

US EPA ARCHIVE DOCUMENT

**PROJECT EXCEL-PILOT PROJECTS FOR PRETREATMENT PROGRAMS**

**City of Albuquerque-Final Project Agreement,**  
**February 1999**

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## PROJECT EXCEL-PILOT PROJECTS FOR PRETREATMENT PROGRAMS

### City of Albuquerque - Final Project Agreement, February, 1999

#### Executive Summary

The City of Albuquerque's proposal to participate in the Project XL Pilot Projects for Pretreatment Programs plans to implement a modified program that increases environmental benefits. A primary aim of the project will be to achieve reduced pollutant loadings to the environment from industries and businesses in Albuquerque through the integration of pollution prevention activities with the existing Industrial Pretreatment Program (IPP). The City's proposal would allow the present IPP program to shift resources from certain less productive requirements towards innovative activities likely to yield superior environmental results.

New initiatives will include pollution prevention outreach by a variety of methods. Outreach will be guided by new sewer sub-basin monitoring to investigate the ability to learn where in the City certain pollutants of concern predominate. Databases will be developed after inquires to appropriate agencies to help the IPP identify where in the City hazardous materials are used or stored and thereby learn where such wastes potentially originate. It is planned to use this new information to target pollution prevention outreach material development and promotion at appropriate locations and businesses in the City. A much broader P2 outreach will be accomplished by addressing hundreds of different commercial sector businesses that have not been part of traditional IPP work. Multi-media aspects of P2 will be promoted to avoid pollutant transfers between different media. Stormwater pollution prevention plans will be included as part of the multi-media approaches.

The environmental focus will be guided by stakeholder input through the City's on-going work with local and statewide P2 environmental projects. An excellent rapport presently exists with many local stakeholders that include environmental citizen groups, downstream Indian Pueblo, trade, business and professional associations, agencies and task forces. As stated by one of our stakeholders "The City of Albuquerque and local industries have been pioneers in cooperative industrial pretreatment. This reinvention proposal would help support the evolution of an important legacy for future generations nationwide. We are confident that our City, if selected, will continue to serve as a national model in this area of work." New Mexico Silver Users Association, November, 1998.

## I. OVERVIEW

This Final Project Agreement (FPA) is an outgrowth of the U.S. Environmental Protection Agency's (EPA) June 23, 1998 Federal Register Notice (Vol. 63, No. 120) requesting proposals from Publicly Owned Treatment Works (POTWs) for XL (eXcellence and Leadership) projects based on environmental performance measures for waste water pretreatment programs. The intent of this effort is to investigate ways of increasing the effectiveness of the pretreatment program and thus to obtain greater environmental benefit. EPA is willing to provide POTWs regulatory relief from programmatic requirements (e.g., specific monitoring frequencies, specific control mechanism issuance requirements, etc.), so that they can implement alternative programs that increase environmental benefits.

### A. Purpose of Project XL and the FPA

#### 1. Purpose of Project XL

Project XL, which stands for "eXcellence and Leadership," is a national pilot program to test the extent to which regulatory flexibility, and other innovative environmental approaches, can be used to achieve superior environmental performance and reduced economic burden. Through site-specific agreements with project sponsors, EPA is able to gather data and project experience that will help the Agency redesign current approaches to public health and environmental protection. Under Project XL, sponsors -- private facilities, multiple facilities, industry sectors, Federal facilities, communities, and states -- can implement innovative strategies that produce superior environmental performance, provide flexibility, cost savings, paperwork reduction or other benefits to sponsors, and promote greater accountability to stakeholders.

#### 2. Purpose of This Final Project Agreement

This FPA is intended to be a joint statement of the plans and intentions of EPA, and The City of Albuquerque, The New Mexico Green Zia Environmental Excellence Program and the New Mexico Silver Users Association (collectively "the parties") and to reflect the firm commitment of each party with regard to the project approved for implementation at The City of Albuquerque (the "Project"). This FPA is not, however, intended to create legal rights or obligations and is not an enforceable contract or a regulatory action such as a permit or rule. Nevertheless, some provisions of this FPA will be implemented through rulemaking, consent orders and/or permitting, the terms and conditions of which will be legally enforceable. This FPA will articulate that The City of Albuquerque intends to continue to attain environmental results that are measurably superior

when compared to current and reasonably anticipated regulatory standards as contemplated by EPA's Project XL criteria. This FPA will identify the means to provide for environmental regulatory flexibility as requested by The City of Albuquerque as an incentive for superior environmental results. All parties to this FPA will strive for a high level of cooperation, communication, and coordination to assure successful, effective, and efficient administration of the FPA and the Project.

## B. Current Program Description

1. The City of Albuquerque operates a single Publicly Owned Treatment Works (POTW) facility, The Southside Water Reclamation Plant located at 4201 Second Street SW, Albq. NM, 87105. The plant design capacity is 76 million gallons/day (MGD). Present flows average about 57 MGD. The population served is about 500,000 with an industrial flow contribution of about 15%. The City's Pretreatment Program presently has some 90 significant industrial users (SIU's) permitted within the program, of whom about 45 are categorical under federal regulations.
2. The City of Albuquerque's NPDES discharge permit presently has limits for CBOD, TSS, nitrates, fecal coliform, ammonia, dissolved oxygen, arsenic, silver and whole effluent toxicity. Pretreatment Program requirements include standard regulatory program procedures for permitting and monitoring SIU's as well as monitoring the POTW's influent and effluent for priority pollutants. An approved Enforcement Response Plan is in force as well as an adopted City Sewer Use and Wastewater Control Ordinance. The City's Pretreatment Program adopted Technically Based Local Limits subsequent to EPA's review and approval as of March 24, 1997.
3. Pretreatment Program implementation procedures follow regulatory guidelines for permitting and monitoring SIU's that contribute wastewater to the City's system. Limits are placed on parameters according to the city's local limits found in the above referenced Ordinance. Present SIU permits call for industries to report to the City at least twice a year with pertinent data about their waste management. The City performs all sampling and inspections and generally exceeds EPA minimum monitoring frequency requirements. An Enforcement Response Plan is followed for out-of-compliance situations that usually call for increased monitoring and direct communication with the particular business. Compliance enforcement can lead to formal administrative orders and even service termination, although this has never been necessary. The majority of the SIU's in the program regularly receive annual awards of excellence for perfect records of both administrative reporting and sampling compliance.
4. The City presently dedicates a minor part of program resources to pollution prevention

