




City of Santa Fe, New Mexico

memo

Date: October 29, 2024

To: Public Works and Utilities Committee / Finance Committee / City Council

Via: John Dupuis, Public Utilities Department Director 
Jesse D. Roach, Water Division Director 

From: Bill Huey, Water Division Engineer 

Subject: Request for Approval of Amendment No. 2 to Price Agreement #21-0378 with Sub Surface Contracting, Inc. to Increase Maximum Compensation by \$542,187.50 for a New Total Contract Amount of \$1,626,562.50 including NMGRT. (Bill Huey, Engineer, bchuey@santafenm.gov).

Vendor Name: Sub Surface Contracting, Inc.

Vendor Number: 1921

Contract Number: 3202777

ITEM AND ISSUE:

The Public Utilities Department Water Division requests approval of Amendment No. 2 to Price Agreement #21-0378 with Sub Surface Contracting, Inc. (Sub Surface) to Increase Maximum Compensation by \$542,187.50 for a New Total Contract Amount of \$1,626,562.50 including New Mexico Gross Receipt Tax (NMGRT) with No Corresponding Change to the Term of the Agreement. (Bill Huey, Engineer, bchuey@santafenm.gov).

ACTION REQUESTED:

Approval of Amendment No. 2 to Price Agreement #21-0378

BACKGROUND AND SUMMARY:


The City Wide Water Utility Construction Contract is a multi-contractor on-call requirements contract, with the Water Division issuing work orders as needed for work such as water line replacements, and emergency repairs. In July 2021, the Governing Body approved ITB No. '21/37/B for \$250,000.00 plus NMGRT per year for each of the two contractors, Sub Surface and A.A.C. Construction LLC. Due to Supply Chain delays, \$467,000.00 in orders from Sub Surface on the previous contract were delayed until after this contract was in effect and were paid under this contract. Current contract possible funding is limited to \$29,713.52 without approval of Amendment #3.

This is a multi-contractor award ITB to set the applicable Bid Items for future work. Future work will be assigned under fully signed Work Orders for planned work on will be followed with a signed Work Order

for Emergency repair. The exact type of work required will be used to select from the applicable Bid Items.

PROCUREMENT METHOD:

ITB No. '21/37/B FY 21/22 City Wide Water Utility Construction & Repair Price Agreement, CIP # 3057 approved by City Council on 7/28/2021.

Chief Procurement Officer Approval:  **Date:** Nov 12, 2024
Comment/Exceptions: _____

Supporting Information:

CONTRACT NUMBER:

The FY25 Munis contract number is 3202777

The FY25 Project ledger number for City Wide Construction is WTR2550504

\$\$\$\$\$ SOURCE/REVENUE: Expense Revenue

The funding source is:

Fund Name/Number: Water Enterprise Fund 505


Munis Org Name/Number: Water CIP/5050395

Munis Object Name/Number: WIP Construction/572970

If the project is grant funded? List grant award number: _____

Grant Manager / Accounting Officer Approval: _____ **Date:** _____
Comment/Exceptions: _____

Project Ledger #: _____

Budget Officer Approval:  ALEMS LOTERO (Nov 12, 2024 10:42 MST) **Date:** Nov 12, 2024
Comment/Exceptions: _____

CAPITAL ASSET (will this procurement result in a tangible item that costs more than \$5,000?):

Yes | No

(if known): _____

Repair or Replacement of Existing Equipment:

Yes | No

If yes -> Repair | Replacement

Please explain: Contract is used for water line main break emergency repairs and replacements.

Capital Project:

(New and improvement projects that are going to cost \$10,000 or more)

Yes | No

Project Ledger #: _____

Anticipated length of project: To be determined

Asset Manager Approval: 
Lisa Storey (Nov 12, 2024 10:53 MST)

Date: Nov 12, 2024

Comment/Exceptions: Nov 12, 2024

Department Approvals:

IT Components: Yes | No

Vehicles: Yes | No

Facilities, Furniture, Fixtures, Equipment: Yes | No

Approval: _____

Title: _____

Date: _____

Approval: _____

Title: _____

Date: _____

Comment & Exceptions: _____

Department Contract Administrator Contact Info:

Gina Wolff

vawolff@santafenm.gov

505-955-4271

ATTACHMENTS:

Amendment No. 2

Budget Amendment Request (BAR)

cc:

Item# _____
Munis Contract# 3202777
Original Contract Item#_21-0378
CIP # 3057

**CITY OF SANTA FE
AMENDMENT No.2
TO
PRICE AGREEMENT# 21-0378**

This AMENDMENT No. 2 (the "Amendment") amends the CITY OF SANTA FE PRICE AGREEMENT, dated July 28, 2021 (the "Agreement"), between the City of Santa Fe (the "City") and Sub Surface Contracting, Inc. (the "Contractor"). The date of this Amendment shall be the date when it is executed by the City and the Contractor whichever occurs last.

RECITALS

- A. Under the terms of the Agreement, Contractor has agreed to provide On-Call Construction Services for City Wide Utility Construction & Repair for the City of Santa Fe.
- B. Pursuant to Article 14 of the Agreement, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the City and the Contractor agree as follows:

1. COMPENSATION.

Article 2, paragraph A of the Agreement is amended to add five hundred forty-two thousand one hundred eighty-seven dollars and fifty cents (\$542,187.50), inclusive of New Mexico Gross Receipts Tax (NMGRT), so that Article 2, paragraph A reads in its entirety as follows:

The City shall pay to the Contractor in full payment for services satisfactorily performed **BASED UPON THE ATTACHED PRICE SHEETS**, such compensation not to exceed one million dollars (\$1,626,563.50) including NMGRT for a total of four (4) years. **The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed one million six hundred twenty-six thousand five hundred and sixty-three dollars and fifty**

cents (\$1,626,563.50). This amount is a maximum and not a guarantee that the **work** assigned 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 City when the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided.

2. AGREEMENT IN FULL FORCE.

Except as specifically provided in this Amendment, the Agreement remains and shall remain in full force and effect, in accordance with its terms.

IN WITNESS WHEREOF, the parties have executed this Amendment No. 2 to the Contract as of the dates set forth below.

CITY OF SANTA FE:

ALAN WEBBER, MAYOR

Date: _____

ATTEST:

CITY CLERK

CITY ATTORNEY'S OFFICE:

Marcos Martinez
Marcos Martinez (Nov 8, 2024 13:10 MST)

SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

Emily K. Oster
EMILY OSTER, FINANCE DIRECTOR

CONTRACTOR:
SUB SURFACE CONTRACTING, INC.

