



SOLE SOURCE PURCHASE REPORT

To: Purchasing Officer

From: *Katherine Yuhas*

Date: *4/30/19*

1. Name and address and contact information of supplier:

*Kristin Leigh, Deputy Director 505-224-8380 kleigh@explora.us
Explora 1701 Mountain Rd. NW Albuquerque, NM 87104*

2. Goods and/or services to be purchased:

Water science exhibits for new wing of Explora

3. Estimated total dollar amount of expenditures pursuant to this request: \$ *425,000*

4. Term for which goods and/or services will be purchased pursuant to this request (mark only the option which applies):

a. *6.5* Years/Months/Weeks/Days (circle one)

b. This is a one-time sole source purchase, to be completed within the next fiscal year.

5. Identify the specific circumstances that require a sole source purchase of the goods and/or services requested:

a. Brief description of the purpose of the goods or services to be purchased:

Explora will be developing a new STEAM wing of the museum for older students. The Water Authority will be funding and consulting with Explora to design and install exhibits on water resources for this new wing.

b. Reasons for need of goods and/or services from the specific supplier. Any one reason, by itself, does not necessarily justify a sole source purchase (mark all that apply):

i. A diligent inquiry failed to identify any source for the same or similar goods and/or services that will substantially accomplish the same or similar functions to those provided by the source identified above. If so, identify which of the following steps were taken to establish a good-faith review of available alternative sources and provide written justification verifying the actions below were taken (mark all that apply):

1. Contacted various suppliers of similar goods to discuss alternative options;
2. Performed product research for potential alternative sources;
3. Consulted with subject matter experts to identify potential alternative sources;
4. Other (specifically describe any actions taken, attach additional sheets if necessary):

Explora is the only science museum in town that is designing a new STEAM wing and offering us this unique opportunity.

(Inability to locate other sources via internet search will not suffice as acceptable due diligence.)

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- ii. The goods and/or services offered are unique or proprietary in form, fit, and function. If so, describe the unique or proprietary qualities of the goods and/or services; if available, provide documentation of their unique or proprietary nature, e.g. evidence of patent/copyright/secret processes/limited rights in data (attach additional sheets if necessary):
- iii. Use of goods and/or services from sources other than an Original Equipment Manufacturer will require substantial modification to equipment or systems currently in use, resulting in substantial duplication in cost to the Water Authority that is not expected to be recovered through competition and/or unacceptable delays in fulfilling the Water Authority's requirements. If so, describe the modifications, potential costs, and/or delays associated with making substitute goods and/or services compatible with current equipment or systems (attach additional sheets if necessary):
- iv. The procurement requires a specific supplier of goods or services. If so, identify one or more of the following reasons and provide written justification verifying that the statement below is true:
1. Limited availability of goods or services;
 2. Proven quality, accuracy, and/or dependability;
 3. Compatibility considerations;
 4. Safety considerations;
 5. Warranty issues or guarantee of parts performance;
 6. During the system design process, several alternatives were evaluated and the current proprietary process was selected;
 7. Other (specifically describe any other reasons, attach additional sheets if necessary):
- v. The goods and/or services cannot be purchased by the Water Authority from any other supplier, e.g. the supplier has a protected territory established by the original producer of the goods or services. If so, attach written documentation from the original producer verifying the availability of sources for goods and/or services.

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6. Describe the reasons the purchase is in the public's interest (attach additional sheets if necessary):

Our collaboration with Explna offers us a unique opportunity to educate the public about water resources and get young people from our community interested in careers at the Water Authority.

7. Attach negotiated cost or fee schedule, as applicable, along with evidence confirming that the price is most advantageous to the Water Authority.

See MOA

Requirement:

At least fifteen days before a sole source contract is awarded, the Central Purchasing Office shall post this notice of intent to award any sole source contracts for goods, services, or construction, on its website.

Any qualified potential contractor may protest an intent to award a sole source procurement to the Central Purchasing Office. The protest shall be submitted in writing within fifteen calendar days of the notice of intent to award a contract being posted by the Central Purchasing Office.

The signature below certifies that this justification is accurate and complete to the best knowledge and belief of the individuals signing:

Requestor's Signature:

Katherine Yubas *4/30/19*
Title: *Water Resources* Date
 Division Mgr.

