

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN SANTA FE COUNTY AND
CDM SMITH, INC.
FOR ENGINEERING SERVICES**

THIS AGREEMENT is made and entered into on this 5 day of November, 2012, by and between **SANTA FE COUNTY** (hereinafter referred to as the "County"), a New Mexico political subdivision, and **CDM Smith, Inc.**, with corporate address 6000 Uptown Blvd, NE, Suite 200, Albuquerque, New Mexico 87110 (hereinafter referred to as the "Contractor").

WHEREAS, the County requires an analysis of alternatives for improving the reliability of raw water delivery to the County's water customers from the Buckman Direct Diversion ("BDD") raw water system;

WHEREAS, pursuant to Santa Fe County Resolution 2007-113 and Section 41 of the Santa Fe County Purchasing Regulations, the Purchasing Manager may procure and negotiate a contract for professional services having a value not exceeding fifty thousand dollars (\$50,000), and pursuant to Section 42 of the Purchasing Regulations, a contract may be awarded without competitive sealed bids or proposals when the Purchasing Manager determines that there is only one source for the required service;

WHEREAS, Contractor was the engineer of record for the design of the BDD raw water system and the County's use of Contractor's services are determined to be in the best interest of the County;

WHEREAS, the County requires the services of the Contractor, and the Contractor is qualified and willing to provide the services and both parties wish to enter into this Agreement.

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

1. SCOPE OF WORK

A. Objective. Contractor shall perform and complete an alternative analysis for improving the reliability of the delivery of raw water to a Santa Fe County water customer while taking into account operational and maintenance requirements of the BDD raw water delivery system. The alternative analysis will be performed to identify an approach to improving the reliability of the delivery of raw water at BDD Booster Station 2A (BSD2A) for the County's customer.

B. Approach. Contractor shall discuss with the County and BDD an initial list of alternatives to obtain consensus on three (3) viable alternatives to be analyzed. Contractor shall then perform and analysis of the three (3) alternatives according to: 1) technical and O&M constraints, advantages

and disadvantages, 2) conceptual level implementation and O&M costs, and 3) implementation schedule.

C. Contractor's Assumptions. The Contractor shall perform and complete the alternative analysis based on the following assumptions:

- The County will provide information on its water customer's water system including facilities, constraints and operating conditions.
- The BDD will discuss and comment on the BDD O&M constraints related to the BDD's raw water delivery system to obtain a consensus on raw water system constraints in providing raw water to the County's customer.
- Contractor will provide an analysis of three (3) alternatives after screening the initial alternatives list with the County and BDD.
- Contractor's project manager will participate in project meetings by telephone conference call.
- Implementation and O&M costs will be conceptual level costs since it is likely that a detailed construction cost will require preliminary engineering that is not included in this Scope of Work.

D. Deliverables. Each of the following deliverables will be delivered to the County in draft form for comment, edit or direction prior to finalization:

- a) A list of initial alternatives and screen alternatives.
- b) Minutes from meetings and conference calls.
- c) Technical memoranda.

E. Contractor's schedule.

- 1) Contractor shall meet with the County and BDD for screening of initial alternatives two (2) weeks after the date of receipt of information from the County regarding the County water customer's water system.
- 2) Contractor shall submit a draft technical memorandum on the alternative analysis of each of the three (3) alternatives two (2) weeks after the County and BDD agree on the three (3) alternatives to be analyzed.
- 3) Contractor shall submit a final technical memorandum one (1) week after the County and BDD's review and comments on the draft technical memorandum.

2. COMPENSATION, INVOICING, AND SET-OFF

A. In consideration of its obligations and services under this Agreement the Contractor shall be compensated as follows:

- 1) Contractor's labor rates are as follows subject to change due to salary adjustments during the term of this Agreement. Contractor's labor charges

will be invoiced at raw rates time a multiplier of 3.04 and other direct expenses will be invoiced at cost.

