



The Purchasing Memo

Date: February 21, 2025

To: Governing Body

Via: Regina Wheeler, Public Works Department Director *RW*
RW (Feb 24, 2025 09:46 MST)

From: Romella Glorioso-Moss, Complete Streets Capital Projects Manager

Subject: Name Change from WH Pacific to NV5 Inc.

ACTION:

Request for Approval of Amendment #1 to the Professional Services Agreement #24-0505 with WH Pacific Inc. to Reflect Company’s Name Change to NV5 inc. (Romella Glorioso-Moss, Complete Streets Capital Projects Manager, rsglorioso-moss@santafenm.gov)

CONTRACT NUMBER:

The FY25 Munis contract number is 3250010.

BACKGROUND AND SUMMARY:

WH Pacific, Inc’s. original Professional Services Agreement Item#24-0505 for on-call engineering services, including construction management, was approved by the Governing Body on August 14, 2024. On December 28, 2024, WH Pacific, Inc. merged with NV5, Inc. and the merged company name is NV5.

The professional engineers from WH Pacific who are currently working on two state-funded roadway projects will remain the design engineers for these projects. Hence, there is no huge impact to the quality of work, budget, and project completion due to this merger and name change.

PRIOR APPROVALS AND SUPPORTING INFORMATION:

FUNDING SOURCE:

Fund Name/Number: Various

Munis Org Name/Number: Various

Munis Object Name/Number: Various

Budget Officer / Designee: _____ **Date:** _____

Budget Officer Comment/Exceptions: _____

PROCUREMENT METHOD:

The procurement method used was NMSA 1978, Section 13-1-111, RFP #24001.

Chief Procurement Officer (CPO) / Designee: _____ **Date:** _____

CPO Comment/Exceptions: _____

ASSOCIATED APPROVALS: _____

IT Components included? Yes | No

Approval: _____ Title: _____ Date: _____

Comment/Exceptions: _____

Vehicles included? Yes | No

Approval: _____ Title: _____ Date: _____

Comment/Exceptions: _____

Construction to City Facilities, Furniture, and/or Fixtures included? Yes | No

Approval: _____ Title: _____ Date: _____

Comment/Exceptions: _____

Is this an externally funded purchase? Yes | No

If yes, what is the issuing agency: _____

Approval: _____ Title: _____ Date: _____

Comment/Exceptions: _____

Is this a Capital Asset or Project? Yes | No

Project Ledger Number: _____

Approval: _____ Title: _____ Date: _____

Comment/Exceptions: _____

ATTACHMENTS:

Original contract packet

Amendment #1

Certificate of Liability Insurance (COI)

**CITY OF SANTA FE
AMENDMENT No. 1 TO
PROFESSIONAL SERVICES AGREEMENT
ITEM# 24-0505**

This AMENDMENT No. 1 (the "Amendment") amends the CITY OF SANTA FE PROFESSIONAL SERVICES AGREEMENT, dated August 19, 2024 (the "Agreement"), between the City of Santa Fe (the "City") and NV5, Inc. formerly known as WHPacific, 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. Per the attached Exhibit A – *Agreement and Plan of Merger*, an Agreement of Merger has been entered into between NV5, Inc., a California corporation with California Entity Number 1015797 (the “Acquiror”) and WHPacific, Inc., an Alaska corporation (herein “Merging Corporation”) with Alaska Entity No. 97747 and with California Foreign Entity No. 3284233.
- B. The Merger has become effective on December 28, 2024 (the “Effective Time”).
- C. The Merger has the effects set forth in the Corporations Code, including without limitation the generality of the foregoing, from the Effective Time: (i) all the properties, rights, privileges, immunities, powers and franchises of the Corporation, and (ii) all debts, liabilities, obligations and duties of the Corporation shall become the debts, liabilities, obligations and duties of the Acquiror, as the Surviving Corporation.
- D. 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. Contractor

”Contractor” as defined on page 1 of the original Agreement shall henceforth refer to NV5, Inc., in every instance.

2. NOTICES.

Article 28 of the Agreement, Notice to the Contractor is hereby amended as follows:

To the Contractor: Jonathan Peña, PE, Operations Manager, NV5, Inc., 6501 Americas Parkway NE Suite 400, Albuquerque, NM 87110, Jonathan.Pena@nv5.com.

3. AGREEMENT IN FULL FORCE.

Except as specifically provided in this Amendment, the Contract 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 Contract as of the dates set forth below.

CITY OF SANTA FE:

ALAN WEBBER, MAYOR

DATE: _____

ATTEST:

ANDRÉA SALAZAR, CITY CLERK

CITY ATTORNEY'S OFFICE:

Kevin L. Nault
Kevin L. Nault (Jan 30, 2025 23:41 MST)

KEVIN NAULT
ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

EMILY OSTER, FINANCE DIRECTOR

CONTRACTOR:

Jonathan Pena
Jonathan Pena (Jan 30, 2025 17:45 MST)

JONATHAN PEÑA, PE
OPERATIONS MANAGER

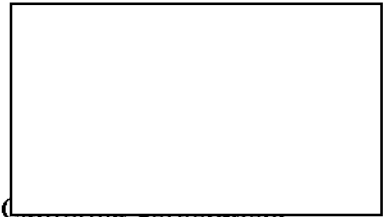
DATE: Jan 30, 2025

NMBTIN 03-32665400-9

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EXHIBIT A



AGREEMENT AND PLAN OF MERGER

This Agreement of Merger is entered into between NV5, Inc., a California corporation, with California Entity Number 1015797 (the "Acquiror"), and WHPacific, Inc., an Alaska corporation (herein "Merging Corporation") (the "Corporation"), with Alaska Entity Number 97747 and with California Foreign Entity No. 3284233.

