



**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 **Transmission & Distribution Services, LLC**, a New Mexico limited liability company corporation ("Consultant"), to be effective for all purposes January 21, 2019.

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. 19-18 (the "RFP") on September 23, 2018, requesting proposals for On-Call Services for Utility Power Distribution Electrical Engineering, as described in the RFP; and

WHEREAS, Consultant timely responded to the RFP by submitting a response dated October 23, 2018, ("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 January 16, 2019; 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:

- 1. SCOPE OF SERVICES.** Consultant shall provide On-Call Electrical Engineering Services ("EE" or "Services"), which may consist of any or all of the following Services and deliverables as requested by County:
 - a.** 115KV electrical transmission and 15KV distribution system engineering.
 - b.** EE design that may include minor civil or structural engineering for electrical substation upgrade projects; i.e. concrete foundations for electrical substation components.
 - c.** 15KV distribution system planning and modeling of: Electrical substations, overhead and underground power lines, etc., utilizing Milsoft's Windmil software. County shall provide its electrical distribution Windmil database model to Consultant and Consultant shall update the electrical model accordingly for: Voltage drop analysis, distribution feeder reconfigurations, or long range load planning. Consultant shall provide the revised Windmil database to County as part of the submittals.
 - d.** Development of short-circuit analysis studies, over-current protection and coordination studies ("OCDP"), utilizing Milsoft's LightTable software. Similar to **1.c.** above, County

shall provide the Windmil database to Consultant and Consultant shall then update the electrical model accordingly with the new OCDP devices and settings. Consultant shall provide the revised Windmil & LightTable database model to County as part of the submittals.

- e. Develop and upload the protection files from the OCDP studies onto County's SEL 787 and SEL 751 relays. SEL relays are utilized in County's 15KV distribution station switchgear for: Bus differential and back-up overcurrent protection to GE 750/760 substation feeder relays. County's 15KV distribution system 3PH feeder protection consists of ABB PCD 2000 reclosers for overhead; and S&C, SMU Type "E" fusing for underground. The 15KV distribution feeder single or v-phase lateral protection consists of McGraw Edison Type "L" reclosers and Kearney Type "T" fuses for overhead.
- f. Consultant shall design arc-flash substation protection utilizing the SEL suite of relays for 15KV metal enclosed station switchgears in White Rock and Los Alamos.
- g. Consultant shall prepare construction staking sheets, ("CSS") for 15KV overhead and underground distribution power lines. Design work for the CSS shall be based on the most recent Rural Utilities' Service, ("RUS") construction standards.
- h. Consultant shall design, upgrade and install minor 115KV to 15KV electrical substations where the 15KV side is a metal enclosed switchgear station and NOT open bus. Typical 115KV side protection is candle stick circuit switcher.
- i. Consultant shall support County staff with the commission or "start-up" of new electrical substations where the 15KV side is a metal enclosed switchgear station and NOT 15KV "open bus".
- j. Consultant shall comply with all National Electric Safety Code, ("NESC") standards while present and within the County electrical distribution system and inside County's enclosed electrical substations.

2. TASK ORDERS. All request for Services by Consultant shall be issued via a written Task Oder, as follows:

- a. County shall provide all relevant information and scope of work to be accomplished to Consultant for a Task Order Request.
- b. County and Consultant shall agree on the Scope of Work for the Task Order Request.
- c. Consultant shall submit a not-to-exceed price for the Task Order based on the hourly pricing set forth in Exhibit "A."
- d. Before a Task Order is approved by County, County and Consultant shall mutually agree on the delivery dates and schedule of Services.
- e. Progress invoices shall be submitted by Consultant, based on the percentage completed, but not more than once per month unless authorized by County.
- f. Consultant shall produce project deliverables to the County as indicated in the Task Order including but not limited to: hard copies of reports and drawings in word, pdf, excel and in AutoCAD.

3. COUNTY RESPONSIBILITIES. As related to issued Task Orders, County shall provide relevant plans, documents, studies, reports, and drawings as requested by Consultant if

available. County plans, documents, studies, reports and drawings shall be “as is” and any inaccuracies are not the responsibility of County. Consultant shall be responsible for reviewing all related documents for accuracy. The failure or omission of Consultant to examine any document, form or instrument shall in no way relieve Consultant from any obligation with respect to this Agreement or any executed Task Order.