Jeremy Sanderson
JEREMY SANDERSON, VICE
PRESIDENT

Date: 11/8/24

CRS # 02104256000

Sub Surface			
Bid Item	Article and Description	Unit	Unit Price
Construction Items			
5	2" PVC Water Main, cip, all lengths	LF	\$ 30.00
10	4" PVC Water Main, cip, <100'	LF	\$ 36.00
15	4" PVC Water Main, cip, >100'	LF	\$ 34.00
20	6" PVC Water Main, cip, <100'	LF	\$ 42.00
25	6" PVC Water Main, cip, >100'	LF	\$ 39.00
30	8" PVC Water Main, cip, <100'	LF	\$ 48.00
35	8" PVC Water Main, cip, >100'	LF	\$ 45.50
40	10" PVC Water Main, cip, <100'	LF	\$ 52.00
45	10" PVC Water Main, cip, >100'	LF	\$ 49.00
50	12" PVC Water Main, cip, <100'	LF	\$ 66.75
55	12" PVC Water Main, cip, >100'	LF	\$ 64.50
60	14" PVC Water Main, cip	LF	\$ 79.00
65	16" PVC Water Main, cip	LF	\$ 97.00
70	24" PVC Water Main, cip	LF	\$ 100.00
75	2" DI Water Main, cip, all lengths	LF	\$ -
80	4" DI Water Main, cip, <100'	LF	\$ 57.50
85	4" DI Water Main, cip, >100'	LF	\$ 56.00
90	6" DI Water Main, cip, <100'	LF	\$ 53.00
95	6" DI Water Main, cip, >100'	LF	\$ 51.00
100	8" DI Water Main, cip, <100'	LF	\$ 60.25
105	8" DI Water Main, cip, >100'	LF	\$ 58.00
110	10" DI Water Main, cip, <100'	LF	\$ 65.00
115	10" DI Water Main, cip, >100'	LF	\$ 63.00
120	12" DI Water Main, cip, <100'	LF	\$ 78.00
125	12" DI Water Main, cip, >100'	LF	\$ 74.00
130	14" DI Water Main, cip	LF	\$ 87.00
135	16" DI Water Main, cip	LF	\$ 101.00
140	24" DI Water Main, cip	LF	\$ 159.00
145	Extra Pay for Trench Depth, 6'-8'	LF	\$ 8.00
150	Extra Pay for Trench Depth, 8'-10'	LF	\$ 12.00
155	Extra Pay for Trench Depth, 10'-14'	LF	\$ 30.00
160	Rock Excavation	CY	\$ 220.00
165	Exploratory Excavation (as SDCW Approved)	CY	\$ 65.00
170	Imported Backfill (as SDCW Approved)	CY	\$ 24.00
175	Fitting Installation	LB	\$ 4.00
180	Fitting Insertion	LB	\$ 34.00
185	4" Retainer Ring/ Bolt on Flange	EA	\$ 75.00
190	6" Retainer Ring/ Bolt on Flange	EA	\$ 105.00
195	8" Retainer Ring/ Bolt on Flange	EA	\$ 119.00
200	10" Retainer Ring/ Bolt on Flange	EA	\$ 121.00
205	12" Retainer Ring/ Bolt on Flange	EA	\$ 145.00
210	14" Retainer Ring/ Bolt on Flange	EA	\$ 179.00
215	16" Retainer Ring/ Bolt on Flange	EA	\$ 285.00
220	4" Joint Harness	EA	\$ 96.00
225	6" Joint Harness	EA	\$ 130.00
230	8" Joint Harness	EA	\$ 155.00

235	10" Joint Harness	EA	\$ 160.00
240	12" Joint Harness	EA	\$ 200.00
245	14" Joint Harness	EA	\$ 375.00
250	16" Joint Harness	EA	\$ 455.00
255	Concrete Thrust Blocking (as SDCW Approved)	CY	\$ 355.00
260	Tapping Sleeve w/ Tap, 4" X 4"	EA	\$ 1,400.00
265	Tapping Sleeve w/ Tap, 6" X 4" - 6"	EA	\$ 1,600.00
270	Tapping Sleeve w/ Tap, 8" X 4" - 8"	EA	\$ 1,800.00
275	Tapping Sleeve w/ Tap, 10" X 4" - 10"	EA	\$ 2,100.00
280	Tapping Sleeve w/ Tap, 12" X 4" - 12"	EA	\$ 2,300.00
285	Tapping Sleeve w/Tap, 20" X 4" - 20"	EA	\$ 4,200.00
290	Non-Pressurized Connections, 2" line	EA	\$ 2,500.00
295	Non-Pressurized Connections, 4"-10" line	EA	\$ 3,675.00
300	Non-Pressurized Connections, 12"-20" line	EA	\$ 4,100.00
305	2" CL125 Gate Valves, cip.	EA	\$ 975.00
310	4" CL125 Gate Valves, cip.	EA	\$ 1,050.00
315	6" CL125 Gate Valves, cip.	EA	\$ 1,300.00
320	8" CL125 Gate Valves, cip.	EA	\$ 1,825.00
325	10" CL125 Gate Valves, cip.	EA	\$ 2,335.00
330	12" CL125 Gate Valves, cip.	EA	\$ 2,800.00
335	2" CL250 Gate Valves, cip.	EA	\$ 945.00
340	4" CL250 Gate Valves, cip.	EA	\$ 1,925.00
345	6" CL250 Gate Valves, cip.	EA	\$ 2,050.00
350	8" CL250 Gate Valves, cip.	EA	\$ 2,950.00
355	10" CL250 Gate Valves, cip.	EA	\$ 4,200.00
360	12" CL250 Gate Valves, cip.	EA	\$ 4,625.00
365	16" CL250 Gate Valves, cip.	EA	\$ 7,100.00
370	20" CL250 Gate Valves, cip.	EA	\$ 16,190.00
375	24" CL250 Gate Valves, cip.	EA	\$ 23,250.00
380	12" CL250 Butterfly Valves, cip.	EA	\$ 2,800.00
385	16" CL250 Butterfly Valves, cip.	EA	\$ 4,850.00
390	20" CL250 Butterfly Valves, cip.	EA	\$ 6,700.00
395	24" CL250 Butterfly Valves, cip.	EA	\$ 9,325.00
400	Fire Hydrant, 5' or less bury, cip.	EA	\$ 3,125.00
405	Fire Hydrant Extension, 6" or 12" length	EA	\$ 840.00
410	Fire Hydrant Extension, 18" or 24" length	EA	\$ 1,225.00
415	Fire Hydrant Remove & Relay	EA	\$ 800.00
420	Fire Hydrant Remove & Return	EA	\$ 575.00
425	2 1/4" Flush Hydrant	EA	\$ 1,565.00
430	2" Blow-Off Valve Installation	EA	\$ 1,340.00
435	2" Pressure Relief Valve, cip.	EA	\$ 6,830.00
440	3" Pressure Relief Valve, cip.	EA	\$ 7,075.00
445	4" Pressure Relief Valve, cip.	EA	\$ 8,195.00
450	6" Pressure Relief Valve, cip.	EA	\$ 10,950.00
455	8" Pressure Relief Valve, cip.	EA	\$ 15,525.00
460	12" Pressure Relief Valve, cip.	EA	\$ 29,725.00
465	Air & Vacuum Release Valve, 1"	EA	\$ 2,950.00
470	Air & Vacuum Release Valve, 2"	EA	\$ 4,140.00
475	Install City of Santa Fe Furnished Valve/Meter, 2" - 4"	EA	\$ 450.00
480	Install City of Santa Fe Furnished Valve/Meter, 6" - 8"	EA	\$ 550.00