-FILED-

File No.: BA20242247573

Date Filed: 12/20/2024

WHEREAS, the respective Boards of Directors of the Acquiror and the Corporation have each approved and adopted this Agreement and the transactions contemplated by this Agreement, in each case after making a determination that this Agreement and such transactions are advisable and fair to, and in the best interests of, such corporation and its stockholders: and

WHEREAS, pursuant to the transactions contemplated by this Agreement and on the terms and subject to the conditions set forth herein, the Corporation, in accordance with the California Corporations Code (the "Corporations Code"), will merge with and into the Acquiror, with the Acquiror as the surviving corporation (the "Merger").

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Merger. Upon the terms and subject to the conditions set forth in this Agreement, and in accordance with the Corporations Code, the Corporation shall be merged with and into the Acquiror at the Effective Time (as hereinafter defined). Following the Effective Time, the separate corporate existence of the Corporation shall cease, and the Acquiror shall continue as the surviving corporation (the "Surviving Corporation"). The effects and consequences of the Merger shall be as set forth in this Agreement.

2. Effective Time.

(a) Subject to the provisions of this Agreement, on the date hereof, the parties shall duly prepare, execute and file a certificate of merger (the "Certificate of Merger") complying with Section of the Corporations Code with the Secretary of State of the State of California with respect to the Merger. The Merger shall become effective on December 28, 2024 (the "Effective Time").

(b) The Merger shall have the effects set forth in the Corporations Code, including without limitation the generality of the foregoing, from the Effective Time: (i) all the properties, rights, privileges, immunities, powers and franchises of the Corporation shall vest in the Acquiror, as the Surviving Corporation, and (ii) all debts, liabilities, obligations and duties of the Corporation shall become the debts, liabilities, obligations and duties of the Acquiror, as the Surviving Corporation.

3. Organizational Documents. The by-laws of the Acquiror in effect at the Effective Time shall be the by-laws of the Surviving Corporation until thereafter amended as provided therein or by the Corporations Code, and the certificate of incorporation of the Acquiror in effect at the Effective Time, as amended pursuant to the Certificate of Merger, shall be the certificate of

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incorporation of the Surviving Corporation until thereafter amended as provided therein or by the Corporations Code.

4. Directors and Officers. The directors and officers of the Acquiror immediately prior to the Effective Time shall be the directors of the Surviving Corporation from and after the Effective Time and shall hold office until the earlier of their respective death, resignation or removal or their respective successors are duly elected or appointed and qualified in the manner provided for in the certificate of incorporation and by-laws of the Surviving Corporation or as otherwise provided by the Corporations Code.

5. Conversion of Securities. At the Effective Time, by virtue of the Merger and without any action on the part of the Acquiror or the Corporation or the holders of shares of capital stock of the Corporation:

(a) each share of common stock of the Corporation, (the "**Corporation Common Stock**"), issued and outstanding immediately prior to the Effective Time shall be converted into the right to receive one validly issued, fully paid and non-assessable share of common stock, of the Surviving Corporation (the "**Surviving Corporation Common Stock**");

(b) each share of Corporation Common Stock that is owned by the Acquiror or the Corporation (as treasury stock or otherwise) will automatically be canceled and retired and will cease to exist, and no consideration will be delivered in exchange therefor; and

(c) each share of capital stock of Acquiror issued and outstanding immediately prior to the Effective Time shall remain outstanding following the consummation of the Merger.

6. Stock Certificates. Upon surrender by the stockholders of the Corporation of the certificate or certificates (the "**Certificates**") that immediately prior to the Effective Time evidenced outstanding shares of Corporation Common Stock to Acquiror for cancellation, together with a duly executed letter of transmittal and such other documents as Acquiror shall require, the holder of such Certificates shall be entitled to receive in exchange therefor one or more shares of Surviving Corporation Common Stock representing, in the aggregate, the whole number of shares that such holder has the right to receive pursuant to Section 5 after taking into account all shares of Corporation Common Stock then held by such holder. Each Certificate surrendered pursuant to the previous sentence shall forthwith be canceled. Until so surrendered and exchanged, each such Certificate shall, after the Effective Time, be deemed to represent only the right to receive shares of Surviving Corporation Common Stock pursuant to Section 5, and until such surrender or exchange, no such shares of Surviving Corporation Common Stock shall be delivered to the holder of such outstanding Certificate in respect thereof.

7. Entire Agreement. This Agreement together with the Certificate of Merger constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, representations and warranties, and agreements, both written and oral, with respect to such subject matter.

8. **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

9. **No Third-Party Beneficiaries.** This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person any legal or equitable right, benefit or remedy of any nature whatsoever, under or by reason of this Agreement.

10. **Headings.** The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

11. **Amendment and Modification; Waiver.** This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

12. **Severability.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to affect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

13. **Governing Law.** This Agreement shall be governed by and construed in accordance with the internal laws of the State of California without giving effect to any choice or conflict of law provision or rule (whether of the State of California or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of California.

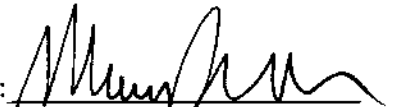
14. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the 12th day of December, 2024.

NV5, INC.


By: 

Name: Dickerson C. Wright
Title: Chief Executive Officer

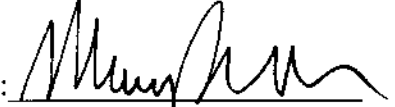
By: 

Name: MaryJo O'Brien
Title: Secretary

WHPACIFIC, INC.