Signature Acknowledgement from the Division Manager:

K. Yubas *4/30/19*
Division Manager Date

Review and Verification by Purchasing Officer:

[Signature] *5/1/19*
Purchasing Officer Date

Memorandum of Agreement between Albuquerque Bernalillo County Water Utility Authority and Explora

**MEMORANDUM OF AGREEMENT
BETWEEN
Albuquerque Bernalillo County Water Utility Authority
AND
Explora Science Center & Children's Museum of Albuquerque**

THIS MEMORANDUM OF AGREEMENT ("MOA" or "Agreement") is entered into as of the date of the last signature below, by and between the Albuquerque Bernalillo County Water Utility Authority ("Water Authority"), a political subdivision of the State of New Mexico, and Explora Science Center & Children's Museum of Albuquerque, a 501(c)(3) corporation organized under the laws of the State of New Mexico, collectively referred to as the "Parties":

WHEREAS Water Authority wishes to educate the public on issues related to water resource management and associated career pathways; and

WHEREAS Explora's mission and purpose is to engage New Mexicans in science, technology, engineering, art, and math and works to engage, educate, and employ students in STEM fields; and

WHEREAS this Agreement is intended to set forth the spirit and principal terms of the Agreement between Water Authority and Explora in connection with Water Authority's funding support of a new exhibition at Explora;

NOW THEREFORE, in consideration of the mutual agreements herein, the Parties agree as follows:

1: Purpose and Objectives

- a. Water Authority and Explora are partnering in the development of a long-term exhibition at Explora, with possible locations for exhibits to include the new STEM Education and Workforce Development Center, the current Explora, and the campus grounds.
- b. The exhibition will provide 7-9 interactive indoor and outdoor experiences related to the scientific properties of water, surface water, ground water, aquifers, the water cycle, conservation, and water's importance in Albuquerque's urban environment and New Mexico's desert and be a dedicated, hands-on space for students and families to explore these concepts.
- c. The exhibition also will include associated environmental treatments, like slip-resistant flooring, walls and wall treatments, seating, paint, electrical, lighting, plumbing and drainage, and storage. Exhibition components will meet accessibility requirements. Additionally, through signage and other means to be determined during concept development, the exhibition will provide examples of local STEM professionals working at the Water Authority and will elucidate possible career pathways into careers in water resource management.
- d. Installation of final exhibits is slated for November-December, 2020, pending construction schedule for the new STEM Education and Workforce Development Center. The exhibition will be

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on display for a minimum of five years from launch date unless otherwise agreed to in writing by and between the Parties.

2: Key Exhibit Development Schedule Benchmarks

The following schedule sets out the key exhibit development benchmarks over the period of this MOA:

- | | |
|------------------------------------|----------------------------------------------------------|
| a. By June 30, 2019 | Mutual approval and signing of this MOA; Deposit paid |
| b. July, 2019 to March, 2020 | Exhibit Design, Prototyping, Co-development meetings |
| c. March, 2019 to October, 2020 | Exhibit Fabrication Phase, Partner check-ins |
| d. November-December, 2020 | Exhibit Installation, Staff training and education phase |
| e. December, 2020 | Exhibit Launch in optimal Explora public spaces |
| f. January, 2021-December 30, 2025 | Exhibition Open to Public |

3: Roles and Responsibilities for Exhibit Development

The following tables set out key responsibilities of each Party, including the anticipated outcomes:

Water Authority is responsible for the following key activities:
Payment of \$350,000 in initial funding associated with the exhibit concept development, design, fabrication, installation, and improvements (remediation) to the exhibit required after opening and evaluation.
Participation of at least two Water Authority staff/content experts in the majority of exhibit concept development and design meetings and in at least two prototyping sessions.
Timely submission of content related to water resource management for review and consideration by Explora.
Payment of \$15,000/year for at least five years for ongoing maintenance, upkeep, and staffing of the exhibition.