485	Install City of Santa Fe Furnished Valve/Meter, 10"-12"	EA	\$ 750.00
490	Metered 2" Bypass – Vault Installation	EA	\$ 3,185.00
495	Valve Box, cip.	EA	\$ 825.00
500	Valve Box Replacement	EA	\$ 975.00
505	Valve Box Removal of Existing	EA	\$ 450.00
510	Valve Box Adjustment	EA	\$ 625.00
515	Valve Stem Extension, 0'-4' Depth	EA	\$ 250.00
520	Precast 4' Diameter Pit w/ Lid Min. 4' Depth	VF	\$ 4,000.00
525	Precast 6' Diameter Pit w/ Lid Min. 4' Depth	VF	\$ 5,150.00
530	Precast 8' Diameter Pit w/ Lid Min. 4' Depth	VF	\$ 6,200.00
535	Cast-In-Place RCP Vault w/ Lid	CY	\$ 12,500.00
540	Prefabricated Vault, 4' X 8'	EA	\$ 8,995.00
545	Native Seeding	ACRE	\$ 2,275.00
550	Bollards (pair)	EA	\$ 1,200.00
555	4" Steel Casing	LF	\$ 95.00
560	4" PVC Casing	LF	\$ 85.00
565	14" Steel Casing	LF	\$ 225.00
570	16" Steel Casing	LF	\$ 240.00
575	18" Steel Casing	LF	\$ 275.00
580	22" Steel Casing	LF	\$ 330.00
585	26" Steel Casing	LF	\$ 400.00
590	28" Steel Casing	LF	\$ 475.00
595	30" Steel Casing	LF	\$ 425.00
600	36" Steel Casing	LF	\$ 460.00
605	Bore & Jack Casing Pipe	DIA-IN- LF	\$ 28.00
610	Open Cut Casing Pipe Installation, < 6' Deep	LF	\$ 39.00
615	Asphalt Pavement Removal & Disposal, <2"	SY	\$ 65.00
620	Asphalt Pavement Removal & Disposal, 2"-6"	SY	\$ 65.00
625	Concrete Pavement Removal & Disposal, <2"	SY	\$ 95.00
630	Concrete Pavement Removal & Disposal, 2"-6"	SY	\$ 110.00
635	Concrete Curb and Gutter Removal & Disposal	LF	\$ 29.00
640	Concrete Sidewalk Removal & Disposal	SY	\$ 30.00
645	Replace City Street Pavement w/o Laydown Machine, Virgin Asphalt	SY	\$ 75.00
650	Replace City Street Pavement w/o Laydown Machine, Recycled Asphalt	SY	\$ 75.00
655	Replace City Street Pavement with Laydown Machine, Virgin Asphalt	SY	\$ 265.00
660	Replace City Street Pavement with Laydown Machine, Recycled Asphalt	SY	\$ 265.00
665	Replace City Street Pavement with Temporary Cold Mix	SY	\$ 105.00
670	Replace Non-City Street Pavement w/o Laydown Machine, Virgin Asphalt	SY	\$ 75.00
675	Replace Non-City Street Pavement w/o Laydown Machine, Recycled Asphalt	SY	\$ 75.00
680	Replace Non-City Street Pavement with Laydown Machine, Virgin Asphalt	SY	\$ 265.00
685	Replace Non-City Street Pavement with Laydown Machine, Recycled Asphalt	SY	\$ 265.00
690	Replace Non-City Street Pavement with Temporary Cold Mix	SY	\$ 105.00

695	Replace Concrete Pavement	SY	\$ 290.00
700	Replace Concrete Curb & Gutter	LF	\$ 45.00
705	Replace Concrete Sidewalk	SY	\$ 190.00
710	Replace Gravel Surface, 0"-2"	CY	\$ 55.00
715	Replace Gravel Surface, 2"-4"	CY	\$ 65.00
720	Base course/Gravel (crushed or landscape), 0'-3"	SY	\$ 35.00
725	Base course/Gravel (crushed or landscape), 3"-6"	SY	\$ 45.00
730	Service, 3/4" Single, New Main	EA	\$ 1,650.00
735	Service, 3/4" Double, New Main	EA	\$ 1,975.00
740	Service, 1", New Main	EA	\$ 1,825.00
745	Service, 1 1/2", New Main	EA	\$ 3,590.00
750	Service, 2", New Main	EA	\$ 3,970.00
755	Service, 3/4" Single, Existing Main	EA	\$ 1,650.00
760	Service, 3/4" Double, Existing Main	EA	\$ 1,975.00
765	Service, 1", Existing Main	EA	\$ 1,825.00
770	Service, 1 1/2", Existing Main	EA	\$ 3,590.00
775	Service, 2", Existing Main	EA	\$ 3,950.00
780	Service Replacement, 3/4"	EA	\$ 1,850.00
785	Service Replacement, Double, 3/4"	EA	\$ 2,100.00
790	Service Replacement, 1"	EA	\$ 1,950.00
795	Service Replacement, 1 1/2"	EA	\$ 3,750.00
800	Service Replacement, 2"	EA	\$ 4,125.00
805	Meter Box Relocation/Replacement, 3/4"	EA	\$ 1,200.00
810	Meter Box Relocation/Replacement, 1"	EA	\$ 1,400.00
815	Meter Box Relocation/Replacement, 1-1/2"	EA	\$ 1,600.00
820	Meter Box Relocation/Replacement, 2"	EA	\$ 1,600.00
825	Service Transfer, 3/4"	EA	\$ 625.00
830	Service Transfer, 1"	EA	\$ 725.00
835	Service Transfer, 1 1/2"	EA	\$ 825.00
840	Service Transfer at Main, 2"	EA	\$ 850.00
845	Retire Existing Service at Main, 3/4"- 2"	EA	\$ 725.00
850	Retire Existing Meter Box & Setting	EA	\$ 525.00
855	Adjust Meter Box To Grade	EA	\$ 450.00
860	Service Saddle, 3/4" Tap, 4"-12" Main	EA	\$ 650.00
865	Service Saddle, 1" Tap, 4"-12" Main	EA	\$ 775.00
870	Service Saddle, 1 1/2" Tap, 4"-12" Main	EA	\$ 950.00
875	Service Saddle, 2" Tap, 4"-12" Main	EA	\$ 1,075.00
880	Service Tubing, 3/4"	LF	\$ 33.50
885	Service Tubing, 1"	LF	\$ 36.25
890	Service Tubing, 1 1/2"	LF	\$ 44.00
895	Service Tubing, 2"	LF	\$ 53.00
900	Air and Vacuum Valve (individual)	EA	\$ 2,350.00
905	Air and Vacuum Valves	GROUP OF 10	\$ 21,250.00
910	Automatic Flushing Valve	EA	\$ 6,235.00
915	Materials Mark-Up Over Invoice	%	\$ 20,000.00
920	Traffic Control Mark-Up Over Invoice	%	\$ 8,000.00
925	Street-Cut Permits	Allow.	\$ 375.00
930	Project Signs	EA	\$ 450.00
935	Archeological Required Delay (after 2 hrs.)	HR	\$ 375.00