By: 

Name: Dickerson C. Wright
Title: Executive Vice President

By: 

Name: MaryJo O'Brien
Title: Secretary

**OFFICERS' CERTIFICATE
OF APPROVAL OF
AGREEMENT OF MERGER**


Dickerson Wright and MaryJo O'Brien certify that:

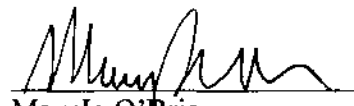
1. They are the Chief Executive Officer and the Secretary, respectively, of NV5, Inc., a California corporation with California Entity Number 1015797.
2. The principal terms of the Agreement of Merger in the form attached were duly approved by the board of directors and by the shareholders of the corporation by a vote that equaled or exceeded the vote required.
3. The shareholder approval was by the holder of 100% of the outstanding shares of the corporation.
4. There is only one class of shares and the number of shares outstanding entitled to vote on the merger is 100.

We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge.

Effective Date: December 28, 2024

Execution Date: December 12, 2024


Dickerson C. Wright
Chief Executive Officer


MaryJo O'Brien
Secretary

**OFFICERS' CERTIFICATE
OF APPROVAL OF
AGREEMENT OF MERGER**

Dickerson Wright and MaryJo O'Brien certify that:

5. They are the Executive Vice President and the Secretary, respectively, of WHPacific, Inc., an Alaska corporation with Alaska Entity Number 97747 and California Foreign Entity No. 3284233.

6. The principal terms of the Agreement of Merger in the form attached were duly approved by the board of directors and by the shareholders of the corporation by a vote that equaled or exceeded the vote required.

7. The shareholder approval was by the holder of 100% of the outstanding shares of the corporation.

8. There is only one class of shares and the number of shares outstanding entitled to vote on the merger is 1000.

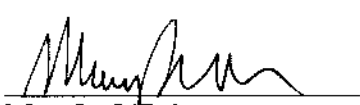
We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge.

Effective Date: December 28, 2024

Execution Date: December 12, 2024



Dickerson C. Wright
Executive Vice President



MaryJo O'Brien
Secretary

CITY OF SANTA FE
PROFESSIONAL SERVICES CONTRACT

THIS CONTRACT is made and entered into by and between the City of Santa Fe, New Mexico, hereinafter referred to as the “City,” and **WHPacific, Inc.**, hereinafter referred to as the “Contractor,” and is effective as of the date set forth below upon which it is executed by the Parties.

RECITALS

WHEREAS, the Chief Procurement Officer of the City has made the determination that this Agreement is in accordance with the provisions of the New Mexico Procurement Code (NMSA 1978, 13-1-28 et seq.) pursuant to NMSA 1978, section 13-1-111; and

WHEREAS, the Contractor is one of such requisite knowledge and qualifications and is willing to engage with the City for professional services, in accordance with the terms and conditions hereinafter set out, and the Contractor understanding and consenting to the foregoing is willing to render such professional services as outlined in the Agreement; and

The City and the Contractor hereby agree as follows:

1. Scope of Work

The Contractor shall provide the following services-for the City:

The Professional Engineer (PE) shall provide On-Call General Engineering Services and Construction Management Services for the design and construction of roadway, trail, drainage, facility, utility and traffic design. Once the City identifies a need, the City will issue a written task order to the PE that will detail required services. Upon receiving the City's request for services, the PE shall provide the City with an estimate of hours required to do the work and the parties will negotiate the tasks for each project on a project-by-project basis. The PE may also be required to do the project in phases. Where a project proceeds in phases based on the development model used by the City, the PE shall provide the work estimate for each phase.

Work estimates shall be based on producing the deliverables described in the development model below for the tasks or phase(s) in the task order.

1. PROJECT DEVELOPMENT PHASES

a. Phase 1 - Project Scoping

The PE will review available data, define project scope, conduct scoping field review, and write scoping report in accordance with guidelines of the New Mexico Department of Transportation.

1. Phase 1 Activities:

- i. Understanding and documenting existing conditions, environmental, and right-of-way needs;
- ii. Identifying design parameters for the project;
- iii. Documenting safety considerations;
- iv. Describing proposed improvements;
- v. Conducting a preliminary field review meeting; and
- vi. Developing a preliminary engineer's estimate.

2. Phase 1 Deliverables

a. Scoping Report

The following defines the required contents of the Scoping Report. The PE should evaluate all items listed below but some elements may not apply based on the project type.

i. Project Summary/General Description

a) Project data

- Control number
- Type of work
- Project purpose and need
- Location description
- Posted route
- Milepost (coordinates and/or intersections)
- Project length
- NMDOT district
- County
- Roadway functional classification
- Terrain type
- Fiscal year (study, design, construction) and project Termination Date
- Program (funding category)

b) Site description (beginning of project to end of project)

c) Survey requirements (location and/or property survey)

d) Right-of-way requirements

e) Environmental Level of Effort (ELOE)

f) Estimated project development time (from scoping to letting) all within agreement contract time; and

g) Estimated project construction schedule and budget

ii. Existing Conditions (where applicable)

a) Typical road section

- Driving lanes per direction
- Auxiliary lanes (acceleration, deceleration, and turning lanes) and medians
- Shoulders (including rumble strips/stripes) and/or curb and gutter
- Surfacing tapers

