contractor shall perform the Services described herein in accordance with a standard that meets the industry standard of care for performance of the Services in the same geographic area as the Services being performed (“Standard of Care”). If Contractor fails to meet the Standard of Care, Contractor will re-perform the Services at its own cost, and without reimbursement from County, the Services necessary to reperform negligent errors and omissions which are reported to Contractor in writing within one (1) year from the completion of the Services. If Contractor is unable to or fails to reperform such Services which do not meet the Standard of Care, County shall be entitled to a refund for the portion of the Services for which County has paid but which Contractor failed to perform or performed incorrectly. The obligations in this Section F are Contractor’s sole obligation and County’s negotiated exclusive remedy with respect only to defects in the quality of the Services.

Contractor has relied upon the information provided by County in the preparation of the proposal and shall rely on the information provided by or through County during the execution of this project as complete and accurate without independent verification.

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 . A “work made for hire” is a work specially ordered or commissioned for use as a contribution to a collective work, a compilation, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire. A “compilation” is a work formed by the collection and assembling of preexisting materials or of “standard features”, schematics and data that are selected, coordinated, or arranged in such a way that the resulting work as a whole constitutes an original work of authorship. The term “compilation” includes collective works. A “collective work” is a work in which a number of contributions, constituting separate and independent works in themselves, are assembled into a collective whole. Notwithstanding, County shall retain title to deliverables Contractor delivers to County, however, Contractor shall retain ownership of Contractor’s prior developed and concurrently developed intellectual property. Contractor shall provide County a royalty-free license to utilize such Contractor prior intellectual property rights with regard to the project. Contractor shall not use deliverables in any manner for any other purpose without the express written consent of County. All documents prepared by Contractor pursuant to this Agreement are not intended or represented to be suitable for reuse by County or others in extensions of the project beyond that now contemplated or on any other project. Any reuse, extension, or completion by County or others without written verification, adaptation, and permission by Contractor for the specific purpose intended will be at County’s sole risk and without liability or legal exposure to Contractor

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

SECTION I. INSURANCE: Contractor shall obtain and maintain insurance of the types and in the amounts set out below throughout the term of this Agreement with an insurer reasonably acceptable to County. Compliance with the terms and conditions of this Section is a condition precedent to County's obligation to pay compensation for the Services, and Contractor shall not provide any Services under this Agreement unless and until Contractor has met the requirements of this Section. County requires Acord Certificates of Insurance, stating that Contractor has met its obligation to obtain and maintain insurance and. Should any of the policies described below be cancelled before the expiration date thereof, notice shall be delivered in accordance with the policy provisions. General Liability Insurance, Automobile Liability Insurance, and Professional Liability Insurance shall include County as an additional insured.

1. **General Liability Insurance:** ONE MILLION DOLLARS (\$1,000,000.00) per occurrence; ONE MILLION DOLLARS (\$1,000,000.00) in the general aggregate.
2. **Workers' Compensation:** In an amount as may be required by law. County may immediately terminate this Agreement if Contractor fails to comply with the Worker's Compensation Act and applicable rules when required to do so.
3. **Automobile Liability Insurance for Contractor and its Employees:** ONE MILLION DOLLARS (\$1,000,000.00) combined single limit per accident; on any owned, and/or non-owned motor vehicles used in performing Services under this Agreement.
4. **Professional Liability Insurance:** ONE MILLION DOLLARS (\$1,000,000.00) per claim and in the aggregate. Professional Liability Insurance shall provide coverage for Services provided hereunder during the term of this Agreement and for a period of at least two (2) years thereafter.

SECTION J. COUNTY LIABILITY

1. The County shall be responsible for liability arising from personal injury or damage to person and property occasioned by its own employees as relates to the performance of this Agreement, subject in all cases to the immunities and limitations of the New Mexico Tort Claims Act (Section 41-4-1, et. seq., NMSA 1978) and any amendments thereto. This paragraph is not intended to modify, in any way, the parties' liabilities as governed by common law or the New Mexico Tort Claims Act.
2. By entering into this agreement, the County and its "employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and/or do not waive any limitations of liability pursuant to law. No provision in this Agreement modifies and/or waives any provision of the New Mexico Tort Claims Act.
3. It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of any part of the Agreement to create in the public or any member thereof a third party beneficiary or to authorize anyone not a party to the Agreement to maintain a suit(s) for wrongful death(s), bodily injury(ies) to person(s), damage(s) property(ies) and/or other claim(s) whatsoever pursuant to the provisions of this Agreement.