940	Archeological Required Mob/Demob	LS	\$	450.00
EMERGENCY REPAIR				
9000	Supervisor's Truck with tools	HR	\$	35.00
9100	Backhoe/Skid Steer	HR	\$	58.00
9200	Compressor with tools	HR	\$	55.00
9300	Dump Truck	HR	\$	60.00
9400	Pump	HR	\$	30.00
9500	Laborer	HR	\$	43.00
9600	Pipe Fitter	HR	\$	45.00
9700	Equipment Operator	HR	\$	58.00
9800	Foreman	HR	\$	70.00
9900	Rental Items Mark-Up Over Invoice (multiply \$5,000 x your % for Item Price)	%	\$	5,000.00
9950	Materials Mark-Up Over Invoice (multiply \$20,000 x your % for Item Price)	%	\$	20,000.00

Tax Rate:

8.1875%



ADDITIONAL REMARKS SCHEDULE

AGENCY HUB International Insurance Services (SOW)		License # 0757776	NAMED INSURED Sub Surface Contracting Inc 27A Paseo De River St Santa Fe, NM 87507
POLICY NUMBER SEE PAGE 1			
CARRIER SEE PAGE 1	NAIC CODE SEE P 1	EFFECTIVE DATE: SEE PAGE 1	

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: ACORD 25 FORM TITLE: Certificate of Liability Insurance

Description of Operations/Locations/Vehicles:
Where required by written contract or agreement, the City of Santa Fe, Wastewater Division, City Representative, other parties reasonably requested in writing by the City of Santa Fe, and their officials, members, officers, employees, and agents are included as additional insured with respects to general liability, on a primary & non-contributory basis.

ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - AUTOMATIC STATUS WHEN REQUIRED IN CONSTRUCTION AGREEMENT WITH YOU

CG-2033R(6-13)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

1. Section II - Who Is An Insured is amended to include as an additional insured:
 - a. Any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy; and
 - b. Any other person or organization you are required to add as an additional insured under the contract or agreement described in paragraph a above.

Such person or organization is an additional insured only with respect to liability for *bodily injury, property damage or personal and advertising injury* caused, in whole or in part, by:

- a. Your acts or omissions; or
- b. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured.

However the insurance afforded to such additional insured:

- a. Only applies to the extent permitted by law; and
- b. Will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

A person's or organization's status as an additional insured under this endorsement ends when your operations for that additional insured are completed.

2. With respect to the insurance afforded these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- a. *Bodily injury, property damage or personal and advertising injury* arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

- (1) The preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
- (2) Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the *occurrence* which caused the *bodily injury or property damage* involved the rendering of or the failure to render any professional architectural, engineering or surveying services.

- b. *Bodily injury or property damage* occurring after:

- (1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
- (2) That portion of *your work* out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

3. With respect to the insurance afforded to these additional insureds, the following is added to Section III - Limits Of Insurance:

The most we will pay on behalf of the additional insured is the amount of insurance:

- a. Required by the contract or agreement you have entered into with the additional insured; or
- b. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

**ADDITIONAL INSURED - COMPLETED OPERATIONS AUTOMATIC STATUS
WHEN REQUIRED IN CONSTRUCTION AGREEMENT WITH YOU (OWNERS,
LESSEES OR CONTRACTORS)**

CG-7277(6-13)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS-COMPLETED OPERATIONS LIABILITY COV-
ERAGE FORM

1. Section II - Who Is An Insured is amended to include as an additional insured:
 - a. Any person(s) or organization(s) for whom you have performed operations if you and such person(s) or organization(s) have agreed in writing in a contract or agreement that such person(s) or organization(s) be added as additional insured on your policy for completed operations; and
 - b. Any other person(s) or organization(s) you are required to add as an additional insured under the contract or agreement described in paragraph a above.

Such person or organization is an additional insured only with respect to liability included in the *products-completed operations hazard for bodily injury or property damage* caused, in whole or in part, by *your work* performed for that additional insured at the location designated and described in the contract or agreement.

However:

- a. The insurance afforded to such additional insured only applies to the extent permitted by law; and
 - b. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.
2. This insurance does not apply to:
 - a. *Bodily injury or property damage* which occurs prior to the execution of the contract or agreement described in item 1; or

- b. *Bodily injury or property damage* that occurs after the time period during which the contract or agreement described in item 1 requires you to add such person or organization onto your policy as an additional insured for completed operations; or
- c. *Bodily injury or property damage* arising out of the rendering of, or the failure to render, any professional, architectural, engineering or surveying services, including:
 - (1) The preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - (2) Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the *occurrence* which caused the *bodily injury or property damage* involved the rendering of or the failure to render any professional services by or for you.

3. With respect to the insurance afforded to these additional insureds, the following is added to Section III - Limits Of Insurance:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

- a. Required by the contract or agreement; or
 - b. Available under the applicable Limits of Insurance shown in the Declarations;
- whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

PRIMARY AND NONCONTRIBUTORY - OTHER INSURANCE CONDITION

CG-2001R(4-13)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS-COMPLETED OPERATIONS LIABILITY COVERAGE FORM

RESIDENTIAL CARE FACILITY LIABILITY COVERAGE PART

The following is added to the Other Insurance Condition and supersedes any provision to the contrary:

Primary And Noncontributory Insurance

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

- (1) The additional insured is a Named Insured under such other insurance; and
- (2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

**CITY OF SANTA FE
AMENDMENT No. 1 TO
PRICE AGREEMENT # 21-0378**

AMENDMENT No. 1 (the "Amendment") to the CITY OF SANTA FE PRICE AGREEMENT, July 28, 2021 (the "Agreement"), between the City of Santa Fe (the "City") and Sub Surface Contracting Inc. (the "Contractor"). The date of this Amendment shall be the date when it is executed by the City.

RECITALS

A. Under the terms of the Agreement, Contractor has agreed to provide Construction Services for City Wide Utility Construction & Repair for the City of Santa Fe.

B. Pursuant to Article 14 of the Agreement, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the City and the Contractor agree as follows:

1. COMPENSATION.

Article 2, paragraph A of the Agreement is amended to remove the per Fiscal Year Cap, so that Article 2, paragraph A reads in its entirety as follows:

2. Compensation.

A. The City shall pay to the Contractor in full payment for services satisfactorily performed BASED UPON THE ATTACHED PRICE SHEETS, such compensation not to exceed one million dollars (\$1,000,000) excluding gross receipts tax for a total of 4 years. The New Mexico gross receipts tax levied on the amounts payable under this Agreement totaling eighty-four thousand three hundred seventy-five dollars (\$84,375) shall be paid by the City to the Contractor.