- Multi-modal facilities (including transit, pedestrian and bicycle facilities)
 - b) Roadside slopes
 - c) Geotechnical conditions
 - d) Surfacing type and condition
 - e) Horizontal alignment
 - f) Vertical alignment
 - g) Major and minor roadway intersections
 - h) Right-of-way width
 - i) Major structures (> 20-foot span)
 - j) Other structures (< 20-foot span, may include fencing, retaining walls, cattle guards, concrete box culverts, safety barriers, etc.)
 - k) Roadway lighting
 - l) Traffic control and management devices (traffic signals, intelligent transportation system (ITS) equipment, special traffic signs, etc.)
 - m) Utilities (inventory and owners)
 - n) Environmental factors
 - o) Posted speed limit and design speed
 - p) Driveway and entrances (inventory)
 - q) Level of service (traffic volume and fleet characteristics)
 - r) Facilities and compliance with the Americans with Disabilities Act (ADA)
 - s) Railroad facilities (identify, should include railroad right-of-way, crossings, etc.)
 - t) Erosion control and landscaping installations
 - u) School crossings
 - v) Safety considerations
- iii. Proposed Improvements
- a) Typical section (including surfacing type and thickness)
 - b) Major structures
 - c) Other structures
 - d) Horizontal alignment
 - e) Vertical alignment
 - f) Intersections
 - g) Turnouts
 - h) Safety
 - i) Drainage and erosion control
 - j) Design exceptions/ variances
 - k) Detours and traffic control
 - l) Warrants and signalization
 - m) Landscaping and irrigation
 - n) ADA/ pedestrian/ bicycle
 - o) Special issues or unique project elements
- iv. Factors Affecting Project Development and Schedule
- a) Survey requirements
 - b) Environmental requirements and certification
 - Archaeological requirements

- Historic preservation requirements (include the State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO))
- Hazardous materials investigations
- Right-of-way (ROW) considerations and certification
- Utility relocations and/or hookups and utility certification
- Outside agency involvement and coordination
- Railroad facilities and certification
- ITS facilities and certification

b. Conceptual Design

Contractor shall inquire with the Director of Public Works to determine whether an Early Neighborhood Notification (“ENN”) Meeting will be held for the project. If an ENN is to be held, Contractor shall develop a conceptual design based on the Project Scoping Report, and may be directed to present the conceptual design to the Public via the ENN Meeting described below. Conceptual design can be simply a series of sketches, ideas and explorations, or it can go to considerable depth, including design illustrations, indicative plans, sections and elevations and 3D models of a development approach.

c. ENN Meeting

An ENN is required for certain types of city capital improvement projects requiring review by the governing body as follows:

- i. Facility plans for municipal facilities or services, including wastewater, solid waste, potable water and airport facilities.
- ii. New projects or projects to expand or extend service to new service areas included in the capital improvement plan or general plan.
- iii. Any new road construction or reconstruction of an existing road that materially expands capacity.
- iv. Projects funded out of capital impact fee funds.
- v. Any new park or reconstruction or expansion of an existing park that exceeds one acre in size or one hundred and fifty thousand dollars (\$150,000) in cost.
- vi. Construction of a new building or structure at a park or placement of new lighting at a park that exceeds one hundred and fifty thousand dollars (\$150,000) in cost.

See APPENDIX A for the ENN Requirements.

b. Phase II – Preliminary Design (30% Design)

Preliminary design defines the general project location and design concepts. It includes, but is not limited to, preliminary engineering and other activities and analyses, such as environmental assessments, topographic surveys, metes and bounds surveys, geotechnical investigations, hydrologic analysis, hydraulic analysis, utility engineering, traffic studies, financial plans, revenue estimates, hazardous materials assessments, general estimates of the types and quantities of materials, and other work needed to establish parameters for the final design. Preliminary design should focus on establishing the horizontal and vertical alignments, typical section, and drainage and structural needs to a level sufficient to establish the project footprint.

Contractor shall develop a preliminary design to the standard of the NMDOT for a 30% level of completion.

1. Phase 2 Activities

The following activities should be initiated, if applicable, or required by the Scoping Report:

- i. Complete Drainage Report
- ii. Development of typical sections, grading plans, geometric alignments
- iii. Bridge type/size/location studies, temporary structure requirements, staged bridge construction requirements
- iv. Structural design, retaining wall design, noise wall design
- v. Guardrail length/layout
- vi. Existing property lines
- vii. Title and deed research
- viii. Soil borings
- ix. Cross sections with flow line elevations
- x. Ditch designs
- xi. Intersection design/configuration
- xii. Interchange design/configurations
- xiii. Pavement design
- xiv. Storm/sanitary sewer design
- xv. Culvert design, identification of removal items
- xvi. Quantity estimates
- xvii. Pavement details/elevation tables
- xviii. Preliminary traffic control plans to be maintained during construction
- xix. Coordinate railroad impacts
- xx. Coordinate ITS impacts and improvements
- xxi. Identify utility owners, records research, and begin utility coordination for Subsurface Utility Engineering (SUE)
- xxii. Continue documentation for environmental, cultural resource, and hazardous materials investigations, and obtain approvals
- xxiii. Hold ENN meeting (APPENDIX A)

If additional right-of-way is needed, the following additional activities need to occur in order during Preliminary Design.

- i. Complete property survey
- ii. Based on the project footprint, cultural and biological resource impacts are identified and plans for avoidance or mitigation are prepared.
- iii. If there are right-of-way impacts, the PE will schedule a meeting with the NMDOT's Right of Way Bureau and the Tribal/Local Public Agency Coordinator of North Region Design.
- iv. Begin Title Search and Title Reports

2. Phase 2 Deliverables

Typically, preliminary design would require a final geotechnical report, a final drainage report, utility location and mapping, right-of-way design and legal descriptions, roadway plan and profiles, bridge and structure types and criteria, plan and profile sheets, a preliminary traffic control plan, a National Pollution Discharge Elimination System (NPDES) permit, and an engineer's construction cost estimate.

The PE shall use the NMDOT format for plan sets with standard information to be completed to a level consistent with the design stage. For NMDOT series sheets standards please refer to the “Tribal/Local Public Agency Handbook”, 2019 or most current edition.

c. Phase III – Grade and Drain (60% Design)

The engineer shall address all comments on the 30% complete Preliminary Design by City Staff, including but not limited to Complete Streets, Parks and Open Spaces, Land Use, Public Utilities, and SFMPO, as well as comments by the Bicycle and Pedestrian Advisory Committee and comments from the NMDOT review meeting. All of the components in the 30% Preliminary Design phase are further developed and designed to a greater level of detail.