Category	Individual	Raw Rate
Project Manager	Mark Ryan, P.E.	\$75.56
Client Service Manager	Paul Karas, C.P.G.	\$64.04
Regional Quality Manager	Billy O'Donnell, P.E.	\$73.91
Senior Technical Reviewer	Robert Fowlie, P.E.	\$54.61
Regulatory Specialist	Kelly Collins, R.G.	\$65.10
O&M Specialist	Stephen Hoffman	\$56.42
Staff Engineer	Jeremy Anderson, P.E.	\$37.14
Contract Administrator	Heidi Hilland	\$31.23
Word Processing	Kathy Fitch	\$22.48
Clerical	Marie Olivarez	\$17.47

- 2) The total amount payable to the Contractor for Contractor's services including all labor and direct costs (travel, printing copying, postage and communications) under this Agreement shall not exceed fourteen thousand dollars (\$14,000.00), exclusive of New Mexico gross receipts tax. Any New Mexico gross receipts tax levied on the amounts payable under this Agreement shall be paid by the County to the Contractor.

- 3) This amount is a maximum and not a guarantee that the work and services to be performed by Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the County when the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for additional services provided in excess of the total compensation amount without this Agreement being amended in writing.

B. The Contractor shall submit a written request for payment to the County when payment is due under this Agreement. Upon the County's receipt of the written request, the County shall issue a written certification of complete or partial acceptance or rejection of the contractual items or services for which payment is sought. The Contractor acknowledges and agrees that the County may not make any payment hereunder unless and until it has issued a written certification accepting the contractual items or services. Within thirty (30) days of the issuance of a written certification accepting the contractual items or services, the County shall tender payment for the accepted items or services. In the event the County fails to tender payment within thirty (30) days of the written certification accepting the items or services, the County shall pay late payment charges of one and one-half percent (1.5%) per month, until the amount due is paid in full.

C. Contractor's compensation shall correspond to the following schedule based on the Contractor's completion of services:

- 1) Alternatives discussion meeting and minutes: 50%
- 2) Draft Alternatives Analysis Memorandum: 35%
- 3) Final Alternatives Analysis Memorandum: 15%

D. In the event the Contractor breaches this Agreement, the County may, without penalty, withhold any payments due the Contractor for the purpose of set-off until such time as the County determines the exact amount of damages it suffered as a result of the breach.

E. Payment under this Agreement shall not foreclose the right of the County to recover excessive or illegal payment.

3. EFFECTIVE DATE AND TERM

This Agreement shall, upon due execution by all parties, become effective as of the date first written above and shall terminate one (1) year later, unless earlier terminated pursuant to Section 5 (Termination) or Section 6 (Appropriations and Authorizations). The County has the option to extend this Agreement on the same price, terms and conditions in one (1) year increments for up to three (3) years. The County may exercise this option by submitting a written notice to Contractor that the Agreement will be extended an additional year. The notice must be submitted to Contractor at least sixty days prior to expiration of the initial Agreement or any extension thereof.

4. ADDITIONAL SERVICES

A. The parties agree that all tasks set forth in Paragraph 1 (Scope of Work – Exhibit A) of this Agreement, shall be completed in full, to the satisfaction of the County, for the amount set forth in Section 2 (Compensation) of this Agreement, and for no other cost, amount, fee, or expense.

B. The County may from time-to-time request changes in the Scope of Work to be performed hereunder. Such changes, including any increase or decrease in the amount of the Contractor's compensation, which are mutually agreed upon by and between the County and the Contractor, shall be incorporated in written amendments to this Agreement.

5. TERMINATION

A. Termination of Agreement for Cause. Either party may terminate the Agreement based upon any material breach of this Agreement by the other party. The non-breaching party shall give the breaching party written notice of termination specifying the grounds for the termination. The termination shall be effective thirty (30) days from the breaching party's receipt of the notice of termination, during which time the breaching party shall have the right to cure the breach. If, however, the breach cannot with due diligence be cured within thirty (30) days, the breaching party shall have a reasonable time to cure the breach, provided that, within thirty (30) days of its receipt of

the written notice of termination, the breaching party began to cure the breach and advised the non-breaching party in writing that it intended to cure.