The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed one million eighty-four thousand three hundred and seventy-six dollars (\$1,084,376). This amount is a maximum and not a guarantee that the work assigned 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 City when the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided.

2. AGREEMENT IN FULL FORCE.

Except as specifically provided in this Amendment, the Agreement remains and shall remain in full force and effect, in accordance with its terms.

IN WITNESS WHEREOF, the parties have executed this Amendment No.1 to the City of Santa Fe Price Agreement as of the dates set forth below.

CITY OF SANTA FE:

CONTRACTOR:
SUB SURFACE CONTRACTING.



NEAC KEIPER

ALAN WEBBER, MAYOR



NAME & TITLE

Date: May 23, 2022

Date: 9-14-22

CRS# 02104256000
Registration #4691

ATTEST:



KRISTINE BUSTOS MIHELIC, CITY CLERK 
GB MTG 05/11/2022

CITY ATTORNEY'S OFFICE:



Marcos Martinez (Apr 11, 2022 08:11 MDT)

Apr 11, 2022

SENIOR ASSISTANT CITY ATTORNEY

APPROVED:



Alexis Lotero (May 22, 2022 21:51 MDT)

~~MARY MCCOY~~, FINANCE DIRECTOR
5050386.520200


AH



(Rev. 4/20)

City of Santa Fe Central Purchasing Office

Price Agreement

Awarded Contractor(s):

- 1) Sub Surface Contracting, Inc.
- 2) A.A.C. Construction, LLC.

Price Agreement Number:**Payment Terms: Net 30****Ship To:****All City of Santa Fe Departments and Political
Subdivisions allowed by Law****F.O.B.: Destination****Invoice To:****City of Santa Fe
Accounts Payable
PO Box 909
Santa Fe, NM 87504-0909****Term: July 1, 2021 to June 30, 2025****Delivery: As requested by Department****Title: City Wide Water Utility Construction & Repair Price Agreement, CIP # 3057**

This Price Agreement is to be awarded pursuant to the respective Invitation to Bid (ITB) 21/37/B and shall become a part thereof.

This Price Agreement is made subject to the "terms and conditions" as indicated on subsequent price agreement articles and construction contract pages.

Instructions to Supplier:

- By commencing under this Price Agreement (Agreement), the Contractor agrees to all terms and conditions within and attached and agrees that if there is a conflict with the Contractors terms, the City of Santa Fe's terms and conditions shall govern. In cases of discrepancy between the work order, purchase order and this Agreement, the terms and conditions of this Agreement shall prevail.
- Do not fill orders for goods/services not listed in this Agreement.
- Orders against this Agreement must be placed with as a separate contract work order with a purchase order.
- Do not fill orders without a valid quote, purchase order work order.
- The purchase order release number must be on all invoices.
- The City of Santa Fe (City) will not be liable for purchases made by unauthorized individuals.

Please forward all original invoice(s) to the Accounts Payable Department at PO Box 909, Santa Fe, NM 87504-0909**Instructions to Requesting Department:**

- Do not place orders for goods/services not listed in the Procurement Contract.
- To place an order against this Procurement Contract, issue a Purchase Order Release before placing the order with the Supplier.

**This Price Agreement is made subject to the “terms and conditions” as indicated on subsequent pages.
Terms and Conditions**

General: When the City or the Requesting Department issues a contract or a purchase order release, a binding contract is created.

Variation in Quantity: No variation in the quantity of any item called for by this order will be accepted unless such variation has been caused by conditions of loading, shipping, packing or allowances in manufacturing process and then only to the extent, if any, specified in this order.

Assignment:

- a. Neither the order, nor any interest therein, nor any claim thereunder, shall be assigned or transferred by the Contractor, except as set forth in Subparagraph 3b or as expressly authorized in writing by the Chief Procurement Officer or his/her designee. No such assignment or transfer shall relieve the Contractor from the obligations and liabilities under this order.
- b. Contractor agrees that any and all claims for overcharge resulting from antitrust violations which are borne by the City as to goods, services, and materials purchased in connection with this agreement are hereby assigned to the City.

City Furnished Property: City furnished property shall be returned to the City upon request in the same condition as received except for ordinary wear, tear and modifications ordered hereunder.

Inspection: Final inspection and acceptance will be made at the destination. Supplies rejected at the destination for nonconformance with specifications shall be removed at the Contractor's risk and expense, promptly after notice of rejection.

Inspection of Plant: The Chief Procurement Officer or his/her designee may inspect, at any reasonable time, the part of the Contractor's, or any subcontractor's plant or place of business, which is related to the performance of this contract.

Commercial Warranty: The Contractor agrees that the supplies or services furnished under this order shall be covered by the most favorable commercial warranties the Contractor gives for such to any customer for such supplies or services. The rights and remedies provided herein shall extend to the City and are in addition to and do not limit any rights afforded to the City by any other clause of this order. **Contractor agrees not to disclaim warranties of fitness for a particular purpose of merchantability.**

Taxes: The unit price shall exclude all state taxes.

Default: The City reserves the right to cancel all or any part of this order without cost to the City, if the Contractor fails to meet the provisions of this order and, except as otherwise provided herein, to hold the Contractor liable for any excess cost occasioned by the City due to the Contractor's default. The Contractor shall not be liable for any excess costs if failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Contractor, such causes include but are not restricted to, acts of God or the public enemy, acts of the State or Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of subcontractors due to any of the above, unless the City shall determine that the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery scheduled. The rights of

the City provided in this paragraph shall not be exclusive and are in addition to any other rights now being provided by law or under this order.

Non-Collusion: In signing this bid the Contractor certifies he/she has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with this offer submitted to the Chief Procurement Officer or his/her designee.

Nondiscrimination: Contractor doing business with the City must be in compliance with the Federal Civil Rights Act of 1964 and Title VII of the Act (Rev. 1979) and the Americans with Disabilities Act of 1990 (Public Law 101-336).

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

Items: All bid items are to be NEW and of most current production, unless otherwise specified.

Payment for Purchases: Except as otherwise agreed to: late payment charges may be assessed against the Requesting Department in the amount and under the conditions set forth in Section 13-1-158 NMSA 1978.

Workers' Compensation: The Contractor agrees to comply with state laws and rules pertaining to Workers' Compensation benefits for its employees. If the Contractor fails to comply with Workers' Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the contracting agency.

Contractor Personnel: Personnel proposed in the Contractor's written bid to the Procuring Agency are considered material to any work performed under this Price Agreement. Once a Purchase Order or contract has been executed, no changes of personnel will be made by the Contractor without prior written consent of the Requesting Department. Replacement of any Contractor personnel, if approved, shall be with personnel of equal ability, experience, and qualifications. The Contractor will be responsible for any expenses incurred in familiarizing the replacement personnel to insure their being productive to the project immediately upon receiving assignments. Approval of replacement personnel shall not be unreasonably withheld. The Requesting Department shall retain the right to request the removal of any of the Contractor's personnel at any time.