educational material development and proactive promotion via partnerships with many other entities. This is an outgrowth of an earlier 1992-94 EPA Pilot Grant for Waste Minimization at POTW's. We hope to dedicate a larger amount of program resources to effective pollution prevention work through the XL project.

- 5) Historical measures that are indicators of the effectiveness of the Pretreatment Program include influent, effluent and sludge pollutant loading trends. Certain key manholes within the City's collection system have also been monitored periodically. Periodic receiving stream sampling has also been performed for many years by the US Geological Survey and the State of New Mexico.

### **Why Regulatory Relief?**

Some POTWs have mastered the programmatic aspects of the pretreatment program (identifying industrial users, permitting, monitoring, etc.) and want to move into more environmental performance-based processes. These POTWs have expressed an interest in being allowed to focus their resources on activities that they believe will provide greater environmental benefit than is achieved by complying with the current requirements. Some POTWs want to be able to make decisions on allocating resources based on the risk associated with the industrial contributions they receive or other factors. Others want to be able to focus more resources on ambient monitoring in their receiving waters and/or to integrate their pretreatment programs with their storm water monitoring programs. In general, these POTWs want the opportunity to redirect limited resources away from currently required activities that they do not believe are benefitting the environment and toward activities that can achieve measurable improvements in the environment. Project XL was implemented to provide the flexibility to conduct these types of innovative projects.

The City of Albuquerque's XL Project proposes to modify otherwise required activities in five areas. Positive trade-offs are intended to shift time and energies to pollution prevention work for superior environmental results. The following summarizes the proposed regulatory modifications:

1. Modify or delete approx. 13 categorical Industrial User (IU) permits. Maintain annual monitoring and reporting requirements.
2. Modify requirements for approx. 32 other categorical IU permits. Maintain annual monitoring and reporting requirements.
3. Consider use of general permits where possible to simplify permitting. EPA guidance will be used in this area.
4. Reduce EPA's intensive "rolling quarter" record keeping and "significant non-compliance"



accounting. Replace with City's approved enforcement response plan with annual listing of permittees who received administrative orders, and

5. Require a Pollution Prevention program component within the City's NPDES Pretreatment Program requirements.

## II. PROCESS

### Process for FPA Development/Stakeholder Involvement

In order for this project to get to the FPA development stage, the project was required to go through EPA's selection and screening process. After selection and screening, full development of this FPA occurred approximately over a [#?] month time frame. During these [#?] months, the project sponsor, EPA, the State, and other interested stakeholders negotiated the final language of this document.

The first step in FPA development consisted of The City of Albuquerque convening all interested stakeholders through a public notice process to inform them of this pilot project proposal and to explore any issues that might have existed. The stakeholder involvement measures taken by The City of Albuquerque included the following:

- A. November 23, 1998 - Invitations were mailed to 50 potential stakeholders for an introductory meeting in Albuquerque, Dec. 10, 1998. Invitees included local and state-wide public environmental organizations, City and State environmental agencies, downstream and upstream Indian tribes, an Indian Pueblo Association, US Fish and Wildlife Service, the Rio Grande irrigation control agency, the municipal stormwater flood control agency, local trade and professional associations, medical institutions and other individuals. A hand delivered invitation and personal explanation was provided to the downstream Isleta Indian tribe with verbal confirmation received of their support for the XL project initiative.
- B. December 10, 1998 - Introductory meeting held with some 27 in attendance. A successful session was held with general support received for the XL initiative. No opposition was voiced. There was a strong suggestion to involve local media in the future. Eight Stakeholders have volunteered to date to directly participate to help guide the project. Others have requested to be kept informed. Others needed time to discuss with their organization what level of involvement they would take.
- C. December 15, 1998 - Packages with letter sent to those invitees who did not attend the Dec. 10th meeting. The packages supplied the booklet the City prepared for the meeting giving a complete description of the City's Pretreatment Program and XL proposal. In the

letter the City offered to continue to keep the recipients informed about the XL project and again solicited their input.

The City of Albuquerque will encourage continued stakeholder involvement over the duration of this project. The relevant stakeholders for this project presently include: the New Mexico Green Zia Environmental Excellence Program, the New Mexico Silver Users Association, the University of New Mexico, the Albuquerque Metropolitan Area Flood Control Authority, Lea Environmental Consulting Co., the City's Solid Waste Management Dept., the City's Environmental Health Dept., and the City's Hydrology Division

The next step involved refining the issues and drafting a document that addressed all parties' concerns and ideas. This step encompassed several meetings. This FPA outlines the details of the project and each party's commitments. Specifically, the participants defined the innovation to be tested, what superior environmental performance must be achieved, what flexibility EPA and other co-regulators will provide, what conditions must be met, and how results will be monitored and reported. All parties were given the opportunity to review and amend the draft document, including a cross-Agency review team, **consisting of, but limited to, members from EPA's Office of Enforcement and Compliance Assurance, Office of Policy, Planning and Analysis, Office of Regulatory Enforcement, Office of Reinvention, and Office of Water. The New Mexico Green Zia Environmental Excellence Program was also given the opportunity to review and amend the draft document.** The draft document was sent out for notice and comment in the Federal Register and was then signed by the affected parties.