1. Phase III Activities

- i. Design drainage improvements
- ii. Finalize project footprint
- iii. Complete quantity schedules (if not included in the preliminary plans) and ensure they reflect computed design quantities
- iv. Prepare and submit design variance and/or exceptions (if applicable)
- v. Continue with environmental approvals
- vi. Continue right-of-way process
- vii. Develop preliminary traffic control plans including a suggested sequence of construction.
- viii. Submit engineer’s estimate
- ix. Prepare and submit draft contract book, including specifications, special provisions and Notice to Contractor (NTC)
- x. Incorporate ITS sheets, if necessary
- xi. Incorporate rail design or mitigation and coordinate rail agreements and special provisions, as required
- xii. Submit all Public Interest Findings (PIF) requests, if applicable
- xiii. Coordinate the Storm Water Pollution Prevention Plan (SWPPP) sheets and Temporary Erosion and Sediment Control Plan (TESCP) sheets with the City’s River and Watershed Manager (if the project’s disturbed area is greater than one acre)
- xiv. Begin Utility Relocation documentation (if applicable) for utility certification

2. Phase III Deliverables

Submit to the City’s Project Manager the 60% design plan set for review at least 2 weeks in advance of review meeting.

d. Phase IV - Plan-in-Hand (90% Design)

Comments from the 60% Design review meeting and Constructability Review, when applicable, are incorporated during the 90% Design phase. At 90% Design, the plans, quantities, and engineer’s estimate should be nearly complete. Only minor design changes should be occurring at (or after) this design phase. During the 90% Design phase, construction phasing layouts and construction signing, and striping plans are finalized, and project

certification requests are completed and requested from NMDOT's North Region Design Coordinator or T/LPA Coordinator.

1. Phase IV Activities

- i. Finalize plans
- ii. Finalize right-of-way coordination/certification
- iii. Finalize utilities coordination/certification
- iv. Finalize ITS coordination/certification
- v. Finalize railroad coordination/certification
- vi. Finalize environmental certification
- vii. Complete work zone checklist
- viii. Start plans, specifications, and estimates (PS&E) checklist
- ix. Finalize project cost estimate, including testing, construction management, and utility relocation when applicable
- x. Request Disadvantaged Business Enterprise Program (DBE) goal from the Region Coordinator, if applicable
- xi. Finalize project specifications and contract book, including all federal requirements
- xii. If project-specific special provisions are required, those must be submitted to the NMDOT's North Region Design Coordinator or T/LPA Coordinator for review and approval
- xiii. If project-specific Notice to Contractors (NTCs) are required, those must be submitted to the NMDOT's North Region Design Coordinator or T/LPA Coordinator for review and approval

2. Phase IV Deliverables

The 90% design plans shall include as appropriate: cover sheet, title sheet, typical roadway sections, quantity sheets, general notes, SWPPP Information sheet, TESCP sheets, plan and profile sheets, roadway, trail, interchange and intersection plans, structure placement sheets, special details, bridge plans and foundation recommendations, traffic control and detour plans, permanent signing and striping, signalization, lighting plans, grading plans, earthwork computations, landscape details and/or plans, incorporation of standard plans and those prepared by others, final detail estimate and proposal, supplemental specifications, notice to contractors, and special provisions as required and all other plans/specifications as may be required.

The 90% design plan set shall further include five (5) required NMDOT certifications. Environmental, ROW, Utility, Railroad, and Intelligent Transportation System (ITS) certifications must be submitted to City's Project Administrator at least two (2) weeks prior the review meeting.

e. Phase V - Plans, Specifications, and Estimate (PS&E)

The PS&E phase incorporates the comments from the 90% Design review meeting and finalizes the plans, quantities, and engineer's estimate. The contract book and specifications are complete, and all certifications are obtained prior to holding the PS&E review.

1. PS&E Deliverables

- a. PS&E package (to be submitted to City Project Administrator at least one week before NMDOT's annual deadline of June 1st)
 - i. 100% construction plans
 - ii. Engineer's opinion of probable cost
 - iii. Contract book
 - iv. Environmental clearance and certification documentation
 - v. SHPO's concurrence
 - vi. Right-of-way certification documentation
 - vii. Utility certification documentation
 - viii. ITS certification documentation
 - ix. Railroad certification documentation
 - x. Work zone checklist
 - xi. All other applicable maintenance agreements
 - xii. PS&E checklist
 - xiii. Approved Public Interest Findings (PIFs) and/or variances if applicable

- b. Project Production Package (to be submitted to City Project Administrator at least one week before NMDOT's annual deadline of June 15th)
 - i. Stamped and sealed construction plans
 - ii. Engineer's opinion of probable cost (including Construction Management if using federal funding to cover these expenses and utility relocation when applicable)
 - iii. Contract book (may leave out wage decisions until ready to bid because they can change over time)
 - iv. Environmental clearance and certification documentation, including signed environmental commitments sheet in the construction plans
 - v. SHPO's or THPO's concurrence
 - vi. Right-of-way certification documentation
 - vii. Utility certification documentation
 - viii. ITS certification documentation
 - ix. Railroad certification documentation
 - x. Work zone checklist
 - xi. All other applicable maintenance agreements
 - xii. Signed PS&E checklist
 - xiii. Approved PIFs and/or variances if applicable

f. Phase VI - Construction Engineering and Management Services

Construction Engineering and Management Services begins when the City advertises, bids and awards the project.