Explora is responsible for the following key activities:
Leading all aspects of design, development, prototyping, fabrication, and installation of the exhibition, in consultation with content experts from Water Authority.
Ongoing operation, maintenance, and staffing of the exhibition.
Identification of the key messages and leading content development, in consultation with content experts from the Water Authority.
Timely review of water resource management content submitted by Water Authority and timely responses given to questions and feedback from Water Authority.
Providing Water Authority with visible recognition on or near the exhibition and location of the exhibits in areas of significant visual impact to the visitors.
Sharing of visitor information annually with Water Authority (such as attendance and school group data) where possible
Providing opportunities for staff from Water Authority to participate as STEM mentors for teens and young adults in Explora's STEM Education and Workforce Center programming

Anticipated outcomes:

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The exhibit is installed and operational in December, 2020 (pending changes to the new Center's construction schedule—which will be communicated to Water Authority)
The exhibition is on display at Explora for a minimum of five years unless otherwise agreed to in writing by and between the Parties
Explora's visitor experience offer is enhanced and diversified by the presence of an engaging and interactive exhibit
There is an increased awareness of water resource management among students and families
There is an increased awareness of STEM career pathways in water resource management among students
Explora and Water Authority receive positive feedback regarding the exhibition from visitors
This collaboration between Water Authority and Explora is determined by both Parties to be a success, thereby strengthening the relationship and setting the stage for further areas for collaboration.

4: Duration of Agreement

- a. This Agreement shall remain in effect from the date this Agreement is signed by both parties to December 31, 2025.

5: Fees

- a. Water Authority shall pay Explora a total of \$350,000.00 for capital costs associated with the exhibition. The payments will be made on invoice in 5 installments, as follows:
 - a. A deposit of \$10,000 will be made by June 30, 2019.
 - b. An amount equal to 30% of the total price will be paid on completion of the Phase 1 Design/Development schematic. This includes a concept summary, floor plan or other schematic, and proposed components; summary and plans will be provided at time of invoice. = \$105,000 by December 31, 2019.
 - c. An amount equal to 40% will be paid when initial Phase 2 Prototyping is complete. This includes working models or mock-ups of proposed components; images and descriptions of prototypes will be provided at time of invoice. = \$140,000 by March 30, 2020.
 - d. An amount equal to 20% will be paid when half the Fabrication is complete; an explanation of the Fabrication process with images of progress will be provided at time of invoice. = \$70,000 by October 31, 2020.
 - e. An amount equal to 10% will be paid after Installation of the exhibition is complete; images of completed exhibition and marketing related to its opening will be provided at time of invoice. = \$35,000 by December 31, 2020.

- b. Water Authority shall pay Explora a total of \$15,000/year for five years (\$75,000) for operating costs associated with the exhibit to be invoiced as follows:
 - a. By June 30, 2021: 1st year operating costs of \$15,000.00
 - b. By June 30, 2022: 2nd year operating costs of \$15,000.00
 - c. By June 30, 2023: 3rd year operating costs of \$15,000.00
 - d. By June 30, 2024: 4th year operating costs of \$15,000.00
 - e. By June 30, 2025: 5th year operating costs of \$15,000.00

- c. Any other costs and expenses over and above the detailed capital and operating fees must be

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agreed-upon by both parties and added as an amendment to the MOA.

6: Launch/Promotional Events

Water Authority reserves the right to hold a launch/promotional event, on dates that are mutually agreeable by both Parties. The event may be held within Explora's regular operating hours or after hours, including evenings or weekends.

Explora agrees to provide Water Authority, at no additional charge, access to the facility, appropriate personnel to open and staff the facility, as necessary, for the launch/promotional event.

Water Authority agrees to arrange, provide, and pay for the catering, entertainment, and other costs associated with the launch/promotional event, such as cleaning, security, insurance, special events liquor permits.

7: Payment

Water Authority payment terms are net 30 days of the invoice date, unless stated otherwise. Water Authority will not be responsible for any delay in receipt of the invoice. Should delay occur, time for payment of invoices or for accepting cash discount offered shall commence on the date of invoices are received by Water Authority. Water Authority shall pay Explora in accordance with providing services only if the services have been authorized by Water Authority and if Explora has provided the services in compliance with the terms and conditions of this agreement.

8: Intellectual Property

Water Authority grants Explora the right to use contributed Content for the purposes of developing the exhibition under this Agreement or for any use of the exhibit consistent with Explora's ordinary business. Explora acknowledges and agrees that it will review the Content and determine its suitability for Explora's purposes. Explora represents and warrants that the Exhibition shall not infringe upon or violate any intellectual property or proprietary rights of any third party or any law and bears the sole responsibility for obtaining all rights to any third-party intellectual property

Water Authority grants Explora the non-exclusive right to use the Water Authority name and logo for the sole purpose of the exhibition and Explora agrees to use the Water Authority logo only as specifically authorized under this Agreement and in the form provided by Water Authority.