### III. XL PROJECT DESCRIPTION

#### A. Scope

##### 1. Describe existing Pretreatment Program requirements

###### a. Industrial waste survey requirements

Regular updating is required to keep abreast of industries who are or could discharge wastewater to the City's system. The City regularly updates its database of businesses and dischargers via Newspapers, business directories, telephone books, field surveys, Internet postings and information from other city departments. An annual compilation is made of new entries into the database along with survey information and any decisions made to issue permits. The survey data is routinely used to help pollution prevention outreach work.

b. Permitting procedures

The City is required to issue permits to industries meeting any federal categorical designation as a matter of course. Other industries not falling into categorical types are issued permits if their discharge is considered significant, hence their designation as a “significant industrial user.” Any discharge over 25,000 gallons/day is considered as a potential SIU and is usually issued a permit. Some businesses under 25,000 gallons/day may also receive permits if their discharge could potentially affect the City. Permits are issued for different lengths of time, typically 2 to 4 years, depending on the need to review their overall status.

c. Monitoring requirements

Monitoring at permitted industries is required to be performed at least twice a year. The City has traditionally followed EPA guidelines to perform more frequent sampling visits on a quarterly basis to provide additional background compliance data. A large database of industrial compliance history has thus accumulated over many years. Inspections are also typically performed at the time of sampling. With rare exception, inspections and sampling are performed unannounced. The City also monitors the plant influent, effluent and biosolids for priority pollutants twice a year. A few domestic and commercial areas with key manhole locations have been monitored semi-annually in the past. The US Geological Survey is under contract to perform stormwater runoff sampling city-wide also.

d. Enforcement procedures

An approved Enforcement Response Plan is in force and is followed in situations of inspections and/or sampling data resulting in violations. A first occurrence violation is followed up with direct communication of the violation to the business and a requirement for an explanation and return to compliance schedule. Resampling is performed to confirm return to compliance. In rare instances follow-up sampling does not document return to compliance which then necessitates a meeting with the business at city offices to find out why. Such “conciliation meetings” are followed by additional sampling work that is charged to the business involved. A new compliance schedule is required. Charges cease upon successful return to compliance. In extremely rare cases further non-compliance results in contacting the City Attorney’s office for potential administrative order processing. Loss of service is a possibility but has never been necessary.

e. Reporting requirements

Semiannual reports are required from industries to provide information about their operation's waste management. Typical information includes any self monitoring data, haz waste manifest information, special items such as Toxic Organic Management Plans and updates, certifications as appropriate, such as regarding Cyanide use, and descriptions of Pollution Prevention efforts.

f. Local limits development requirements

The City completed a Technically Based Local Limits Report, Dec. 2, 1996, which was submitted to EPA. The Report and associated program modifications were approved by EPA on March 24, 1997. All local limits are reflected in the most recent *City of Albuquerque - Sewer Use and Wastewater Control Ordinance*.

g. Current resources (Equipment and personnel)

The City of Albuquerque's Pretreatment Program is presently comprised of 14 employee positions with sufficient sampling equipment of approximately 20 individual units. An adequate, although aging, number of vehicles are available. Vehicle replacement is an identified priority need for the program. The program's 1999 fiscal year budget is \$812,000 and is under review for competitive reductions.

h. Quality Assurance / Quality Control

QA/QC is provided with attention to clean procedures, sample equipment decontamination, occasional split sampling and maintenance of laboratory accreditation credentials. Training is provided to technicians in areas of proper sample preservation protocols consistent with *Standard Methods* and EPA methods. Close attention is paid to laboratory holding periods and testing turn around times to provide data within allowable time frames. Third party sampling is performed for stormwater city-wide by the US Geological Survey. The State Scientific Lab Division is contracted for most organic priority pollutants testing.

## 2. Proposed changes

a. Proposed industrial waste survey requirements

Business waste management surveys are proposed to include a broader consideration of potential discharges of pollutants. An investigation of information sources (e.g.'s Fire Marshall's Office, State Haz Waste Program, Toxic Release Inventory Program and others) will be made to learn where haz materials are used/stored at businesses. A focused approach is proposed to investigate sewer

system sub-basins at key manholes to learn if it is possible to identify where in the City certain pollutants of concern predominate. If successful, certain sub-basins will receive more focused and intense pollution prevention outreach efforts and activities depending on the types and amounts of pollutants identified in their sector of the City. Any focused P2 efforts will be preceded with surveys of business and potentially include residential activities within sectors to learn what sources of pollutants exist.

b. Proposed permitting procedures

Permitting procedures are proposed to be changed in the following ways:

- (1) Delete approximately 13 categorical permits due to their diminimus wastewater discharge while maintaining annual inspection, monitoring and some reporting requirements.
- (2) Modify approximately 32 categorical permits with good performance histories while maintaining annual inspection, monitoring and some reporting requirements.
- (3) Create general permits where appropriate to simplify permitting procedures.
- (4) Modify the City's next NPDES permit to require a Pollution Prevention component with required annual accounting of all activities and objective measurements.

c. Proposed monitoring requirements

Monitoring requirements are proposed to be changed in the following ways:

- (1) Annual only monitoring will be performed at those permitted industries with good compliance histories and who exhibit cooperation with pollution prevention efforts.
- (2) New monitoring is proposed at appropriate collection system sub-basin manhole locations to investigate if it is possible to learn where pollutants of concern predominate.