Subcontracting: The Contractor shall not subcontract any portion of the Price Agreement without the prior written approval of the Requesting Department. No such subcontracting shall relieve the Contractor from its obligations and liabilities under this Price Agreement, nor shall any subcontracting obligate payment from the City.

Records and Audit: The Contractor shall maintain detailed time and expenditure records that indicate the date, time, nature, and cost of services rendered during this Price Agreement's term and effect, and retain them for a period of three (3) years from the date of final payment under this Price Agreement. The records shall be subject to inspection by the City. The City shall have the right to audit billings, both before and after payment. Payment for services under this Price Agreement shall not foreclose the right of the City to recover excessive or illegal payments.

Subcontracts: The foregoing requirements for Contractor Personnel, Subcontracting, and Audit shall be inserted into all subcontracts from the prime contractor to the subcontractor.

ARTICLES

Article I – Statement of Work

Under the terms and conditions of this Price Agreement all commissions, institutions, political subdivisions and local public bodies allowed by law may issue orders for items and/or services described herein. The terms and conditions of this Price Agreement shall form a part of each order issued hereunder.

The items and/or services to be ordered shall be as listed under Article IX - Price Schedule. All orders issued hereunder will bear both an order number and this Price Agreement number. It is understood that no guarantee or warranty is made or implied by the City's Chief Procurement Officer, his/her designee or the Requesting Department that any order for any definite quantity will be issued under this Price Agreement. The Contractor is required to accept the order and furnish the items and/or services in accordance with the articles contained hereunder for the quantity of each order.

Article II – Term

The term of this Price Agreement, for issuance of orders, shall be as indicated in the specifications.

Article III – Specifications

Items and/or services furnished hereunder shall conform to the requirements of specifications and/or drawings applicable to items listed under Article IX-Price Schedule. Orders issued against this schedule will show the applicable Price Agreement item(s), number(s), and price(s); however they may not describe the item(s) fully.

Article IV – Shipping and Billing Instructions

Delivery shall be as called for by the Requesting Department. Shipment shall be made only against specific orders which the Requesting Department may place with the Contractor during the term. Contractor shall ship in accordance with the following instructions:

a. The Contractor shall enclose a packing list with each shipment listing the City's purchasing document number and the Contractor's name, Requesting Department's contact name and location shall be shown on each packing and delivery ticket, package, bill of lading, the commercial parts number (if any) for each item and other correspondence in connection with the shipments. The Requesting Department's count will be accepted by the Contractor as final and conclusive on all shipments not accompanied by a packing ticket.

b. The Contractor's invoice shall be submitted duly certified and shall contain the following information: order number, description of supplies or services, quantities, unit price and extended totals. Separate invoices shall be rendered for each and every complete shipment.

c. Invoices must be submitted to the City's **Accounts Payable** and NOT the Central Purchasing Office.

If Contractor is unable to meet stated delivery the City's Chief Procurement Officer or his/her designee must be notified.

Article V – Termination

The City may terminate this Agreement for convenience or cause. The Contractor may only terminate this Agreement based upon the City's uncured, material breach of this Agreement. Contractor shall give the City written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the City's material breaches of this Agreement upon which the termination is based and (ii) state what the City must do to cure such material breaches. Contractor's notice of termination shall only be effective (i) if the City does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the City does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach.

Termination of this Contract, however, shall not affect any outstanding orders. This provision is not exclusive and shall not waive other rights and remedies afforded either party in the event of breach of contract or default. In such instances the contract may be cancelled effective immediately.

Article VI – Amendment

This Price Agreement may be amended by mutual agreement of the City’s Chief procurement Officer or his/her designee and the Contractor upon written notice by either party to the other. An amendment to this Price Agreement shall not affect any outstanding orders issued prior to the effective date of the amendment as mutually agreed upon, and as published by the City’s Chief procurement Officer or his/her designee. Amendments affecting price adjustments and/or the extension of a price agreement expiration date are not allowed unless specifically provided in the bid and price agreement specifications.

Article VII – Indemnity Clause

Contractor shall indemnify and hold harmless the City, its officers and employees, against liability, claims, damages, losses or expenses arising out of bodily injury to persons or damage to properties caused by, or resulting from Contractor’s, and/or its employees, own negligent act or omission while Contractor, and/or its employees, perform or fails to perform its obligations and duties under the Terms and Conditions of this agreement. This hold harmless and indemnification clause is subject to the immunities, provisions, and limitations of the Tort Claims Act (Section 41-4-1, et seq., N.M.S.A. 1978 comp. and Section 57-7-1 N.M.S.A. 1878 comp. and any amendments thereto.

It is specifically agreed between the parties executing this agreement that it is not intended by any of the provisions of any part of the agreement to create in the public or any member thereof a third party beneficiary or to authorize anyone not a party to the agreement to maintain a suit(s) for wrongful death(s), bodily and/ or personal injury(s) to person(s), damage(s) to property(ies) and/or any other claim(s) whatsoever pursuant to the provisions of this agreement.

Contractor shall provide all insurance necessary to employees on the work site, including but not limited to Worker’s Compensation.

Article VIII – Issuance of Orders

Only written signed orders are valid under this Price Agreement.

Article IX – Packing (if applicable)

Packing shall be in conformance with standard commercial practices.

Article X – Price Schedule

Prices as listed in the item(s) price schedule hereto attached are firm.

Article XI – Wage Rates

Pursuant to the requirements of any Contract entered into that will have a Work Order (WO) in excess of sixty thousand dollars (\$60,000) for construction is subject to the minimum wage rate determination issued by the New Mexico Department of Work Force Solutions for this project/WO.

CITY OF SANTA FE

**ON CALL CITY-WIDE WATER UTILITY
CONSTRUCTION & REPAIR
PRICE AGREEMENT, CIP # 3057**

THIS AGREEMENT is made and entered into by and between the **CITY OF SANTA FE, NEW MEXICO**, hereinafter referred to as the “City,” and **SUB SURFACE CONTRACTING, INC. AND A.A.C. CONSTRUCTION**, hereinafter referred to as the “Contractor” and is effective as of the date set forth below upon which it is executed by the Parties.