SECTION B. TERM: The term of this Agreement shall commence January 21, 2019 and shall continue through January 21, 2023, unless sooner terminated, as provided herein. At County’s sole option this Agreement may be renewed for one (1) one-year period, unless sooner terminated, as provided therein.

SECTION C. COMPENSATION:

- 1. Amount of Compensation.** County shall pay compensation for performance of the Services in accordance with the Rate Schedule set out as Exhibit “A,” attached hereto and made a part hereof for all purposes. Compensation for any one Task Order shall not exceed the approved Task Order amount, which amount shall not include applicable New Mexico gross receipts taxes (“NMGR”). Total compensation during the initial term of this Agreement and any extensions shall not exceed ONE HUNDRED NINETY-FIVE THOUSAND DOLLARS (\$195,000.00), which sum includes reimbursable expenses, but which amount does not include applicable NMGR.
- 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 the 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 exceeds 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 the 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 subcontractors.

SECTION I. INSURANCE: Consultant shall obtain and maintain insurance of the types and in the amounts set out below throughout the term of this Agreement with an insurer acceptable to County. Consultant shall assure that all subcontractors 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 subcontractors 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) 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) aggregate 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) each claim, with a TWO MILLION DOLLARS (\$2,000,000.00) annual aggregate, without any restrictive "negligent act, negligent error, or negligent omission" clause, and with coverage extending for a three (3) 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 subcontractors.

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 subcontractors 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 the 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:

Deputy Utilities Manager, Electric Distribution
Incorporated County of Los Alamos
1000 Central Avenue Suite 130
Los Alamos, New Mexico 87544

Consultant:

Harry Barnes, Jr. – Managing Partner
Transmission & Distribution Services, LLC
9550 San Mateo Boulevard, NE, Suite G
Albuquerque, New Mexico 87113

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: _____
TIMOTHY A. GLASCO, P.E. **DATE**
UTILITIES MANAGER

Approved as to form:

J. ALVIN LEAPHART
COUNTY ATTORNEY

TRANSMISSION & DISTRIBUTION SERVICES, LLC A
NEW MEXICO LIMITED LIABILITY COMPANY

BY: _____
DATE

**Compensation Rate Schedule
AGR19-18**

BILLING CLASSIFICATION	Year 1 Hourly Rate	Year 2 Hourly Rate	Year 3 Hourly Rate	Year 4 Hourly Rate	Year 5 Hourly Rate
Senior Engineer	\$166	\$170	\$174	\$179	\$183
Engineer II	\$128	\$131	\$134	\$138	\$141
Engineer I	\$102	\$105	\$107	\$110	\$113
Project Manager	\$153	\$157	\$161	\$165	\$169
Project Representative	\$105	\$108	\$110	\$113	\$116
WO Review Technician	\$105	\$108	\$110	\$113	\$116
Project Observer	\$102	\$105	\$107	\$110	\$113
Designer II	\$89	\$91	\$94	\$96	\$98
Designer I	\$77	\$79	\$81	\$83	\$85
CADD III	\$77	\$79	\$81	\$83	\$85
CADD II	\$72	\$74	\$76	\$78	\$79
CADD I	\$60	\$62	\$63	\$65	\$66
Office/Clerical/Admin II	\$64	\$66	\$67	\$69	\$71
Office/Clerical/Admin II	\$55	\$56	\$58	\$59	\$61

The above table includes an Annual Multiplier of 2.5%.

Reimbursable Expenses. The following are the only reimbursable expenses under this Agreement and which does not include annual increases:

<u>Category</u>	<u>Rate</u>
Vehicles	IRS Mileage rate + 10%
GPS Equipment	\$400/day; \$200 ½ day
Testing Equipment	\$265/day; \$140 ½ day
Utility Task Vehicle ("UTV")	\$350/day; \$125 ½ day
All-Terrain Vehicle ("ATV")	\$160/day; 135 ½ day
Per Diem	\$90/day/person
Motels	Cost + 10%
Meals	Cost + 10%
FedEx	Cost + 10%
Reproduction Costs	Cost + 10%
Other Costs	Cost + 10%