d. Proposed enforcement procedures

Enforcement procedures are proposed to be changed in the following ways:

- (1) The rolling quarter determination of “significant non-compliance” will be replaced with annual determinations of SNC based on whether administrative orders have been issued to a permittee under the City’s Enforcement Response Plan. Present SNC determinations are an artifact of sampling frequencies that place an inequitable burden on businesses and the City to administer. The City’s approved ERP will be modified to delete presently required SNC tracking and administration in favor of the above approach.

e. Proposed reporting requirements

Reporting requirements are proposed to be changed in the following ways:

- (1) Only annual reports from permitted industries will apply where good compliance histories and cooperation with pollution prevention efforts exist. The City will stipulate what specific annual reporting information will be required on an individual basis as appropriate to the business. General permits, developed with EPA guidance, will include base-line reporting requirements needed to fulfill regulatory mandates.

f. Proposed local limits development requirements

None needed.

g. Proposed resources (Equipment and personnel)

No changes proposed. Project XL will result in shifting of existing resources.

h. Quality Assurance / Quality Control

No changes proposed.

I. Detailed description of expected benefits as a result of the proposed changes (e.g., influent, effluent and sludge; ambient water quality)

Expected benefits as a result of the proposed changes are:

- (1) Once baseline data is established within the City’s wastewater collection system sub-basins, eventual declines will be expected of targeted pollutants of concern within the sub-basins. Declines in sub-basin pollutant loadings will be expected

to be reflected in reductions of total mass pollutant loadings to the POTW. Expected mass loading declines to the POTW will be measured in terms of influent, effluent and biosolids concentrations over time. Pollutant releases at a majority of businesses will be expected to decline where pollution prevention promotion has been addressed. Monitoring at businesses will include tracking hazardous materials use, storage and disposal trends. Case histories will be expected to document multi-media reductions in pollution releases. All declines translate to lowered amounts of pollutants in the environment.

- (2) Enhanced POTW compliance with NPDES permit limits will be expected over time as a result of effective pollution prevention promotion and implementation. Permit compliance history will be measured by the continuation of daily, weekly and monthly required monitoring.
- (3) Stormwater quality improvements will be expected over time as more businesses implement stormwater pollution prevention plans which will be integrated in XL project work. Measurements of non-point source stormwater pollutant trends will continue to be performed by the US Geological Survey under contract with the City.
- (4) Increased public awareness of the importance of pollution prevention will be a tangible result of increased promotion and education efforts. Measurements will include the number and diversity of public outreach materials disseminated.
- (5) Transferability of program methods, materials and successes to other businesses and other cities will be a tangible benefit of the project. Project methods, materials and successful approaches will be documented for anyone's use.

## B. Agreement

### 1. Signatories

The Signatories to this Final Project Agreement are the **United States Environmental Protection Agency (hereafter EPA), The New Mexico Green Zia Environmental Excellence Program, The City of Albuquerque/Public Works Department, and the New Mexico Silver Users Association.**

### 2. Significance of Agreement

The significance of this Agreement is to achieve superior environmental benefits of enhanced reductions of pollutants through educational promotion of pollution prevention efforts within an otherwise regulatory/monitoring/enforcement agency. Successes documented by this Project can be transferred to other Pretreatment Programs around the country thus achieving even greater environmental benefits through more effective approaches. Broader pollution prevention public awareness will be fostered by all outreach and promotion work wherever these approaches are taken.

### 3. Definitions

(Provide any specialized definitions that will help stakeholders better understand this document) (**Note - ensure that specialized definitions do not include terms defined in the statutes and/or regulations**)

### 4. Duration of Agreement

This FPA will be in effect for the period of 5 years, unless it is terminated earlier. Prior to the end of the five-year period (at least 180 days) the City of Albuquerque may apply for a renewal or extension of the project period. **A renewal or extension of the project period will be treated as a modification of the FPA, and is addressed Section II.F., Modification of Agreement/Reopener.** If the City of Albuquerque is not able to meet the performance goals of its Local Pilot Pretreatment Program, the Approval Authority may allow the performance measures to be adjusted if the primary objectives of the Local Pilot Pretreatment Program will be met. The revised Local Pilot Pretreatment Program must be approved in accordance with the procedures in 40 CFR § 403.18.

If the primary objectives of the proposal are not being met, the Approval Authority shall direct the City of Albuquerque to discontinue implementing the Local Pilot Pretreatment Program and resume implementation of its previously approved pretreatment **program by amending the NPDES permit [and/or any other implementation mechanism, site-rule, etc.]** accordingly. The Approval Authority will ensure that the City of Albuquerque NPDES permit includes a reopener clause with this requirement.

### 5. Enforceability of FPA

This FPA is not intended to create legal rights or obligations and is not an enforceable contract or a regulatory action such as a permit or rule. This applies to both the substantive and the procedural provisions of the FPA. Thus, for example, the FPA establishes procedures that the parties intend to follow with respect to termination under the FPA. However, while the parties fully intend to follow these procedures, they are



not legally obligated to do so. Because it is not legally enforceable, the FPA is not an agency “action” that could be reviewable; in addition, no action or omission by any party to the FPA could give rise to any claim against the party for penalties, damages or other compensation based solely on the claim that the action or omission was at variance with a provision or provisions of the FPA.