B. Termination for Convenience of the County. The County may, in its discretion, terminate this Agreement at any time for any reason by giving the Contractor written notice of termination. The notice shall specify the effective date of termination, which shall not be less than fifteen (15) days from the Contractor's receipt of the notice. The County shall pay the Contractor for acceptable work performed and completed before the effective date of termination but shall not be liable for any work performed after the effective date of termination.

6. APPROPRIATIONS AND AUTHORIZATIONS

This Agreement is contingent upon sufficient appropriations and authorizations being made for performance of this Agreement by the Board of County Commissioners of the County and/or, if state funds are involved, the Legislature of the State of New Mexico. If sufficient appropriations and authorizations are not made in this or future fiscal years, this Agreement shall terminate upon written notice by the County to the Contractor. Such termination shall be without penalty to the County, and the County shall have no duty to reimburse the Contractor for expenditures made in the performance of this Agreement. The County is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure by the County. The County's decision as to whether sufficient appropriations and authorizations have been made for the fulfillment of this Agreement shall be final and not subject to challenge by the Contractor in any way or forum, including a lawsuit.

7. INDEPENDENT CONTRACTOR

The Contractor and its agents and employees are independent contractors and are not employees or agents of the County. Accordingly, the Contractor and its agents and employees shall not accrue leave, participate in retirement plans, insurance plans, or liability bonding, use County vehicles, or participate in any other benefits afforded to employees of the County. Except as may be expressly authorized elsewhere in this Agreement, the Contractor has no authority to bind, represent, or otherwise act on behalf of the County and agrees not to purport to do so.

8. ASSIGNMENT

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the advance written approval of the County. Any attempted assignment or transfer without the County's advance written approval shall be null and void and without any legal effect.

9. SUBCONTRACTING

The Contractor shall not subcontract or delegate any portion of the services to be performed under this Agreement without the advance written approval of the County. Any attempted subcontracting

or delegating without the County's advance written approval shall be null and void and without any legal effect.

10. PERSONNEL

A. All work performed under this Agreement shall be performed by the Contractor or under its supervision.

B. The Contractor represents that it has, or will secure at its own expense, all personnel required to discharge its obligations under this Agreement. Such personnel (i) shall not be employees of nor have any contractual relationships with the County and (ii) shall be fully qualified and licensed or otherwise authorized or permitted under federal, state, and local law to perform such work.

11. RELEASE

Upon its receipt of all payments due under this Agreement, the Contractor releases the County, its elected officials, officers, agents and employees from all liabilities, claims, and obligations for payment arising from or under or relating to this Agreement.

12. CONFIDENTIALITY

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the County. Confidential information provided by the County to the Contractor shall be marked as such.

13. PUBLICATION, REPRODUCTION, AND USE OF MATERIAL; COPYRIGHT

A. The County has the unrestricted right to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data, or other material prepared under or pursuant to this Agreement.

B. The Contractor acknowledges and agrees that any material produced in whole or in part under or pursuant to this Agreement is a work made for hire. Accordingly, to the extent that any such material is copyrightable in the United States or in any other country, the County shall own any such copyright.

C. Notwithstanding any provision to the contrary contained in this Agreement, Contractor shall retain sole ownership to its preexisting information including but not limited to computer programs, software, standard details, figures, templates and specifications. Any reuse of the documents prepared by Contractor under this Agreement for other than their specific intended purpose will be at the sole risk of the user and without liability or legal exposure to the Contractor.

14. CONFLICT OF INTEREST

The Contractor represents that it has no and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of its obligations under this Agreement.

15. NO ORAL MODIFICATIONS; WRITTEN AMENDMENTS REQUIRED

This Agreement may not be modified, altered, changed, or amended orally but, rather, only by an instrument in writing executed by the parties hereto. The Contractor specifically acknowledges and agrees that the County shall not be responsible for any changes to Section 1 (Scope of Work – Exhibit A) of this Agreement unless such changes are set forth in a duly executed written amendment to this Agreement.

16. ENTIRE AGREEMENT; INTEGRATION

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such agreements, covenants and understandings have been merged into this written Agreement. No prior or contemporaneous agreement, covenant or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

17. NOTICE OF PENALTIES

The Procurement Code, NMSA 1978, Sections 13-1-28 through 13-1-199, imposes civil and criminal penalties for its violation. In addition, New Mexico criminal statutes impose felony penalties for bribes, gratuities, and kickbacks.

18. EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

A. The Contractor agrees to abide by all federal, state, and local laws, ordinances, and rules and regulations pertaining to equal employment opportunity and unlawful discrimination. Without in any way limiting the foregoing general obligation, the Contractor specifically agrees not to discriminate against any person with regard to employment with the Contractor or participation in any program or activity offered pursuant to this Agreement on the grounds of race, age, religion, color, national origin, ancestry, sex, physical or mental handicap, serious medical condition, spousal affiliation, sexual orientation, or gender identity.

B. The Contractor acknowledges and agrees that failure to comply with this Section shall constitute a material breach of this Agreement.

19. COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW

A. In performing its obligations hereunder, the Contractor shall comply with all applicable laws, ordinances, and regulations.

B. This Agreement shall be construed in accordance with the substantive laws of the State of New Mexico, without regard to its choice of law rules. Contractor and the County agree that the exclusive forum for any litigation between them arising out of or related to this Agreement shall be federal and state district courts of New Mexico, located in Santa Fe County.

20. RECORDS AND INSPECTIONS

A. To the extent its books and records relate to (i) its performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to the County as part of the procurement process, the Contractor agrees to (i) maintain such books and records during the term of this Agreement and for a period of six (6) years from the date of final payment under this Agreement; (ii) allow the County or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with generally accepted accounting principles (GAAP).

B. To the extent its books and records relate to (i) its performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to County as part of the procurement process, the Contractor also agrees to require any subcontractor it may hire to perform its obligations under this Agreement to (i) maintain such books and records during the term of this Agreement and for a period of six (6) years from the date of final payment under the subcontract; (ii) to allow the County or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with GAAP.

21. INDEMNIFICATION

A. The Contractor shall defend, indemnify, and hold harmless the County and its elected officials, agents, and employees from any losses, liabilities, damages, demands, suits, causes of action, judgments, costs or expenses (including but not limited to court costs and attorneys' fees) to the extent resulting from or arising out of the Contractor's (1) negligent performance or non-performance of its obligations under this Agreement, or (2) Contractor's breach of any representation or warranty made herein.

B. The Contractor agrees that the County shall have the right to control and participate in the defense of any such demand, suit, or cause of action concerning matters that relate to the County and that such suit will not be settled without the County's consent, such consent not to be unreasonably withheld. If a conflict exists between the interests of the County and the Contractor in such demand, suit, or cause of action, the County may retain its own counsel to represent the County's interest.

C. The Contractor's obligations under this section shall not be limited by the provisions

of any insurance policy the Contractor is required to maintain under this Agreement.

22. SEVERABILITY

If any term or condition of this Agreement shall be held invalid or non-enforceable by any court of competent jurisdiction, the remainder of this Agreement shall not be affected and shall be valid and enforceable to the fullest extent of the law.

23. NOTICES

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the County: Santa Fe County
 Office of the County Attorney
 102 Grant Avenue
 Santa Fe, New Mexico 87501

and, Adam Leigland
 Public Works Director
 Public Works Divisions
 Santa Fe County
 102 Grant Avenue
 Santa Fe, New Mexico 87501

To the Contractor: CDM Smith, Inc.
 6000 Uptown Blvd. NE
 Suite 200
 Albuquerque, New Mexico 87110

24. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

The Contractor hereby represents and warrants that:

A. This Agreement has been duly authorized by the Contractor, the person executing this Agreement has authority to do so, and, once executed by the Contractor, this Agreement shall constitute a binding obligation of the Contractor.

B. This Agreement and Contractor's obligations hereunder do not conflict with Contractor's corporate agreement or any statement filed with the Public Regulation Commission on Contractor's behalf.

C. Contractor is legally registered and licensed to operate as a business in the State of New Mexico and shall maintain such registration and licensure in good standing throughout the duration of this Agreement.

25. FACSIMILE SIGNATURES

The parties hereto agree that a facsimile signature has the same force and effect as an original for all purposes.