IT IS AGREED BETWEEN THE PARTIES:

1. Scope of Work.

A. The Contractor shall perform the following work:

- 1) The Contractor shall perform all the work required by Water Division, as required, on each Work Order (W/O) in the Contract Documents (attached) for City-Wide Water Construction & Repair Contract. The work consists of, but is not limited to furnishing all equipment, labor and materials for the construction and repair of water mains, valves, hydrants, metered water service lines and settings, pressure reducing valves, vaults, and other incidental work such as pavement removal and replacement, traffic control all as required to extend, replace or repair water distribution, water storage, and water supply infrastructure, in accordance with the drawings, specifications, W/O, attached price sheets and other Contract Documents. All water piping shall be new, poly-wrapped ductile iron, unless otherwise specified.
- 2) The Contractor shall be responsible for verifications of all measurements and dimensions for bidding on each subsequent Work Order.
- 3) The Contractor shall provide and keep at the work site, a complete “as-built” record set of drawings that shall be corrected daily and shall show every change from the original approved drawings and specifications. These changes shall be forwarded to City periodically. The drawings shall reflect exact and actual “as-built” conditions of construction, installation, and erection as it progresses. Where drawings are not adequate to show “as-built” conditions, Contractor shall prepare sketches which delineate the necessary “as-built” information. City shall furnish two (2) sets of all paper “blue-line” print “approved” drawings for use in accomplishing specified mark-up. Final “as-built” drawings shall be delivered to City by Contractor upon completion of the work.
- 4) The Contractor shall be responsible for maintaining traffic control at the site in conformance with the Manual on Uniform Traffic Control Devices.
- 5) The Contractor shall be responsible for all permits, fees, and State and City inspections associated with the construction.

- 6) Incorporation by Reference. All exhibits, addenda, schedules of ITB 21/37/B attached hereto and all certificates, work order documents, drawings, as-builts and other instruments contemplated to be delivered hereunder are hereby expressly made a part of this Agreement as fully as though set forth herein, and all references to this Agreement herein or in any of such writings shall be deemed to refer to and include all of such writings. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof. If there is any conflict between such exhibits or addenda and the terms of this Agreement, such exhibits or addenda shall control.

2. Compensation.

A. The City shall pay to the Contractor in full payment for services satisfactorily performed **BASED UPON THE ATTACHED PRICE SHEETS**, such compensation not to exceed two hundred and fifty thousand dollars (\$250,000) excluding gross receipts tax per Fiscal Year for a total of four (4) years. The New Mexico gross receipts tax levied on the amounts payable under this Agreement totaling twenty one thousand and ninety four dollars (\$21,094) shall be paid by the City to the Contractor per Fiscal Year. **The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed one million eighty four thousand three hundred and seventy six dollars (\$1,084,376.). This amount is a maximum and not a guarantee that the work assigned 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 City when the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided.**

B. Payment is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work, and to approval by the City. All invoices **MUST BE** received by the City no later than thirty (30) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date **WILL NOT BE PAID.**

C. Payment in future fiscal years is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work, and to approval by the City. All invoices **MUST BE** received by the City no later than fifteen (15) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date **WILL NOT BE PAID.)**

E. The Contractor must submit a detailed statement accounting for all services performed and expenses incurred. If the City finds that the services are not acceptable, within thirty days after the date of receipt of written notice from the Contractor that payment is requested, it shall provide the Contractor a letter of exception explaining the defect or objection to the services, and outlining steps the Contractor may take to provide remedial action. Upon certification by the City that the services have been received and accepted, payment shall be tendered to the Contractor within thirty days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is

postmarked. However, the City shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

3. Term.

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE CITY. This Agreement shall terminate on **June 30, 2025** unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations). In accordance with Section 13-1-150 NMSA 1978, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

4. Termination.

A. Termination. This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. Except as otherwise allowed or provided under this Agreement, the City's sole liability upon such termination shall be to pay for acceptable work performed prior to the Contractor's receipt of the notice of termination, if the City is the terminating party, or the Contractor's sending of the notice of termination, if the Contractor is the terminating party; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor if the Contractor becomes unable to perform the services contracted for, as determined by the City or if, during the term of this Agreement, the Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of City funds or due to the Appropriations paragraph herein. *THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE City's OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.*

B. Termination Management. Immediately upon receipt by either the City or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the City; 2) comply with all directives issued by the City in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the City shall direct for the protection, preservation, retention or transfer of all property titled to the City and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the Contractor with contract funds shall become property of the City upon termination and shall be submitted to the City as soon as practicable.

5. Appropriations.

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the City Council for the performance of this Agreement. If sufficient appropriations and authorization are not made by the City Council, this Agreement shall terminate immediately upon written notice being given by the City to the Contractor. The City's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the City proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

6. Status of Contractor.

The Contractor and its agents and employees are independent contractors performing professional services for the City and are not employees of the City. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of City vehicles, or any other benefits afforded to employees of the City as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the City unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

7. Construction Contract Performance and Payment Bond.

A. When a construction contract is awarded in excess of twenty-five thousand dollars (\$25,000), the following bonds or security shall be delivered to the City and shall become binding on the parties upon the execution of the contract. If the Contractor fails to deliver the required performance and payment bonds, the Contractor's bid shall be rejected, its bid security shall be enforced to the extent of actual damages. Award of the contract shall be made pursuant to the Procurement Code in the following manner:

- 1) a performance bond satisfactory to the City, executed by a surety company authorized to do business in this state and said surety to be approved in federal circular 570 as published by the United States treasury department or the state board of finance or the local governing authority, in an amount equal to one hundred percent of the price specified in the contract; and
- 2) a payment bond satisfactory to the City, executed by a surety company authorized to do business in this state and said surety to be approved in federal circular 570 as published by the United States treasury department or the state board of finance or the local governing authority, in an amount equal to one hundred percent of the price specified in the contract, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract.

B. A subcontractor shall provide a performance and payment bond on a public works building project if the subcontractor's contract for work to be performed on a project is one hundred twenty-five thousand dollars (\$125,000) or more.

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 prior written approval of the City.

9. Subcontracting.

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the City. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the City.

10. Release.

Final payment of the amounts due under this Agreement shall operate as a release of the City, its officers and employees from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

11. 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 City.

12. Product of Service – Copyright.

All materials developed or acquired by the Contractor under this Agreement shall become the property of the City and shall be delivered to the City no later than the termination date of this Agreement. Nothing developed or produced, in whole or in part, by the Contractor under this Agreement shall be the subject of an application for copyright or other claim of ownership by or on behalf of the Contractor.

13. Conflict of Interest; Governmental Conduct Act.

A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978.

C. Contractor's representations and warranties in Paragraphs A and B of this Article 12 are material representations of fact upon which the City relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the City if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the City and notwithstanding anything in the Agreement to the contrary, the City may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this section.

14. Amendment.

A. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.

B. If the City proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in Article 4 herein, or to agree to the reduced funding.

15. Change Orders.

Changes. The Contractor may only make changes or revisions within the Scope of Work as defined by Article 1 and/or Exhibit 1 after receipt of written approval by the City Manager or his/her designee. Such change may only be made to Tasks or Sub-Task as defined in the Scope of Work. Under no circumstance shall such change affect the:

1. Deliverable requirements, as outlined in the Scope of Work;
2. Due date of any Deliverable, as outlined in the Scope of Work;
3. Compensation of any Deliverable, as outlined in the Scope of Work;
4. Agreement compensation, as outlined in Article 2; or
5. Agreement termination, as outlined in Article 4.

Change Request Process. In the event that circumstances warrant a change to accomplish the Scope of Work as described above, a Change Request shall be submitted that meets the following criteria:

The Project Manager shall draft a written Change Request for review and approval by the City Manager to include:

1. the name of the person requesting the change;
2. a summary of the required change;
3. the start date for the change;
4. the reason and necessity for change;
5. the elements to be altered; and
6. the impact of the change.