## 6. Modification of Agreement / Reopener

The FPA may be modified by mutual agreement of all parties at any time during the minimum Project term. The parties recognize that certain modifications to the Project may necessitate modification of any existing implementation mechanisms or may require development of new implementation mechanisms, **as provided in Section III.B.6.** In that case, EPA and The City of Albuquerque expect to work together to identify and pursue any modifications or additions to the implementation mechanisms required, in accordance with procedures applicable to the modification of the relevant implementation mechanism. To the extent that the parties agree to make a material modification of the Project, appropriate notice of such modification, **as set forth in this FPA and the implementing mechanism,** and an appropriate opportunity to participate in the process will be provided to stakeholders and interested parties.

In recognition that the Project is an experiment designed to test new approaches to environmental protection, and of the uncertain nature of the environmental benefits and costs associated with the activities to be undertaken in this Project, the parties to this FPA agree to evaluate the appropriateness of a modification or “reopener” to the FPA according to the provisions set forth below.

- a. During the minimum Project term, the City of Albuquerque may seek to reopen and modify this FPA in order to address matters covered in the FPA, including failure of the Project to achieve superior environmental results, or the enactment or promulgation of any environmental, health or safety law or regulation after execution of this FPA which renders the Project legally, technically, or economically impractical. To do so, the City of Albuquerque will submit a proposal for a reopener under this Section to EPA for their consideration. EPA will review and evaluate the appropriateness of such proposal submitted by the City of Albuquerque. EPA may also elect to initiate termination under Section III.B.7. of this FPA, which shall supersede application of this Section.
- b. In determining whether to reopen and modify the FPA in accordance with any reopener proposal(s) submitted by the City of Albuquerque under this Section, EPA will base their decision upon the following: (a) whether the proposal meets

the Project XL Criteria in effect at the time of the proposal, (b) the environmental benefits expected to be achieved by the proposal, (c) the level of emissions or effluent included in the proposal, (d) other environmental benefits achieved as a result of other activities under the proposal, and (e) any net adverse environmental impacts expected to occur as a result of the proposal.

- c. All parties to the FPA will meet within ninety (90) days following submission of any reopener proposal by the City of Albuquerque to EPA (or within such shorter or longer period as the parties may agree) to discuss the Agencies' evaluation of the reopener proposal. If, after appropriate stakeholder involvement, the Agencies support reopening of this FPA to incorporate the proposal, the parties will (subject to any required public comment) take steps necessary to amend the FPA. Concurrent with the amendment of this FPA, EPA will take steps consistent with Section I to implement the proposal.

## 7. Termination of Agreement [TO BE FILLED BY OW/OGC/OECA/OR]

- a. Expectations Concerning Termination

This FPA is not a legally binding document and any party may withdraw from the FPA at any time. **If parties do withdraw from the FPA, the regulation and / or permit will remain enforceable until modified.** However, it is the desire of the parties that this FPA should remain in effect through the expected minimum Project term, and, during that time, be implemented as fully as possible. **Although EPA retains its discretion to terminate the FPA at any time,** it is the intent of the parties that this Project will not be terminated unilaterally during the expected minimum Project term of this FPA unless one of the conditions set forth below occurs:

- (1) Failure (taking into account its nature and duration) by any other party to (a) comply with the provisions of the implementation mechanisms for this Project, or (b) act in accordance with the provisions of this FPA;
- (2) Discovery of the failure of any other party to disclose material facts during development of the FPA;
- (3) Failure of the Project to provide superior environmental performance consistent with the expectations of this FPA;
- (4) Enactment or promulgation of any environmental, health or safety law or regulation after execution of the FPA which renders the Project legally,

technically or economically impracticable; or

- (5) Decision by a party to reject the proposed assumption by a future owner or operator of the Facility of the City of Albuquerque rights and obligations under the Project.

Unless the parties determine, consistent with the provisions of Section III.B.4. and 7. of this FPA, that continuation of the Project past the minimum Project term is warranted, this FPA will be terminated as of the end of the minimum Project term.

EPA and The City of Albuquerque do not intend to withdraw from the FPA based on non-compliance by the City of Albuquerque with the implementation mechanisms, unless such non-compliance constitutes a material failure to comply with the implementation mechanisms, taking into account its nature and duration the non-compliance. EPA retains their discretion to address compliance, as appropriate, through existing enforcement authorities available to the parties. As set forth in Section III.D., the City of Albuquerque retains all rights to defend against any such enforcement actions.

b. Termination Procedures

**The parties agree that the following procedures will be used to terminate the project prior to the minimum project term, and further that the implementation mechanism(s) will provide for withdrawal or termination consistent with these procedures:**

- (1) Any party desiring to terminate this FPA is expected to provide written notice of its intent to terminate to the other parties at least sixty (60) days prior to termination.
- (2) If requested by any one party during the sixty (60) day period noted above, the dispute resolution proceedings provided in Section III.B.8. herein, may be initiated to resolve any dispute relating to the intent to terminate. If, following any dispute resolution or informal discussion, the party still desires to terminate, the terminating party will provide written notice of final termination to all other parties to the FPA.
- (3) If any party terminates its participation in the FPA, the remaining parties will consult with the City of Albuquerque to determine whether the FPA should be continued in a modified form consistent with applicable federal and state law or

terminated.