SECTION K. RECORDS: Contractor shall maintain, throughout the term of this Agreement and for a period of six (6) years thereafter, business records that indicate the date, time, and nature of the services rendered, directly related to the deliverables under this Agreement. Contractor shall make available, for inspection by County, all records, books of account, memoranda, and

other documents directly pertaining to the deliverables at any reasonable time upon request of the County upon County's sole expense. Notwithstanding anything to the contrary herein, in no event shall County be entitled to audit the composition of any agreed upon fixed rates or percentage multipliers nor shall it be entitled to audit any rates, charges, costs, hours worked or expenses related to work performed on a lump sum or fixed price basis.

SECTION L. DUTY TO ABIDE: Contractor 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.

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

SECTION N. CHOICE OF LAW: The interpretation and enforcement of this Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico.

SECTION O. VENUE, FORUM NON-CONVENIENS, EXCLUSIVE STATE JURISDICTION: County and Contractor knowingly, voluntarily, intentionally, and irrevocably agree that any and all legal proceedings related to this Agreement, or to any rights or any relationship between the parties arising therefrom, shall be solely and exclusively initiated, filed, tried, and maintained in the First Judicial District Court of the State of New Mexico. County and Contractor each expressly and irrevocably waive any right otherwise provided by any applicable law to remove the matter to any other state or federal venue, consents to the jurisdiction of the First Judicial District Court of the State of New Mexico in any such legal proceeding, waives any objection it may have to the laying of the jurisdiction of any such legal proceeding. County and Contractor also agree that this term is a material inducement for each to enter this Agreement, and that both County and Contractor warrant and represent that each have had the opportunity to review this term with legal counsel. The parties shall seek to resolve in good faith any dispute or difference between them, including on against an officer, director or employee of a party, arising out of or related to the Agreement, whether in contract or tort. Should negotiations fail, the parties agree to submit to and participate in a third party facilitated mediation as a condition precedent to resolution by litigation.

SECTION P. WAIVER OF JURY TRIAL: In the event of any action or proceeding, (including without limitation, any claim, counterclaim, cross-claim or third party claim) arising out of or relating to this Agreement, or the transaction contemplated by this Agreement, County and Contractor KNOWINGLY, VOLUNTARILY, INTENTIONALLY, AND IRREVOCABLY WAIVE ANY RIGHT TO A JURY TRIAL, and agree that a court shall determine and adjudicate all issues of law and fact with a jury trial being expressly waived. County and Contractor also agree that this waiver of a jury trial was a material inducement for each to enter this Agreement, and that both County and Contractor warrant and represent that each have had the opportunity to review this jury waiver with legal counsel.

SECTION Q. INDEMNITY: Contractor shall indemnify, but not defend, and hold harmless County, its Council members, employees, and representatives, from and against all liability, claims,

demands, actions (legal or equitable), damages, losses, costs, or expenses, including reasonable attorney fees, of any kind or nature for bodily injury, death, and third party property damage to the extent that the liability, claims, demands, actions, damages, losses, costs, and expenses are caused by, or arise out of, the negligent acts or omissions of the Contractor or Contractor's officers, employees, agents representatives, and subcontractors in the performance or breach of the Services under this Agreement.

SECTION R. FORCE MAJEURE: Neither County nor Contractor 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; provided, however, that the Party failing to perform shall (i) as soon as possible, inform the other Party of the occurrence of the circumstances preventing or delaying the performance of its obligations, and describe at a reasonable level of detail the circumstances causing such delay, and (ii) upon a mutually executed change order, exert reasonable efforts to eliminate, cure, or overcome any of such causes and to resume performance of its Services with all possible speed. In such event, the non-performing Party may be excused from any further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and such Party continues to use its best efforts to recommence performance or observance whenever and to whatever extent possible without delay.

Contractor may be entitled to a mutually executed change order for cost and/or schedule relief for events beyond Contractor reasonable control, including changes in applicable law, delays or failure by County or differing conditions, , and/or discovery of hazardous substances which interfere with Contractor's performance. County shall review and respond to such change order within ten (10) business days of Contractor's request.