The City Manager shall provide a written decision on the Change Request to the Contractor within a maximum of ten (10) Business Days of receipt of the Change Request. All decisions made by the City Manager are final. Change Requests, once approved, become a part of the Agreement and become binding as a part of the original Agreement.

16. Merger.

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

17. Entire Agreement.

This Agreement, together with any other documents incorporated herein by reference and all related Exhibits and Schedules constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Agreement, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to the subject matter. In the event of any inconsistency between the statements in the body of this Agreement, and the related Exhibits and Schedules, the statements in the body of this Agreement shall control.

18. Penalties for violation of law.

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

19. Equal Opportunity Compliance.

The Contractor agrees to abide by all federal and state laws and rules and regulations, and Santa Fe City Code, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

20. Applicable Law.

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with Section 38-3-1 (G) NMSA 1978. By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

21. Workers Compensation.

The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the City.

22. Professional Liability Insurance.

Contractor shall maintain professional liability insurance throughout the term of this Agreement providing a minimum coverage in the amount required under the New Mexico Tort Claims Act. The Contractor shall furnish the City with proof of insurance of Contractor's compliance with the provisions of this section as a condition prior to performing services under this Agreement.

23. Other Insurance

If the services contemplated under this Agreement will be performed on or in City facilities or property, Contractor shall maintain in force during the entire term of this Agreement, the following insurance coverage(s), naming the City as additional insured.

A. Commercial General Liability insurance shall be written on an occurrence basis and be as broad as ISO Form CG 00 01 with limits not less than \$2,000,000 per occurrence and \$2,000,000 in the aggregate for claims against bodily injury, personal and advertising injury, and property damage. Said policy shall include broad form Contractual Liability coverage and be endorsed to name the City of Santa Fe their officials, officers, employees, and agents as additional insureds.

B. Business Automobile Liability insurance for all owned, non-owned automobiles, with a combined single limit not less than \$1,000,000 per accident.

C. Broader Coverage and Limits. The insurance requirements under this Agreement shall be the greater of (1) the minimum coverage and limits specified in this Agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the Named Insured. It is agreed that these insurance requirements shall not in any way act to reduce coverage that is broader or that includes higher limits than the minimums required herein. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of Contractor hereunder.

D. Contractor shall maintain the above insurance for the term of this Agreement and name the City as an additional insured and provide for 30 days cancellation notice on any Certificate of Insurance form furnished by Contractor. Such certificate shall also specifically state the coverage provided under the policy is primary over any other valid and collectible insurance and provide a waiver of subrogation.

24. Records and Financial Audit.

The Contractor shall maintain detailed time and expenditure records that indicate the date; time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the City. The City shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the City to recover excessive or illegal payments

25. Indemnification.

The Contractor shall defend, indemnify and hold harmless the City from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the City.

26. New Mexico Tort Claims Act

Any liability incurred by the City of Santa Fe in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. seq. NMSA 1978, as amended. The City and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

27. Invalid Term or Condition.

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

28. Enforcement of Agreement.

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

29. 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 City:
Public Utilities Department
Water Division
801 W. San Mateo
Santa Fe, NM 87504

To the Contractor:
Sub Surface Contracting Inc.
27A Paseo de River
Santa Fe, NM 87507

30. Authority.

If Contractor is other than a natural person, the individual(s) signing this Agreement on behalf of Contractor represents and warrants that he or she has the power and authority to bind Contractor, and that no further action, resolution, or approval from Contractor is necessary to enter into a binding contract.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date of the signature by the required approval authorities below.

CITY OF SANTA FE:

AW
ALAN WEBBER, MAYOR

DATE: Aug 4, 2021

CONTRACTOR:

SUB SURFACE CONTRACTING INC.

MS
NAME

GENERAL MANAGER
TITLE

DATE: 6-17-2021

CRS# 02104256000
Registration # 46991

ATTEST:

Kristine Mihelcic
Kristine Mihelcic (Aug 4, 2021 14:46 MDT)

KRISTINE BUSTOS MIHELICIC, CITY CLERK *JB*
GB MTG 07/28/2021

CITY ATTORNEY'S OFFICE:

Marcos Martinez
Marcos Martinez (Jun 16, 2021 16:07 MDT)

SENIOR ASSISTANT CITY ATTORNEY

APPROVED FINANCES:

Mary McCoy
MARY MCCOY, FINANCE DIRECTOR

5050395.572970 *AJH*
Org. Name/Org# AJH

WTR1950536

GB Subsurface CW Contract 3202777 Amend 2 Full Packet For Purchasing Budget FD Sig 11Nov2024

Interim Agreement Report

2024-11-12

Created:	2024-11-12
By:	JAMES EDWARDS (jwedwards@santafenm.gov)
Status:	Out for Signature
Transaction ID:	CBJCHCAABAApjATGnLxq3NOmSG08YbSOyQhD_Zc_zuk


Agreement History

Agreement history is the list of the events that have impacted the status of the agreement prior to the final signature. A final audit report will be generated when the agreement is complete.

"GB Subsurface CW Contract 3202777 Amend 2 Full Packet For Purchasing Budget FD Sig 11Nov2024" History

 Document created by JAMES EDWARDS (jwedwards@santafenm.gov)

2024-11-12 - 2:56:51 PM GMT- IP address: 97.182.23.177

 Document emailed to ajhopkins@santafenm.gov ajhopkins@santafenm.gov (ajhopkins@santafenm.gov) for signature

2024-11-12 - 2:59:45 PM GMT



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GB Subsurface CW Contract 3202777 Amend 2 Full Packet For Purchasing Budget FD Sig 11Nov2024

Final Audit Report


2024-11-12

Created:	2024-11-12
By:	Kristy Miera (kamiera@santafenm.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAhzi69-TfuhrCTZ5ZMtKTWKEN9Z-a9J00

"GB Subsurface CW Contract 3202777 Amend 2 Full Packet For Purchasing Budget FD Sig 11Nov2024" History

 Document created by Kristy Miera (kamiera@santafenm.gov)

2024-11-12 - 5:31:21 PM GMT- IP address: 63.232.20.2

 Document sent to ALEXIS LOTERO (aclotero@santafenm.gov) and ajhopkins@santafenm.gov
ajhopkins@santafenm.gov (ajhopkins@santafenm.gov) for signature. One of them to sign

2024-11-12 - 5:32:28 PM GMT

 Email viewed by ALEXIS LOTERO (aclotero@santafenm.gov)

2024-11-12 - 5:41:58 PM GMT- IP address: 104.47.64.254

 Document e-signed by ALEXIS LOTERO (aclotero@santafenm.gov)

Signature Date: 2024-11-12 - 5:42:33 PM GMT - Time Source: server- IP address: 63.232.20.2

 Agreement completed.

2024-11-12 - 5:42:33 PM GMT