- (4) The termination procedures set forth in this Section b.) apply to the decision to terminate participation in the FPA. Procedures to be used in modifying or rescinding the legal mechanisms used to implement the Project will be governed by the terms of those legal mechanisms and applicable law.

c. Post-Project Compliance Period

- (1) *Orderly Return to Compliance in the Event of Early Termination:* In the event of any termination not based upon the end of the expected minimum Project term, there will be an Interim Compliance Period to provide sufficient time **consistent with permit modification procedures set forth in 40 CFR § 122.1 et seq.** for the City of Albuquerque to come into compliance with the regulations deferred under the Project. By the end of the Interim Compliance Period, the City of Albuquerque will comply with the applicable standards set forth in 40 C.F.R. Part [section] [and state law/regulations]. During the Interim Compliance Period, EPA will issue an order, permit, or other legally enforceable mechanism establishing an implementation schedule for the City of Albuquerque's orderly return to compliance as soon as practicable, but no later than [#?] months from the date of termination. The Interim Compliance Period is [#?] months from the date on which EPA, or the City of Albuquerque provides written notice of final termination of the Project in accordance with Section [?] of this FPA. It is the City of Albuquerque's intent to be in full compliance with all applicable requirements above as soon as is practicable, as will be set forth in the implementation schedule.
- (2) *Orderly Return to Compliance in the Event of Completion of Project Term:* In the event of termination based upon the end of the Project term, the City of Albuquerque will achieve compliance with all applicable requirements by the end of the minimum Project term, unless the Project is modified in accordance with Section.B.6. - Modification. The City of Albuquerque is expected too anticipate and plan for all activities necessary to come into compliance upon completion of the Project sufficiently in advance of the end of the Project term. The City of Albuquerque may request a meeting with EPA to discuss the timing and nature of any actions that the City of Albuquerque will be required to take to come into compliance with regulatory requirements that have been deferred under this Project **and should request such a meeting at least 60 days in advance of the anticipated completion date of the project term.** The parties expect that they will meet within thirty days of receipt of the City of Albuquerque's written request for such a discussion. At

and following such meeting, the parties expect that they will engage in reasonable good faith discussions to identify the extent to which requirements deferred under this Project will apply after termination of the Project.

## 8. Dispute Resolution

Any dispute that arises with respect to the meaning, application, implementation, interpretation, amendment, termination or modification of the FPA will, in the first instance, be the subject of informal discussions. To initiate informal discussions, any party which believes it has a dispute with any other party will simultaneously notify all of the parties, in writing, setting forth the matter(s) in dispute.

If the dispute cannot be resolved by the parties within thirty (30) days of receipt of such notice (or such longer time as agreed to by the parties to the dispute), then one or both of the parties may invoke non-binding mediation by setting forth the nature of the dispute, with a proposal for its resolution, in a letter to the EPA Region 6 Administrator, with a copy to all parties. The EPA Regional Administrator or the disputants may request an informal mediation meeting. The disputants may request an opinion from the Regional Administrator in lieu of or in addition to the mediation meeting. Any opinion, verbal or written, expressed by the Regional Administrator will be non-binding.

Nothing in this section will be construed to alter the parties' expectations regarding the ability to terminate or withdraw from the FPA set forth in the provision of Section III.B.7.c., Termination of Agreement / Post Project Compliance Period.

## 9. Implementation

To implement the Project, the parties intend to take the following steps:

- a. EPA expects to propose for public comment and promulgate (subject to review of public comment) a site-specific rule amending 40 C.F.R. Part [X] so as to defer application of the requirements of Part [X] to the City of Albuquerque's Facility. The rule will [describe project requirements and other aspects of rulemaking. Include description of any necessary permits, orders, or other actions to be undertaken by EPA or State to implement project.] It is expected that the site-specific rule will provide for Termination and a post-Project compliance period consistent with Section III.B.7. and will address the transfer procedures included in Section IV.B. The standards and reporting requirements set forth in Section I and III of this FPA will be implemented in the site-specific rule.
- b. Except as provided in any rule(s), compliance order(s), permit provisions or other

implementation mechanisms that may be adopted to implement the Project, the parties do not intend that this FPA will modify or otherwise alter the applicability of existing or future laws or regulations to the City of Albuquerque's Facility.

- c. By signing this FPA, EPA, the City of Albuquerque acknowledge and agree that they have the respective authorities and discretion to enter into this FPA and to implement the provisions of this Project, to the extent appropriate.

## 10. Reporting & Periodic Reviews

The City of Albuquerque is required to periodically report the progress of its pilot program, **as set forth below**. The City of Albuquerque's periodic report will describe its Local Pilot Pretreatment Program activities and accomplishments, including activities and accomplishments of any participating agencies and public involvement. The report will include an analysis of all environmental data collected over the reporting period and activities conducted to reduce pollutant loadings to the environment and any other activities that address the objectives of the Local Pilot Pretreatment Program.

The report following the fourth year of pilot program implementation will also include the findings of the pilot. This report will specifically address all objectives of the pilot program and provide measures related to the effectiveness of the program, as implemented, in meeting the objectives. The report will also include recommendations concerning the implementation of the pretreatment program at the local level.

The minimum report requirements will be detailed in the City of Albuquerque's NPDES permit. This requirement will be similar to the current requirement for the City of Albuquerque to annually report to the Approval Authority the status of its Pretreatment Program. See 40 CFR 403.12(I). At the discretion of the NPDES permitting authority, the report may be required more frequently than once per year. The City of Albuquerque **is required to submit regulatory reports on the non-waived requirements of its pretreatment program.**

## 11. Events Preventing Project Implementation / Unavoidable Delay

This section applies to provisions of this FPA that do not encompass enforceable, regulatory mechanisms. Enforceable mechanisms, such as permit provisions or rules, shall be subject to modification or enforcement as provided in applicable law.