SECTION S. NON-ASSIGNMENT: Contractor shall not assign this Agreement or any privileges or obligations herein and shall not novate this Agreement to another without the prior written consent of the County Utilities Manager.

SECTION T. LICENSES: Contractor shall maintain all required licenses including, without limitation, all necessary professional and business licenses, throughout the term of this Agreement. Contractor shall require and shall assure that all of Contractor's employees and subcontractors maintain all required licenses including, without limitation, all necessary professional and business licenses.

SECTION U. PROHIBITED INTERESTS: Contractor 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. Contractor further agrees that it shall 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 V. TERMINATION:

1. **Generally.** The County Utilities Manager may terminate this Agreement with or without cause upon thirty (30) days prior written notice to Contractor. Upon such termination, Contractor

shall be paid for Services actually completed to the satisfaction of County at the rate set out in Section C. Contractor 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. Contractor shall be paid for Services actually completed at the rate set out in Section C.

In the event of termination for any reason prior to completion of the deliverables or any Services, County releases Contractor from any liability for such incomplete documents and waives all claims against Contractor on account of County's reliance upon, or completion of, such incomplete documents.

- 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 Contractor at least ninety (90) days advance notice that funds have not been and are not expected to be appropriated for that purpose.

SECTION W. NOTICE: Unless otherwise provided in this Agreement, any notices required under this Agreement shall be made in writing. Notices shall be sent via 1) hand-delivery; 2) registered or certified mail; 3) a nationally recognized overnight courier service; or 4) electronic mail (with copy by mail or courier). All notices shall be sent to each party at the addresses set out in this section or any address later provided by such party in writing, with postage prepaid by the sender, and shall be deemed delivered upon hand delivery, verified proof of delivery by courier, or three (3) days after deposit in the United States Mail.

County:

Stephen Marez, Deputy Utility Manager
Incorporated County of Los Alamos
101 Camino Entrada, Building 5
Los Alamos, New Mexico 87544
E-mail: Stephen.marez@Countynm.us

Contractor:

Managing Director, 1898 & Co.
Burns & McDonnell Engineering Company,
Inc.
1850 N. Central Avenue, Suite 800
Phoenix, AZ 85004

With a copy to:

County Attorney's Office
1000 Central Avenue, Suite 340
Los Alamos, New Mexico 87544

E-mail: ~Attorney@Countynm.us

SECTION X. 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 authorized representatives of County and Contractor. In the event of any conflict between the terms, conditions, and provisions of this Agreement, and the terms, conditions and provisions of any exhibits or attachments, the terms, conditions and provisions of this Agreement shall control and take precedence.

SECTION Y. NO IMPLIED WAIVERS: The failure of County to enforce any provision of this Agreement is not a waiver by County of the provisions, or of the right thereafter, to enforce any provision(s).

SECTION Z. SEVERABILITY: If any provision of this Agreement is held to be unenforceable for any reason: (i) such provision shall be reformed only to the extent necessary to make the intent of the language and purpose of the Agreement enforceable; and (ii) all other provisions of this Agreement shall remain in effect so long as the substantive purpose of the Agreement is possible.

SECTION AA. CAMPAIGN CONTRIBUTION DISCLOSURE FORM: A Campaign Contribution Disclosure Form was submitted as part of the Contractor's Response and is incorporated herein by reference for all purposes.

SECTION AB. LEGAL RECOGNITION OF ELECTRONIC SIGNATURES: Pursuant to NMSA 1978 § 14-16-7, this Agreement may be signed by electronic signature.

SECTION AC. DUPLICATE ORIGINAL DOCUMENTS: This document may be executed in two (2) counterparts, each of which shall be deemed an original.