Upon request, the PE shall review bids and/or offers and provide an opinion to the City's Central Purchasing Office as to whether the bids and/or offers fully address the Invitation to Bid and/or Request for Proposals, and shall recommend selection of a bidder or offeror with written justification for that recommendation.

When a contract is awarded by the City in relation to the project, the PE shall fully execute and participate in the following tasks to implement the construction of the Project in conformance with the plans and specifications:

1. Hold Transition Meeting with City Project Administrator and NMDOT/FHWA Staff to discuss the required project documentation, format for submittals, and procedures to be used to ensure adequate management of a federally-funded construction project.
2. Hold Preconstruction Conference.
3. Duties during construction:
 - i. Daily documentation and maintain a project management diary
 - ii. Verify all construction activities and documentation meet NMDOT and federal standards and policies
 - iii. Supervise activities for government and third-party inspectors and office personnel
 - iv. Administer change orders in compliance with the change order provisions stated in the Tribal/Local Public Agency Handbook (current edition).
 - v. Coordinate all project activities
 - vi. Maintain public relations
 - vii. Address all problems and/or concerns related to project designs and plans.
 - viii. Approve all project documentation and submittals (including source books, certificates of compliance, NPDES permits, payrolls, subcontracts, traffic control diary, quality control plan, and testing reports).
 - ix. Enforce contractor's compliance with contract requirements (i.e., Buy America, Disadvantaged Business Enterprise (DBE), EEO, traffic control/safety, etc.)
 - x. Administer monthly progress payments
 - xi. Reject defective and/or non-compliant material and workmanship, in accordance with the contract
 - xii. Interpret the plans and specifications
 - xiii. Verify construction activities meet contractor schedule
 - xiv. Designate a person familiar with Storm Water Pollution (SWPP) Plan Preparation and Maintenance to review the work of contractors and provide an opinion on compliance to the Public Works Director, when applicable. In order to be considered "familiar," that person would need to have attended the Associated Contractors of New Mexico (ACNM) class "Storm Water Qualified Person" or equivalent.
 - xv. Approve the contractor's Quality Control Plan per Section 902, Quality Control, of the NMDOT Standard Specifications at least two weeks prior to the start of any work being performed that requires QC testing for acceptance. Once the Quality Control Plan is approved, PE shall verify that it is on file.
 - xvi. Review and approve any proposed changes to the traffic control plan at least two weeks prior to implementation. Ensure the revisions have been designed in accordance with 23 CFR § 630 Subpart J – Work Zone Safety and Mobility and 23 CFR § 630 Subpart K – Temporary Traffic Control Devices and are stamped by a current New Mexico Licensed Professional Engineer. If any part of the revised traffic control will be located on an NMDOT roadway, concurrence from the District Traffic Engineer is required prior to approval by the City project manager. Unapproved changes shall not be allowed in the field.

- xvii. Ensure proper B2Gnow and LCPtracker reporting.
- xviii. Review and approve progress payments.
- xix. Prepare for Project Closure and Final Inspection.

4. Duties after construction

Prepare and submit the Final Package to NMDOT.

In all cases where the PE is responsible for acceptance of a deliverable, payment of invoices remains subject to acceptance by city staff pursuant to Section 3(D) above.

2. Standard of Performance; Licenses

A. The Contractor does hereby accept its designation as a professional service, rendering services related to general engineering and construction management services for the City, as set forth in this Agreement. The Contractor represents that Contractor possesses the personnel, experience, and knowledge necessary to perform the services described under this Contract.

B. The Contractor agrees to obtain and maintain throughout the term of this Contract, all applicable professional and business licenses required by law, for itself, its employees, agents, representatives, and subcontractors.

3. Compensation

A. The City shall pay to the Contractor in full payment for services satisfactorily performed as per Task Order, such compensation not to exceed five million dollars (\$5,000,000), excluding gross receipts tax. The New Mexico gross receipts tax levied on the amounts payable under this Contract totaling four hundred nine thousand three hundred seventy-five dollars (\$409,375) 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 five million four hundred nine thousand three hundred seventy-five dollars (\$5,409,375). This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Contract 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 Contract 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 Contract 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.)

D. 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.

E. If the City fails to pay the contractor within twenty-one days after receipt of an undisputed request for payment, the City shall pay interest to the contractor beginning on the twenty-second day after payment was due, computed at one and one-half percent of the undisputed amount per month or fraction of a month until the payment is issued. If the City receives an improperly completed invoice, the City shall notify the sender of the invoice within seven days of receipt in what way the invoice is improperly completed, and the owner has no further duty to pay on the improperly completed invoice until it is resubmitted as complete.

F. **Notice of Extended Payment Provision For Grant Funded Contracts.** This contract allows the owner to make payment within 45 days after submission of an undisputed request for payment.

4. **Term**

THIS CONTRACT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE CITY. This Contract shall terminate **four (4) years from date of final signature** unless terminated pursuant to paragraph 5 (Termination) and paragraph 6 (Appropriations) in accordance with NMSA 1978, Sections 13-1-150 through 152.

5. **Termination**

A. Grounds. The City may terminate this Agreement for convenience or cause. For contracts within their authority, the City Manager or their designee is authorized to provide the notice of termination, otherwise such notice of termination shall be provided by the Mayor or their designee as authorized by the Governing Body. The Contractor may only terminate this Agreement based upon the City's uncured, material breach of this Agreement.

B. Notice; City Opportunity to Cure.

1) The City shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.

2) Contractor shall give 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.

3) Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by the City; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the City; or (iii) the Agreement is terminated pursuant to

Paragraph 6, “Appropriations”, of this Agreement.

C. Liability. Except as otherwise expressly allowed or provided under this Agreement, the City’s sole liability upon termination shall be to pay for acceptable work performed prior to the Contractor’s receipt or issuance of a notice of termination; 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. 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.