"Unavoidable delay" for purposes of the project described in this FPA is defined as any event arising from causes beyond the control of any Party or Parties that delays or prevents the implementation of the project described in this FPA despite the Parties'

best efforts to put their intentions into effect. An unavoidable delay event includes, without limitation, delay arising from fire, unusual storm events, acts of war, vandalism, or legislative or judicial bars to performance. **An unavoidable delay does not include any increase in costs necessary to undertake and successfully complete the project in a timely fashion.**

When any event occurs that may delay or prevent the implementation of this project, whether or not it is unavoidable, the Party with knowledge of the event will provide verbal notice to the designated representatives of the remaining Parties. Within ten (10) days of the Party providing initial notice of the event a written confirming notice will be provided. The confirming notice will include the reason for the delay, the anticipated duration of the delay, all actions taken to prevent or minimize the delay, and the party's rationale for considering such a delay to be unavoidable. The Party providing notice will include all available documentation supporting the claim that the delay was unavoidable.

If the Parties, after reasonable opportunity to confer, agree that the delay is attributable to an unavoidable delay then the time for performance of obligations that are affected will be extended to cover the period lost due to the delay. If the Parties agree, the Parties will document their agreement in a written amendment to this FPA. If the Parties do not agree, then the following provisions for Dispute Resolution in Section H will be followed.

**C. Requirements of NPDES Permit (revisions) [TO BE FILLED BY OW]**

The pilot alternative Local Pretreatment Program will become an enforceable part of the POTW's NPDES permit. Provide a summary of the alternative program and attach a copy of the full description of the alternative program following the requirements of 40 CFR 403.9(b).

**D. Analyses to Determine eligibility for a conditional variance**

1. Provide summary information demonstrating that your local Pretreatment Program meets these requirements:
  - a. The POTW is administering an Approved POTW Pretreatment Program.
  - b. The POTW has a solid record of compliance. In general, this means that the POTW must not be the subject of a planned or ongoing judicial or administrative enforcement action, be in significant noncompliance with applicable requirements,

or have outstanding obligations under (or be in violation of) an order or consent decree. Additionally, a POTW's history of compliance will also be considered; POTWs most likely to be included in the pilot program would be those which do not have a history or pattern of violations, violations resulting in serious threats or harms, or have other recent significant compliance problems.

- c. The POTW has five years of influent, effluent, and sludge quality data, as well as three years of ambient water quality measurements for its receiving water.
2. Federal Implementation Mechanisms - description of Federal requirements to be met
3. State Implementation Mechanisms - description of State requirements to be met

#### **E. Environmental Benefits**

How will project provide SEP? Baseline Assessment

This project was chosen as an XL Project because it has the potential to achieve environmental performance that is superior to what would have been achieved absent the XL Project. The sponsors have developed a quantitative and qualitative baseline estimate of what would have happened to the environment absent the project and have compared that baseline estimate against the project's anticipated environmental performance to determine that the anticipated environmental performance will produce a level of environmental performance superior to the baseline.

Expected benefits as a result of the proposed changes are:

1. Once baseline data and determinations are established to provide guidance within the City's wastewater collection system sub-basins, eventual declines will be expected of targeted pollutants of concern within the sub-basins. Declines in sub-basin pollutant loadings will be expected to be reflected in reductions of total mass pollutant loadings to the POTW. Expected mass loading declines to the POTW will be measured in terms of influent, effluent and biosolids concentrations over time.
2. Pollutant releases at a majority of businesses will be expected to decline where pollution prevention promotion has been addressed. Monitoring at businesses will include tracking hazardous materials use, storage and disposal trends. Case histories will be expected to document multi-media reductions in pollution releases. All declines translate to lowered amounts of pollutants in the environment.
3. Enhanced POTW compliance with NPDES permit limits will be expected over time as



a result of effective pollution prevention promotion and implementation. Permit compliance history will be measured by the continuation of daily, weekly and monthly required monitoring.

4. Stormwater quality improvements will be expected over time as more businesses implement stormwater pollution prevention plans which will be integrated in XL project work. Measurements of non-point source stormwater pollutant trends will continue to be performed by the US Geological Survey under contract with the City.
5. Increased public awareness of the importance of pollution prevention will be a tangible result of increased promotion and education efforts. Measurements will include the number and diversity of public outreach materials disseminated.
6. Transferability of program methods, materials and successes to other businesses and other cities will be a tangible benefit of the project. Project methods, materials and successful approaches will be documented for anyone's use.

Please refer to the following Table One which summarizes the City's plans and time frames to address the objectives identified above.

**Albuquerque XL Project - Preliminary Proposal**

<b>Table 1</b>	<b>Proposed Objectives, Measurements &amp; Time Lines</b>
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Objective		Measurements	Time line
1.	Achieve pollution prevention implementation at new businesses	Document new P2 implementation at 25 businesses/year	Begin at year 2 and continue indefinitely
2.	Achieve reductions for 13 pollutants of concern at sub-basin locations	Monitor sewer sub-basins one week/month; determine where pollutants predominate first	Begin at year 2 after sub-basins baseline data established
3.	Maintain and enhance compliance with City's NPDES effluent and biosolids limits	Continuation of regulatory monitoring and reporting monthly	Continuation of daily, weekly and monthly monitoring
4.	Perform pollution prevention surveys and certifications to promote continued implementation at businesses	Perform 100 P2 surveys/certifications per year at businesses	Perform each year
5.	Develop targeted business and residential P2 educational/outreach materials and methods	Develop 4 new outreach materials or methods per year	Perform each year
6.	Write case studies demonstrating implementation of P2-BMP's, problem areas and follow-up needs	Write-up 6 case studies per year	Perform each year
7.	Initiate targeted P2 workshops	Initiate 2 workshops per year	Perform each year
8.	Collect stormwater baseline water quality data to guide stormwater P2 outreach work	Monitor 15 storm events per year	Perform each year
9.	Perform stormwater Pollution Prevention Plan (P3) surveys at businesses where stormwater Notices of Intent (NOI's) have been filed	Perform 25 stormwater P3 surveys per year	Perform each year
10.	Respond to P2 inquiries and requests to the community	Provide 10 responses to the community per month	Perform each month
11.	Achieve stakeholder involvement through joint participation in P2 activities locally and statewide	Participate in 6 coordinating meetings per year with local and statewide stakeholders	Perform each year

**IV. RIGHTS RETAINED AND PROJECT TRANSFER**

**A. Rights Retained:**

Except as expressly provided in the legal implementation mechanisms, nothing in the FPA shall be construed to affect or limit either the City of Albuquerque's legal rights or the Agencies' rights to seek legal, equitable, civil, criminal or administrative relief regarding the enforcement of present or future applicable federal and state code, rules, or regulations with respect to the Facility or the City of Albuquerque.