SECTION AD. NEGOTIATED TERMS: This Agreement reflects negotiated terms between the parties, and each party has participated in the preparation of this Agreement with the opportunity to be represented by counsel, such that neither party shall be considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

SECTION AE. HAZARDOUS MATERIALS: County represents that it has disclosed knowledge and information to Contractor regarding hazardous substances known or suspected at the site to the extent necessary for Contractor to perform services. Contractor is relying on such representations made herein through the execution of this Agreement and the services performed hereunder. Contractor is not responsible for any conditions preexisting at or near the work sites prior to performance of the services by Consultant's employees or subcontractors, and is not responsible for the transportation or disposal of, or title to, or the risk of loss associated with, any hazardous substances or other waste. If any hazardous materials not identified by County are discovered after a project is undertaken, which may directly impact Contractor's performance, Contractor and County agree that the scope of services, schedule, and compensation will be adjusted accordingly by a mutually acceptable amendment to this agreement.

SECTION AF. CONSEQUENTIAL DAMAGES

In no event shall Contractor or its affiliates or its subcontractors or subconsultants, of any tier, be liable to the County or its councilors, officers, employees, agents, subcontractors, subconsultants, contractors and other consultants of any tier in contract, tort, strict liability, warranty, or otherwise for consequential damages for delay, and/or governmental fines or penalties, loss of reputation, business, or opportunity, cost of financing or capital, or cost of purchase, or any indirect, incidental, exemplary, consequential or punitive damages for any reason or under any theory of liability whatsoever.

The total liability, in the aggregate, of Contractor, its officers, directors, shareholders, employees, agents, affiliates, subcontractors and subconsultants, and any of them, to County and anyone

claiming by, through or under County, for any and all claims, losses, liabilities, costs or damages whatsoever arising out of, resulting from or in any way related to the services or this Agreement, including, but not limited to, tort claims, claims of negligence (of any degree), professional errors or omissions, breach of contract, breach of warranty, indemnity claims and strict liability of Contractor, its officers, directors, shareholders, employees, agents, subcontractors and subconsultants, and any of them, or otherwise shall not exceed one million USD (\$1,000,000).

SECTION AG. CONFIDENTIAL INFORMATION: Any confidential information of one party that is provided to the other party during the term of this Agreement shall be kept confidential and shall not be made available to any individual or organization in accordance with the Confidential Information Disclosure Statement in Exhibit C. The Confidential Information Disclosure Statement shall be completed by Contractor as a condition precedent and submitted as part of this Agreement. Its terms shall govern as if fully set forth herein.

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: _____ **DATE**
ANNE W. LAURENT
COUNTY MANAGER

Approved as to form:

J. ALVIN LEAPHART
COUNTY ATTORNEY

**BURNS & MCDONNELL ENGINEERING
COMPANY, INC., A MISSOURI CORPORATION**

BY: _____ **DATE**
MARK IBARRA
MANAGING DIRECTOR

Exhibit A Proposed Project Schedule AGR25-26

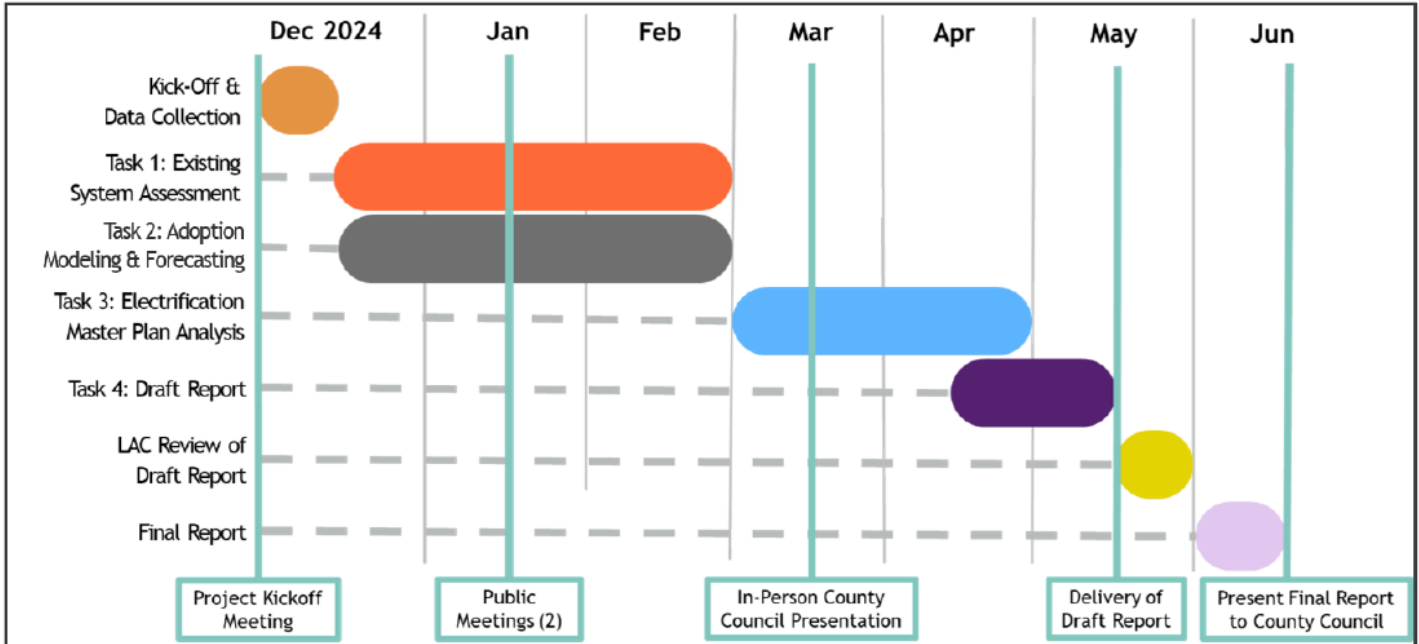


Exhibit B
Compensation Rate Schedule
AGR25-26

Phase	Task Fees
Task 1 - Existing System Assessment	\$105,000
Task 2 - Adoption Modeling and Forecasting	\$125,000
Task 3 - 30-Year Master Plan	\$95,000
Task 4 - Deliverable Creation & Meetings	\$65,000
Travel Budget (4 on-site visits X 2 people)	\$8,000
Total	\$398,000

Exhibit C
Confidential Information Disclosure Statement
AGR25-26

The Incorporated County of Los Alamos is a governmental entity subject to certain disclosure laws including, but not limited to, the New Mexico Inspection of Public Records Act, NMSA 1978, §§ 14-2-1, et seq. Nothing in this Agreement is intended to diminish or expand the application of any applicable disclosure laws to any proprietary or confidential information.

This Confidential Information Disclosure Statement (“Statement”) defines obligations and waivers related to Confidential Information disclosed pursuant to the above referenced Agreement between County and Contractor. County and Contractor agree to the following:

1. Statement Coordinator – Each party designates the following person as its Statement Coordinator for coordinating the disclosure or receipt of Confidential Information:

	Contractor	County
Name:		
Title:		
Address:		
City/State/Zip:		Los Alamos, New Mexico 87544
Email:		

2. Definitions:
 - a) **Confidential Information** - any form of information, in any format, disclosed by the Discloser to the Recipient and identified in writing as confidential.
 - b) **Discloser** - the party disclosing Confidential Information.
 - c) **Exception** – An exception is satisfied if the Confidential Information disclosed: (i) was in Recipient’s possession prior to receipt from Discloser, (ii) is publicly known or readily ascertainable by legal means, (iii) is lawfully received by Recipient from a third party without a duty of confidentiality, (iv) is disclosed by Discloser to a third party without a duty of confidentiality on the third party, (v) is independently developed or learned by Recipient, or (vi) is disclosed by Recipient with Discloser’s prior written approval.
 - d) **Recipient** – the party receiving Confidential Information.
3. Obligations – Recipient shall protect and ensure its participating subcontractors, agents, or associates shall protect all Confidential Information by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use, dissemination, or publication of the Confidential Information as Recipient uses to protect its own information of a like nature. If any person or entity requests or demands, by subpoena or otherwise, all or any portion of the Confidential Information provided by one party to another, the party receiving such request shall immediately notify the Discloser of such request or demand. The party receiving the request or demand shall independently determine whether the information sought is subject to disclosure under applicable law including the New Mexico Inspection of Public Records Act. If the party receiving the request or demand determines that the information is subject to disclosure, it shall notify the Discloser of its intent to permit the disclosure with sufficient time to permit the Discloser to invoke the jurisdiction of an appropriate court or administrative body to raise any legitimate objections or defenses it may have to the disclosure. In the absence of an appropriate order prohibiting the disclosure, the party receiving the request or demand shall permit and proceed with the disclosure without incurring any duty, obligation or liability to the Discloser.