6. Appropriations

The terms of this Contract are contingent upon sufficient appropriations and authorization being made by the Governing Body for the performance of this Contract. If sufficient appropriations and authorization are not made by the Governing Body, this Contract 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 Contract to unilaterally reduce funding, the Contractor shall have the option to terminate the Contract or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

7. 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 Contract. 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.

8. Assignment

The Contractor shall not assign or transfer any interest in this Contract or assign any claims for money due or to become due under this Contract 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 Contract without the prior written approval of the City. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Contract, nor shall any subcontract obligate direct payment from the City.

10. Release

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

11. Confidentiality

Any confidential information provided to or developed by the Contractor in the performance of this Contract 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 Contract shall become the property of the City and shall be delivered to the City no later than the termination date of this Contract. Nothing developed or produced, in whole or in part, by the Contractor under this Contract 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 Contract, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Contract.

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Contract, will continue to comply with, and that this Contract 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 are material representations of fact upon which the City relied when this Contract was entered into by the parties. Contractor shall provide immediate written notice to the City if, at any time during the term of this Contract, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Article were erroneous on the effective date of this Contract 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 were erroneous on the effective date of this Contract 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 Contract to the contrary, the City may immediately terminate the Contract.

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 Contract 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 Contract, pursuant to the termination provisions as set forth in Article 4 herein, or to agree to the reduced funding.

15. 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.

16. Merger

This Contract 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 contract.

All terms and conditions of the **RFP #24001 On-Call General Engineering Services for Roadway, Trail, Bridge, Drainage, Facility, Utility and Traffic Design** and the Contractor's response to such document(s) are incorporated herein by reference and is included in the order of precedence.

No prior Agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Contract.

17. Penalties for violation of law

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

18. 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 Contract. If Contractor is found not to be in compliance with these requirements during the life of this Contract, Contractor agrees to take appropriate steps to correct these deficiencies.

19. Applicable Law

The laws of the State of New Mexico shall govern this Contract, 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 NMSA 1978, section 38-3-2. By execution of this Contract, 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 Contract.

20. 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 Contract may be terminated by the City.

21. Professional Liability Insurance

Contractor shall maintain professional liability insurance throughout the term of this Contract 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 Contract.

22. Other Insurance

If the services contemplated under this Contract will be performed on or in City facilities or property, Contractor shall maintain in force during the entire term of this Contract, 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 a 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 Contract shall be the greater of (1) the minimum coverage and limits specified in this Contract, 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 Contract are sufficient to cover the obligations of Contractor hereunder.

D. Contractor shall maintain the above insurance for the term of this Contract 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.

23. 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 Contract's term and effect and retain them for a period of three (3) years from the date of final payment under this Contract. 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 Contract shall not foreclose the right of the City to recover excessive or illegal payments.

24. 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 Contract, 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 Contract. If any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Contract 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.

25. New Mexico Tort Claims Act

Any liability incurred by the City of Santa Fe in connection with this Contract 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 Contract modifies or waives any provision of the New Mexico Tort Claims Act.

26. Invalid Term or Condition

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

27. Enforcement of Contract

A party's failure to require strict performance of any provision of this Contract 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 Contract 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.

28. Notices

Any notice required to be given to either party by this Contract 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: Regina Wheeler, Public Works Department Director, City of Santa Fe, P.O. Box 909 Santa Fe, NM 87504-0909, rawheeler@santafenm.gov.

To the Contractor: Jonathan Peña, PE, Albuquerque Operations Manager, WHPacific, Inc., 6501 Americas Parkway NE Suite 400, Albuquerque, NM 87110, Jonathan.Pena@nv5.com.

29. Authority

If Contractor is other than a natural person, the individual(s) signing this Contract 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 a binding contract.

30. Non-Collusion

In signing this Agreement, the Contractor certifies the Contractor has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with this offer submitted to the City's Chief Procurement Officer.

31. Default/Breach

In case of Default and/or Breach by the Contractor, for any reason whatsoever, the City may procure the goods or services from another source and hold the Contractor responsible for any resulting excess costs and/or damages, including but not limited to, direct damages, indirect damages, consequential damages, special damages, and the City may also seek all other remedies under the terms of this Agreement and under law or equity.

32. Equitable Remedies

The Contractor acknowledges that its failure to comply with any provision of this Agreement will cause the City irrevocable harm and that a remedy at law for such a failure would be an inadequate remedy for the City,

and the Contractor consents to the City 's obtaining from a court of competent jurisdiction, specific performance, or injunction, or any other equitable relief in order to enforce such compliance. The City's rights to obtain equitable relief pursuant to this Agreement shall be in addition to, and not in lieu of, any other remedy that the City may have under applicable law, including, but not limited to, monetary damages.

33. Default and Force Majeure

The City reserves the right to cancel all, or any part of any orders placed under this Agreement without cost to the City, if the Contractor fails to meet the provisions of this Agreement 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 and remedies of the City provided in this Clause shall not be exclusive and are in addition to any other rights now being provided by law or under this Agreement.