This provision survives the termination or expiration of this Agreement.

9: Independent Contractor

Explora is an independent contractor and neither the contractor, nor their directors, officers, employees, servants or agents are the directors, officers, employees, servants or agents of Water Authority.

Water Authority may, from time to time, give such instructions as it considers necessary to Explora in connection with the provision of the services. Explora shall comply with these instructions, but Explora will not be subject to the control of Water Authority with respect to the manner in which such instructions are carried out except in regard to general Water Authority standards, policies and guidelines.

10: Termination for Cause

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Water Authority reserves the right to cancel all or any part of this Agreement if Explora fails to deliver the services in accordance with the terms of this Agreement. Such cancellation shall be in writing.

11: Contingent upon Appropriations

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

12: Termination for Convenience of Water Authority

The Water Authority may terminate this Agreement at any time without cause and for the convenience of the Water Authority by giving at least thirty (30) days' notice in writing to Explora. If the Agreement is terminated by the Water Authority as provided herein, Explora will be paid an amount which bears the same ratio to the total compensation as the key activities actually performed bear to the total key activities to be performed by Explora covered by this Agreement, less payments of compensation previously made. If this Agreement is terminated due to the fault of Explora, the preceding Section hereof relative to termination for cause shall apply.

13: Indemnity

Explora will indemnify and hold harmless Water Authority from and against all claims, demands, losses, damages, costs and expenses made against or incurred, suffered or sustained by Water Authority at any time where the same are based upon or arise out of anything tortiously done or omitted to be done by Explora or any breach of this Agreement, except to the extent that any claim, demand, losses, damages, cost or expense results from or arises out of or in connection with anything tortiously done or omitted to be done, or the breach of this Agreement by Water Authority, its officers, agents and employees. This provision survives the termination or expiration of this Agreement.

14: Liability

The Water Authority and Explora acknowledge and represent that each will be responsible, to the extent of its own negligence, for liability arising from personal injury or damage to property occasioned by its respective employees or agents. The liability of the Water Authority shall be subject in all cases to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, Section 4-41-1, et seq., and any amendments thereto.

15: Force Majeure

Neither party will be liable for any failure or delay to perform that party's obligations resulting from any cause beyond that party's reasonable control, including but not limited to fires, explosions, floods, strikes, work stoppages or slow downs or other industrial disputes, accidents, riots or civil disturbances, acts of civil or military authorities, inability to obtain any license or consent necessary in respect of use with any telecommunications facilities, or delays caused by carriers, contractors or material shortages.

16: No Third Party Beneficiary

This Agreement is not intended to nor shall it create or authorize a third party beneficiary or authorize anyone not a party to the Agreement to maintain any cause of action whatsoever pursuant to the

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provisions of the Agreement.

17: Entire Agreement

This Agreement contains the entire agreement of the parties and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.

18: Applicable Law

This Agreement shall be governed by the construed and enforced in accordance with the laws of the State of New Mexico, and the laws, rules and regulations of the Water Authority.

19: Approval Required

This Agreement shall not become effective or binding until approved by the Water Authority's Executive Director.

20: Principal Contacts and Notices

The principal contacts for this Agreement are listed below. All notices shall be addressed accordingly to the following Water Authority and Explora representatives:

FOR WATER AUTHORITY		FOR EXPLORA	
Name:	Mark S. Sanchez	Name:	Joe Hastings
Title:	Executive Director	Title:	Executive Director
Address:	1 Civic Plaza NW, Albuquerque, NM 87102	Address:	1701 Mountain Rd. NW, Albuquerque, NM 87104
Phone:	505.289.3056	Phone:	505-224-8302
Email:	msanchez@abcwua.org	Email:	jhastings@explora.us

By signing below **Water Authority** and **Explora** both acknowledge that this agreement outlines our mutual understanding of our respective rights and responsibilities with respect to the specified exhibition development partnership.

IN WITNESS WHEREOF Water Authority and Explora have executed this Agreement:

Albuquerque Bernalillo County Water Utility Authority

Explora Science Center & Children's Museum of Albuquerque

Name:

Name:


Title:

Title:

Signature:



Signature:



Date:

3/21/19

Date:

1 - 8 - 2019