Although the City of Albuquerque does not intend to challenge agency actions implementing the Project (including any rule amendments or adoptions, permit actions, or other action) that are consistent with this FPA, the City of Albuquerque nonetheless reserves its right to appeal or otherwise challenge any and all agency actions implementing the Project. Nothing in this FPA is intended to limit the City of Albuquerque's right to administrative or judicial appeal or review of any modification or termination of those legal mechanisms in accordance with the applicable procedures for such review.

#### **B. Transfer of Project Benefits and Responsibilities:**

It is expected that the implementation mechanisms will allow for the transfer of the City of Albuquerque's rights and obligations under the Project to any future owner or operator upon request of the City of Albuquerque and such owner/operator, provided that the following conditions are met:

1. The City of Albuquerque will provide written notice of any such proposed transfer to EPA and [PARTIES] at least forty-five (90) days prior to the effective date of the transfer. The notice is expected to include identification of the proposed transferee, a description of the proposed transferee's financial and technical capability to assume the obligations associated with the Project, and a statement of the transferee's intention to sign the FPA as an additional party.
2. Within thirty (45) days of receipt of the written notice, it is expected that the Agencies will determine whether the transferee has demonstrated adequate financial and technical capability to carry out the Project and a willingness to sign the FPA. It is expected that the implementation mechanisms will provide that, so long as the demonstration has been made to the satisfaction **and unreviewable discretion** of the Agencies, and upon consideration of other relevant factors, the FPA will be modified to allow the proposed transferee to assume the rights and obligations of the City of Albuquerque.

In the event that transfer is disapproved by any agency, withdrawal or termination may be initiated, as provided in Section II G.

3. Upon approval of transfer under this section, EPA, [STATE], and [LOCAL AUTHORITY] will amend the rule, permit and other implementing mechanism(s)

(subject to public notice and comment) to legally transfer the rights and obligations of the City of Albuquerque under this project to the proposed transferee. The rights and obligations of this project remain with the City of Albuquerque prior to their final, legal transfer to the proposed transferee.

## APPENDIX

### A) XL Criteria

Since this pilot program is being administered under the Project XL program, the proposals must address the Project XL criteria:

#### 1. Superior Environmental Performance

Projects that are chosen should be able to achieve environmental performance that is superior to what would have been achieved absent the XL project. EPA uses a two-part method of determining whether an XL project will achieve superior environmental performance: (1) Develop a quantitative baseline estimate of what would have happened to the environment absent the project and, then compare that baseline estimate against the project's anticipated environmental performance; and (2) Consider both quantitative and qualitative measures in determining if the anticipated environmental performance will produce a level of environmental performance superior to the baseline.

#### 2. Cost Savings and Paperwork Reduction

The project should produce cost savings or economic opportunity, and/or result in a decrease in paperwork burden.

#### 3. Stakeholder Support

The extent to which project proponents have sought and achieved the support of parties that have a stake in the environmental impacts of the project is an important factor. Stakeholders may include communities near the project, local or state governments, businesses, environmental and other public interest groups, or other similar entities.

#### 4. Innovation/Multi-Media Pollution Prevention

EPA is looking for projects that test innovative strategies for achieving environmental results. These strategies may include processes, technologies, or management practices. Projects should embody a systematic approach to environmental protection that tests alternatives to several regulatory requirements and/or affects more than one environmental medium. EPA has

a preference for protecting the environment by preventing the generation of pollution rather than by controlling pollution once it has been created. Pilot projects should reflect this preference.

5. Transferability

The pilots are intended to test new approaches that could conceivably be incorporated into the Agency's programs or in other industries, or other facilities in the same industry. EPA is therefore most interested in pilot projects that test new approaches that could one day be applied more broadly.

6. Feasibility

The project should be technically and administratively feasible and the project proponents must have the financial capability to carry it out.

7. Monitoring, Reporting and Evaluation

The project proponents should identify how to make information about the project, including performance data, available to stakeholders in a form that is easily understandable. Projects should have clear objectives and requirements that will be measurable in order to allow EPA and the public to evaluate the success of the project and enforce its terms. Also, the project sponsor should be clear about the time frame within which results will be achievable.

8. Shifting of Risk Burden

The project must be consistent with Executive Order 12898 on Environmental Justice. It must protect worker safety and ensure that no one is subjected to unjust or disproportionate environmental impacts.

These criteria are described in detail in the following Federal Register documents: 60 FR 27282, May 23, 1995 and 62 FR 19872, April 23, 1997.

**B. NPDES Permit (Revised)**

**CITY OF ALBUQUERQUE, NEW MEXICO**

**Final Project Agreement**

**for the**

**Project Excel - Pilot Projects**

**for**

**Pretreatment Program**

**February, 1999**

**Pretreatment/Pollution Prevention Program  
Albuquerque Public Works Department  
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