26. LIMITATION OF LIABILITY

The County's liability to the Contractor for any breach of this Agreement by the County shall be limited to direct damages and shall not exceed the maximum amount of Two Hundred and Fifty Thousand Dollars (\$250,000.00).

The Contractor's liability to the County for any breach of this Agreement by the Contractor shall be limited to direct damages and shall not exceed the maximum amount of Two Hundred and Fifty Thousand Dollars (\$250,000.00).

In no event shall either party be liable to the other for special or consequential damages, even if such party was advised of the possibility of such damages prior to entering into this Agreement.

27. NO THIRD-PARTY BENEFICIARIES

This Agreement was not intended to and does not create any rights in any persons not a party hereto.

28. INSURANCE

A. General Conditions. The Contractor shall submit evidence of insurance as is required herein. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico.

B. General Liability Insurance, Including Automobile. The Contractor shall procure and maintain during the life of this Agreement a comprehensive general liability and automobile insurance policy with liability limits in amounts not less than \$1,050,000.00 combined single limits of liability for bodily injury, including death, and property damage for any one occurrence. Said policies of insurance shall include coverage for all operations performed for the County by the Contractor; coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment, both on and off work; and contractual liability coverage under which this Agreement is an insured contract. The County of Santa Fe shall be a named additional insured on the policy.

C. Workers' Compensation Insurance. The Contractor shall comply with the provisions of the Workers' Compensation Act.

D. Increased Limits. If, during the life of this Agreement, the Legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act (NMSA 1978, Sections 41-4-1 through 41-4-29, as amended), the Contractor shall increase the maximum limits of any insurance required herein.

E. Professional Liability [Malpractice/Errors and Omissions Insurance]. The Contractor shall procure and maintain during the life of this agreement professional liability (errors and omissions) insurance, with policy limits of not less than \$2,500,000.00 per claim/aggregate.

29. PERMITS, FEES, AND LICENSES

Contractor shall procure all permits and licenses, pay all charges, fees, and royalties, and give all notices necessary and incidental to the due and lawful performance of its obligations hereunder.

30. NEW MEXICO TORT CLAIMS ACT

No provision of this Agreement modifies or waives any sovereign immunity or limitation of liability enjoyed by County or its "public employees" at common law or under the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, et seq.

31. CAMPAIGN CONTRIBUTION DISCLOSURE FORM

The Contractor agrees to compute and submit simultaneous with execution of this Agreement a Campaign Contribution Disclosure Form approved by the County.

32. APPOINTMENT OF AGENT FOR SERVICE OF PROCESS, if applicable

The Contractor hereby irrevocably appoints, CT Corporation Services, a New Mexico resident company located at, 123 East Marcy St., Santa Fe, NM 87501, as its agent upon whom process and writs in any action or proceeding arising out of or related to this Agreement may be served. The Contractor acknowledges and agrees that service upon its designated agent shall have the same effect as though the Contractor were actually and personally served within the state of New Mexico.

32. SURVIVAL

The provisions of following paragraphs shall survive termination of this Contract; INDEMNIFICATION; RECORDS AND INSPECTION; RELEASE, CONFIDENTIALITY, PUBLICATION, REPRODUCTION, AND USE OF MATERIAL; COPYRIGHT; COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW; NO THIRD-PARTY BENEFICIARIES; SURVIVAL.

IN WITNESS WHEREOF, the parties have duly executed this Amendment to the Agreement as of the date first written above.

IN WITNESS WHEREOF, the parties have duly executed this Amendment to the Agreement as of the date first written above.

SANTA FE COUNTY:

Katherine Miller 11.5.12
Katherine Miller Date
Santa Fe County Manager

Approved as to Form:

Stephen C. Ross Date
Santa Fe County Attorney

Finance Department Approval:

Teresa C. Martinez 11/5/12
Teresa C. Martinez for TCM Date
Santa Fe County Finance Director

CONTRACTOR: CDM Smith Inc.

Paul A. Karas 10/29/12
(Signature) Date

By: Paul A. Karas, its Associate

FEDERAL TAX I.D. NUMBER: 04-2473650