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

CITY OF SANTA FE:


Alan Webber (Aug 19, 2024 17:04 MDT)
ALAN WEBBER, CITY MAYOR

DATE: Aug 19, 2024

CONTRACTOR:

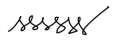
WHPacific, Inc

Jonathan Pena (Jul 8, 2024 10:42 MDT)
JONATHAN PEÑA, PE
ALBUQUERQUE OPERATIONS MANAGER

DATE: Jul 8, 2024

CRS#: 03-122525-00-0

Registration #: 17632

ATTEST:



GERALYN CARDENAS
INTERIM CITY CLERK *xiv*
GB MTG 08/14/2024

CITY ATTORNEY'S OFFICE:


Marcos Martinez (Jul 18, 2024 08:12 MDT)

MARCOS MARTINEZ
SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:



EMILY OSTER, FINANCE DIRECTOR

APPENDIX A

EARLY NEIGHBORHOOD NOTIFICATION

Early Neighborhood Notification (ENN) Applicability to City Capital Improvement Projects

ENN is required for certain types of *city capital improvement* projects requiring review by the *governing body* as follows:

- (i) facility plans for municipal facilities or services, including wastewater, solid waste, potable water and airport facilities;
- (ii) new projects or projects to expand or extend service to new service areas included in the *capital improvement plan* or *general plan*;
- (iii) any new road construction or reconstruction of an existing road that materially expands capacity; and
- (iv) projects funded out of capital impact fee funds.
- (v) any new park or reconstruction or expansion of an existing park that exceeds one acre in size or one hundred and fifty thousand dollars (\$150,000) in cost; construction of a new building or structure at a park or placement of new lighting at a park that exceeds one hundred and fifty thousand dollars (\$150,000) in cost.

The following types of *capital improvement* projects do not require ENN:

- (i) *replacement*, repair or maintenance of underground facilities where such activity does not represent a material expansion of existing facilities;
- (ii) road maintenance, repair, surfacing or resurfacing, striping, curb and gutter or sidewalk repair or maintenance, *sign* maintenance, signal repair, shoulder work, bridge or culvert maintenance work; and
- (iii) special assessment districts covered by *state* law or *city* ordinance.

Summary Notices to Meet ENN Guidelines (not all of the agencies may be needed for every project):

20 days in advance:

Project Consultants submit to City Project Administrator Meeting Notice Letter for review and Approval.

15 days in advance:

City Project Administrator

Email: to Santa Fe City Council members and the mayor, Santa Fe MPO staff, City of Santa Fe Parks and Recreation Department, BPAC members, City of Santa Fe Land Use Department, interested individuals, neighboring condominium / apartment associations and neighborhood associations

City PrimeGov: Post notice of ENN meeting on PrimeGov

Social Media: City's Facebook – Coordinate with Community Engagement Department's Communications Manager (505) 469-0946

Project Consultants

Mail: Meeting notice (first class mail) to property owners and physical addresses within 300' of project boundary and neighborhood associations within 300' of project boundary

Posters: At least (1) (preferably 2, but subject to availability) 4'x5' City of Santa Fe Notification Board

Newspaper: Display advertisement in a local daily newspaper of general circulation stating the date, time and place of the public hearing

City Project Administrator

Contacts:

OPTIONAL: One week in advance:

Email: to Santa Fe City Council members and mayor, Santa Fe MPO staff, City of Santa Fe Parks and Recreation Department, BTAC members, City of Santa Fe Land Use Department, interested individuals, neighboring condominium or apartment associations and neighborhood associations

OPTIONAL: One day in advance:

Email: to Santa Fe City Council members and mayor, Santa Fe MPO staff, City of Santa Fe Parks and Recreation Department, BTAC members, City of Santa Fe land Use Department, interested individuals, neighboring condominium or apartment associations and neighborhood associations

Additional References

Section 14-3.1(F) of the Santa Fe City Code for a complete representation of all regulations pertaining to Early Neighborhood Notification



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

5/1/2025

5/1/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Lockton Companies 3280 Peachtree Road NE, Suite #1000 Atlanta GA 30305 (404) 460-3600	CONTACT NAME: PHONE (A/C, No. Ext):		FAX (A/C, No):
	E-MAIL ADDRESS:		
INSURED WHPacific, Inc. 1491108 NV5 Global, Inc., NV5, Inc. 200 South Park Road, Su Hollywood, FL 33021	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A: Hartford Fire Insurance Company		19682
	INSURER B: Navigators Specialty Insurance Company		36056
	INSURER C: Twin City Fire Insurance Company		29459
	INSURER D: Everest Indemnity Insurance Company		10851
	INSURER E: National Fire and Marine Insurance Co		20079
INSURER F:			

COVERAGES **CERTIFICATE NUMBER:** 17538462 **REVISION NUMBER:** XXXXXXXX

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	N	N	21 CSE S88600	5/1/2024	5/1/2025	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 15,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 4,000,000 \$
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	N	N	21 CSE S88601	5/1/2024	5/1/2025	COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000 BODILY INJURY (Per person) \$ XXXXXXXX BODILY INJURY (Per accident) \$ XXXXXXXX PROPERTY DAMAGE (Per accident) \$ XXXXXXXX \$ XXXXXXXX
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ \$0	N	N	GA24EXRZ0DWT51C	5/1/2024	5/1/2025	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 \$ XXXXXXXX
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	22 WE BE9P58	5/1/2024	5/1/2025	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D	Excess Liab	N	N	XC3EX00564-241	5/1/2024	5/1/2025	Ea. Claim/Agg. \$10M/\$10M
E	Prof/Poll Liab			42-EPP-321328-03	5/1/2024	5/1/2025	Ea. Claim/Agg. \$10M/\$20M
A	Bus Per Prop			22 UUN AF9909	5/1/2024	5/1/2025	Limit \$20,415,609

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 Excess/Umbrella policy follows form over underlying policies: General Liability, Auto Liability & Employers Liability (additional insured and waiver of subrogation apply).
 Professional Liability - Claims made form, defense costs included within limit.

CERTIFICATE HOLDER**CANCELLATION** See Attachments

17538462
 City of Santa Fe
 200 Lincoln Ave
 Santa Fe NM 87501

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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Signature: 
XAVIER VIGIL (Aug 19, 2024 16:42 MDT)

Email: xivigil@santafenm.gov